

The Limits Of Predecessor Strict Liability In Pa.

Law360, New York (November 2, 2015, 12:46 PM ET) --



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Any manufacturer seeking to sell its product line should carefully consider whether to completely divest all interest in and control of the product line due to a risk of being subjected to strict liability for future product-related injuries. In a case that constitutes both a win and a warning for product designers, the U.S. District Court for the Eastern District of Pennsylvania recently made clear that strict liability only attaches to “sellers” of products. Where a product line is divested prior to an injury, the key consideration is what, if any, control the divesting company retained over the product line. Unless control is fully relinquished, the predecessor manufacturer may be held strictly liable for post-divestment injuries.

In *Thorpe v. Bollinger Sports LLC*, 2015 U.S. Dist. LEXIS 119643 (E.D. Pa. Sept. 2015), the plaintiff argued that Bell Sports Inc. should be held strictly liable for an eye injury sustained by the plaintiff in 2014 allegedly caused by an exercise product, the Embark resistance band. The resistance band had been the subject of a recall in 2011. Bell sold the Embark product line to Bollinger Sports LLC in 2012. According to the plaintiff, Bell never disclosed to Bollinger that the product line had been the subject of a recall.

The Thorpe court ultimately rejected the plaintiff’s strict liability claim against Bell. The court observed that Restatement (Second) of Torts § 402A imposes strict liability on the “seller” of a defective and unreasonably dangerous product. Pennsylvania courts broadly construed the term seller to include any entity involved in supplying a product to the consuming public. Conversely, the court observed that an individual is not a “seller” — and therefore beyond the scope of § 402A liability — if the individual “is not engaged in the distribution or marketing, i.e., the chain of distribution, of a product to the public.” *Id.* at *6.

It was undisputed that Bell did not manufacture the resistance band that injured the plaintiff. The

plaintiff, however, argued that even if Bell was not a seller in the traditional sense, it still should be held strictly liable as a de facto seller because of its failure to disclose the recall of the bands to Bollinger during the course of the divestment. By withholding this information, the plaintiff claimed, Bell “made the continued sale of its defective and previously recalled product inevitable, thus establishing [Bell’s] role in the supply of the defective product to unsuspecting customers.” *Id.* at *7. The court rejected this creative theory.

First, the court noted that the act of licensing or selling a product design to another entity that manufactures and sells an allegedly defective product “does not inject the designer into the chain of distribution.” *Id.* at 7-8. The court observed that, in selling the product line, Bell “relinquished all control over the band’s design and, thus, the ability to affect or control the alleged defect nearly two years before [the plaintiff’s] injury.” *Id.* at 8. Under these circumstances, the court concluded that the public policy considerations that justify the imposition of strict liability — ensuring that “the costs of injuries sustained from purchasing defective products are paid by the manufacturers who put the products on the market and not by the injured persons themselves” — would be undermined if strict liability were extended to Bell. *Id.* at *8 (citation and quotation marks omitted).

The plaintiff also argued that holding Bell strictly liable would serve public policy interests in that (1) imposing strict liability would incentivize companies to disclose product defects when divesting product lines; (2) Bell was in a superior position than consumers to prevent injury from the alleged defect by disclosing the alleged defect to Bollinger; and (3) Bell could spread the costs of compensation for product-related injuries by increasing the cost of the product to customers. The court did not credit the first two arguments because Bell played no role in the manufacture or distribution of the band that injured the plaintiff, did not retain any influence over Bollinger and did not gain financially from post-divestiture band sales. As such, Bell could not have prevented the plaintiff’s injury. The court rejected the third argument, explaining that liability could not attach to Bell simply because its pockets were deep enough to pay damages.

The conclusion in *Thorpe* — that a predecessor manufacturer of a product is not strictly liable for a post-divestment injury where it relinquished all control and interest in the product line — is in line with decisions from other courts presented with similar facts. In *Christian v. 3M*, 126 F. Supp. 2d 951 (D. Md. 2001), the plaintiffs sued Minnesota Mining & Manufacturing Co. under a strict liability theory for injuries arising from defective silicone breast implants. 3M sold the implants, but divested the product line to a successor company, McGhan Medical Corp., four years before any plaintiff underwent breast implant surgery. After the sale of the product line, 3M leased office and manufacturing space to McGhan, accepted promissory notes as payment and provided other transitional services. The plaintiffs argued that the divestiture was a sham designed to shield 3M from liability arising from the defective breast implants. Writing for the U.S. District Court for the District of Maryland, the Honorable Deborah K. Chasanow analyzed the post-divestiture relationship between 3M and McGhan and rejected the plaintiffs’ theory that the former was merely the alter-ego of the latter. Accordingly, Judge Chasanow held that because “3M played no role in the manufacture or the sale of Plaintiffs’ breast implants, 3M cannot be strictly liable.” *Id.* at 958.

Similarly, in *Emmons v. Bridgestone Americas Tire Operations LLC*, 2012 U.S. Dist. LEXIS 175848 (E.D. Mo. Dec. 12, 2012), the plaintiff was injured in 2009 while servicing a multipiece tire rim installed on a log-hauling truck. The plaintiff claimed that Goodyear Tire & Rubber Co. was strictly liable for his injuries. The component parts of the rim that injured the plaintiff were manufactured by Motor Wheel Corp. in 1992. Motor Wheel was a wholly owned subsidiary of Goodyear until 1986, at which point Motor Wheel became an independent company. Motor Wheel manufactured the components that

injured the plaintiff before and after the company's affiliation with Goodyear. Under these facts, the U.S. District Court for the Eastern District of Missouri rejected the plaintiff's claim that Goodyear could be held liable under a "predecessor strict liability" theory, explaining that "[s]imply because a designer or manufacturer previously was engaged in placing a product in the market does not mean that it can be held liable based upon the actions of successors in the industry." *Id.* at *9. Importantly, the court noted that the "plaintiffs fail[ed] to prove that Goodyear played a role in the manufacture and/or sale" of the specific products that had injured the plaintiff. *Id.* at *13.

The Thorpe, Christian and Emmons decisions serve as important reminders to manufacturers and sellers of products as they reinforce the core principles — and limits — of strict liability: it does not apply to those who were not involved in manufacturing, distributing or selling the product at issue. By refusing to impose strict liability on Bell because it had fully divested its interest in the Embark product line, the Thorpe Court demonstrated balance and restraint in refusing to expand the scope of strict liability to those outside the product distribution chain. A contrary result would have violated the fundamental public policy reasons that justify the imposition of strict liability in the first place.

Thorpe, along with Christian and Emmons, also serve as a warning to product manufacturers to completely divest control and influence over product lines conveyed to successors in order to avoid strict liability for post-divestment injuries. In all three opinions, the legal analysis and outcome may have been drastically different if the predecessor manufacturers had retained control over, or financial interest in, the continued sale of the divested product line.

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