Pennsylvania Supreme Court Limits Strict Products Liability Claims

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On May 25, 2006, the Pennsylvania Supreme Court substantially restricted the grounds upon which strict products liability claims may be asserted. Specifically, in Pennsylvania Department of General Services v. United States Mineral Products Co., 898 A.2d 590 (Pa. 2006), a four-Judge majority held that to succeed in a strict liability claim, a plaintiff must show that an allegedly defective product was used in its intended manner.

U.S. Mineral Products Co. stemmed from a fire that damaged a government office building in Harrisburg, Pennsylvania on June 16, 1994. The Commonwealth demolished the building and replaced it with a new office tower. The decision to demolish was due, at least in part, to the presence of polychlorinated biphenyls (“PCBs”), a class of synthetic chemicals detected in the ambient air inside the building following the fire.

The Commonwealth brought a strict products liability action against Monsanto, the manufacturer of PCB-containing materials used in the construction of the original office building. The Commonwealth claimed that Monsanto’s products were the source of the PCBs that contaminated the original building, and sought to recover the costs of constructing the new office tower. The jury returned a verdict in favor of the Commonwealth and assessed damages at $90 million.

On appeal, the Supreme Court reversed the judgment and granted Monsanto a new trial on liability and damages. The court accepted Monsanto’s argument that it was not liable for the release of PCBs because subjecting its building materials to fire was not an intended use of the product. According to the majority, there is generally no strict liability in Pennsylvania relative to non-intended uses even where foreseeable by a manufacturer. It stated: “[F]oreseeable misuse of a product will not support a strict liability claim.”

The court acknowledged that one could argue that, because it is reasonably foreseeable that building materials could be subjected to a fire, the products’ intended use should include consumption in fire. However, the court held that “such an argument contravenes the strong admonition . . . that foreseeability considerations have no place in [the strict products liability] setting . . . .” This decision may have ramifications for many strict products liability actions pending in Pennsylvania. For instance, U.S. Mineral Products Co. can be cited as supporting precedent in motions for summary judgment seeking the dismissal of strict liability claims where there is evidence of product misuse.

Beyond such immediate effects, U.S. Mineral Products Co. may foreshadow decisions that will further remedy the Supreme Court’s dissatisfaction with the confused state of strict products liability law in Pennsylvania. As early as 2003, in Phillips v. Cricket Lighters, 841 A.2d 1000 (Pa. 2003), three Supreme Court justices considered the adoption of the Restatement (Third) of Torts: Products Liability, a recent compilation of products liability law that largely abandons the distinction between products liability law and negligence. The majority in U.S. Mineral Products Co. recognized “substantial deficiencies in present strict liability doctrine, [which] should be closely limited pending an overhaul by the Court.” Accordingly, U.S. Mineral Products may signal a continuing trend toward the adoption of the Third Restatement of Torts.

For more information, please contact Clem C. Trischler at 412.263.1816 or at his e-mail address, CCT@PBandG.com, or David W. Turner at 412.263.4356 or at his e-mail address, DWT@PBandG.com.
PIETRAGALLO ESTABLISHES 24/7 NATIONAL RAPID RESPONSE TEAM

In conjunction with the USLAW Network, Pietragallo Bosick & Gordon has established a National Rapid Response Team and Rapid Response Line which will be accessible 24 hours a day to assist clients and companies nationwide who are faced with construction emergencies, aviation accidents, transportation accidents, or criminal justice system matters. Callers to the line will be immediately forwarded to the proper Pietragallo attorney to deal with the incident. Services provided include attorney recommendations, selection of experts, attorney coordination of accident reconstruction and attendance of attorneys at criminal hearings. The toll-free 800-number for the Rapid Response Line is 1-800-645-8003.

USLAW Network is a national organization composed of 59 independent law firms in 43 states with more than 3,500 attorneys. All member firms are AV-rated law firms and become part of the Network by invitation only.

1-800-645-8003

PIETRAGALLO OPENS SHARON, PA OFFICE

Pietragallo Bosick & Gordon has opened an office in Sharon, Pennsylvania and named Richard F. Moroco as partner-in-charge of the new location.

The office, located at 54 Buhl Boulevard, will serve Crawford, Lawrence and Mercer counties in Pennsylvania and Columbiana, Mahoning and Trumbull counties in Ohio.

Mr. Moroco had maintained a private law practice concentrating on mergers and acquisitions, entity formations, venture capital finance, corporate governance and securities law. He also has extensive expertise in the area of international business, including global sourcing. Mr. Moroco is a member of Pietragallo's Business Practice Group.

PASSPORTS WILL SOON BE A REQUIREMENT FOR TRAVELERS FROM MEXICO AND OTHER WESTERN HEMISPHERE COUNTRIES

Between December 31, 2006 and January 1, 2008, the U.S. Departments of State and Homeland Security (DOS and DHS) will begin requiring that people entering the U.S. from Mexico, Canada, the Caribbean, Central or South America present a valid passport or another secure national identification document.

As part of the Intelligence Reform and Terrorism Prevention Act of 2004 (IRTPA), the U.S. government will begin requiring passports for all travelers from these areas by January 1, 2008.

The current U.S. law requires Mexican nationals to present a valid passport containing a valid visa or a Border Crossing Card (BCC) when crossing a land border shared with Mexico. A BCC is a machine-readable, biometric card that is issued by the DOS' Bureau of Consular Affairs.

The new law will require a valid passport for each person entering the U.S. and BCC cards will no longer be accepted.

These laws do not apply to U.S. citizens or legal permanent residents who may enter the U.S. by providing proof of their citizenship or by showing their permanent resident (green) card.

To learn more, you may contact Brian S. Green, Esq. of Pietragallo's Employment Law Practice at 412.263.1815 or at his e-mail address, BSG@PBandG.com.

GOVERNOR RENDELL SIGNS ACT 41 INTO LAW RAISING COMPULSORY ARBITRATION LIMITS

On May 11, 2006, Pennsylvania Governor Edward Rendell signed Act 41 into law. This law, which took effect on July 10, 2006, amends section 7361(b) of the Judicial Code and increases the maximum dollar amounts for cases sent to compulsory arbitration.

In the counties of Allegheny, Berks, Bucks, Chester, Dauphin, Delaware, Erie, Lackawanna, Lancaster, Lehigh, Luzerne, Montgomery, Northampton, Philadelphia, Westmoreland and York, arbitrators can hear cases if the amount in controversy is less than $50,000. In all other counties, arbitrators can hear cases where the amount in controversy is less than $35,000.

To learn more, you may contact Louis C. Long, Esq. of Pietragallo's Insurance Coverage and Appellate Practice at 412.263.4395 or at his e-mail address, LCL@PBandG.com.
SPOTLIGHT

RECENT SUCCESSES

Rochelle L. Brightwell successfully obtained summary judgment in favor of Encompass Insurance Company in the U.S. District Court for the Southern District of West Virginia in a case alleging negligence in a motor vehicle collision. Neither the defendant nor his vehicle was insured and the plaintiff sought coverage under the Encompass policy issued to the defendant’s parents. The court found that there were no genuine issues of material fact and granted Encompass’ motion for summary judgment.

Richard F. Moroco successfully facilitated the preparation of a private placement to raise $4.2 million to fund a start-up workers’ compensation insurance carrier, in addition to numerous other activities associated with this engagement. The company received its Certificate of Authority in late July and began writing insurance on September 1, 2006.

Robert J. D’Annibale, Jr. received a judgment in favor of the City of Steubenville from the Court of Appeals of Ohio, Seventh Appellate District, in a case involving a water contract dispute between Steubenville and Wintersville. The court ruled the latter must pay Steubenville the full $600,000 in capital improvement costs plus interest of approximately $64,000.

Mark Gordon successfully obtained concessions from the Pennsylvania Compensation Rating Bureau to reclassify codes for a large auto parts company, resulting in significant insurance cost savings for the employer.

ATTORNEYS IN THE NEWS

William Pietragallo, II was included in the 2006 edition of The Best Lawyers in America for Bet-the-Company Litigation and also recognized by the BTI Consulting Group as one of 114 lawyers nationwide who have been designated by Fortune 1000 companies as providing superior client service. Mr. Pietragallo is one of only three attorneys in Pittsburgh and six in Pennsylvania so selected by BTI.

Mark Gordon, David H. Dille, Harry J. Klucher and Francis E. Pipak were included in the 2006 edition of The Best Lawyers in America for Workers’ Compensation Law. The Best Lawyers in America is widely regarded as the preeminent referral guide to the legal profession in the United States.

Mark Gordon and P. Brennan Hart were appointed Hearing Committee Members serving the Disciplinary Board of the Supreme Court of Pennsylvania.

Robert J. D’Annibale, Jr. was appointed to the Board of Advisors for the Franciscan University of Steubenville and as a board member to the Trinity Health System Foundation.

The Legal Intelligencer and American Lawyer Media’s law.com website featured an article discussing a writ of certiorari filed by Joseph J. Bosick and Alfred S. Peláez on behalf of USX. The cert petition asked the U.S. Supreme Court to certify questions to state supreme courts whenever a case hinges on an unanswered question of state law.

Pamela G. Cochenour appeared on KDKA Radio to provide expert commentary on the sexual harassment claim filed against Isiah Thomas of the New York Knicks.

Robert R. Leight appeared on WPGB Radio to discuss the legal ramifications of the Duke University lacrosse team rape case.

Bryan S. Neft was honored by the Allegheny County Bar Association for his participation in the “Lawyers Against Hunger” campaign, which has raised nearly $500,000 in the past 13 years.

Brian S. Green published two articles in the American Immigration Lawyers Association’s peer-reviewed magazine, Immigration Law Today. The articles were, “Third Circuit is Latest to Award Attorneys’ Fees for Remand to Board of Immigration Appeals” and “Federal Injunction Compels U.S. Citizenship and Immigration Services to Issue Proof of Lawful Permanent Resident Status.”
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