



Product Liability Law Alert

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Plaintiffs filing suit for design defects or inadequate warnings may carry burden of proof on reasonable foreseeability

On May 4, the Sixth Circuit Court of Appeals made clear a plaintiff's burden in bringing a design defect or inadequate warnings claim under the Ohio Products Liability Act is to prove that his or her injury was reasonably foreseeable to the manufacturer – even if there appears to be no other explanation for an injury that occurred during normal use of the product. In *Butts v. OMG, Inc., et al.*, Case No. 14-3962, the Sixth Circuit upheld the Southern District of Ohio's grant of summary judgment to the manufacturer defendants, concluding the evidence established that Plaintiff Butts' injuries resulted from an unforeseeable risk of using the product.

Butts was an experienced roofer who used an industrial caulking gun unit to fasten insulation board to roofing substrates. While Butts was using it, the unit's transfer bar allegedly shot backwards with a sound Butts' coworkers described as being like a pistol or shotgun firing and crushed two fingers on Butts' left hand. After several months and five unsuccessful surgeries, Butts lost his middle finger below the knuckle and the top of his ring finger.

Butts brought suit under the Ohio Product Liability Act, alleging that the defendants defectively designed, manufactured, and labeled the unit. He eventually abandoned his manufacturing defect claim. After the close of discovery, the defendants moved to exclude Butts' experts and for summary judgment on the remaining claims. The trial court granted summary judgment to the defendants on both claims and denied the motions to exclude as moot, ruling that Butts could not succeed on his claims even with expert opinions because he could not show that his injury was foreseeable.

The Sixth Circuit agreed, focusing on the requirement in § 2307.75(A) that Butts prove that "...the foreseeable risks associated with the design ... exceed the benefits associated with that design." Summary judgment in favor of a plaintiff is proper if a plaintiff's injury results from a risk that is in no way foreseeable, considering the specific factors outlined in § 2307.75(B). The Court found that none of the tests performed by either of Butts' experts showed that excessive pressure in the caulking gun unit caused blowback under normal use conditions. The Court concluded that the blowback that caused Plaintiff's injury was therefore not foreseeable to the manufacturers, pointing out that the type of injury suffered by Butts had never happened before and had not happened since.



Butts is a good reminder that a plaintiff asserting a design defect or inadequate warning claim under Ohio law bears the burden of proving that his injury was reasonably foreseeable to the manufacturer – even if there appears to be no other apparent explanation for the injury. As the Sixth Circuit pointed out, “The fact that Butts was injured while using the product [does not] create a genuine dispute of fact ... Indeed, this type of evidence exists in every products liability action.”

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