



Product Liability Law Alert

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A reminder that Ohio's Product Liability Act does not shield manufacturers or suppliers from certain common law defect claims

Huffman v. Electrolux N. Am., Inc., No. 3:12CV2681, 2013 U.S. Dist. Lexis 117531 (N.D. Ohio Aug. 13, 2013)

In *Huffman v. Electrolux*, the United States District Court for the Northern District of Ohio identified continued ambiguities in Ohio's Product Liability Act (OPLA) that appear to permit the pairing of OPLA claims with common-law claims seeking only economic loss damages, ambiguities that in turn create additional considerations for defense attorneys and their manufacturer clients. When OPLA was passed in 1988, the Act did not state whether it superseded common-law product liability claims seeking solely economic loss damages – damages that do not result from, primarily, personal injury or property damage. After the Ohio Supreme Court attempted to clarify this issue in two cases, the General Assembly amended OPLA in 2005 to state that the Act was “intended to abrogate all common-law product liability claims or causes of action.” R.C. 2307.71(B). Since this amendment, seizing on this statutory language, it has been conventional wisdom among many practitioners that a plaintiff had a choice: bring claims under OPLA seeking compensatory damages and recover certain economic loss damages if successful, or bring common-law claims seeking solely economic loss damages.

Huffman v. Electrolux

In *Huffman*, the plaintiff alleged that her malodorous front-loading washing machine destroyed her clothing and household goods. She filed a class action, alleging common law claims, contract claims under the UCC, and claims under OPLA against Electrolux, the manufacturer of the machine. For her destroyed clothing and household goods, she sought compensatory damages under OPLA. The controversy surrounded her common-law claims, for which she sought economic loss damages, including damages for her defective washer.

Electrolux moved to dismiss, arguing principally that OPLA precludes bringing common-law claims seeking solely economic loss damages. The court disagreed, holding that the plaintiff could bring both common-law and OPLA claims. The court identified a number of reasons for its conclusion: the plain language of the statute; OPLA's definition of “products liability claim;” OPLA's damage provision; and the General Assembly's failure to amend the remedial portion of the Act.



OPLA defines a “products liability claim” as one that “seeks to recover compensatory damages . . . for death, physical injury to person, emotional distress, or physical damage to property other than the product in question.” R.C. 2307.71(A) (13). And “[i]f a claimant is entitled to recover compensatory damages . . . the claimant may recover . . . for any economic loss that proximately resulted from the defective aspect of the product in question.” R.C. 2307.79(A). But the damages provision of the Act appears to preserve economic loss recovery under the common law when it states that “[a]ny recovery . . . for economic loss based on a claim that is asserted in a civil action, other than a product liability claim, is not subject to [OPLA], but **may occur under the common law of this state.**” R.C. 2307.72(C). When the legislature in 2005 amended OPLA to apparently abrogate common-law claims, it left untouched this remedial portion of the Act. Judge Carr parsed the statute carefully, and by coupling his plain meaning understanding with a procedural right to plead inconsistent alternative theories and with Ohio’s consumer-friendly right to the remedy of economic loss damages, he concluded that OPLA does not preclude common-law claims for pure economic loss. In essence, because OPLA applies only to “product liability claims,” and claims seeking only economic loss recovery do not fall within this definition, the Act (despite the legislature’s attempt to abrogate decades of the common law in one fell swoop) by its own terms permits common law defect claims.

What *Huffman* means for manufacturers

Huffman is significant for manufacturers and suppliers sued by class action plaintiffs in Ohio. A plaintiff bringing a typical suit for compensatory damages under OPLA – because of personal injury or property damage – is often precluded from maintaining a class action because individual injuries and unique factual circumstances will predominate over common questions of fact. But a plaintiff suing under the common law for economic loss damages – according to *Huffman*, a permissible theory to pair with an OPLA claim – might find numerous others with a common economic injury typical of the class (a fetid washing machine, for example) such that a court would be willing to certify that class.

Until the General Assembly, in the words of Judge Carr, “clearly shows [the] intent” to circumscribe recovery of economic loss damages, it appears that plaintiffs may bring common-law claims seeking solely economic loss damages together with OPLA claims.

For more information, please contact any member of Porter Wright’s product liability attorneys or Jason Gerken at jgerken@porterwright.com, Elizabeth Moyo at emoyo@porterwright.com, or Terry Miller at tmiller@porterwright.com.

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