

PRODUCT LIABILITY ALERT

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Product misuse defense washes away plaintiff's product liability claim



A man walks into a laundromat . . .

In October 2014, plaintiff Seth McLaughlin took a comforter to a laundromat. He loaded the comforter into a front-loading washing machine and initiated a wash cycle. Approximately 20 minutes later, he noticed that the machine was stuck in the wash cycle and an error message was displayed on the control panel. McLaughlin and several other patrons attempted to use the machine's emergency stop button, but the machine continued to spin and its door remained locked. Anthony Jones, another laundromat customer, told McLaughlin that Jones had observed other patrons "pop open" washing machine doors when a machine malfunctioned. McLaughlin agreed to Jones's suggestion that Jones retrieve a screwdriver and pry open the door. Jones got a screwdriver from his vehicle and opened the door.

After waiting one to two minutes as the machine continued to spin with the door open, McLaughlin reached into the machine to remove the comforter. He lost his grip with his left hand and tried his right hand. The comforter began to wrap around McLaughlin's right arm, pulling his arm into the machine. His wrist was crushed and disconnected internally from his arm. Jones pulled McLaughlin and his arm out of the machine. As a result of the accident, McLaughlin's right hand was amputated at the wrist.

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Although McLaughlin testified that he did not recall seeing a warning label on the front of the machine, one was present. It warned that users should not try to open the door during a cycle, and it contained an image of a reaching hand, with a line crossing out the hand, indicating that users should not place their hands into a spinning machine.



Although McLaughlin testified that he did not recall seeing a warning label on the front of the machine, one was present.

McLaughlin and his wife filed suit against the laundromat, the manufacturer of the machine and the manufacturer of the machine's control panel, asserting claims for negligence, product liability, spoliation and loss of consortium. The trial court granted all defendants' motions for summary judgment. McLaughlin and his wife appealed.

Did McLaughlin misuse the machine?

The majority's [decision](#) principally addresses the McLaughlins' product liability claims for defective design and failure to warn. The McLaughlins' liability expert offered various theories at the summary judgment stage as to why the machine and control panel were defectively designed and why the warning label was insufficient, but the manufacturers defended on the grounds of product misuse, arguing that the act of forcing open a locked washing machine door with a screwdriver while the machine's drum was visibly rotating and still contained water, and then reaching into the rotating drum, constituted misuse of the product.

The McLaughlins countered with expert testimony from a laundromat business veteran, who testified that it was common knowledge that patrons would try to pry open doors when machines malfunctioned. The expert even testified that, decades ago, he had discussed with employees of the washing machine manufacturer this concept, although he clarified that neither he nor the manufacturer's employees were aware of such incidents occurring while the drum was still rotating. And although the post-accident inspection by the machine manufacturer's employees

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revealed scratch marks around the doors on various other machines at the laundromat, the manufacturer's employees testified that they had no prior knowledge of users prying open washing machine doors when the drum was still rotating and then inserting their hands into the rotating drum.

Based on this latter evidence, the First District agreed that there was no genuine issue of material fact as to whether McLaughlin had misused the washing machine in an unforeseeable manner, affirming summary judgment for the manufacturers.

But was that misuse foreseeable?

Judge Miller concurred separately, writing that he would find a genuine issue of material fact regarding whether McLaughlin's misuse was foreseeable. He reasoned that the majority interpreted the misuse standard incorrectly, writing, "the question is whether the misuse was foreseeable, not unprecedented or even unreasonable," and thus he discounted the "anecdotal" testimony about the lack of knowledge of similar prior incidents. He also wrote that the warning label itself suggested that the manufacturer foresaw such misuse, even though it may not have understood just how the door might be opened. Nevertheless, Judge Miller concurred in the judgment because he found that McLaughlin assumed the risk of injury.

Conclusion

In *McLaughlin*, the First District confirmed that product misuse is a viable defense. Although the majority and Judge Miller did not see eye-to-eye on the standard, the court highlighted the types of evidence that may be pertinent to the foreseeability issue. A defendant facing allegations that a product is defective should always consider whether the plaintiff was using the product in a foreseeable manner; if not, misuse may be dispositive at the summary judgment stage, as it was in *McLaughlin*. Even if a genuine issue of material fact remains, product misuse remains a defense available at trial.

For more information please contact [Jason Gerken](#), [Tracey Turnbull](#), [Joyce Edelman](#), [Liz Moyo](#) or any member of Porter Wright's [Product Liability Practice Group](#).