



News & Updates

SELLER MAY BE HELD STRICTLY LIABLE FOR SALE OF PRODUCT DESPITE SAFE HARBOR PROVISIONS OF NJ PRODUCT LIABILITY ACT

Last month the United States District Court for the District of New Jersey denied a retailer's motion for summary judgment under the New Jersey Product Liability Act. *DeGennaro v. Rally Manufacturing*, 2011 U.S. Dist. LEXIS 126568 (D.N.J. Nov. 2, 2011).

Plaintiff Alfred Degennaro was injured on February 15, 2007, when the Rally "Boost-It" lead-acid battery pack which he had purchased from Pep Boys spontaneously exploded in his hands. He contended that the design of the heat-sealed plastic packaging for the battery pack was defective because it was not properly ventilated, allowing combustible gases to collect within the packaging which lead to the explosion. The Boost-It's warning labels and instructions identified the product as containing a lead-acid battery pack which could potentially explode. Plaintiff's expert opined that the defect in the packaging should have been apparent to the designers, and that "personnel of a company dealing with lead-acid batteries" are familiar with the danger posed by lead-acid batteries. The product manufacturer, Rally, conceded that the packaging was defective.

It was undisputed that Pep Boys had no role in the design, manufacture, or packaging of the Boost-It battery pack. Nor did Pep Boys have any record of a customer complaint, claim, or lawsuit prior to the date of plaintiff's incident. Pep Boys did receive reports of two subsequent incidents, and in an e-mail chain dated a few weeks after plaintiff's accident, a Pep Boys General Liability Manager stated that they may want to pull these products because they were having a lot of "these types of complaints." However, the only known prior incident of a similar explosion was a claim sent to the manufacturer from an unrelated retailer in Mexico. The manufacturer's testing of that unit suggested the product had been damaged in shipping; it did not identify a ventilation problem with the packaging. It was not until after the plaintiff's incident that the manufacturer had additional testing conducted which identified a defect in the heat-sealed packaging.

With the manufacturer of the product identified and already a party to the litigation, Pep Boys moved for summary judgment dismissing plaintiff's strict liability claims against it under the New Jersey Product Liability Act.

NJSA §2A:58C-9 provides that a product seller shall be relieved of all strict liability claims against it upon the filing of an affidavit certifying the correct identity of the product manufacturer. An exception is carved out, however, if the seller has retained some significant control over the product, it knew or should have known of the defect, or it created the defect. See NJSA §2A:58C-9(d).

At issue was whether Pep Boys met the second exception, that is if it "knew or should have known of the defect" or if plaintiff could "affirmatively demonstrate that it was in possession of facts from which a reasonable person would conclude that [it] had or should have had knowledge of the alleged defect."

The court acknowledged that the record showed that neither the manufacturer nor Pep Boys was aware of the Boost-It's packaging defect at the time of the plaintiff's injury, and that there was no triable issue as to the possibility of ascertaining the defect by visually examining the packaging.

However, the court found that the evidence from the instructions and warnings identifying the product as potentially dangerous, combined with the "common knowledge" in the industry and Pep Boys' own e-mail chain which could potentially have included complaints that pre-dated plaintiff's accident, when taken together could support a finding that Pep Boys should have known that the Boost-It had a packaging defect, therefore subjecting the seller to potential liability.

If you have questions about how this may impact your business, please contact a member of the Goldberg Segalla Product Liability Practice Group.

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