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Product Liability

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Component Part and Bulk Supplier Liability under the Restatement of Torts (Third)

By Spencer H. Silvergate and Jonathan F. Claussen

On February 20, 2003, the fourth deadliest nightclub fire in U.S. history tore through The Station, in West Warwick, Rhode Island.¹ Ninety-six people died in the flames. Four more died in the days to follow.² Pyrotechnic displays for the 80's metal band, Great White, started the blaze, which quickly spread through soundproofing polyurethane foam behind the stage and then through the building itself.³ The West Warwick Fire Chief said that the intense black smoke and fast burning fire was due to the soundproofing.⁴

In addition to criminal charges brought against the owners of the club and the band's tour manager, multiple civil lawsuits were filed in state and federal court.⁵ The cases were consolidated in Gray, et al. v. Derderian, et al., 365 F. Supp.2d 218 (D. R.I. 2005). Given how quickly the fire spread, the soundproofing foam became a target in the civil lawsuits. In the consolidated case, the plaintiffs alleged that the foam was defective. The foam manufacturers moved to dismiss the complaint arguing that Section 5 of the Third Restatement of Torts, also referred to as the "bulk supplier doctrine," absolved them of liability.

Section 5 of the Third Restatement of Torts provides as follows:

One engaged in the business of selling or otherwise distributing product components who sells or distributes a component is subject to liability for harm to persons or property caused by a product into which

the component is integrated if:

(a) the component is defective in itself, as defined in this Chapter, and the defect causes the harm; or

(b)(1) the seller or distributor of the component substantially participates in the integration of the component into the design of the product; and

(2) the integration of the component causes the product to be defective, as defined in this chapter; and

(3) the defect in the product causes the harm.

The court in Gray noted that Section 5 provides a “helpful analytical tool, but it [could not] operate to limit the analysis necessary to apportion liability among the various contributors to a manufactured end-product.” Id. at 235-236.

Instead, the court considered whether the raw material at issue had been altered before it was integrated into the final product.⁶ The court also analyzed whether raw material with a large range of safe uses could or could not be viewed as a dangerous product in and of itself. Additionally, the court considered whether sellers of such products should bear the responsibility for how their products are integrated into potentially dangerous products, particularly when they know that their raw materials are being integrated into such products. Id. at 237.⁷ The court then considered liability based on the theories that a raw materials’ manufacturer could have made a safer product and that the dangerous and foreseeable use of the product gave rise to a duty to warn on the manufacturer’s part.⁸

Ultimately, the court declined to dismiss the complaint against the polyurethane foam

manufacturers, noting that it was not clear whether any distributors had altered the polyurethane foam as in other cases where bulk manufacturers were absolved of liability. See In re Silicone Gel Breast Implants Prods. Liab. Litig., 887 F. Supp 1463 (N.D. Ala. 1995). The court also considered the dangerous characteristics and intended use of the foam, the foreseeability of such uses, and the failure to warn about dangerous uses of the foam. Gray, 365 F. Supp.2d at 239. The court noted that its decision was based only on the pleadings and emphasized the difficulty of dismissing such a cause of action under the “bulk supplier doctrine” when the above-listed factors are alleged.

Other courts have relied more heavily on Section 5. For example, in Toshiba International v. Henry, 152 S.W. 3d 774 (Tex. App. 2004), the court focused on whether the component part manufacturer “substantially participate[d] in the integration of that part into a system that was found to be defective.” Id. at 777. The component part in question was an inverter that received and sent electrical commands. It was integrated into a “scrap winder” that processed raw aluminum into rolls. Plaintiff was injured when the speed switch on the “scrap winder” malfunctioned. The component part manufacturer did not design or install the control panel, wiring, or switches, nor did it make or send the control panel or produce the switch on the panel.

The court reasoned that the inverter did not contain a manufacturing defect itself and that the manufacturer could only be liable if it participated in the integration of the inverter into the “scrap winder.” Id. at 779. The Court ruled that Toshiba did not play any role in the design of the scrap winder and the control panel, absolving it of liability under Section 5(b) of the Third Restatement of Torts. The court further held that supplying a detailed manual to the ultimate product’s manufacturer did not qualify as “substantial participation” in the planning stages to trigger liability under the Restatement. Id. at

781. In making this determination, the court cited to comment e of Section 5, stating that providing advice or mechanical or technical services, by itself, does not qualify as “substantial participation” subjecting the component supplier to liability. Id. As such, a component part manufacturer who simply provides a non-defective product to be integrated into a final product and does not participate in the integration will not be liable for any injuries arising out of the final product’s malfunction.

The court in Kohler Co. v. Marcotte, 907 So. 2d 596 (Fla. 3d DCA 2005), explained the rationale for not holding a component part manufacturer liable when it does not participate in the integration or design of its product into the final end-product. The appellate court absolved a component part manufacturer of a lawn mower engine from liability because: (1) the engine manufacturer designed a “generic engine” that had several applications; (2) the engine itself was not defective; and (3) the engine manufacturer did not participate in the integration of the engine into the lawn mower.

The Kohler court cited to comment a of Section 5, which outlines the social implications of imposing liability on a component part manufacturer whose product is not itself defective. The comment specifically references the unjust and inefficient result of imposing liability on a component part manufacturer solely because the manner of component part use in the final product renders the final product defective. In explaining the inefficiency, the comment refers to the unnecessary sophistication a component part manufacturer would have to attain regarding an end-product it has no role in developing. Id. at 599 (citing §5 cmt. a.) The court summed up its position by quoting the Restatement comment itself, “Components sellers are subject ‘to liability when the components themselves are defective or when component providers substantially participate in the integration of components into the design of the other products.’” Id. at 599 (quoting §5 cmt. a.)

The court found that the engine manufacturer did not participate in the design of the lawn mower itself. The lawn mower manufacturer designed the mower without assistance from the engine manufacturer, nor did it seek out the component part manufacturer’s assistance to install the engine. Further, the lawn mower manufacturer, not the component part manufacturer, choose not to install any sort of guard to prevent injury. As such, the engine manufacturer could not be held strictly liable for the injuries sustained by the plaintiff unless the engine itself was defective. Id.

The Kohler Court used Section 5 to emphasize the disproportionate social cost of forcing a component part manufacturer to be responsible for the malfunction of an end-product into which its products have been integrated when the component part manufacturer had no hand in the ultimate design. Other courts have reached the same conclusion. For example, in Artiglio v. General Electric Co., 61 Cal. App. 4th 830 (Cal. Ct. App. 2005), the case against the manufacturer of silicone used in breast implants was dismissed because: (1) it provided a generic product used in many applications; (2) the silicone was substantially changed after it was provided to the breast implant manufacturer; and (3) it did not participate in the development, design or manufacture of the breast implants. The component part manufacturer did not control the design, testing or labeling of the implants. Relying on Section 5, the court concluded that the social cost of imposing a duty on the component part manufacturer for the end-product far exceed the utility of imposing the duty. Id. at 841.

Similarly, in Bostrom Seating, Inc. v. Crane Carrier Co., 140 S.W.3d 681, 683 (Tex. 2004), the court entered a directed verdict for a component part manufacturer of a seat in a garbage truck roll-over case. The court cited Section 5, holding that the component part manufacturer could not be liable when the cause of the harm is the design of the end-product and the component part itself is not defective. Id. at

683.

Other courts have either adopted Section 5 outright or have used it to bolster state enacted laws. See Sepulveda-Esquivel v. Central Machine Works, Inc., 84 P.3d 895 (Wash. Ct. App. 2004); Davis v. Konmatsu America Industries Corp., 42 S.W.3d 34 (Tenn. 2001).

Yet another case that focused on a component part manufacturer's participation in the design of the end product was Buonanno v. Colmar Belting, Inc., 733 A.2d 712 (R. I. 1999). There, the plaintiff was injured when he fell on a conveyor belt. The court upheld a summary judgment for a component part manufacturer of a wing pulley in a conveyor belt assembly because the company was not involved in the integration of the component part into the final product. However, summary judgment for the conveyor belt manufacturer was overturned because it "substantially participate[d]" in the design of the end-product conveyor belt system. Id. at 717.

The fact pattern in Buonanno is virtually identical to the illustration in comment a to Section 5 of the Third Restatement of Torts. The illustration provides that a component part manufacturer, ABC Chain Co., who produces chains for a wide range of industrial uses, sold chains to the producer of a conveyor belt system, XYZ Mach. Co., who in turn sold the entire assembly to a third party, LMN Co. When LMN's employee is injured because of ABC's exposed chain in XYZ's conveyor belt, ABC is not liable to the employee because its chain is not defective in and of itself and ABC did not participate in the integration of the chain into the design of the XYZ conveyor belt. XYZ, however, is liable for selling a defectively designed product.

Conclusion

When evaluating component part manufacturer liability under the Third Restatement of Torts, defense lawyers first must determine whether the component is defective

itself. If not, evidence should be adduced that the component part manufacturer did not participate in the integration of the component into the end-product or, in the case of a raw material producer, that the raw material was altered after the initial manufacture. Possibly present will be challenges to the logic of Section 5 based on a failure to warn or alternative design theory. However, the above cases demonstrate that, absent a defect in the component itself, the component part manufacturer should prevail if it did not substantially participate in the integration of its component into the finished product.

Endnotes

1. National Fire Protection Association, www.nfpa.org, The 10 deadliest public assembly and nightclub fires in U.S. history, <http://www.nfpa.org/itemDetail.asp?categoryID=851&itemID=21090&URL=Research%20&%20Reports/Fact%20sheets/Safety%20in%20other%20occupancies/Nightclubs/assembly%20occupancies/Public%20assembly%20and%20nightclub%20fires>.
2. www.CNN.com, At least 96 killed in nightclub inferno, (Feb. 21, 2003), available at <http://www.cnn.com/2003/US/Northeast/02/21/deadly.nightclub.fire/>.
3. Id., Before the deadly fire, Great White was best known for its 1989 hit single, "Once Bitten, Twice Shy" and had been nominated for a Grammy award in 1990 for best hard-rock performance. See www.CNN.com, Great White a Roots Metal Band, (Feb.21,2003), available at <http://www.cnn.com/2003/SHOWBIZ/Music/02/21/great.white/index.html>, See also Mider, Zachary R. and Ziner, Karen Lee, *Many feared dead, scores injured as fire rips through West Warwick club* (February 20, 2003), available at http://www.projo.com/extra/2003/stationfire/archive/projo_20030221_nufire.21.2c1

15.html.

4. www.CNN.com, *At least 96 killed in nightclub inferno*, (Feb. 21, 2003), available at <http://www.cnn.com/2003/US/Northeast/02/21/deadly.nightclub.fire/>.
5. Parker, Paul Edward, *Biechele gets 4 years in Jail*, (May 11, 2006), available at http://www.projo.com/extra/2003/stationfire/content/projo_20060511_fire11.1cfc3cf8.html, Perry, Jack, *Derderians sentenced, but pain continues*, (September 29, 2006), available at <http://www.projo.com/extra/2003/stationfire/content/projo-20060929-sentencing.2ba699e2.html>.
6. See In re Silicone Gel Breast Implants Prods. Liab. Litig., 887 F. Supp 1463 (N.D. Ala. 1995).
7. See Suchomajcz v. Hummel Chemical Co., 524 F.2d 19 (3^d Cir. 1975).
8. See Buonanno v. Colmar Belting Co., 733 A.2d 712 (R.I. 1999).