

A Publication of the Products Liability Practice Group

Spring/Summer 2014



Dear Clients & Friends,



We are pleased to present you with the Spring/Summer 2014 Edition of the Reminger Product

Liability Group Newsletter.

The attorneys in our group continue to achieve success in defending our clients. The Results section in this newsletter highlights some of our successes in both motion practice and in trial.

We are also happy to share with you that our Product Liability Litigation Practice Group was ranked as Metropolitan Cleveland Tier 1 by *U.S. News and World Report's* 2014 Rankings. We are very proud of this distinction as it is based on client feedback and directly reflects our clients' satisfaction and approval of our work.

In an effort to keep our clients abreast of legal issues, we include in this newsletter an article on Limiting Supplier Liability. We hope that you find this information useful even if it does not directly impact your business. We see this article as a concise reminder of some of the basic principles of Product Liability law.

As always, we are thankful for our relationships with our clients and for the opportunities you have provided in allowing us to continue to serve your legal needs. We wish each of you an enjoyable summer and look forward to the opportunity to work with you in the future.

Sincerely,

Michael Gilbride and Robert Yallech
Products Liability Practice Group
Co-Chairs

PRODUCTS LIABILITY RESULTS

Over the past several months, Reminger attorneys have been busy trying cases and defending their clients against claims arising out of product liability/breach of warranty. Here are a few of the notable matters that Reminger attorneys have handled:



DIRECTED VERDICT

In April 2014, Reminger attorneys defended an automobile manufacturer in a trial in Stark County (Canton, Ohio). The plaintiff claimed that his transmission was defective and made claims for breach of express and implied warranties and under the Magnuson Moss Warranty Act and Ohio Consumer Sales Practices Act. After plaintiff's case, Reminger was successful in convincing the Court that the plaintiff had failed to prove their case and the Court granted a directed verdict on all counts.



DISMISSAL

In April 2014, Reminger attorneys were successful on a motion to dismiss on a products liability case in Cuyahoga County on behalf of our client, a manufacturer of mobility devices for the disabled. Plaintiff alleged severe injury to his leg. The Court granted motion to dismiss premised upon a statute of limitations defense.



SUMMARY JUDGMENT

Reminger attorneys obtained a summary judgment in favor of a manufacturer of an injection molding machine, in a products liability action in the United States District Court, Eastern District of Kentucky. Reminger defended their client against manufacturing defect, design defect, failure to warn and breach of warranty theories. The Court entered summary judgment in favor of our client on all claims.

TABLE OF CONTENTS

- Letter from the Co-Chairs..... 1
- Products Liability Results..... 1
- Limiting Supplier Product Liability..... 2
- Ohio Product Liability Law..... 3
- Kentucky Product Liability Law..... 4
- Indiana Product Liability Law..... 4
- Meet Our Newest Practice Group Members..... 5



SUMMARY JUDGMENT

Reminger attorneys were successful in obtaining summary judgment for our client in a products liability case involving the amputation of the plaintiff's left leg while operating a paper bailer. The Court has granted motion for summary judgment premised on Ohio's statute of repose, finding that the product in question had been manufactured beyond the ten year limitation.



SUMMARY JUDGMENT

Reminger attorneys prevailed on summary judgment in an agricultural nuisance action with respect to, among others, the plaintiffs' claim for product liability. We won on argument that the livestock facility was not a product and that, even if it was, it was not defectively designed.

LIMITING SUPPLIER PRODUCT LIABILITY



By Robert Yallech

While most manufacturers are kept abreast of risk management guidelines in the area of products liability, the risks associated with products liability lawsuits may not be as obvious to product distributors. Often, suppliers and distributors believe that they are not exposed to the threat of a products liability lawsuit because they were not involved in the design or manufacture of the products they distribute or service. However, suppliers need to be aware that their own actions can form the basis for product liability. Further, there are situations where a supplier can be liable for the acts or omissions of the manufacturer. There are a number of policy considerations that support holding a supplier liable for a defective product, even where the supplier has little control over the product they sell. The primary argument is that product suppliers benefit from being in the marketing chain and are in a position to adjust costs to cover the cost of litigation. By allowing some of the liability for a product's defect to fall on the supplier, the supplier will in turn put pressure on the manufacturer to provide a safer product. Most suppliers believe that even if they face a lawsuit, they will be able to seek indemnity from the product manufacturer. But indemnity is

not always a possibility and suppliers should take steps to decrease the risks involved with products liability.

Suppliers

A supplier is most commonly the business that sells, distributes, or packages products that come from the manufacturer. However, anyone who in the course of business leases, packages, or labels products that go into the stream of commerce are also product suppliers. Suppliers may also be any business that installs, repairs, or maintains a product.

Supplier Negligence

One form of supplier liability arises where the supplier knew or had reason to know that the product sold or serviced was dangerous or defective. Without some knowledge or logical inference that a product is defective, a supplier is not under a duty to inspect or test a product before putting it into the stream of commerce.

Supplier Representation

Another way that a supplier may be held liable for a defective product is where the supplier makes a representation and the product fails to conform to that representation. In this scenario, the supplier may be held liable even when it did not intentionally misrepresent the product. In order for the supplier to be liable, it must expressly assert some material fact concerning the character, quality, or safety of the product.

The actions a supplier takes in distributing a product are not, by themselves, enough to constitute a representation. For example, a store that sells a certain product cannot be said to have made a representation about that product merely because it sells the product it to the public. A more affirmative, express representation is required. Suppliers should keep in mind the following to avoid liability when making representations about a product that they distribute, sell, install, or maintain:

- If a manufacturer has issued a warning or provided product advice, do not make a separate representation.
- Be aware of industry and regulatory standards and ensure that any representation made complies with those standards.
- Make sure all statements regarding a product's capabilities and uses are accurate.

Substitution for Manufacturer

Another way that suppliers can be held liable for a defective product is when a plaintiff has no one else from whom to seek recovery. This typically occurs when the actual manufacturer is not subject to the jurisdiction of the Court or is insolvent. In these instances, the supplier will stand in the shoes of the manufacturer and be held liable as if it were the manufacturer.

These situations typically arise when a supplier sells products from a foreign

This document is presented for informational purposes only. Neither the document nor the information contained herein is intended to be construed as legal advice and should not be considered legal advice. Readers should consult with their legal professional(s) regarding the applicability of this information to their business operations.

manufacturer or financially unstable manufacturer. Any relationship between a supplier and a foreign manufacturer immediately increases the likelihood of the supplier being sued if the foreign manufacturer is not subject to suit. Suppliers that deal with foreign manufacturers should determine whether a product's manufacturer is subject to suit before contracting with them, and insist on indemnity clauses in the contract.

Similar steps should be taken with manufacturers that have uncertain or unstable finances. A supplier should always be aware of a manufacturer's financial stability and involvement in previous lawsuits before agreeing to sell, distribute, maintenance, or install that manufacturer's product. If a manufacturer becomes insolvent, it leaves the product's supplier on the hook for any damages awarded to the claimant. However, bankruptcy is not necessarily the equivalent of insolvency. If a manufacturer files bankruptcy, a supplier should inquire whether the manufacturer has any trusts preserved or insurance policies in place for settling product liability claims before accepting full liability for a product's defect.

Suppliers Own Actions

Finally, suppliers need to understand that certain actions they take pertaining to a

product may result in liability being assessed against them. One example of such action is where the supplier alters, modifies or fails to maintain a product. In this case, the alteration, modification or failure to maintain must be the cause of the product failure. Nevertheless, suppliers should be aware that these actions can result in liability. Suppliers who commonly install, repair, or maintain products may face an increased risk of liability for a defective product. To avoid liability, these suppliers should ensure that they comply with the manufacturer's mandatory safety instructions and any applicable industry or regulatory standards.

“If a manufacturer files bankruptcy, a supplier should inquire whether the manufacturer has any trusts preserved or insurance policies in place for settling product liability claims before accepting full liability for a product’s defect.”

Suppliers should also ensure that the individuals that install, repair, or maintain the product are familiar with the product and its safe and proper installation or repair. Suppliers that market products under their own label or trade name and suppliers of products that are manufactured by several different companies also face additional liability issues. Suppliers that market products under their own label may face liability, not just for a product that is repackaged in the supplier's own materials and bearing the supplier's name, but for a product that is sold as part of a marketing scheme.

For example, a fast food chain that does not manufacture its own cups and lids but has its brand on the product could nevertheless be said to have used those products in its marketing scheme and, therefore, face liability for any defect in the product. Suppliers of products that are manufactured by several companies may find that they are a larger target for litigation. A claimant may find it more attractive to file a claim against a supplier and demand a list of all manufacturers of the supplier's product. In that case, if the supplier is unable to identify all manufacturers, the supplier may be on the hook for most or all of the damages.

For more information, please contact attorney Robert Yallech at ryallech@reminger.com.

OHIO PRODUCT LIABILITY LAW

DEFENSES	APPLICABILITY/ANALYSIS
Statute of Limitations	2 years from date of personal injury
Statute of Repose	10 years after dates of delivery
Contributory Fault	Yes
Assumption of Risk	Yes
Misuse of Product	Yes
Alteration of Product	Yes
Unavoidably Unsafe Product	Yes
Economic Loss Rule Applicable	Yes
Market Share Liability	No
Expert Testimony Required	Yes (for design defect claims)
Caps on Damages	Yes (depending on nature of injury)
Strict Liability against Supplier	Yes (if manufacturer not subject to service)

KENTUCKY PRODUCT LIABILITY LAW

DEFENSES	APPLICABILITY/ANALYSIS
Statute of Limitations	1 year
Statute of Repose	No; rebuttable presumption of non-defectiveness if the injury occurs more than 5 years from date of sale to the first consumer, or more than 8 years after the date of manufacture
Contributory Fault	No, comparative fault
Assumption of Risk	No, considered part of comparative fault
Misuse of Product	Yes
Alteration of Product	Yes
Unavoidably Unsafe Product	Yes
Economic Loss Rule Applicable	Yes
Market Share Liability	No
Expert Testimony Required	Yes, where issues are outside the common knowledge
Caps on Damages	No
Strict Liability against Supplier	Yes, if manufacturer not subject to the court's jurisdiction

INDIANA PRODUCT LIABILITY LAW

DEFENSES	APPLICABILITY/ANALYSIS
Statute of Limitations	2 years from date of injury
Statute of Repose	10 years after date of delivery
Contributory Fault	No. Comparative fault only. (Ind. Code § 34-20-8-1). No joint liability. (Ind. Code § 34-20-7-1).
Assumption of Risk	Yes
Misuse of Product	Yes
Alteration of Product	Yes
Unavoidably Unsafe Product	Yes. A product which cannot be made safe for its reasonably expectable use is not defective when properly manufactured, sold, handled, and packaged. (Ind Code § 34-20-4-4)
Economic Loss Rule Applicable	Yes
Market Share Liability	No
Expert Testimony Required	Yes
Caps on Damages	No
Strict Liability Against Supplier	No, unless they are the principal distributor or seller closest to the manufacturer if the manufacturer and all other "upstream" intermediate sellers are not subject to the court's jurisdiction, (Ind. Code § 34-20-2-4) or a "seller" considered a "manufacturer" under (Ind. Code § 34-6-2-77)(knowledge of defect, alters product, owns or owned by manufacturer, etc.)

FOLLOW US
LIKE US
CIRCLE US



Find us on Twitter, LinkedIn, Facebook & Google+ for the latest news, media coverage, updates and more.



MEET OUR NEWEST PRACTICE GROUP MEMBERS



ROBERT OTT

Louisville | t: 502.625.7289
 rott@reminger.com

“Passion, planning and preparedness are the cornerstones for success for each client. I believe in working closely with my clients so their case is positioned for success.”

Rob practices in Reminger Co., LPA's Louisville office, focusing on products liability matters along with medical malpractice and long term care issues. Prior to joining Reminger, Rob worked at a Louisville firm where he maintained an active practice in Kentucky and Florida. His practice was focused on defending physicians and other healthcare providers in medical negligence actions, as well as defending long term care facilities. Rob has tried a number of cases and was named to the list of most prolific trial attorneys in both 2010 and 2011.

Rob obtained his undergraduate degree through a full Army R.O.T.C. scholarship and was commissioned as a U.S. Army Officer, serving four years on active duty. Rob achieved his law degree from the University of Louisville where he graduated *cum laude*. He participated in moot court and was the recipient of the Edwin M. Post Award for litigation potential. He also earned the highest grade in Trial Practice and Advanced Trial Practice.

Honors & Recognitions:

- Recognized as one of the Most Prolific Trial Attorneys in 2010 and 2011 by the Kentucky Trial Court Reporter.
- Recognized as a Rising Star by *Kentucky Super Lawyers Magazine* in 2013.

Professional Memberships & Community Affiliations:

- Kentucky Bar Association
- Florida Bar Association
- Louisville Bar Association
- Defense Research Institute (DRI)



REBECCA R. SCHAFER

Louisville | t: 502.625.7299
 rschafer@reminger.com

“One of aspects of the practice of law that I appreciate the most is the fact that it is very goal oriented. Along with that, I always strive to understand and achieve the client’s end goal. A “win” for one client may look very different than a “win” for another.”

Rebecca practices in Reminger, Co., L.P.A.’s Louisville office, where she defends professionals and corporations in long term care, products liability, mass tort, retail and hospitality, and medical malpractice.

Rebecca serves as the Secretary Treasurer for the Kentucky Bar Association Young Lawyers Division, and also volunteers with Hosparus and the Legal Aid Society Domestic Violence Program.

Honors & Recognitions:

- Louisville Legal Aid Society Outstanding Volunteer Attorney, 2010.
- Recognized as a Rising Star in *Kentucky Super Lawyers Magazine* in 2013 and 2014.

Professional Memberships & Community Affiliations:

- Kentucky Bar Association
 - Young Lawyers Division, Secretary Treasurer (2013 – 2014)*
 - Young Lawyers Division, Law School Outreach Co-Chair (2012 – 2013)*
 - Young Lawyers Division, Fourth District Representative (2011 – 2012)*
- Kentucky Bar Foundation
 - Board of Directors (2013 – 2014)*
- Defense Research Institute
- Kentucky Defense Counsel
- Executive Women’s Golf Association
- Young Professionals Association of Louisville

PRODUCTS LIABILITY PRACTICE GROUP CONTACTS

CINCINNATI

525 Vine Street
Suite 1700
Cincinnati, OH 45202
(513) 721-1311
Contact Attorney:
ROBERT HOJNOSKI
rhojnoski@reminger.com

CLEVELAND

101 West Prospect Avenue
Suite 1400
Cleveland, OH 44115
(216) 687-1311
Contact Attorneys
HUGH BODE
hbode@reminger.com
DANIEL HAUDE
dhaude@reminger.com

COLUMBUS

Capitol Square Office Bldg.
65 East State Street, 4th Floor
Columbus, OH 43215
(614) 228-1311
Contact Attorney:
MATTHEW SCHRADER
mschrader@reminger.com

AKRON

200 Courtyard Square
80 South Summit Street
Akron, OH 44308
(330) 375-1311
Contact Attorney:
STEPHAN KREMER
skremer@reminger.com

SANDUSKY

237 W. Washington Row
Second Floor
Sandusky, OH 44870
(419) 609-1311
Contact Attorney:
MICHAEL GILBRIDE
mgilbride@reminger.com

YOUNGSTOWN

11 Federal Plaza Central
Suite 1200
Youngstown, OH 44503
(330) 744-1311
Contact Attorney:
ROBERT YALLECH
ryallech@reminger.com

TOLEDO

One SeaGate
Suite 1600
Toledo, OH 43604
(419) 254-1311
Contact Attorney:
LAURIE AVERY
lavery@reminger.com

LEXINGTON

269 West Main Street
Suite 700
Lexington, KY 40507
(859) 233-1311
Contact Attorney:
SHEA CONLEY
sconley@reminger.com

LOUISVILLE

730 West Main Street
Suite 300
Louisville, KY 40202
(502) 584-1310
Contact Attorney:
REBECCA SCHAFFER
rschafer@reminger.com

FT. MITCHELL

250 Grandview Drive
Suite 550
Ft. Mitchell, KY 41017
(859) 426-7222
Contact Attorney:
JOHN DUNN
jdunn@reminger.com

INDIANAPOLIS

Two River Crossing
3925 River Crossing Pkwy.
Suite 280
Indianapolis, IN 46240
(317) 663-8570
Contact Attorney:
VINCENT ANTAKI
vantaki@reminger.com
