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EXPLORING THE CHANGING FACE OF PRODUCT LIABILITY

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No Expert Needed to Pursue Breach of Implied Warranty Claim

By Mark Masters

In *Olson v. The Home Depot,* (E.D. Mich. Jun. 10, 2004) (Gadola, J.), Plaintiff claimed she was injured in her home because of a defective hand rail bracket on her stairs. Plaintiff alleged that the hand rail bracket was defectively manufactured by Defendant The Stanley Works and sold by Defendant The Home Depot. The case was originally filed in the Wayne County Circuit Court of the State of Michigan, but removed to the Southern Division of the Eastern District of Michigan of the US District Court based on diversity jurisdiction.

Due to repeated discovery violations, the *Olson* Court struck all of Plaintiff's expert witnesses. Defendants moved for summary disposition of all of Plaintiff's claims based on Plaintiff's current inability to offer any expert testimony to support any of her claims. In response, Plaintiff withdrew her claims for defective design and defective manufacture, but continued to assert her claim for breach of implied warranty. Plaintiff claimed that no expert testimony was needed to support such a claim.

The *Olsen* Court held "because Michigan law distinguishes between negligence and warranty claims, and because warranty claims require less stringent proof, this Court concludes that the expert requirement does not extend to breach of implied warranty claims."

The *Olsen* Court began its analysis by citing *Sundberg v. Keller Ladder,* No. 00-10117, 2001 U.S. Dist. LEXIS 18390 (E.D. Mich. Nov. 8, 2001)(Lawson, J.), which held that expert testimony was "not necessarily required" to prove an action for implied or express warranty under Michigan law.

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This decision further opens the door for Plaintiffs to bring product liability actions to a jury without any expert testimony to support their claims, and without any design or manufacturing defects. The Court seemingly wanted to reach this result since Plaintiff's Response to Defendants' Motion for Summary Judgement not served on the Court and only an unsigned copy was served on Defendants.

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The *Olsen* Court went on to note that Michigan law indicated that the standards for negligence and for breach of implied warranty were distinct. "The Michigan Supreme Court has stated that 'concepts of negligence and fault, as defined by negligence standards, have no place in warranty recovery cases. Proof of negligence is unnecessary to liability for breach of implied warranty and the lack of it is immaterial to defense thereof.'"

The *Olsen* Court noted that another Court in its district previously held that "Plaintiff's inability to prove a design defect claim eviscerates her claim of breach of implied warranties." *Berry v. Crown Equipment Corp,* 108 F.Supp. 2d 743 (E.D. Mich. 2000) (Rosen, J.). The *Berry* Court relied on the often cited decision of *Prentis v. Yale Mfg. Co.,* 421 Mich 670 (1984), which held "breach of implied warranty and negligence involve identical evidence and require proof of exactly the same elements." Nevertheless, the *Olsen* Court diminished this holding due to the *Prentis* Court's statement that the case was "limited solely to its facts" and emphasized that it did "not suggest that implied warranty and negligence are not separate and distinct theories of recovery."

The *Olsen* Court further justified its holding based on the recent Michigan Court of Appeals holding in *Kenkel v. The Stanley Works,* 256 Mich App 548 (2003). In *Kenkle,* the Court of Appeals held that "Plaintiff's concession that the product was neither negligently designed nor negligently manufactured is not fatal to her claim of breach of implied warranty." Further, "it is within the province of the jury to infer the existence of a defective condition from circumstantial evidence alone."

Defendants' Motion for Summary Judgement was denied, and the case was set for trial.

CONTACT US

Farmington Hills
30903 Northwestern Highway, P.O. Box 3040
Farmington Hills, MI 48333-3040
Tel: 248-851-9500 Fax: 248-851-2158

Mt. Clemens
94 Macomb Place, Mt. Clemens, MI 48043-5651
Tel: 586-465-7180 Fax: 586-465-0673

Lansing
6639 Centurion Drive, Ste. 130, Lansing, MI 48917
Tel: 517-886-1224 Fax: 517-886-9284

Grand Rapids
1550 East Beltline, S.E., Ste. 305, Grand Rapids, MI 49506-4361
Tel: 616-285-0143 Fax: 616-285-0145

Champaign, IL
2919 Crossing Court, Ste. 11, Champaign, IL 61822-6183
Tel: 217-378-8002 Fax: 217-378-8003

www.secrestwardle.com

SECREST SW WARDLE

CONTRIBUTORS

Products Liability Practice Group Leader
Mark F. Masters

Editor
Carina Carlesimo

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