

state of the art

EXPLORING THE CHANGING FACE OF PRODUCT LIABILITY

11.22.06

Products Claim Dismissed for Lack of Evidence to Support Claims

By Mark F. Masters

In *Nordman v. Omega SPA*, unpublished decision of the United States District Court, Western District of Michigan, Southern Division, Plaintiff's finger and thumb were amputated on Defendant's mitre saw. Plaintiff sued on theories of negligent design and manufacture, failure to warn, and violation of express and implied warranties.

Plaintiff was injured while working at McBain Woodworking. The accident occurred on the third day she used the saw. The saw was attached to a table and had a plastic guard over the blade. When Plaintiff lifted the saw handle, the blade guard would move down and cover the blade. Plaintiff observed that the blade was covered "when you're cutting and when it's completely upright."

On the day of the accident, the blade cover was moving in the same manner as in the previous two days. Plaintiff was the only person operating the saw that day. She noticed nothing different about the saw. When Plaintiff released the switch, the blade would coast to a stop. Plaintiff operated the switch with her thumb. Plaintiff described the accident as follows:

A: The last cut before I cut my hand, I cut ... the piece of wood, picked it up, turned to my left, stacked it on the shelf that's to the left side of the saw and turned back around to face the saw and the saw caught my hand – my glove, my hand and I felt it jerk in and cut my hand.

Q: And what you're saying is that when you turned around you were—would have been rotating towards your right, your right hand just hit the side of the saw?

A: Yes.

Q: And there was no guard there?

A: Correct.

Q: Do you have any explanation why the guard wasn't down?

A: No.

Q: Had you ever seen the guard stay up like that before?

A: No.

SECRET WARDLE NOTES:

This case is a good example of a high value injury with a low or no value liability case.

Plaintiff suffered a significant amputation injury, and filed suit alleging numerous products liability theories. Once again, diligent discovery and legal practice revealed Plaintiff's lack of evidence to support her various liability claims.

Therefore, when examining your own claims, be sure to focus sufficient attention on Plaintiff's possible theories of recovery, and not just on the severity of the injuries.

CONTINUED...

Plaintiff testified that the blade did not have a brake, so it was still coasting to a stop after she released the switch. Plaintiff further testified that she had never bumped into the saw previously, and that she had no explanation as to why she bumped into it on the date of the accident. She lost her thumb and middle finger in the accident. Doctors amputated her index finger and reattached it as a thumb to provide her with some opposing movement.

In regard to the negligence claims, Plaintiff failed to meet her burden of proof imposed by MCLA 600.2496(2), which provides:

In a product liability action brought against a manufacturer or seller for harm allegedly caused by a production defect, the manufacturer or seller is not liable unless the plaintiff establishes that the product was not reasonably safe at the time the specific unit of the product left the control of the manufacturer or seller and that, according to generally accepted production practices at the time the specific unit of the product left the control of the manufacturer or seller, a practical and technically feasible alternative production practice was available that would have prevented the harm without significantly impairing the usefulness or desirability of the product to users and without creating equal or greater risk of harm to others. An alternative production practice is practical and feasible only if the technical, medical, or scientific knowledge relating to production of the product, at the time the specific unit of the product left the control of the manufacturer or seller, was developed, available, and capable of use in the production of the product and was economically feasible for use by the manufacturer. Technical, medical, or scientific knowledge is not economically feasible for use by the manufacturer if use of that knowledge in production of the product would significantly compromise the product's usefulness or desirability.

Since Plaintiff failed to present any expert testimony or other evidence to meet this burden, her negligence claims were dismissed.

In regard to the failure to warn claim, the danger of the saw blade was obvious or readily apparent on casual inspection. Whether the saw was a simple tool was irrelevant under the open and obvious defense. Therefore, there was no duty to warn.

In regard to the warranty claims, Plaintiff presented no evidence of any express warranties. To establish a breach of an implied warranty, a plaintiff must prove that a defect existed at the time the product left the control of the defendant. Once a plaintiff demonstrates that a product is defective, she must then demonstrate that the defect was a proximate cause of her injuries. In this case, Plaintiff failed to establish that the mitre saw was defective. Accordingly, her claim for breach of an implied warranty also failed.

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

2025 East Beltline, S.E., Ste. 209, Grand Rapids, MI 49546
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

SECRET
SW
WARDLE

Copyright 2006 Secrest, Wardle, Lynch, Hampton, Truex and Morley, P.C.

This newsletter is published for the purpose of providing information and does not constitute legal advice and should not be considered as such. This newsletter or any portion of this newsletter is not to be distributed or copied without the express written consent of Secrest Wardle.

CONTRIBUTORS

Products Liability Practice Group Chair Bruce A. Truex

Group Co-Chair Mark F. Masters

Editor Carina Nelson

We welcome your questions and comments.

OTHER MATERIALS

If you would like to be on the distribution list for State of the Art, or for newsletters pertaining to any of our other practice groups, please contact Secrest Wardle Marketing at cnelson@secrestwardle.com, or 248-539-2850.

Other newsletters include:

Benchmarks – Navigating the hazards of legal malpractice
Blueprints – Mapping legal solutions for the construction industry
Boundaries – A guide for property owners and insurers in a litigious society
Community Watch – Breaking developments in governmental litigation
Contingencies – A guide for dealing with catastrophic property loss
Fair Use – Protecting ideas in a competitive world
In the Margin – Charting legal trends affecting businesses
Industry Line – Managing the hazards of environmental toxic tort litigation
Landowners' Alert – Defense strategies for property owners and managers
No-Fault Newslines – A road map for motor vehicle insurers and owners
On the Beat – Responding to litigation affecting law enforcement
On the Job – Tracking developments in employment law
Safeguards – Helping insurers protect their clients
Structures – A framework for defending architects and engineers
Vital Signs – Diagnosing the changing state of medical malpractice and nursing home liability
Update Illinois - Current trends in Illinois law