

[Products Liability Law Daily Wrap Up, DEFENSES TO LIABILITY—
CHEMICAL PRODUCTS—M.D. Pa.: Defenses based upon workplace safety/
property owner-code enforcement barred in the absence of a duty of
care, \(Mar. 1, 2018\)](#)

Products Liability Law Daily Wrap Up

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By Kathleen Bianco, J.D.

The manufacturers of polymer fragrance oil could not assert defenses based upon alleged violations of Occupational Safety and Health Administration (OSHA) regulations and local and state building laws and codes to defeat potential liability on claims of negligence and strict liability arising from a fire that was purportedly caused by the manufacturers' product because the user of the oil did not owe a duty to the manufacturer to comply with OSHA standards or state or local building codes, a federal district court in Pennsylvania ruled. Moreover, the manufacturers were not permitted to raise a defense based upon the insurance contract between the oil purchaser and its insurance company because the oil maker was not an intended third-party beneficiary of the insurance contract (*Dyvex Industries, Inc. v. Agilex Flavors & Fragrances, Inc.*, February 28, 2018, Mannion, M.).

A fragrance company, Dyvex Industries, Inc., that used scented oils in its manufacture of fragrance concentrate products filed suit against three fragrance oil makers—Agilex Flavors & Fragrances, Inc., Aromatic Technologies, Inc., and Aroma Tech—following an industrial fire allegedly caused by a defective fragrance oil produced by the oil makers. The fire caused extensive damage to the fragrance company's plant and surrounding property, resulting in the plant having to halt operations for a period of time. The company sued the oil makers, asserting claims for negligence, strict liability, breach of contract, and breach of warranty, and requested punitive damages. The oil makers denied liability and filed a partial motion for summary judgment on the punitive damages claim, which was granted [see *Products Liability Law Daily's* February 13, 2018 [analysis](#)].

Currently before the court is the fragrance company's motion for partial summary judgment seeking to preclude the oil makers' from asserting defenses which rely upon certain duties and legal relationships which do not exist between the parties and offering expert testimony regarding the alleged duties and standards of care. Specifically, the oil makers sought to offer evidence establishing that the fire had been caused by the building owner's negligence in failing to comply with OSHA standards and applicable building codes.

OSHA standards. The oil makers asserted that the cause of the fire was the fragrance company's failure to comply with applicable OSHA safety standards. The fragrance company asserted that the oil makers had "no right to invoke OSHA or other safety standards which require employers to furnish employees with a safe workplace" because the oil makers were not employees. Thus, the fragrance company did not owe them a duty of care. After analyzing the evidence and facts presented, the court concluded that the fragrance company did not owe the oil makers a legally cognizable duty of care. As such, the oil makers were barred from asserting defenses based on OSHA and other safety standards. Furthermore, the oil makers' expert witness opinion regarding compliance with OSHA regulations also was excluded.

Building code violations. The oil makers alleged that, but for, the lack of a sprinkler system in the fragrance company's facility in violation of building code requirements, the fire damage would have been preventable or greatly reduced. The fragrance company challenged this argument, contending that the oil makers had to take the building as it was because the evidence demonstrated that the building had received all necessary approvals to begin its operation and the fragrance company was never cited for violating any code requirements over the many years it was in business. Having met all of the requirements applicable at the time of construction,

the fragrance company could not be held responsible for complying with code requirements, such as those for sprinkler systems, enacted years after its building was complete. Based upon the evidence, the court determined that the oil makers could not establish standing to invoke violations of building codes because the fragrance company did not owe any duty to the oil makers. Consequently, the oil makers were precluded from introducing evidence of alleged building code and fire code violations.

Insurance contract. Finally, the manufacturers attempted to raise a defense to the fragrance company's claims based upon an alleged breach of duty under the insurance contract between the fragrance company and its insurer. The manufacturers argued that the insurer had breached its duty to ensure that the fragrance company adopted and implemented safety policies and training programs; and its duty to verify compliance with OSHA regulations. The fragrance company challenged the manufacturers' ability to assert a defense based upon an alleged breach of the insurance contract because they lacked privity and were not intended third-party beneficiaries to the insurance contract. The court agreed with this analysis and determined that the fragrance company's motion for partial summary judgment should be granted in its entirety.

The case is No. [3:12-cv-00979-MEM](#).

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Companies: Dyvex Industries, Inc.; Agilex Flavors & Fragrances, Inc.; Aromatic Technologies, Inc.; Aroma Tech

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