

[Products Liability Law Daily Wrap Up, TOP STORY—STATUTORY SCOPE—N.J. Sup. Ct.: New Jersey products liability statute does not bar consumer fraud act claim raised in same cause of action, \(Jul. 30, 2020\)](#)

Products Liability Law Daily

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By Leah S. Poniatowski, J.D.

State high court answers Third Circuit's certified question, explaining that the nature of the underlying action, not the remedy, determines the character of the claim.

New Jersey's supreme court held that claims arising under the state's consumer fraud statute, namely deceptive, fraudulent, misleading, or similar commercial practices, may proceed in separate counts of the same pleading as claims for manufacturing, warning, or design defects under the New Jersey Products Liability Act (PLA), thus answering questions certified to the state high court by the U.S. Court of Appeals for the Third Circuit in the affirmative (*Sun Chemical Corp. v. Fike Corp.*, July 29, 2020, Solomon, L.).

An ink producer, Sun Chemical Corporation, had purchased a new dust collection system that included an explosion protection system manufactured by Suppression Systems, Inc., a wholly owned subsidiary of Fike Corporation (collectively, Fike or, the manufacturer). On the first day that the system was operational, a fire occurred, and an alarm on the system's control panel activated but was not audible. An explosion sent a fireball through the ducts of the dust collection system, injuring seven Sun Chemical employees and damaging the company's facility.

The ink producer filed suit, alleging in a single count that Fike made false promises and misrepresentations in violation of New Jersey's Consumer Fraud Act (CFA). Fike asserted that it was entitled to summary judgment under the CFA and that the CFA claims were subsumed by New Jersey's Products Liability Act (PLA).

Trial court. The federal district court in New Jersey agreed with the manufacturer [see *Products Liability Law Daily's* December 12, 2017 [analysis](#)]. The trial court held that despite the fact that the claim was brought under the CFA, the essential nature of the claim sounded in products liability—i.e., a manufacturing or design defect, or a failure to warn, which caused harm in the form of personal injury to the plant's workers. Thus, the manufacturer's motion for summary judgment was granted.

Third Circuit appeal. Sun Chemical filed an appeal to the U.S. Court of Appeals for the Third Circuit. The [appellate court held](#) that the case fell "at the intersection of the UCC, the PLA, the CFA, and the economic loss doctrine." Despite a thorough review of governing law, the appellate court explained that it remained unsure of how to resolve the questions presented by Sun Chemical's claim. While the PLA may allow recovery and punitive damages for some of the same injuries, under the CFA, the \$5 million sought in damages could be trebled to more than \$15 million. Given the stakes in this allocation of economic-loss risk arising from a commercial transaction—both for the companies in this case and others operating in the state of New Jersey—the appellate court petitioned New Jersey's high court to certify four questions of law.

Certified question. The New Jersey Supreme Court answered the questions, collapsing them into one: whether tort-based claims that can be pleaded under the PLA can also—or instead—be pleaded under the CFA.

State statutes. The high court explained the differences between the CFA and the PLA, identifying both as remedial statutes that target different wrongs, address distinct types of harm, and provide for divergent remedies. Historically, the CFA predated the PLA by three decades. The high court stated that the CFA is to be expansively read to proscribe unconscionable business practices, while the PLA's reach is more limited—it permits pursuit of product liability claims brought by "claimants" for "harm," as those terms are defined in the statute. Reflecting PLA's more limited scope is its limited remedy: it provides only for damages traditionally available in tort actions,

such as remuneration for destroyed property, emotional distress, and loss of consortium. In contrast, the CFA allows recovery of treble damages, costs, and attorney's fees.

Applicable case law. The supreme court turned to the body of case law interpreting the statutes, noting that "[i]t is not readily to be inferred that the Legislature, by enacting multiple remedial statutes designed to augment protection, actually intended that parties be subject only to one source of regulation." The court added that courts should avoid statutory interpretations that impose overlapping or conflicting duties and obligations. In another decision, the high court held that the common law claims asserted by the plaintiffs essentially sounded in product liability for failure to warn and, therefore, also were covered by the PLA. In that case, it was determined that the theory of liability in fact was a PLA claim and was actionable only under the strictures of the PLA.

Analysis. The state supreme court acknowledged that it had not before resolved the question presented by the Third Circuit. There was support in the statutes to allow claimants to proceed under both laws so long as their claims were tort-based because contract-based claims cannot be pleaded under the PLA. In two amendments to the CFA, the high court observed the legislative intent to allow CFA-based claims to co-exist with separately pleaded PLA claims. The CFA is expressly "in addition to and cumulative of any other right, remedy or prohibition accorded by the common law or statutes of this State," and the high court pointed out that there was no language in the statute limiting its application vis-a-vis similar legislation. Moreover, neither the Federal Rules of Civil Procedure nor the New Jersey Court Rules preclude separate claims premised upon separate theories of liability from being advanced in the same pleading and sought at the same trial.

Therefore, the answer to the Third Circuit's question was affirmative: irrespective of the nature of the damages, a CFA claim alleging express misrepresentations—deceptive, fraudulent, misleading, and other unconscionable commercial practices—may be brought in the same action as a PLA claim premised upon product manufacturing, warning, or design defects. The supreme court held that "it is the nature of the claims brought, and not the nature of the damages sought, that is dispositive of whether the PLA precludes the separate causes of action." Thus, in the case at bar, it was the nature of the action giving rise to the claim that determined how that claim was characterized, and Sun Chemical was mistaken in its heavy reliance on the nature of the damages it sought when it asserted that the damages were economic losses rather than damages for injury to persons or property, the state supreme court concluded.

The case is No. [A-89-18](#).

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Companies: Sun Chemical Corp.; Fike Corp.; Suppressions Systems Inc.

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