

Products Liability Law Daily Wrap Up, DESIGN AND MANUFACTURING DEFECTS—INDUSTRIAL AND COMMERCIAL EQUIPMENT—D. N.J.: Misrepresentation claim against manufacturer of explosion protection system governed by New Jersey's products liability law, (Dec. 12, 2017)

Products Liability Law Daily Wrap Up

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By Susan Engstrom

In an action stemming from an explosion at an ink production plant, a claim alleging that the manufacturer of the facility's explosion suppression system misrepresented that its product would protect workers and equipment was subsumed by New Jersey's Products Liability Act (PLA), the federal court in that state ruled in a decision designated as not for publication. Although the claim was brought under the state's Consumer Fraud Act (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 (*Sun Chemical Corp. v. Fike Corp.*, December 11, 2017, Vazquez, J.).

The 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). The actual dust collector was located on the plant's roof, and the only portion of the Fike system that was inside the facility was the control panel, which was located outside the pre-mix room. On the day of the accident, there was a loud noise followed by a small fire on top of a mixer in the pre-mix room. While two workers were attempting to put out the fire with an extinguisher, a larger ball of flames materialized in the pre-mix room, injuring seven employees. Sun Chemical contended that the Fike system was supposed to include an audible alarm, but that the injured employees heard no alarm. The ink producer filed suit, alleging that Fike made false promises and misrepresentations in violation of the CFA. Fike asserted that it was entitled to summary judgment under the CFA and that the CFA claims were subsumed by the PLA.

Theories of liability. Sun Chemical's complaint alleged that after the fire began in the pre-mix dust collection system, the "explosion protection system was triggered, releasing pressure and suppressant agent into the dust collection system, which resulted in a fire and explosion that injured numerous workers and caused severe damage to the [f]acility" (the "blowback theory"). Sun Chemical also asserted that the Fike system either did not have an audible alarm as promised or that the audible alarm did not function as promised. According to this theory of liability (the "alarm theory"), the workers did not leave the explosion area and were injured by the explosion because they did not hear any alarm.

Consumer Fraud Act. Sun Chemical alleged that Fike made four false promises that constituted an "unlawful practice" under the CFA: (1) that the Fike system complied with industry standards; (2) that there had been no previous failures of the system in the field; (3) that the ink producer would be provided a more detailed training on the system; and (4) that the Fike system would protect the facility's workers and equipment. The court disposed of the first three under the CFA, finding that Sun Chemical failed to raise a genuine issue of material fact demonstrating that those misrepresentations caused any of its alleged injuries.

Products Liability Act. The fourth alleged misrepresentation (that the system would protect the workers and equipment), however, was subsumed by the PLA. In New Jersey, a products liability claim is defined as "any claim or action brought by a claimant for harm caused by a product, irrespective of the theory underlying the claim, except actions for harm caused by breach of an express warranty." Relevant case law holds that the PLA

subsumes claims when the essential nature of the claim presented would traditionally be considered a products claim. In essence, the PLA governs any products liability action.

Here, with respect to the alarm theory, Sun Chemical argued that it sought to recover only economic losses, such as money paid for workers' compensation and legal fees expended in the injured workers' related personal injury suit. However, the underlying harm itself—injuries to the workers—was squarely that of personal injury. If the personal injury had never occurred, then Sun Chemical would not have paid any of its claimed economic damages. In the court's view, the alarm theory was more properly construed as a manufacturing or design defect or a failure to warn that caused harm (personal injury to the plant's employees).

The court also concluded that the blowback theory presented a classic products liability claim because it alleged that the Fike system was defective and caused harm to both person and property. According to the complaint, the system was supposed to suppress deflagration and isolate the fire, but—in light of the fireball—it did neither. The complaint further alleged that not only did the system fail in its primary function, it actually exacerbated the situation. Thus, the system allegedly contained a defective design and/or was manufactured incorrectly. As such, the CFA claims based on the blowback theory were subsumed by the PLA.

The case is No. [13-4069 \(JMV\)](#).

Attorneys: Drew Cleary Jordan (Morgan Lewis and Bockius LLP) for Sun Chemical Corp. Gino Peter Mecoli (Reilly Janiczek & McDevitt PC) for Fike Corp.

Companies: Sun Chemical Corp.; Fike Corp.

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