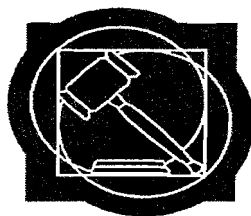

COMPONENT PART MANUFACTURER AND BULK SUPPLIER LIABILITY IN PRODUCTS LIABILITY CASES: A FIFTY-STATE SURVEY

A Report of the Subcommittee on Chemical and Industrial Equipment
Manufacturers of the Products Liability Litigation Committee



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A. The Law Governing the Liability of Component Part Manufacturers and Bulk Material Suppliers

The general rule imposing strict liability against component manufacturers and bulk suppliers in Illinois is well developed. Courts in Illinois have long since held that component manufacturers are subject to strict liability for defective components that injure someone. In 1965, the Illinois Supreme Court first recognized strict liability against manufacturers of defective products and first imposed such liability against a component manufacturer. See Suvada v. White Motor Co., 210 N.E.2d 182, 186-87 (Ill. 1965) (citing out-of-state authority and adopting section 402A of Restatement (Second) of Torts 1964), overruled on other grounds, Dixon v. Chicago and North Western Transp. Co., 601 N.E.2d 704 (Ill. 1992). In Suvada, the plaintiff truck owners sought indemnification for repairs and personal injury settlements arising from the failure of the truck's Bendix brake system. Id. at 183. The Illinois Supreme Court held Bendix liable, reasoning that a component manufacturer is responsible for injury resulting from the unreasonably dangerous condition of the component at the time it left the manufacturer's control. Id. at 187-88.

Since Suvada, Illinois courts have routinely recognized strict liability principles against component manufacturers when the component itself was defective, but courts have not imposed such liability if these manufacturers have no control over the component after sale and therefore cannot foresee whether the component may become unreasonably dangerous in the final product. See, e.g., Loos v. American Energy Savers, Inc., 522 N.E.2d 841, 845 (Ill. App. Ct. 1988) (finding that a component manufacturer need not anticipate how non-dangerous part may become dangerous in final assembly); Woods v. Graham Eng'g Corp., 539 N.E.2d 316, 320 (Ill. App. Ct.), appeal denied, 545 N.E.2d 135 (1989) (finding that a component manufacturer is not liable if an injury results from a dangerous condition created by a party who assembled the final product); Depre v. Power Climber, Inc., 635 N.E.2d 542, 545 (Ill. App. Ct.), appeal denied, 642 N.E.2d 542 (1994) (finding that the component was not unreasonably dangerous); Rotzoll v. Overhead Door Corp., 681 N.E.2d 156, 162 (Ill. App. Ct. 1997) (finding that the component was not unreasonably dangerous); Ruegger v. Int'l Harvester Co., 576 N.E.2d 288, 292 (Ill. App. Ct. 1991) (finding that the component manufacturer was not liable because it had no control over final assembly or usage).

Illinois courts have not imposed liability on the component manufacturer if the component was improperly installed or if the anticipated use of the component or bulk material was subsequently changed in the final assembly. See, e.g., Rios v. Niagara Mach. & Tool

Works, 319 N.E.2d 232, 236 (Ill. 1974) (finding that the manufacturer was not liable for failure of safety device installed by plaintiff's employer); see also Gasdiel v. Federal Press Co., 396 N.E.2d 1241, 1245 (Ill. App. Ct. 1979) (finding that the substitution of the starting mechanism in the punch press by plaintiff's employer was a substantial change in the product as sold by the manufacturer); Apperson v. E.I. DuPont de Nemours & Co., 41 F.3d 1103, 1107 (7th Cir. 1994) (applying Illinois law and holding manufacturer not liable when inherently safe raw material became unreasonably dangerous upon integration into specialized medical prostheses). Likewise, the component manufacturer is not liable for failing to incorporate a safety device in the component that is unique to the final product or its specific adaptation. Curry v. Louis Allis Co., 427 N.E.2d 254, 258 (Ill. App. Ct. 1981) (stating that it is "absurd" to hold component manufacturer liable because assembler did not incorporate safety guards); see also Depre, 635 N.E.2d at 544-45.

Component manufacturers are not liable if a component is supplied according to the purchaser's specifications, especially where the purchaser subsequently assembled the part and created an unreasonably dangerous condition. Loos, 522 N.E.2d at 845; Curry, 427 N.E.2d at 258. But a component manufacturer may be held strictly liable if it exercises control or influence over the integration of the component into the final product. See Estate of Carey v. Hy-Temp Mfg., Inc., 702 F. Supp. 666, 670 (N. D. Ill. 1988) (citing Dunham v. Vaughan & Bushnell Mfg. Co., 247 N.E.2d 401, 402 (Ill. 1969) and Kokoyachuk v. Aeroquip Corp., 526 N.E.2d 607, 609 (Ill. App. Ct. 1988) (holding that the component manufacturer had no authority to instruct the manufacturer about assembly of the final product)). Cf. Sparacino v. Andover Controls Corp., 592 N.E.2d 431, 434 (Ill. App. Ct. 1992) (noting that the component manufacturer was never provided written specifications regarding component's installation or use in final product); Depre, 635 N.E.2d at 545 (finding that the component manufacturer did not have a duty to warn).

Neither component manufacturers nor bulk suppliers have a duty to warn their purchaser about the dangerous propensities of the component part or bulk material when the purchaser already had equal knowledge of its dangerous properties. See Jackson v. Reliable Paste & Chem. Co., 483 N.E.2d 939, 943 (Ill. App. Ct. 1985) (holding that the bulk supplier of methanol did not owe a duty to warn because the purchaser was fully aware of methanol's flammable and explosive qualities); see also Curry, 427 N.E.2d at 258 (holding that the component manufacturer did not have a duty to warn the final product manufacturer of a "fact which was already apparent"); Apperson, 41 F.3d at 1108 (holding that a raw materials supplier has a duty to warn "only when there is unequal knowledge with respect to the risk of harm").

Moreover, Illinois courts are uniquely postured to adopt section Five of the Restatement (Third) of Torts: Products Liability, which addresses strict liability imposed upon component manufacturers, because the Restatement itself found generous support in many Illinois decisions for its new statement of the law in this area. See Restatement (Third) of Torts at 139-44 (citing Suvada, 210 N.E.2d 182 (comment b--liability when a product component itself is defective)); see also Styck v. E.I. DuPont de Nemours & Co., Nos. 91-2038, 92-2214, 1993 WL 761301, aff'd, 41 F.3d 1103 (7th Cir. 1994) (comment b--duty to warn only immediate buyer of component); Woods, 539 N.E.2d at 320 (comment d--nonliability of component

manufacturer of incomplete product with multiple uses); Rotzoll, 681 N.E.2d at 156 (comment d); Ruegger, 576 N.E.2d 288 (Ill. App. Ct. 1991) (comment d); Loos, 522 N.E.2d at 841 (comment d); Estate of Carey, 702 F. Supp. at 666 (comment e--substantial participation in integration of the component into the design of another product). To date, however, no Illinois court has adopted section Five of the Third Restatement.

B. Practice Pointers

Early evaluation is always key. Lawyers representing component manufacturers or bulk suppliers should exhaust all potential sources of information that would reveal (1) the level of sophistication of the immediate buyer; (2) specifications for the component or raw material; (3) the identity of other component manufacturers, designers, installers, assemblers, or suppliers involved in the chain of production for the subject product; (4) the involvement of the component manufacturer in the integration of the final product; (5) the extent to which information about dangerous qualities of the component or raw material is generally known; and (6) the identification of multiple uses available for the same component part or raw material.

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A. The Law Governing the Liability of Component Part Manufacturers and Bulk Material Suppliers

Few Missouri courts have addressed strict liability issues regarding component part manufacturers and bulk suppliers. In 1969, the Missouri Supreme Court adopted section 402A of the Restatement (Second) of Torts in Keener v. Dayton Electric Mfg. Co., 445 S.W.2d 362 (Mo. 1969), thereby implementing strict liability in Missouri. But since Keener, only a handful of court decisions have given any guidance regarding the liability of component part manufacturers and bulk suppliers, and even that guidance has been limited. See Chubb Group of Ins. Cos. v. D.F. Murphy & Assoc., 656 S.W.2d 766 (Mo. App. Ct. 1983) (finding no cause of action in a products liability case against architect and contractor); Lewis v. Envirotech Corp., 674 S.W.2d 105 (Mo. App. Ct. 1984) (holding that it is plaintiff's burden to show that the component was defective when it left the manufacturer's control and entered stream of commerce); Hunt v. Guarantee Electric Co. of St. Louis, 667 S.W.2d 9 (Mo. App. Ct. 1984) (finding no evidence that defendant manufactured or supplied allegedly defective component); Carlisto v. General Motors Corp., 870 S.W.2d 505 (Mo. App. Ct. 1994) (finding that subsequent changes or alterations in final product after component was supplied presented question of fact for jury).

Indeed, Missouri federal courts have noted the absence of Missouri law in this area. See Crossfield v. Quality Control Equip. Co., Inc., 1 F.3d 701 (8th Cir. 1993) (noting that Missouri courts have not addressed the component manufacturer's liability for failure to warn); Sperry v. Bauermeister, Inc., 786 F. Supp. 1512 (E.D. Mo. 1992) ("Missouri has not addressed this issue [of component manufacturer's liability] directly."). These federal decisions, however, suggest that Missouri courts would not impose strict liability on a component manufacturer that has neither designed nor manufactured a component that is itself defective.

In Crossfield, for example, the Eighth Circuit held that the component manufacturer had no duty to warn of a hazard arising in a larger, integrated product when it had merely supplied a component of that product that was neither defectively designed nor defectively manufactured. See 1 F.3d at 703. The court concluded that the component manufacturer had no duty to warn in either strict liability or negligence. Id. (finding that the component was not manufactured or designed by defendant). In so holding, the court stated that Missouri courts would not likely extend strict liability further to require a manufacturer of a nondefective component to warn about potential dangers in the final product because that "would be tantamount to charging a component part manufacturer with knowledge that is superior to that

of the completed product manufacturer.” *Id.* at 706 (citing Childress v. Gresen Mfg. Co., 888 F.2d 45, 49 (6th Cir. 1989)). But see Heifner v. Synergy Gas Corp., 883 S.W.2d 29 (Mo. App. Ct. 1994) (finding that bulk suppliers must provide adequate instructions to distributor next in line); Menschik v. Mid-American Pipeline Co., 812 S.W.2d 861 (Mo. App. Ct. 1991) (deciding that a bulk supplier had a duty to warn).

In Sperry v. Bauermeister, Inc., the court held that “a non-defective component part manufacturer should not be held liable for the incorporation of the part into a defectively designed product.” Sperry, 786 F. Supp. at 1516 (E.D. Mo. 1992) (“Sperry I”). Later, the court granted summary judgment in favor of another component manufacturer holding that it had no duty to warn in either strict liability or negligence because the components at issue were not “in any way defective or [did] a lack of warning render any of the component parts supplied by defendant defective or unreasonably dangerous.” Sperry v. Bauermeister, Inc., 804 F. Supp. 1134, 1140 (E.D. Mo. 1992), aff’d, 4 F.3d 596 (8th Cir. 1993) (“Sperry II”).

In 1994, the Southern District Court of Appeals held that a component manufacturer was not liable in strict liability when the components were not defective when sold to the immediate purchaser or when the component manufacturer had not participated in the design of the final product. See Welsh v. Bowling Electric Machinery, Inc., 875 S.W.2d 569, 574 (Mo. App. Ct. 1994). The court reasoned that a component manufacturer that did not design the final product “cannot be held liable for providing a component part which is specially produced to the specifications of the larger machine manufacturer.” *Id.* Likewise, the court did not impose a duty to warn on the component manufacturer in either strict liability or negligence. *Id.* at 575. To do so would have “extend[ed] liability too far” and would have forced component manufacturers to “provide modifications and attach warnings on machines which they never designed nor manufactured.” *Id.*

Despite the primitive state of strict liability law as it relates to component manufacturers and bulk suppliers in Missouri, section Five of the Restatement (Third) of Torts: Products Liability does find some limited support in Missouri decisions. See Restatement (Third) of Torts: Products Liability at 136, 139-40, 143 (citing Crossfield, 1 F.3d at 704) (comment b--liability when component itself is defective); Welsh, 875 S.W.2d at 572-73 (comment e--substantial participation in the integration of a component into the design of another product)). To date, Missouri courts have not adopted section 5 of the Restatement (Third) but are in the forefront of states that have taken favorable notice of the general liability sections of the Restatement. See Newman v. Ford Motor Co., 975 S.W.2d 147, 152 (Mo. 1998).

B. Practice Pointers

Early evaluation is always key. Lawyers representing component manufacturers or bulk suppliers should exhaust all potential sources of information that would reveal: (1) the level of sophistication of the immediate buyer; (2) specifications for the component parts or raw material; (3) the identity of other component manufacturers, designers, installers, assemblers, or suppliers involved in the chain of production for the subject product; (4) the involvement of the component manufacturer in the integration of the final product; (5) the extent to which

information about dangerous qualities of the component or raw material is generally known; and
(6) the identification of multiple uses available for the same component part or raw material.

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A. The Law Governing the Liability of Component Part Manufacturers and Bulk Material Suppliers

Few Oklahoma courts have addressed strict liability issues regarding component manufacturers and bulk suppliers. In 1974, the Oklahoma Supreme Court adopted section 402A of the Restatement (Second) of Torts in Kirkland v. General Motors Corp., 521 P.2d 1353, 1362-63 (Okla. 1974), endorsing it as “Manufacturers’ Products Liability.” In 1979, the court made clear that its decision in Kirkland extended to all “suppliers” of defective products, as well as manufacturers and sellers. Dewberry v. LaFollette, 598 P.2d 241, 242 (Okla. 1979) (holding that lessor of personal property could be held in strict liability for plaintiff’s injury). But since Kirkland, relatively few courts have considered component manufacturer or bulk supplier liability, and even those courts have provided little guidance on this issue. See Mayberry v. Akron Rubber Mach. Corp., 483 F. Supp. 407, 413-14 (N.D. Okla. 1979) (holding that component manufacturer had no duty to warn about dangers in final product and could not be held strictly liable in absence of control over design of final product); Duane v. Oklahoma Gas & Elec. Co., 833 P.2d 284, 286-87 (Okla. 1992) (bulk suppliers had no duty to warn knowledgeable user about generally known dangers of product); Scott v. Thunderbird Indus., Inc., 651 P.2d 1346, 1348-49 (Okla. Ct. App. 1982) (finding that component part not in stream of commerce is not subject to doctrine of Manufacturers’ Products Liability).

In Duane, plaintiff was injured when he cut open an oil-insulated vacuum switch for inspection. 833 P.2d at 285. Two bulk suppliers, Chevron and Shell, were sued in strict liability for their alleged failure to warn plaintiff’s employer -- and manufacturer of the vacuum switch -- about the oil’s dangerous propensities. Both suppliers, however, were dismissed on summary judgment. Id. The Oklahoma Supreme Court affirmed and held that neither bulk supplier had a duty to warn a knowledgeable user about the dangerous propensities of their products or about any dangers inherent in Duane’s job duties. Id. at 287. In so holding, the court embraced section 388 of the Restatement (Second) of Torts, which sets forth the general rule when a supplier must warn about such known dangers. Id. at 286. Here, neither Chevron nor Shell had reason to believe that its oil was inherently dangerous when used to insulate an electric switch. Id. at 286-87. To the contrary, their products were purchased for that very purpose. Id. Even so, Duane’s employer was also a knowledgeable user of insulating oil, and, therefore, owed no duty to warn under either a strict liability or negligence theory. Id.

In Mayberry, the court held that suppliers of used component parts were not strictly liable for the defective design of a rubber mixing mill where the supplier had no

responsibility for the final design or construction of the mill. 483 F. Supp. at 413. Moreover, the court held that the component suppliers had no duty to warn the purchaser-manufacturer about any inherent dangers that might potentially arise from the final assembled product because the purchaser-manufacturer already had equal knowledge about these same potential dangers. Id. at 413-14.

B. Practice Pointers

Early evaluation is always key. Lawyers representing component manufacturers or bulk suppliers should exhaust all potential sources of information that would reveal: (1) the level of sophistication of the immediate buyer; (2) specifications for the component or raw material; (3) the identity of other component manufacturers, designers, installers, assemblers, or suppliers involved the chain of production for the subject product; (4) the involvement of the component manufacturer in the integration of the final product; (5) the extent to which information about dangerous qualities of the component or raw material is generally known; and (6) the identification of multiple uses available for the same component part or raw material.