Connecticut Law Tribune

SEPTEMBER 19, 2011
VOL. 37 • NO. 38

An ALM Publication

CTLAWTRIBUNE.COM

A Favorable Ruling For Product Manufacturers

Other key decisions made on arbitration and workplace issues

BY JEFFREY J. WHITE

It is no secret that Connecticut product liability law develops at a glacial pace because many manufacturers wisely decide not to jeopardize their product lines by litigating a case at the trial level – let alone at the appellate level. As a result, it is a significant event when the Supreme Court issues a product liability decision that could possibly influence pending cases.

Metropolitan Property & Casualty Insurance Co. v. Deere & Company, 2011 Conn. LEXIS 317 (Aug. 16, 2011) is such a case and, therefore, is a must read for any attorney involved in product-related litigation. *Metropolitan*, authored by Justice Peter Zarella, contains a detailed and scholarly analysis of the "malfunction doctrine," which is implicated when a plaintiff is unable to produce direct evidence of a product defect because of the loss of the essential components of the product (for example, through fire, explosion, or breakage). In such cases, the malfunction doctrine allows a plaintiff to use circumstantial evidence to establish that a defect existed at the time of sale or distribution.

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Metropolitan is a subrogation case arising out of a fire at the home of the plaintiff's insureds. The plaintiff alleged that the fire, which started in the garage, was caused by a defect in the electrical system of a lawn tractor manufactured by the defendant. For over four years, the homeowners owned the tractor without any issues. In the spring of 2003, the dealer performed maintenance on the tractor, which reportedly led to operational problems in the following months.

On the day of the fire, the insured had attempted to use the tractor, but had returned it to the garage after it did not operate properly. As is common in malfunction cases, many of the tractor's components were damaged or destroyed during the fire, and thus, the plaintiff's expert had to speculate as to the exact cause of the fire and could give no opinion as to whether there was any defect attributable to the tractor's manufacturer. Nonetheless, the plaintiff prevailed at trial.

Based on these facts, the Supreme Court provided a detailed description of the malfunction doctrine. The Supreme Court began its analysis by noting that proof of an accident alone is insufficient to establish a manufacturer's liability. Significantly, the Court emphasized the dangers of applying the doctrine in a liberal manner (most notably, that it can convert manufacturers to insurers of their products).

Unlike other jurisdictions, the Supreme Court rejected the temptation to apply the principles underlying the negligence doctrine of *res ipsa loquitur* because the manufacturer does not have exclusive control over the product. (Many courts have improperly injected *res ipsa loquitur* into malfunction doctrine cases, which is leading to a confusing line of case law.)

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In addition, the Supreme Court noted that while many courts have justified adopting the malfunction doctrine by pointing to the harm that can be caused to a *plaintiff's* case if evidence is destroyed, the destruction of evidence also can prevent a *manufacturer* from defending itself. Accordingly, "courts must be cautious not to diminish a plaintiff's burden of proof in such cases." Of particular note is that the plaintiff must present evidence that establishes the probability, and not the mere possibility, that the plaintiff's injury resulted from a product defect.

Applying these rigid standards to the facts in *Metropolitan*, the Court held that the trial court should have granted defendant's motion for a directed verdict. Although there were several reasons for its decision, it appears that the Court was particularly troubled by the fact that the tractor operated without issue for four years, and problems only developed after the dealer performed maintenance on it.

Ultimately, manufacturers and other businesses involved with products should not be lured into a false sense of security — cases will still be filed under the auspices of the malfunction doctrine. However, the

Jeffrey J. White is an attorney in the Hartford office of Robinson & Cole LLP. He is a member of the firm's Appellate Group and his trial practice focuses on product liability litigation.

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Supreme Court has provided guidance on the doctrine that will have a dramatic impact on how the cases are litigated in our state court, including by providing avenues for manufacturers to seek summary judgment or a directed verdict.

Arbitration

In the last few years, the Supreme Court has issued several important arbitration decisions. Although no blockbuster decisions affected the business community this year, one decision deserves attention. *Farrell v. Twenty-First Century Insurance Co.*, 301 Conn. 657 (2011) serves as a reminder about the rules on obtaining an enforceable written agreement to arbitrate.

In *Farrell*, the parties agreed in principle to arbitrate the plaintiffs' claims, and thereafter, their respective attorneys exchanged at least 14 letters on the subject in an attempt to hammer out the parameters of the arbitration itself. The plaintiffs moved to compel arbitration based upon this purported agreement. Ultimately, the defendant prevailed on summary judgment after it argued that there was no express agreement on the terms on which the arbitration would take place.

After winning at trial, the defendant won again at the Appellate Court, and thereafter, the Supreme Court granted certification. The Supreme Court affirmed the Appellate Court's decision. The Court's analysis was guided by the principle that arbitration agreements must be in writing to be enforceable and that the parties must agree to submit to the same arbitration. Although the plaintiffs argued that the totality of the correspondence revealed they had a "deal," the Court found that the "cumulative effect of the correspondence reflects that the plaintiffs and the defendant failed to reach a written agreement on a single parameter or condition of arbitration that either counsel had identified as necessary to the agreement." The plaintiffs tried to save their case by relying on inferences which could be drawn from the purported intentions of counsel, but the Court rejected those arguments. Ultimately, the lesson to be learned is that an agreement to arbitrate is not an agreement to arbitrate until the parties have executed a final, written arbitration agreement.

Workplace Injury

Finally, the Supreme Court issued a decision that reaffirms how difficult it is for employees to bypass the exclusivity provision in the Connecticut Workers' Compensation Act and be permitted to sue their employers for workplace injuries. In *Motzer v. Haberli*, 300 Conn. 733 (2011), the plaintiff filed suit against his employer after he was injured during the installation of electrical wiring at an apartment complex. As part of his complaint, the plaintiff claimed that his employer engaged in misconduct, including by failing to train employees and violating applicable state and federal safety regulations.

During trial, the court granted the defendant's motion for directed verdict in part because the plaintiff had failed to establish (as required by *Suarez v. Dickmont*, 229 Conn. 99 (1994)) that his employer intentionally created a dangerous condition that made the employee's injuries "substantially certain" to occur. Indeed, the Court noted that the failure to comply with safety regulations or to train employees is not enough unless there was further evidence "that the employer knew or believed that injury to the employee is substantially certain to occur." Because the plaintiff failed to present such evidence, the Supreme Court affirmed the trial court's decision granting the motion for directed verdict. Accordingly, the standard remains high for those employees seeking to skirt the Workers' Compensation Act.

In sum, although the vast majority of decisions released by the Supreme Court were outside the business realm, the 2010 to 2011 Court year produced interesting decisions that will have a future effect on the business community. ■