

ADMIRALTY & MARITIME

ANTITRUST & TRADE REGULATION

APPELLATE LITIGATION

AVIATION

BANKRUPTCY, RESTRUCTURING &
CREDITORS-DEBTORS RIGHTS

BUSINESS & COMMERCIAL LITIGATION

CLASS ACTION DEFENSE

COMMERCIAL LENDING & FINANCE

CONSTRUCTION

CORPORATE & SECURITIES

EMPLOYEE BENEFITS, ERISA, &
EXECUTIVE COMPENSATION

ENERGY

ENVIRONMENTAL & TOXIC TORTS

GAMING

GOVERNMENT RELATIONS

HEALTH CARE

INSURANCE, BANKING & FINANCIAL
SERVICES

INTELLECTUAL PROPERTY

INTERNATIONAL

LABOR & EMPLOYMENT

MERGERS & ACQUISITIONS

PRODUCTS LIABILITY

PROFESSIONAL LIABILITY

PROJECT DEVELOPMENT & FINANCE

PUBLIC FINANCE

REAL ESTATE: LAND USE,
DEVELOPMENT & FINANCE

TAX (INTERNATIONAL,
FEDERAL, STATE AND LOCAL)

TELECOMMUNICATIONS & UTILITIES

TRUSTS, ESTATES &
PERSONAL PLANNING

VENTURE CAPITAL &
EMERGING COMPANIES

WHITE COLLAR CRIME

IN THIS ISSUE:

- Cigarette Manufacturer Not Responsible for FEMA Trailer Fire
- Seller of Spanish Skin Cream Not Liable for Irritating “Secret Ingredient”

CIGARETTE MANUFACTURER NOT RESPONSIBLE FOR FEMA TRAILER FIRE

Lacoste v. Pilgrim Int’l, Inc., No. CIV.A.07-2904, 2007 WL 2713261 (E.D. La. 9/14/07)

Cigarettes caused the death of Dwayne Lacoste, Sr., when an ill-extinguished cigarette accidentally set ablaze his FEMA trailer. Fumed over the loss of a member of their family, Lacoste’s surviving relatives filed suit against the cigarette manufacturer, Lorillard Tobacco Company, among nine other manufacturers, alleging a design defect under the Louisiana Products Liability Act (LPLA). Lacoste’s relatives alleged that Lorillard “knew how, but refused, to manufacture the cigarettes that did not have a propensity to easily ignite upholstery and carpet.”

Lorillard moved to smother the claims by filing a motion to dismiss on the grounds that the plaintiffs failed to state a claim recognized under the LPLA. Judge Vance, writing for the United States District Court for the Eastern District of Louisiana, agreed that the plaintiffs were unable to prove any set of facts that would entitle them to relief under the LPLA. Accordingly, Judge Vance granted Lorillard’s motion to dismiss, and thereby extinguished the flames of the plaintiffs’ action.

– [Eric Michael Liddick](#)

SELLER OF SPANISH SKIN CREAM NOT LIABLE FOR IRRITATING “SECRET INGREDIENT”

O’Shaughnessy v. Acuderm, Inc., 06-2218 (La. App. 1 Cir. 9/19/07), 2007 WL 2713543

Michael O’Shaughnessy purchased a “Skin-Cap” product which contained a “secret ingredient” from Acuderm on approximately July 21, 1997, probably to help with a skin condition. Instead of experiencing the desired results, he suffered unspecified injuries. O’Shaughnessy and his wife brought a claim against Acuderm, the seller of Skin-Cap, a product imported from Spain, and Laboratories Cheminova Internacional, S.A., the Spanish manufacturer. The O’Shaughnessys claimed that Acuderm was liable for the injuries caused by the skin cream, because it knew or should have known that the product was dangerous at the time of sale and because Acuderm could be liable as a manufacturer under Louisiana product liability law. The district court disagreed and granted summary judgment, dismissing Acuderm. The decision was affirmed on appeal.

In order to hold a seller liable for damages caused by an unreasonably dangerous product it sold, a plaintiff must prove the seller knew or should have known the product was

- ADMIRALTY & MARITIME
- ANTITRUST & TRADE REGULATION
- APPELLATE LITIGATION
- AVIATION
- BANKRUPTCY, RESTRUCTURING & CREDITORS-DEBTORS RIGHTS
- BUSINESS & COMMERCIAL LITIGATION
- CLASS ACTION DEFENSE
- COMMERCIAL LENDING & FINANCE
- CONSTRUCTION
- CORPORATE & SECURITIES
- EMPLOYEE BENEFITS, ERISA, & EXECUTIVE COMPENSATION
- ENERGY
- ENVIRONMENTAL & TOXIC TORTS
- GAMING
- GOVERNMENT RELATIONS
- HEALTH CARE
- INSURANCE, BANKING & FINANCIAL SERVICES
- INTELLECTUAL PROPERTY
- INTERNATIONAL
- LABOR & EMPLOYMENT
- MERGERS & ACQUISITIONS
- PRODUCTS LIABILITY
- PROFESSIONAL LIABILITY
- PROJECT DEVELOPMENT & FINANCE
- PUBLIC FINANCE
- REAL ESTATE: LAND USE, DEVELOPMENT & FINANCE
- TAX (INTERNATIONAL, FEDERAL, STATE AND LOCAL)
- TELECOMMUNICATIONS & UTILITIES
- TRUSTS, ESTATES & PERSONAL PLANNING
- VENTURE CAPITAL & EMERGING COMPANIES
- WHITE COLLAR CRIME

defective and that the seller failed to declare it. The O'Shaughnessys attempted to prove that Acuderm was on notice of the dangerous nature of the products with evidence that two distributors of Skin-Cap had received warning letters in 1996 about advertising and selling an unapproved product. The O'Shaughnessys showed that, on August 8, 1997, the FDA issued a nationwide import notice ordering the detention of Skin-Cap products at all U.S. borders, based on the fact that it had found that Skin-Cap contained prescription-strength corticosteroids. Unfortunately for the O'Shaughnessys, the court was not convinced by this evidence. There was no indication that Acuderm was one of the distributors who received the 1996 warning and no proof that Acuderm had any knowledge that these warnings were issued. Additionally, the product was sold to Michael O'Shaughnessy on approximately July 21, several days before the FDA's more specific nationwide notice was issued. As such, there was no way the notice could have made Acuderm aware of the dangerous nature of the product.

The O'Shaughnessys also alleged that Acuderm was a seller-manufacturer under Louisiana products liability law. A seller of a product may be considered a manufacturer for products liability purposes if it labels a product as its own or otherwise holds itself out to be the manufacturer of the product; exercises control or influence over the design, construction, or quality of the product; incorporates into the product a part or component made by another manufacturer; or is an importer or distributor of the product from an alien manufacturer and acts as an alter ego of the alien manufacturer (La. Rev. Stat. Ann. 9:2800.53). Through the affidavit of its president, Acuderm demonstrated that none of these requirements were met. Acuderm was a distributor of Skin-Cap for a limited time and was not an alter ego of the Spanish manufacturer. Acuderm played no part in the design or manufacture of Skin-Cap products. Furthermore, it had never been affiliated with the manufacturer through ownership or control, and the products were clearly labeled as being manufactured by the Laboratories Cheminova Internacional, S.A. and distributed by Acuderm.

Because the O'Shaughnessys did not put on any additional evidence to rebut the affidavit of Acuderm's president, the trial court held – and the appellate court affirmed – that they could not meet their burden of proof at trial, summary judgment was proper, and the claims against Acuderm were dismissed.

This case reiterates that while a seller is generally not liable for injuries caused by an unreasonably dangerous product it sells, circumstances exist when liability can arise. First, the seller can be liable under general theories of redhibition if it was aware of the defect in the product but failed to disclose it. Second, the seller can be considered a manufacturer for the purpose of products liability when certain requirements are met, particularly when the seller holds itself out as manufacturer, or is in the business of selling the product of an alien manufacturer and is the alter ego of that manufacturer. In this case the seller was not found to be a manufacturer and did not have to have had knowledge of the defect. However, the outcome would have been different but for a few factual details. In the view of the court, the FDA notice would have put Acuderm on notice had it been issued before the sale, and, if the O'Shaughnessys

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ANTITRUST & TRADE REGULATION

APPELLATE LITIGATION

AVIATION

BANKRUPTCY, RESTRUCTURING &
CREDITORS-DEBTORS RIGHTS

BUSINESS & COMMERCIAL LITIGATION

CLASS ACTION DEFENSE

COMMERCIAL LENDING & FINANCE

CONSTRUCTION

CORPORATE & SECURITIES

EMPLOYEE BENEFITS, ERISA, &
EXECUTIVE COMPENSATION

ENERGY

ENVIRONMENTAL & TOXIC TORTS

GAMING

GOVERNMENT RELATIONS

HEALTH CARE

INSURANCE, BANKING & FINANCIAL
SERVICES

INTELLECTUAL PROPERTY

INTERNATIONAL

LABOR & EMPLOYMENT

MERGERS & ACQUISITIONS

PRODUCTS LIABILITY

PROFESSIONAL LIABILITY

PROJECT DEVELOPMENT & FINANCE

PUBLIC FINANCE

REAL ESTATE: LAND USE,
DEVELOPMENT & FINANCE

TAX (INTERNATIONAL,
FEDERAL, STATE AND LOCAL)

TELECOMMUNICATIONS & UTILITIES

TRUSTS, ESTATES &
PERSONAL PLANNING

VENTURE CAPITAL &
EMERGING COMPANIES

WHITE COLLAR CRIME

had put on evidence that Acuderm was aware of the prior warning letters, summary judgment might not have been granted.

– *Wade B. Hammett*

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APPELLATE LITIGATION

AVIATION

BANKRUPTCY, RESTRUCTURING &
CREDITORS-DEBTORS RIGHTS

BUSINESS & COMMERCIAL LITIGATION

CLASS ACTION DEFENSE

COMMERCIAL LENDING & FINANCE

CONSTRUCTION

CORPORATE & SECURITIES

EMPLOYEE BENEFITS, ERISA, &
EXECUTIVE COMPENSATION

ENERGY

ENVIRONMENTAL & TOXIC TORTS

GAMING

GOVERNMENT RELATIONS

HEALTH CARE

INSURANCE, BANKING & FINANCIAL
SERVICES

INTELLECTUAL PROPERTY

INTERNATIONAL

LABOR & EMPLOYMENT

MERGERS & ACQUISITIONS

PRODUCTS LIABILITY

PROFESSIONAL LIABILITY

PROJECT DEVELOPMENT & FINANCE

PUBLIC FINANCE

REAL ESTATE: LAND USE,
DEVELOPMENT & FINANCE

TAX (INTERNATIONAL,
FEDERAL, STATE AND LOCAL)

TELECOMMUNICATIONS & UTILITIES

TRUSTS, ESTATES &
PERSONAL PLANNING

VENTURE CAPITAL &
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WHITE COLLAR CRIME

Remember that these legal principles may change and vary widely in their application to specific factual circumstances. You should consult with counsel about your individual circumstances. For further information regarding these issues, contact:

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