

Jones Walker E*Zine

Products Liability
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IN THIS ISSUE:

- [Non-Manufacturing Seller Not Strictly Liable Under La. Products Liability Act](#)

Editor's note: Louisiana courts, many affected by Hurricanes Katrina and Rita, did not issue many product liability opinions in October. Our article below addresses the sole case for this month's issue. We will continue to follow and report on all product liability cases decided by Louisiana state and federal courts.

Non-Manufacturing Seller Not Strictly Liable Under La. Products Liability Act

Smith v. Premier Ford Lincoln Mercury, L.L.C.,
2005 WL 2563177 (W.D.La. 10/11/05)

The Smith family filed suit against Ford Motor Company, manufacturer, and Premier Ford Lincoln Mercury, L.L.C., dealership, for injuries sustained in an automobile accident when their 2003 Ford F-150's rear axle broke suddenly and without warning. The Smiths alleged products liability claims against both Ford Motor and Premier Ford. The court subsequently granted Premier Ford's motion to dismiss, which it treated as a motion for summary judgment.

The Smiths alleged that the axle defect was present when they bought the vehicle. However, a non-manufacturing seller, who does not vouch for the product by holding it out as his own, cannot incur strict manufacturer's liability under the Louisiana Products Liability Act. That seller may only be responsible under general tort law if it knew or should have known that the product was defective and failed to declare it. However, Premier Ford had no legal duty to inspect the vehicle for inherent vices or defects prior to sale. It was new when sold to the Smiths, and there had been no recalls or warranty work performed on the vehicle.

After the Smiths bought the vehicle, they complained to Premier Ford about noises and vibrations. When Premier Ford inspected the vehicle, it assumed a duty to perform the inspection in a non-negligent manner. A reasonable person in Premier Ford's situation, with the same level of knowledge and experience, would not have taken notice of the allegedly defective axle. Premier Ford's expert testimony revealed that the noises and vibrations complained of were not indicative of axle fatigue. Further, the Smith's own expert testified that the axle broke "suddenly and without warning."

To justify imposing manufacturer's strict liability, Premier Ford's repair of the vehicle must rise to the level of control over the manufacturing process or product quality contemplated by the LPLA. The repairs made by Premier Ford did not alter the basic design so as to be considered a remanufacturing, reconditioning, or refurbishing of the vehicle. Consequently, no evidence existed that Premier knew or should have known of the alleged axle defect or that its repairs to the vehicle would rise to a level of incurring liability under the LPLA.

- [Sarah B. Belter](#)

[back to top](#)

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:

Leon Gary, Jr.
Jones Walker
Four United Plaza
8555 United Plaza Boulevard
Baton Rouge, LA 70809-7000
ph. 225.248.2024
fax 225.248.3324
email lgary@joneswalker.com

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