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PLACING PRODUCT ORDERS DOES NOT RESULT IN MANUFACTURER LIABILITY UNDER THE LPLA

Tunica-Biloxi Indians of Louisiana d/b/a Paragon Casino Report v. Pecot, 2006 WL 273604 (W.D.La. 2/2/06)

This case involved mold contamination in connection with the construction of the Paragon Casino Resort in Marksville, Louisiana. The vinyl wall covering procured and installed at the casino was supposedly linked to the mold contamination. Paragon sued DesignTex, the entity who placed the order for the vinyl wall covering, alleging it to be a manufacturer under the Louisiana Products Liability Act (LPLA). The district court judge found that DesignTex was not a manufacturer under the LPLA.

The LPLA defines a manufacturer as a person or entity who is in the business of manufacturing a product for business or trade. Manufacturer also means a person or entity who labels a product as his own or otherwise holds himself out to be the manufacturer of a particular product, a seller who exercises control or influences a characteristic of the product that causes damage, or a manufacturer who incorporates into the product a component manufactured by another manufacturer. Manufacturing means producing, making, fabricating, constructing, designing, remanufacturing, reconditioning or refurbishing a product. Here, DesignTex did not fall into any of these categories.

DesignTex did not actually manufacture the vinyl wall covering; however, Paragon claimed that DesignTex held itself out as a manufacturer in its contact with Paragon's agent. Yet Paragon failed to point to any facts or legal authority to support its position. The district court judge relied on earlier Louisiana cases holding that the mere placement of an order for goods does not equate to control over the design, construction or quality of a product. Here, DesignTex simply took an order from Paragon's agent, and transmitted that order to the actual manufacturer. DesignTex neither held itself out to be a manufacturer, nor determined the design, construction or quality of the vinyl wall covering. Consequently, DesignTex was not a manufacturer under the LPLA. Note, however, that DesignTex could have been arguably liable in tort for failing to warn Paragon of known potential defects.

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This case is important because it limits who may be considered a manufacturer. Where a person merely places an order for a product on another's behalf, he will not be subject to product liability claims as a manufacturer. Such a limitation, however, does not permit a non-manufacturer seller to escape from general tort liability.

—*Sarah B. Belter*

BIKE MAKER & SELLER MAY HAVE TO WARN OF DANGER OF BUYING A BIKE THAT IS TOO BIG

Prothro v. Wal-Mart Stores, Inc., 2006 WL 220843 (W.D.La. 1/27/06)

Two months ago we reported on an earlier decision in this case involving a bicycle injury. There the manufacturer of a component part of the bicycle was let out on summary judgment, with the court finding that the design of the particular component was not the cause of the boy's injury. (MANUFACTURER OF BICYCLE COMPONENT WINS SUMMARY JUDGMENT, January 2006, Vol. 60.) Here the same judge considered a summary judgment brought on behalf of defendants Pacific Cycle, Inc. and Wal-Mart, Louisiana, the manufacturer and marketer of the bicycle.

The child was hurt when he crashed his bicycle into a tree and landed on the bar of the bicycle injuring his penis and genitals. Plaintiff claimed that Wal-Mart failed to warn the boy when it sold him the bicycle that it was "drastically too large." Plaintiff also argued that Pacific Cycle provided inadequate warnings in its owner's manual of the dangers of a bicycle that is too large for a child.

The defendants countered that the size of bicycle is not a defect, nor does it constitute a mis-manufacture. They contended that the bicycle seat on the bike at the time of the accident was not the seat sold with the bike.

Plaintiff countered on the seat issue by pointing out that they had replaced the seat because, at the time plaintiffs purchased the bicycle in question, it had an "Element" seat with words that read "Designed for Women," rather than a "Mongoose" seat.

The trial judge found that there was a genuine issue of material fact concerning inadequate warnings as to the bicycle's size and denied the summary judgment motion. The judge did not directly address the legal arguments concerning design and mis-manufacture under the LPLA.

—*Madeleine Fischer*

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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