Despite Tincher, Pennsylvania Superior Court Determines “Industry Standards” Is Still Not a Viable Defense to Product Liability Claims

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In a product liability case where a manufacturer is defending a claim that a product it designed was defective and the cause of a plaintiff’s injury, the manufacturer may attempt to introduce evidence at trial showing its product was manufactured in accordance with applicable industry standards. Proof that the product was designed in accordance with industry standards, in some instances, can establish that the product was built with the latest technological advancements being used by other manufacturers in the marketplace. However, a recent decision in Sullivan v. Werner Co., et al., 3086 EDA 2019, the Pennsylvania Superior Court reemphasized that the “Industry Standards” defense does not apply to strict liability claims, so that evidence of a manufacturer following industry standards is appropriately excluded from trial.

In this case, the plaintiff was injured in 2015 when a steel scaffolding platform manufactured by Werner Co. and sold by Lowe’s collapsed. Plaintiff claimed that the scaffold’s locking pins could rotate out of position during normal use, which could cause the platform to come loose and collapse. The trial court barred the defendants from introducing evidence that pointed to the similarity between the scaffold’s
locking pins and other locking pins used by other manufacturers in the industry, and barred the defendants from arguing that the plaintiff’s own negligence was the sole cause of his injuries.

The defendants argued that the Pennsylvania Supreme Court’s decision in Tincher v. Omega Flex, Inc. had set new standards in Pennsylvania for proving a strict liability claim so that the previous ban on the “Industry Standards” defense was moot. The Superior Court in a decision handed down by a three-judge panel disagreed, and stated that the Tincher court had declined to adopt the American Law Institute’s Restatement (Third) of Torts’ requirement that a plaintiff had to prove that an alternative, safer design of the product existed. Therefore, because Pennsylvania still follows the Restatement (Second) of Torts, the panel noted that a product can be designed and manufactured with all possible care but still be defective. The panel consequently upheld the trial court’s determination that evidence of industry standards was properly excluded, as such evidence is irrelevant to the overall determination of whether the product is safe.

What remains to be seen is whether Pennsylvania will ultimately follow the Restatement (Third) of Torts, which could allow the “Industry Standards” defense to apply to a product liability claim. Until then, Pennsylvania will continue to ban the use of the “Industry Standards” defense in strict liability claims. It also is possible that the defendants will appeal this decision to the Pennsylvania Supreme Court. We will watch for any appeals and update this post if any appeal is granted.

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