CHAPTER 73

Sellers of Defective Products

**SECTION 15‑73‑10.** Liability of seller for defective product.

 (1) One who sells any product in a defective condition unreasonably dangerous to the user or consumer or to his property is subject to liability for physical harm caused to the ultimate user or consumer, or to his property, if

 (a) The seller is engaged in the business of selling such a product, and

 (b) It is expected to and does reach the user or consumer without substantial change in the condition in which it is sold.

 (2) The rule stated in subsection (1) shall apply although

 (a) The seller has exercised all possible care in the preparation and sale of his product, and

 (b) The user or consumer has not bought the product from or entered into any contractual relation with the seller.

HISTORY: 1962 Code Section 66‑371; 1974 (58) 2782.

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65 ALR 5th 357 , Liability of Hospital or Medical Practitioner Under Doctrine of Strict Liability in Tort, or Breach of Warranty, for Harm Caused by Drug, Medical Instrument, or Similar Device Used in Treating Patient.

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Preemption, State‑law design‑defect claims that turn on adequacy of prescription drug’s warnings are preempted by federal law, see Mutual Pharmaceutical Co., Inc. v. Bartlett, 2013, 133 S.Ct. 2466, 186 L.Ed.2d 607. Products Liability 133, 225; States 18.65

Products liability, drugs, state law failure to warn claims, federal preemption, Food and Drug Administration approval of drug labeling, see Wyeth v. Levine, 2009, 129 S.Ct. 1187, 555 U.S. 555, 173 L.Ed.2d 51.

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Products liability, preemption, common law claims of negligence, strict liability and implied warranty, medical device amendments, pre‑market approval, see Riegel v. Medtronic, Inc., 2008, 128 S.Ct. 999, 552 U.S. 312, 169 L.Ed.2d 892.

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1. In general

Section 15‑73‑10 applied to Crimper which left the manufacturer’s hands in Germany, apparently in December 1974, and was delivered and installed in South Carolina, early in 1975, inasmuch as both dates were well after the effective date of the statute, notwithstanding the fact that purchase order for the Crimper was made on November 23, 1973 more than 7 months before the effective date of the statute. Martin v. Fleissner GmbH (C.A.4 (S.C.) 1984) 741 F.2d 61. Products Liability 104

To establish liability pursuant to any products liability theory under South Carolina law, plaintiff must show (1) he was injured by the product, (2) the injury occurred because the product was in a defective condition, unreasonably dangerous to the user, and (3) the product, at the time of the accident, was in essentially the same condition as when it left the hands of defendant. Disher v. Synthes (U.S.A.), 2005, 371 F.Supp.2d 764. Products Liability 111

In products liability suit, jury focuses on conduct of the seller when analyzing the fault element of a negligence cause of action, but when analyzing unreasonably dangerous element of any cause of action, jury focuses on the product. Lawing v. Trinity Mfg., Inc. (S.C.App. 2013) 406 S.C. 13, 749 S.E.2d 126, rehearing denied, affirmed in part, reversed in part 415 S.C. 209, 781 S.E.2d 548. Products Liability 114; Products Liability 119

The Supreme Court’s decision in Branham, in which it held that the exclusive test in a products liability design case was the risk‑utility test with its requirement of showing a feasible alternative design, applied retroactively to all pending defective design cases, including action brought by mother, on behalf of nine‑year‑old daughter, against automobile manufacturer; the Supreme Court recognized no new right or cause of action, but rather affirmed that the risk‑utility test would be the exclusive test for design defect cases, abandoning the consumer expectations test in design defect cases. Miranda C. v. Nissan Motor Co., Ltd. (S.C.App. 2013) 402 S.C. 577, 741 S.E.2d 34. Courts 100(1)

In a products liability action, regardless of the theory on which the plaintiff seeks recovery, he must establish three elements: (1) he was injured by the product; (2) the injury occurred because the product was in a defective condition, unreasonably dangerous to the user; and (3) the product, at the time of the accident, was in essentially the same condition as when it left the hands of the defendant. Rife v. Hitachi Const. Machinery Co., Ltd. (S.C.App. 2005) 363 S.C. 209, 609 S.E.2d 565, rehearing denied, certiorari denied. Products Liability 111

A products liability case may be brought under several theories, including negligence, strict liability, and warranty. Rife v. Hitachi Const. Machinery Co., Ltd. (S.C.App. 2005) 363 S.C. 209, 609 S.E.2d 565, rehearing denied, certiorari denied. Products Liability 113; Products Liability 114; Sales 1905

Since Section 15‑73‑10 determines the liability of the seller of a defective product, the pertinent date to determine its application is the date the product was sold by the seller. Thus, in an action arising out of injuries sustained by a cement company employee due to an allegedly defective wheel assembly, the statute applied to both the seller and lessor of a trailer containing the defective wheel assembly, even though the defective parts of the wheel assembly were manufactured prior to the effective date of the statute, where the trailer was sold to the lessor after the effective date of the statute, and the lessor leased the trailer to the cement company after the effective date of the statute. Scott by McClure v. Fruehauf Corp. (S.C. 1990) 302 S.C. 364, 396 S.E.2d 354.

Blood is not a product for purposes of strict liability in tort. Samson v. Greenville Hosp. System (S.C. 1989) 297 S.C. 409, 377 S.E.2d 311. Products Liability 120; Products Liability 231

Cause of action in strict liability does not exist under Code Section 15‑73‑10 in favor of party injured, after July 9, 1974, by product placed in stream of commerce prior to codification of Restatement (Second) of Torts Section 402A as Code Section 15‑73‑10. Schall v. Sturm, Ruger Co., Inc. (S.C. 1983) 278 S.C. 646, 300 S.E.2d 735. Products Liability 104

Academically, it may be argued that all products are defective because they can be made more safe, however, it does not automatically follow that products are deemed “unreasonably dangerous”; balancing is required and numerous factors must be considered, including usefulness and desirability of product, cost involved for added safety, likelihood and potential seriousness of injury, and obviousness of danger. Claytor v. General Motors Corp. (S.C. 1982) 277 S.C. 259, 286 S.E.2d 129.

Strict Liability in tort was not part of South Carolina common law at time of passage of this section, which operates prospectively only and therefore does not apply to injury which occurred before that date. Hatfield v. Atlas Enterprises, Inc. (S.C. 1980) 274 S.C. 247, 262 S.E.2d 900. Products Liability 113

1.5. Constitutional issues

Design defect claim under New Hampshire law, based on generic drug manufacturer’s failure to strengthen warnings on inflammatory pain reliever’s label to advise of risks of toxic epidermal necrosis and Stevens‑Johnson Syndrome and to ensure that pain reliever was not “unreasonably dangerous” to users, was preempted by federal law that expressly prohibited manufacturers of generic drugs from making any unilateral changes to drug’s label; mere fact that manufacturer could escape impossibility of complying with both its federal and state law duties by choosing not to manufacture drug at all did not alter fact that state law design defect claim was conflict preempted, because it was impossible to comply with both laws. Mutual Pharmaceutical Co., Inc. v. Bartlett, 2013, 133 S.Ct. 2466, 186 L.Ed.2d 607. Products Liability 133; Products Liability 225; States 18.65

Sophisticated user doctrine, as part of products liability law, was not impliedly preempted by federal regulations regarding labeling of hazardous materials that imposed duty to warn on distributors, manufacturers, and importers of such chemicals, since doctrine did not absolve defendants of duty to warn, but rather addressed what conduct would suffice to absolve that duty; federal regulations required warnings that were appropriate under the circumstances, and doctrine required only that certain circumstances be considered in determining what was reasonable. Lawing v. Trinity Mfg., Inc. (S.C.App. 2013) 406 S.C. 13, 749 S.E.2d 126, rehearing denied, affirmed in part, reversed in part 415 S.C. 209, 781 S.E.2d 548. Products Liability 137; Products Liability 217; States 18.65

2. Negligence or strict liability

South Carolina would admit testimony on “state of the art” in design defect cases tried under the theory of strict liability. Reed v. Tiffin Motor Homes, Inc. (C.A.4 (S.C.) 1982) 697 F.2d 1192. Products Liability 378

Strict liability does not apply where under defendant’s sales agreement with plaintiff, defendant warranted only that its tobacco curing barns would be free from defects in parts and workmanship and confined plaintiff’s remedies to repair or replacement of defective parts; plaintiff’s showing that barns caused physical injury to tobacco by failing to cure it does not establish that barns were unreasonably dangerous to property so as to allow doctrine of strict products liability to override contract. Purvis v. Consolidated Energy Products Co. (C.A.4 (S.C.) 1982) 674 F.2d 217.

In South Carolina, some differences exist between product liability claims brought under negligence and strict liability theories; under a negligence theory, the plaintiff has the additional burden of proving the seller or manufacturer failed to exercise due care in some respect, and, unlike strict liability, the focus is on the conduct of the seller or manufacturer, and liability is determined according to fault. Little v. Brown & Williamson Tobacco Corp., 2001, 243 F.Supp.2d 480. Products Liability 113; Products Liability 114

Under South Carolina law, a plaintiff may bring a product liability claim under several theories, including negligence and strict liability. Little v. Brown & Williamson Tobacco Corp., 2001, 243 F.Supp.2d 480. Products Liability 110

In a product liability action brought under both negligence and strict liability theories in South Carolina, the plaintiff must show (1) that he was injured by the product; (2) that the product, at the time of the accident, was in essentially the same condition as when it left the hands of the defendant; and (3) that the injury occurred because the product was in a defective condition unreasonably dangerous to the user. Little v. Brown & Williamson Tobacco Corp., 2001, 243 F.Supp.2d 480. Products Liability 113; Products Liability 114

Unlike a negligence claim, the focus in a strict liability action is on the condition of the product, without regard to the action of the seller or manufacturer. 5 Star, Inc. v. Ford Motor Co. (S.C. 2014) 408 S.C. 362, 759 S.E.2d 139, on remand 2014 WL 5035395. Products Liability 119

Strict liability and negligence claims may co‑exist in products liability context. 5 Star, Inc. v. Ford Motor Co. (S.C. 2014) 408 S.C. 362, 759 S.E.2d 139, on remand 2014 WL 5035395. Products Liability 301

In a products liability action, liability for negligence requires proof that the manufacturer breached its duty to exercise reasonable care to adopt a safe design. Rife v. Hitachi Const. Machinery Co., Ltd. (S.C.App. 2005) 363 S.C. 209, 609 S.E.2d 565, rehearing denied, certiorari denied. Products Liability 127

Worker could maintain negligence claim against manufacturer and lessor of trash compactor in connection with alleged injuries arising from sudden fright when compactor crushed co‑worker to death as worker operated controls. Bray v. Marathon Corp. (S.C. 2003) 356 S.C. 111, 588 S.E.2d 93, rehearing denied. Damages 57.60

Analysis governing a bystander’s cause of action for negligent infliction of emotional distress does not apply to strict liability cause of action by a user of defective product to recover for physical harm from emotional damage arising from death or serious injury to a third person; user of defective product is not a mere bystander in such cases, but a primary and direct victim of product defect. Bray v. Marathon Corp. (S.C. 2003) 356 S.C. 111, 588 S.E.2d 93, rehearing denied. Damages 57.60

In a products liability case in which the theory of recovery is strict liability, the only inference of any import to be made from a finding that a given warning is adequate is that the product is not in defective condition nor is it unreasonably dangerous. Code 1976 Sections Sections 15‑73‑10, 15‑73‑30. Curcio v. Caterpillar, Inc. (S.C.App. 2001) 344 S.C. 266, 543 S.E.2d 264, rehearing denied, certiorari granted, reversed 355 S.C. 316, 585 S.E.2d 272. Products Liability 133

In a products liability action under both negligence and strict liability theories, the plaintiff must establish (1) that he was injured by the product, (2) that the product, at the time of the accident, was in essentially the same condition as when it left the hands of the defendant, and (3) that the injury occurred because the product was in a defective condition unreasonably dangerous to the user; liability for negligence requires, in addition to the above, proof that the manufacturer breached its duty to exercise reasonable care to adopt a safe design. Allen v. Long Mfg. NC, Inc. (S.C.App. 1998) 332 S.C. 422, 505 S.E.2d 354, rehearing denied, certiorari denied. Products Liability 113; Products Liability 114

Common law indemnification does not apply among joint tortfeasors in strict liability. Scott by McClure v. Fruehauf Corp. (S.C. 1990) 302 S.C. 364, 396 S.E.2d 354.

Contributory negligence is an affirmative defense to an action for negligence; it has no application to an action based on breach of warranty or liability for a defective product. Wallace v. Owens‑Illinois, Inc. (S.C.App. 1989) 300 S.C. 518, 389 S.E.2d 155. Products Liability 181; Sales 2457

Although Section 15‑73‑10 uses the terms “sells” and “sellers,” these terms are merely descriptive and the doctrine of strict liability may be applied if the requirements for its application are otherwise met, even though no sale has occurred in the literal sense. Henderson v. Gould, Inc. (S.C.App. 1986) 288 S.C. 261, 341 S.E.2d 806. Products Liability 164

2.5. Elements of action

In a products liability action under South Carolina law, regardless of the theory on which plaintiff seeks recovery, he must establish three elements: (1) he was injured by the product, (2) the injury occurred because the product was in a defective condition, unreasonably dangerous to the user, and (3) the product at the time of the accident was in essentially the same condition as when it left the hands of defendant. Fisher v. Pelstring, 2011, 817 F.Supp.2d 791, on reconsideration in part. Products Liability 111

In a products liability action based on negligent design theory, a plaintiff must prove: (1) that he was injured by the product; (2) that the product, at the time of the accident, was in essentially the same condition as when it left the hands of the defendant; and (3) that the injury occurred because the product was in a defective condition unreasonably dangerous to the user. 5 Star, Inc. v. Ford Motor Co. (S.C. 2014) 408 S.C. 362, 759 S.E.2d 139, on remand 2014 WL 5035395. Products Liability 127

In a products liability action based on a negligent design theory, the plaintiff must establish, among other things, that the defendant failed to exercise due care in designing the product. 5 Star, Inc. v. Ford Motor Co. (S.C. 2014) 408 S.C. 362, 759 S.E.2d 139, on remand 2014 WL 5035395. Products Liability 127

When addressing the element of due care in a negligence action related to product, the focus is on the conduct of the seller or manufacturer, and liability is determined according to fault. 5 Star, Inc. v. Ford Motor Co. (S.C. 2014) 408 S.C. 362, 759 S.E.2d 139, on remand 2014 WL 5035395. Products Liability 114

In evaluating a negligence claim in products liability context, the focus may be either on the presence of conduct or the absence of conduct. 5 Star, Inc. v. Ford Motor Co. (S.C. 2014) 408 S.C. 362, 759 S.E.2d 139, on remand 2014 WL 5035395. Products Liability 114

In a products liability action, regardless of the theory of recovery pursued, a plaintiff must establish three elements: (1) he was injured by the product; (2) the injury occurred because the product was in a defective condition, unreasonably dangerous to the user; and (3) the product, at the time of the accident, was in essentially the same condition as when it left the hands of the defendant. Jackson v. Bermuda Sands, Inc. (S.C.App. 2009) 383 S.C. 11, 677 S.E.2d 612. Products Liability 111

3. “User”

Worker, a maintenance mechanic who worked in a plant that refined metals, was a “user” of sodium bromate, a chemical that was an oxidizer, for whom any warnings on packaging were intended, for purposes of imposing strict liability upon suppliers of chemical for his injury during a fire to which chemical contributed, even though he did not actually handle chemical, where worker noticed pallets of chemical within the work area on the day of the fire but failed to request their removal because he did not see a label indicating their dangerous nature, and worker used lack of labeling on chemical to evaluate its safety in the area on the day of the fire. Lawing v. Univar, USA, Inc. (S.C. 2015) 415 S.C. 209, 781 S.E.2d 548, rehearing denied. Products Liability 133; Products Liability 217

Determination of who constitutes a “user,” for purposes of imposing strict liability upon on the manufacturer and seller of a product for an injury to any user if the product reaches the user without substantial change in the condition in which it is sold, requires a case‑by‑case analysis. Lawing v. Univar, USA, Inc. (S.C. 2015) 415 S.C. 209, 781 S.E.2d 548, rehearing denied. Products Liability 113

For negligence cause of action in products liability suit, to same extent evidence of buyer’s sophistication relates to whether seller’s conduct was reasonable, evidence also relates to whether product as sold under those circumstances was unreasonably dangerous. Lawing v. Trinity Mfg., Inc. (S.C.App. 2013) 406 S.C. 13, 749 S.E.2d 126, rehearing denied, affirmed in part, reversed in part 415 S.C. 209, 781 S.E.2d 548. Products Liability 119; Products Liability 137

Under “sophisticated user doctrine,” in determining whether seller of dangerous product acted with reasonable care in fulfilling its duty to warn, jury must consider: (1) what buyer already knew about dangers associated with product, and (2) whether under that circumstance, seller can reasonably rely on buyer to warn its employees and others who might come into contact with product. Lawing v. Trinity Mfg., Inc. (S.C.App. 2013) 406 S.C. 13, 749 S.E.2d 126, rehearing denied, affirmed in part, reversed in part 415 S.C. 209, 781 S.E.2d 548. Products Liability 137

Sophisticated user doctrine, as part of products liability law, applies when there is evidence that seller of product was aware that intermediate purchaser understood dangers associated with product and had ability to effectively communicate those dangers to end user. Lawing v. Trinity Mfg., Inc. (S.C.App. 2013) 406 S.C. 13, 749 S.E.2d 126, rehearing denied, affirmed in part, reversed in part 415 S.C. 209, 781 S.E.2d 548. Products Liability 137

Question posed by sophisticated user doctrine, under products liability law, is whether supplier acted reasonably in assuming that intermediary would recognize danger and take precautions to protect its employees. Lawing v. Trinity Mfg., Inc. (S.C.App. 2013) 406 S.C. 13, 749 S.E.2d 126, rehearing denied, affirmed in part, reversed in part 415 S.C. 209, 781 S.E.2d 548. Products Liability 137

Worker was “user” of chemical that caught fire on jobsite, within meaning of statute imposing liability on one who sells “product in defective condition unreasonably dangerous to the user,” when worker looked at pallets and bags of chemicals for labels that indicated he should not work near them, even though worker was not doing something with chemical at time of fire; warnings on packaging were part of product and manufacturers and suppliers intended that workers would use information on packaging even if they were not actually using chemical within packaging. Lawing v. Trinity Mfg., Inc. (S.C.App. 2013) 406 S.C. 13, 749 S.E.2d 126, rehearing denied, affirmed in part, reversed in part 415 S.C. 209, 781 S.E.2d 548. Products Liability 133; Products Liability 161; Products Liability 217

Worker who witnessed co‑worker being fatally crushed by trash compactor was a “user” of compactor under statute governing strict liability actions for defective products, where worker was operating controls on compactor in an effort to assist co‑worker. Bray v. Marathon Corp. (S.C. 2003) 356 S.C. 111, 588 S.E.2d 93, rehearing denied. Products Liability 161; Products Liability 235

If a person is considered a “direct victim” for the purposes of proximate cause analysis under one products liability cause of action, that person must be a direct victim for all causes of action; it would be too fine a distinction to say that person is a user and therefore a foreseeable plaintiff under a strict liability theory, but that same person is not a “direct victim” and not a foreseeable plaintiff under a negligence cause of action. Bray v. Marathon Corp. (S.C. 2003) 356 S.C. 111, 588 S.E.2d 93, rehearing denied. Products Liability 147

4. “Physical harm”

Worker’s alleged physical injuries arising from emotional trauma of witnessing co‑worker being fatally crushed by trash compactor constituted “physical harm” within meaning of statute governing strict liability actions for defective products. Bray v. Marathon Corp. (S.C. 2003) 356 S.C. 111, 588 S.E.2d 93, rehearing denied. Damages 57.60; Products Liability 155; Products Liability 235

5. Questions of fact

Genuine issue of material fact as to whether lack of safety‑interlocked access point to area known to cause problems within incline conveyor used in cotton baling operation rendered product defective as it was originally sold precluded summary judgment in worker’s products liability suit against manufacturer to recover for loss of his arm while clearing out cotton. Ervin v. Continental Conveyor & Equipment Co., Inc., 2009, 674 F.Supp.2d 709. Federal Civil Procedure 2515

Genuine issue of material fact existed as to whether tobacco companies’ manufactured cigarettes were distinct from raw tobacco, precluding summary judgment, in product liability action under South Carolina law. Little v. Brown & Williamson Tobacco Corp., 2001, 243 F.Supp.2d 480. Federal Civil Procedure 2515

Genuine issue of material fact existed as to when health risks of smoking were commonly known, precluding summary judgment, in product liability action against tobacco companies under South Carolina law. Little v. Brown & Williamson Tobacco Corp., 2001, 243 F.Supp.2d 480. Federal Civil Procedure 2515

Genuine issue of material fact existed as to whether there existed safer alternative design for cigarettes, precluding summary judgment, in product liability action against tobacco companies under South Carolina law. Little v. Brown & Williamson Tobacco Corp., 2001, 243 F.Supp.2d 480. Federal Civil Procedure 2515

Genuine issue of material fact existed as to whether “lower tar and nicotine” cigarettes were fit for their intended use as safer and healthier cigarettes, precluding summary judgment, in product liability action against tobacco company under South Carolina law. Little v. Brown & Williamson Tobacco Corp., 2001, 243 F.Supp.2d 480. Federal Civil Procedure 2515

5.5. Questions of law

The question of whether South Carolina’s strict liability statute covers a general contractor supervising the construction of a home is a question of law, which the appellate court reviews de novo. Fields v. J. Haynes Waters Builders, Inc. (S.C. 2008) 376 S.C. 545, 658 S.E.2d 80. Appeal And Error 893(1)

6. Sufficiency of evidence

Mechanic who was injured when radiator hose detached as he was adjusting transmission cable of pickup truck failed to establish negligence liability of truck manufacturer under South Carolina products liability law when he failed to show that manufacturer had knowledge of any problem with allegedly defective plastic inlet connector for radiator hose; manufacturer’s statement that it had never received complaint about inlet connector in connection with any of more than 2.5 million trucks using that part went unchallenged. Oglesby v. General Motors Corp. (C.A.4 (S.C.) 1999) 190 F.3d 244. Products Liability 116; Products Liability 203

Widow of smoker failed to carry her burden of showing on failure to warn claim against tobacco company that smoker would not have begun smoking, or would have stopped smoking, had tobacco company provided warning about danger of its cigarettes, in product liability action under South Carolina law. Little v. Brown & Williamson Tobacco Corp., 2001, 243 F.Supp.2d 480. Products Liability 149; Products Liability 263

Evidence was sufficient to create jury question as to whether automobile manufacturer failed to exercise due care in designing vehicle’s speed control deactivation switch, and therefore submission of case to the jury was warranted in products liability action based on negligent design theory; expert witness testified that the deactivation switch was defectively designed to be constantly energized, that it was defectively designed in that the deactivation switch, rated for two amperes, was protected only by a fifteen‑ampere fuse, which allowed the deactivation switch to “overheat and start a fire before the 15‑ampere fuse would ever blow,” and that the deactivation switch was defectively designed to have an electrical component next to flammable hydraulic brake fluid, separated only by a thin membrane. 5 Star, Inc. v. Ford Motor Co. (S.C. 2014) 408 S.C. 362, 759 S.E.2d 139, on remand 2014 WL 5035395. Evidence 571(6); Products Liability 203; Products Liability 406

A renter of tree climbing equipment was entitled to summary judgment in a products liability action where the plaintiff admitted that there was nothing wrong with either the spikes or the harness which he rented, and that his fall was caused by the failure of the knot he tied in his own safety rope. Koester v. Carolina Rental Center, Inc. (S.C.App. 1993) 311 S.C. 115, 427 S.E.2d 708, rehearing denied, certiorari granted, reversed 313 S.C. 490, 443 S.E.2d 392.

7. Foreseeability

Genuine issue of material fact as to whether it was foreseeable that incline conveyor system used in cotton baling operation would be modified to give users access to lower belt pulley to permit them to clear out cotton precluded summary judgment in worker’s products liability suit against manufacturer to recover for loss of his arm while clearing out cotton. Ervin v. Continental Conveyor & Equipment Co., Inc., 2009, 674 F.Supp.2d 709. Federal Civil Procedure 2515

Including a foreseeability analysis in a determination of whether a plaintiff constitutes a “user,” for purposes of imposing strict liability upon on the manufacturer and seller of a product for an injury to any user if the product reaches the user without substantial change in the condition in which it is sold, is improper. Lawing v. Univar, USA, Inc. (S.C. 2015) 415 S.C. 209, 781 S.E.2d 548, rehearing denied. Products Liability 150

Excavator manufacturer could not reasonably foresee that its excavator, not equipped with seat belt, would injure person in United States, and thus, manufacturer was not liable to excavator operator injured when sudden stop ejected him through front window of operator’s cab; excavator was designed and manufactured solely for distribution and use in Japan. Rife v. Hitachi Const. Machinery Co., Ltd. (S.C.App. 2005) 363 S.C. 209, 609 S.E.2d 565, rehearing denied, certiorari denied. Products Liability 150; Products Liability 235

Although foreseeability of some injury from an act or omission is a prerequisite to establishing proximate cause, the plaintiff need not prove that the actor should have contemplated the particular event which occurred. Rife v. Hitachi Const. Machinery Co., Ltd. (S.C.App. 2005) 363 S.C. 209, 609 S.E.2d 565, rehearing denied, certiorari denied. Negligence 387

Test of foreseeability is whether some injury to another is the natural and probable consequence of the complained‑of act; for an act to be a proximate cause of the injury, the injury must be a foreseeable consequence of the act. Rife v. Hitachi Const. Machinery Co., Ltd. (S.C.App. 2005) 363 S.C. 209, 609 S.E.2d 565, rehearing denied, certiorari denied. Negligence 386; Negligence 387

Proximate cause, in products liability context, requires proof of both causation in fact and legal cause, which is proved by establishing foreseeability. Bray v. Marathon Corp. (S.C. 2003) 356 S.C. 111, 588 S.E.2d 93, rehearing denied. Products Liability 147

In a product liability action arising from injuries sustained when the plaintiff slipped and fell in liquid on the floor while cleaning up an exploded glass soft drink bottle, the test of foreseeability was met. It was to be expected that if the defective bottle exploded, broken glass and liquid would spill on the floor. It was also predictable that a spill of broken glass and liquid would create a hazard which might cause injury to someone; that a person might slip on the liquid or be cut by the broken glass was readily foreseeable, and any resulting injury would be the natural and probable consequence of furnishing a defectively manufactured bottle containing liquid under pressure. Wallace v. Owens‑Illinois, Inc. (S.C.App. 1989) 300 S.C. 518, 389 S.E.2d 155.

7.5. Proximate cause

In order to successfully prosecute a products liability claim, a plaintiff must prove the product defect was the proximate cause of the injury sustained. Jackson v. Bermuda Sands, Inc. (S.C.App. 2009) 383 S.C. 11, 677 S.E.2d 612. Products Liability 147

The defendant’s conduct can be a proximate cause if it was at least one of the direct, concurring causes of the injury. Rife v. Hitachi Const. Machinery Co., Ltd. (S.C.App. 2005) 363 S.C. 209, 609 S.E.2d 565, rehearing denied, certiorari denied. Negligence 421; Negligence 422

Proximate cause is the efficient or direct cause of an injury; proximate cause does not mean the sole cause. Rife v. Hitachi Const. Machinery Co., Ltd. (S.C.App. 2005) 363 S.C. 209, 609 S.E.2d 565, rehearing denied, certiorari denied. Negligence 385; Negligence 422

7.7. Intervening cause

An intervening force may be a superseding cause that relieves an actor from liability; however, the intervening cause must be a cause that could not have been reasonably foreseen or anticipated. Rife v. Hitachi Const. Machinery Co., Ltd. (S.C.App. 2005) 363 S.C. 209, 609 S.E.2d 565, rehearing denied, certiorari denied. Negligence 431

8. Knowledge

In South Carolina, the “common knowledge” requirement, that a product cannot be labeled either defective or unreasonably dangerous if a danger associated with the product is one that the product’s users generally recognize, is emasculated if a defendant may show merely that the public was aware that a product presented health risks at some vague, unspecified, and undifferentiated level. Little v. Brown & Williamson Tobacco Corp., 2001, 243 F.Supp.2d 480. Products Liability 119

In a products liability action based on a negligent design theory, the judgment and ultimate decision of the manufacturer must be evaluated based on what was known or reasonably attainable at the time of manufacture. 5 Star, Inc. v. Ford Motor Co. (S.C. 2014) 408 S.C. 362, 759 S.E.2d 139, on remand 2014 WL 5035395. Products Liability 127

Manufacturer of motorboat held not liable on theory of strict liability due to boat’s lack of kill switch to shut off motor when improperly repaired steering cable on boat parted causing deceased’s ejection from boat, since normal risk of boating includes being thrown overboard, and absence of kill switch did not render boat more dangerous than that contemplated by consumer who purchases boat with ordinary knowledge common to community. Young v. Tide Craft, Inc. (S.C. 1978) 270 S.C. 453, 242 S.E.2d 671, 1 A.L.R.4th 394.

9. Causation

Genuine issue of material fact existed as to whether 25% of citizen’s smoking history could have constituted proximate cause of his cancer, precluding summary judgment, in product liability action against tobacco companies under South Carolina law. Little v. Brown & Williamson Tobacco Corp., 2001, 243 F.Supp.2d 480. Federal Civil Procedure 2515

Citizen’s smoking of particular brand of cigarette was not efficient cause without which his injury would not have resulted to as great an extent, in context of product liability action against tobacco companies under South Carolina law, since one percent of citizen’s smoking history, which was attributable to particular cigarette, was de minimis, and none of smoker’s experts opined that such contribution was substantial. Little v. Brown & Williamson Tobacco Corp., 2001, 243 F.Supp.2d 480. Products Liability 147; Products Liability 263

Causation in fact is proved by establishing the injury would not have occurred but for the defendant’s negligence; legal cause is proved by establishing foreseeability. Rife v. Hitachi Const. Machinery Co., Ltd. (S.C.App. 2005) 363 S.C. 209, 609 S.E.2d 565, rehearing denied, certiorari denied. Negligence 379; Negligence 387

Proximate cause requires proof of causation in fact and legal cause. Rife v. Hitachi Const. Machinery Co., Ltd. (S.C.App. 2005) 363 S.C. 209, 609 S.E.2d 565, rehearing denied, certiorari denied. Negligence 373

Genuine issue of material fact existed as to whether incident in which co‑worker was fatally crushed by trash compactor was proximate cause of physical harm to worker, who was operating controls on compactor, from emotional trauma of witnessing incident, precluding summary judgment for manufacturer and lessor of compactor on worker’s strict liability cause of action. Bray v. Marathon Corp. (S.C. 2003) 356 S.C. 111, 588 S.E.2d 93, rehearing denied. Judgment 181(33)

A products liability plaintiff must prove the product defect was the proximate cause of the injury sustained. Bray v. Marathon Corp. (S.C. 2003) 356 S.C. 111, 588 S.E.2d 93, rehearing denied. Products Liability 147

10. Stream of commerce requirement

A sale need not occur in the literal sense for strict liability to apply as long as the product is injected into the stream of commerce by other means. Priest v. Brown (S.C.App. 1990) 302 S.C. 405, 396 S.E.2d 638. Products Liability 113

An electric utility could not be held strictly liable for the electrocution death of a deputy sheriff who attempted to move a downed power line from the road after an automobile accident, where there was no evidence of an unreasonably dangerous defective condition, and the power line had not been placed into the stream of commerce since it was within the exclusive possession, ownership and control of the electric utility and the electricity through the lines was of such a high voltage that it was not in a form immediately useable by the consumer. Priest v. Brown (S.C.App. 1990) 302 S.C. 405, 396 S.E.2d 638. Electricity 16(3)

10.5. Sellers

Seller of excavator machine could not be liable under products liability theory for design or manufacturing defect in operator’s action brought after operator was injured when sudden stop ejected him through front window of operator’s cab; seller had absolutely no involvement in design or manufacture of excavator, and operator knew that excavator did not have seat belt prior to accident. Rife v. Hitachi Const. Machinery Co., Ltd. (S.C.App. 2005) 363 S.C. 209, 609 S.E.2d 565, rehearing denied, certiorari denied. Products Liability 168; Products Liability 235

11. Warnings

Doctrine of strict tort liability, recognized in South Carolina, provides that manufacturer of product sold in defective condition unreasonably dangerous is liable to ultimate user who was injured by product; manufacturer of pacemaker device does not have duty to warn consumer directly about potential risks provided that physician receives adequate notice of possible complications. Brooks v. Medtronic, Inc. (C.A.4 (S.C.) 1984) 750 F.2d 1227. Products Liability 161

Product package insert adequately warned against danger of medical nail’s breaking if nonunion or delayed union were to occur, even though patient alleged that product was unreasonably dangerous on basis that language in insert stated that “if there is delayed union or nonunion of bone in the presence of weight bearing or load bearing, the implant could eventually break due to metal fatigue” was guarantee that nail would not break before nonunion or delayed union could be declared; insert also contained general warning that indicated nail could break under any of number of stresses. Phelan v. Synthes (U.S.A.) (C.A.4 (S.C.) 2002) 35 Fed.Appx. 102, 2002 WL 1058900, Unreported. Products Liability 133; Products Liability 227

Wood chipper manufacturer could not be liable on failure to warn theory for injuries sustained by sawmill employee when he opened the chipper’s hood while it was still running, then was struck in the head by the hood, which was “kicked” by the spinning blades; manufacturer had included numerous warnings on the wood chipper, the wood chipper had been through three previous owners before purchase by sawmill, previous owners had placed new warnings on it, and employee admitted during his deposition that he was aware he could be hit in the head by the hood if he opened it prematurely. Holland ex rel. Knox v. Morbark, Inc. (S.C.App. 2014) 407 S.C. 227, 754 S.E.2d 714, rehearing denied. Products Liability 133; Products Liability 262

Warnings placed on wood chipper hood by reseller adequately warned users of dangers of opening hood while chipper was in operation; decal affixed to hood depicted an individual being struck in the head by the hood if opened while the disc was turning and included written warnings against operating the chipper without securing the hood lock or opening the hood while the disc was turning. Holland ex rel. Knox v. Morbark, Inc. (S.C.App. 2014) 407 S.C. 227, 754 S.E.2d 714, rehearing denied. Products Liability 133; Products Liability 262

A seller is not required to warn of dangers that are generally known and recognized. Holland ex rel. Knox v. Morbark, Inc. (S.C.App. 2014) 407 S.C. 227, 754 S.E.2d 714, rehearing denied. Products Liability 133; Products Liability 134

A product bearing a warning that the product is safe for use if the user follows the warning is neither defective nor unreasonably dangerous; therefore, the seller is not liable for any injuries caused by the use of the product if the user ignores the warning. Holland ex rel. Knox v. Morbark, Inc. (S.C.App. 2014) 407 S.C. 227, 754 S.E.2d 714, rehearing denied. Products Liability 133

The operation of an unlighted golf car on a public highway at night presents an open and obvious risk. Moore v. Barony House Restaurant, LLC (S.C.App. 2009) 382 S.C. 35, 674 S.E.2d 500, certiorari denied. Products Liability 124; Products Liability 203

A seller is not required to warn of dangers or potential dangers that are generally known and recognized, and a product cannot be deemed either defective or unreasonably dangerous if a danger associated with the product is one that the product’s users generally recognize. Moore v. Barony House Restaurant, LLC (S.C.App. 2009) 382 S.C. 35, 674 S.E.2d 500, certiorari denied. Products Liability 134

A product may be deemed defective, although faultlessly made, if it is unreasonably dangerous to place the product in the hands of the user without a suitable warning. Moore v. Barony House Restaurant, LLC (S.C.App. 2009) 382 S.C. 35, 674 S.E.2d 500, certiorari denied. Products Liability 133

A product is not defective for failure to warn of an open and obvious danger. Moore v. Barony House Restaurant, LLC (S.C.App. 2009) 382 S.C. 35, 674 S.E.2d 500, certiorari denied. Products Liability 134

The adequacy of a warning in a products liability case is generally a jury question. Curcio v. Caterpillar, Inc. (S.C. 2003) 355 S.C. 316, 585 S.E.2d 272, rehearing denied. Products Liability 407

Warning printed on track loader was adequate as a matter of law and prevented loader from being “unreasonably dangerous,” and thus manufacturer was not liable in strict products liability suit brought by personal representative of estate of mechanic killed while working on loader, where warning advised those working on loader to disconnect batteries before performing service, mechanic failed to do so, and mechanic’s death could have been prevented if he had heeded warning. Curcio v. Caterpillar, Inc. (S.C.App. 2001) 344 S.C. 266, 543 S.E.2d 264, rehearing denied, certiorari granted, reversed 355 S.C. 316, 585 S.E.2d 272. Products Liability 133; Products Liability 237

Once it is established that a product must display a warning to be safe, the question of the adequacy of the warning is one of fact for the jury as long as evidence has been presented that the warning was inadequate. Allen v. Long Mfg. NC, Inc. (S.C.App. 1998) 332 S.C. 422, 505 S.E.2d 354, rehearing denied, certiorari denied. Products Liability 407

Once it is established that a product must display a warning to be safe, the question of the adequacy of the warning is one of fact for the jury as long as evidence has been presented that the warning was inadequate. Allen v. Long Mfg. NC, Inc. (S.C.App. 1998) 332 S.C. 422, 505 S.E.2d 354, rehearing denied, certiorari denied. Products Liability 407

Operator of catfish and eel farming operation failed to produce evidence from which jury could conclude that either of two manufacturers had reason to believe warning was necessary where, on each occasion of failed compressor, one manufacturer obtained compressor from operator’s serviceman and returned it to remanufacturer, which furnished replacement; as to other manufacturer, operator had produced no evidence that it was actually aware of any problems with compressors at issue which would necessitate warning. Livingston v. Noland Corp. (S.C. 1987) 293 S.C. 521, 362 S.E.2d 16, 72 A.L.R.4th 83.

11.5. Reasonable alternative design

To satisfy Branham risk‑utility test in a product liability design defect action, plaintiff must present evidence of a reasonable alternative design and is required to point to a design flaw in the product and show how an alternative design would have prevented the product from being unreasonably dangerous; the presentation of an alternative design must include consideration of the costs, safety and functionality associated with the alternative design. Riley v. Ford Motor Co. (S.C.App. 2014) 408 S.C. 1, 757 S.E.2d 422, rehearing denied, certiorari granted, reversed 414 S.C. 185, 777 S.E.2d 824. Products Liability 129

In products liability action, alleging that negligent design of compression rod door‑latch system of pickup truck allowed door to come open in collision, reasonable alternative design for door‑latch system was shown by evidence that manufacturer had used cable‑linkage system in earlier truck models, internal documents revealing safety issues with rod systems, and evidence that manufacturer had conducted “risk‑utility” analysis of costs, safety and functionality, concluding cable system was feasible, if not superior, alternative design. Riley v. Ford Motor Co. (S.C.App. 2014) 408 S.C. 1, 757 S.E.2d 422, rehearing denied, certiorari granted, reversed 414 S.C. 185, 777 S.E.2d 824. Products Liability 128; Products Liability 208

Expert need not “champion” feasible alternative design, required, under “risk‑utility test,” to establish that product was unreasonably dangerous as result of design defect. Riley v. Ford Motor Co. (S.C.App. 2014) 408 S.C. 1, 757 S.E.2d 422, rehearing denied, certiorari granted, reversed 414 S.C. 185, 777 S.E.2d 824. Products Liability 129; Products Liability 387

Law of crashworthiness does not require product liability plaintiff to prove its alternative design will prevent automobile from being unreasonably dangerous in every foreseeable collision; rather, plaintiff is required to prove design creates an unreasonable risk of injury, that is readily foreseeable as an incident to the normal and expected use of the automobile. Riley v. Ford Motor Co. (S.C.App. 2014) 408 S.C. 1, 757 S.E.2d 422, rehearing denied, certiorari granted, reversed 414 S.C. 185, 777 S.E.2d 824. Products Liability 128; Products Liability 150; Products Liability 151; Products Liability 208

Sawmill employee who was injured by an allegedly defective wood chipper failed to prove a reasonable alternative design necessary to support a design defect claim against the chipper’s manufacturer; employee’s expert stated he was unaware of anyone in the industry that had performed a feasibility analysis for an alternative design, and admitted he had not prepared an actual design for an interlock system, instead stating his design was only “conceptual.” Holland ex rel. Knox v. Morbark, Inc. (S.C.App. 2014) 407 S.C. 227, 754 S.E.2d 714, rehearing denied. Products Liability 128; Products Liability 262

The requirement of proving a reasonable alternative design in a design defect case is mandatory. Holland ex rel. Knox v. Morbark, Inc. (S.C.App. 2014) 407 S.C. 227, 754 S.E.2d 714, rehearing denied. Products Liability 128

12. Defense of completion and acceptance

The defense of completion and acceptance was inapplicable as a matter of law in a products liability action based on allegations of strict liability, negligence and breach of warranties. The defense of completion and acceptance is inconsistent with the statute providing that sellers of defective products are strictly liable for physical harm caused to the ultimate users of the products or to their property, and is inconsistent with the statute extending the warranty of sellers beyond those with whom they have a contractual relationship. Stanley v. B.L. Montague Co., Inc. (S.C.App. 1989) 299 S.C. 51, 382 S.E.2d 246.

13. Particular products

Implantee failed to proffer expert testimony showing that titanium humeral nail that fractured after being implanted in his arm was defective and unreasonably dangerous, as required to defeat manufacturer’s motion for summary judgment on strict products liability claim based on design defect under South Carolina law, given that sole expert proffered conceded that he lacked requisite expertise in area of biomechanical design and that expert’s metallurgical opinions, in which he declined to label nail as “defective,” fell short of proving that nail was defective and unreasonably dangerous. Disher v. Synthes (U.S.A.), 2005, 371 F.Supp.2d 764. Federal Civil Procedure 2515

Failure of outboard motor manufacturer to equip its engine with kill switch did not render engine defective within purview of strict liability law. Tisdale v. Teleflex, Inc. (D.C.S.C. 1985) 612 F.Supp. 30.

Employer injured by wood chipper at sawmill where he worked could not sue manufacturer of wood chipper for violations of Occupational Safety and Health Administration (OSHA) standards based on an allegedly unsafe design; OSHA regulated employers rather than manufacturers. Holland ex rel. Knox v. Morbark, Inc. (S.C.App. 2014) 407 S.C. 227, 754 S.E.2d 714, rehearing denied. Products Liability 127; Products Liability 262

Absence of seat belt on excavator machine did not factually or legally prove that excavator was unreasonably dangerous, and thus, seller of machine was not liable under any products liability theory. Rife v. Hitachi Const. Machinery Co., Ltd. (S.C.App. 2005) 363 S.C. 209, 609 S.E.2d 565, rehearing denied, certiorari denied. Products Liability 119; Products Liability 235; Products Liability 384

No evidence of negligence through failure to warn found on part of distributor of extendable crane, where employee of crane purchaser was injured as result of co‑employee’s failure to properly extend crane boom, even though aware of dangers that could result. Marchant v. Mitchell Distributing Co. (S.C. 1977) 270 S.C. 29, 240 S.E.2d 511.

Crane was not in defective condition unreasonably dangerous by reason of absence of optional safety device to prevent overextension of crane boom. Marchant v. Mitchell Distributing Co. (S.C. 1977) 270 S.C. 29, 240 S.E.2d 511. Products Liability 119; Products Liability 236

14. Altered product

Under South Carolina law, in products liability case, liability may be imposed upon manufacturer or seller notwithstanding subsequent alteration of product when alteration could have been anticipated by manufacturer or seller. Ervin v. Continental Conveyor & Equipment Co., Inc., 2009, 674 F.Supp.2d 709. Products Liability 153

Under South Carolina law, if it can be shown that: (1) product was materially altered before it reached injured user, and (2) such alteration could not have been expected by manufacturer or seller, then manufacturer or seller is not liable. Ervin v. Continental Conveyor & Equipment Co., Inc., 2009, 674 F.Supp.2d 709. Products Liability 153

Under Section 15‑73‑10, the manufacturer or seller of a product is not strictly liable if it can be shown that (1) the product was materially altered before it reached the injured user, and (2) such alteration could not have been expected by the manufacturer or seller. Fleming v. Borden, Inc. (S.C. 1994) 316 S.C. 452, 450 S.E.2d 589, rehearing denied. Products Liability 153

In a products liability action, the trial court erred in granting the manufacturer summary judgment based on the fact that the product had been materially altered after delivery to the consumer where there was an issue of fact as to the foreseeability of the alteration. Fleming v. Borden, Inc. (S.C. 1994) 316 S.C. 452, 450 S.E.2d 589, rehearing denied.

14.5. Defective or unreasonably dangerous product

Expert’s testimony raised jury question as to whether compression rod door‑latch system of pickup was defective, as required to support negligent design claim; testimony identified a failure, truck door opening in collision with no pull of handle, and a defect causing failure, door‑latch system that did not protect against “foreshortening,” allowing door to open with only “a very small amount of longitudinal crush.” Riley v. Ford Motor Co. (S.C.App. 2014) 408 S.C. 1, 757 S.E.2d 422, rehearing denied, certiorari granted, reversed 414 S.C. 185, 777 S.E.2d 824. Evidence 571(6); Products Liability 208; Products Liability 406

A product cannot be deemed either defective or unreasonably dangerous if a danger associated with the product is one that the product’s users generally recognize. Holland ex rel. Knox v. Morbark, Inc. (S.C.App. 2014) 407 S.C. 227, 754 S.E.2d 714, rehearing denied. Products Liability 119

Identity of company that manufactured speed control deactivation switch that vehicle manufacturer installed in vehicles was not relevant to issue whether vehicle manufacturer knowingly installed defective switch with kapton seal that failed to prevent brake fluid from entering electrical side of switch, in vehicle owners’ action against vehicle manufacturer to recover for damages arising from fire caused by defective switch that spread to, and ultimately destroyed, owners’ home; vehicle manufacturer had duty to test and inspect switch when it installed switch in vehicle. Duncan v. Ford Motor Co. (S.C.App. 2009) 385 S.C. 119, 682 S.E.2d 877, rehearing denied. Products Liability 203; Products Liability 360

There was no evidence that white resin chair, which collapsed when plaintiff sat on the chair near pool while a guest at a hotel, was in an defective condition at the time it was shipped by manufacturer, as required to support plaintiff’s products liability claim against manufacturer of chairs. Jackson v. Bermuda Sands, Inc. (S.C.App. 2009) 383 S.C. 11, 677 S.E.2d 612. Products Liability 119; Products Liability 216

Unlighted golf car was not defective or unreasonably dangerous due to manufacturer’s failure to provide adequate warnings regarding nighttime operation on public roads, and therefore manufacturer was not strictly liable for death of golf car operator who died as a result of injuries suffered when struck by sport‑utility vehicle while crossing public highway at night; operation of unlighted golf car on a public highway at night presented an open and obvious risk, and estate’s expert conceded that danger posed should have been obvious. Moore v. Barony House Restaurant, LLC (S.C.App. 2009) 382 S.C. 35, 674 S.E.2d 500, certiorari denied. Products Liability 134; Products Liability 203

Products are not defective simply because they do not have all the optional safety features that could be included. Moore v. Barony House Restaurant, LLC (S.C.App. 2009) 382 S.C. 35, 674 S.E.2d 500, certiorari denied. Products Liability 142

Golf car was not defective or unreasonably dangerous due to manufacturer’s failure to equip car with lights and reflective equipment, and therefore manufacturer was not strictly liable for death of golf car operator who died as a result of injuries suffered when struck by sport‑utility vehicle while crossing public highway at night; while the addition of lights and reflectors to golf car would no doubt have added an increased element of safety, golf car was not defective simply because it did not have all the optional safety features that could be included. Moore v. Barony House Restaurant, LLC (S.C.App. 2009) 382 S.C. 35, 674 S.E.2d 500, certiorari denied. Products Liability 142; Products Liability 203

15. Performance of service

The strict liability statute applies only to sales of products and not to the provision of services. Fields v. J. Haynes Waters Builders, Inc. (S.C. 2008) 376 S.C. 545, 658 S.E.2d 80. Products Liability 121

Builder, as general contractor for construction of home, provided services rather than product, and thus, was not subject to strict liability for damage from installation of defective stucco siding that allowed moisture intrusion, in homeowners’ action against builder. Fields v. J. Haynes Waters Builders, Inc. (S.C. 2008) 376 S.C. 545, 658 S.E.2d 80. Products Liability 121; Products Liability 214

A pharmacy may not be held strictly liable for properly filling a prescription in accordance with a physician’s orders; in filling a prescription, a pharmacy is providing a service, rather than selling a product. Madison v. American Home Products Corp. (S.C. 2004) 358 S.C. 449, 595 S.E.2d 493. Products Liability 121; Products Liability 225

Worker who was injured when he fell through partially opened hatch door on catwalk had no strict liability claim against contractor that performed assembly work on catwalk; assembly work amounted to service, rather than product. Duncan v. CRS Sirrine Engineers, Inc. (S.C.App. 1999) 337 S.C. 537, 524 S.E.2d 115. Products Liability 121; Products Liability 214

South Carolina’s strict liability statute does not apply to services. Duncan v. CRS Sirrine Engineers, Inc. (S.C.App. 1999) 337 S.C. 537, 524 S.E.2d 115. Products Liability 121

Health care providers who use products, including breast implants, during course of providing treatment to patients are providing “services,” and are not “sellers” within meaning of Defective Products Act; thus, providers cannot be strictly liable under Act for such products. In re Breast Implant Product Liability Litigation (S.C. 1998) 331 S.C. 540, 503 S.E.2d 445. Products Liability 121; Products Liability 227

Providers of services may not be held liable under Defective Products Act. In re Breast Implant Product Liability Litigation (S.C. 1998) 331 S.C. 540, 503 S.E.2d 445. Products Liability 121

In an action arising out of defective installation of an automobile tire by a tire company, the company was entitled to a directed verdict on the injured party’s cause of action for strict liability since the tire had not been defective and the scope of strict liability does not apply to negligent installation of non‑defective products. DeLoach v. Whitney (S.C. 1981) 275 S.C. 543, 273 S.E.2d 768.

15.5. Summary judgment

Genuine issues of material fact existed as to whether homeowners were damaged by allegedly defective roofing shingles and whether manufacturer knew or should have known that the shingles contained a defect which resulted in premature cracking, precluding summary judgment in manufacturer’s favor on homeowners’ negligence claim under South Carolina law. Brooks v. GAF Materials Corp., 2014, 41 F.Supp.3d 474. Federal Civil Procedure 2515

16. Parties

School maintenance man could not base cause of action on strict liability under Section 15‑73‑10 against manufacturer of lawn mower which ran over and propelled bolt into his back while being operated by fellow worker because injured maintenance man was not user or consumer of allegedly defective lawn mower. Lightner v. Duke Power Co., 1989, 719 F.Supp. 1310.

16.5. Burden of proof

In a products liability action based on a negligent design theory, a plaintiff has the burden of presenting evidence of a reasonable alternative design. 5 Star, Inc. v. Ford Motor Co. (S.C. 2014) 408 S.C. 362, 759 S.E.2d 139, on remand 2014 WL 5035395. Products Liability 128; Products Liability 346

In order to establish a products liability claim, a plaintiff must show injury by the product, that the injury occurred because the product was in a defective condition, unreasonably dangerous to the user, and that the product was in essentially the same condition as when it left the hands of the defendant. Moore v. Barony House Restaurant, LLC (S.C.App. 2009) 382 S.C. 35, 674 S.E.2d 500, certiorari denied. Products Liability 111

17. Recovery for economic losses

Owner of utility truck which had been rebuilt by defendant could not recover from defendant for economic losses sustained when truck caught fire, allegedly as result of defendant’s negligence, because strict liability cause of action is not available to cover economic losses between commercial entities. Laurens Elec. Co‑op., Inc. v. Altec Industries, Inc. (C.A.4 (S.C.) 1989) 889 F.2d 1323.

A plaintiff suing under a products liability cause of action can recover all damages that were proximately caused by the defendant’s placing an unreasonably dangerous product into the stream of commerce. Rife v. Hitachi Const. Machinery Co., Ltd. (S.C.App. 2005) 363 S.C. 209, 609 S.E.2d 565, rehearing denied, certiorari denied. Products Liability 147

18. Liability of successor corporation

Defendant corporation’s motion for summary judgment in product liability case was denied, where motion was based upon defendant corporation’s contention that it was not manufacturer of alleged defective product in question because it had purchased the assets of its predecessor corporation two years after such predecessor had sold alleged defective product and where evidence indicated that defendant corporation was mere continuation of predecessor corporation. Holloway v. John E. Smith’s Sons Co., Division of Hobam, Inc. (D.C.S.C. 1977) 432 F.Supp. 454.

A plaintiff may maintain a product liability claim under a successor liability theory against a defendant when there are one or more other viable product liability defendants; the status and availability of other potential defendants is irrelevant in determining the issue of a successor corporation’s liability in a product liability action. Simmons v. Mark Lift Industries, Inc. (S.C. 2005) 366 S.C. 308, 622 S.E.2d 213, rehearing denied. Corporations And Business Organizations 2641(3); Products Liability 164

18.5. Admissibility of evidence

Expert witness’s qualifications in electrical engineering relating to automobiles were sufficient to render him qualified to testify regarding automobile manufacturer’s exercise of due care in products liability action, based on negligent design theory, by consumer stemming from fired allegedly caused by speed control deactivation switch, where, although witness had never worked directly for an automotive manufacturer, he had a vast amount of experience related to automotive engineering and had designed many component parts that were used in vehicles and other products, component manufacturers had hired witness to determine the cause and origin of fires in boats, buses, and other large commercial vehicles, and witness had investigated a number of fires caused by the deactivation switch in manufacturer’s vehicles, including reviewing the relevant scientific literature. 5 Star, Inc. v. Ford Motor Co. (S.C. 2014) 408 S.C. 362, 759 S.E.2d 139, on remand 2014 WL 5035395. Evidence 539

19. Jury instructions

In an action to recover for alleged design and construction defects affecting the plaintiff’s car, the trial court erred by instructing the jury that even if the condition of the car was unreasonably dangerous, the plaintiff could recover only if she was an “ordinary consumer”; moreover, the trial court’s error was not harmless where the plaintiff suffered from psychiatric illness and the defendant had emphasized her illness in its final argument. Vaughn v. Nissan Motor Corp. in U.S.A., Inc. (C.A.4 (S.C.) 1996) 77 F.3d 736.

Jury instruction on sophisticated user defense was not warranted in failure to warn products liability action against suppliers of sodium bromate, a chemical that was an oxidizer which contributed to a fire that occurred in plant and injured worker, even though worker was very familiar with chemical and understood its dangerous nature, where worker received training to familiarize himself with hazard labels, including an oxidizer symbol, and worker encountered shrink‑wrapped pallets of chemical without any visible hazard label and was unable to identify it as a dangerous product. Lawing v. Univar, USA, Inc. (S.C. 2015) 415 S.C. 209, 781 S.E.2d 548, rehearing denied. Products Liability 217; Products Liability 427

Evidence that manufacturers of hazardous chemicals knew nature of buyer’s business, buyer’s understanding of dangers of chemical, and steps buyer took to protect its employees from dangers supported trial court’s decision to give jury instruction on sophisticated user doctrine in injured worker’s products liability suit, since jury could infer that manufacturers acted reasonably in providing warnings, relying on buyer to provide its employees any additional warnings. Lawing v. Trinity Mfg., Inc. (S.C.App. 2013) 406 S.C. 13, 749 S.E.2d 126, rehearing denied, affirmed in part, reversed in part 415 S.C. 209, 781 S.E.2d 548. Products Liability 217; Products Liability 427

A post‑verdict interrogatory in which the jury found nine‑year‑old girl had failed to prove a feasible alternative design, in her design defect case against vehicle manufacturer, was not intended to bind the parties on the issue of liability, where the trial court had ruled that a feasible alternative design was not a separate requirement in a design defect case, but rather was simply a factor to be considered on the issue of whether vehicle was defectively designed, and it was on that ground that the court instructed the jury that the interrogatory was neither relevant to the verdict nor to the deliberations of the case. Miranda C. v. Nissan Motor Co., Ltd. (S.C.App. 2013) 402 S.C. 577, 741 S.E.2d 34. Trial 365.3

The trial court properly instructed the jury in a products liability action that the defendants were liable only to the extent of proven damages, even though the court failed to include this wording in its charge on strict liability, where the court twice instructed the jury that the burden to prove damages was on the plaintiff. Dunn v. Charleston Coca‑Cola Bottling Co. (S.C.App. 1992) 307 S.C. 426, 415 S.E.2d 590, rehearing denied, certiorari granted in part, reversed 311 S.C. 43, 426 S.E.2d 756. Damages 216(2)

19.5. Damages

Public policy does not bar impaired drivers from recovering damages in a crashworthiness case when the plaintiff alleges claims of strict liability and breach of warranty. Donze v. General Motors, LLC (S.C. 2017) 420 S.C. 8, 800 S.E.2d 479. Products Liability 181; Products Liability 208; Sales 2457

In determining non‑settling pickup manufacturer’s setoff from jury verdict on claim that door‑latch system was negligently designed, for settlement of claim against at‑fault driver, 80% of proceeds of settlement was allocable to wrongful death claim, and 20% to survival action, given some evidence of conscious pain and suffering by driver after being ejected from pickup truck in collision; driver’s estate’s claim against manufacturer was limited to enhanced injuries, driver’s death, and at‑fault driver alone was liable for pain and suffering that driver endured before being ejected. Riley v. Ford Motor Co. (S.C.App. 2014) 408 S.C. 1, 757 S.E.2d 422, rehearing denied, certiorari granted, reversed 414 S.C. 185, 777 S.E.2d 824. Set‑off And Counterclaim 44(1)

20. Punitive damages

Recovery of punitive damages is not allowed under a cause of action based solely upon the South Carolina strict liability statute. Under Section 15‑73‑10(1), recovery is limited to actual damages, which compensate “for physical harm caused,” and punitive damages are not assessed to compensate the plaintiff for “physical harm” suffered, but rather, their purpose is to punish the wrongdoer and to deter him or her and others from engaging in similar misconduct. Barnwell v. Barber‑Colman Co. (S.C. 1989) 301 S.C. 534, 393 S.E.2d 162. Damages 91.5(4)

21. Review

Worker’s argument regarding substantive correctness of jury instruction on sophisticated user doctrine, as part of products liability law, was not preserved for appellate review, since, after trial court gave instruction, worker did not object to the correctness of its language, but only to whether the doctrine was applicable. Lawing v. Trinity Mfg., Inc. (S.C.App. 2013) 406 S.C. 13, 749 S.E.2d 126, rehearing denied, affirmed in part, reversed in part 415 S.C. 209, 781 S.E.2d 548. Appeal and Error 215(1)

Vehicle manufacturer was entitled to a new trial on products liability design defect case brought by mother on behalf of nine‑year‑old child injured in motor‑vehicle accident, regardless of the validity of the consumer expectations test relied on by daughter at the time of trial, where, because of the retroactive application of Branham, the exclusive test in a products liability design case was the risk‑utility test with its requirement of showing a feasible alternative design. Miranda C. v. Nissan Motor Co., Ltd. (S.C.App. 2013) 402 S.C. 577, 741 S.E.2d 34. New Trial 25

Neither the two issue rule, under which when a decision is based on more than one ground, the appellate court will affirm unless the appellant appeals all grounds because the unappealed ground will become the law of the case, nor the law of the case doctrine, applied in products liability design defect action brought by mother on behalf of nine‑year‑old daughter against vehicle manufacturer, and as such, manufacturer’s failure to object to the inclusion of the consumer expectations test in the jury instructions did not require the reinstatement of verdict in favor of daughter; the jury’s verdict could not be supported by the consumer expectations test for a finding of liability based on the retroactive application of Branham. Miranda C. v. Nissan Motor Co., Ltd. (S.C.App. 2013) 402 S.C. 577, 741 S.E.2d 34. Appeal and Error 853; Appeal and Error 1136

In determining whether certain types of vendors or professionals offer services or products within the meaning of the strict liability statute, the court focuses on the character of the underlying transaction, the law regarding similar transactions in other jurisdictions, and the policy arguments in favor of imposing strict liability in a given situation. Fields v. J. Haynes Waters Builders, Inc. (S.C. 2008) 376 S.C. 545, 658 S.E.2d 80. Products Liability 121

**SECTION 15‑73‑20.** Situation in which recovery shall be barred.

 If the user or consumer discovers the defect and is aware of the danger, and nevertheless proceeds unreasonably to make use of the product and is injured by it, he is barred from recovery.

HISTORY: 1962 Code Section 66‑372; 1974 (58) 2782.

CROSS REFERENCES

Implied warranty of fitness for a particular purpose under Commercial Code, see Section 36‑2‑317.

LIBRARY REFERENCES

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Products Liability 26.

C.J.S. Products Liability Sections 44, 48.

RESEARCH REFERENCES

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S.C. Jur. Products Liability Section 44, Unreasonable Use of Product With Knowledge of Danger.

Treatises and Practice Aids

American Law of Products Liability 3d Section 1:34, Defenses Under Products Liability Statutes.

American Law of Products Liability 3d Section 39:1, Overview of Statutory Defenses.

American Law of Products Liability 3d Section 39:3, Assumption of Risk.

American Law of Products Liability 3d Section 41:11, Reasonableness of Plaintiff’s Conduct.

American Law of Products Liability 3d Section 41:36, Bar to Recovery.

American Law of Products Liability 3d PS STATESTATS, State Statutes.

NOTES OF DECISIONS

In general 1

1. In general

In a products liability action, the trial court erred in directing a verdict for the manufacturer on the ground of assumption of the risk although the plaintiff testified that she had been injured by the product in a similar manner once before the occurrence of the incident on which she sued, but that she had continued using the product, since the question of whether the plaintiff’s continued use of the product was reasonable was a question for the jury. Fleming v. Borden, Inc. (S.C. 1994) 316 S.C. 452, 450 S.E.2d 589, rehearing denied.

In an action against the lessor of tree climbing equipment, for injuries sustained by the lessee of the equipment when a knot in his makeshift rope lanyard gave way and he fell to the ground, the products liability cause of action was not barred by Section 15‑73‑20 since the lessor did not rent the lanyard with the equipment but instructed consumers to purchase rope to use instead of lanyard, and the lessee was attempting to use the equipment in a manner intended by the lessor when the accident occurred; under the circumstances, whether the use of the product was unreasonable was a question of fact for the jury. Koester v. Carolina Rental Center, Inc. (S.C. 1994) 313 S.C. 490, 443 S.E.2d 392, rehearing denied.

**SECTION 15‑73‑30.** Intent of chapter.

 Comments to Section 402A of the Restatement of Torts, Second, are incorporated herein by reference thereto as the legislative intent of this chapter.

HISTORY: 1962 Code Section 66‑373; 1974 (58) 2782.

CROSS REFERENCES

Implied warranty of fitness for a particular purpose under Commercial Code, see Section 36‑2‑317.

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Products Liability 2.

C.J.S. Products Liability Section 5.

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81 ALR 5th 245 , Products Liability: Ladders.

Encyclopedias

S.C. Jur. Products Liability Section 4, Defectiveness or Harmfulness of Injury‑Causing Product.

S.C. Jur. Products Liability Section 37, Duty to Warn, Generally.

S.C. Jur. Products Liability Section 39, Adequacy of Warning.

Treatises and Practice Aids

American Law of Products Liability 3d Section 5:11, Strict Liability‑Who is a “Seller”‑State Statutes.

American Law of Products Liability 3d PS STATESTATS, State Statutes.

LAW REVIEW AND JOURNAL COMMENTARIES

Annual Survey of South Carolina: Strict Tort Liability; Liability for Products Deemed Defective for Lack of Safety Feature. 31 S.C. L. Rev. 107.

Annual Survey of South Carolina Law: Torts: Products Liability. 33 S.C. L. Rev. 173, August 1981.

Note: Corporate successor liability for punitive damages in products liability litigation. 40 S.C. L. Rev. 509 (Winter 1989).

NOTES OF DECISIONS

Construction and application 1

1. Construction and application

There was no evidence that white resin chair, which collapsed when plaintiff sat on the chair near pool while a guest at a hotel, was in an defective condition at the time it was shipped by manufacturer, as required to support plaintiff’s products liability claim against manufacturer of chairs. Jackson v. Bermuda Sands, Inc. (S.C.App. 2009) 383 S.C. 11, 677 S.E.2d 612. Products Liability 119; Products Liability 216

**SECTION 15‑73‑40.** Actions involving firearms or ammunition; basis for determining design defect; elements to be proved by plaintiff.

 (A) In a products liability action involving firearms or ammunition, whether a firearm or ammunition shell is defective in design must not be based on a comparison or weighing of the benefits of the product against the risk of injury, damage, or death posed by its potential to cause that injury, damage, or death when discharged.

 (B) In a products liability action brought against a firearm or ammunition manufacturer, importer, distributor, or retailer that alleges a design defect, the burden is on the plaintiff to prove, in addition to any other elements required to be proved that:

 (1) the actual design of the firearm or ammunition was defective, causing it not to function in a manner reasonably expected by an ordinary consumer of firearms or ammunition; and

 (2) any defective design was the proximate cause of the injury, damage, or death.

HISTORY: 2000 Act No. 345, Section 1.

LIBRARY REFERENCES

Westlaw Key Number Search: 406k4.

Weapons 4.

C.J.S. Weapons Sections 9 to 10.

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84 Am. Jur. Trials 109, Litigating Against the Firearm Industry.

Treatises and Practice Aids

American Law of Products Liability 3d Section 106:4, Applicable Statutes‑State Statutes.

American Law of Products Liability 3d PS STATESTATS, State Statutes.

19 Causes of Action 2d 127, Cause of Action for Carbon Monoxide Poisoning.