



2014 Oklahoma Products Liability Reform Protects Sellers Significantly. Manufacturers Receive Less Relief.

By Adam Doverspike and Jeffrey Curran

The Oklahoma legislature passed the products liability reform bill, HB 3365, by supermajorities in both chambers: 69-19 in the House and 34-8 in the Senate. Governor Fallin signed the bill into law May 2, 2014.

Taking effect November 1, 2014, the reform legislation provides substantial protections to sellers from product liability lawsuits. The reform also provides protections to manufacturers; however, those protections are undermined by the statute's limitations.

Product Sellers

Sellers who are not manufacturers of a product received significant protection from product liability lawsuits. The reform forbids product liability lawsuits against product sellers, except in statutorily enumerated situations. Sellers familiar with those exceptions can avoid inadvertently exposing themselves to liability. Specifically, sellers do not usually exercise substantial control over the design or testing of products nor do they usually alter or modify products. Thus, the reform excludes most sellers from any vicarious liability based on simply being a conduit of a product.

Sellers still face some residual liability because they cannot control several statutory exceptions. Consumers may still bring suit against sellers if:

- The consumer cannot “identify the manufacturer” after a good-faith effort; or
- The manufacturer is not subject to service of process in Oklahoma; or
- The court determines that the consumer would be unable to enforce a judgment against the manufacturer.

Importantly, the reform limits discovery initially to determining whether any of the statutory exceptions apply. Thus, plaintiffs' lawyers cannot launch full discovery before showing an exception applies.

Sellers also remain liable for ordinary negligence claims if the seller does not “exercise reasonable care” in assembling, inspecting or maintaining a product, or if a seller fails to pass on warnings or instructions from the manufacturer and the sellers' actions cause harm. This limitation will likely

precipitate a growth in claims that sellers did not exercise reasonable care, and consequently creates fertile ground for new case law on what constitutes reasonable care in “inspecting” or “maintaining” a product.

Manufacturers

Manufacturers receive less substantive relief from the reform. Ostensibly, the biggest protection is a rebuttable presumption that a manufacturer is not liable for injury based on formulation, labeling or design if the manufacturer “complied with or exceeded mandatory safety standards or regulations” from the federal government. That presumption loses much of its value in the details.

First, the reform explicitly excludes manufacturing flaws or defects. The law governing those claims remains even if a manufacturer “complied with all quality control and manufacturing practices mandated by the federal government.” Little creativity is needed for plaintiffs’ attorneys to alter future pleadings to allege such a flaw or defect.

Second, the presumption may provide little cost savings depending how and when during litigation the judiciary decides whether a presumption has been rebutted. If the courts permit significant discovery before addressing whether the presumption has been rebutted, the reform loses even the small benefit it provides.

Third, the presumption is rebuttable merely by showing the standards “were inadequate to protect the public from unreasonable risks, injury or damage.” Manufacturers should expect a rise in expert testimony about what is adequate to protect the public.

Finally, the presumption is rebuttable by showing the manufacturer withheld or misrepresented information to the federal government agency that approved the product’s safety. Manufacturers should expect an increased scope of discovery to identify any possible error or exclusion that could support a showing that the manufacturer misrepresented information to the government.

Those limitations notwithstanding, manufacturers may receive a hidden benefit in being able to remove more products liability cases to federal court. Once a seller’s non-liability is established, more products liability cases will satisfy the requirements for diversity jurisdiction. Thus, the reform may provide a new avenue to the federal courthouse.



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