



Reading Eagle: Tim Leedy | John J. Speicher, an attorney at Leisawitz Heller, Spring Township. When it comes to product liability law, he said, "even we have a hard enough time understanding it."



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They specialize in product liability lawsuits

By Monica von Dobeneck - Reading Eagle correspondents

Anything from industrial equipment to a cup of hot coffee can lead to a product liability lawsuit.

If a product causes injury because it is poorly designed, defective, unsafe or lacks appropriate warnings, it can bring awards to the plaintiff.

The laws surrounding product liability are complex, however.



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According to David Miller, an attorney in the Reading office of the Michael J. O'Connor & Associates LLC law firm, product liability is "a very difficult area of law that is always changing."

Attorney John J. Speicher of Leisawitz Heller, Spring Township, said, "Even we have a hard enough time understanding it."

Miller said bringing a product liability lawsuit can be expensive, since it can require courtroom testimony by experts. His first advice to clients is to make sure to keep the defective product.

A motor vehicle case could cost \$5,000 to \$10,000 to prosecute, and if several doctors are required to testify as to the nature of the injuries, it could easily go to \$20,000 or \$25,000, he said. That's one reason many product liability cases are class action lawsuits.

Do research

Miller suggested that anyone who believes they have been injured because of a defective product start by doing some research on the Internet to see if there is already a case against the company.

There are two major types of product liability cases: strict liability and negligence.

Strict liability establishes liability without fault. The plaintiff does not have to prove that damages were the result of the defendant's negligence, only that the product was dangerous and the defendant is responsible. The responsible party can be the manufacturer, the distributor, the retailer or all three, even if there is no evidence any of them were actually negligent.

Speicher called strict liability "a weird animal under our law."

Defending against a strict liability case entails showing that the plaintiff knew of the danger and assumed the risk. If that is the case, the plaintiff would get nothing in damages.

Speicher gave this example of how that might happen: A

homeowner who tries to use a lawn mower to trim a hedge by lifting it off the ground, knowing that it is dangerous, probably would not be successful.

Comparative negligence takes into account the responsibility of both the plaintiff and the defendant for the injury.

Speicher gave another example, this one of a homeowner who tries to empty the bag on his lawn mower while it is running and gets his hand caught in the blade. A jury might decide it is partly his fault, but the

manufacturer of the lawn mower also should have put an automatic shut-off on the machine. In that case, the plaintiff would get only partial damages.

Success with cases

Area attorneys have had success in prosecuting product liability cases.

The Galfand Berger LLP law firm, 29 N. Sixth St., obtained a \$2.2 million settlement in the case of a 51-year-old factory worker who was severely injured on a coil-stacker machine in Berks County, according to attorney Gabriela Raful. The machine lacked two important safety features, according to the lawsuit.

A jury awarded \$650,000 to a Galfand Berger client who had three fingers amputated as the result of an accident with a riding lawn mower. The lawn mower rolled backward and flipped over onto his hand. According to the lawsuit, that type of mower had a high center of gravity and had been prone to rolling over.

Speicher also has successfully prosecuted product liability cases involving workplace accidents, including injuries caused by cleaning out mixing containers in steel foundries.

Miller said he often sends cases involving mass torts to the lead attorneys.

Famous case

Speicher said one of the most famous product liability cases involved the Ford Pinto in the 1970s. The car was prone to exploding when rear-ended, causing injuries and deaths. During the trial, it turned out that executives know about the defect but used a cost-benefit analysis to determine that it would be cheaper to pay off the resulting lawsuits than to fix the problem. After that memo came to light, the jury gave what was the largest award given at the time. The case also led to criminal charges.

While reports of huge awards for what sometimes seem like frivolous lawsuits make headlines, product liability cases lead to better corporate responsibility, local attorneys said.

"They have to make smart decisions, not just based on the bottom line," Miller said. "Often these are simple fixes, not expensive."

Speicher said it is liability cases, not government regulations, that have made our world safer. Such innovations as seat belts and air bags arose out of lawsuits.

"Most safety modifications came not from Congress or the federal government, but through litigation," he said.

Many of the huge awards reported in newspapers are reduced on appeal.

Miller has experience with prosecuting and defending product liability cases. There are times he has turned down clients whose claims don't hold up.

"If it doesn't sound like a solid story to an attorney, most likely a jury will feel the same," he said.

A successful product liability lawsuit can include both actual and punitive damages. Punitive damages are controversial. Some manufacturers see them as an unfair windfall for the plaintiff, while some lawyers say they are useful for punishing wrongdoing and blatant disregard for safety.

Stories of huge awards given for punitive damages have led to calls for tort reform.

Hot coffee

Take, for instance, the story of the hot coffee at McDonald's.

While many point to the 1994 case against the fast-food restaurant chain as an example of frivolous

lawsuits, the facts say differently, Speicher said. He blames insurance companies for distorting the details.

In 1992, 79-year-old Stella Liebeck bought coffee at a drive-thru at a McDonald's in Albuquerque, N.M. While adding cream and sugar, she spilled it on her lap. The result was third-degree burns, which landed her in the hospital for eight days, and required skin grafts to her vaginal area for the next two years.

During the trial, it turned out that McDonald's had received 700 previous reports of severe burns caused by its coffee. Liebeck had offered to settle the case for \$20,000 to cover her medical expenses, but McDonald's only offered \$800.

The jury awarded Liebeck about \$3 million in punitive damages, which a judge later reduced to \$640,000, and which was reduced further in a settlement.

The general consensus after that incident is that it was her fault for spilling the coffee. But Speicher thinks the resulting brouhaha over frivolous lawsuits did harm to the legal system.

"It turned people against plaintiffs in lawsuits," he said. "Plaintiffs who are legitimately hurt lose on cases they shouldn't lose."

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FYI

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