LITIGATION OF PRODUCTS LIABILITY CASES IN EXOTIC FORUMS - PUERTO RICO

By

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I. OVERVIEW OF PUERTO RICO LEGAL SYSTEM

A. Three branches of government

B. Judicial Branch
   1. Supreme Court
   2. Court of Appeals
   3. Court of First Instance
      a. Proceedings are in Spanish.
      b. Bench trials for all civil cases.
      c. Rules of Civil Procedure and of Evidence-adopted from federal rules.
      d. Judges appointed to eight year terms.
      e. "Civil Law tradition"-Based on Civil Code.

C. Federal courts
   1. Erie Doctrine – Puerto Rico law applies in diversity cases.
   2. Civil jury trials.
   3. Common Law and Civil Law interplay

II. CAUSES OF ACTION

A. Express warranties.
B. Implied warranty under Puerto Rico Civil Code.

   1. Seller not liable for defects known to buyer.– Art. 1373 of P.R. Civil Code
   2. Seller must cure hidden defects, even if they are unknown to seller. – Art. 1374 if P.R. Civil Code
   3. Buyer can rescind or reform contract to lower price. If the defects were known to seller, seller will also be liable for damages if buyer opts to rescind. Art. 1375 of P.R. Civil Code.
   4. Causes of action based on implied warranty expire in six months. Art. 1379 of P.R. Civil Code.

C. Products Liability – Evolved within general torts law - Article 1802 of P.R. Civil Code

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III. STRICT LIABILITY DOCTRINE

A. Development of doctrine:

1. Not codified in any statute. Incorporated into our legal system via judicial decisions.

2. First adopted by the Puerto Rico Supreme Court in Castro v. Payco, 75 D.P.R. 499 (1953), a food case in which there was privity between the manufacturer and the buyer (product was ice cream, sold by manufacturer's ice cream push cart). . Court held food product manufacturer is liable to person poisoned when consuming unfit product, relying on implied warranty of merchantability local Food, Product and Cosmetics Act).

3. Extended to non-privity cases in Mendoza v. Cerveceria Corona, 97 D.P.R. 499 (1969), citing the strict liability in torts rule set forth in by the California Supreme Court in Greenman v. Yuba Power, 377 P.2d 897 (Cal. 1962).

4. Manufacturer of defective or dangerous products' liability for injuries to third parties reiterated in Rivera v. Superior Pkg., Inc., 132 D.P.R. 115 (1992).

5. Extended to require warnings in labels of inherently dangerous products. Aponte v. Sears Roebuck de P.R., Inc., 144 D.P.R. 830 (1998).

B. Extent of liability

1. Manufacturer is strictly liable in tort when placing a defective article in the market that causes injuries to consumer, knowing that it will be used without inspection for defects. Montero Saldana v. Amer. Motors Corp., 107 D.P.R. 452, 461 (1978), adopting § 402(A) of the Restatement (Second) of Torts.

2. Manufacturer is not the insurer of every damage its products may cause. Mendoza, supra.

IV. PROVING A PRODUCTS LIABILITY CASE

A. To establish a prima facie products liability case, plaintiff has to prove:

1. Existence of defect in product used.

a. Product failed to equal the average quality of similar products. Rivera Santana v. Superior Packaging, 132 D.P.R. 115 (1992); or

b. The product has failed to perform as safely as an ordinary consumer would expect when used in an intended or reasonably foreseeable manner;

and

2. Defective product was an "adequate cause" of plaintiff's injuries. Malave Felix v. Volvo Car., 946 F.2d 967, 971 (1st Cir. 1991). Speculation or conjecture as to what might or could have caused plaintiff's damages is insufficient.
b)

B. "Adequate cause" is defined as "that condition which ordinarily produces the injury according to general experience" i.e., "when the injury appears as an ordinary and reasonable consequence of the condition".

C. Plaintiff does not have to prove manufacturer's negligence (products liability is strict liability). Mendoza, supra.

D. Types of Defects- Depending on the particular facts of the case and/or the affirmative defenses asserted, it may be necessary to establish in what way was the product defective. A product may be defective for one of three reasons:

1. Manufacturing Defect- Manufacturing defect is readily identifiable because a defective product is one that differs from the manufacturer's intended result or from other ostensibly identical units.

Caveat- If a plaintiff establishes a prima facie case of a defective product, the manufacturer will not escape liability by proving no other similar incidents in a number of other products; this may only prove the design is adequate, but does not rule out the existence of a manufacturing defect.

2. Design Defect

i. Elements of a design defect case- The design of the product that injured plaintiff was the same as the design of the product when it left the defendant's possession (this shows

that the "feature" or properties of the product that allegedly caused injury was designed into the product) ;

ii. That the design was the proximate cause of the injury

ii. The product failed to perform as safely as an ordinary consumer of that product would expect;

b. In evaluating the design of the particular part of the product that caused the injury, the following relevant factors may be considered:

i) The gravity of the danger posed by the challenged product;
ii) The likelihood that such danger will occur;
iii) The mechanical feasibility of a safer alternative design;
iv) The financial cost of an improved design, and
v) The adverse consequences to the product and to the consumer that would result from an alternative design.

c. Risk-Benefits test – Design can be defended by showing that the benefits of the challenged design outweigh the risk of danger inherent in such design.

C. Failure to Warn

1. Even if a product is free of manufacturing and design defects, it will nevertheless be considered defective if the manufacturer fails to offer adequate warnings or instructions with respect to the inherent dangers and risks associated with the use of the product. This duty extends to all product uses that are reasonably foreseeable to the manufacturer.

2. To prove that a product is defective because of failure to warn, plaintiff must establish:

a) The manufacturer knew or should have known the risks inherent to the reasonably foreseeable uses of the product;
b) There were no warnings or instructions as to said risks, or those provided were inadequate;
c)
d) The absence of adequate warnings or instructions was the adequate cause of plaintiff's injury.

VI. EXPERT EVIDENCE

A. Direct eyewitness observation of a product malfunction can be sufficient to prove defect.

B. Expert testimony not necessarily required to prove that a product differs from the manufacturer's intended result or from other ostensibly identical units of the same product.

C. In design defect cases, an expert does not have to inspect the specific product that failed to reasonably arrive at conclusions with regards to defects in design. As a corollary, alleged spoliation of evidence in design defect cases may not necessarily result in dismissal.

VII. DEFENSES

A. Sophisticated Buyer Doctrine

1. The manufacturer owes no duty to the employee of a purchaser if the manufacturer provides an adequate warning of any inherent dangers to the purchaser or if the purchaser has knowledge of such dangers and the duty to warn its employees thereof.

2. The manufacturer's duty to warn may be discharged by providing information of the dangerous propensities of the product to a third person upon whom it can reasonably rely to communicate the information to the ultimate users of the product or those who will be exposed to the hazardous effects.

3. To determine if a manufacturer reasonably relied on a third person the Court must balance the following factors:

   a) The dangerous nature of the product;
   b) The burdens imposed by requiring warnings to the ultimate users;
   c) The likelihood that the particular warning will be adequately communicated to those who will foreseeably use the product;
   d) The intensity and form of the warnings given; and
   e) The form in which the product is used.

B. The Learned Intermediary Doctrine

1. In strict liability cases involving prescription drugs, the manufacturer's duty to warn runs to the physician rather than the patient.

2. Manufacturer has no duty to warn consumers directly of dangers or risks posed by the use of its products. Rather, this duty extends exclusively to the prescribing physicians.

3. Manufacturers have a duty to adequately instruct and warn physicians responsible for prescribing the medication of any potential dangers that may result from the drugs' use.

4. The underlying premise of this doctrine is that patients rely on their doctors' expert judgment – not any materials included on the label or in the drug packaging – when deciding which drugs to use and how to use them.

5. The protection vanishes if the warnings to the physicians are found to be inadequate.

C. Misuse by user/operator– Misuse must not have been reasonably foreseeable by manufacturer. If misuse was foreseeable, then adequacy of instructions/warnings will be at issue. If misuse was foreseeable, effect of defense may be limited to a defense of comparative negligence.

E. Modification – Modification caused product to perform in dangerous fashion. Nature or degree of modification may also raise issues of adequacy of instructions/warnings.

F. Comparative Negligence

1. Art. 1802 of the P.R. Civil Code: "*Concurrent imprudence of the party aggrieved does not exempt from liability, but entails a reduction of the indemnity*."

2. Puerto Rico is a pure comparative negligence jurisdiction. If the plaintiff is 80 or even 90 percent at fault, recovery on this basis alone will not be barred.

2. Assumption of risk: In Puerto Rico, the assumption of risk defense only implies comparative fault on behalf of the plaintiff; it is not a bar to recovery..

G. Absorption of fault – In theory, per P.R. case law a plaintiff may be precluded from recovering anything if his/her own negligence is "disproportionately greater" than any negligence imputable to defendant. In practice, 90% comparative negligence of a plaintiff has not triggered the absorption of fault doctrine; it has merely reduced a plaintiff's award by 90%. A defendant's degree of fault would have to be in the single digits; the case is

H. Failure to mitigate damages – A plaintiff has a duty to mitigate his or her damages. Defendant has to prove mitigation was possible, and what

damages would have been avoided had mitigation efforts been undertaken.

I. Statute of Limitations – The applicable statute of limitations in Puerto Rico for torts actions, including strict liability, is one (1) year from the moment the aggrieved party had knowledge of the injury and who caused it.

J. Preemption – Preemption of standards v. exclusiveness of remedy.

K. Government Contractors' Defense