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Pennsylvania Supreme Court Clarifies Plaintiff's Burden of Proof in the Malfunction Theory Case of *Barnish v. KWI Building Co.*

The Pennsylvania Supreme Court unanimously ruled in *Barnish v. KWI Building Co.*, 980 A.2d 535 (Pa. 2009), that a plaintiff may be precluded from relying on the malfunction theory where the product has functioned properly in the past. Specifically, the Court held that a plaintiff "must present some evidence explaining how the product could be defective when it left the manufacturer's control and yet still function properly for a period of time" in order to survive summary judgment. *Id.* at 547.

In *Barnish*, employees working at a particleboard manufacturing plant filed suit alleging that Defendant, GreCon Electronics, Inc.'s spark detection system malfunctioned when it failed to prevent an explosion at the plant. *See id.* at 539. The spark detection system was composed of sensors, designed to trigger an adequate response if it detected sparks or a heat source along its conveyor belt system. *See id.* The GreCon sensors were installed in 1991 and operated for ten years without incident. *See id.* On February 13, 2001, employees observed a glowing ember on a conveyor belt transporting combustible material. *See id.* at 540. None of the five sensors activated a proper response; an explosion and fire occurred, killing two employees and severely injuring three other employees. *See id.*

Plaintiffs alleged that the sensors were defective under a strict liability claim. Because the sensors were lost after the explosion and fire, Plaintiffs proceeded under the malfunction theory. *See id.* GreCon Electronics filed a motion for summary judgment, asserting that Plaintiffs failed to state a *prima facie* case. *See id.* at 543. The trial court granted the motion, and the Pennsylvania Superior Court affirmed. *See id.* at 544. The Court held that because Plaintiffs conceded that the product functioned properly for ten years prior to the incident,

they were unable to "present a case-in-chief free of reasonable, secondary causes, e.g., wear and tear from prolonged use." *Id.* Consequently, a jury could not reasonably infer a defect existed at the time the product left defendant's control. *See id.*

On appeal, Plaintiffs argued that the burden of negating the potential secondary cause of wear and tear should be placed on the Defendants because it was not introduced in their case-in-chief. *See id.* at 545. Therefore, they should not be prevented from presenting before the jury for not rebutting Defendant's alleged cause of the malfunction. *See id.* In response, Defendants argued that Plaintiffs were required to "adduce some evidence that the alleged defect existed at the time the product left the manufacturer's control to survive summary judgment." *Id.*

The Pennsylvania Supreme Court sided with the Defendants and found that "Plaintiffs failed to present evidence, circumstantial or direct, that the product was defective at the time it left the manufacturer's control." *Id.* at 547. The Court, however, "refus[ed] to conclude that the prior successful use of a product, in and of itself, dooms a plaintiff's ability to present a *prima facie* case for strict product liability under the malfunction theory." *Id.* at 546. Instead, the Court found that "to survive summary judgment, a plaintiff who admits that the product functioned properly in the past must present some evidence explaining how the product could be defective when it left the manufacturers control and yet still function properly for a period of time." *Id.* at 547. Here, the Court noted that the Plaintiffs could have showed that the other sensors functioned properly but the sensor at issue was never called into question or that the product at issue failed prior to the expiration of its expected lifespan. *Id.* at 9. Because Plaintiff provided no explanation for how the product could



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have functioned properly for ten years, yet still have been defective at the time it left the manufacturer's control, the Court affirmed the entry of summary judgment in favor of the manufacturer.

Plaintiffs and defendants will want to watch for further refinements of the *Barnish* holding. The Pennsylvania Supreme Court has already been asked to consider a further clarification of plaintiff's proofs in a malfunction theory case. In determining whether a product has functioned properly since leaving the control of the manufacturer, should the focus be on the particular component that is alleged to have malfunctioned, or on the product as whole? Cheryl M. Nicolson of Nicolson Associates, LLC will argue that case on behalf of the Defendant manufacturer.

Please contact Nicolson Associates LLC for further information about this Update and other related topics.

Nicolson Associates LLC

Cheryl M. Nicolson has authored this Update.

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