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Emotional Distress Damages Awarded to Physically Unharmed Plaintiffs in Products Liability Action

In a case of first impression, *Schmidt v. Boardman Co.*, 2008 WL 4051149 (Pa. Super.), the Pennsylvania Superior Court has just ruled that physically unharmed Plaintiffs were entitled to recover damages for claims of emotional distress in a strict products liability action.

In *Schmidt*, the Plaintiffs filed suit against Defendants alleging they were liable as the successor companies to the original company that manufactured an allegedly defective fire truck. On August 19, 2004, members of the Coraopolis Volunteer Fire Department were operating a fire truck on the way to the scene of a reported alarm when the truck's fire hose and nozzle came loose from the side of the truck and lodged itself under the tire of a parked car. Not realizing the hose line had become lodged under the parked car the truck continued on causing the hose line and nozzle to break free from the truck under tremendous pressure. The hose and nozzle then flew through the air with enough force to shear a concrete bird feeder in half before hitting two young girls, killing one, Erin Schmidt, and seriously injuring the other, Joeylynne Jeffress. Erin Schmidt's mother, Joyce Schmidt, was struck, but was not injured. The girls' sisters, Lauren Jeffress and Lindsay Schmidt, were not injured, but witnessed the event.

An Allegheny County jury rendered a verdict in favor of the Plaintiffs awarding monetary damages, including emotional distress damages to Plaintiffs, Joyce Schmidt, Lauren Jeffress and Lindsay Schmidt, who did not suffer any physical harm.

The Defendants filed post-trial motions contesting the jury's award of emotional distress damages on the grounds that the bystander Plaintiffs suffered no physical injuries. In response to the post-trial motions, the trial court upheld the jury verdict, granted Plaintiffs' motion for delay damages and entered judgment against Defendants in the amount of \$4,517,073.00.

On appeal to the Pennsylvania Superior Court, Defendants again contested the trial court's failure to mold the verdict to exclude the award of damages to the bystander Plaintiffs for emotional distress. Defendants primarily argued that Plaintiffs' underlying claim was for strict products liability and that in the absence of physical injury, Pennsylvania law does not permit recovery for emotional distress damages under a theory of strict products liability. In addition, Defendants argued that under Pennsylvania law, negligence concepts are separate and distinct from the doctrine of strict products liability and, therefore, the physically unharmed Plaintiffs were not entitled to recover damages for emotional distress. The Superior Court found these arguments to be "meritless."ⁱ

A three-judge panel voted 2-1 to affirm the judgment of the trial court. Judge Cheryl Lynn Allen and Judge John T. Bender comprised the majority. While Judge Joan Orié Melvin concurred with the majority on all the issues on appeal, she dissented from the majority's view that emotional distress damages are recoverable in a strict products liability action.

The trial court, in ruling on Defendants' post-trial motions, found precedent to support recovery for emotional distress in a strict products liability action. Specifically, the trial court relied upon *Shepard v. The Superior Court of Alameda County*, 142 Cal. Rptr. 612 (1977) and *Walker v. Clark Equipment Co.*, 320 N.W.2d 561 (Iowa 1982) to support its decision to affirm the jury's award of

emotional distress damages to the bystander Plaintiffs. The trial court found that “after a mother stands in such close proximity as to be struck with the same projectile that killed her daughter and witnessed her daughter’s life drain from her body, emotional distress is the inescapable byproduct of any underlying tort which caused the injury and thus, should be compensated.”ⁱⁱ

With respect to the bystander sisters, the trial court similarly found that “although no physical injury was sustained... [an] award of damages is... equally justified. Watching one’s sister sustain an injury of that magnitude and the suffering that resulted therefrom surely constitutes an infliction of emotional distress.”ⁱⁱⁱ

The Superior Court, in the opinion written by Judge Allen, agreed with the trial court’s analysis and adopted it. The Court concluded that there was sufficient evidence presented by the Plaintiffs to support a jury charge on infliction of emotional distress and the physically unharmed Plaintiffs should not be foreclosed from recovery because the physically injured Plaintiffs asserted a claim for strict products liability against the Defendants.

Defendants are reportedly planning to appeal the Superior Court’s decision. If the Pennsylvania Supreme Court affirms the ruling, the affirmation will significantly impact strict products liability litigation in the future by expanding the sphere of potential plaintiffs from those who have suffered physical injury to those bystanders who have witnessed the injury of others while suffering no physical injury themselves. Stay tuned for additional information on this topic as it becomes available.

Please contact Nicolson Associates LLC for further information or with questions or comments about this Update.

ⁱ *Schmidt v. Boardman, Co.*, 2008 WL 4051149
at *16 (Pa. Super.)

ⁱⁱ *Id.* at *17.

ⁱⁱⁱ *Id.*