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The Arizona Legislature's abolishment of joint and several liability extends to strict products liability actions, the Arizona Supreme Court held in *State Farm Insurance Cos. v. Premier Manufactured Systems Inc.* In this Analysis & Perspective, attorney Iman R. Soliman offers an overview of the legislative history and explains the court's holding.

Joint Tortfeasor Liability in Strict Products Liability Actions in Arizona

BY IMAN R. SOLIMAN

In *State Farm Insurance Cos. v. Premier Manufactured Systems Inc.*, 217 Ariz. 222, 172 P.3d 410 (2007), the Arizona Supreme Court held that the Legislature's abolishment of joint and several liability extends to strict product liability actions; consequently, juries must allocate fault among all party and non-party tortfeasors, and each tortfeasor is severally liable only for the plaintiff's total damages.

Background

In *State Farm*, a homeowner sustained property damage from a leak in a water filtration system installed in his home. Premier Manufactured Systems Inc. (''Premier'') assembled and sold the water filtration system. Worldwide Water Distributing Ltd. (''Worldwide'') manufactured components for the system—plastic canisters—and sold them to Premier. State Farm, as subrogee for its insured, sued Premier and Worldwide, alleging that Premier and Worldwide were each strictly liable in tort for distributing a defective product.

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Premier filed an answer denying liability. Worldwide failed to answer, and State Farm obtained a default judgment against it. The judgment, however, was not collectible because Worldwide had gone out of business and did not have insurance coverage. State Farm therefore filed a motion for partial summary judgment against Premier arguing that Premier was jointly and severally liable for 100 percent of the homeowner's damages. Premier argued that its liability, if any, was several only under Arizona Revised Statute Section 12-2506, and that the statute required an allocation of fault between Premier and Worldwide. The superior court agreed with Premier and denied State Farm's motion.

Subsequently, State Farm and Premier entered into a stipulated judgment holding Premier 25 percent liable and Worldwide 75 percent liable for the total damages, but preserving for appeal the issue of whether Premier was jointly and severally liable for Worldwide's share of the total damages.

On appeal, the court of appeals affirmed the superior court's holding that Premier's liability was several only and that each tortfeasor's fault must be apportioned under Section 12-2506. *State Farm Ins. Cos. v. Premier*

Manufactured Sys. Inc., 213 Ariz. 419, 420, 142 P.3d 1232, 1233 (Ct. App. 2006). The Arizona Supreme Court granted State Farm's petition for review because it presented an issue of statewide importance.

History of Joint and Several Liability in Arizona

Historically, the common law imposed joint and several liability on tortfeasors whose conduct caused a single injury to a plaintiff. The joint and several liability doctrine, while enabling a plaintiff to collect all of his or her damages, impacted defendants harshly. A single defendant could pay all of the plaintiff's damages, but have no right of contribution from other defendants for their share of liability.

In an attempt to alleviate this harsh effect, the Arizona Legislature adopted the Uniform Contribution Among Tortfeasors Act (UCATA) in 1984. Under UCATA, a jointly liable defendant ''who has paid more than his pro rata share of the common liability'' could seek contribution from other tortfeasors. Ariz. Rev. Stat. § 12-2501(B).

As originally enacted, however, UCATA did not fully protect defendants from paying more than their allocated share of a judgment. Their right to contribution was limited, or of no use, when another joint tortfeasor was insolvent or judgment-proof. In those circumstances, a defendant who paid more than his or her share of fault absorbed the insolvent tortfeasor's portions.

To remedy this continued harshness, the Legislature amended UCATA in 1987 by abolishing ''joint and several liability'' in most circumstances. The 1987 amendment, codified in Section 12-2506, adopted a comparative fault system holding each tortfeasor responsible for its percentage of fault only. The amendment dissolved ''joint and several liability'' and replaced it with a several-only liability system, placing on plaintiffs, not defendants, the risk of insolvent joint tortfeasors.

The Court's Analysis

The case was litigated because State Farm wanted to collect the insolvent's (Worldwide's) portion of fault from Premier. The court did not spend time on this issue but instead deferred to the Legislature's power to modify or abrogate common law. In doing so, the court articulated several principles.

First Principle: The general abolition of joint and several liability in 1987 was intended to apply to parties strictly liable in tort for distributing a defective product.

State Farm argued that the Legislature's amendment of UCATA in 1987, which abolished joint and several liability and adopted comparative fault, did not apply in strict liability actions for distributing a defective product.

The court rejected State Farm's argument, finding that a strict products liability action is an action for ''personal injury, property damage or wrongful death'' under Arizona Revised Statute Section 12-2506(A). Based on the plain language of the 1987 amendment, the court reasoned that each defendant's liability is several only, unless one of the exceptions to Section 12-2506 applies.

Second Principle: The mere purchase of a product component by a manufacturer from a supplier does not establish an agent or servant relationship between the manufacturer and the supplier under Section 12-2506(D)(2).

As an exception to Section 12-2506(A), Section 12-2506(D)(2) holds a person jointly and severally liable for the fault of another person if ''[t]he other person was acting as an agent or servant of the party.'' Ariz. Rev. Stat. § 12-2506(D)(2).

State Farm argued that Premier, by purchasing a product component from Worldwide, became an agent of Worldwide with respect to the product that caused the homeowner's damages. The court rejected State Farm's argument, holding that ''[t]he mere purchase of a product from a supplier does not establish a master-servant or principal-agent relationship between the buyer and the seller.'' The court reasoned that ''in a strict products liability action, the various participants in the chain of distribution are liable not for the actions of others, but rather for their own actions in distributing the defective product'' (citing *Jimenez v. Sears, Roebuck & Co.*, 183 Ariz. 399, 402, 904 P.2d 861, 864 (1995); *O.S. Stapley Co. v. Miller*, 103 Ariz. 556, 559-60, 447 P.2d 248, 251-52 (1968)). Thus, every party in the chain of distribution of a defective product commits its own ''actionable breach of legal duty.'' Its fault is based on its own actions—distributing a defective product—rather than on a master-servant or principal-agent relationship with other wrongdoers.

Third Principle: Arizona's contribution statute gives a right of contribution in rare situations in which Section 12-2506(D) provides for joint and several liability.

State Farm next argued that joint and several liability remains the rule in strict products liability actions because Section 12-2509(A) provides a right of contribution among tortfeasors in actions ''based on . . . strict liability in tort or any product liability action'' and because Section 12-2509(C) provides that ''[a]mong two or more persons strictly liable in tort who are entitled to claim contribution against each other, the relative degree of fault of each is the degree to which each contributed to the defect causing injury to the claimant.'' State Farm argued that these statutory provisions ''would be wholly unnecessary if the liability of products liability tortfeasors were several only,'' the court said.

The court rejected State Farm's argument, finding that Section 12-2509 does not establish a ''general doctrine'' of joint and several liability in strict products liability actions. The court explained that Section 12-2509(A) ''refers not only to contribution among tortfeasors in strict liability and product liability actions, but also among 'all tortfeasors whose liability is based on negligence.' '' Thus, any reading of Section 12-2506 that would allow joint and several liability in all cases covered by Section 12-2509 would render useless the several-only provision of Section 12-2506.

Fourth Principle: The indemnity statute does not contemplate joint and several liability in strict products liability actions.

State Farm next argued that the indemnity statute, Arizona Revised Statutes Section 12-684, ''contemplates the continuation of joint and several liability in products liability actions,'' the court said. The court rejected this argument because the indemnification stat-

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ute was enacted in 1978 and thus could not be thought to negate the subsequent, broader abolition of joint and several liability by the Legislature's 1987 amendment of the UCATA. Moreover, several-only liability does not conflict with the indemnity statute or with apportionment of fault under Section 12-2506, the court said.

Fifth Principle: Tennessee and California decisions do not address Arizona's statutory scheme.

Relying on Tennessee and California decisions, State Farm argued that all entities in the chain of distribution of a defective product are jointly and severally liable for injury caused by the product. The court dismissed this argument, stating that the foreign authorities were inapposite to Arizona's statutory scheme. Arizona's Legislature specifically abolished joint and several liability in all actions, except in rare situations in which a Section 12-2506 exception applies, the court said. Moreover, the broad definition of ''fault'' in Section 12-2506(F)(2) requires the finder of fact to compare the fault of all tortfeasors in strict liability actions, the court added.

Sixth Principle: Section 12-2506 does not violate the right of action to recover damages under the ''anti-abrogation clause'' of Article 18, Section 6 of the Arizona Constitution.

Lastly, State Farm argued that interpreting Section 12-2506 to preclude joint and several liability among tortfeasors in strict products liability actions would violate the ''anti-abrogation clause'' of Article 18, Section 6 of the Arizona Constitution, which states in part:

> The right of action to recover damages for injuries shall never be abrogated, and the amount recovered shall not be subject to any statutory limitation.

Ariz. Const., art. 18, § 6.

The court noted, however, that Article 18, Section 6 does not limit the Legislature's authority to regulate common law tort actions in a manner that does not affect the claimant's ''fundamental right to sue for damages as to effectively deprive the claimant of the ability to bring the action,'' citing *Duncan v. Scottsdale Med. Imaging Ltd.*, 205 Ariz. 306, 313, 70 P.3d 435, 442 (2003), and *Barrio v. San Manuel Div. Hosp.*, 143 Ariz. 101, 106, 692 P.2d 280, 285 (1984). The ''abolition of joint and several liability in strict products liability cases does not deprive an injured claimant of the right to bring the action. Nor does it prevent the possibility of redress for injuries; the claimant remains entirely free to bring his claim against all responsible parties,'' the court wrote. Thus, the court concluded, Section 12-2506 does not violate the anti-abrogation clause, citing for comparison *Dietz v. Gen. Elec. Co.*, 169 Ariz. 505, 511, 821 P.2d 166, 172 (1991) (finding no violation of anti-abrogation clause in applying comparative fault principles in case involving injuries caused by both the defendant and a statutorily immune employer).

State Farm further argued that joint and several liability is so essential to the tort of strict products liability that enacting several-only liability negates the cause of action. Specifically, the court said, State Farm argued ''that it is impossible to allocate 'fault' in strict liability actions and that imposition of several-only liability will effectively deprive claimants of the right to sue 'innocent' sellers in the chain of distribution.'' The court rejected State Farm's argument, finding that Section 12-2506 does not prevent ''a claimant from suing all participants in a defective product's chain of distribution and obtaining a judgment for the full amount of his damages.'' Moreover, the court reasoned that the statute does not excuse any responsible party from liability. The court explained that ''under the doctrine of strict products liability, a defendant breaches its legal duty when it distributes a defective and unreasonably dangerous product,'' citing *Torres v. Goodyear Tire & Rubber Co.*, 163 Ariz. 88, 91, 786 P.2d 939, 942 (1990). ''A defendant who does so is at 'fault' under Section 12-2506(F)(2), and a claimant is entitled to recover against any such defendant under the statutory regime of several-only liability,'' the court wrote, citing *Daly v. Gen. Motors Corp.*, 575 P.2d 1162, 1170 (Cal. 1978).

The court acknowledged the difficulty, in some situations, for jurors to allocate fault among the participants in the chain of distribution of a defective product; however, it expressed confidence in jurors' abilities to accomplish this task.

The court further held that several-only liability does not violate the second clause of Article 18, Section 6, which prohibits limitation of damages. Relying on *Jimenez v. Sears, Roebuck & Co.* (183 Ariz. 399, 407, 904 P.2d 861, 869 (1995)) and its analogy of the misuse defense to instituting a several-only system of liability, the court found that several-only liability does not limit the damages recoverable, but rather serves ''only to limit each defendant's liability to the damages resulting from that defendant's conduct.''

The court was clear in its holding that ''an injured claimant may not be able to recover the full amount of his damages under a regime of several-only liability when a defendant is insolvent or full collection of the judgment against each defendant is not possible.'' Indeed, the court said, ''Our Constitution provides only that a statute cannot limit the 'amount recovered'; it is not a guarantee that the entire judgment will be collectible from a single defendant or indeed from any of the responsible parties.''

Conclusion

This case was litigated because of the risk-of-loss issue. Who should bear the burden of loss from an insolvent products liability defendant? State Farm argued that the burden of loss from an insolvent products liability defendant should fall on other entities in the product's chain of distribution rather than on the injured claimant. Ironically, the court spent little time discussing public policy reasons for the risk of loss on either side; instead, the court deferred to the judgment of the Legislature. The court, in essence, affirmed the principle that the Legislature is free to modify or abrogate common law even when the effect places the risk of loss on an injured claimant. The court also gave effect to the plain language of the statute over efforts to give it a different interpretation. Consistent with the evolution of products liability law, the court held that in strict products liability cases, the various participants in the chain of distribution are not liable for the actions of others in the chain of distribution; they are only liable for their own actions in distributing a defective product. This long awaited decision is clear and leaves no room for any well crafted and creative exception to overcome the abolishment of joint and several liability. This question has been answered.