5.40A PRODUCTS LIABILITY — Introduction: Caveats to Judges (3/10)

NOTE TO JUDGE

Caveats

I. Since the passage of the *Products Liability Act*, *N.J.S.A.* 2A:58C-1 through 7, effective July 22, l987, there is one cause of action for recovery for harm caused by a product. That theory is, for the most part, identical to strict liability as defined by *Suter v. San Angelo Foundry & Machine Co.,* 81 *N.J.* 150 (l979). The Act explicitly excludes from coverage an environmental tort action as well as actions for harm caused by a breach of an express warranty. *See Sinclair v. Merck & Co.,* 195 *N.J.* 51 (2008) and *Stevenson v. Keene,* 131 *N.J.* 393 (l993). Some negligence actions involving products probably survive the Act. *See Cartel Capital Corp. v. Fireco of New Jersey*, 81 *N.J.* 548 (l980), where the manufacturer and the installer of a fire extinguisher system were sued after a fire damaged the property. *See Tirrell v. Navistar Int'l., Inc.,* 248 *N.J. Super.* 390 (App. Div. l991).

II. Adapting this general charge to the specific facts and contentions is critically important in any product liability case. As the Supreme Court advised in *Suter v. San Angelo Foundry & Machine Co., supra* at 176 (l979): "The instruction should be tailored to the factual situation to assist the jury in performing its fact finding responsibility."

The defendant *[insert name of defendant]* as the manufacturer/seller of a product has the duty[1] to make/sell a product that is reasonably safe. In this charge when I refer to a reasonably safe product I mean a product that is reasonably fit, suitable and safe for its intended or reasonably foreseeable uses.[2] Defendant *[insert name of defendant]* owes that duty to direct users of the product, to reasonably foreseeable users of the product, and to those who may reasonably be expected to come into contact with it.

The defendant *[insert name of defendant]* is liable only if *[insert name of the plaintiff]* proves that the product causing the harm was not reasonably safe for its intended purpose. In this case the plaintiff *[name of plaintiff]* claims that the

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[1] This duty may apply to a defendant independent contractor such as a manufacturer of a component part of a product, or even a rebuilder where the part or product was built according to plans and specifications of the general manufacturer. The standard applied in assessing whether a component part manufacturer can be held liable for a design defect is set forth succinctly in *Boyle v. Ford Motor Co., 399 N.J. Super.* 18, 24 (App. Div. 2008), *certif. denied*, 196 *N.J.* 597. The respective contractual responsibilities of defendant manufacturers and producers vis-a-vis component parts and the finished product have no bearing upon the issue of proximate cause. *Michalko v. Cooke & Chem. Corp.*, 91 *N.J.* 386 (l982).

[2] *N.J.S.A.* 2A:58C-2 uses the phrase "not reasonably fit, suitable or safe." Although this model charge condenses the phrase, and then defines "safe" by including fitness and suitability, individual judges may feel more comfortable using the full phrase. In addition if the phrase "fit" or "suitable" is more appropriate to the facts of the case, those words may be used instead of "safe." Refer also to *Freund v. Cellofilm Properties, Inc.*, 87 *N.J.* 229, 242 (l981), for warning defect cases; and, generally, *Suter v. San Angelo Foundry & Machine Co., supra* at 176.

[name of product] was not reasonably safe for its intended purpose because of[3]:

a. a manufacturing defect; or

b. a failure to adequately warn or instruct; or

c. a design defect.

[Each specific defect and the appropriate law dealing with the defect will be discussed in the following charges.]

[3] Charge only the specific defect which is applicable to the case.