December 23, 2003

The Malfunction Theory: Establishing Product Liability Without Proof of a Specific Defect

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The malfunction theory can be used to effectively establish the inherent defect element of a product liability claim when the damage to the product caused by the product failure renders the remains of the product useless as physical evidence. The malfunction theory is most effective when the product involved is relatively new. The malfunction theory is usually not effective when the product involved has been in use for some time.

A product can be defective due to a manufacturing defect, a design defect, or due to a failure to provide adequate warning about an unavoidable danger associated with the use of the product. The product may include a manufacturing defect if the product was not manufactured as intended. A design defect may exist in a product if foreseeable use of the product creates an unreasonable danger of injury even though the product was manufactured as designed and intended. A product may have a failure to warn defect if the manufacturer/seller fails to provide an adequate warning of an unavoidable risk associated with the use of the product.

Manufacturing defects are different than design or failure to warn defects. For a manufacturing defect to occur, something must go wrong during the manufacturing process. Therefore, manufacturing defects typically affect only a single product or a limited number of products. Design and failure to warn defects, on the other hand, typically affect large numbers of products.

Generally, to prevail on a strict product liability claim, a plaintiff must prove that an inherent defect in a product caused the damages claimed. In other words, the plaintiff must prove (1) that the product was inherently defective and (2) that the defect in the product caused the injury or damage. Both elements of the strict product liability claim must be specifically and independently proved.

To establish the first element of a strict product liability claim, a plaintiff must prove that the product was inherently defective.
The plaintiff must show a specific defect, or specific defects, that existed, or could have existed, in the product and caused the damages in issue. Although the plaintiff in a strict product liability action does not need to establish a specific negligent act that created the defect, the plaintiff must establish a specific defect that caused, or could have caused, the damage.

Unfortunately, the failure of a product often causes damage to the product that renders the product useless as evidence. In design defect and failure to warn cases, the existence of the defect can be established through analysis of exemplar products and/or written material. However, an exemplar product will not conclusively establish the existence of a manufacturing defect in the destroyed product unless the exemplar product coincidentally has the same manufacturing defect.

The malfunction theory has developed to allow a product liability plaintiff to prove inherent defect with circumstantial evidence. Courts have acknowledged that a plaintiff in a product liability case may not be in a position to offer direct physical evidence of product defect when the product is destroyed by the product failure. Although the product failure can be evidence that the product was defective, the failure alone does not prove the defect.

The malfunction theory is similar to the res ipsa loquitur negligence doctrine. Some courts have actually referred to the malfunction theory as res ipsa loquitur. Basically, a plaintiff can establish the existence of an inherent defect in a product pursuant to the malfunction theory by eliminating all possible causes of the damage other than inherent defect and by identifying an inherent defect that could have existed in the product and caused the damages that occurred.

The malfunction theory has particular and important application in fire subrogation cases. In these cases, the product is very often so heavily damaged or completely destroyed by the fire that no physical evidence exists to prove the product defect. Although the elements of the malfunction theory differ from state to state, a plaintiff in such cases can generally establish the existence of a manufacturing defect by proving the following:

1. The fire originated in or at the product;
2. The product was relatively new, i.e., early in its useful life;
3. The product was properly used by the plaintiff;
4. There was no previous trauma or damage to the product; and
5. One or several ways in which the product could have been defective and started the fire that occurred.

For example, consider the claim against the manufacturer of a coffee maker involved in a fire. The coffee maker was purchased brand new less than a week before the fire and was being used for the first time when the fire occurred. The plaintiff’s expert eliminated all potential ignition sources in the area of origin other than the coffee maker and eliminated user negligence as a cause of the fire. The coffee maker was almost completely consumed by the fire, rendering it useless as physical evidence. Plaintiff’s expert can testify that these facts support the opinions that the coffee maker was defective and that the defect caused the fire. However, to establish a prima facie case against the manufacturer/seller, the expert must also describe a specific defective condition that
could have existed in the coffee maker and caused the fire that occurred.

The malfunction theory most probably would not be permitted to prove that a fire originating in an eight year old battery charger was caused by an inherent defect in the battery charger when the remains of the battery charger are so damaged that it is impossible for any expert to identify the specific problem with the battery charger that caused the fire. A plaintiff most probably would not be able to establish the necessary elements of the claim when the battery charger functioned properly for eight years before the fire. Battery chargers are susceptible to external damage. The possibility of damage from external sources over the eight year period would have to be conclusively eliminated for the malfunction theory to be applicable.

An example of the malfunction theory at work can be found in Hinckley v. La Mesa R.V. Center, Inc. (1984) 158 Cal.App.3d 630. Hinckley (1984) involved a fire that destroyed a motorhome. Due to the extent of damage, physical evidence conclusively establishing an inherent defect in the motorhome as the cause of the fire could not be found. The court allowed the plaintiff to establish existence of inherent defect through circumstantial evidence. The vehicle was relatively new. The vehicle had experienced electrical problems prior to the fire. There was no evidence to suggest that the vehicle had been misused or damaged between purchase and the fire. Plaintiff’s expert was able to identify a number of specific defects that could have existed in the vehicle to cause the fire as it occurred.

The malfunction theory has been adopted in one form or another in many states. The malfunction theory is discussed in the following cases. The list is not complete. Absence of a state from the list does not mean the state has rejected the malfunction theory. Cozen O’Connor is preparing a comprehensive chart identifying the law of each state on the issue.

- Oregon: Quirk v. Ross, 257 Or. 80 (1970)
