SECONDARY SOURCES

Types of Secondary Sources:

- Legal encyclopedias
- Legal periodicals
- Loose-leaf services
- Newspapers
- Legal dictionaries
- Treatises/nutshells/form books, etc.

Consult Secondary Sources:

- ● When encountering an unfamiliar area of law
- ● When encountering a new or developing area of law
- ● When encountering too little or too much material among primary sources
  - or
- ● When you just want to save time and effort

2014 Edition

NEW JERSEY PRODUCTS LIABILITY & TOXIC TORTS LAW

STATUTES CURRENT TO L. 2013, c. 165

INCLUDES CASES REPORTED THROUGH
215 N.J. 2 and 431 N.J. Super. 611

WILLIAM A. DREIER

JOHN E. KEEFE, SR.

&

ERIC D. KATZ

Cite this Volume
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GANN LAW BOOKS **NEWARK, N.J.**

TABLE OF CASES

Note that all references are to sections, not pages.

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RESTATEMENT OF THE LAW THIRD

THE AMERICAN LAW INSTITUTE

RESTATEMENT OF THE LAW

TORTS

Products Liability

As Adopted and Promulgated

BY

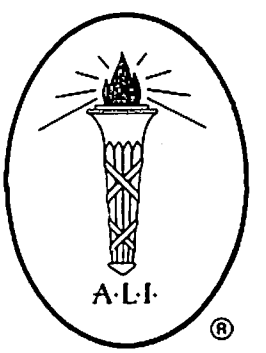
THE AMERICAN LAW INSTITUTE

AT WASHINGTON, D.C.

May 20, 1997

§§ 1 – End

Tables and Index



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SUMMARY OF CONTENTS

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PRODUCTS LIABILITY REPORTER

In Three Volumes

CCH Editorial Staff Publication

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PRODUCTS LIABILITY REPORTER

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¶ 15,951 to 16,200

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"property" whose damage gives rise to a claim under the Act. *Rispens*, 621 N.E.2d at 1089. That result, apparently accepted by the legislature, dictates disallowance of the claim for damage to the defective product, whether or not accompanied by other damage. Thus, for the same reasons given in *Progressive*, we hold that damage caused to other property by a defective product does not create a claim for damage to the product itself. We also think there are other persuasive reasons to reject the *Dutsch* rule. If recovery hinges on the presence of other damage, many cases will be launched into quests for some collateral damage. An oil stain on a garage floor from a failed engine or a burnt blade of grass from a fire should not create a claim where none existed.

We conclude that it was error for the trial court to refuse to instruct the jury that damage to the product itself, *i.e.*, the motor home, was not recoverable under the Products Liability Act. In reviewing a trial court's decision to give or refuse tendered instructions, the Court considers: (1) whether the instruction correctly states the law; (2) whether there was evidence in the record to support the giving of the instruction; and (3) whether the substance of the tendered instruction is covered by other instructions which are given. *Wooley v. State*, 716 N.E.2d 919, 926 (Ind. 1999). An erroneous instruction merits reversal if it could have formed the basis for the jury's verdict. *Canfield v. Sandock*, 563 N.E.2d 1279, 1282 (Ind. 1990).

Here, it is clear that Indiana Pattern Instruction No. 11.40 left the jury with the mistaken impression that it should award full damages for the motor home to Progressive if it determined that Fleetwood was liable to Progressive in Progressive's products liability claim, and that the trial court erred in refusing to give Fleetwood's instruction. Ordinarily, a new trial would be required. However, where, as here, liability was determined by the jury and the basis of the jury's damages award is apparent, it is appropriate to vacate the portion of the damages award not recoverable as a matter of Indiana law. *See* Ind. Appellate Rule 15(N)(5) (*now* App. R. 66(C)(4)) ("The court, with respect to all or some of the parties or upon all or some of the issues, may order: . . . (6) In the case of excessive or inadequate damages, entry of final judgment on the evidence for the amount of the proper damages . . .").

No challenge is raised to the award of prejudgment interest beyond a challenge to the underlying judgment. Accordingly, prejudgment interest should be awarded in proportion to the amount of the judgment that is affirmed.

CONCLUSION

We affirm the jury's award of damages in the amount of $6,587.89, reverse the damages award in the amount of $162,500, and remand with direction that judgment be entered for the plaintiff in the amount of $6,587.89 plus prejudgment interest of $1,826.56.

SHEPARD, Chief Justice, and SULLIVAN, Justice, concur. RUCKER, Justice, concurs in result with separate opinion in which DICKSON, Justice, concurs.

[Concurrence]

RUCKER, Justice, concurring in result: Because of the doctrine of *stare decisis*, I concur in the result reached by the majority. Both *Martin Rispens & Son v. Hall Farms, Inc.*, 621 N.E.2d 1078 (Ind. 1993), and *Reed v. Central Soya Co., Inc.*, 621 N.E.2d 1069 (Ind. 1993), compel the outcome in this case.

DICKSON, Justice, concurs.

[¶ 16,119] BUCKMAN CO., Petitioner v. PLAINTIFFS' LEGAL COMMITTEE, Respondent.

U.S. Supreme Court; 98-1768; February 21, 2001. 531 US 341, 121 SCt 1012, 148 LEd2d 854. Appeal from the U.S. Court of Appeals, 3d Circuit; 97-1783; Stapleton, Circuit Judge. Reversed.

The opinion of the U.S. Court of Appeals, 3d Circuit, appears at CCH PRODUCTS LIABILITY REPRTS ¶ 15,408.

Preemption Doctrine: Pedicle Screws: Medical Device Amendments: Implied Preemption: Fraud on FDA.—State-law fraud-on-the-FDA claims regarding off-label use of bone screws in the surgery of spinal pedicles conflicted with the powers granted to the FDA to deter fraud and balance varied statutory objectives; therefore the claims were impliedly preempted by the Federal Food, Drug, and Cosmetic Act and the Act's Medical Device Amendments. The screws were approved by the FDA as being substantially equivalent to devices that were already on the market prior to the Amendments' enactment in 1976. The federal statutory scheme empowered the FDA to punish and deter fraud against the agency, which had at its disposal a variety of enforcement options that allow it to make a measured response to suspected fraud. Compliance with state tort law in addition to the FDA's detailed regulatory regime would increased the burdens facing medical device manufacturers. Furthermore, the fraud-on-the-FDA claims, if successful, could have judged

CURRENT

Rules Governing The Courts

OF THE

State of New Jersey

AMENDMENTS TO SEPTEMBER 1, 2013

Comments and Annotations include cases reported through 213 N.J. 570 and 431 N.J. Super. 92

WITH COMMENTS AND ANNOTATIONS

by

SYLVIA B. PRESSLER (1969-2010)

&

PETER G. VERNIERO

Cite this Volume

PRESSLER & VERNIERO, Current N.J. COURT RULES, (GANN)
followed by a reference to authors' comment on specific rule, e.g.,
PRESSLER & VERNIERO, Current N.J. COURT RULES, Comment R. 4:4-4, (GANN)

GANN LAW BOOKS NEWARK, N.J.

4:50-2. Time of Motion

The motion shall be made within a reasonable time, and for reasons (a), (b) and (c) of R. 4:50-1 not more than one year after the judgment, order or proceeding was entered or taken.

Note: Source—R.R. 4:62-2 (second sentence).

COMMENT

1. Generally.
2. Void Judgments.
3. Reasonable Time.

1. Generally. The basic scheme of the rule is to require that a R. 4:50-1 motion be made within a reasonable time under the circumstances, and to impose an outer limit of one year on motions made pursuant to subsection (a) mistake, inadvertence, surprise, or excusable neglect; subsection (b) newly discovered evidence; and subsection (c) fraud, misrepresentation, or misconduct. See Orner v. Liu, 419 N.J. Super. 431, 437 n.7 (App. Div. 2011); Bascom Corp. v. Chase Manhattan, 363 N.J. Super. 334, 340 (App. Div. 2003), certif. den. 178 N.J. 453 (2004) certif. den. 178 N.J. 453 (2004).

Where the order or judgment from which relief is sought is not served or otherwise transmitted to the party complaining of it, the timeliness of the application is measured by when the party had actual notice. Farrell v. TCI of Northern N.J., 378 N.J. Super. 341, 353-354 (App. Div. 2005).

2. Void Judgments. The ordinary rule is that a motion pursuant to subsection (d) must be made within a reasonable time despite the voidness of the judgment or order. See United Pacific Ins. Co. v. Lamanna's Estate, 181 N.J. Super. 149 (Law Div. 1981); Last v. Audubon Park Associates, 227 N.J. Super. 602 (App. Div. 1988), certif. den. 114 N.J. 491 (1989); Citibank, N.A. v. Russo, 334 N.J. Super. 346, 353 (App. Div. 2000). But see contra, Berger v. Paterson Veterans Taxi, 244 N.J. Super. 200 (App. Div. 1990), holding that a void judgment not entitled to enforcement or execution may be moved against under this rule at any time. Nevertheless, where defendant failed to seek relief under this rule and intervening rights of an innocent third person arose in the meantime, relief will be denied. City of Newark v. (497) Block 1854, 244 N.J. Super. 402 (App. Div. 1990); Friedman v. Monaco and Brown Corp., 258 N.J. Super. 539, 545 (App. Div. 1992); Reaves v. Egg Harbor Tp., 277 N.J. Super. 360 (Ch. Div. 1994).

3. Reasonable Time. What constitutes a reasonable time is, of course, dependent on the totality of the circumstances. See Moore v. Hafeeza, 212 N.J. Super. 399 (Ch. Div. 1986)(an application by the mother of a child born out of wedlock seeking reconsideration of a paternity decision 16 years after the birth based on developments in HLA testing failed to meet the reasonable time standard); Mt. Olive Com. v. Tp. of Mt. Olive, 340 N.J. Super. 511, 531 (App. Div. 2001), reaff'd after remand 356 N.J. Super. 500 (App. Div.), certif. den. 176 N.J. 73 (2003) (laches is a relevant consideration in the decision to modify or refuse to enforce a consent decree in public interest litigation). Note that the one-year limitation for reasons (a), (b) and (c) of the Rule does not mean that filing within one year automatically qualifies as within a reasonable time. Orner v. Liu, 419 N.J. Super. 431, 436-437 (App. Div. 2011).

4:50-3. Effect of Motion

A motion under R. 4:50 does not suspend the operation of any judgment, order or proceeding or affect the finality of a final judgment, nor does this rule limit the power of a court to set aside a judgment, order or proceeding

4:50-2. Time of Motion

The motion shall be made within a reasonable time, and for reasons (a), (b) and (c) of R. 4:50-1 not more than one year after the judgment, order or proceeding was entered or taken.

Note: Source__R.R. 4:62-2 (second sentence).

COMMENT

What's New?

1. Generally. The basic scheme of the rule is to require that a R. 4:50-1 motion be made within a reasonable time under the circumstances, and to impose an outer limit of one year on motions made pursuant to subsection (a) mistake, inadvertence, surprise, or excusable neglect; subsection (b) newly discovered evidence; and subsection (c) fraud, misrepresentation, or misconduct. See Orner v. Liu, 419 N.J. Super. 431, 437 n.7 (App. Div. 2011); Bascom Corp. v. Chase Manhattan, 363 N.J. Super. 334, 340 (App. Div. 2003), certif. den. 178 N.J. 453 (2004) certif. den. 178 N.J. 453 (2004).

Where the order or judgment from which relief is sought is not served or otherwise transmitted to the party complaining of it, the timeliness of the application is measured by when the party had actual notice. Farrell v. TCI of Northern N.J., 378 N.J. Super. 341, 353-354 (App. Div. 2005).

2. Void Judgments. The ordinary rule is that a motion pursuant to subsection (d) must be made within a reasonable time despite the voidness of the judgment or order. See United Pacific Ins. Co. v. Lamanna's Estate, 181 N.J. Super. 149 (Law Div. 1981); Last v. Audubon Park Associates, 227 N.J. Super. 602 (App. Div. 1988), certif. den. 114 N.J. 491 (1989); Citibank, N.A. v. Russo, 334 N.J. Super. 346, 353 (App. Div. 2000). But see contra, Berger v. Paterson Veterans Taxi, 244 N.J. Super. 200 (App. Div. 1990), holding that a void judgment not entitled to enforcement or execution may be moved against under this rule at any time. Nevertheless, where defendant failed to seek relief under this rule and intervening rights of an innocent third person arose in the meantime, relief will be denied. City of Newark v. (497) Block 1854, 244 N.J. Super. 402 (App. Div. 1990); Friedman v. Monaco and Brown Corp., 258 N.J. Super. 539, 545 (App. Div. 1992); Reaves v. Egg Harbor Tp., 277 N.J. Super. 360 (Ch. Div. 1994).

What's New?

3. Reasonable Time. What constitutes a reasonable time is, of course, dependent on the totality of the circumstances. See Moore v. Hafeeza, 212 N.J. Super. 399 (Ch. Div. 1986)(an application by the mother of a child born out of wedlock seeking reconsideration of a paternity decision 16 years after the birth based on developments in HLA testing failed to meet the reasonable time

standard); Mt. Olive Com. v. Tp. of Mt. Olive, 340 N.J. Super. 511, 531 (App. Div. 2001), reaff'd after remand 356 N.J. Super. 500 (App. Div.), certif. den. 176 N.J. 73 (2003) (laches is a relevant consideration in the decision to modify or refuse to enforce a consent decree in public interest litigation). Note that the one-year limitation for reasons (a), (b) and (c) of the Rule does not mean that filing within one year automatically qualifies as within a reasonable time. Orner v. Liu, 419 N.J. Super. 431, 436-437 (App. Div. 2011).

4:50-3. Effect of Motion

A motion under R. 4:50 does not suspend the operation of any judgment, order or proceeding or affect the finality of a final judgment, nor does this rule limit the power of a court to set aside a judgment, order or proceeding for fraud upon the court or to entertain an independent action to relieve a party from a judgment, order or proceeding.

Note: Source__R.R. 4:62-2 (third and fourth sentences).

NEW JERSEY PRACTICE SERIES™

Volume 52

ELEMENTS OF AN ACTION

2013-2014 Edition

Issued in September 2013

By

JAMES H. WALZER
Attorney at Law

Chapter 46

Products Liability

§ 46:1 Summary of law

The term "products liability" refers to the liability of a manufacturer, processor, or non-manufacturing seller for injury to the person or property of a buyer or third party caused by a product, which has been sold.[1]

There are several federal acts that may have great importance in any products liability case. These include the Consumer Product Safety Act,[2] the Flammable Fabrics Act,[3] the Hazardous Substances Act,[4] and the Special Packaging of Household Substances

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[Section 46:1]

[1]Am. Jur. 2d, Products Liability § 1.

[2]15 U.S.C.A. §§ 2051 et seq.

[3]15 U.S.C.A. §§ 1191 et seq.

[4]15 U.S.C.A. §§ 1261 et seq.

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