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Non-Manufacturing Sellers' Qualified Immunity in Michigan

8.20.2020

Non-manufacturing sellers may be entitled to the protection of MCLA 600.2947(6). This Michigan statutory provision provides that in a product liability action, a seller other than a manufacturer is not liable for harm allegedly caused by a product unless a statutory exception to non-liability applies.

The Michigan Legislature enacted this statute for the express purpose of providing qualified immunity to non-manufacturing sellers for harm caused by products they sell, unless they are somehow independently negligent in their distribution or sale of the product, or unless they make an express warranty about the product and the failure of the product to conform to that warranty is the proximate cause of a person's harm. The legislature's intent was that liability should normally lie with the actual manufacturer, while providing for potential fault-based or express warranty-based liability against pure sellers in the event that the conditions of either statutory exception are met. Thus, in the event of a personal injury product liability lawsuit asserted against a non-manufacturing seller, the underlying activities and representations of the non-manufacturing seller will likely be scrutinized by counsel for the plaintiff in an attempt to invoke one or both of the exceptions to statutory immunity.

Non-manufacturing entities that buy and re-sell products should consult with product liability experts in advance of entering into agreements for the supply of such products. A thorough knowledge of such products should be obtained in advance of entering into any supply agreements, and contractual indemnity protection for the non-manufacturing seller for potential product defects should be bargained for in advance of finalizing any such agreements. Additionally, the actions or statements of such sellers vis-à-vis such products before or while placing them into the stream of commerce, including but not limited to advertising for the sale of the same, should be carefully considered before any such action is taken

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or such statements are made.

Butzel Long has a number of lawyers experienced in product liability law. While Butzel lawyers have successfully litigated such cases, the preference is always for prospective non-manufacturing sellers to consult with us before purchasing or distributing products to avoid unnecessary liability, and to provide for the safe and proper use of such products by their ultimate users.

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