

## Do You Have the Receipt? Pennsylvania Court Finds Insufficient Evidence That Defendant Sold the Product

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In *State Farm Fire & Cas. Co. v. Coway USA, Inc.*, No. 22-cv-3516, 2024 U.S. Dist. LEXIS 192849, the United States District Court for the Eastern District of Pennsylvania (District Court) considered whether the plaintiff produced sufficient evidence to establish that the defendant sold and/or marketed a product and, thus, could be held liable for an alleged defect in the product. The plaintiff, a subrogating insurance carrier, brought strict product liability and breach of warranty claims against the defendant—the installer of a bidet in its insured's home—claiming that the defendant also marketed and sold the bidet. The sole evidence to support a finding that the defendant sold the bidet was the homeowner's testimony that she bought the product from the installer. The court found that the insured's testimony, without any documentation or other corroborating evidence, was insufficient to establish that the defendant sold the product. Since proof of a sale is a required element for strict product liability and breach of warranty claims, the District Court granted the defendant's motion for summary judgment, dismissing the case.

This case involved a water loss to the Pennsylvania residence of Mikyung Kim and her husband Adrian Kim (collectively, the Kims) that was discovered in April 2021. An investigation revealed that the water loss originated from the failure of a bidet for a toilet in the second-floor bathroom. The Kims alleged that defendant, Coway USA, Inc. (Coway), sold the bidet and installed it around 2010. An employee of the plaintiff's liability expert, a materials engineer, opined that a T-connector—a plastic valve that regulates the flow of water to and through the bidet—failed due to overtightening of the connector during the manufacturing process.

The Kims' insurance carrier, State Farm Fire Casualty Company (State Farm) filed a subrogation lawsuit against Coway. The complaint alleged that Coway sold and marketed the subject bidet and asserted counts for, among other things, strict product liability and breach of warranty. The parties agreed that Coway did not design or manufacture the bidet. For reasons unknown, State Farm did not sue the designer or manufacturer of the bidet.

Coway filed a motion for summary judgment, arguing that there was insufficient evidence to establish that Coway marketed or sold the product. While Coway admitted that it was an authorized seller and distributor of the bidet model, it denied selling the subject bidet. Coway also denied being the exclusive seller or distributor of the bidet model. Coway claimed that it had no records indicating that it sold the subject bidet, and the Kims did not have any documentation to support their claim that they bought the bidet from Coway.

Ms. Kim testified, during her deposition, that she bought the bidet from Coway's store in Philadelphia, but Coway claimed it did not have a store in Philadelphia during the alleged time of purchase. Also, the location where she claimed Coway had an office was no longer in existence at the time of the lawsuit. Ms. Kim claimed that the individual who installed the bidet represented that he was a Coway employee, but she was unable to support her testimony with any evidence. She admitted that the installer never wore a Coway uniform or drove a Coway truck. Ms. Kim also claimed that she heard that the product came from Coway's headquarters in New Jersey, but again, had no evidence to substantiate her testimony.

The District Court acknowledged that under Pennsylvania law, each count asserted by the plaintiff required a showing that the defendant sold, marketed or distributed the product. The doctrine of strict product liability applies only to suppliers and sellers in the chain of distribution of the product. Proof of sale is also an essential fact necessary to support the plaintiff's breach of warranty claim. Thus, absent sufficient evidence that Coway sold the subject bidet, Coway could not be held liable for any defective component of the

product.

The court found that the only evidence before it that Coway sold the subject bidet was Ms. Kim's unsubstantiated testimony regarding her purchase of the subject bidet over ten years ago. Without any documentation to support Ms. Kim's claim that she purchased the subject bidet from Coway or any admissible evidence to corroborate her testimony, the court found that Ms. Kim's testimony was insufficient to prove that Coway sold or marketed the subject bidet. Since the court found that the plaintiff failed to introduce sufficient evidence to give rise to a reasonable inference that Coway sold the bidet, the court granted the defendant's motion for summary judgment and dismissed the case.

The *Coway* case reminds us that, under Pennsylvania law, to make a claim against a product seller for an alleged defect the plaintiff must introduce sufficient facts to establish a reasonable inference that a defendant sold, marketed, or distributed the product. The *Coway* decision indicates that mere testimony from the purchaser may not be sufficient to survive summary judgment. A subrogation professional pursuing a seller for a product defect should make every effort to gather supporting documentation or as much evidence as possible to establish that the defendant indeed sold the product at issue. This case also reveals why it is best to include the manufacturer in the product liability claim, when possible.

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