

# Quarterly Review

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## OHIO ASSOCIATION *of* CIVIL TRIAL ATTORNEYS

**A Quarterly Review of  
Emerging Trends  
in Ohio Case Law  
and Legislative  
Activity...**

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# Utilizing the Unforeseeable Misuse Defense To Dispose of Product Liability Claims

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## I. Why It Matters

The unforeseeable misuse defense applies to preclude a plaintiff from maintaining an actionable product liability in Ohio where the plaintiff uses a product in a capacity which is unforeseeable and incompatible with the product's design. Importantly, unforeseeable misuse can be used as a complete defense to a broad array of product liability causes of action. Three recent Ohio decisions demonstrate the broad applicability of the defense with respect to this particular area of civil litigation, and exemplify how the misuse defense can be deployed in litigation to dispose of an action favorably and efficiently, oftentimes without having to undergo the time, effort, and expense of fully litigating a dispute through trial.

## II. Ohio Law

To prevail on a product liability claim against a manufacturer, a plaintiff must establish that: (1) the product was defective in manufacture or construction, was defective in design or formulation, was defective due to an inadequate warning, or was defective because it did not conform to a manufacturer's representation; (2) the defective aspect of the product was a proximate cause of the harm to the plaintiff; and (3) the manufacturer designed, formulated, produced, constructed, created, assembled, or rebuilt the actual product that caused the harm. Moreover, in any product liability case, whether based in common law or statute, a plaintiff must prove that a product defect proximately caused his or her injury. The rule of proximate cause requires that the injury sustained shall be the natural and probable consequence of the negligence

alleged; that is, such consequence as under the surrounding circumstances of the particular case should have been foreseen or anticipated by the wrongdoer as likely to follow his or her negligent act. Importantly, it is well-established in Ohio that foreseeability must be present in connection with a product liability claim in order to establish proximate cause.

A manufacturer must neither anticipate all product uses nor guarantee that the product is incapable of causing injury in all of its possible uses. Only those circumstances which the manufacturer perceived or should have perceived at the time of its respective actions should be considered. The foreseeable risks associated with the design of a product are determined by considering, among other factors, the likelihood that the design would cause harm in light of the intended and reasonably foreseeable uses, modifications, or alterations of the product.

Accordingly, an otherwise strictly liable defendant in a product liability action is provided with a complete defense if the plaintiff misused the product in an unforeseeable manner. Unforeseeable misuse is an affirmative defense, which means that even if the product were defectively designed, the plaintiff's unforeseeable misuse would prevent liability from attaching. Judgment as a matter of law is appropriate where the product is used in a capacity which is unforeseeable by the manufacturer and completely incompatible with the product's design. "Misuse" of a product suggests a use which was unanticipated or unexpected by the product manufacturer, or unforeseeable and unanticipated. With that said, an unreasonable use—unlike an unforeseeable misuse—is not a complete defense to a negligence/product liability claim.

### III. Successful Applications of the Misuse

#### Defense to Defeat Product Liability Claims

Three significant Ohio decisions exemplify how defense practitioners can attack product liability claims by leveraging the unforeseeable misuse defense to conclusively dispose of a wide array of product liability causes of action.

In *McLaughlin v. Andy's Coin Laundries, LLC*, 2018-Ohio-1798 (1st Dist.), the court found that the unforeseeable misuse defense applied to preclude a plaintiff from maintaining an actionable product liability claim stemming from an injury sustained when the plaintiff misused a laundromat washing machine. In that case, Seth McLaughlin took a comforter to a laundromat, where he placed the item inside a front-loading machine and initiated a wash cycle. The front of the washing machine bore a warning label that warned patrons of the risk of serious injury that could result from trying to open the door while the drum was still turning. Midway through the wash, McLaughlin noticed that the machine was stuck in the wash cycle, and that the display on the machine was flashing the error message "F-10." Unaware of what an "F-10" error was, on the advice of other patrons McLaughlin pried the washing machine doors open. While the machine's drum continued to spin, McLaughlin then attempted to grab the comforter to pull it out of the washer. In doing so, McLaughlin's arm was pulled into the machine as the drum continued to turn. McLaughlin's wrist was crushed and disconnected internally from his arm, ultimately causing his hand to be amputated at the wrist. Under these facts, the court found that McLaughlin's acts of forcing open a locked washing machine door with a screwdriver while the machine's drum was visibly rotating and still contained water, and then reaching into the rotating machine drum, constituted misuse of the product. Such actions, which included the purposeful disabling of a safety device on the machine, were completely incompatible with the product's design. In addition, the court further concluded that the manufacturers' employees had no prior knowledge of this misuse and, as such, the misuse was not foreseeable. Combined, McLaughlin's misuse of the washing machine in an unforeseeable manner mandated summary judgment in favor of the machine's manufacturers on McLaughlin's product liability claims.

Likewise, in *Dinsio v. Occidental Chem. Corp.*, 126 Ohio App.3d 292, 710 N.E.2d 326 (7th Dist. 1998), the court also found that the unforeseeable misuse defense applied to bar a product liability claim in its entirety. In that case, Vincent Dinsio, Jr. purchased caustic soda beads from supplier Superior Chemical Products Co. Superior purchased the beads from manufacturer Occidental Chemical Corp. The product contained warnings and instructions that appeared on the bag of the beads cautioning users that the beads could react violently with water, acids, and other substances. In addition, further warnings were also included advising users to always wear protective clothing when handling the beads. After buying the product, Dinsio poured a cup of undiluted beads into a floor drain for the purpose of cleaning it out. An upward explosion occurred, causing bodily injury to Dinsio. Subsequently, Dinsio filed a product liability action alleging a claim of inadequate warning and labeling against Superior and Occidental. In his deposition, Dinsio admitted that he did read the warnings on the bag when he initially purchased the product. Dinsio further admitted that after reading the warnings, he poured a cup of the undiluted beads into the floor drain and, without wearing any protective clothing, returned to attend to the drain when a liquid exploded out of the drain, causing him bodily injury. Taken together, the court found that Superior and Occidental were not liable for Dinsio's injuries because Dinsio failed to heed the explicit warnings and instructions on the package, which triggered the complete defense of unforeseeable misuse as a matter of law.

Finally, in *Richards v. C. Schmidt Co.*, 54 Ohio App.3d 123, 561 N.E.2d 569 (1st Dist. 1989), the court likewise applied the unforeseeable misuse defense to dispose of a product liability claim. In that case, Dennis Richards worked for C. Schmidt Company, which manufactured foam-insulated refrigeration boxes. During his work, Richards used an Olin Autofroth foam machine. Richards used methylene chloride supplied by Ashland Chemical Company to clean the machine. In addition, Richards also used the chemicals supplied by Ashland to clean himself after work. Richards filed suit against Ashland, among others, alleging that Ashland failed to provide adequate warnings with their chemicals, causing Richards to sustain injuries due to

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his use of the chemicals to wash himself. Importantly, the label on the drums containing the Ashland chemicals provided a warning in bold print that cautioned users to avoid prolonged or repeated contact with skin. The label also advised the user to wear chemical safety glasses, gloves, and other necessary protective equipment when handling the chemicals. Richards admitted that he read the warnings on the labels and understood them, but that he ignored the warnings and washed his hands and his face with the chemicals. Accordingly, the court found that Richards improperly used the chemicals to clean himself after work, even though he read the warnings cautioning against repeated contact with skin. As such, the court concluded that this improper use, which was done contrary to clear warnings, removed the existence of any genuine issue of material fact relative to the alleged failure to warn, and mandated the award of summary judgment in favor of Ashland based on the unforeseeable misuse defense.

#### **IV. The Final Word**

As the above cases demonstrate, Ohio courts have not hesitated to apply the unforeseeable misuse defense to bar a wide range of product liability claims and actions in their entirety. Accordingly, defense practitioners must carefully analyze the potential applicability of the unforeseeable misuse doctrine at the outset of any product liability suit, as this stringent defense can serve to completely dispose of product liability claims where the doctrine applies. As a general rule of thumb, where a product contains a clear and unambiguous warning, and a plaintiff reads and understands the warning, but nonetheless proceeds to use the product in a manner that runs directly contrary to the product's warnings and instructions, the unforeseeable misuse defense can be applied to conclusively defeat a product liability claim.

Where the defense appears to be potentially applicable, counsel should formulate an effective strategy to obtain the necessary factual evidence during discovery and depositions that will allow defense counsel to successfully utilize the defense as part of a well-supported summary

judgment motion. In particular, defense counsel should seek to elicit admissions on the part of the plaintiff that he or she read and understood the product's warnings and instructions, but nonetheless improperly used the product contrary to the product's clear warnings which cautioned against the plaintiff's course of conduct.

Armed with the right evidence, the successful assertion of the unforeseeable misuse defense via summary judgment can pay huge dividends for defense practitioners and their clients, allowing both to avoid not only the time and expense of trial, but also the payment of any settlement dollars as well. Moreover, in addition to conclusively disposing of a lawsuit altogether, the unforeseeable misuse defense can be strategically leveraged to alter the playing field and significantly reduce the overall value of a claim during settlement negotiations. As such, product liability defense practitioners are well advised to make the unforeseeable misuse defense a mainstay in their litigation tool belts, and should seek to utilize this game-changing defense whenever possible.

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