

Product Liability

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Multiple Defendants in Product Liability Cases: Pleading a Sufficient Claim

Product liability cases involving multiple defendants require special attention when only one of the defendants is responsible for the injury or damages alleged. In *Weddle v. Smith & Nephew, Inc.*, No. 14 C 09549, 2016 U.S. Dist. LEXIS 48512 (N.D. Ill. Apr. 11, 2016), the District Court, Northern District of Illinois illustrated how such cases must be plead.

In *Weddle*, the plaintiff underwent ankle surgery after suffering a fracture. *Weddle*, 2016 U.S. Dist. LEXIS 48512, at *2-3. The surgery required the insertion of a medical device manufactured by defendant Smith & Nephew. *Id.* *3. The device was inserted with nails and cement manufactured by defendant Howmedica Osteonics, and with screws manufactured by defendant DePuy. *Id.* at *3-4. Approximately six months after the ankle surgery, the plaintiff experienced pain due to the failure of one or more of the components in her ankle, which required her to undergo further surgeries. *Id.* at *5.

The plaintiff filed suit asserting claims of negligence, strict product liability, and breach of express and implied warranties against the three manufacturers claiming that ““the TRIGEN Hindfoot Fusion Nail **and/or** a Howmedica Component **and/or** a DePuy Component”” failed and caused her injuries. *Id.* at *5-6, 8 (emphasis added in the court’s quotation). Specifically, plaintiff claimed that the defendants “negligently designed and manufactured their respective products and negligently misrepresented material facts about their products’ safety,” were “strictly liable for defectively designing or manufacturing their products and for inadequately warning about their products’ dangerousness,” and “breached express warranties and implied warranties of merchantability and fitness.” *Id.*

All three of the defendants moved to dismiss the complaint on the grounds that it failed to identify precisely which component failed and thus, which defendant was responsible for causing plaintiff’s alleged injuries. *Id.* at *7-8. In support, the manufacturers argued that the pleading merely established the possibility that one of their products failed and caused the alleged injury. *Id.* The district court granted the defendants’ motions without prejudice. *Id.* at *21.

A Plaintiff Must Do More Than Allege Possibilities

In its decision, the district court relied heavily upon the well-established rulings in *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009), and *Bell Atlantic Corp. v. Twombly*, 550 U.S. 554, 570 (2007). Both *Iqbal* and *Twombly* clearly articulated that a plaintiff must do more than allege possibilities. *Weddle*, 2016 U.S. Dist. LEXIS 48512, at *2. In order to state a sufficient claim, a plaintiff must allege facts to make the claim plausible. *Id.* In other words, a plaintiff’s claim must articulate more than a mere possibility that a defendant acted unlawfully. *Id.* at *8.

With respect to plaintiff’s negligence claim, the court reasoned that the plaintiff failed to articulate a breach because it never identified which defendants’ component failed. *Id.* at *9-10. In that regard, although an x-ray and CT scan

“suggested” that the nails in plaintiff’s ankle fractured, plaintiff failed to identify the manufacturer of the fractured device. *Id.* As such, the court stated that, on the face of the complaint, it is impossible to discern whether all or some of the products failed and therefore the defendants could not be put on notice of a claim. *Id.* at *10.

The district court also stated that the complaint did not plead in the alternative as she sought to hold three different defendants liable for the same injuries without providing any basis to conclude that one was responsible. *Id.* at *14. The court further noted that plaintiff had exclusive access to information necessary to determine the basis of liability and therefore should bear the burden to identify the responsible party in her pleading.

With respect to her strict product liability claim, the court found it impossible to decipher if any of the defendants were liable, since plaintiff never articulated which component contained the alleged defect. *Id.* at *18. To properly plead a product liability claim, a plaintiff must plead and prove that the injury complained of resulted from a condition of the product, that the condition was unreasonably dangerous, and that it existed at the time the product left the manufacturer’s control. *Id.* Without identifying which product failed, it is impossible to show that any of the defendants violated a duty to the plaintiff.

Lastly, the court stated that the plaintiff failed to identify either an express or implied warranty that any defendant made about a particular product or that any such warranty was breached. *Id.* at *18. In Illinois, a plaintiff must show a breach of an affirmation of fact or promise that was made a part of the basis of a bargain. *Id.* For an implied breach of warranty, a plaintiff must prove that the product was not merchantable at the time of sale, that the plaintiff suffered damages as a result of the defective product, and that the plaintiff gave defendant notice of the defect. Again, as the plaintiff failed identify the particular product that caused her injuries, her breach of warranty claims were also not properly plead. *Id.* at *18-19.

Inconsistencies and Alternative Liability

Throughout its opinion, the district court highlighted the difference between pleading in the alternative and an implausible claim. While implausible statements are insufficient claims, alternate or inconsistent remarks are adequate. *Id.* at *13-14. In *Weddle*, the plaintiff was not asserting alternate or inconsistent claims, but rather seeking to hold three different defendants liable for the same injury, without providing requisite reasoning that any one of the defendants was responsible. *Id.* at *14. Thus, the court concluded that naming multiple defendants and alleging that each might be the responsible party for an injury does not create a mere inconsistency, but rather an implausibility. *Id.*

The plaintiff was not necessarily required to prove which defendant caused her injury if she were to plead alternative liability. The theory of alternative liability is well established in Illinois and allows a plaintiff to shift the burden of causation to two defendants after showing that both were negligent without establishing which defendant caused the injury. *Id.* at *11-12. The plaintiff in *Weddle*, however, did not establish that all three of the defendants acted negligently. *Id.* at *11.

In summary, attorneys in product liability claims involving multiple defendants must identify the specific allegations levied at their client. Defendants that face implausible allegations should seek a dismissal and force plaintiffs to provide more specific allegations.



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