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### **Strict Products Liability Claim**

A manufacturer, supplier, or distributor -- this does not include casual sellers -- may be strictly liable for harm caused by a product that is defectively designed. To establish a strict liability claim, the plaintiff may do so by establishing either of the following: (1) manufacturing defect; (2) design defect; and (3) failure to warn.

#### **Manufacturing Defect**

A manufacturing defect is present when the design of the product itself is not necessarily defective but rather a single product itself has a defect within it.

Here, Paul purchased a box of UltraKlean from DishWay. Paul used UltraKlean to wash some aluminum pots. Paul used those pots to later prepare a meal. Shortly after finishing the meal, Paul experienced severe stomach pain. There are no facts to indicate that the particular box of UltraKlean that Paul purchased was defectively manufactured. There are no facts indicating that there was a breakage in the seal of the box that may have caused contamination nor was there any facts indicating that the UltraKlean itself was contaminated at the processing plant. Moreover, the facts state that there was no flaw in DishWay's manufacturing process. Thus, Paul cannot establish a claim of strict products liability under manufacturing defect.

#### **Design Defect**

A design defect is present when the design of the product itself is necessarily defective. This defect impacts the product at large and not just a few singular products.

Here, DishWay developed a new dishwasher powder that it named UltraKlean. DishWay knew the cleaning agent could cause severe stomach pain if ingested, but this is true of all detergent products. DishWay did not know that a potentially dangerous amount of UltraKlean residue tended to remain on aluminum cookware after a wash cycle. It is generally not unusual for dishwasher powders to leave a harmless amount of residue on different surfaces. However, here, UltraKlean left a potentially dangerous amount of residue. During product development, DishWay tested UltraKlean on some surfaces but not on aluminum because there was no indication that it would work differently on aluminum than on other surfaces. Here, given that though it was not abnormal for dishwasher powders to leave a harmless amount of residue on different surfaces, the fact that UltraKlean left a potentially dangerous amount of UltraKlean residue on aluminum cookware after the wash cycle may indicate that UltraKlean at large contains a design defect. This is because UltraKlean, unlike its fellow competitors, left a potentially dangerous amount of UltraKlean residue on aluminum cookware in particular. Presumably this is not common amongst dishwasher powders because of the fact that ingestion of dishwasher powder can cause severe stomach pain if ingested. If DishWay had tested UltraKlean on aluminum cookware, then presumably they may have discovered this. This factor is not relevant to a strict product liability claim but may be relevant to a negligent product liability claim (as analyzed below). Thus, it is likely that Paul can establish a strict products liability claim under design defect because UltraKlean leaves a potentially dangerous amount of residue on aluminum cookware after a wash cycle that its competitors do not seem to leave because though it is not abnormal for dishwasher powders to leave residue, to leave a

potentially dangerous amount is alarmingly and evidences a defect in how UltraKlean was produced at large.

### Failure to Warn

A failure to warn exists if providing an adequate warning would have prevented a foreseeable harm to plaintiff.

Here, DishWay advertised widely that UltraKlean was "a revolutionary, safe product with the most powerful cleaning agent ever." DishWay knew the cleaning agent could cause severe stomach pain if ingested, but this is true of all detergent products. DishWay did not know that a potentially dangerous amount of UltraKlean residue tended to remain on aluminum cookware after a wash cycle. DishWay's instructions on the product only stated that the product should not be ingested. Here, DishWay may argue that it did not fail to warn customers about the potential harm of ingesting UltraKlean because the instructions on UltraKlean stated that the product should not be ingested. DishWay will argue that this was adequate warning because it clearly states that UltraKlean should not be ingested. However, Paul will likely argue that DishWay did fail to warn customers about the potential harm of ingesting UltraKlean because it was advertised as "a revolutionary, safe product with the most powerful cleaning agent ever." Paul will argue that such an advertisement combined with the warning on the product was not an adequate enough warning to warn customers that UltraKlean would leave a potentially dangerous amount of residue that could be ingested by those who used UltraKlean on aluminum cookware because the advertisement purported that UltraKlean was a "safe product" and the product itself only warned the product should not be ingested. Instead, Paul will argue that the product should have warned that UltraKlean should not be used on aluminum cookware. The fact that DishWay did not know about the potentially dangerous amount of residue that tended to remain on aluminum cookware is not relevant to a strict products liability claim. So, the Court may favor Paul's argument that at the very least, UltraKlean should have provided a broad warning that when customers use their product they should maybe do a triple-wash or rinse after using the product or that ingestion of UltraKlean may occur regardless because of potential residues left on products and that customers who choose to use the product on their cookware did so at their risk. Thus, Paul may be able to establish a strict products liability claim under a failure to warn.

### Damages

To recover for damages, a plaintiff must demonstrate actual injuries, not mere economic loss.

Here, Paul experienced severe stomach pain, which required him to be hospitalized. This indicates that Paul did in fact suffer actual injuries to his stomach and not mere economic loss.

### **Negligent Products Liability**

#### Duty

An individual has a duty to those who would foreseeably be harmed by their negligent conduct. Under the Cardozo majority view, the individual is liable to all those who are harmed within the foreseeable zone of danger. Under the Andrews majority view, the individual is liable to any who is harmed by their negligent conduct.

Here, Paul purchased a box of UltraKlean from DishWay after DishWay developed a new

dishwasher powder that it named UltraKlean and advertised widely as "a revolutionary, safe product with the most powerful cleaning agent ever." Given that DishWay advertised its product widely and touted it to be "a revolutionary, safe product with the most powerful cleaning agent ever," it is foreseeable that Paul and other customers would pick up the product at the store because of the appeal of a product that is both touted as "safe" and the "most powerful cleaning agent ever". Under the Cardozo majority view, Paul is certainly within the foreseeable zone of danger which is customers looking to purchase dishwasher powders because UltraKlean was widely advertised and so it can be inferred that UltraKlean reached a large consumer audience and so, DishWay's zone of danger is quite large. Under the Andrews minority view, Paul is an individual that was harmed by DishWay's negligent conduct because the facts indicate that Paul experienced severe stomach pain after using the product on his aluminum cookware and subsequently using the cookware to prepare a meal. Thus, DishWay has a duty of care to Paul.

### Standard of Care

An individual has a standard of care of that of a reasonably prudent person in like circumstances.

Here, a reasonably prudent person in the circumstances of DishWay, which is a manufacturer of a new dishwasher powder, would take time to test its product on all surfaces that its product may potentially be used upon. Here, during product development, DishWay tested UltraKlean on some surfaces but not on aluminum because there was no indication that it would work differently on aluminum than on other surfaces. The residue was not detectable to the eye, and there was no flaw in DishWay's manufacturing process. DishWay did not act as a reasonably prudent person who is a manufacturer of dishwasher powder would, by not testing UltraKlean on aluminum cookware. A reasonably prudent person would test the product on aluminum because it is foreseeable that cookware would be made out of aluminum given the ability of the metal to heat quickly and to provide a non-stick surface for cooking. A large majority of cookware is in fact made out of aluminum because it is a cheaper metal that is more readily available and so, a reasonably prudent manufacturer of dishwasher powder would test it on aluminum even if there was no indication that it would work differently on aluminum. Moreover, as a manufacturer, DishWay arguably does have the resources to conduct such testing, especially since it already was in the process of testing other surfaces. DishWay also touted the product to be "a safe product". A reasonably prudent manufacturer would take the time to test its product before making such a bold statement and then widely advertise it to the general public at large. Thus, DishWay did not act as a reasonably prudent person would as a manufacturer of dishwasher powder.

### Breach

A breach occurs when an individual breaches the applicable standard of care.

Here, as analyzed above, DishWay breached its standard of care when it did not take the time to test UltraKlean on aluminum cookware. Moreover, generally in the industry it is known that dishwasher powders leaving residue on different surfaces is the norm. However, generally the residue left is harmless. Moreover, it is generally known that ingesting dishwasher powder causes severe stomach pain if ingested. So, DishWay failing to take the time to test UltraKlean on cookware when it knows that dishwasher powder is known to leave residue on different surfaces and that ingesting such powders can cause severe stomach pain is a breach of its duty of care to Paul because there is a foreseeable risk that both an amount of residue

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may be left on the cookware and the residue may be at levels that are harmful to ingest. Thus, DishWay breached its duty of care to Paul when it failed to test UltraKlean on aluminum cookware.

### Causation

#### **Actual Cause**

An individual's negligent conduct must be the but for cause of plaintiff's actual harm.

Here, Paul purchased a box of UltraKlean from DishWay. The first time he used it was to wash some aluminum pots. The next day, Paul used several of those pots to prepare a meal. Shortly after finishing the meal, Paul experienced severe stomach pain, which required him to be hospitalized. Laboratory test results revealed the cleaning agent in UltraKlean caused Paul's stomach pain. Here, DishWay was the actual cause of Paul's severe stomach pain because but for DishWay failing to test UltraKlean on aluminum cookware surfaces, Paul would not have used the dishwasher powder to wash some aluminum pots and then use those same pots to prepare a meal. This is because presumably, if DishWay was aware that its products left a potentially dangerous amount of residue on aluminum cookware then it would have provided warnings indicating as much in both its advertisements and on its products. Thus, but for DishWay's failure to test UltraKlean on aluminum surfaces, Paul would not have suffered severe stomach pains.

#### **Proximate Cause**

An individual negligent conduct must be the foreseeable result of plaintiff's actual harm.

Here, DishWay failing to test UltraKlean on aluminum surfaces would foreseeably cause Paul severe stomach pains because it is generally known within the industry that ingesting dishwasher powder causes severe stomach pains. Moreover, DishWay failing to test UltraKlean on aluminum surfaces would foreseeably cause Paul severe stomach pains because it is generally known within the industry that dishwasher powder at large do in fact leave residue and so, it would make sense to test it on various potential cookware surfaces before advertising at large that UltraKlean is "a safe product" and is the "most powerful cleaning agent ever," which would entice consumers to purchase the product for their own use. The failure to ensure that though residue is the norm, that the residue of UltraKlean was not abnormally high to the point where it was potentially harmful is a foreseeable result of Paul's suffering of severe stomach pains.

#### **Intervening Cause**

The facts also evidence that there was no unforeseeable intervening cause that caused Paul's severe stomach pains. The facts state that Paul used UltraKlean to wash some aluminum pots and then used several of those pots to prepare a meal. Paul experienced severe stomach pain "shortly" after finishing the meal. "Shortly" after indicates that there was no intervening unforeseeable cause that could have contributed to Paul's severe stomach pain. Moreover, laboratory test results revealed the cleaning agent in UltraKlean caused Paul's stomach pain, that there was no intervening unforeseeable cause that could have contributed to Paul's severe stomach pain. DishWay may argue that the meal that Paul prepared may have triggered the cleaning agent's toxicity levels or that the meal itself may have caused Paul's

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severe stomach pain however, this is unlikely to prevail before a Court because the laboratory tests affirm that it was in fact the cleaning agent that caused Paul's severe stomach pain and UltraKlean itself left potentially dangerous amount of residue on aluminum cookware. So, regardless of what Paul was making for a meal, the residue itself was going to harm Paul because he was using UltraKlean on aluminum cookware. Thus, there is no intervening cause to cut off DishWay's liability to Paul.

### Damages

To recover damages, the plaintiff must demonstrate actual injuries, not mere economic harm.

Here, Paul did in fact suffer actual injuries. The facts state that Paul experienced severe stomach pain, which required him to be hospitalized. This evidences actual injuries -- the severe stomach pain that required him to be hospitalized -- and not mere economic harm.

### Overall Conclusion

Paul may be able to bring a claim of strict products liability against Dishway on the basis on design defect or failure to warn. If Paul is unable to establish such claims under strict products liability, then Paul may be able to bring a claim for negligent products liability against Dishway.

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