

Case Notes

Products Liability



Marc P. Weingarten, Esq.
mweingarten@lockslaw.com

The Pennsylvania Supreme Court's long-awaited decision in *Tincher v. OmegaFlex, Inc.*, 104 A.3d 328 (Pa. 2014) finally clarified the law of Pennsylvania with respect to a looming, undecided issue of product liability. Pennsylvania had previously been a jurisdiction which adhered to the Restatement (Second) of Torts 402A, but in the interim, the American Law Institute came forward with the Restatement (Third) of Torts. Controversy ensued in Pennsylvania, particularly because many of the federal courts in Pennsylvania had predicted that the Pennsylvania Supreme Court would adopt the Third Restatement. *Tincher* served to clarify that the Second Restatement would still be the law in Pennsylvania. However, in so doing, it reversed the 1978 opinion of *Azzarello v. Black Bros. Co.*, 390 A.2d 1020 (Pa. 1978).

The reason this is important is that the facts and the holding of *Tincher* were limited to a case involving a design defect. Under *Azzarello*, the adequacy of the warning was a question of law for the court, and only

after the court ruled upon that threshold question, would a warning's adequacy be submitted to a jury. The *Azzarello* court dealt with this issue with respect to design defect and it was extended to failure to warn cases in *Mackowick v. Westinghouse Electric Corp.*, 575 A.2d 100 (Pa. 1990).

In overruling *Azzarello*, *Tincher* held that the threshold determination of defective design is an issue for the factfinder—the trial court judge if it is a bench trial, or the jury if it is a jury trial—and changed the previous Pennsylvania law which held that it was a question of law for the judge to determine before sending to the jury. However, because *Tincher* dealt only with a design defect case, the question still remains open as to whether or not that same *Tincher* analysis would apply in a failure to warn situation.

That question was answered, at least by one trial court judge, in the case of *Hatcher v. SCM Group North America, Inc.*, (Civil Action No. 2:15-1630, E.D. Pa. March 1, 2016). Judge Schiller held in this failure to warn case that because *Tincher* did not address a failure to warn defect—only a design defect—*Mackowick* still applied, and the threshold determination of the adequacy of the warning

remained a question of law for the court.

In the *Hatcher* case, the plaintiff was using an industrial woodworking machine manufactured by the defendant, called a T130. In the course of using this machine at his job working for the Timberlane, Inc. plant as a machinist, he injured three fingers. The machine in question had been purchased by his employer at an auction in the late 1980s. The machine had wooden fences on the left and right sides of the blade and a steel spring safety guard as safety devices. Both the fence system and the blade guard were removable.

The front of the machine had a warning label which states, in capital letters, "DON'T RUN THE MACHINE WITHOUT NECESSARY SAFETY GUARDS." There is also a maintenance and operation manual which explains how to use the safety systems. The manual contains the statement, "before starting machine, make sure all guards are in place."

The plaintiff was never given formal training in using the machine and had not read the operating manual. He also testified that he did not read the warning on the machine itself.

Having decided as a matter of law that

Mackowick still applies, the court then applied that legal ruling to the facts as summarized above. The court first held that the danger of a spinning saw blade is an obvious hazard and one which does not require a warning. However, the court further noted that if warnings were necessary, they were already both on the machine itself and also in the operating manual, neither of which were read by the plaintiff. Using a *Mackowick* analysis, the court was then able to rule that the threshold question of the adequacy of the warning was not an issue sufficient to submit to the jury, and granted summary judgment.

This is one of the first reported post-*Tincher* opinions dealing with one of the unanswered questions in *Tincher*.

Of course, this is simply one trial court's interpretation of post-*Tincher* law, and it is anticipated that this is yet another issue which will have to be resolved by the appellate courts, and hopefully, the Pennsylvania state appellate judiciary. ■

President's Club Member Marc P. Weingarten is a partner at Locks Law Firm, Philadelphia. He is also a Member of the Board of Governors of the American Association for Justice.