What Every Product Manufacturer Needs To Know When Defending A Lawsuit In Alabama

By Chris Berdy

Hey Stan, you're in Ala-*#!-Bama. You come from New York…There is no way this is not going to trial.

Vinny Gambini (Joe Pesci), My Cousin Vinny (1992)

I. ALABAMA: IS THE HEART OF DIXIE A “JUDICIAL HELLHOLE”?

In the 1980’s and 1990’s, the State of Alabama won the nickname of “tort hell” for its “headline-grabbing” verdicts.1 In 2002, Alabama earned a spot on the American Tort Reform Association’s (“ATRA”) “Dishonorable Mention” list.2 After hosting back-to-back jury verdicts that ranked as the nation’s highest, with an $11.9 billion verdict in 2003 and $1.6 billion and $1.3 billion verdicts in 2004, Alabama returned to the ATRA’s list of “Judicial Hellholes,” although relegated to the “Watch List.”3 For product manufacturers and distributors defending suit in the Heart of Dixie, what follows is an overview of Alabama’s product liability law.

II. THE ALABAMA EXTENDED MANUFACTURERS LIABILITY DOCTRINE

A. Introduction

In two 1976 companion cases,4 the Alabama Supreme Court adopted the Alabama Extended Manufacturers Liability Doctrine (“AEMLD”), a hybrid version of “strict liability” law. Declining to
embrace the concept of strict liability under Section 402A of the Restatement (Second) of Torts, the Court instead retained a fault-based concept of liability.

To establish liability under the AEMLD, a plaintiff must prove (1) he/she suffered injury or damages to the plaintiff’s property by one who sold a produce in a defective condition unreasonably dangerous to her as the ultimate user or consumer, if (a) the seller was engaged in the business of selling such a product, and (b) it was expected to, and did, reach the user or consumer without substantial change in the condition in which it was sold. The plaintiff must affirmatively show a defect in the product. A “defect” is that which renders a product “unreasonably dangerous,” i.e., not fit for its intended purpose.

B. Types of Claims

Under the AEMLD, a plaintiff can pursue claims for (1) defective manufacture, (2) defective design, and (3) failure to warn. A defective manufacture claim requires that the plaintiff establish the above-listed elements. In a defective design claim, the plaintiff must prove that a safer, practical alternative design was available to the manufacturer at the time it manufactured the product, in addition to the above-listed elements. In a failure to warn claim, the plaintiff must prove that the proposed warning would have been read and heeded and that it would have prevented the resulting accident, as Alabama has no “heeding presumption.” A manufacturer is under a duty to warn users of the dangerous propensities of a product only when such product is dangerous when put to its intended use.

C. The Plaintiff’s Burden of Proof

Under the AEMLD, the plaintiff must prove by substantial evidence that the product was substantially unaltered when used by him and must also prove causation in fact, including proof that the defect caused the injury and that the defect is traceable to the defendant. Therefore, essential to an AEMLD claim is proof that the product’s performance failure is causally related in fact to the product’s defective condition at the time of its sale.

A product manufacturer is not required to produce the safest possible product, but only to produce one that is reasonably safe when put to its intended use. The failure of a product does not presuppose the existence of a defect. The fact that someone was injured while using a product does not establish that it was unreasonably dangerous when put to its intended use.

D. Defenses

A claim under the AEMLD is subject to a two-year statute of limitations. Alabama has no statute of repose.

Because the AEMLD is a fault-based tort, a plaintiff’s contributory negligence and assumption of the risk are complete defenses to an AEMLD claim. Likewise, product misuse, defined as use of the product in some manner different than that intended by the manufacturer, is an affirmative defense to AEMLD claims. The open-and-obvious defense is an affirmative defense in failure to warn claims.

Finally, the “no causal relation” defense is available exclusively to distributors and sellers, but not to manufacturers. Under this affirmative defense, a distributor may establish that there is no causal connection in fact between the distributor’s handling the product and its alleged defective condition.

Additionally, a manufacturer selling an industrial product to a “sophisticated user,” one who has significant experience operating and using a particular product, has no duty to warn the employees of that purchaser where the purchaser has an obligation to inform them of the hazards
associated with the product. Moreover, a plaintiff cannot recover for injuries that result from allergic or idiosyncratic reactions to otherwise harmless substances.

III. CO-EMPLOYEE LIABILITY

As an exception to the Alabama Workers’ Compensation Act’s exclusivity provision, an injured employee can sue a co-employee when personal injury or death results from a co-employee’s “willful conduct.” In the context of products liability actions, “willful conduct” is defined as the willful or intentional removal, or failure to install, from a machine of a safety guard or safety device provided by the manufacturer of the machine with the knowledge that injury or death would likely or probably result from the removal.

IV. BREACH OF WARRANTY CLAIMS

Under Alabama’s version of the Uniform Commercial Code, implied warranties are applicable only to sellers and have no application to product manufacturers. As to express warranties, breach of warranty claims are unavailable if the essence of the claim is that the product was “unreasonably dangerous.” Alabama has a four year limitations period for breach of warranty claims, and in the case of “equipment,” the breach occurs upon delivery, while for “consumer goods,” the cause of action accrues when the injury occurs.

V. OTHER ISSUES RELATING TO PRODUCT LIABILITY CLAIMS

A. Wrongful Death Claims

The Wrongful Death Act is the sole remedy for the tortious infliction of death in Alabama, and the only available remedy is punitive damages. To recover for wrongful death in Alabama, all that is required is the mere commission of a tort resulting in death, although no heightened standard of proof is required to recover punitive damages. The statute of limitations for a wrongful death claim is two years.

Despite the limitation to recovering punitive damages, one must beware of the “Aquaslide” scenario in which a plaintiff may be entitled to recover compensatory damages, such as medical expenses, if sustained by the decedent before his death, in addition to punitive damages recoverable for wrongful death. Alabama’s Wrongful Death Act does not allow apportionment of damages among joint tortfeasors.

Liability insurers are obligated to cover punitive damages in the wrongful death context. A standard liability policy that excludes coverage for punitive damages in a wrongful death case contravenes Alabama law.

B. Expert Witnesses

Ordinarily, expert testimony is required to support an AEMLD claim. Rule 702 of the Alabama Rules of Evidence governs the admission of expert testimony. Likewise, Alabama has yet to abandon the outdated Frye “general acceptance” test for novel expert testimony in civil cases. Both general acceptance in the scientific community and a reliable basis in the knowledge and experience of a discipline are required under Alabama’s application of Frye.

C. Admissibility Of Other Similar Incidents

Where the plaintiff attempts to introduce the defendant-manufacturer’s internal reports of other incidents, the reports must be substantially similar to the incident in question. When the reports of other incidents are not substantially similar, the reports should not be admitted.

D. Spoliation Of Evidence

In connection with defending a product liability or warranty claim, a defendant is entitled to examine the product to determine the cause of
the alleged problems.\textsuperscript{43} Strict sanctions may be imposed for a party’s failure to preserve crucial evidence.\textsuperscript{44} In fact, Alabama now recognizes an independent cause of action for negligent spoliation of evidence.\textsuperscript{45}

**E. Personal Jurisdiction**

When considering a motion to dismiss for lack of personal jurisdiction, courts must consider the allegations contained in the Plaintiff’s complaint as true, unless those allegations are controverted by the defendant’s affidavits.\textsuperscript{46} Alabama’s long-arm statute has long been recognized as expanding the scope of Alabama courts’ jurisdiction to the full extent allowed by the due process constraints.\textsuperscript{47} Although a physical presence in Alabama is not a prerequisite, there must be such contacts with this state such that the defendant should reasonably anticipate being haled into court in Alabama.\textsuperscript{48}

The Alabama Supreme Court has adopted the “purposeful availment” test to determine whether a defendant has sufficient minimum contacts with this state.\textsuperscript{49} For either general or specific jurisdiction, the nexus between the defendant and Alabama must arise out of an action by the defendant that was purposefully directed toward Alabama.\textsuperscript{50}

**VI. DAMAGES**

**A. Compensatory and Punitive Damages**

In addition to compensatory damages, a plaintiff may recover punitive damages by proof of clear and convincing evidence that the defendant consciously or deliberately engaged in oppression, fraud, wantonness, or malice with regard to the plaintiff.\textsuperscript{51} A variety of limitations exist restricting punitive damages awards in certain circumstances.\textsuperscript{52}

**B. The Economic Loss Doctrine**

Under the Economic Loss Doctrine, a plaintiff cannot recover under a negligence or other tort theory of liability, including the AEMLD, where a product only causes damage to itself.\textsuperscript{53} However, warranty claims will provide an avenue of recovery for damage to the product.

**B. Collateral Source Rule**

Where the plaintiff claims, as damages, medical expenses that have been reimbursed, the defendant can introduce evidence that those expenses have been paid by a third party.\textsuperscript{54}

**C. Contribution And Indemnity**

In general, no contribution is permitted among joint tortfeasors, except when a written indemnity agreement between the parties exists.\textsuperscript{55} Thus, all responsible defendants are jointly and severally liable for any damages.\textsuperscript{56}

**VII. INFORMATION ABOUT ALABAMA AND ITS JUDICIAL SYSTEM**

Alabama’s sixty-seven counties and three federal districts vary greatly in demographics and judicial temperament. A wealth of information about the State of Alabama, its judicial system, and its demographics can be found on the Internet.

The State of Alabama’s official website is \texttt{www.alabama.gov}. For demographic and Census information, visit \texttt{http://quickfacts.census.gov/qfd/}. For facts and information about Alabama’s State Bar and its Unified Judicial System, visit \texttt{www.alabar.org} and \texttt{www.alacourt.gov}. Information relating to Alabama’s United States District Courts can be found at \texttt{www.alnd.uscourts.gov} (Northern District), \texttt{www.almd.uscourts.gov} (Middle District), and \texttt{www.als.uscourts.gov} (Southern District).

**Endnotes**

20, 2005.

2. *Id.*

3. *Id.*


5. *Atkins*, 335 So. 2d at 141


10. *Hawkins*, 536 So. 2d at 927.

11. Ala. Code § 12-21-12(d); *Verchot*, 812 So. 2d at 301.

12. *Verchot*, 812 So. 2d at 301.


14. *Verchot*, 812 So. 2d at 301.

15. *Id.*


18. *General Motors Corp. v. Saint*, 646 So. 2d 564, 565-66 (Ala. 1994); *Atkins*, 335 So. 2d at 143.


22. *See Foremost Ins. Co. v. Indies House, Inc.*, 602 So. 2d 380, 382 (Ala. 1992); *Atkins*, 335 So. 2d at 143.


26. Ala. Code § 25-5-11(b) and (c).


29. *See Ex parte General Motors Corp.*, 769 So. 2d at 913; *Yarbrough v. Sears, Roebuck and Co.*, 628 So. 2d 478, 483 (Ala. 1993).


34. *See Benefield v. Aquaslide 'N' Dive Corp.*, 406 So. 2d 873, 876 (Ala. 1981); *King*, 607 So. 2d at 1248.


37. Hill, 804 So. 2d at 1109.

38. See Verchot, 812 So. 2d at 303.


41. See Verchot, 812 So. 2d at 304-5; General Motors Corp. v. Johnston, 592 So. 2d 1054, 1058-59 (Ala. 1992).

42. See Verchot, 812 So. 2d at 304-5; Taylor v. General Motors Corp., 707 So. 2d 198, 203 (Ala. 1997).

43. See Iverson v. Xpert Tune, Inc., 553 So. 2d 82, 84 (Ala. 1989); Capitol Chevrolet, Inc. v. Smedley, 614 So. 2d 439, 441-42 (Ala. 1993).


46. See Ex parte McInnis, 820 So. 2d 795, 798 (Ala. 2001).

47. See Ala. R. Civ. P. 4.2(a)(2); Ex parte McInnis, 820 So. 2d at 802.