

PRODUCT LIABILITY ALERT

GOOD NEWS IF YOU SELL PRODUCTS IN PENNSYLVANIA: PLAINTIFFS MUST FOLLOW PRODUCT WARNINGS.

Manufacturers should make certain their product labels and manuals are sufficient.

Product liability law in Pennsylvania took another turn, for the better this time, with the Third Circuit U.S. Court of Appeals' opinion in *Clevenger v. CNH America LLC*, No. 08-2872 (3rd Circuit, August 13, 2009), declaring that a user's failure to follow instructions can be fatal to any design defect claim. In affirming the jury's "no defect" defense verdict, the Court of Appeals held that under Pennsylvania law, it is presumed that the manufacturer's warnings and instructions will be obeyed. To prevail on a design defect claim, a plaintiff must prove that the product is unsafe even if the manufacturer's instructions for safe use are followed.

In the *Clevenger* case, the skid steer loader plaintiff was using contained warnings and instructions in the operator's compartment and in the manual to turn off the engine before exiting. Despite those warnings and instructions, plaintiff left his seat and tried to exit the machine with the engine running. Unfortunately, he inadvertently moved the control levers as he tried to leave the operator's compartment, causing the lift arms to rise, and pinning his arm.

After a four day trial, the jury returned a defense verdict, finding no defect in the skid steer loader. The Appellate Court's decision concluded that Pennsylvania law requires users to follow instructions and to use products in the manner intended by the manufacturer. If the warnings and instructions tell the user how to safely operate the product, and the product can be safely operated by following those warnings and instructions, the product is not defectively designed.

What you should do: This decision rewards careful and conscientious manufacturers who provide safety warnings and instructions which guide a user on the proper use of the product. Thus, the warning labels and manuals accompanying a product are a valuable part of your company's product and manufacturers should take the time necessary to make certain the instructions make sense and show users how to be safe.

Preparation and assessment of warnings and instructions is a significant part of the legal services we provide. If you need help with your product's warnings and instructions, or if you have any questions about this decision, please contact Mark Gebauer at 717.237.6052 or mgebauer@eckertseamans.com or any other attorney with whom you have been working.

The Product Liability Alert is intended to keep readers current on product liability matters and is not intended to be legal advice.