

New Jersey Product Liability Law Doesn't Bar Fraud Claim

By Jill R. Cohen

On July 29, 2020, the Supreme Court of New Jersey ruled that the Products Liability Act (PLA) does not block claims under the Consumer Fraud Act (CFA). While previously plaintiffs had to choose which theory of liability to pursue, this ruling allows plaintiffs to assert claims and seek dissimilar relief under both statutes in separate counts of the same complaint. In addressing “whether a Consumer Fraud Act claim can be based, in part or exclusively, on a claim that also might be actionable under the Products Liability Act,” the Court answered affirmatively that it can. This decision resolves a question from the Third Circuit arising from litigation in which Sun Chemical Corp. seeks \$5 million from Suppression Systems Inc. for a product that exploded the first day it became operational. *Sun Chem. Corp. v. Fike Corp.*, Nos. A-89, 082815, 2020 N.J. LEXIS 880 (July 29, 2020).

Moving forward, plaintiffs still may only bring claims based upon a product’s manufacturing, warning, or design defect under the PLA — claims for the same are precluded under the CFA. However, plaintiffs may simultaneously bring claims for deceptive, fraudulent, or misleading commercial practices under the CFA. For example, a plaintiff may bring a claim for failure to warn of a product defect under the PLA, along with a claim for an affirmative misrepresentation that a specific flaw did not exist or a product had never failed under the CFA. Though the claims relate to the same product and seek relief for the same harm, the crucial difference between them is that liability under the PLA arises from the product itself, whereas liability under the CFA arises from the conduct of the manufacturer/seller in relation to the product.

Emphasizing that the two statutes govern different conduct and provide different remedies, the Court determined the statutes are complementary in nature because both concern product safety and the protection of child consumers. “If the state legislature had intended the Products Liability Act to preclude claims under the Consumer Fraud Act, it would have said so,” the Court explained.