

Pennsylvania Supreme Court Precludes Introduction of Evidence of Compliance with Industry Standards

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The Pennsylvania Supreme Court, in a long-awaited decision, determined that evidence of a product's compliance with industry standards is inadmissible in strict product liability cases. *Sullivan v. Werner Co.*, 2023 Pa. LEXIS 1715 (Pa. December 22, 2023).

In the underlying case, Michael Sullivan suffered injury when the platform of a mobile scaffold collapsed, which caused him to fall to the ground. To recover for these injuries, plaintiffs commenced this action, alleging defects in the pins used to secure the platform. Prior to trial, plaintiffs moved to preclude defendants from introducing evidence of the product's compliance with industry standards, including federal Occupational Safety and Health Administration (OSHA) regulations and American National Standards Institute (ANSI) standards. The trial court granted plaintiffs' Motion and precluded the evidence. After a verdict in plaintiffs' favor, defendants appealed the decision, asserting, among other arguments, that the trial court improperly precluded defendants from introducing evidence of the product's compliance with industry standards. The Pennsylvania Superior Court unanimously affirmed the decision of the trial court. *Sullivan v. Werner Co.*, 253 A.3d 730 (Pa. Super. 2021). The Pennsylvania Supreme Court subsequently granted a petition for allowance of appeal.

The Supreme Court, in an Opinion Announcing the Judgment of the Court issued by three of the six sitting Justices, upheld the findings of the Superior Court. The Court reaffirmed the viability of its reasoning in *Lewis v. Coffing Hoist Div., Duff-Norton Co., Inc.*, 528 A.2d 590 (Pa. 1987) that evidence of industry standards improperly focuses on the reasonableness of a defendant's actions in making design decisions, which improperly injects negligence concepts into a strict liability action. While the Supreme Court's 2014 decision in *Tincher v. Omega Flex, Inc.*, 104 A.3d 328 (Pa. 2014), appeared to lessen the distinct separation between negligence and strict liability concepts in Pennsylvania product liability cases, the *Sullivan* Court observed that strict liability remains a distinct theory of liability from negligence in Pennsylvania. The Court further noted that the focus of a design case must remain limited to the characteristics of the product itself and not on the conduct of the manufacturer or seller. According to the Court's opinion, "Compliance evidence does not prove any characteristic of the product; rather, it diverts attention from the product's attributes to both the manufacturer's conduct and whether a standards-issuing organization would consider the product to be free from defects." *Sullivan*, 2023 Pa. LEXIS 1715 at *37.

Justice Christine Donohue authored a concurring opinion, noting that defendants had not submitted actual OSHA or ANSI standards to the lower court as they had intended, which prevented the trial court from fully considering whether they were a relevant defense.

In a strong dissenting opinion, Chief Justice Debra Todd noted that governmental and industry standards may be relevant to resolving questions as to whether a product is unreasonably dangerous, observing that the characteristics of a product and the manufacturer's conduct "are largely inseparable, calling for the introduction

of standards and regulatory compliance when conduct is at issue.” *Sullivan*, 2023 Pa. LEXIS 1715 at *57. The dissent further suggested that compliance evidence may provide guidance on the balancing of safety risks and benefits in the design of a product, consistent with the factors to be considered when applying the risk-utility test adopted in *Tincher*.

Following *Sullivan*, manufacturers are limited in the manner in which they can defend their designs when in many respects the design decisions were made to comply with industry standards (both voluntary and mandatory). However, the Court did potentially leave open some avenues for introduction of this critical evidence. The *Sullivan* court rendered its decision in a case based solely on *Tincher*’s risk-utility analysis. This leaves open the possibility of a manufacturer arguing that *Sullivan*’s limitations may not apply to those matters which involves theories of liability other than risk-utility (i.e., *Tincher*’s consumer expectations test, negligent design, manufacturing defect, punitive damages, etc.).

In an effort to overcome the limitations imposed by the *Sullivan* court, manufacturers should consider offering the evidence identified as lacking by Justice Donohue in her concurring opinion. This would include an identification of the standard/regulation proposed for introduction, an evaluation of the proposed standard/regulation evidence and how it applies to the factors identified in the *Tincher* risk-utility analysis. Moreover, manufacturers should be ready to present this evidence should plaintiffs open the door in their case. Nevertheless, the Supreme Court’s decision in *Sullivan* presents significant challenges for manufacturers in their efforts to present evidence of a product’s compliance with industry standards in products liability matters.