

OHIO CASE SUMMARIES

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Ohio case summaries will be provided on a continuing basis every Wednesday and Friday of each week (excluding holidays). Summaries include brief descriptions of cases decided in the past week by the Ohio Supreme Court and lower appellate courts on issues related to insurance law. To discontinue receiving this service, please call Adam Webber at 937.224.3333 or send an email to arwebber@green-law.com.

Court of Appeals: First District

Case Name: *Bouher v. Aramark Servs., Inc.*, 2009-Ohio-1597

Decided: April 3, 2009

Issue(s): Can a Product Manufacturer be Held Liable for Defectively Designing a Product When the Injury Results from an Open and Obvious Danger

Summary of Opinion: On the day she was injured, Plaintiff went to her employer's cafeteria to get hot water to make a cup of tea. The cafeteria used a FETCO coffee maker with a separate dispenser for hot water. Plaintiff dispensed the water into a polystyrene cup, put a lid on the cup, and sealed it. As she was walking back to her desk, she set the cup on a counter while she talked to a co-worker. She talked for approximately two minutes. Then, as she picked the cup up with her left hand, her thumb went through the cup and became stuck. She felt intense pain and started shaking the cup to free her thumb. The cup's contents then splashed on her right arm, right hand, face, eye, and forehead. She suffered second-degree burns and scarring.

An examination of the coffee maker showed that it dispensed hot water at 205 degrees Fahrenheit. The industry standard for brewing tea is 208 to 212 degrees. Plaintiff sued the manufacturer of the coffee maker, FETCO, and argued it was defectively designed and that FETCO had failed to warn of an inherent danger. The trial court granted FETCO's motion for summary judgment on all of plaintiff's claims.

On appeal before the First District Court of Appeals, plaintiff argued that the product was defective in design under the consumer expectation test. Under this test, a product

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is defective in design if it is more dangerous than an ordinary consumer would expect when used in an intended or reasonably foreseeable manner. The First District held that:

the fact that a product may cause injury does not mean that the product is defective under...Ohio's Products Liability Act. A manufacturer need not make its product accident-proof or foolproof. It is not an insurer that its product is, from a design viewpoint, incapable of producing injury.

In this case, plaintiff presented no evidence to show that a genuine issue of material fact existed as to whether the coffee maker was defectively designed. To the contrary, the court held, the evidence showed that it did exactly what any consumer would expect it to do: it produced hot water from a spigot that was hot enough to brew tea.

The court also held that the manufacturer did not fail to provide an adequate warning. Ohio's Product Liability Act states that "a product is not defective due to a lack of warning or instruction or inadequate warning or instruction as a result of the failure of its manufacturer to warn or instruct about an open and obvious risk or a risk that is a matter of common knowledge." The court noted that confusion often arises when there is a horrific injury that results from an open and obvious risk. The court held, however, that "it is not the severity of a specific injury that constitutes the open and obvious risk; the open and obvious risk is the danger or potential for danger that a product possesses, regardless of the severity of injury that might occur." In this case, the court held that burns from hot water are an open and obvious risk. The fact that the spigot on the hot water dispenser told the user that the water coming out of that spigot was hot was adequate to put the user on notice of the risk of potential injury.

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