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frontation, would the admission of the hearsay statements have been harmless error? These questions remain unanswered by State v. Hansen.

**Products Liability—Recovery of Economic Loss in Commercial Transactions—**


The doctrine of products liability was developed primarily to compensate consumers for personal injury and property damage caused by defective products. Most importantly, the doctrine protects non-commercial buyers who cannot adequately protect themselves against defective products. Consumers can recover under warranty, negligence, or strict liability theories for personal injury and property damage.

Courts have not received claims for economic loss damages in commercial transactions as readily as they have received consumer claims. A majority of the states that have considered the issue follow Seely v. White Motor Co., and disallow recovery of economic loss under either negligence.

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3. See Prosser, supra note 1, at 1120; see also Seely v. White Motor Co., 63 Cal. 2d 9, 19, 403 P.2d 145, 151, 45 Cal. Rptr. 17, 23 (1965) (commercial consumer was held to have adequate remedies under the U.C.C.).
4. McCormack v. Hanksraft Co., 278 Minn. 322, 154 N.W.2d 488 (1967) (the basic theory of McCormick is embodied in Restatement (Second) of Torts § 402A (1965)).
7. 63 Cal. 2d 9, 403 P.2d 145, 45 Cal. Rptr. 17 (1965). The Seely court considered whether a plaintiff could recover the purchase price of a defective truck and the resulting loss of profits for lack of its normal use. The court refused to allow recovery on the theory of strict liability, stating that the law of sales was designed to meet the needs of parties involved in commercial transactions. To allow other forms of recovery would undermine the law of sales, and would not reflect the intent of the parties. In dicta, the court indicated that economic losses could not be recovered under a negligence theory.
gence or strict liability. Some states\(^8\) follow *Santor v. A \& M Karagheu-
sian*,\(^9\) and allow commercial buyers to recover under either the U.C.C.
laws of warranty, or under a tort theory. The Minnesota Supreme Court
followed the majority rule in *Superwood Corp. v. Siempelkamp Corp.*\(^10\)

In *Superwood*, the plaintiff purchased a high capacity hot plate hard-
wood press in 1954 from the defendant, Siempelkamp Corp., a West Ger-
man corporation. The plaintiff operated the press from 1954 to 1975
without incident.\(^11\) On March 24, 1976, the lubricating oil contained in
the main cylinder suddenly spatred through a rupture in the cylinder
wall irreparably damaging the hot plate press.\(^12\) After the defendant’s
inspection, the plaintiff disassembled the press and discovered that an
interior portion of this cylinder wall was substantially below stress and
safety specifications. The plaintiff contended that the weakened portion
of the cylinder wall was a dangerous defect causing the plaintiff substan-
tial loss.\(^13\) On March 12, 1978, three years after the cylinder failed,
Superwood sued Siempelkamp in federal district court, for $616,716 in
damage to the press and lost profits. The plaintiff claimed negligence,
strict liability, breach of warranty, and breach of contract against the
defendant.\(^14\)

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8. See Robbins v. Farmers Union Grain Terminal Assoc., 552 F.2d 788 (8th Cir.
1977) (applying South Dakota law); Sterner Aero AB v. Page Auto., Inc., 499 F.2d 709
(10th Cir. 1974) (applying Oklahoma law); Boone Valley Coop. Processing Assoc. v.
Motors Corp., 87 Wash. 2d 584, 555 P.2d 818 (1976); Lamphiear v. Skagit Corp., 6 Wash.
(allowed recovery in strict liability for dangerously defective mobil home); Whitaker v.
Farmhand, Inc., 173 Mont. 345, 567 P.2d 916 (1977) (allowed recovery in negligence,
strict liability, and breach of warranty for loss of use of a ranch because of defective irriga-
tion equipment); Russell v. Ford Motor Co., 281 Or. 587, 575 P.2d 1383 (1978) (involving
a defective truck axel; the court, assuming there was danger to other persons or property,
allowed recovery of damages to the product itself).

9. 44 N.J. 52, 207 A.2d 305 (1965). *Santor* allowed a commercial plaintiff economic
recovery against the manufacturer under either strict products liability or under the
U.C.C.’s warranty provisions for a cosmetic defect in carpeting. In so holding, the court
decided that the U.C.C. did not provide the exclusive set of remedies for cases arising out
of commercial transactions. But see Dickerson, *The ABC’s of Products Liability—With a Close
Look at section 402A and the Code*, 36 TENN. L. REV. 439, 452 n.30 (1969) (a court that
applies § 402A without taking account of the Code is defaulting on its constitutional respon-
sibility to respect the legislative will). See generally Rapson, *Products Liability Under Par-
allel Doctrines: Contrasts Between the Uniform Commercial Code and Strict Liability in Tort*, 19
RUTGERS L. REV. 692, 704-11 (1965) (pointing out several areas of inconsistency between
the code and strict liability tort theory).

10. 311 N.W.2d 159 (Minn. 1981).
11. *Id.* at 160.
12. See Appellant’s Brief at 3.
13. *Id.*
The federal court granted the defendant a partial summary judgment dismissing the breach of warranty and contract claims. The statute of limitations had expired on those claims. After considering whether recovery was available to commercial plaintiffs for pure economic losses under strict liability and negligence theories, the federal court concluded that Minnesota law was unclear on this question and therefore certified three questions to the Minnesota Supreme Court in order to clarify the applicable state law.15

1. Is the manufacturer of defective equipment (a press) strictly liable in negligence to the user of the equipment damaged in its property and business by negligent product manufacture, inspection, installation, or supervision?

2. Is the manufacturer of defective equipment (a press) strictly liable in tort to the user of the equipment damaged in its property and business by the product defect?

3. If question 1 or 2, or both, are answered affirmatively, are any . . . [economic] damages recoverable, if directly caused by negligence or defect?16

The Minnesota Supreme Court framed the issue as whether economic losses arising out of commercial transactions are recoverable under negligence and strict products liability theories.17 If neither negligence nor strict products liability theories applied to commercial transactions, the question of damages would be moot.18

Many courts have considered whether negligence and strict products liability theories apply to commercial transactions.19 Those courts clearly divide into majority and minority camps. The first and leading minority case is Santor v. A & M Karagheusian, Inc.,20 while the leading majority case is Seely v. White Motor Co.21

In Santor, the plaintiff bought grade #1 carpet from a store.22 After

15. Id.
16. Id.
17. Id. at 160-61. The RESTATEMENT gives the most famous strict products liability rule: “One who sells any product in a defective condition unreasonably dangerous to the use or consumer or to his property, is subject to liability for physical harm thereby caused to the ultimate user or consumer, or to his property.” RESTATEMENT (SECOND) OF TORTS § 402A(1) (1965).


18. See Supernood, 311 N.W.2d at 162.
19. Id. at 161; see also, Seely v. White Motor Co., 63 Cal. 2d 9, 45 Cal. Rptr. 17, 403 P.2d 145 (1965) (majority); Santor v. A & M Karagheusian, Inc., 44 N.J. 52, 207 A.2d 305 (1965) (minority); cases cited supra notes 6 & 8.
20. 44 N.J. 52, 207 A.2d 305 (1965); see infra notes 22-25 and accompanying text.
21. 63 Cal. 2d 9, 403 P.2d 145, 45 Cal. Rptr. 17 (1965); see infra notes 26-31 and accompanying text.
the carpet was laid, the plaintiff noticed an unusual line in it. Though the defendant manufacturer assured the plaintiff the line would wear away, it never did. In fact, two additional lines appeared. The New Jersey court allowed the plaintiff to sue the manufacturer under strict products liability or the U.C.C. warranties. For the New Jersey court, the U.C.C. warranties were not exclusive remedies.

In *Seely*, the plaintiff purchased a truck from a dealer. The truck repeatedly malfunctioned. Eventually the brakes failed while rounding a corner. The truck flipped and crashed. The plaintiff sued the truck’s manufacturer for the purchase price of the defective truck and lost profits because he could not make normal use of the truck. The California court would not apply strict liability to the manufacturer in a commercial transaction. The U.C.C. governs the economic relations between manufacturers and consumers; strict liability governs the distinct problem of physical injuries from defective products. The truck did not meet warranty specifications, however, and therefore, the manufacturer was liable for damage to the truck and lost profits. Under strict products liability or negligence, the defendant would not be liable for such economic losses.

Although the Minnesota court had never before faced the issue of whether economic loss in a commercial setting is recoverable under negligence and strict products liability theories, the court previously had approved of the *Seely* holding in *Farr v. Armstrong Rubber*. In *Farr*, the plaintiff sued the manufacturer of a defective tire. When it applied Restatement (Second) of Torts section 402A, the court noted that strict products liability did not undermine the U.C.C. warranties. The *Farr* court approved of *Seely* because “[t]he laws of warranty still meet the needs of commercial transactions and function well in the commercial setting.” Tacitly, *Seely* was already law in Minnesota.

The *Superwood* court continued its analysis by noting the U.C.C.’s legislative history. When the Minnesota Legislature adopted the U.C.C. it

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23. *Id.* at 56, 207 A.2d at 307.
24. *Id.* at 57 & 63, 207 A.2d at 310 & 312.
27. *Id.*
28. *Id.* at 13, 403 P.2d at 148, 45 Cal. Rptr. at 20. The plaintiff also asked for the cost of repairing the damaged truck. *Id.* at 13, 403 P.2d at 147, 45 Cal. Rptr. at 19.
29. *Id.* at 14, 403 P.2d at 149, 45 Cal. Rptr. at 21.
30. *Id.* at 16, 403 P.2d at 150, 45 Cal. Rptr. at 22. The warranty stated the truck was “free from defects in material and workmanship under normal use and service.” *Id.*
31. *Id.* at 17, 403 P.2d at 151, 45 Cal. Rptr. at 23.
32. 288 Minn. 83, 179 N.W.2d 64 (1970).
33. See *id.* at 87, 179 N.W.2d at 67.
34. *Id.* at 89, 179 N.W.2d at 70.
35. *Id.* at 94, 179 N.W.2d at 71.
intended to clarify the rights and remedies of parties to commercial transactions. For example, the U.C.C. provided warranties, warranty disclaimers, liability limitations, and notice provisions. The Minnesota court feared allowing tort theories of recovery in commercial transactions would blur the rights and remedies of commercial parties that the U.C.C. was intended to clarify. Allowing tort liability would permit parties to circumvent and thereby weaken the effectiveness of the U.C.C. The legislature intended that the U.C.C. exclusively encompass a party’s rights in commercial transactions. The majority ruled that the U.C.C.’s effectiveness would be preserved only if recovery of economic loss was not available under negligence and strict liability in commercial transactions.

The Superwood holding does not prevent consumers from suing a manufacturer under strict products liability. For instance, a Delaware case, Cline v. Prowler Industries, Inc., held that the U.C.C. completely pre-empted the entire products liability field, leaving injured consumers with only the remedies provided in the U.C.C. The Superwood court did not agree. Strict product liability developed because sales law did not adequately protect consumers. Strict products liability and negligence actions best meet the needs of consumers, while the U.C.C. best meets the needs of the commercial sector. The U.C.C. exclusively governs commercial transactions leaving no room for strict products liability and negligence for economic losses in a commercial setting. Only recovery of property damage or personal injury remains outside of the U.C.C.’s preview. Superwood Corporation could not recover under either strict liability or negligence.

Justice Yetka agreed with the majority in disallowing recovery by a commercial plaintiff for purely economic losses under strict liability, but argued that a commercial plaintiff should be allowed to assert negligence as a ground for recovery of economic injury. He argued that the legislature did not intend to abrogate negligence actions, and that allowing

36. See Superwood, 311 N.W.2d at 162.
37. See MINN. STAT. § 336.2-314 (1982).
38. See MINN. STAT. § 336.2-316 (1982).
40. See MINN. STAT. § 336.2-607 (1982).
41. See Superwood, 311 N.W.2d at 162.
42. Id.
43. 418 A.2d 968 (Del. 1980).
44. See id. at 980.
45. See Superwood, 311 N.W.2d at 162.
46. Id.; see also Noel, Products Liability of Retailers and Manufacturers in Tennessee, 32 TENN. L. REV. 207 (1965); Prosser, supra note 1; Traynor, The Ways and Meanings of Defective Products and Strict Liability, 32 TENN. L. REV. 363 (1965).
47. See Superwood, 311 N.W.2d at 162.
48. Id.
49. Id. (Yetka, J., dissenting).
negligence actions would neither "emasculate" the U.C.C., or contravene prudent policy. According to the Justice, Minnesota has long recognized negligence in commercial contexts. Statutes are not construed to abrogate long-held common law rights unless the statute expressly so states. Because the legislature did not expressly preempt negligence as a theory of recovery for economic loss, it survives the enactment of the U.C.C.\textsuperscript{50}

Justice Yetka saw no reason to think that negligence actions in commercial cases would emasculate the U.C.C. The framers of the U.C.C. never intended to exclude negligence actions.\textsuperscript{51} The U.C.C. warranty theories supplement negligence theories.\textsuperscript{52}

Prudent public policy dictates, according to Justice Yetka, retention of negligence actions for economic loss. Allowing damages for only personal and property damage allows a manufacturer to escape the full consequences of marketing a defective product. Manufacturers will be more accountable if held liable for all damages, economic and otherwise, caused by their defective products. As a result, products will be safer for all consumers.\textsuperscript{53}

Two Minnesota cases have had an impact on the Superwood opinion. In the first case, \textit{Allied Aviation Fueling Co. v. Dover Corp.},\textsuperscript{54} the court held that the plaintiff did not prove the defendant's alleged negligence or strict liability in attempting to recover economic loss,\textsuperscript{55} but the court did not state that the plaintiff was precluded from asserting an action to recover commercial losses under these tort theories. The plaintiff merely failed to meet the burden of proof. \textit{Allied Aviation} demonstrated a willingness by the Minnesota Supreme Court to allow economic loss claims to be brought under negligence, if not also strict liability.\textsuperscript{56}

In the second case, \textit{Le Sueur Creamery Inc. v. Haskon},\textsuperscript{57} the Federal Eighth Circuit Court of Appeals found "that property damage, includ-
ing damage to the defective property itself . . . is recoverable in negligence." The court held that lost profits for economic loss are recoverable when property damage or personal injury also occur. If property damage had also occurred in Superwood, the plaintiff would have been allowed to assert a negligence action for the recovery of commercial losses.

In Superwood, the Minnesota Supreme Court clearly aligned itself with the Seely majority. In a commercial transaction, strict products liability and negligence actions are no longer allowed unless property damage or personal injury occurs. The U.C.C. is the parties’ only recourse and does not allow recovery of economic loss. Thus, a plaintiff cannot recover for economic loss in a commercial transaction in Minnesota.

misrepresentation with respect to the sale, installation, and servicing of the pasteurizing equipment. Id. 58. See id. at 349.

59. Id.

60. But see Bland & Wattson, Property Damage Caused by Defective Products, 9 WM. MITCHELL L. REV. 1 (1984). Bland and Wattson claim that if the Superwood court had followed Seely, the court would have based its decision on the unreasonably dangerous defect in the press and would have allowed plaintiff to prove its case. They argue that either the Minnesota Supreme Court did not follow Seely, or economic losses might never be recoverable under Minnesota law. Id. at 16-17.