William Mitchell Law Review

Volume 9 | Issue 2 Article 14

1983

Products Liability—Recovery of Economic Loss in Commercial Transactions—Superwood Corp. v. Siempelkamp Corp., 311 N.W.2d 159 (Minn. 1981)

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—*Superwood Corp. v. Siempelkamp Corp.,* 311 N.W.2d 159 (Minn. 1981).

The doctrine of products liability was developed primarily to compensate consumers for personal injury and property damage caused by defective products.[1] Most importantly, the doctrine protects non-commercial buyers who cannot adequately protect themselves against defective products.[2] Consumers can recover under warranty, negligence,[3] or strict liability theories[4] for personal injury and property damage.[5]

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[6] that have considered the issue follow *Seely v. White Motor Co.,*[7] and disallow recovery of economic loss under either negli-

1. *See* Greenman v. Yuba Power Prods., Inc., 59 Cal. 2d 57, 377 P.2d 897, 27 Cal. Rptr. 697 (1962); Henningsen v. Bloomfield Motor Inc., 32 N.J. 358, 161 A.2d 69 (1960); Prosser, *The Assault upon the Citadel: Strict Liability to the Consumer,* 69 YALE L.J. 1099, 1122-24 (1960).

2. *See* Greenman v. Yuba Power Prods., Inc., 59 Cal. 2d 57, 63, 377 P.2d 897, 901, 27 Cal. Rptr. 697, 701 (1962).

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. Hankscraft Co., 278 Minn. 322, 154 N.W.2d 488 (1967) (the basic theory of *McCormick* is embodied in RESTATEMENT (SECOND) OF TORTS § 402A (1965)).

5. *See* Noel Transfer & Package Delivery Serv., Inc. v. General Motors Corp., 341 F. Supp. 968 (D. Minn. 1972); Peterson v. Crown Zellerbach Corp., 296 Minn. 438, 209 N.W.2d 922 (1973).

6. *See* Iowa Elec. Light & Power Co. v. Allis-Chalmers Mfg. Co., 360 F. Supp. 25, 27-33 (S.D. Iowa 1973); Miehle Co. v. Smith-Brooks Printing Co., 303 F. Supp. 501, 503 (D. Colo. 1969); Morrow v. New Moon Homes, Inc., 548 P.2d 279 (Alaska 1976); Beauchamp v. Wilson, 21 Ariz. App. 14, 515 P.2d 41 (1973); Long v. Jim Letts Oldsmobile, Inc., 135 Ga. App. 293, 217 S.E.2d 602 (1975); Clark v. International Harvester Co., 99 Idaho 326, 581 P.2d 784 (1978); Marcil v. John Deere Indus. Equip. Co., 9 Mass. App. 908, 403 N.E.2d 430 (1980); Rhodes Pharmacal Co. v. Continental Can Co., 72 Ill. App. 2d 362, 219 N.E.2d 726 (1966); Hawkins Constr. Co. v. Matthews Co., 190 Neb. 546, 209 N.W.2d 643 (1973); Ford Motor Co. v. Lonon, 217 Tenn. 400, 398 S.W.2d 240 (1966); City of La Crosse v. Schubert, Schroeder & Assoc., 72 Wis. 2d 38, 240 N.W.2d 124 (1976).

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 Karagheusian,*[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 hardwood press in 1954 from the defendant, Siempelkamp Corp., a West German 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 spurted 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 substantial 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]

---

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. French Oil Mill Mach. Co., 383 F. Supp. 606 (N.D. Iowa 1974); States Steamship Co. v. Stone Manganese Marine Ltd., 371 F. Supp. 500 (D. N.J. 1973); Cova v. Harley Davidson Motor Co., 26 Mich. App. 602, 609-11, 182 N.W.2d 800, 805 (1970); Berg v. General Motors Corp., 87 Wash. 2d 584, 555 P.2d 818 (1976); Lamphiear v. Skagit Corp., 6 Wash. App. 350, 493 P.2d 1018 (1972); *see also* Cloud v. Kit Mfg. Co., 563 P.2d 248 (Alaska 1977) (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 irrigation 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 responsibility to respect the legislative will). *See generally* Rapson, *Products Liability Under Parallel 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.*

14. *See Superwood,* 311 N.W.2d at 160.

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).

Minnesota adopted the RESTATEMENT version of strict products liability in McCormack v. Hankscraft Co., 278 Minn. 322, 154 N.W.2d 488 (1967); *see also* Steenson, *The Anatomy of Product Liability in Minnesota: Principles of Loss Allocation,* 6 WM. MITCHELL L. REV. 243, 251-56 (1980) (a brief history of products liability in Minnesota).

18. *See Superwood,* 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.

22. *See* Santor v. A & M Karagheusian, 44 N.J. 52, 207 A.2d 305 (1965).

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.[23] The New Jersey court allowed the plaintiff to sue the manufacturer under strict products liability or the U.C.C. warranties.[24] For the New Jersey court, the U.C.C. warranties were not exclusive remedies.[25]

In *Seely,* the plaintiff purchased a truck from a dealer.[26] The truck repeatedly malfunctioned. Eventually the brakes failed while rounding a corner. The truck flipped and crashed.[27] 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.[28] 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.[29] The truck did not meet warranty specifications, however, and therefore, the manufacturer was liable for damage to the truck and lost profits.[30] Under strict products liability or negligence, the defendant would not be liable for such economic losses.[31]

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.*[32] In *Farr,* the plaintiff sued the manufacturer of a defective tire.[33] When it applied Restatement (Second) of Torts section 402A, the court noted that strict products liability did not undermine the U.C.C. warranties.[34] 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."[35] 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

23. *Id.* at 56, 207 A.2d at 307.
24. *Id.* at 57 & 63, 207 A.2d at 310 & 312.
25. *Superwood,* 311 N.W.2d at 161.
26. *See* Seely v. White Motor Co., 63 Cal. 2d 9, 12, 403 P.2d 145, 147, 45 Cal. Rptr. 17, 19 (1965).
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.[36] For example, the U.C.C. provided warranties,[37] warranty disclaimers,[38] liability limitations,[39] and notice provisions.[40] 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.[41]

The *Superwood* holding does not prevent consumers from suing a manufacturer under strict products liability.[42] For instance, a Delaware case, *Cline v. Prowler Industries, Inc.*,[43] held that the U.C.C. completely preempted the entire products liability field, leaving injured consumers with only the remedies provided in the U.C.C.[44] The *Superwood* court did not agree.[45] Strict product liability developed because sales law did not adequately protect consumers.[46] 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.[47] 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.[48]

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.[49] 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).
39. *See* MINN. STAT. § 336.2-719 (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.[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.[51] The U.C.C. warranty theories supplement negligence theories.[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.[53]

Two Minnesota cases have had an impact on the *Superwood* opinion. In the first case, *Allied Aviation Fueling Co. v. Dover Corp.*,[54] the court held that the plaintiff did not prove the defendant's alleged negligence or strict liability in attempting to recover economic loss,[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. *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.[56]

In the second case, *Le Sueur Creamery Inc. v. Haskon,*[57] the Federal Eighth Circuit Court of Appeals found "that property damage, includ-

50. *See Superwood,* 311 N.W.2d at 163 (Yetka, J., dissenting).

51. *Id.* Justice Yetka notes that, "U.C.C. 2-218, Comment 2, indicates that the expansion of existing warranties to the buyer's household and guests should be 'accomplish[ed] . . . without any derogation of any right or remedy resting on negligence.' " *Id.* (quoting U.C.C. § 2-218 comment 2 (1977)).

52. *See Superwood,* 311 N.W.2d at 163.

53. *Id.* The argument could, as well, justify strict product liability actions for economic loss. Justice Yetka makes no mention of that possibility although he agrees that commercial plaintiffs should not be allowed to recover for purely economic injuries under strict liability. *Id.* at 162.

54. 287 N.W.2d 657 (Minn. 1980).

55. *See id.* at 659. The *Allied* court held supplier of valve in a fuel system not liable for economic loss sustained by a skilled user when valve supplied by defendant failed from application of force during the use by user who has knowledge of the limitations of the valve. *Id.*

56. *Id.*

57. 660 F.2d 342 (8th Cir. 1981). In *Le Sueur,* a cheesemaker sued a dairy equipment corporation and corporation's parent company for breach of warranty, negligence, and

ing damage to the defective property itself . . . is recoverable in negligence."[58] The court held that lost profits for economic loss are recoverable when property damage or personal injury also occur.[59] 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.[60]

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.