

BENNETT, BRICKLIN & SALTZBURG LLC
INTRAOFFICE MEMO

Subject: Summary of Cases Reported in PA Law Weekly of October 19, 2009

Date: October 30, 2009

Product Liability

Malfunction Theory

Barnish v. KWI Building, Supreme Court, opinion by Baer J., filed October 2, 2009; Saylor J. concurring.

Plaintiff filed a product-liability case against the defendant on the theory of a malfunction. The trial court granted summary judgment to the defendant, and the Superior Court affirmed. On further appeal, the Supreme Court also affirmed the grant of summary judgment.

Plaintiff's theory of liability was that defendant's spark detection system contained sensors that were defective, permitting a fire and subsequent explosion to occur. Plaintiff could not present direct evidence of a defect in the sensors, as they were lost after the explosion. Instead, plaintiff proceeded under the malfunction theory.

As noted by the trial court, that theory allows for proof of strict product liability through circumstantial evidence. The trial court found that the plaintiff failed to present evidence from which a reasonable finder of fact could conclude that an unspecified defect existed when the sensors left the manufacturer's control, when it had been stipulated that the sensors functioned properly for ten years. The Superior Court affirmed on this basis.

On review, the Supreme Court stated that a plaintiff must present evidence of a defect, evidence that the defect caused the injury, and evidence that the defect existed at the time the product left the manufacturer's control. In the instant case, although the plaintiff presented evidence of a malfunction and expert testimony that the malfunction caused the fire and explosion, he failed to present evidence, circumstantial or direct, that the product was defective at the time it left the manufacturer's control. Plaintiff failed to present any explanation as to how the sensors could function properly for ten years and yet be defective at the time the sensors left the manufacturer's control. A plaintiff who admits that a product functioned properly in the past must present some evidence explaining how the product could be defective when it left the manufacturer's control and yet still functioned properly for a period of time.