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## Sellers Don't Remove that Warning

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A seller may be held liable if it removes warnings or instructions supplied by the manufacturer. The Michigan Court of Appeals recently offered guidance regarding the exercise of reasonable care that nonmanufacturing sellers owe to consumers under Michigan's product liability statutes. *Pedersen v Meijer Stores, Inc*, unpublished opinion per curiam of the Court of Appeals, issued August 3, 2017 (Docket No. 328855).

### SECRET WARDLE NOTES

**While retail sellers are not required to create warnings or instructions to accompany a product, sellers' employees should be instructed to never remove a warning or instruction that was provided by the manufacturer.**

On a late afternoon in October 2008, Kirk Pedersen set out into the woods with the intent to hunt from a tree stand that he had installed during a previous deer season. However, when Pedersen stepped onto the stand's platform, it immediately broke loose from the tree, causing Pedersen to fall 18 to 20 feet to the ground and rendering him a quadriplegic. In the aftermath of the fall, Pedersen filed a lawsuit against Meijer Stores, Inc., the company that sold him the pre-fabricated stand without providing the instructions or warnings that had accompanied the original packaging. Meijer filed a motion for summary disposition under MCR 2.116(C)(8).

Though several of Pedersen's theories of liability against Meijer were summarily dismissed, the trial court held viable the claim that Meijer failed to exercise reasonable care when it sold Pedersen a tree-stand without its original instructions or on-product warning labels. Meijer appealed.

The Court of Appeals held that under the statutory scheme governing product liability in Michigan, a nonmanufacturing seller is not liable for harm caused by a product unless one of two circumstances is present: “(a) [t]he seller failed to exercise reasonable care, including breach of any implied warranty, with respect to the product and that failure was a proximate cause of the person’s injuries, [or] (b) [t]he seller made an express warranty as to the product, the product failed to conform to the warranty, and the failure to conform to the warranty was a proximate cause of the person’s harm.” MCL 600.2947(6) (emphasis added).

In affirming the trial court’s decision to deny the aforementioned portion of Meijer’s motion for summary disposition, the Court of Appeals was careful to acknowledge that a nonmanufacturing seller does not have a duty “to warn or instruct where no warnings or instructions were supplied by the manufacturer.” However, the court held that the decision to sell an inherently dangerous product without the component materials that were included in the original packaging involved Meijer’s duty to exercise reasonable care and that duty was to be determined by the trier of fact. Accordingly, summary disposition for Meijer on that issue was properly denied.

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