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EXPLORING THE CHANGING FACE OF PRODUCT LIABILITY

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"Exploding" Can of Diet Coke Not Defective, but Diet Coke May Be Dangerous

By Mark F. Masters

In *Kocoloski-Young v. Coca-Cola*, unpublished decision of the Michigan Court of Appeals, Plaintiff allegedly suffered eye injuries after opening a can of Diet Coke that sprayed her in the face and eyes. The packaging did not list any warning that the beverage could exit the can at a high velocity upon opening, or that the beverage could pose potentially harmful results if it were to come in contact with a person's eyes.

Plaintiff purchased a twelve-pack of Diet Coke from her local Kroger in late December. She left it in her garage to keep cool. About a week later, Plaintiff desired a soft drink. As Plaintiff began to open the can, she heard a loud noise and was instantaneously sprayed in the face with the beverage. The beverage entered Plaintiff's eyes and she was unable to open her eyelids. After her eyes did not clear for approximately five minutes, Plaintiff felt her way up the stairs and into her bedroom where she woke her husband, who promptly took her to the emergency room.

In her deposition, Plaintiff testified that the Diet Coke can she opened that morning was not frozen, and the can itself was not bulged, dented or otherwise deformed. Upon inspecting the can after the incident, Plaintiff discovered that the drinking hole had not opened as designed. Instead, a small, pen-tip sized hole formed at the lip of the perforated edge of the drinking hole. The can's lid was also bulged out, presumably caused by the internal pressure of the can being released at a high velocity.

Plaintiff offered evidence in the form of medical reports from her physician that her eye injuries were most likely caused by "the explosion of Coke into her eyes." Plaintiff's ophthalmologist also stated in his report that Diet Coke acted as a moderately strong acid. However, he could not be one hundred percent certain it influenced her degree of injury. Plaintiff hired an expert who would testify at trial that the can was defective, causing Plaintiff to be sprayed in the face. The expert would also testify at trial that the chemical composition of Diet Coke was acidic enough to cause the symptoms from which Plaintiff now suffered.

The trial court dismissed the case based on lack of proximate cause, and lack of breach of warranty. On Appeal, the Court of Appeals held that Plaintiff

SECREST WARDLE NOTES:

It rarely hurts to warn. While the scientific evidence failed to show any defect with the Diet Coke can, there was sufficient evidence that the Diet Coke itself may have been dangerous if it got into someone's eyes "for any number of reasons."

While most people likely agree that getting a carbonated soft drink in your eyes is not good for them, liability in this case may have been totally avoided if the Diet Coke can simply said something to the effect of "Harmful If It Gets In Your Eyes", "May Injure Eyes On Direct Contact" or "Avoid Getting In Eyes - Risk of Injury."

Therefore, think carefully about common injuries both associated and unassociated with the normal use of your products and if you want to warn about them. A simple sentence or warning sign on the packaging may avoid injuries to your customers and liability for you.

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failed to meet her burden of supplying proof that her injuries were caused by a defect in the Diet Coke can. A product is defective if it is not reasonably safe for its foreseeable purposes. To make out a *prima facie* case under a products liability standard, a plaintiff must show (1) that defendant supplied a defective product, and (2) that the defect was the proximate cause of plaintiff's injury. "The threshold requirement is the identification of the injury-causing product and its manufacturer." While Plaintiff's expert testified about 130 other exploding can injuries over an eleven-year period, these reports gave no information as to how or why those cans or this can exploded. These attempts fell short of proving a defect in the can.

In regard to the potentially harmful nature of the chemical composition of Diet Coke, when manufacturing a product that is to be placed in the stream of commerce, a "manufacturer has a duty to 'eliminate any unreasonable risk of foreseeable injury.' " Coke, as the manufacturer of the Diet Coke beverage, and Kroger, as the seller of the product, had this duty. It was foreseeable that consumers of any carbonated beverage, Diet Coke included, could be sprayed in the face by the beverage, or have the beverage enter their eyes for any number of reasons. The evidence showed that Plaintiff's reported injuries could have very well been caused by the Diet Coke. Therefore, the Court of Appeals held there was a question of fact for the jury to decide regarding the potentially harmful nature of Diet Coke.

In regard to the failure to warn claim, when a manufacturer negligently failed to warn of potential dangers in its product, that failure rendered the product defective even if the product functioned properly. To establish a *prima facie* case of negligent failure to warn, plaintiff must show: (1) defendants owed plaintiff a duty to warn of danger, (2) defendants breached that duty, (3) defendants' breach was the proximate and actual cause of plaintiff's injury, and (4) plaintiff suffered damages. However, where the dangerous features or qualities were open and obvious, there was no duty to warn.

Here, while it was reasonable to conclude that exposing one's eyes to Diet Coke would have been an open and obvious hazard, the excessive damage that Plaintiff sustained and continued to suffer from was not. Because the ingredients of Diet Coke were not commonly known to laypersons to be overtly dangerous, the repercussions of getting Diet Coke in the eyes was not open and obvious. Therefore, summary disposition of the failure to warn claim was also in error.

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