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SUPREME COURT REJECTS IMPLIED WARRANTY AND PUNITIVE DAMAGES CLAIMS IN PHILLIPS

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In *Phillips v. Cricket Lighters* (“Phillips III”), 883 A.2d 439 (Pa. 2005), the Pennsylvania Supreme Court rejected a plaintiff’s breach of implied warranty and punitive damages claims. This was the second visit to the Supreme Court for *Phillips*, a case in which a two-year old was playing with a disposable butane lighter.

A. Factual History

This case arises from a tragic fire that killed Robyn Williams and her two children, Jerome Campbell and Alphonso Crawford. The fire began when two-year old Jerome pulled her mother’s purse down from the top of the family’s refrigerator and retrieved a Cricket disposable butane cigarette lighter. The lighter lacked child-resistant features. Jerome’s older brother, Neil Williams, observed Jerome use the lighter to ignite some linens. The fire ultimately spread throughout the apartment. After unsuccessfully attempting to wake his mother, Neil ran to a window and began screaming. He was rescued by a neighbor. Unfortunately, Robyn, Jerome, and Alphonso all perished in the fire. *Phillips v. Cricket Lighters* (“Phillips I”), 576 Pa. 644, 649, 841 A.2d 1000, 1002-1003 (2003).

B. Procedural History

Gwendolyn Phillips, the administratrix of the estate of the three victims and the guardian of Neil, filed an action against the manufacturer and distributors of the Cricket lighter. Plaintiff asserted design defect claims in both strict liability and negligence, negligent infliction of emotional distress, breach of implied warranty of merchantability, and punitive damages. The claims were all based on the allegation that the lighter should have been manufactured and distributed

with childproof features. *Phillips I*, 576 Pa. at 649, 841 A.2d at 1003.

The trial court granted summary judgment on all counts. The trial court held that the lighter was not defective because children were not the intended users of Cricket butane lighters. The court also held that the failure-to-warn claim was not viable since the evidence established that either the lighter or the packaging material had a warning to keep away from children. Finding that the lighter was neither defectively designed nor lacking appropriate warnings, the trial court concluded that under Pennsylvania law, the fact that the product was not defective was fatal to the plaintiff’s negligence, negligent infliction of emotional distress, and breach of warranty claims. The court also dismissed the punitive damages claim because it concluded that such a claim was derivative and there was no longer any viable cause of action. *Id.* at 650, 841 A.2d at 1003.

On appeal, the Superior Court reversed in part, and affirmed in part. It affirmed the dismissal of causes of action sounding in battery, intentional infliction of emotional distress, and inadequate warnings. However, it reversed on design defect products liability, negligence, negligent infliction of emotional distress, breach of warranty, and punitive damages. *Phillips v. Cricket Lighters*, 773 A.2d 802, 816 (Pa. Super. 2001).

1. *Phillips v. Cricket Lighters* (“Phillips I”), 576 Pa. 644, 841 A.2d 1000 (2003)

The Supreme Court reversed in part, affirmed in part, and vacated in part. The Court reversed on the strict liability claims, holding that a plaintiff in a strict

liability design defect claim must establish that the product was defective for the intended user. *Phillips v. Cricket Lighters* (“Phillips I”), 576 Pa. 644, 657, 841 A.2d 1000, 1007. Since two-year old Jerome was not the intended user of the butane lighter, summary judgment was appropriately granted. *Id.*

However, the Court affirmed the Superior Court on the negligence, negligent infliction of emotional distress, and punitive damages claims, holding that they presented jury questions. *Id.* at 661-662, 841 A.2d at 1010. With regard to the negligence claims, the Court rejected the defendants’ argument that because the Superior Court had properly granted summary judgment on the strict liability claims, the negligence claims must naturally fail as well. *Id.* at 658, 841 A.2d at 1008.

The Court vacated and remanded to the Superior Court for reconsideration of the breach of warranty and punitive damages issues. *Id.* at 664, 841 A.2d at 1011.

2. *Phillips v. Cricket Lighters* (“Phillips II”), 852 A.2d 365 (Pa. Super. 2004).

On remand, the Superior Court reconsidered the breach of warranty and punitive damages issues, ultimately arriving at the same conclusion as it had initially. The Superior Court again reversed the trial court’s grant of summary judgment on the breach of warranty and punitive damages claims. *Phillips v. Cricket Lighters* (“Phillips II”), 852 A.2d 365, 372, 374 (Pa. Super. 2004).¹

The Court held that a reasonable jury could conclude that the butane lighter was not merchantable. The Court

emphasized that the mere fact that a two-year old child was not the intended user of the lighter was not fatal to the warranty claim. *Id.* at 372. The Court held that pursuant to 13 Pa. C.S.A. § 2318, breach of implied warranty protections extend to all members of the household with no limitations being placed on whether the person who had used the product was an intended user. *Id.* at 371.

Regarding the punitive damages claim, the Superior Court concluded that the plaintiff had presented enough evidence to create a jury question as to whether the defendants' actions exhibited reckless indifference to others. *Id.* at 374.

C. Analysis of the Supreme Court's Holding in *Phillips III*

On its second trip the Supreme Court, *Phillips III* required the Court to consider the viability of plaintiff's breach of implied warranty and punitive damages claims.

1. Implied Warranty of Merchantability

In order for goods to be considered "merchantable," they: must be at least such as:

- (1) pass without objection in the trade under the contract description;
- (2) in the case of fungible goods, are of fair average quality within the description;
- (3) are fit for the ordinary purposes for which such goods are used;
- (4) run, within the variations permitted by the agreement, of even kind, quality and quantity within each unit and among all units involved;
- (5) are adequately contained, packaged and labeled as the agreement may require; and
- (6) conform to the promises of affirmations of fact made on the container or label if any.

Phillips v. Cricket Lighters ("Phillips III"), 883 A.2d 439,443-444 (Pa. 2005) (quoting 13 Pa. C.S.A. § 2314). Here, the focus was on whether the plaintiff could establish that the lighter was not fit for the ordinary purposes for which such goods are used under 13 Pa. C.S.A. § 2314(3). *Id.* at 444. The Court noted that the "[t]he concept of merchantability does not require that the goods be of the

best quality or the best obtainable but it does require that they have an inherent soundness which makes them suitable for the purpose for which they are designed. . . ." *Id.* (quoting *Gall by Gall v. Allegheny County Health Dep't*, 521 Pa. 68, 555 A.2d 786, 789-90 (1989) (internal citations omitted)).

Plaintiff argued that pursuant to 13 Pa. C.S.A. 2318, the implied warranty of merchantability "extends to any natural person who is in the family or household of his buyer or who is a guest in his home if it is reasonable to expect that such person may use, consume or be affected by the goods and who is injured in person by the breach of warranty." Because Jerome was a family member of Robyn, the purchaser of the Cricket lighter, and it was reasonable to anticipate that a small child would use the lighter, plaintiff argued that she could make out a breach of warranty claim. *Id.*

The Supreme Court rejected this argument and plaintiff's reliance on Section 2318. The Court held that § 2318 did not define when a breach of warranty occurred, it merely spelled out who may recover when a breach of warranty under § 2314 does occur. "In essence, § 2318 was adopted to broaden the class of people who could recover when a product is found to be unmerchantable. This section does not, however, expand upon or in any fashion provide further elucidation of what constitutes a breach of warranty." *Id.*

Instead, the Court looked to the language of § 2314(3) which requires that goods must be fit for their "ordinary purposes" in order to be merchantable:

In the context of this matter, it is apparent that the ordinary purpose of the Cricket lighter was to allow an adult user to produce a flame. Its ordinary purpose certainly was not to be a two year old child's plaything. The fact that the product was tragically misused in such a way does not alter the ordinary purpose of the product.

Id. at 444-445. Having concluded that the lighter was fit for its ordinary purpose – producing a flame for an adult user – the Court concluded that it was indeed merchantable, and that defendants were entitled to summary judgment on plaintiff's implied warranty of merchantability claim.

Although the Court ultimately concluded

that defendants were entitled to summary judgment on plaintiff's breach of implied warranty claim, it refused to adopt defendants' broad proposal that the failure of a strict liability claim automatically precludes a breach of implied warranty claim. Despite similarities between the two causes of action, they are not identical. For example, the Court noted that an implied warranty of merchantability requires that the product "pass without objection in the trade under the contract description . . .," 13 Pa. C.S.A. § 2314(b)(1), yet there is no corollary concept in strict liability. "We can see nothing positive to be gained by conflating two distinct causes of action with each other, and can foresee certain instances where such a crude rule of law would lead to erroneous results." *Id.* at 445, n. 6.

2. Punitive Damages

Turning to the next issue, the Court addressed the standard for awarding punitive damages. It noted that punitive damages are an "extreme remedy" that is available only in the most exceptional matters. *Id.* at 445 (citing *Martin v. Johns-Manville Corp.*, 508 Pa. 154, 173, n. 14, 494 A.2d 1088, 1098, n. 14 (1985), *rev'd on other grounds sub nom., Kirkbride v. Lisbon Contractors, Inc.*, 521 Pa. 97, 555 A.2d 800 (1989)). "Punitive damages may be appropriately awarded only when the plaintiff has established that the defendant has acted in an outrageous fashion due to either 'the defendant's evil motive or his reckless indifference to the rights of others.'" *Id.* (quoting *Martin*, 508 A.2d at 169, 494 A.2d at 1096).

"A defendant acts recklessly when 'his conduct creates an unreasonable risk of physical harm to another [and] such risk is substantially greater than that which is necessary to make his conduct negligent.'" *Id.* (quoting *Hutchison v. Luddy*, 582 Pa. 114, 870 A.2d 766, 771 (2005)). "Thus, a showing of mere negligence, or even gross negligence, will not suffice to establish that punitive damages should be imposed." *Id.* at 446 (citing *SHV Coal, Inc. v. Continental Grain Co.*, 526 Pa. 489, 495, 587 A.2d 702, 705 (1991)). In short, a plaintiff must establish that the defendant's acts amounted to "intentional, willful, wanton, or reckless conduct . . ." *Id.* (quoting *SHV Coal*, 526 Pa. at 493, 587 A.2d at 704).

The Court noted a distinction between negligence and punitive damages claims, in that the plaintiff had a much

lower burden to meet on a mere negligence claim:

Damages awarded in a negligence action compensate a plaintiff for his or her losses. Punitive damages, in contrast, are not awarded to compensate the plaintiff for her damages but rather to heap an additional punishment on a defendant who is found to have acted in a conduct that is particularly egregious.

Id. (citing *G.J.D. by G.J.D. v. Johnson*, 552 Pa. 169, 172, 713 A.2d 1127, 1129 (1998)). The Court, however, rejected defendants' argument that a claim sounding in negligence can never support a claim for punitive damages. *Id.* at 445, n. 7 (citing *Hutchison*, 582 Pa. 114, 870 A.2d at 771).

In support of awarding punitive damages, plaintiff cited evidence showing that fires caused by children playing with butane lighters resulted in 120 deaths and an additional 750 injuries per year. The annual cost of such fires was estimated to be \$300-375 million per year, or 60 to 75 cents per lighter sold. *Id.* at 446. Plaintiff also cited the testimony of an employee of one of the defendants, who testified that the defendants knew of the dangers of young children playing with butane lighters and admitted that the lighters could have been equipped with child-resistant features. However, the witness testified that the defendants chose not to adopt such features after test marketing in France revealed that adult customers disliked the lighter with child-resistant features, as they found them difficult to operate. Plaintiff argued that the defendants' weighing of financial factors demonstrated that their conduct was outrageous. *Id.*

To award punitive damages, the *Phillips* III Court had to determine that defendants either had an evil motive or were recklessly indifferent to the rights of others by creating a harm that was substantially greater than that which was necessary to make their conduct negligent. *Id.* at 446-447. The Court readily found no evidence of evil motive "such as intentionally manufacturing a lighter with the express wish that children misuse it and start fires." *Id.* at 447. Next the Court concluded that plaintiff had failed to establish that defendants' conduct was so outrageous as to be "substantially greater" than that posed by negligent conduct. *Id.*

The Court cited several factors for concluding that defendants' conduct was not outrageous. First, the allegedly dangerous aspect of the product did not arise out of its intended use. Instead, it arose out of its misuse as a toy by a young child. Second, both plaintiff and defendants acknowledged that the product complied with all applicable safety standards at the time it was sold. Though compliance with such standards does not, standing alone, insulate a defendant from punitive damages, it is a factor to be considered. Third, the Court "flatly rejected" plaintiff's argument that defendants' weighing of financial concerns in determining whether to incorporate additional safety features into its product established that they acted wantonly. Instead, it merely showed "that Appellants were considering all of the myriad elements that affect decisions of a for-profit entity must make in manufacturing and marketing commercial products." Thus, the Court concluded that as a matter of law, plaintiff had not produced "evidence sufficient to establish that defendants' conduct was so outrageous as to justify an award of punitive damages." *Id.*

In a concurring opinion, Justice Newman restated her belief from her dissent in *Phillips* I that the plaintiff had failed to establish a cause of action in negligence. Whereas the majority felt that plaintiff had failed to establish the requisite outrageous conduct to support a claim for punitive damages, Justice Newman contended that punitive damages were inappropriate because there was no underlying entitlement to compensatory damages in the first place. *Id.* at 447-449.

D. Practical Application

For the defense practitioner, the Supreme Court's holdings in *Phillips* I and *Phillips* III have wide-reaching application. Collectively, their holdings may be summarized as follows:

- In a strict liability claim, a plaintiff must establish that the product was safe for its intended user. *Phillips* I, 576 Pa. 644, 657, 841 A.2d 1000, 1007 (2003).
- A manufacturer will not be held strictly liable for failing to design a product that was safe for use by any foreseeable user, because that would improperly import negligence concepts into strict liability law. *Phillips* I, 576 Pa. 644, 657, 841 A.2d 1000, 1007 (2003).

- A plaintiff may still maintain a negligence claim, even if the product was not defective under strict liability and the Restatement (Second) of Torts, § 402A. *Phillips* I, 576 Pa. 644, 648-652, 841 A.2d 1000, 1008-1010 (2003).
- A plaintiff may maintain a claim for negligent infliction of emotional distress when it is based on a viable underlying negligence claim. *Phillips* I, 576 Pa. 644, 662, 841 A.2d 1000, 1010 (2003).
- A breach of implied warranty of merchantability claim is applicable only when the product is being used by the intended user. *Phillips* III, 883 A.2d 439, 444-445 (Pa. 2005).
- Punitive damages are available only where a defendant has acted outrageously due to either an "evil motive or his reckless indifference to the rights of others." *Phillips* III, 883 A.2d 439, 445 (Pa. 2005).
- The unintended use of a product, while not dispositive, is a mitigating factor to be considered in determining whether punitive damages are appropriate. *Phillips* III, 883 A.2d 439, 447 (Pa. 2005).
- A defendant's compliance with applicable safety standards, while not dispositive, is a mitigating factor to be considered in determining whether punitive damages are appropriate. *Phillips* III, 883 A.2d 439, 447 (Pa. 2005).
- The fact that a manufacturer weighed financial concerns when manufacturing a product does not establish that it acted wantonly. *Phillips* III, 883 A.2d 439, 447 (Pa. 2005).

ENDNOTE

¹The authors, along with Edward M. Koch, Esquire, extensively analyzed the first Supreme Court decision and the second Superior Court decision in *Phillips* in a two-part series that appeared in the October 2004 and January 2005 issues of *Counterpoint*. In those articles, the two *Phillips* decisions were identified as *Phillips* I and *Phillips* II, respectively. For the purposes of this article, and the sake of continuity, the most recent Supreme Court decision has been referred to as *Phillips* III. However, because the second Superior Court decision (*Phillips* II) has now been reversed, future appellate decisions in Pennsylvania may simply refer to both Supreme Court decisions as *Phillips* I and *Phillips* II, respectively.

