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Application of South Carolina Equitable Indemnification Law in the Products Liability Case

by Brian A. Comer

South Carolina has long recognized the principle of equitable (non-contractual) indemnification. The concept frequently rears its head in products liability actions where a distributor, retailer, or other vendor is named as a defendant in spite of the fact that it had no involvement in the design or manufacture of the product. Based on South Carolina's strict liability statute, these parties are subject to potential liability. However, in the absence of any contractual indemnification, do these parties have any equitable indemnification rights against the manufacturer? What about other parties who are subject to liability because of their use of a product? This article seeks to answer these questions by surveying South Carolina's general law of equitable indemnification and summarizing its application in products liability cases.

South Carolina's General Equitable Indemnity Law

Generally, a party may maintain an equitable indemnification action if he was compelled to pay damages because of negligence imputed to him as a result of the tortious act of another. In such cases, the right to indemnity is implied by operation of law and as a matter of equity. Courts have allowed equitable indemnity in cases of imputed fault or where a "special relationship" exists between the party seeking indemnification ("indemnitee") and the party alleged to be liable for the imputed fault ("indemnitor"). The action can be asserted as a cross-claim between co-defendants during the litigation, as a third-party claim against a non-party, or as a subsequent action. The statute of limitations for an indemnity action generally runs from the time judgment is entered against a defendant.

For a party to recover under a theory of equitable indemnification, the indemnitee must prove (1) the indemnitor was liable for causing the plaintiff's damages, (2) the indemnitee was exonerated from any liability for those damages, and (3) the indemnitee suffered damages as a result of the plaintiff's claims, which were eventually proven to be the fault of the indemnitor. The indemnitee must be "innocent." If the indemnitee also has personal negligence in causing the injury, then there is no right of recovery. "The most important requirement for the finding of equitable indemnity is that the party seeking to be indemnified is adjudged without fault and the indemnifying party is the one at fault." The rationale is that the actions of the wrongdoer have involved the innocent party in litigation and have caused the party to incur expenses to protect his interest.

Allegations contained in the injured party's Complaint are not determinative of whether a party has a right to indemnity. There must be an adjudication of fault. If there is no adjudication, then the requirements are not satisfied. This provides an alleged tortfeasor with the argument that a special verdict form is necessary in order to determine and preserve the indemnitee's rights against the indemnitor. Furthermore, if a party settles during trial and the settlement agreement includes no language concerning allocation of fault (or includes language that there is no admission of liability), then the indemnitee will likely have a difficult time fulfilling the requirements for equitable indemnification. There must be an evidentiary basis for the indemnitee's claim that he is without fault.

With regard to the "special relationship" that must exist between the parties, South Carolina courts have held that the relationship between a contractor and subcontractor supports a claim for equitable indemnification. A building owner who hires a contractor to do work - and the contractor's work results in injury/damage that subjects the owner to litigation - also satisfies the special relationship requirement. However, if this relationship is too far removed or too attenuated, the special relationship contemplated by South Carolina jurisprudence is not present.

There is no right of indemnity between mere joint tortfeasors under South Carolina law. Joint tortfeasors are parties who act together in committing a wrong, or whose acts (if independent of each other) unite in causing a single injury. Stated differently, joint tortfeasors are two or more persons jointly or severally liable for the same injury to person or property. "Parties that have no legal relation to one
another and who owe the same duty of care to the injured party share a common liability and are joint tortfeasors without a right of indemnity between them." 21 Determining whether parties are joint tortfeasors requires a review of the factual evidence. 22

Equitable indemnification allows recovery of any costs which are reasonably necessary to defend the litigation or otherwise protect the innocent party's interests.23 The cost of settling a case is recoverable (1) if the settlement is bona fide, without fraud or collusion by the parties, (2) if, under the circumstances, the decision to settle is a reasonable means of protecting the innocent party's interest, and (3) the amount of the settlement is reasonable in light of the third-party's estimated damages and risk, and the extent of the defendant's exposure if the case goes to trial.24 In such cases, the party seeking indemnification is not required to prove the injured party's actual liability to recover the amount paid in settlement so long as he proves he was potentially liable to the injured party.25

**Application in Products Liability Cases**

The primary equitable indemnification issue that arises in the context of a products liability action is whether co-defendant parties are joint tortfeasors. Joint tortfeasors have a common liability without a right of indemnity.26 For example, South Carolina's strict liability statute makes each party in the chain of distribution (e.g., manufacturer, distributor, retailer) liable for sale of a defective product.27 Therefore, if a plaintiff is injured by a product and sues a party in the chain of distribution, case law supports that there is no right of indemnification between the parties in the chain of distribution.28 Each party has a common duty and common liability to the ultimate consumer under the strict liability statute, making them joint tortfeasors.

For example, Scott v. Fruehauf Corp., 302 S.C. 364, 396 S.E.2d 354 (1990), involved a plaintiff who was injured when he attempted to mount a wheel assembly on the axle of a trailer. The plaintiff settled his case against the wheel assembly manufacturer.29 He brought suit against additional parties in the trailer's chain of distribution, i.e., a refurbisher of the trailer and a lessor of the trailer. The plaintiff won a verdict against the refurbisher based on strict liability and negligence, and he won a verdict again the lessor based on strict liability only. The jury also found in favor of the lessor with regard to its cross-claim for indemnity. Both parties appealed on various grounds, one of which was the submission of the lessor's cross-claim for indemnification to the jury.30

The refurbisher argued the trial judge erred in submitting the lessor's cross-claim to the jury because there is no right of indemnity between joint tortfeasors.31 The court agreed. The defendants shared a common liability to the plaintiff based on South Carolina's strict liability law at S.C. Code § 15-73-10(2)(b).32 "[Refurbisher] and [lessor] each contributed to the consumer's injury by selling a defective product. We hold common law indemnification does not apply among joint tortfeasors in strict liability." 33 The court reversed the judgment against the refurbisher on the lessor's cross-claim. 34

Conversely, if a defendant's use of a product plays a role in causing injury to a plaintiff (independent of any fault of the defendant), then the product seller may be liable for indemnification.35 For example, in Stuck v. Pioneer Logging Machinery, Inc., 279 S.C. 22, 301 S.E.2d 552 (1983), the purchaser of a truck brought an indemnity action against the seller for recovery of settlement proceeds paid in a wrongful death suit arising from an accident involving the truck. The plaintiff needed mechanical harvesting equipment for his pulpwood business and contacted the defendant.36 The defendant recommended a certain loader mounted on a used truck and represented to the plaintiff that it was suitable for the plaintiff's use, which included harvesting timber and driving from one site to the next. The first time the plaintiff attempted to drive the truck, the rear axle shifted when the driver applied the brakes, which caused him to lose control and collide with an oncoming vehicle. The collision killed the driver of the oncoming vehicle and injured the driver. During the underlying wrongful death lawsuit, the truck purchaser asked for the seller's involvement in the action, which the seller declined. The truck purchaser later settled the wrongful death claim on behalf of himself and his driver (after trial but before appeal), and he brought an action for indemnity against the seller.37

During the indemnity trial, the purchaser presented expert testimony that the equipment's rear axle assembly was defective, which caused the driver to have trouble controlling the vehicle when applying the brakes.38 The seller presented evidence that the equipment was roadworthy and that the accident occurred because a rear axle slipped.39 The seller also attempted to admit the transcript from the wrongful death trial to argue the purchaser was negligent and a joint tortfeasor. The trial judge determined the purchaser and seller were not joint tortfeasors. The purchaser's indemnity action asserted the seller was liable on grounds separate and apart from any of the purchaser's purported fault. Specifically, the purchaser's claim was that the seller sold a defective and unreasonably dangerous product and breached its warranty that the vehicle was roadworthy. The court noted the purchaser's action was not based on a right of indemnity from a joint tortfeasor. Instead, it was an action to recover damages sustained by the purchaser based on the seller's failure to ensure the safe condition of the equipment. 40 The purchaser's failure to discover and correct the defects in the equipment did not excuse the seller's breach.41 The court emphasized that its inquiry focused on the seller's breach of warranty of fitness for a particular purpose and strict liability for

On these facts, the court in Lightner dismissed Duke's third-party indemnification claim. First, the court noted the plaintiff's allegations against Duke were for separate negligent acts, and not for the allegedly defective condition of the lawn mower. Therefore, if determined to be wholly or partly responsible for the plaintiff's injuries, Duke would not be entitled to indemnification on a negligence theory against the manufacturer (i.e., Duke would not be "innocent"). Alternatively, if Duke established that the manufacturer was the sole cause of the injury, Duke could not be indemnified because it would have none, and it could not be indemnified for defense expenses because the expenses would be incurred in defense of separate allegations of negligence against Duke alone. "It would not have defended against negligence imputed to it as the result of a tort committed by [the manufacturer], but instead would have defended against its own conduct using [the manufacturer's] negligence as a defense to causation." The lawn mower manufacturer also had no duty to Duke to produce a lawn mower free from defect, and if Duke was liable to the plaintiff, the loss would only be intangible economic loss that is not recoverable in a negligence action.

Significantly, the court also denied Duke's indemnity claims based in strict liability and breach of warranty. The court distinguished Stuck v. Pioneer Logging Machinery Co. by pointing out that the indemnitee in Stuck was a "user or consumer" of the product and within the language of South Carolina's strict liability statute. The same could be said with regard to the breach of warranty cause of action in Stuck, which extended to "any natural person who may be expected to use, consume, or be affected by the product and whose person or property is damaged by the breach of warranty." The plaintiff in Stuck had standing for both of these actions. Conversely, Duke did not have standing because it did not use or consume the lawn mower, and it suffered no damage to its person or property.

Vermeer Carolina, Inc. v. Woodchuck Chipper Corp., 336 S.C. 53, 518 S.E.2d 301 (1999), is probably the most significant state court products liability case involving equitable indemnification because it compares and contrasts the Scott and Stuck cases to summarize the law in South Carolina. Vermeer involved an indemnification action by a seller of a used wood chipper against the manufacturer. In an underlying action, the injured plaintiff purchased the wood chipper from Vermeer, and his right hand was amputated while using it. The plaintiff sued both Vermeer and the manufacturer. Prior to trial, the plaintiff requested a nonsuit with prejudice from the manufacturer, which was granted. He then settled with Vermeer. Vermeer then brought an action for indemnification and contribution against the manufacturer. The manufacturer moved for summary judgment, and the trial court granted the motion. Vermeer appealed, and one of the bases for the appeal was that the trial court erred in finding Vermeer was not entitled to indemnification.

The court provided an extensive review of the law of equitable indemnification. The court then compared the decisions in Scott and Stuck to show the contrasting outcomes and the relationships between the parties in the context of a strict liability products liability case. Applying this law to the case, the court noted that "[a]bsent a contractual provision whereby the upstream manufacturer agreed to indemnify the downstream retailer, the retailer cannot escape liability and, at the same time, prove the manufacturer negligently designed or manufactured a product." Vermeer did not show there was a genuine issue of material fact that it was not a joint tortfeasor. Therefore, the court held Vermeer had no right of equitable indemnification against the manufacturer with regard to the strict liability claim.

The lesson from Stuck, Scott, and Lightner, and Vermeer is that the relationship between the indemnitee and indemnitee is of paramount importance in determining whether a party can obtain equitable indemnification in a products liability claim. To the extent that a party is in the chain of distribution in distributing the product, then the strict liability statute essentially "binds" the parties as joint tortfeasors, eliminating any rights of equitable indemnification. Stuck illustrates that a product user outside of the chain of distribution has equitable indemnification rights if the breach alleged as a basis of recovery is independent of the theory that was asserted against the party (i.e., alleged negligent driving versus a alleged defective product).

The question is whether a party in the chain of distribution can obtain equitable indemnification against another distributing party outside of the strict liability context. For example, if a retailer is found liable in a products liability lawsuit on a theory other than strict liability (e.g., negligent design/manufacturer, failure to warn, breach of warranty, etc.), then is it possible for the retailer to obtain equitable indemnification against the manufacturer? This question does not appear to have been addressed by South Carolina courts. It is also unlikely scenario since no-fault, strict liability is likely the most strategically advantageous theory for

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a plaintiff to assert against potential defendants.

However, for purposes of argument, any theory of liability in a South Carolina products liability lawsuit requires a plaintiff to prove (1) the plaintiff was injured by the product; (2) the injury occurred because the product was in a defective condition, unreasonably dangerous to the user; and (3) the product, at the time of the accident, was in essentially the same condition as when it left the hands of the defendant. These common elements do not differentiate between manufacturer and (non-manufacturer) distributor/retailer. The fact that the same elements are required for every possible legal theory suggests that parties in the chain of distribution have common duties to product users and would be considered joint tortfeasors. An exception to this hypothesis may be if a retailer is found liable in strict liability and pursues indemnification against the manufacturer on a negligence theory. In a negligence action "the plaintiff bears the additional burden of demonstrating the defendant (seller or manufacturer) failed to exercise due care in some respect, and, unlike strict liability, the focus is on the conduct of the seller or manufacturer, and liability is determined according to fault." If the non-manufacturing party seeking indemnification premises recovery on a conduct-based theory of negligence, then this theory may implicates duties separate and apart from statutorily-imposed strict liability duties, and that party may be able to achieve equitable indemnification.

Conclusion

Parties in the chain of distribution of a product are likely to have a difficult time establishing equitable indemnification rights against one another. South Carolina's strict liability statute makes these parties joint tortfeasors because of their common duty, and the common elements for all product liability theories supports joint tortfeasor status outside of the strict liability context. However, products liability defendants can use these same principles to avoid fault by individual defendants who seek to shift liability to a product. If the product user is also at fault, South Carolina law does not allow equitable indemnification.

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Footnotes

1 Vermeer Carolina's, Inc. v. Wood/Chuck Chipper Corp., 336 S.C. 53, 60, 518 S.E.2d 301, 305 (Ct. App. 1999) ("Indemnity is that form of compensation in which a first party is liable to pay a second party of a loss or damage the second party incurs to a third party.") (citing Town of Winnsboro v. Wiedeman-Singleton, Inc., 303 S.C. 52, 56, 398 S.E.2d 500, 502 (Ct. App. 1990), aff'd, 307 S.C. 128, 414 S.E.2d 192 (1992)).


3 Vermeer, 336 S.C. at 60, 518 S.E.2d at 305.

4 Id.


7 Vermeer, 336 S.C. at 63, 518 S.E.2d at 307.

8 Id; see also Stuck v. Pioneer Logging Machinery, Inc., 279 S.C. 22, 301 S.E.2d 552 (1983) ("According to equitable principles, a right of indemnity exists whenever the relation between the parties is such that either in law or in equity there is an obligation on one party to indemnify the other, as where one person exposed to liability by the wrongful act of another in which he does not join.") (emphasis added).

9 Vermeer, 336 S.C. at 63, 518 S.E.2d at 307.

10 Id.

11 Id. at 60, 518 S.E.2d at 305.

12 Id. at 64, 518 S.E.2d at 307 (citing Griffin v. Van Norman, 302 S.C. 520, 522, 397 S.E.2d 378, 379 (Ct. App. 1990)).


14 See, e.g., id. (holding that settlement during trial that did not include adjudication of fault precluded action for equitable indemnification).

15 Id. at 487-89, 709 S.E.2d at 75-76.


18 Rock Hill Tel. Co., 363 S.C. at 390, 611 S.E.2d at 237 (holding that special relationship was not present where action for equitable indemnification was between utility and subcontractor who had been retained by intermediary independent contractor).


21 Id.

22 Id.

23 Vermeer, 336 S.C. at 60, 518 S.E.2d at 305.