STATE FARM INSURANCE COS. V. PREMIER MANUFACTURED SYSTEMS, INC.: SEVERAL-ONLY COMPARATIVE FAULT APPLIES TO STRICT PRODUCTS LIABILITY

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INTRODUCTION

In *State Farm Insurance Companies v. Premier Manufactured Systems, Inc.*, the Arizona Supreme Court unanimously held that Arizona Revised Statutes section 12-2506, which changed Arizona from a joint-and-several-liability to a comparative-fault regime for personal injury, property damage, and wrongful death, applies to strict products liability actions as well.[1] The court also held that applying several-only liability to strict products liability claims does not violate the Arizona Constitution.[2]

I. FACTUAL AND PROCEDURAL BACKGROUND

In May 2001, a homeowner insured by State Farm Insurance Companies ("State Farm") discovered that the water filtration system in his home had leaked.[3] This leak caused damages totaling $19,270.86, all of which State Farm covered.[4] In a subrogation suit, State Farm filed a strict products liability claim for distributing a defective product against Premier Manufactured Systems, Inc. ("Premier"), which had assembled, packaged, and sold the water filtration system, and Worldwide Distributing, Ltd. ("Worldwide"), which sold the plastic canisters used by Premier in assembling the system.[5]

Worldwide failed to answer State Farm's complaint, and the superior court entered a default judgment against it.[6] State Farm moved for partial summary judgment on the issue of liability, arguing that the court should hold Premier and

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1. State Farm Ins. Cos. v. Premier Manufactured Sys., Inc. (*State Farm II*), 172 P.3d 410, 418 (Ariz. 2007).
2. *Id.*
3. *Id.* at 412.
4. *Id.*
5. *Id.*
6. *Id.*

Worldwide jointly and severally liable for 100% of the damages.[7] Premier responded by arguing that Arizona Revised Statute section 12-2506 requires the court to hold defendants severally liable only and to allocate fault.[8] The superior court agreed with Premier and denied State Farm's motion.[9]

Premier and State Farm entered into a stipulated judgment that allocated 75% of fault to Worldwide and 25% of fault to Premier.[10] Because Worldwide had gone out of business and had no insurance coverage, State Farm could only collect 25% of its damages.[11]

On appeal, State Farm argued that Arizona Revised Statute section 12-2506 does not apply to strict products liability cases,[12] and that applying comparative fault principles to strict products liability actions violates Article 18, section 6 of the Arizona Constitution.[13] The court of appeals rejected both of State Farm's arguments and affirmed the trial court's ruling.[14]

II. EVOLUTION OF LIABILITY AMONG MULTIPLE TORTFEASORS IN ARIZONA

When a plaintiff's injury resulted from the conduct of multiple defendants, the common law imposed joint and several liability,[15] which allows the plaintiff to obtain the entire sum of his damages from any single defendant,[16] and it prohibited the paying defendant from seeking contribution from any joint tortfeasors.[17]

The legislature sought to eliminate the harshness created by the common law scheme by enacting the Uniform Contribution Among Tortfeasors Act ("UCATA") in 1984.[18] While retaining the basic tenets of joint and several liability, UCATA changed the common law rule by allowing a defendant to seek contribution from any joint tortfeasor either in the original action or in a separate

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7. *Id.*
8. *Id.*
9. *Id.*
10. *Id.* The stipulation allowed State Farm to argue on appeal that the liability should have been joint and several. *Id.*
11. *Id.*
12. State Farm Ins. Cos. v. Premier Manufactured Sys., Inc. (*State Farm I*), 142 P.3d 1232, 1234 (Ariz. Ct. App. 2006).
13. *Id.* at 1239.
14. *Id.*
15. *State Farm II*, 172 P.3d at 412 (citing Holtz v. Holder, 418 P.2d 584, 588 (Ariz. 1966)).
16. *Id.* (citing *Holtz*, 418 P.2d at 588); 2 DAN B. DOBBS, THE LAW OF TORTS 1078 (2001); W. PAGE KEETON ET AL., PROSSER AND KEETON ON THE LAW OF TORTS 328–29 (5th ed. 1984).
17. *Id.* (citing Holmes v. Hoemako Hosp., 573 P.2d 477, 479 (Ariz. 1977); DOBBS, *supra* note 16, at 1078).
18. 1984 Ariz. Sess. Laws ch. 237, § 1 (codified as amended at ARIZ. REV. STAT. ANN. §§ 12-2501 to -2509 (2003)); *see also State Farm II*, 172 P.3d at 412.

suit.[19] To determine contribution, the fact finder used comparative fault to allocate a percentage of fault to each tortfeasor.[20] Because the legislature retained joint and several liability, a defendant still had to pay more than his share when any of the other tortfeasors were insolvent.[21]

The liability system changed again in 1987 when the Arizona legislature eliminated joint and several liability[22] in favor of a comparative, several-only fault system.[23] Codified in section 12-2506, the several-only system uses comparative fault to apportion liability and demands that a tortfeasor "pay[] his or her percentage of fault *and no more*."[24] Unlike before where the defendant bore the risk of an insolvent joint tortfeasor, plaintiffs now bear this risk.[25] This change arose, in part, because of "powerful defendants, such as insurance companies and municipal entities" lobbying the state legislature to eliminate joint and several liability because, as a spokesperson for one of these entities claims, "it is not fair to have someone who is nominally involved pay 100 percent of the damages."[26]

While Arizona falls within the majority of states that have abolished or modified joint and several liability,[27] this decision is inconsistent with the Restatement (Third) of Torts and the positions of some other states that have considered the issue.[28] The Restatement calls for joint and several liability, notwithstanding any law eliminating it, when the liability of one party is imputed upon another.[29] Thus, because the Restatement holds a seller of a product vicariously liable for the manufacturer's defects, a court should apply joint and several liability,[30] thereby placing the burden of an insolvent manufacturer upon the seller not the buyer.

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19. *State Farm II*, 172 P.3d at 413 (citing ARIZ. REV. STAT. ANN. § 12-2503(A), (B)).

20. *Id.* (citing ARIZ. REV. STAT. ANN. § 12-2502(1)).

21. *Id.* (citing Gehres v. City of Phoenix, 753 P.2d 174, 177 (Ariz. Ct. App. 1987)).

22. Save three exceptions, enumerated in ARIZ. REV. STAT. ANN. § 12-2506(D) and discussed *infra* text accompanying notes 31–33.

23. 1987 Ariz. Sess. Laws ch. 1 (codified at ARIZ. REV. STAT. ANN. § 12-2506); *see also State Farm II*, 172 P.3d at 413.

24. *State Farm II*, 172 P.3d at 413 (quoting Dietz v. Gen. Elec. Co., 821 P.2d 166, 171 (Ariz. 1991)).

25. *Id.*

26. Kelly Catherine Myers, Note, *Tort "Reform" in Arizona: An Analysis of the Demise of Joint and Several Liability*, 35 ARIZ. L. REV. 719, 725 & n.44 (1993) (citations omitted).

27. 2 DOBBS, *supra* note 16, at 1087.

28. RESTATEMENT (THIRD) OF TORTS: APPORTIONMENT OF LIABILITY § 13 reporters' note cmt. a (2000); *see also* discussion *infra* Part III.A.3 (analyzing contrary holdings in Tennessee and California).

29. RESTATEMENT (THIRD) OF TORTS: APPORTIONMENT OF LIABILITY § 13.

30. *Id.* at cmt. a.

III. ANALYSIS

A. Arizona Revised Statute section 12-2506 applies to strict products liability actions

Justice Hurwitz began the court's analysis from a textual standpoint by noting that the plain language of the statute makes it clear that unless one of three exceptions applies, liability is several-only.[31] The exceptions retain joint and several liability, thereby making it possible for a defendant to be liable for more than his apportioned share.[32] These include cases where: (1) the parties acted in concert; (2) the other tortfeasor acted as an agent or servant for the party; or (3) liability exists because of the Federal Employers' Liability Act.[33]

State Farm argued that the second exception applied.[34] While conceding that this case does not depict the traditional principal-agent or master-servant relationship, State Farm asked the court to "impute an agency relationship between Premier and Worldwide."[35] State Farm relied on *Wiggs v. City of Phoenix*, where the court held the City 100% liable for an accident resulting from a faulty streetlight despite the fact that the city had contracted with Arizona Public Service ("APS") to maintain that streetlight.[36] In *Wiggs*, the court stated that the City had a non-delegable duty to maintain the streetlights, which created a principal-agent relationship and made the City liable for the actions (or inactions) of APS.[37]

State Farm claimed that, just as the City had a non-delegable duty of streetlight maintenance, "each entity in a chain of distribution has a non-delegable duty not to distribute a defective product."[38] Justice Hurwitz agreed; however, he clarified this point by holding that the entity is liable only for its own actions, not for those of the others involved.[39] Returning to the statute's text, Justice Hurwitz recited the definition of "fault," which expressly lists "strict liability,"[40] and stated that "every party in the chain of distribution of a defective product has committed its own 'actionable breach of legal duty.' Fault is thus found because of what each

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31. State Farm Ins. Cos. v. Premier Manufactured Sys., Inc. (*State Farm II*), 172 P.3d 410, 413–14 (Ariz. 2007) (citing ARIZ. REV. STAT. ANN. § 12-2506(A) (2003)). Section 12-2506(A) states that "[i]n an action for personal injury, property damage or wrongful death, the liability of each defendant for damages is several-only and is not joint, except as otherwise provided in this section." ARIZ. REV. STAT. ANN. § 12-2506(A).

32. ARIZ. REV. STAT. ANN. § 12-2506(D).

33. *Id.* The elements of a claim brought under the Federal Employers' Liability Act, 45 U.S.C. §§ 51–60 (2000), include: (1) the plaintiff has suffered injury while acting within the scope of his employment with the railroad, (2) the employment furthered the railroad's interstate business, (3) the railroad acted negligently, and (4) the railroad's negligence contributed to plaintiff's injury. 17 AM. JUR. TRIALS § 397 (2007).

34. *State Farm II*, 172 P.3d at 414.

35. *Id.*

36. *Id.* (citing Wiggs v. City of Phoenix, 10 P.3d 625, 629 (Ariz. 2000)).

37. *Wiggs*, 10 P.3d at 628–29.

38. *State Farm II*, 172 P.3d at 414.

39. *Id.* (citing Jimenez v. Sears, Roebuck & Co., 904 P.2d 861, 864 (Ariz. 1995); O.S. Stapley Co. v. Miller, 447 P.2d 448, 251–52 (Ariz. 1968)).

40. ARIZ. REV. STAT. ANN. § 12-2506(F)(2) (2003).

tortfeasor did on its own . . . rather than because of its relationship to other wrongdoers."[41]

After refusing to impute a principal-agent relationship between Premier and Worldwide, the court discussed and dismissed three additional arguments that State Farm raised to support its conclusion that Arizona Revised Statute section 12-2506 should not apply to strict products liability cases.

1. Provision for right of contribution under section 12-2509 does not nullify several-only liability under 12-2506

State Farm next argued that section 12-2509, which grants strictly liable defendants a right to contribution, would have no purpose if the several-only liability described in section 12-2506 applies.[42] Justice Hurwitz, however, dismissed this argument by noting that section 12-2509 was part of the original 1984 UCATA that retained joint and several liability for all tort cases.[43] Section 12-2506, enacted three years later, changed the law to several-only liability subject only to the three exceptions in section 12-2506(D).[44] Therefore, the adoption of section 12-2506 means that section 12-2509 only applies if the action falls within one of the three exceptions.[45] Thus, to accept State Farm's argument so as to "requir[e] joint and several liability in all cases covered by section 12-2509 would render § 12-2506 a dead letter."[46]

2. The indemnity provision in section 12-684 is not inconsistent with the several-only liability of section 12-2506

Section 12-684, enacted in 1978, grants a seller the right to seek indemnity from a manufacturer in a products liability action.[47] State Farm argued that this statute allows for the continuation of joint and several liability in these actions.[48] The court disagreed for two reasons.[49] First, the court borrowed the rationale from the previous argument that dealt with timing, stating that "the indemnification provisions in § 12-684 were first enacted in 1978, and thus can hardly be thought to negate *sub silentio* the broad abolition of joint and several liability in 1987."[50] In addition, the court explained that the indemnification provision "is not at all inconsistent" with fault apportionment under section 12-2506; instead, the two may easily co-exist.[51]

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41. *Id.* at 415.
42. *Id.*
43. *Id.*
44. *Id.*
45. *Id.*
46. *Id.*
47. ARIZ. REV. STAT. ANN. § 12-684(A) (2003); *see also State Farm II*, 172 P.3d at 415.
48. *State Farm II*, 172 P.3d at 415.
49. *Id.*
50. *Id.*
51. *Id.* at 415–16 (citing Bridgestone/Firestone N. Am. Tire, L.L.C. v. A.P.S. Rent-A-Car & Leasing, Inc., 88 P.3d 572, 581–82 (Ariz. Ct. App. 2004)).

3. Opinions from Tennessee and California carry no weight in this decision

State Farm also argued that decisions from Tennessee and California, holding that joint and several liability applies to strict products liability defendants, should be followed.[52] The court, however, distinguished these holdings and rejected State Farm's argument.[53]

In Tennessee, the supreme court, rather than the legislature, adopted comparative, several-only fault as a matter of common law.[54] Because strong policy reasons existed against its application in strict products liability actions, the supreme court decided to retain joint and several liability for these types of actions.[55] Justice Hurwitz, after discussing and commending Tennessee's decision as a matter of sound policy, determined that the role of the court in Tennessee was that of developing the common law, while, here, the court's duty was that of statutory interpretation.[56] Because the legislature had spoken and expressly included exceptions to the several-only rule,[57] the court cannot "engraft further exceptions into the law simply because [it] might favor them as a matter of policy."[58]

California, like Arizona, enacted a statute that transitioned the California liability fault system to comparative fault.[59] The California statute, however, did not define "fault" while the Arizona statute did.[60] The Arizona legislature defined "fault" broadly to specifically include strict products liability.[61] Because California had no "fault" definition, the California court "was thus free to conclude that the law did not require allocation of fault in strict products liability actions."[62] Therefore, unlike the California court, the Arizona Supreme Court had no room to make policy decisions.[63]

B. Section 12-2506 does not violate the Arizona Constitution

In addition to arguing that section 12-2506 should not apply to strict products liability actions, State Farm also contended that such application violates the Arizona Constitution.[64] Article 18, section 6 of the Arizona Constitution

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52. *Id.* at 416.
53. *Id.*
54. McIntyre v. Balentine, 833 S.W.2d 52, 56, 58 (Tenn. 1992); *see also State Farm II*, 172 P.3d at 416.
55. Owens v. Truckstops of Am., 915 S.W.2d 420, 432 (Tenn. 1996); *see also State Farm II*, 172 P.3d at 416.
56. *State Farm II*, 172 P.3d at 416.
57. ARIZ. REV. STAT. ANN. § 12-2506(D) (2003).
58. *State Farm II*, 172 P.3d at 416.
59. CAL. CIV. CODE § 1431.2 (West 2007); Wimberly v. Derby Cycle Corp., 65 Cal. Rptr. 2d 532, 536–37 (Ct. App. 1997); *see also State Farm II*, 172 P.3d at 416.
60. *State Farm II*, 172 P.3d at 416 (citing *Wimberly*, 65 Cal. Rptr. 2d at 536).
61. ARIZ. REV. STAT. ANN. § 12-2506(F)(2); *see also State Farm II*, 172 P.3d at 416.
62. *State Farm II*, 172 P.3d at 416 (citing *Wimberly*, 65 Cal. Rptr. 2d at 536).
63. *Id.*
64. *Id.*

provides that "[t]he right of action to recover damages for injuries shall never be abrogated, and the amount recovered shall not be subject to any statutory limitation."[65] The court divided and analyzed each part of this clause separately: (1) the anti-abrogation clause and (2) the limitations on damages clause.

1. Section 12-2506 does not violate the "anti-abrogation" clause

The anti-abrogation clause preserves courtroom access to litigants by prohibiting any law that prevents a litigant from bringing a common law tort claim.[66] While the abrogation of a common law right violates the constitution, regulation of a common law tort does not.[67] Deciphering between an abrogation and a regulation depends upon "'whether a purported legislative regulation leaves those claiming injury a reasonable possibility of obtaining legal redress.'"[68]

State Farm argued that because strict products liability actions rarely involve "fault" on the part of the "innocent" seller in a chain of distribution, the adoption of several-only liability effectively eliminates the right to institute actions against these sellers; thus, it abrogates a right.[69] The court dismissed this argument.[70] First, the court noted that, facially, the replacement of joint and several liability in favor of several-only liability does not abolish the right to bring a tort action.[71] Second, Justice Hurwitz disagreed with the assertion that the right to bring action against any party within the chain of distribution is effectively abrogated by the statute.[72] Because mere distribution of a defective product constitutes a breach of a legal duty, any party doing so falls under section 12-2506(F)(2)'s definition of "fault."[73] Therefore, several-only liability does nothing to abrogate the right to institute action against even an "innocent" seller.[74]

2. Section 12-2506 does not violate the "limitations on damages" clause

The constitution also prohibits any law that limits the amount recoverable by a plaintiff.[75] In an earlier case, the court concluded that "*instituting a several-only system of liability* . . . regulates responsibility for cause rather than limits the damages recoverable."[76] The possibility exists that an insolvent defendant may leave a plaintiff unable to collect his or her full judgment; however, almost any

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65. ARIZ. CONST. art. 18, § 6.
66. *State Farm II*, 172 P.3d at 416 (citing Cronin v. Sheldon, 991 P.2d 231, 238 (Ariz. 1999)).
67. *Id.* at 417 (citing Duncan v. Scottsdale Med. Imaging, Ltd., 70 P.3d 435, 442–43 (Ariz. 2003)).
68. *Id.* (quoting Boswell v. Phoenix Newspapers, Inc., 730 P.2d 186, 195 (Ariz. 1986)).
69. *Id.*
70. *Id.*
71. *Id.*
72. *Id.*
73. *Id.*
74. *Id.*
75. ARIZ. CONST. art. 18, § 6; *see also State Farm II*, 172 P.3d at 418.
76. *State Farm II*, 172 P.3d at 418 (quoting Jimenez v. Sears, Roebuck & Co., 904 P.2d 861, 869 (Ariz. 1995)).

tort-related statute affects recovery in some way.[77] The constitution "is not a guarantee that the entire judgment will be collectible from a single defendant or indeed from any of the responsible parties."[78]

CONCLUSION

In *State Farm Insurance Companies v. Premier Manufactured Systems, Inc.*, the Arizona Supreme Court unanimously held that the several-only, comparative fault provisions of Arizona Revised Statute section 12-2506 apply to strict products liability actions. The court decided that because strict liability does not fall under an exception to section 12-2506, nor does any other statute void section 12-2506's effectiveness, the statute must apply. The court also held that the statute does not violate the anti-abrogation or the limitation on damages provisions of the Arizona Constitution. As a result plaintiffs, not defendants, must bear the risk of an insolvent defendant in a strict products liability action.

77. *Id.* (citing *Jimenez*, 904 P.2d at 869–70).
78. *Id.* (quoting *Jimenez*, 904 P.2d at 869–70).