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Strict Liability Extended to Commercial Leases

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sion, the court relied upon its analysis in *Quinlin v. Mid Century Ins.*, 741 P.2d 822 (1987), and the state legislature's use of "offer" in other insurance statutes. It concluded that "offer" was used to instruct insurance companies simply to make a certain type of coverage available to purchasers. Nevertheless, the court stated that in order to effectuate the legislature's intent, the insurers must notify their customers that greater UM coverage is available. The *Quinlin* court held that the following statement included in the insurer's renewal notice satisfied the statutory notification requirements: "Did you know that you may now have uninsured motorist coverage in amounts up to your bodily injury liability limits? If interested contact your agent." In examining the notification in the case at bar, the supreme court held that USAA made a much fuller disclosure of the UM coverage available to insureds, and thus met the notice requirement under the statute.

The court concluded, however, that the 1990 amendment to the applicable state law rendered *Quinlin's* notice standard inapplicable to insurance transactions that occurred after the effective date of the statute. The legislative history behind the amendment indicated that it was specifically intended to impose prospectively a greater duty of notice upon insurers.

Court refuses to impose retroactively a broader standard of disclosure

Nevertheless, the Nevada Supreme Court rejected Breithaupt's argument that *Quinlin* should be overruled and a broader duty of disclosure retroactively imposed. It concluded that the legislative history behind the applicable state law indicated the legislature's intent was to impose a greater duty of disclosure upon insurers only to insurance transactions made after the effective date of the statute.

The court examined the committee meetings and legislative history behind the 1990 amendment to NRS

687B.145(2). In doing so, it concluded that the legislature had not considered the statute as imposing a duty of notice greater than announced in *Quinlin*. The court failed to identify any legislative evidence that *Quinlin* contravened the intent of the 1979 legislature in enacting NRS 687B.145(2). Furthermore, it reasoned that even if *Quinlin* had been wrongly decided, it was not necessary to impose retroactively a greater burden upon insurers. In making this determination, the court articulated three factors limiting the law to prospective application. These included: (1) the decision must dictate a new legal principle which either overrules past precedent on which parties may have relied or is an issue of first impression, the outcome of which was not clearly foreshadowed; (2) the court must evaluate the merits in each case by examining the prior history, purpose, and effect of the rule under analysis and whether or not retroactive operation will aid its implementation; and (3) the court must consider whether retroactive application could cause substantial inequitable results. The supreme court concluded that the retroactive application of NRS 687B.145(2) would not improve pre-1990 consumer awareness of the benefits of purchasing the optional UM coverage. Accordingly, it affirmed the lower court's grant of summary judgment for the insurer, USAA.

—Benjamin Malkin

Strict liability extended to commercial leases

In *Samuel Friedland Family Enterprises v. Amoroso*, 630 So.2d 1067 (Fla. 1994), the Florida Supreme Court held that the doctrine of strict liability extends to commercial lease transactions of defective products.

The Amorosos hit rough seas

The Diplomat Hotel (Diplomat), a waterfront property in Hollywood, Florida, leased part of its land to Sunrise Water Sports, Inc. (Sunrise) which used the land to operate a sailboat rental stand. Sunrise owned the sailboats, but Atlantic Sailing Center, Inc. (Atlantic), rented them out. The Amorosos were guests at the Diplomat and rented sailboats on three separate occasions. During the third rental, the crossbar on the Amorosos' rented sailboat broke and Mrs. Amoroso was injured. As a result of her injuries, Amoroso and her husband sued the Diplomat, Sunrise, Atlantic, and the welder who had repaired the crossbar a few days before the accident. One of the Amorosos' claims asserted that the Diplomat, Sunrise, and Atlantic were strictly liable for Mrs. Amoroso's injuries.

The trial court directed verdicts in favor of all the defendants on the strict liability claim. The district court of appeals reversed the trial court, holding that strict liability extends to commercial lease transactions. The appellate court certified the question of whether the doctrine of strict liability extends to commercial lease transactions for appeal to the Florida Supreme Court.

Lessors in the leasing business held to strict liability

The Florida Supreme Court initially analyzed the purpose of strict liability. The court stated that the doctrine of strict liability causes the entities within the distributive chain who profit from the product's sale or distribution to bear the burden of product defects, even undetectable ones. As compared with an innocent injured person, those entities are in a better position to ensure the safety of products, protect against defects in those products, and spread the cost of any resulting injuries. The Florida Supreme Court had previously adopted the strict liability doctrine in *West v. Caterpillar Tractor Co*, 336 So.2d 80, 87 (Fla. 1976), and recognized that "a

manufacturer who places a potentially dangerous product on the market and encourages its use undertakes a special responsibility toward members of the public who may be injured by its use."

Since *West*, courts have expanded the doctrine of strict liability to include not only manufacturers, but also retailers, wholesalers, and distributors. In addition to the district court of appeals in the case at bar, several other circuits, as well as courts of various states, have extended strict liability to commercial lessors for defective products they leased.

The New Jersey Supreme Court, for example, held a truck rental company strictly liable for injuries resulting from a defective truck it leased. The court based its decision to extend strict liability to lessors on the similarities between sales and lease transactions. The court suggested that the rationale for imposing strict liability may be even greater in leasing arrangements than for sales because a lessee usually has less opportunity than a purchaser to inspect a product, and the risk of injury is greater in commercial leasing due to the product's repeated entry into the stream of commerce.

Likewise, the California Supreme Court also held commercial lessors strictly liable. The court reasoned that the purpose of imposing strict liability is to insure that the costs of injuries resulting from defective products are borne by the manufacturers who put these products into the market rather than by the injured persons who are powerless to protect themselves. The court concluded that the only difference between sales and lease transactions is which party retains title to the product. Because the legal form of title does not affect the risk of harm or the burden of cost, lessors and sellers should be subject to the same liability.

The California Supreme Court limited its holding to lessors in the business of leasing, just as strict liability claims are limited to sellers in the business of

manufacturing or retailing. This restriction is consistent with the policy of spreading the cost of injuries because only those "in the business," those who regularly engage in such transactions, are able to adjust prices for the costs associated with strict liability. Accordingly, a person who only leases or sells an item in an isolated transaction is not able to adjust its price for the cost associated with strict liability and should not have to bear that burden.

The court is immune to the Diplomat's arguments

In the case at bar, the Diplomat argued that the district court should not have held it strictly liable for leasing a defective product. The hotel first contended that the district court's application of strict liability was unfair because it was overly broad. It urged the Florida Supreme Court to limit its holding to only those lessors who were "mass dealers in chattel." The Diplomat asserted that the district court's holding would cause a drastic increase in potential liability, which small businesses could not endure. The Florida Supreme Court quickly disposed of this argument, finding no authority or reason to differentiate between a business which is considered a mass dealer in a product and one which is not, provided both are actually in the business of leasing the defective product.

The Diplomat next contended that lessors should be treated as sellers of used goods who are strictly liable only for manufacturing and design defects, but not for defects arising after a product has left the manufacturer and the original seller. This argument was also unpersuasive. The supreme court explained that the policies underlying strict liability require lessors and sellers of used goods to be treated differently because of the distinctions in the role and functions of each. Sellers of used goods should not bear the risk where they neither created it nor assumed it and are not in a position to implement proce-

dures to avoid the distribution of defective products. Defects in a used product generally arise before the product reaches the seller and while the product is in the hands of an unknown previous owner. The seller is unaware of the prior history of products, and can only discover and correct latent defects at a great cost. Further, participants in the used goods market understand that no assurances as to quality exist. These distinct qualities are the reason sellers of used goods are subject only to a limited application of strict liability.

Used product sellers differ from commercial lessors in that the commercial lessor knows the prior history of a product and is easily able to discover and repair any defects through routine inspections. Furthermore, lessees view the lessor's act of placing the product on the market as an implied guarantee of the product's fitness and as an assumption of the risk by the lessor. These important differences between sellers of used goods and lessors demand a broader application of strict liability to lessors in the business of leasing in order to serve the underlying policies of the doctrine of strict liability.

Court finds the Diplomat strictly liable for leasing the defective sailboat

After determining the current status of the law regarding strict liability, the Florida Supreme Court examined the specific facts of the case at bar. The court recognized that the Diplomat, a hotel, would not normally be considered as engaging in the business of renting sailboats. Nevertheless, because the Diplomat leased part of its property for the specific purpose of sailboat rental, actively marketed the boats to its guests as a part of the hotel's services, and led guests to believe that they were renting their boats from the Diplomat, the hotel's involvement in the sailboat rental business was sufficient to subject it to strict liability as a commercial lessor. Further, the court found that the Amorosos

were entitled to assume the boat they rented was free from defects. Accordingly, the majority affirmed the district court's holding that the Diplomat was strictly liable for injuries to Mrs. Amoroso resulting from defects in a sailboat she rented from Atlantic. Thus, the Florida Supreme Court extended the application of strict liability to commercial lease transactions, subject to the limitations set forth in the opinion.

Dissenting justices question strict liability

Justices McDonald and Overton concurred in part and dissented in part with the majority's opinion. The justices concurred with the majority's decision insofar as it held the Diplomat liable under the theories of implied warranty of fitness and negligence, but disagreed with the application of strict liability to the Diplomat. They contended that strict liability should not apply to the Diplomat because the sailboat rental business was only an incidental part of the hotel's business. Furthermore, the two justices felt that the majority's application of strict liability to the Diplomat was unnecessary because the theories of implied warranty of fitness and negligence provide adequate protection to the public in such cases.

—Christy Thouvenot

Mailing, not receipt, determines refund time limitations

In *Rosser v. United States*, 9 F.2d 1519 (11th Cir. 1993), the U.S. Court of Appeals for the 11th Circuit held that the statute of limitations for a tax refund claim expires two years from the mailing of a disallowance notice. Reversing the district court, the 11th Circuit declared the plain language of 26 U.S.C. §6532(a)(1) to mean that the statute of

limitations for an income tax dispute runs from the date a disallowance notice is mailed, regardless of whether the taxpayer actually receives such notice. The court further maintained that a second disallowance notice does not equitably estop the Internal Revenue Service (IRS) from asserting the statute of limitations as a bar to a taxpayer's recovery.

Taxpayer Claims Refunds for Charity Deductions

Robert G. Rosser's federal income tax returns for the years 1979 through 1982 claimed charitable deductions for art objects he donated to the Birmingham Museum of Art. The IRS disallowed portions of those charitable deductions and, therefore, found deficiencies in Rosser's tax liability for those years. On April 5, 1985, Rosser paid his deficiencies for 1979, 1980, and 1981. On December 30, 1986, Rosser paid his deficiencies for 1982 and 1983.

On March 18, 1987, Rosser filed timely refund claims for 1980 and 1981. On April 1, 1987, Rosser filed refund requests for 1979, 1982, and 1983. On January 5, 1988, the IRS responded to Rosser's refund claims by sending to him via certified mail notices of disallowance for each of the years 1979 through 1983. Rosser denied receipt of these notices and submitted an affidavit attesting to his failure to receive them.

On December 30, 1988, Rosser refiled his petitions for refunds for 1979 through 1983, contending that he had not received the disallowance notices from the IRS. The IRS responded by mailing Rosser letters on January 17, 1989, which stated that it would look into his 1982 and 1983 claims and answer him "more fully in 60 days." On January 23, 1989, the IRS issued Rosser a notice of disallowance for 1979, 1980, and 1981. The notice explained that his claims were not timely filed as required by 26 U.S.C. Section 6511 and advised Rosser to contact the IRS with questions.

On January 18, 1991, Rosser filed a refund suit, arguing that the statute of limitations did not begin to run upon mailing of the initial notices of disallowance on January 5, 1988. Rosser argued that the Section 6511 statute of limitations should not begin to run *until* the taxpayer actually receives the notice. Rosser contended that he reasonably relied on the January 17 and January 23, 1989, letters he received from the IRS. In contrast, the IRS argued that its letter mailed January 5, 1988, constituted adequate notice to begin the statute of limitations period, and that its January 17, 1989, letter had no effect on the limitations period.

The district court determined that the statute of limitations did not bar Rosser's suit, and pursuant to the parties' stipulation as to the relevant amount in taxes, entered judgment in Rosser's favor.

Eleventh Circuit rejects taxpayer's argument that notice receipt is required

On appeal, the IRS contended that both the plain language of Section 6532(a)(1) and congressional intent conflict with Rosser's interpretation of the statute. Thus, the 11th Circuit first examined the language of Section 6532(a)(1) which states as follows:

[n]o suit or proceeding...for the recovery of any internal revenue tax...shall be begun...after the expiration of two years from the date of mailing by certified mail or registered mail by the Secretary to the taxpayer of a notice of disallowance of the part of the claim to which suit or proceeding relates.

The court specifically noted that the plain language of Section 6532(a)(1) indicates that the statutory period begins to run from the date of the mailing, irrespective of the taxpayer's receipt of the notice.

The 11th Circuit next scrutinized the legislative history of Section 6532(a)(1),