

Sun Chemical v. Fike: NJ Product Liability Act Claims Can Be Paired with NJ Consumer Fraud Act Claims

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Products Liability, Mass Torts & Consumer Class Actions Alert

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The New Jersey Supreme Court recently ruled that claims under the New Jersey Consumer Fraud Act (“NJCFCA”) relating to the sale of a product are not *per se* subsumed by the New Jersey Product Liability Act (“NJPLA”). The Supreme Court’s opinion therefore leaves open the possibility that a defendant who engages in fraudulent practices in connection with the sale of a product could face a NJCFCA claim, a NJPLA claim, or both. This Alert provides an overview of the *Sun Chemical* decision and its impact on future NJCFCA claims arising from harm caused by a product.

The *Sun Chemical v. Fike* Decision

In *Sun Chemical v. Fike*, the Supreme Court addressed the following question from the Third Circuit: “whether a Consumer Fraud Act claim can be based, in part or exclusively, on a claim that also might be actionable under the Products Liability Act.” *Sun Chemical Corporation v. Fike Corporation*, A-89-18 (Jul. 29, 2020). The Supreme Court answered that question in the affirmative.

The case involved a fire that occurred in an explosion isolation and suppression system purchased by Sun Chemical Corporation (“Sun Chemical”) from Fike Corporation (“Fike”). Sun Chemical asserted a single claim against Fike in the District of New Jersey under the NJCFCA, alleging that Fike made various oral and written misrepresentations regarding the system. Sun Chemical did not assert a NJPLA claim. In particular, Sun Chemical alleged that Fike represented the suppression system would prevent explosions, would have an audible alarm, and that it complied with industry standards. Additionally, Sun Chemical alleged that Fike represented that the suppression system had never failed. The District Court granted Fike’s motion for summary judgment finding that the NJPLA subsumed Sun Chemical’s claims. Sun Chemical appealed, and the Third Circuit certified the question to the New Jersey Supreme Court.

In holding that NJCFCA claims could coexist with NJPLA claims, the Supreme Court reasoned that the two statutes govern different conduct and that there is no conflict between the NJCFCA and the NJPLA. While the NJPLA encompasses (and subsumes) claims for design defect, manufacturing defect, and warning defect, it

does not encompass claims for deceptive, fraudulent, or misleading commercial practices – claims governed by the NJCFA. The Supreme Court further explained that claims for fraud and misrepresentation require unique remedies to prevent such conduct. Thus, “a [NJ]CFA claim alleging express misrepresentations – deceptive, fraudulent, misleading, and other unconscionable practices – may be brought in the same action as a [NJ]PLA claim premised upon product manufacturing, warning, or design defects.”

The Supreme Court confirmed, however, that where a claim is “premiered upon a product’s manufacturing, warning, or design defect, that claim must be brought under the [NJ]PLA with damages limited to those available under that statute; [NJ]CFA claims for the same conduct are precluded.” In other words, “aside from breach of express warranty claims, claims that sound in the type of products liability actions defined in the [NJ]PLA must be brought under the [NJ]PLA.” For example, failure-to-warn claims continue to fall squarely within the NJPLA and therefore may not be cast as NJCFA claims. The Supreme Court explained that the “theory of liability” underlying a claim determines whether the cause of action falls under the NJCFA or NJPLA—not the nature of the plaintiff’s damages.

What Does the *Sun Chemical v. Fike* Decision Mean for My Business?

The *Sun Chemical v. Fike* decision allows for the co-existence of the NJCFA and NJPLA in limited situations, e.g., where a plaintiff plausibly frames his “product” claim as arising from a fraudulent misrepresentation. Thus, manufacturers that once could be confident that their potential liability arising from the sale of products would be confined to the NJPLA, now face the possibility that they will be subject to the broad array of available remedies under the NJCFA, including treble damages and attorneys’ fees. Because of this, product manufacturers and sellers should make doubly sure that their consumer-facing literature and product statements are well-substantiated and defensible. Note, however, that *Sun Chemical* did not involve a pharmaceutical or drug, or other highly regulated product, and therefore does not upset the long line of decisional law declining to apply the NJCFA to activities that are comprehensively regulated by federal or state agencies. See, e.g., *N.J. Citizen Action v. Schering-Plough Corp.*, 367 N.J. Super. 8, 14 (App. Div. 2003).

If you have any questions regarding the NJPLA, NJCFA, or related issues, please contact the authors, a member of the firm’s Products Liability, Mass Torts & Consumer Class Actions Group, or the McCarter attorneys with whom you interact.