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## TORTS Strict Product Liability Actions: Define Product Seller

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## TORTS

### *Strict Product Liability Actions: Define Product Seller*

CODE SECTION:	O.C.G.A. § 51-1-11.1 (new)
BILL NUMBER:	SB 140
ACT NUMBER:	745
SUMMARY:	The Act, by specifically defining "product seller," clarifies the common law principle that strict liability claims for defective products can be maintained only against a manufacturer.
EFFECTIVE DATE:	July 1, 1987

#### *History*

The common law principle that privity of contract is not necessary to support a tort action is codified in Georgia.<sup>1</sup> O.C.G.A. § 51-1-11(b)<sup>2</sup> imposes strict liability on manufacturers of defective products sold as new property.<sup>3</sup> Because strict liability is in derogation of the common law, the statute is to be strictly construed.<sup>4</sup>

The limited strict liability statute was enacted to hold the manufacturer accountable, but there was no clarification in the previous law concerning the definition of a manufacturer. Instead, the law left the distinction between manufacturers and other dealers to the courts.<sup>5</sup>

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1. O.C.G.A. § 51-1-11(a) (Supp. 1987).

2. O.C.G.A. § 51-1-11(b) originally was enacted in 1968 and was not retroactively applied. This subsection created a new cause of action. *See Watkins v. Barber-Colman Co.*, 625 F.2d 714 (5th Cir. 1980); *Wansor v. George Hantscho Co.*, 243 Ga. 91, 252 S.E.2d 623 (1979).

3. O.C.G.A. § 51-1-11(b) (Supp. 1987). *See Lodge v. Champion Home Builders Co.*, 170 Ga. App. 21, 315 S.E.2d 912 (1984); *Center Chem. Co. v. Parzini*, 234 Ga. 868, 218 S.E.2d 580 (1975); *Ellis v. Rich's, Inc.*, 233 Ga. 573, 212 S.E.2d 373 (1975).

4. *See Colt Indus. Operating Corp. v. Coleman*, 246 Ga. 559, 272 S.E.2d 251 (1980) (subsection (b) is in derogation of the common law and should be strictly construed).

5. *See Yaeger v. Stith Equip. Co.*, 177 Ga. App. 835, 837, 341 S.E.2d 492, 494 (1986) (quoting *Pierce v. Liberty Furniture Co.*, 141 Ga. App. 175, 179, 233 S.E.2d 33, 37 (1977)) (an entity which assembles component parts and sells them as a single product under its trade name is a manufacturer); *Morgan v. Mar-Bel, Inc.*, 614 F. Supp. 438 (N.D. Ga. 1985) (a corporation which actually designs or builds the machine, assembles component parts into a single product, or represents a product as its own is a manufacturer).

## SB 140

The Act is a detailed extension and clarification of the law of products liability in Georgia.<sup>6</sup> This Act, one of three major changes in products liability law enacted by the 1987 General Assembly, is a part of the tort reform initiative.<sup>7</sup> Georgia law does not permit a mere dealer of products to be held strictly liable for injuries caused by a defective product which it sold.<sup>8</sup> The new Act clarifies this rule of law and states that "a product seller is not a manufacturer as provided in Code section 51-1-11 and is not liable as such."<sup>9</sup>

Courts in Georgia have addressed the definitional problem concerning who is a manufacturer.<sup>10</sup> However, under prior law neither the General Assembly nor the courts provided a specific description of a "product seller." The new Act defines the term "product seller" to provide courts with guidelines to determine if a plaintiff has sued the proper defendant.<sup>11</sup>

The Act will be advantageous to those product sellers who are improperly named as defendants in strict products liability actions. The court now will have a statutory basis for acting on a summary judgment motion made by a product seller defendant, increasing the likelihood that the court will grant such a motion and save time and money.

The original version of the bill provided specific guidelines for the court to follow when dismissing a strict products liability action against the product seller.<sup>12</sup> The bill would have allowed for systematic dismissal in most cases once the product seller certified the identity of the manu-

6. O.C.G.A. § 51-1-11.1 (Supp. 1987).

7. See O.C.G.A. § 51-1-11(c) (Supp. 1987) (expanding the statute of repose contained in subsection (b)(2) to apply to negligence claims as well as strict liability claims, with three exceptions); O.C.G.A. § 51-12-5.1 (Supp. 1987) (dividing cases into two categories: (1) products liability cases, without limitation as to the amount of punitive damages recoverable but requiring 75% of punitive damages after costs to be paid to the State of Georgia and (2) nonproduct liability cases with a \$250,000 limit on punitive damages unless the defendant acted with specific intent to cause harm, in which case there is no limit).

8. *Lodge v. Champion Home Builders Co.*, 170 Ga. App. 21, 315 S.E.2d 912 (1984).

9. O.C.G.A. § 51-1-11.1(b) (Supp. 1987).

10. See *supra* note 5.

11. O.C.G.A. § 51-1-11.1(a) (Supp. 1987) states that:

[T]he term "product seller" means a person who, in the course of a business conducted for the purpose leases or sells and distributes; installs; prepares; blends; packages; labels; markets; or assembles pursuant to a manufacturer's plan, intention, design, specifications, or formulation; or repairs; maintains; or otherwise is involved in placing a product in the stream of commerce.

*Id.*

12. Telephone interview with Senator Roy Barnes, Senate District No. 33 (Apr. 30, 1987) [hereinafter Barnes Interview].

facturer.<sup>13</sup> The shorter House Judiciary Committee version of the bill, which was adopted, removed this automatic dismissal language.<sup>14</sup>

The Act applies only to "causes of action accruing on or after July 1, 1987."<sup>15</sup>

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13. The specifications allowing for dismissal in the original version of SB 140 were as follows:

- (1) The non-manufacturer defendant must file an affidavit certifying the correct identity of the manufacturer.
- (2) The statute of limitations is tolled upon the filing of the original suit against the non-manufacturer defendant.
- (3) The plaintiff must then file a complaint against the manufacturer(s).
- (4) The court must then order the dismissal of the certifying non-manufacturing defendant unless the plaintiff can show any one of the following:
  - (a) The statute of limitations has run on all assertions of strict liability against the manufacturer.
  - (b) The identity of the manufacturer is incorrect.
  - (c) The manufacturer is non-existent, not subject to the court's jurisdiction or cannot be served.
  - (d) The defendant had some control over the design or manufacture of the product or has provided notice of the danger to the manufacturer.
  - (e) The defendant had actual knowledge of the defect.
  - (f) The defendant created the defect.

*Id.*

14. HB 140 was adopted without a suggested amendment by the bill's sponsor, Senator Roy Barnes, which would have eliminated punitive damage awards against manufacturers when their product "complied at the time of its manufacture with certain governmental standards or specifications." HB 140 (SFA), 1987 Ga. Gen. Assem.

15. O.C.G.A. § 51-1-11.1(d) (Supp. 1987).