

NEW MEXICO INJURY ATTORNEY BLOG

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Strict Product Liability Despite Modifications by User

The New Mexico Court of Appeals addressed for the first time in under New Mexico law whether modifications to a product by the user provides a complete defense to a product liability claim. The court in *Chairez v. James Hamilton Construction Co.* held that it did not and that a seller could be held strictly liable under product liability law for injuries caused by the product when the modifications to the product were foreseeable.

The case involved the modification of a rock crushing machine. The user, the deceased plaintiff's employer, had removed a metal plate covering a flywheel to facilitate removing debris and obstructions in the machine that occurred during operation. The metal plate was a safety feature designed to prevent users from being caught in the flywheel and crushed by the machine. This is in fact what happened to the deceased plaintiff. In addition, the deceased had been removing a jam while the machine was operational despite clear warnings in the user's manual against such behavior.

The plaintiff was prevented from bringing a claim against the clearly negligent employer due to the exclusive worker's compensation remedy under New Mexico law. The plaintiff did bring an action against the defendant manufacturer under a product liability theory. The defendant argued that the modifications to the machine provided a complete defense to the product liability claim. The defendant filed a motion for summary judgment on this ground. The district court granted the defendant's motion and dismissed the claims.

A number of states do indeed hold that alteration or modification of a product by an end user does provide a complete defense. However, as noted by the Court in *Chairez*, "Most states will not absolve a manufacturer or seller from liability as the result of an alteration or modification that was reasonably foreseeable." The court stated that New Mexico would follow the majority position.

The defendant had further argued that the modification was not foreseeable as a matter of law. The court again disagreed holding that the issue of the foreseeability of the modification was an issue that should be left to the jury. The New Mexico Court of Appeals therefore reversed the district court's grant of summary judgment.

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The court was careful to add that it was by no means suggesting that the modification was foreseeable. Instead, the court reiterated that this was a question of fact best determined by a jury.

Likewise, the issue of the comparative negligence of the employer would need to be addressed by the jury. Assuming the jury did award damages to the plaintiff, the total amount of the award would then be reduced by the percentage of fault attributed to the employer. Unfortunately, the deceased plaintiff would be out of luck for this portion of the damage award due to the exclusive workers compensation remedy against the employer.

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