



Virginia Product Liability Law: Please Don't Confuse Us with California

Joseph P. Moriarty

As we say in Virginia, that dog doesn't hunt. A recent California federal court opinion applied Virginia law to dismiss various product liability claims against a catheter manufacturer.

In *Boyer v. Abbott Vascular Inc.*, 2023 U.S. Dist. LEXIS 112747 (N.D. Cal. Jun. 29, 2023), the plaintiff's claims arose from the death of her husband following heart surgery. Plaintiff's decedent was a resident of Virginia, and the surgery occurred in Virginia. The maker of the catheter had its principal place of business in California, but there was no allegation that the catheter was designed in, or manufactured in, California. Thus, the California federal court ruled that California's connection to the claims was not as strong as Virginia's, and then applied Virginia law to dismiss the product liability claims.

Why did the plaintiff go all the way to California to file her product liability lawsuit so clearly arising in Virginia? Let's find out.

- Virginia does not recognize the doctrine of strict liability.
- Virginia applies the learned intermediary doctrine, where manufacturers of prescription medical products have a duty to warn physicians, rather than patients, of the risks associated with the use of the product.
- Virginia does not recognize a duty to recall.
- Virginia follows comment k of the *Restatement (Second) of Torts* § 402A, which does not recognize an implied warranty claim based on a design-defect theory for "unavoidably unsafe

products," or those which bear inherent risks, such as medicines which must be prescribed by a doctor.

- Virginia requires the plaintiff to plead the "specific warranties" (*i.e.*, the specific statements made by the manufacturer) to proceed on an express warranty claim.
- Virginia does not recognize a survivorship cause of action when the decedent dies of their injuries.
- Virginia's wrongful death statute does not create a new cause of action, but only a right of action in a personal representative to enforce the decedent's claim for personal injury that caused death.

Relying on these points of Virginia substantive law, the California federal court granted the defendant's motion to dismiss, with leave to amend. *Id.* at *5.

This case illustrates the importance of choice-of-law tests in product liability cases. In jurisdictions like Virginia, resolving conflicts of laws is simple. In Virginia, applying the *lex loci delicti* rule, the substantive rights of the parties are governed by the law solely at the place where the tort was committed. However, in other jurisdictions, such as California that follow the *Restatement (Second) of Conflicts of Laws* approach, the choice-of-law determination is made by applying "the most significant relationship" test on a case-by-case basis. Under this latter approach, a choice-of-law analysis becomes more complicated. There, the court will systematically analyze all the contacts with the competing jurisdictions, and then evaluate

the contacts according to their relative importance with respect to the issues in the case.

As was the case in *Boyer v. Abbott Vascular Inc.*, the conflicts-of-law ruling in a product liability case may ultimately decide whether the plaintiff has even stated a claim against the product manufacturer at the motion to dismiss stage of litigation.

Joseph P. Moriarty

Willcox Savage

440 Monticello Avenue, Suite 2200

Norfolk, Virginia 23510

jmoriarty@wilsav.com

(757) 628-5502