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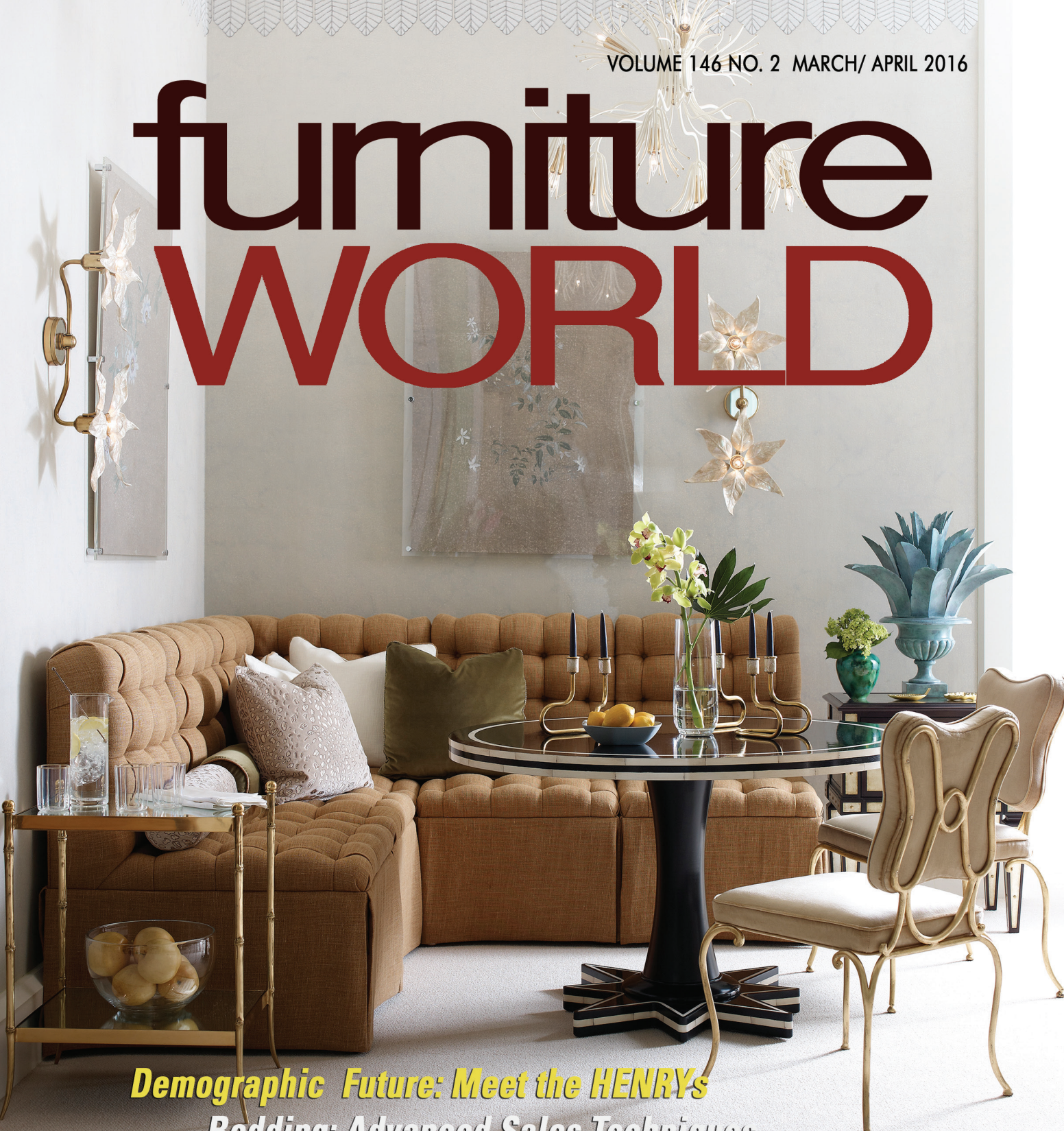
furniture WORLD



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PRODUCT LIABILITY

The product liability landscape for furniture retailers and manufacturers.

By Melissa R. Stull and George W. Soule

Furniture safety and liability present special challenges for manufacturers and retailers.

Homes are full of furniture that are the subject of litigation, the focus of standards, and the target of Consumer Product Safety Commission (CPSC) investigations.

Typical Claims in Furniture Product Liability Cases

Nationwide over the last 10 years, the most frequent accident scenario in reported product liability cases involving furniture, concerned a chair breaking when the plaintiff sat down. In those cases, plaintiffs alleged that the chair was structurally unsound, contained a manufacturing defect, or was not assembled properly. Several such accidents occurred on the retailer's show floor. Other cases involved furniture that tipped on users when pulled or opened; glass in furniture that broke; furniture upholstery or stuffing that ignited; furniture that was coated with toxic material; furniture that collapsed when leaned on; and furniture casters that rolled on a user's foot.

Plaintiffs asserted a host of allegations in these cases:

- **Design defect**—*where plaintiff alleges the furniture design is inherently defective.*
- **Manufacturing defect**—*when a flaw in the manufacturing process renders furniture defective.*
- **Failure to warn or instruct**—*finding defect due to inadequate instructions or warnings.*
- **Misrepresentation**—*when a party supplies false information for others to rely on.*
- **Negligent assembly**—*for example if a retailer failed to exercise proper care in assembling a piece of furniture.*
- **Premises liability**—*when a retailer knows of or could reasonably discover a dangerous condition, such as a slippery step, and fails to protect its customer from the danger.*[1]

In addition to establishing the basic elements of each allegation, the plaintiff must also prove causation, i.e. that the defective condition of the furniture or inadequate warning caused the accident or injury. The specific requirements to prove causation vary by state. For example, in Minnesota, a "direct cause" is a cause that had a substantial part in bringing about the accident or injury. In California, courts focus on whether the defect in the product was a substantial factor in producing the injury to determine a defendant's liability.

These cases raised a multitude of typical issues encountered in personal injury litigation, such as:

- **Daubert challenges**—*claims that a party's expert opinions are not admissible in court.*
- **Spoliation claims**—*claims that the product was not properly preserved after the accident or injury.*
- **Statute of limitations**—*claims that the lawsuit is barred because it was not filed within the time limits proscribed by law based on when the claim accrued*
- **Statutes of repose**—*claims that the lawsuit is barred because it was not filed within the time limits proscribed by law based on when the product was designed or manufactured.*

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The Retailer's Responsibility

In some cases, plaintiff can assert an independent negligence claim against the seller. The retailer may be liable in negligence, for example, for its activities in assembling the product or in staging the product in the show room. A retailer may have a duty to inspect the product before offering it to customers or displaying it in the store.[2] The seller may also be responsible as an "apparent manufacturer" when it labels the product with its identification and holds itself out as the manufacturer.[3]

In other cases, sellers defend against product liability claims, such as design defect, manufacturing defect, and failure to warn that are more properly the responsibility of the manufacturer. Many states have enacted statutes to govern the liability of sellers in product liability actions. Under such statutes, sellers may be liable when they exercise control over the design, manufacture or labeling of the product; or if they modified the product, had knowledge of the defect, or made separate misrepresentations about the product.[4] If the seller did not engage in such activity, it may seek dismissal from the lawsuit. For example, the Mississippi "innocent seller" statute has precluded liability for a seller and assembler when it did not "exercise substantial control over the manufacture" of the product and did not have knowledge of the allegedly defective condition.[5] Similarly, a retailer of a kitchen chair in New Jersey was not liable for strict liability when it did not exercise control over the design, manufacture or labeling of the chair, nor was it aware of any defects in chair.[6]

Even an "innocent" seller, however, may be liable for strict liability under these statutes when the plaintiff cannot recover from the manufacturer. If the manufacturer is not subject to service of process—because, for example the manufacturer is a foreign entity—or the plaintiff would not be able to enforce a judgment against the manufacturer—because, for example the manufacturer is bankrupt—the seller may be liable if a defective product caused a plaintiff harm.[7]

Indemnification from the Manufacturer

An innocent retailer may seek indemnification from the product manufacturer in a case where the claims are based on the product's design, manufacture, or warnings. Indemnity may be provided by common law, contract or statute.[8]

The more difficult issue arises, however, when the seller negotiates or imposes a broad indemnification provision on the manufacturer, making it responsible for all claims arising from the product. Big box retailers have significant market power over manufacturers, importers and distributors, and may exact such a provision as a condition to selling the product. When the fault for the accident properly lies with the retailer (e.g., because of improper assembly), such broad indemnification provisions are enforceable only when the parties' intent is expressed in clear, unequivocal terms. If the agreement is ambiguous, the courts will not impose indemnity in favor of a negligent party.[9]

Reaching all Parties

In cases involving generic products, the plaintiff may have difficulty in proving the identity of the seller or manufacturer. Many cases involve overseas manufacturers, particularly from China, complicating identification of the manufacturer, service of process, and establishment of jurisdiction over the manufacturer. This could pose a problem for a local retailer, as the retailer may be the only or easiest defendant plaintiff is able to sue.

Additionally, when a plaintiff fails to name all potential parties, such as the seller, manufacturer, or designer, the named defendants may need to bring in parties not directly involved in the lawsuit by filing a third-party claim. The defendant, however, might wish to consider the effect that doing so may have on its business relationship with the potential third-party defendant.

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The Effects of Product Misuse

In some product liability cases, the accident occurs when the plaintiff uses the product in a manner not intended by the manufacturer. For example, the plaintiff might become injured while attempting to stand on a bar stool to change a light bulb. In situations such as these, the defendant may allege misuse as an affirmative defense to the claims against it. Whether the defendant may defeat recovery based on product misuse depends on whether the misuse was "reasonably foreseeable" by the manufacturer because the "failure to design a product to prevent a foreseeable misuse can be a design defect."[10]

However, typically a "manufacturer will not be liable if an unforeseeable misuse of the product caused the injuries."[11] Some states make unforeseeable misuse a complete defense.[12] Other states make misuse a factor to be considered in comparing the fault of all parties involved.[13]

Injuries to Children

Furniture accidents involving use by and injuries to children are, unfortunately, common. The Consumer Product Safety Commission (CPSC) reports that "[a] child dies every two weeks and a child is injured every 24 minutes in the U.S. from furniture or TVs tipping over, according to CPSC data."[14] Accidents involving dressers tipping over on children, children pulling down televisions, and entanglement in window covering cords have been widely reported in recent years and sometimes result in action by the CPSC and/or lawsuits by the children's family. The accidents have also lead to introduction of new products such as anti-tip TV straps, wall anchor systems, and cordless blinds.

Are manufacturers required to "child-proof" every piece of furniture that could be placed in a home where children are present? In some cases, the defendant may argue that the child was not an intended user of the product. This argument has met with mixed reception. For example, in Stratos v. Super Sagless Corp., the manufacturer of an electric hospital bed argued that it could not be held strictly liable for the death of a toddler because its product was not intended to be "played with" by children; rather, the bed was intended to be used as a home health care product for adults.[15] The Pennsylvania court stated that unless the product is accompanied by express warnings or instructions that children should not use the product, it can look to the product's targeted purpose, intended audience, and knowledge of the ordinary consumer.[16] The court found that the product was marketed for home use where children could be present, and was not explicitly limited to adult use; therefore it was

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Conversely, in Beaver v. Howard Miller Clock Co., a manufacturer of a grandfather clock that tipped over on a small child was found not to have a duty to make its clock—a product not intended for use by children—"child-resistant." Michigan law does not require manufacturers of "simple products to design safety features to protect users—including children—from open and obvious dangers associated with the product." The court determined it must "necessarily consider what the product's ordinary user would understand about [the product's] characteristics." The risk of a clock tipping over should be obvious to the ordinary user, i.e., the children's parents, regardless of what the children involved in the accident may have known. Therefore, the clock was not defectively designed because it could tip over, nor did the manufacturer have a duty to warn of this danger.

However, the risk of televisions tipping over and injuring a child has been found not to be an open and obvious hazard to the average consumer. In the Simmons case, the Indiana court addressed the plaintiff's failure to warn and design defect allegations against the manufacturer of a television that fell on a ten-month-old child. A manufacturer must warn if misuse is reasonably foreseeable and must also warn regarding "latent dangerous characteristics of the product, even though there is no defect in the product itself." The defendant argued it was not obligated to warn and was not liable under a design defect theory because the characteristics and risks associated with the television were are open and obvious. While it may be obvious that televisions are heavy, the court found the risk of televisions tipping over was not obvious to the average consumer.

Regulation by the CPSC

In addition to defending lawsuits, furniture manufacturers and retailers must navigate CPSC investigations when products are involved in accidents or do not perform as intended. The CPSC is "charged with protecting the public from unreasonable risks of injury or death associated with the use of the thousands of types of consumer products under the agency's jurisdiction." The commission investigates incidents, injuries and complaints regarding a variety of consumer products, including furniture, and makes determinations whether a product should be recalled or otherwise be subjected to corrective action. Recently, for example, CPSC Chairman Elliot Kaye called on the entire furniture industry to make more stable products less prone to tip-over accidents.

The CPSC initiates investigations independently and based on information provided from consumers, manufacturers or retailers. Manufacturers, distributors, and retailers must file a

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(ANSI), as in the case of stability tests; while other standards may be required by the retailer in a sales contract.

Most states have statutes or court decisions governing the effect of compliance or noncompliance with standards in a product liability case. Generally, evidence of a product's compliance with a government or industry standard is admissible at trial to prove the product is not defective—but such evidence is not dispositive.[28] Likewise, evidence of noncompliance is admissible, but not conclusive, to prove that the product is defective.[29]

Some states have given the manufacturer an additional advantage in trial if the product complies with standards adopted or approved by a law or government agency. These states have adopted statutes creating a presumption, which can be rebutted by the plaintiff, that the product is not defective if it complies with a government standard.[30]

Conclusion: Product liability cases involving furniture raise a number of common issues. Litigants and counsel need to analyze these issues in light of the laws of the state in which the suit is brought. These issues also bear pre-suit consideration by furniture manufacturers and retailers — in establishing a product safety program, designing and manufacturing the product, performing risk assessments, developing warnings and instructions, negotiating sales contracts, and monitoring post-sale product performance.

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Citations:

[1] *Each state will have varying legal requirements regarding what a plaintiff must prove to prevail on each of these claims.*

[2] *See Biniek v. Marmaxx Operating Corp., No. 3:14-1154, 2015 U.S. LEXIS 131889, *36 (M.D. Pa. Sept. 30, 2015) (retailer had duty "to inspect the chairs after removing them from their boxes and before openly displaying them in its store").*

[3] *See Vita v. Rooms To Go La. Corp., No. 13-6208, 2014 U.S. Dist. LEXIS 168010, *8 (E.D. La. Dec. 3, 2014).*

[4] *See, e.g., Wis. Stat. § 895.047 (2); Ohio Rev. Code § 2307.78.*

[5] *See, e.g., Garcia v. Premier Home Furnishing, 2013 U.S. Dist. LEXIS 110527 (S.D. Miss. 2013).*

[6] *McKinley v. Skyline Corp., 900 F.2d 408 (D. N.J. 2012).*

[7] *See, e.g., Wis. Stat. § 895.047 (2); Ohio Rev. Code § 2307.78.*

[8] *See, e.g., Ariz. Rev. Stat. § 12-684(A) (manufacturer shall indemnify seller unless seller had knowledge of the defect or altered, modified or installed the product and such activity was a substantial cause of the incident).*

[9] *See, e.g., Hegwood v. Ross Stores, No. 3:04-CV-2674-BH(G), 2007 U.S. Dist. LEXIS 54969, *30 (N.D. Tex. July 28, 2007) (purchase order did not make importer liable for retailer's negligence when contract did not clearly establish parties' intent that indemnity provision covered damages caused by the retailer's negligence).*

[10] *Welch Sand & Gravel v. O&K Trojan, 668 N.E.2d 529, 533 (Ct. App. Ohio 1995).*

[11] *Uptain v. Huntington Lab, Inc., 723 P.2d 1322, 1325 (Colo. 1986), overruled in part on other grounds, 842 P.2d 198 (Colo. 1992).*

[12] *See, e.g., Ariz. Rev. Stat. § 12-683 (defendant shall not be liable if proximate cause was "a use... of the product that was for a purpose, in a manner or in an activity other than that which was reasonably foreseeable").*

[13] *See, e.g., Wis. Stat. § 895.047 (3)(c) (damages reduced by percentage of causal responsibility attributable to claimant's misuse).*

[14] *http://1.usa.gov/1lkctb9.*

[15] *Stratos v. Super Sagless Corp., No. 93-6712, 1994 U.S. Dist. LEXIS 18074 (E.D. Penn. Dec. 21, 1994) at *6.*

[16] *Id. at *8-11.*

[17] *Id. at *13-14.*

[18] *Beaver v. Howard Miller Clock Co., 852 F. Supp. 631, 638 (W.D. Mich. 1994),*

[19] *Id.*

[20] *Id. at 636.*

[21] *Id.*

[22] *Simmons v. Philips Elecs. N. Am. Corp., No. 2:12-CV-39-TLS, 2015 U.S. Dist. LEXIS 39184, *22-23 (N.D. Ind. March 27, 2015).*

[23] *Id. at *20-21.*

[24] *Id. at *22-23.*

[25] *http://1.usa.gov/1lqkBMx.*

[26] *Jayne O'Donnell, Ikea Recalls 27 Million Chests, Dressers After Two Deaths, USA Today, July 23, 2015.*

[27] *15 U.S.C. § 2064.*

[28] *See, e.g., Gentry v. Volkswagen of Am., 521 S.E.2d 13, 16 (Ga. Ct. App. 1999).*

[29] *See, e.g., Rice v. James Hanrahan & Sons, 482 N.E.2d 833, 836 (Mass. App. Ct. 1985) (violation of safety standards adopted by government agencies or industry associations or testing organizations admissible as evidence of failure to use reasonable care, proof that the defendant knew or should have known of the defect, feasibility to remedy a defect, or reflective of industry custom and practice).*

[30] *See, e.g., Tex. Civ. Prac. & Rem. Code § 82.008; Colo. Rev. Stat. § 13-21-403.*