When Buyers Choose and Manufacturers Pay: Navigating the Divided Legal Landscape of Optional Safety Features and Manufacturer Liability

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Society is in a state of rapid technological expansion. Every day, new devices and features are invented to provide comfort, convenience, or safety to consumers. While new technology may create opportunities for manufacturers to connect with the needs of consumers, the pace at which safety features are introduced to the market may also open manufacturers up to an increasingly large exposure in product liability lawsuits.

Manufacturers often allow consumers to choose whether to add certain safety features to their products. While empowering purchasers to "customize" their products to fit specific needs can lead to greater consumer satisfaction, offering safety features as optional equipment may, in some jurisdictions, expose the manufacturer to liability. By understanding the jurisdictional differences surrounding product enhancements and their implications for manufacturers, attorneys can be better prepared to defend products liability claims stemming from the inclusion of such features or the lack thereof.

Courts across the country are divided on whether a manufacturer can be liable for offering safety features as optional, and not standard, equipment. Even among jurisdictions that allow purchasers to "customize" their products with optional safety features, the effect of offering optional safety equipment varies. However, courts generally abide by one of the following approaches: (1) the Non-Delegable Duty Doctrine, the harshest for manufacturers, (2) the Optional Equipment Doctrine, the most flexible for manufacturers, or (3) the Risk-Utility Analysis, a case-by-case approach with varying results.

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Advising a client on the risks of offering optional safety features and defending a product design claim where the purchaser did not select an optional safety device requires thorough research of the forum's law and a creative defense strategy. By advocating for adoption of the Optional Equipment Doctrine, defense attorneys can build a consistent approach that allows manufacturers to promote customer individuality without risk of legal exposure.

Non-Delegable Duty Doctrine

Courts historically held that manufacturers cannot delegate design decisions involving safety features to consumers. In the early landmark case of *Bexiga v. Havir Manufacturing Corp.*, the Supreme Court of New Jersey held that manufacturers were responsible for the safety devices or lack thereof on the equipment that they produce. 290 A.2d 281, 285 (N.J. 1972). In the court's view, manufacturers were in a better position to determine which safety devices were reasonably necessary because the manufacturers had knowledge of specific products and applicable industry standards. *Id.* By shifting the burden to manufacturers, the law would ensure uniformity and trust that the ultimate user would be protected from the haphazard conduct of an individual purchaser. *Id.* Therefore, the court reasoned that manufacturers should bear the responsibility for making that decision rather than purchasers. *Id.*

Bexiga involved a device in which no relevant safety features were offered by the manufacturer; however, its broad rule imposing the burden of implementing safety features on manufacturers caused many jurisdictions to extend the case's logic to situations where a manufacturer offers additional, optional safety features. *Bilotta v. Kelly Co.*, Inc., 346 N.W.2d 616 (Minn. 1984) (adopting the Non-Delegable Duty Doctrine set forth in *Bexiga* to a case where the plaintiff alleged a dockboard was defective because it lacked an optional fixed-leg safety system); see also *Caterpillar Tractor Co. v. Ford*, 406 So.2d 854, 857 (Ala. 1981) (adopting the Non-Delegable Duty Doctrine set forth in *Bexiga* to a case where the plaintiff alleged a tractor was defective because it lacked an optional Roll Over Protection System). In many of these states, manufacturers cannot delegate choices involving safety features to consumers

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even when there is a reasonable basis for believing that purchaser will add his or her own better-fitting safety device to the equipment. *Bexiga*, 290 A.2d at 285. Instead, manufacturers have a duty to determine which features are "reasonably necessary" and add them to all applicable equipment. *Id.*

The Non-Delegable Duty Doctrine, the initial approach for optional safety feature cases, is now followed by only a minority of jurisdictions. Today, most jurisdictions either relieve manufacturers of some liability for offering optional safety features or at least take a more nuanced, factor-based approach. However, states such as New Jersey, Minnesota, and Alabama have maintained their nondelegable duty stance, holding manufacturers responsible for determining which safety features are necessary in equipment and assigning fault for not including such features. *Bilotta*, 346 N.W.2d at 616; see also *Caterpillar Tractor Co.*, 406 So.2d at 857; see also *Bexiga*, 290 A.2d at 285. Nevertheless, even within these few states, courts have, in some instances, hesitated to apply such strict bight-line rules against manufacturer defendants. For example, New Jersey has limited its strict approach to cases where (1) it was feasible to install a specific safety device on all machines or (2) the safety device would not render the machine unusable for its intended purpose. *Bexiga*, 290 A.2d at 285.

In its general application, the Non-Delegable Duty Doctrine is the least favorable approach for manufacturers. In a world full of quickly evolving technology, purchasers are often in the best position to weigh the costs and benefits of safety features. This approach is outdated and requires manufacturers to bear the risk of design choices the purchasers are often in a better position to make. Defense attorneys with cases in "non-delegable duty" states must develop a factual record to support one of the less onerous approaches discussed below and look for opportunities to change the law.

Risk-Utility Analysis

The Risk-Utility Analysis, as set forth in the Third Restatement of Torts, is currently a popular approach among many state courts, such as Texas, Washington, and South Carolina, to determine if a

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product is defective generally. *Timpte*, 286 S.W.3d at 311 (using the Risk-Utility Analysis to hold that a trailer ladder was not unreasonably dangerous); see also *Soproni v. Polygon Apartment Partners*, 971 P.2d 500 (Wash. 1999) (using the Risk-Utility Analysis to preclude summary judgment for a window manufacturer); see also *Branham v. Ford Motor Co.*, 701 S.E.2d 5, 14 (SC 2010) (adopting the Risk-Utility Analysis as the state's sole design defect approach and ruling that a seatbelt sleeve was not defective). Under this analysis, a combination of the following factors are weighed to determine if a product is defective: (1) the foreseeability of the severity of the injury, (2) the likelihood of occurrence, (3) the availability of a practical, available design, (4) whether the alternative design would have minimized the foreseeable risk of harm. *Sedgwick Ins. v. F.A.B.E. Custom Downstream Systems, Inc.*, 81 F.Supp.3d 582, 590-591 (E.D. Mich. 2015) (citing *Croskey v. BMW of North Am.*, Inc., 532 F.3d 511, 516 (6th Cir. 2008).

More recently, some states, such as Michigan, have applied the logic and balancing test for the Risk-Utility Analysis to cases where optional safety equipment was offered by the manufacturer but not purchased by the consumer. Owens v. Allis-Chalmers Corp., 414 Mich. 413 (Mich. 1982) (using a Risk-Utility Analysis to relieve a manufacturer of liability for offering an unpurchased, optional cage enclosure for a forklift because the plaintiff could not show that the roll-over weas foreseeable or probable). In doing so, courts have tailored the test and added another consideration to the analysis: whether the omission of the optional safety device rendered the product not reasonably safe. *Sedgwick Ins. v. F.A.B.E. Custom Downstream Systems, Inc.*, 81 F.Supp.3d 582, 590-591 (E.D. Mich. 2015) (citing *Croskey v. BMW of North Am.*, Inc., 532 F.3d 511, 516 (6th Cir. 2008).

Under this tailored analysis, optional safety features could give rise to liability if they could be feasibly added and would minimize a foreseeable risk of harm. *Cacevic v. Simplimatic Engineering Co.*, 645 N.W.2d 287, 672 (Mich. App. 2001). However, unlike the Non-Delegable Duty Doctrine, a defendant's choice to make a specific safety feature optional does not necessarily make the product defective. *Owens v. Allis-Chalmers Corp.*, 326 N.W.2d 372, 429 (Mich. 1982) (holding that the manufacturer was not liable for

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offering an unpurchased seatbelt for a forklift because Plain-tiff did not establish that the harm was foreseeable). Instead, the court looks at numerous factors, including the likelihood that requiring the safety feature would have prevented the foreseeable harm, on a case-by-case basis. *Timpte Indus-tries, Inc. v. Gish*, 286 S.W.3d 306, 311 (Tex. 2009).

To establish a safe harbor for manufacturers and relieve some of the variability of the case-by-case approach, a few jurisdictions have created a "purchaser's plans" exception that holds a product is not unreasonably dangerous if it was manufactured according to the purchaser's plans and specifications. *Huff v. Ford Motor Co.*, 338 N.W.2d 287, 293-295 (Mich. App. 1983); see also *Spangler v. Kranco, Inc.*, 481 F.2d 373 (4th Cir. 1973); see *also Gerhardt v. Cattron-Theimeg, Inc.*, 2013 WL 4736721 at *4 (Sept. 3, 2013). However, this safe harbor is only available to manufacturers if the purchaser's plans were not obviously dangerous and defective that "no reasonable manufacturer would make a product so designed." *Huff*, 338 N.W.2d at 293-295.

Optimal Equipment Doctrine

Finally, some courts have adopted an entirely different approach to cases involving unpurchased, optional safety equipment. Under the Optional Equipment Doctrine, a product is not defective when the evidence and inferences show that (1) the buyer has thorough knowledge of the product, its uses, and the availability of the safety feature, (2) there are normal circumstances of use in which the product is not unreasonably unsafe without the safety feature, and (3) the buyer can balance the risks and benefits of not having the safety feature. *Scarangella v. Thomas Built Buses, Inc.*, 717 N.E.2d 679 (N.Y. 1999).

The Optional Equipment Doctrine limits exposure for manufacturers and allows consumers to have more autonomy in their purchases. *Parks v. Ariens Company*, 829 F.3d 655, 658 (8th Cir. 2016) (interpreting Iowa law). Courts that have adopted this doctrine have reasoned that, when all three of the aforementioned elements are met, buyers are in a better position to choose which safety equipment is necessary based on their specific use of the product.

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Scarangella, 717 N.E.2d at 679. However, when even one of these elements is not met, manufacturers are in the better position to discover design defects, so strict liability is enforced. *Id.*

For example, the Court of Appeals of New York applied the Optional Equipment Doctrine and held that the bus manufacturer was not liable for the bus driver's severe injuries. *Scarangella*, 717 N.E.2d at 679. The manufacturer had offered a back-up alarm as an additional, optional safety feature for the bus, but the plaintiff's employer chose not to purchase it. *Id.* at 681. Because the plaintiff's employer had operated buses for decades and was highly knowledgeable about the safety risks and alter-native safety features offered, the court held that the employer, as a buyer, was in a better position than the manufacturer to know the risks of foregoing the back-up alarm system and should have the ability to choose the system that best fits its needs. *Id.* at 684. As such, the manufacturer was not liable. *Id.*

The Optional Equipment Doctrine has only been explicitly adopted in a handful of jurisdictions, with states such as New York, Iowa, Missouri, and Indiana leading the charge. *Scarangella*, 717 N.E.2d at 679 (adopting the Optional Equipment Doctrine to relieve a bus manufacturer of liability for offering an unpurchased, optional back-up alarm system); see also *Parks*, 829 F.3d at 655 (interpreting Iowa law and adopting the Optional Equipment Doctrine to relieve a lawnmower manufacturer of liability for offering an unpurchased, optional rollover protection system); see also *Morrison v. Kubota Tractor Corp.*, 891 S.W.2d 422 (Mo. Ct. App. 1994) (adopting the Optional Equipment Doctrine to relieve a tractor manufacturer of liability for offering an unpurchased, optional rollover protection system); see also *Anderson v. P.A. Radocy & Sons, Inc.*, 865 F.Supp. 522 (N.D. Ind. 1994) (granting summary judgment in favor of a manufacturer that offered an unpurchased, optional fiberglass bucket).

While states such as New York have applied the Optional Equipment Doctrine in its broadest form to relieve manufacturers from liability in most circumstances, other states have taken a more limited approach. For example, Iowa only applies the Optional Equipment Doctrine in cases where (1) the purchased product has multiple

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uses and (2) the optional equipment impairs some of those uses. *Parks*, 829 F.3d at 659-660.

The Optional Equipment Doctrine in its broadest form is the most favorable approach to manufacturers. Defense attorneys should push for adoption of this approach by highlighting its public policy advantages. Unlike the Risk-Utility Analysis, the Optional Equipment Doctrine uses a uniform, predictable approach that promotes manufacturer innovation with a reduced fear of litigation. The doctrine is fair, because often the purchaser is in the best position to understand the anticipated use of the product and decide whether a feature is warranted. The alternative is to force manufacturers to include, and consumers to purchase, features that not only do not enhance safety, but may make products less safe.

Even with all its benefits for manufacturers, defense attorneys in jurisdictions that have adopted the Optional Equipment Doctrine must still be weary of the pitfalls of the approach. As mentioned, the doctrine, in its current state, is not a one-size-fits-all approach across jurisdictions. States such as Iowa have adopted a narrow version of the doctrine that only relieves manufacturers of liability for offering optional safety equipment when failing to do so would impair at least one use of the product for the consumer. *Parks*, 829 F.3d at 659-660. Therefore, it is important to stay up to date on technological advances in the industry and be proactive in advising clients on the risks of offering safety features as optional rather than standard equipment.

Key Takeaways

As technology continues to evolve, manufacturers face increasing challenges in product liability litigation, particularly regarding the inclusion or omission of optional safety features. Jurisdictions differ in their approaches, ranging from the strict Non-Delegable Duty Doctrine to the more flexible Risk-Utility Analysis and the manufacturer-friendly Optional Equipment Doctrine. Defense attorneys must stay informed of these legal standards, advocate for favorable doctrines, and develop creative strategies to address the rapid pace of technological change. By under-standing the nuances of these approaches, attorneys can better protect manufacturers

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from undue liability and help shape a balanced legal landscape that encourages innovation.

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