



Product Liability

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The Distributor's Statute: Proof Necessary to Reinstate Product Liability Claim

As numerous manufacturers of consumer and industrial goods are moving operations off shore, American distributors increasingly struggle with passing on product liability responsibility to manufacturers. Under strict liability theory, everyone in the chain of distribution is liable to the potential plaintiff for “unreasonably dangerous” products, which cause injury. The Illinois Distributors’ Statute, 735 ILCS 5/2-621, is meant to relieve distributors from strict liability in products cases. In reality, attempts to apply section 2-621 to foreign manufacturers are becoming more difficult. The recent case of *Chraca v. U.S. Battery Manufacturing Co.*, 2014 IL App (1st) 132325 shows the hurdles distributors must clear to get relief from strict liability under the statute.

In *Chraca*, the plaintiff was injured while unpacking a shipment of golf cart batteries. The plaintiff, an employee of U.S. Battery Manufacturing Company (U.S. Battery), was lifting and carrying individual batteries with the assistance of a flexible black strap. As the plaintiff was carrying the batteries, the strap gave way, wrenching one of his shoulders and his neck. *Chraca*, 2014 IL App (1st) 132325, ¶ 2.

The plaintiff filed a strict-liability action against U.S. Battery alleging that two metal hooks separated from the strap. *Id.* ¶¶ 2–3. U.S. Battery, however, did not manufacture the subject strap. The subject strap found its way to the U.S. market through multiple companies. Yuhuan County Litian Metal Products Co. Ltd. (Yuhuan), located in China, manufactured the strap and originally released it into the stream of commerce. *Id.* ¶ 8. Pursuant to section 2-621, U.S. Battery provided Yuhuan’s information to the plaintiff who subsequently filed an amended complaint against Yuhuan. *Id.* ¶ 9. The court later granted the plaintiff’s motion for default judgment against Yuhuan after special process was served. *Id.* ¶¶ 8–9.

After certifying Yuhuan as the manufacturer, U.S. Battery moved for dismissal from the suit based on section 2-621. The plaintiff responded to the motion to dismiss by stating that there was “no good faith basis to assert Illinois has jurisdiction over [the manufacturer]” and the plaintiff would be unable to collect on the default judgment. *Id.* ¶ 10. Nevertheless, the circuit court then granted the section 2-621 dismissal of U.S. Battery. *Id.* ¶ 11.

Shortly after the dismissal of U.S. Battery, the plaintiff filed a motion to reinstate the claim against U.S. Battery pursuant to 735 ILCS 5/2-621(b)(3) or (b)(4). Specifically, those sections state:

The plaintiff may at any time subsequent to the dismissal move to vacate the order of dismissal and reinstate the certifying defendant or defendants, provided plaintiff can show one or more of the following:

- (3) That the manufacturer no longer exists, cannot be subject to the jurisdiction of the courts of this State, or, despite due diligence, the manufacturer is not amendable to service of process; or
- (4) That the manufacturer is unable to satisfy any judgment as determined by the court[.]



735 ILCS 5/2-621(b).

The plaintiff argued that all he needed to show under subsection (b)(3) was that it “appeared” there was no jurisdiction over the manufacturer and it would be “fruitless” to pursue an action. *Chraca*, 2014 IL App (1st) 132325, ¶¶ 12–13 (citing *Kellerman v. Crowe*, 119 Ill. 2d 111 (1987)).

In *Kellerman*, non-manufacturers were dismissed from a product liability suit after the manufacturer was certified. The defendants suggested that the reinstatement provisions of section 2-621 were similar to those found in section 2-1401 of the Code of Civil Procedure. The court disagreed, explaining that section 2-621 “is not intended to correct errors in a separate action, but rather allows a plaintiff to have reinstated to a pending product liability action a previously dismissed defendant, once it appears that an action against the product manufacturer is unavailable or will be fruitless.” *Kellerman*, 119 Ill. 2d at 117. The supreme court further stated that for this reason, section 2-621 dismissal was not a final order, unlike a section 2-1401 order. *Id.*

The plaintiff provided several reasons as to why it “appeared” that there was no jurisdiction over Yuhuan. First, Yuhuan did not import the strap directly to the United States. *Chraca*, 2014 IL App (1st) 132325, ¶ 13. Secondly, the plaintiff went so far as to present an affidavit jointly executed by native Chinese attorneys Xiong Yin and Yan, which stated: (1) there is no judicial assistance treaty between the United States and China that requires Chinese enforcement of American state court decisions; (2) it would be necessary to initiate a new action in China in order to obtain judgment; and (3) it would be almost impossible to directly collect from Yuhuan any judgment from the Illinois circuit court. *Id.* U.S. Battery responded that the plaintiff was misstating the legal standard for reinstatement when offering the “appeared” standard. *Id.* ¶¶ 13–14. The circuit court denied the plaintiff’s motion stating that the difficulty of collecting an Illinois judgment was not a part of the statutory criteria for reinstatement. *Id.* ¶ 15. The plaintiff appealed. The appellate court used a two-prong analysis in deciding whether a distributor should be reinstated. The appellate court first evaluated whether Yuhuan met the standard for being unable to satisfy a judgment under section 2-621 and secondly, analyzed whether Yuhuan was subject to personal jurisdiction. *Id.* ¶¶ 22–23.

What is the Plaintiff’s Evidentiary Standard on a Motion to Reinstatement?

In product liability cases seeking the reinstatement of a distributor, the Distributor Statute is controlling. The plaintiff in *Chraca* argued that the Illinois Supreme Court’s holding in *Kellerman*, 119 Ill. 2d 111 (1987), established the plaintiff’s necessary evidentiary standard for a section 2-621 reinstatement. Specifically, the plaintiff pointed to the language that section 2-621 was meant to allow the plaintiff to reinstate a product liability action of a previously dismissed defendant “once it *appears* that an action against the product manufacturer is *unavailable or will be fruitless*.” *Id.* at 117 (emphasis added).

The *Chraca* court disagreed with the plaintiff, reasoning that *Kellerman* did not set out an evidentiary standard for reinstating a distributor in a strict product liability action. The court stated that the *Kellerman* court was not construing any specific statutory terms, and it merely provided a descriptive summary of section 2-621. *Chraca*, 2014 IL App (1st) 132325, ¶ 22. The appellate court further reasoned that according to the plain language of the statute “it is *Chraca*’s burden to show that he is entitled to have the court vacate the dismissal order and reinstate the nonmanufacturing defendant to his product liability action.” *Id.* Further, the plaintiff “needed to show either that the product manufacturing defendant ‘is unable to satisfy any judgment as determined by the court’ or ‘cannot be subject to the jurisdiction of the



courts.” *Id.* Most importantly, the court noted the burden was on the plaintiff to provide “competent evidence” that the certifying defendant should remain in the case. *Id.* ¶ 39.

Inability to Satisfy Judgment

In Illinois, a company is deemed “unable to satisfy any judgment” when it is bankrupt or nonexistent. The plaintiff in *Chraca* provided no information regarding the financial stability of Yuhuan. In fact, the information provided by the plaintiff tended to suggest that Yuhuan was an ongoing and solvent business. *Id.* ¶ 25. Although information provided by the plaintiff may have showed an unwillingness to recognize Illinois judgments in China, such evidence did not indicate Yuhuan was declared bankrupt or was unable to satisfy any judgment as the statute requires. *Id.* ¶¶ 24–25. Therefore the court rejected “difficulty” in collecting a judgment as criteria under the statute. *Id.* ¶ 25.

Personal Jurisdiction

The Illinois Long Arm Statute allows its courts to exercise personal jurisdiction to the full extent of the State and Federal Constitutions. In a product liability case, the defendant satisfies the minimum contacts test when it purposefully avails itself of the privilege of conducting activities within the forum state. *Id.* ¶ 27. Illinois courts have long noted the mere placement of the product in the stream of commerce without any expectation that it be sold in the forum state does not create a minimum contact. *Id.* ¶ 30. If personal jurisdiction of the manufacturing defendant cannot be established in the case, the distributor should remain in the case. The *Chraca* court stated that Yuhuan must have “targeted” the forum before it submitted to its jurisdiction. *Id.* ¶¶ 34, 38. The facts the plaintiff provided show Yuhuan simply placed its product in the stream of commerce and did not take any action to place it in the hands of an Illinois consumer. *Id.* ¶ 34.

The appellate court ruled that the plaintiff’s evidence was enough to show that Yuhuan did not target Illinois. Nor were the manufacturer’s actions directed at the Illinois market. *Id.* ¶¶ 34, 38. The court noted that none of the facts provided suggested that Yuhuan was even aware the strap was sent to Illinois. *Id.* ¶ 38. As a result, the court ordered that U.S. Battery be reinstated as an active defendant. *Id.* ¶¶ 38–39.

Practice Pointers

The *Chraca* court affirmed that it is the plaintiff’s burden to show by “competent evidence” when a distributor may be reinstated pursuant to the statutory exceptions. The court also made clear that mere “difficulty” in enforcing or collecting a judgment is not enough. The manufacturer must be “unable to satisfy” a judgment by virtue of insolvency or bankruptcy. In *Chraca*, the plaintiff essentially presented the same type of evidence required to support a motion to dismiss under section 2-301 of the Code of Civil Procedure.

Distributors who desire more certainty in transferring product liability risk to the product manufacturer should consider the following:

- (1) In purchasing contracts, identify foreign manufacturers with a U.S. subsidiary or U.S. based product distribution network to avoid the risk of the lack of jurisdiction over the absent foreign product manufacturer. Alternatively, if there is leverage, require the foreign manufacturer to consent to U.S. and state court jurisdiction.



(2) Make sure the manufacturer, regardless of location, includes the distributor as an additional insured under an appropriate endorsement on the manufacturer's product liability policy.

(3) Require that the manufacturer obtain insurance from companies that regularly do business in the U.S. and insure U.S. risks.

About the Authors

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