

Schenck Price

SCHENCK PRICE SMITH & KING, LLP

www.spsk.com

August 17, 2018

New Jersey Supreme Court Rules on Offer of Judgment Rule with Multiple Defendants and Jury Charges in a Product Liability Case

By: Brian R. Lehrer, Esq.

In a case involving a product defect, the New Jersey Supreme Court recently ruled that evidence of a manufacturer's conduct is irrelevant in a manufacturing defect claim, but the trial court's failure to give a limiting instruction was harmless error; and that a single offer of judgment under R. 4:58-58 presented to multiple defendants will not bind a single defendant who's molded share of liability is less than the offer of judgment absent some advanced notice of that consequence. Willner v. Vertical Realty, Inc., - N.J. – (2018).

Willner was a products liability action. Plaintiff, Josh Willner, was injured while climbing a rock wall owned by his employer and sued numerous defendants including the manufacturers of the wall and parts contained in the wall – Vertical Realty, Inc. and ASCO Numatics.

Before trial, Willner made a single offer of judgment to the defendants in accordance with R. 4:58 in the amount of \$125,000.00. He obtained a verdict of \$358,000.00 with 30% liability on Numatics and 70% liability on Vertical Realty.

At the end of trial, the only claim left was a manufacturing defect claim. Plaintiff requested a jury charge that the jury was not to focus on the conduct of the parties, but the trial court refused to give the charge and instead provided a charge that mirrored model jury charge 5.40B, "manufacturing defect". The jury returned a verdict of \$358,000.00 – 30% of which was allocated to a manufacturing defect claim against Numatics.

The Supreme Court held that the trial court's failure to charge the jury on conduct evidence and its irrelevance in a manufacturing defect claim was harmless error.

The court then addressed the Offer of Judgment Rule. It noted that while the total verdict exceeded 120% of Willner's \$125,000.00 Offer of Judgment thus potentially triggering the Rule, Numatics' responsibility was only \$107,400.00. Therefore, the Supreme Court held that it would be unjust to trigger the Rule's sanctions against Numatics absent some kind of advance notice which was not given in this case.