

Webb & Azzarello Spurned by Third Circuit Restatement (Third) of Torts Grows Too Thick to Ignore?

In a significant opinion published last week, the United States Court of Appeals for the Third Circuit opened a new door for plaintiffs in product liability suits. In *Berrier v. Simplicity Manufacturing, Inc.*, No. 05-3621 (3d Cir. April 21, 2009), the federal appellate court ruled that a "bystander" or "non-intended user" can pursue a strict liability claim against a manufacturer to recover for injuries that occur while a third-party actually used the product.

Berrier involved a strict liability claim arising from a lawn mower accident. Ashley Berrier, a minor, was injured when a riding mower that was being operated by her grandfather backed up over her left foot, resulting in a traumatic amputation. The trial court reasoned that Ashley Berrier was a "bystander," and granted summary judgment in favor of the manufacturer.

The Third Circuit reversed the decision, predicting that Pennsylvania Supreme Court would adopt the Restatement (Third) of Torts which extends claims to bystanders such as Ashley Berrier who was not a user, let alone an intended user, of the lawn mower product that resulted in her injury. In doing so, the Third Circuit has opened the door to a new class of plaintiffs in federal court in strict liability claims. It is possible that a true shift in product liability law in Pennsylvania could be coming soon as well. At this moment, the Pennsylvania Supreme Court is reviewing a case in which it will decide whether to adopt the Restatement (Third) of Torts in design defect cases, a decision now predicted by the Third Circuit.

To review a more in-depth synopsis of the *Berrier* decision, or to view a full copy of the *Berrier* opinion, please click to the following link: [Synopsis of Berrier](#).

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