

Article - Courts and Judicial Proceedings

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§5–405.

(a) (1) In this section the following words have the meanings indicated.

(2) (i) “Manufacturer” means a designer, assembler, fabricator, constructor, compounder, producer, or processor of any product or its component parts.

(ii) “Manufacturer” includes an entity not otherwise a manufacturer that imports a product or otherwise holds itself out as a manufacturer.

(3) “Product” means any tangible article, including attachments, accessories and component parts, and accompanying labels, warnings, instructions, and packaging.

(4) “Sealed container” means a box, container, package, wrapping, encasement, or housing of any nature that covers a product so that it would be unreasonable to expect a seller to detect or discover the existence of a dangerous or defective condition in the product. A product shall be deemed to be in a sealed container if the product, by its nature and design, is encased or sold in any other manner making it unreasonable to expect a seller to detect or discover the existence of a dangerous or defective condition.

(5) (i) “Seller” means a wholesaler, distributor, retailer, or other individual or entity other than a manufacturer that is regularly engaged in the selling of a product whether the sale is for resale by the purchaser or is for use or consumption by the ultimate consumer.

(ii) “Seller” includes a lessor or bailor regularly engaged in the business of the lease or bailment of the product.

(b) It shall be a defense to an action against a seller of a product for property damage or personal injury allegedly caused by the defective design or manufacture of a product if the seller establishes that:

(1) The product was acquired and then sold or leased by the seller in a sealed container or in an unaltered form;

(2) The seller had no knowledge of the defect;

(3) The seller in the performance of the duties he performed or while the product was in his possession could not have discovered the defect while exercising reasonable care;

(4) The seller did not manufacture, produce, design, or designate the specifications for the product which conduct was the proximate and substantial cause of the claimant's injury; and

(5) The seller did not alter, modify, assemble, or mishandle the product while in the seller's possession in a manner which was the proximate and substantial cause of the claimant's injury.

(c) The defense provided in subsection (b) of this section is not available if:

(1) The manufacturer is not subject to service of process under the laws of this State or the Maryland Rules;

(2) The manufacturer has been judicially declared insolvent in that the manufacturer is unable to pay its debts as they become due in the ordinary course of business;

(3) The court determines by clear and convincing evidence that the claimant would be unable to enforce a judgment against the product manufacturer;

(4) The claimant is unable to identify the manufacturer;

(5) The manufacturer is otherwise immune from suit; or

(6) The seller made any express warranties, the breach of which were the proximate and substantial cause of the claimant's injury.

(d) (1) Except in an action based on an expressed indemnity agreement, if the seller shows by un rebutted facts that he has satisfied subsection (b) of this section and that subsection (c) of this section does not apply, summary judgment shall be entered in his favor as to the original or third party actions.

(2) Notwithstanding the granting of a motion for summary judgment pursuant to paragraph (1) of this subsection, the seller will thereafter continue to be treated as though he were still a party for all purposes of discovery including the uses thereof.

(3) On a subsequent showing of the occurrence of any condition described in subsection (c) of this section or that one or more of the conditions of subsection (b) of this section did not exist, during the pending litigation, the actions

dismissed by summary judgment pursuant to paragraph (1) of this subsection shall be reinstated and are not barred by the passage of time.

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