

## Can Fitness Facilities Be Liable for Defective Equipment Injuries?

### Avoiding Liability Bulletin – February 2018

*Please note: the following article relates to a products and completed operations liability case. CPH & Associates does not offer liability insurance for products and completed operations BUT wants this article to serve as a critical reminder stressing the importance of the selection, set up, placement and maintenance of equipment so that these types of situations don't turn into professional liability claims related to negligence.*

In a recent and interesting case from New Jersey,[\[1\]](#) an appeals court reviewed a trial court's decision in a fitness equipment injury case where summary judgment was granted to the defendants. In this case, the facts were reported as follows:

Around the time of the accident, HealthQuest employed plaintiff as a personal trainer; plaintiff was also a weight-lifter and body-builder. On June 9, 2012, during his off-hours, plaintiff was lifting weights at HealthQuest's facility. He placed an estimated six to seven hundred pounds of evenly distributed weight on a hack squat machine. After performing at least two repetitions, plaintiff "went to push up [when] the machine dropped and crushed [him] under it." He suffered serious injuries, which have significantly impacted his lifestyle and career.

In this action, plaintiff argues his injuries resulted from the hack squat machine's defective design. . . Regarding the products liability and negligence claims, plaintiff contends HealthQuest allowed the hack squat machine to remain in the stream of commerce despite known risks. He also argues that Coulter, an Ohio-based sporting and recreational equipment retailer, markets and sells the product as successor to Nebula Fitness, LLC (Nebula), the subject machine's manufacturer.

Although the plaintiff was an employee of the defendant facility, the instant action was not treated as a worker's compensation type claim since the employee's injury occurred during non-employment hours. In support of the plaintiff's product's liability and negligence claims, the plaintiff submitted to the court equipment reports from an industrial engineer and one from a kinesiology specialist. The engineer "determined the machine in question lacks lower safety stops and product warnings and safety instructions." The kinesologist stated:

that the machine's lacking lower stops "deprived [plaintiff] of the protection provided in other comparable hack squat machines." He further opined "HealthQuest's failure to provide a safe hack squat machine created an unreasonably dangerous condition that [caused plaintiff's] injury."

In response to the plaintiff's suit the defendant HealthQuest moved for summary judgment arguing that it did not place the hack squat machine into the stream of commerce and as a consequence, it

could not be liable for any injuries allegedly caused by the device. The trial court found that the defendant “never manufactured, distributed, or sold the hack squat machine . . . [and] never placed the machine into the stream of commerce.” In regard to the plaintiff’s claim based upon negligence, the trial court found that the plaintiff failed to submit any proof that the facility had notice of the machines’ defects. While the plaintiff attempted to counter that assertion based upon the statement that he heard the machine injured another employee some 9 years earlier, the lower court determined that such hearsay was inadmissible. While other claims were also asserted, the trial court granted summary judgment to the defendant. The plaintiff appealed.

On appeal the appellate court analyzed New Jersey law and noted as follows:

A manufacturer or seller of a product shall be liable in a product liability action only if the claimant proves by a preponderance of the evidence that the product causing the harm was not reasonably fit, suitable[, ] or safe for its intended purpose because it: a. deviated from the design specifications, formulae, or performance standards of the manufacturer or from otherwise identical units manufactured to the same manufacturing specifications or formulae, or b. failed to contain adequate warnings or instructions, or c. was designed in a defective manner.

The Act defines a "product seller" as:

[A]ny person who, in the course of a business conducted for that purpose: sells; distributes; leases; installs; prepares or assembles a manufacturer's product according to the manufacturer's plan, intention, design, specifications or formulations; blends; packages; labels; markets; repairs; maintains or otherwise is involved in placing a product in the line of commerce. [N.J.S.A. 2A:58C-8]

Based upon the stated law, the appellate court determined that since the defendant “did not manufacture, sell, or distribute the subject hack squat machine” it could not be liable under New Jersey Product Liability Laws. As to the plaintiff’s common law negligence claims, the appellate court noted that the decision of the trial court was correct because common law negligence claims require notice and an opportunity to cure a defect before liability can be successfully asserted. The appellate court determined that the 2008 injury to another employee involving a hack squat machine was properly excluded from consideration and as a consequence, the defendant could not be liable.

Despite the ruling in the case, facilities and personnel would be prudent to remember that the placement of equipment into service which is known to be defective or which is allowed to become defective due to a lack of proper maintenance or because of usage without appropriate maintenance or repair can expose facilities to claims related to product problems. Exercise machinery and fitness equipment needs to be properly selected, assembled, setup and placed in service, maintained in accordance with the standard of care and manufacturers’ instructions and if in need of repair, removed from service until repaired. Personal trainers and other fitness personnel are frequently involved in these activities and need to carry out these responsibilities.

