

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF WISCONSIN

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BARRY LEE SMALLEY,

Plaintiff,

v.

THE PROCTER & GAMBLE  
COMPANY,

Defendant.

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ORDER

06-C-0295-C

Plaintiff Barry Lee Smalley has moved the court to reconsider its decision to dismiss R.E. McKnight as a defendant in this action, in which plaintiff claims that defendant was negligent in failing to warn purchasers of Joy dish soap that it might cause burns if applied to the skin. In denying plaintiff leave to proceed against McKnight, I noted that plaintiff had not alleged any facts in his complaint concerning McKnight and, therefore, there appeared to be no basis under the law for his claim against her. Now plaintiff explains that McKnight works for defendant in its North America Product Safety Surveillance department and that, after plaintiff wrote to defendant to complain about his reaction to Joy dish soap, McKnight corresponded with plaintiff. Plaintiff attaches to his motion for reconsideration

the letters McKnight wrote to him. None of the letters suggest that McKnight was involved in the decision not to warn consumers that Joy dish soap should not be used for bathing, that she was responsible for developing or testing Joy dish soap for adverse reactions prior to its manufacture and sale or that she knew of dangers associated with the soap and was responsible for curing the defect or preventing its distribution to the public. In two identical letters, one dated April 4, 2006 and one dated April 17, 2006, McKnight 1) thanks plaintiff for contacting defendant; 2) advises him that defendant is committed to product safety and evaluates all products extensively before they are marketed; 3) explains that defendant follows up on all health-related comments “as part of [defendant’s] ongoing product safety program,” and 4) asks plaintiff to complete a questionnaire which she encloses, to return a sample of the dish soap for evaluation and to authorize defendant to review plaintiff’s medical records concerning his injury. In a third letter, McKnight thanks plaintiff for returning the questionnaire and providing a sample of the soap he used and advises plaintiff that the product will be evaluated by defendant’s Quality Assurance Group. In addition, McKnight states,

Procter & Gamble is committed to product safety. All of our products are extensively evaluated prior to marketing. Additionally, when used as developed and intended for hand dishwashing, we would not expect the use of Joy to result in any irritation. However, product in contact with the skin for long periods of time may, of course, cause skin irritation.

Plaintiff highlights the last sentence quoted above, and argues that based upon McKnight’s

“admission that [defendant’s] product Joy dish soap does cause irritation” and her status as an employee of defendant, she is a proper defendant in this action. Plaintiff is wrong. Plaintiff’s only claim in this case is that defendant Procter & Gamble was negligent in failing to warn consumers that Joy dish soap was not safe for bathing. The appropriate defendant in such a claim is the manufacturer of the product, not the manufacturer’s employees (particularly not employees such as McKnight, who had no apparent involvement with Procter & Gamble’s decision not to warn consumers). See, e.g., Strasser v. Tanstech Mobile Fleet Service, Inc., 236 Wis. 2d 435, 459, 613 N.W.2d 142, 154 (2000) (*manufacturers have duty to warn of dangers that they know or should know are associated with the proper use of their products*) (emphasis added); Restatement (Second) of Torts § 388 (1965) (“*one who supplies . . . a chattel . . . is subject to liability*”) (emphasis added); Cf. Restatement (Second) of Torts § 402A (1965) (strict products liability triggered where “*one who sells any product in a defective condition . . .*”). At a later stage in this case, plaintiff will have an opportunity to introduce whatever evidence he believes he has to prove that defendant Procter & Gamble knew of the dangers associated with the soap. Plaintiff’s motion for reconsideration will be denied.

ORDER

IT IS ORDERED that plaintiff Barry Lee Smalley's motion for reconsideration of the dismissal of R.E. Mcknight from this lawsuit is DENIED.

Entered this 17th day of July, 2006.

BY THE COURT:

/s/

BARBARA B. CRABB

District Judge