National Coordinating Counsel, CSST Class Actions — Ward Manufacturing

Tom Sullivan has more than 15 years of experience defending class actions and has been a leader in the defense of CSST class actions and national coordinating counsel for individual subrogated matters for Ward Manufacturing for much of that time.

Corrugated Stainless Steel Tubing is a form of gas tubing installed as a system to deliver natural gas throughout a home or building. CSST is thinner and more flexible than prior gas piping technology, such as steel pipe. Installers and builders generally prefer it as a safe and useful alternative to traditional iron piping.

Despite these advantages, plaintiffs have alleged claims for diminished property value and loss of the benefit of the bargain on grounds that CSST can be damaged in rare instances by the electrical energy from events like a lightning strike. The CSST industry has been defending itself against such allegations for several years.

Mr. Sullivan has been at the forefront of the legal efforts assisting Ward through these challenges. He has represented Ward in consumer class action litigation and coordinated the defense of hundreds of individual lawsuits.

Litigation against CSST manufacturers began around 2004, when a group of plaintiffs' lawyers filed a putative nationwide class action against Ward and other industry defendants, such as Titeflex Corp., Omegaflex Corp., and Parker Hannifin in Clark County, Arkansas. This first class action complaint alleged that plaintiffs suffered economic and property damage caused by the installation of CSST in their houses because CSST allegedly carried an increased risk of fires in a structure as its thin walls made it susceptible to damage from lightning strikes.

The Arkansas court approved a nationwide class settlement on February 6, 2007. As part of the settlement, defendants agreed to provide the plaintiff class with a remedy in the form of vouchers that would defray the costs of recognized mitigation measures in the form of lightning protection systems or bonding and grounding. Settlement class members were provided a choice between these remedies. The amount of the vouchers varied, depending on the location of class

member's residence and the risk of lightning in the area of their residence. The Settlement Agreement also contained provisions for the implementation of "marketing changes" by defendants that included development of more robust installation instructions and warnings, and for attorneys' fees. The Settlement Agreement did not release defendants from potential claims for damages caused by actual fires.

Since 2007, Ward has defended several cases per year that have been brought by insurers subrogated to the interests of insureds, seeking damages allegedly caused by fires resulting from a failure of CSST. Ward has vigorously defended these cases. In some instances investigation has uncovered evidence that the fires apparently resulted from different causes, such as improper installation practices and failure of other systems. Ward also has achieved dismissal of some cases based on legal defenses. In a number of other cases, Ward has developed facts in discovery and pursued legal defenses that have helped result in settlements.

In the meantime, Ward and other companies in the industry engaged in several efforts to refine installation practices by installers. They have also worked with state fire marshals to increase awareness of the risks that lightning presents to many types of construction materials, including CSST. Like others in the industry, Ward also developed a product designed to mitigate some of the risks of lightning-induced energy.

Ward and other companies in the industry faced a second wave of class actions that began in 2013. Mr. Sullivan worked with Ward to defend each of these class action cases.

MR. SULLIVAN'S EXPERIENCE WITH CSST CLASS ACTIONS AND DEFENDING WARD MANUFACTURING INCLUDES:

- ***George et al. v. Omegaflex, et al.*, Western District of Missouri, Civ. A. No. 2:17-3114, (August 13, 2020)** | August 13, 2020, Judge Harpool granted Defendants' motion for summary judgment, dismissing of all of Plaintiffs' claims on behalf of a putative class for violations of the Missouri Merchandising Practices Act ("MMPA"), unjust enrichment, and civil conspiracy against Ward and its co-defendants, Titeflex and Omega Flex. The court granted Defendants' motion for summary judgment in its entirety and denied Plaintiffs' pending motion for class certification as moot. The court dismissed Plaintiffs' MMPA claims because Defendants' representations about the safety of CSST had not been made "in connection" with any of Plaintiffs' product purchases--Plaintiffs had not actually seen any such representations at the time they acquired their CSST. In addition, the court found that Defendants' statements about the safety of CSST did not amount to "unfair" or "deceptive" trade practices because those statements had been consistent with the *Lovelis* settlement, providing an independent reason for the court's dismissal of Plaintiffs' MMPA claims. Finally, the court observed that because none of the Plaintiffs' CSST had manifested a defect and none of Plaintiffs' properties had actually declined in value, that Plaintiffs' were unable to establish yet another essential element of their MMPA claims—"ascertainable loss[es] of money or property." The court found that because Plaintiffs had not actually relied on any Defendant's statements about CSST's safety,

Defendants' statements had been consistent with the *Lovelis* settlement, and Plaintiffs' CSST was still in working order, Plaintiffs' unjust enrichment claim failed. Further, because there was no underlying predicate injury or wrongful act, summary judgment was also appropriate with respect to the civil conspiracy claim. The court's summary judgment ruling disposed of all of Plaintiffs' claims in Defendants' favor. Because no underlying substantive claim remained, the court also denied Plaintiffs' pending motion for class certification as moot.

- ***Chad Pelino and Tina Pelino v. Ward Manufacturing* – United States District Court for the District of Maryland – Case No. 14-cv-02771 (July 27, 2015)** | Chad and Tina Pelino allege, on their behalf and on behalf of other similarly situated persons, strict liability, negligent design, negligent failure to warn, and breach of implied warranty claims against Ward Manufacturing related to the manufacture, sale, and distribution of WARDFLEX. Specifically, the complaint alleges that WARDFLEX is defective because it is unreasonably susceptible to failure in the event of a lightning strike and that Ward has failed to warn of such risks and/or adequately design its product based on this alleged risk. The putative class is defined by the complaint to include "[a]ll persons in the State of Maryland who purchased a house or other structure in which Ward Manufacturing's Wardflex® was installed after September 5, 2006, or who, after September 5, 2006, purchased a house, or other structure, in which Ward Manufacturing's Wardflex® was installed prior to September 5, 2006."

  Ward filed a motion to dismiss plaintiff's complaint and also filed a motion to strike the class allegations. On July 27, 2015, the Court held the plaintiff could not satisfy commonality or typicality because the plaintiff had alleged some physical damage to her property. The court went on to dismiss plaintiff's allegations for lack of standing and because they were barred under the economic loss doctrine. Plaintiff appealed the decision. The parties reached a settlement of plaintiff's individual claims before the appellate court heard the matter.

- ***Michael Locke, d/b/a Pipsqueaks Child Care Center, Inc. v. Ward Manufacturing* – The Court of Common Pleas of Lawrence County, PA – Case No. 10555/13CA (September 2, 2014)** | Plaintiff Michael Locke alleged, on his behalf and on behalf of other similarly situated persons, strict liability, negligent design, and negligent failure to warn against Ward Manufacturing related to the manufacture, sale, and distribution of WARDFLEX. Specifically, the complaint alleged that WARDFLEX is defective because it is unreasonably susceptible to failure in the event of a lightning strike and that Ward failed to warn of such risks and/or adequately design its product based on this alleged risk. The putative class was defined by the complaint to include "[a]ll persons or entities in the State of Pennsylvania who purchased a house, or other structure, in which Ward Manufacturing's WARDFLEX is installed after September 5, 2006, or who, after September 5, 2006, purchased a house in which WARDFLEX was installed prior to September 5, 2006."

  On September 2, 2014, the Court granted Ward Manufacturing's Preliminary Objections, dismissing the entire complaint with prejudice. The court dismissed the complaint for lack of standing under Pennsylvania law and because plaintiffs' claims were barred under the economic loss doctrine.

- ***Randall Halsey, Sr. and Judith Halsey v. Ward Manufacturing* – United States District Court for the District of Maryland – Case No. 13-cv-01607 (July 8, 2014)** | Randal and Judith Halsey alleged, on their behalf and on behalf of other similarly situated persons, strict liability, negligent design, and negligent failure to warn claims against Ward Manufacturing related to the manufacture, sale, and distribution of WARDFLEX. Specifically, the complaint alleged that WARDFLEX is defective because it is unreasonably susceptible to failure in the event of a lightning strike and that Ward failed to warn of such risks and/or adequately design its product based on this alleged risk. The putative class was defined by the complaint to include "[a]ll persons or entities in the State of Maryland who purchased a house, or other structure in which Ward Manufacturing's WARDFLEX is installed after September 5, 2006, or who, after September 5, 2006, purchased a house, or other structure, in which Ward Manufacturing's WARDFLEX was installed prior to September 5, 2006."

  On July 8, 2014, the Court granted Ward Manufacturing's Motion to Dismiss, dismissing the entire complaint with prejudice for lack of standing and because the claims were barred under Maryland's economic loss rule.

- ***James Roy v. Titeflex Corp. T/A Gastite and Ward Manufacturing, LLC* Circuit Court Montgomery County Maryland, Case No. 384003V. |** James Roy alleged, on his behalf and on behalf of other similarly situated persons, strict liability, negligent design, and negligent failure to warn claims against Titeflex Corp. related to its manufacture, sale, and distribution of Gastite and Ward Manufacturing related to its manufacture, sale, and distribution of WARDFLEX. Specifically, the complaint alleged that both products are defective because they are unreasonably susceptible to failure in the event of a lightning strike and that both manufacturers failed to warn of such risks and/or adequately design their products based on this alleged risk. As to Ward, the putative class was defined by the complaint to include "[a]ll persons or entities in the State of Maryland who own a home or other structure in which Ward's Wardflex® was installed after September 5, 2006, or who, after September 5, 2006, purchased a house or other structure in which Ward's Wardflex® was installed prior to September 5, 2006."

  On September August 22, 2014, the Court granted Titeflex Corp. and Ward's combined Motion to Dismiss, dismissing the entire complaint with prejudice. On September 8, 2014, Plaintiffs filed a motion to alter or amend the judgment, and on September 19, 2014, Titeflex Corp. and Ward filed a joint response.

  The District Court then remanded the case to state court. Defendants again filed motions to dismiss, arguing that Maryland's standing law and economic loss doctrine barred plaintiff's claims. Without writing an opinion, the Montgomery County court denied the motions to dismiss holding, contrary to analysis by the federal court in *Halsey* and *Pelino*, that plaintiffs had standing under Maryland and that they adequately alleged the "public safety" exception to the Maryland economic loss rule.

  After months of intensive discovery and mediation, the parties reached a settlement of a class of persons in Maryland who owned a structure in which CSST was installed after September 5, 2006, or who purchased a structure in which CSST was installed on or prior to September 5, 2006. The Court entered a Final Order and Judgment Granting Final Approval of the Class Action Settlement on June 23, 2017.

- ***Lovelis v. Titeflex Corp. et al.*, No. Civ.-2004-211, (Ark. Cir)** – Settlement of nationwide class action arising out of allegations of consumer fraud and negligent design that allegedly caused economic and property damage to residential structures.

PROFESSIONAL PROFILE

Thomas J. Sullivan, *Partner*

Philadelphia | 215.575.3130| tsullivan@shb.com

Tom Sullivan is an essential part of Shook's Class Action Practice with his broad range of class action experience that extends across various industries, including food and dietary supplement labeling matters. Life sciences, pharmaceutical off-labeling, and food and beverage labeling are significant aspects of Tom's practice. He has worked with clients operating throughout the health care supply chain, including manufacturers (pharmaceutical, medical device, food and beverage and agribusiness), pharmacies, PBMs and health insurers on matters ranging from product liability cases to class actions and false claims act litigation.