

## Cases Citing Tincher for Various Propositions

### I. Favorable Rulings

#### Tincher is retroactively applied to cases previously filed and tried (if properly preserved):

Tincher v. Omega Flex, Inc., \_\_\_ A.3d \_\_\_, 2018 WL 915007, at \*11 (Pa. Super. Feb. 16, 2018) (“Tincher II”)

Webb v. Volvo Cars, Inc., 148 A.3d 473, 482 (Pa. Super. 2016) (defendant did not properly preserve)

Amato v. Bell & Gossett, Clark-Reliance Corp., 116 A.3d 607, 617, 619 (Pa. Super. 2015), appeal dismissed, 150 A.3d 956 (Pa. 2016)

DeJesus v. Knight Industries & Associates, Inc., 599 F. Appx. 454, 455 (3d Cir. 2015)

Sikkelee v. AVCO Corp., 268 F. Supp.3d 660, 690 n.18 (M.D. Pa. 2017)

American Honda Motor Co. v. Martinez, 2017 WL 1400968, at \*2 n.2 (Pa. Super. April 19, 2017) (uncitable)

Nathan v. Techtronic Industries North America, Inc., 92 F. Supp.3d 264, 270-72 (M.D. Pa. 2015)

#### Rejecting argument that Tincher was a narrow decision that did not change anything:

Tincher v. Omega Flex, Inc., \_\_\_ A.3d \_\_\_, 2018 WL 915007, at \*13 (Pa. Super. Feb. 16, 2018) (“Tincher II”)

Renninger v. A&R Machine Shop, 163 A.3d 988, 1000 (Pa. Super. 2017)

#### After Tincher an Azzarello-“any element”/“guarantor” jury charge is reversible error:

Tincher v. Omega Flex, Inc., \_\_\_ A.3d \_\_\_, 2018 WL 915007, at \*10-11 (Pa. Super. Feb. 16, 2018) (“Tincher II”)

#### After Tincher courts are not necessarily bound by Azzarello-era decisions:

Renninger v. A&R Machine Shop, 163 A.3d 988, 1000 (Pa. Super. 2017)

Cloud v. Electrolux Home Products, Inc., 2017 WL 3835602, at \*2 (E.D. Pa. Jan. 26, 2017)

Rapchak v. Haldex Brake Products Corp., 2016 WL 3752908, at \*3 (W.D. Pa. July 14, 2016)

Sliker v. National Feeding Systems, Inc., 2015 WL 6735548, at \*7 (C.P. Clarion Co. Oct. 19, 2015)

**Tincher requires that the product be unreasonably dangerous:**

Tincher v. Omega Flex, Inc., \_\_\_ A.3d \_\_\_, 2018 WL 915007, at \*13 (Pa. Super. Feb. 16, 2018) (“Tincher II”)

High v. Pennsy Supply, Inc., 154 A.3d 341, 347 (Pa. Super. 2017)

Amato v. Bell & Gossett, Clark-Reliance Corp., 116 A.3d 607, 620 (Pa. Super. 2015), appeal dismissed, 150 A.3d 956 (Pa. 2016)

Sikkelee v. AVCO Corp., 268 F. Supp.3d 660, 696 (M.D. Pa. 2017)

Roudabush v. Roundo, Inc., 2017 WL 3912370, at \*2 (W.D. Pa. Sept. 5, 2017)

Wright v. Ryobi Technologies, Inc., 175 F. Supp.3d 439, 450 (E.D. Pa. 2016)

DeJesus v. Knight Industries & Associates, Inc., 2016 WL 4702113, at \*6-7 (E.D. Pa. Sept. 8, 2016)

Rapchak v. Haldex Brake Products Corp., 2016 WL 3752908, at \*2 (W.D. Pa. July 14, 2016)

Stellar v. Allied Signal, Inc., 98 F. Supp.3d 790, 807 (E.D. Pa. 2015)

Nathan v. Techtronic Industries North America, Inc., 92 F. Supp.3d 264, 272 (M.D. Pa. 2015)

Punch v. Dollar Tree Stores, Inc., 2015 WL 7769223, at \*3 (Mag. W.D. Pa. Nov. 5, 2015), adopted, 2015 WL 7776601 (W.D. Pa. Dec. 2, 2015)

Dunlap v. American Lafrance, LLC, 2016 WL 9340617, at \*2 & n.4 (Pa. C.P. Allegheny Co. April 4, 2016)

**A product being dangerous does not necessarily mean it is unreasonably dangerous:**

Dunlap v. American Lafrance, LLC, 2016 WL 9340617, at \*2 (Pa. C.P. Allegheny Co. April 4, 2016)

**Application of Wade factors/cost-benefit balancing appropriate:**

Sikkelee v. AVCO Corp., 268 F. Supp.3d 660, 695 (M.D. Pa. 2017)

Igwe v. Skaggs, 258 F. Supp.3d 596, 610 (W.D. Pa. 2017)

Punch v. Dollar Tree Stores, 2017 WL 752396, at \*8 (Mag. W.D. Pa. Feb. 17, 2017), adopted, 2017 WL 1159735 (W.D. Pa. March 29, 2017)

Wright v. Ryobi Technologies, Inc., 175 F. Supp.3d 439, 451 (E.D. Pa. 2016)

Rapchak v. Haldex Brake Products Corp., 2016 WL 3752908, at \*2-3 (W.D. Pa. July 14, 2016)

Rapchak v. Haldex Brake Products Corp., 2016 WL 1019534, at \*13-14 & n.16 (W.D. Pa. March 15, 2016)

Lewis v. Lycoming, 2015 WL 3444220, at \*3 (E.D. Pa. May 29, 2015)

Capece v. Hess Maschinenfabrik GmbH & Co. KG, 2015 WL 1291798, at \*3 n.2, 7 (M.D. Pa. March 20, 2015)

Meyers v. LVD Acquisitions, LLC, 2016 WL 8652790, at \*2 (Pa. C.P. Mifflin Co. Sept. 23, 2016), aff'd mem., 2017 WL 1163056 (Pa. Super. March 28, 2017)

High v. Pennsy Supply, Inc., 2016 WL 676409, at \*2 (C.P. Dauphin Co. Feb. 18, 2016), rev'd on other grounds, 154 A.3d 341 (Pa. Super. 2017)

Renninger v. A&R Machine Shop, 2015 WL 13238603, at \*5 (Pa. C.P. Clarion Co. Nov. 3, 2015), aff'd, 163 A.3d 988 (Pa. Super. 2017)

Sliker v. National Feeding Systems, Inc., 2015 WL 6735548, at \*4 (C.P. Clarion Co. Oct. 19, 2015)

**Lack of viable alternative design required summary judgment in risk/utility case:**

Dunlap v. American Lafrance, LLC, 2016 WL 9340617, at \*3 (Pa. C.P. Allegheny Co. April 4, 2016)

High v. Pennsy Supply, Inc., 2016 WL 676409, at \*4 (C.P. Dauphin Co. Feb. 18, 2016), rev'd on other grounds, 154 A.3d 341 (Pa. Super. 2017)

**Tincher did not shift burden of proof to defendants in risk/utility cases:**

Capece v. Hess Maschinenfabrik GmbH & Co. KG, 2015 WL 1291798, at \*3 n.1 (M.D. Pa. March 20, 2015)

Meyers v. LVD Acquisitions, LLC, 2016 WL 8652790, at \*1 (Pa. C.P. Mifflin Co. Sept. 23, 2016), aff'd mem., 2017 WL 1163056 (Pa. Super. March 28, 2017)

Dunlap v. American Lafrance, LLC, 2016 WL 9340617, at \*2 n.4 (Pa. C.P. Allegheny Co. April 4, 2016)

**Tincher rejects blanket exclusion of “negligence principles”:**

Roverano v. John Crane, \_\_\_ A.3d \_\_\_, 2017 WL 6729661, at \*12 n.9 (Pa. Super. Dec. 28, 2017)

Renninger v. A&R Machine Shop, 163 A.3d 988, 997 (Pa. Super. 2017)

Webb v. Volvo Cars, LLC, 148 A.3d 473, 482-83 (Pa. Super. 2016)

Amato v. Bell & Gossett, Clark-Reliance Corp., 116 A.3d 607, 620 (Pa. Super. 2015), appeal dismissed, 150 A.3d 956 (Pa. 2016)

Dodson v. Beijing Capital Tire Co., 2017 WL 4284417, at \*6 (Mag. M.D. Pa. Sept. 27, 2017)

Cloud v. Electrolux Home Products, Inc., 2017 WL 3835602, at \*2 (E.D. Pa. Jan. 26, 2017)

DeJesus v. Knight Industries & Associates, Inc., 2016 WL 4702113, at \*6 (E.D. Pa. Sept. 8, 2016)

Rapchak v. Haldex Brake Products Corp., 2016 WL 3752908, at \*2-3 (W.D. Pa. July 14, 2016)

Rapchak v. Haldex Brake Products Corp., 2016 WL 1019534, at \*13 n.15 (W.D. Pa. March 15, 2016)

Punch v. Dollar Tree Stores, Inc., 2015 WL 7769223, at \*7 (Mag. W.D. Pa. Nov. 5, 2015), adopted, 2015 WL 7776601 (W.D. Pa. Dec. 2, 2015)

Sliker v. National Feeding Systems, Inc., 2015 WL 6735548, at \*3-4 (C.P. Clarion Co. Oct. 19, 2015)

**Strict liability is similar to, and derived from, negligence:**

Schwartz v. Abex Corp., 106 F. Supp.3d 626, 643 (E.D. Pa. 2015)

Sliker v. National Feeding Systems, Inc., 2015 WL 6735548, at \*3-4 (C.P. Clarion Co. Oct. 19, 2015)

**Risk/utility test is similar to, and derived from, negligence:**

Renninger v. A&R Machine Shop, 163 A.3d 988, 997 (Pa. Super. 2017)

Webb v. Volvo Cars, LLC, 148 A.3d 473, 482 (Pa. Super. 2016)

Dodson v. Beijing Capital Tire Co., 2017 WL 4284417, at \*6 (Mag. M.D. Pa. Sept. 27, 2017)

Sikkelee v. AVCO Corp., 268 F. Supp.3d 660, 696 (M.D. Pa. 2017)

Punch v. Dollar Tree Stores, 2017 WL 752396, at \*7 (Mag. W.D. Pa. Feb. 17, 2017), adopted, 2017 WL 1159735 (W.D. Pa. March 29, 2017)

Cloud v. Electrolux Home Products, Inc., 2017 WL 3835602, at \*2 (E.D. Pa. Jan. 26, 2017)

DeJesus v. Knight Industries & Associates, Inc., 2016 WL 4702113, at \*9 (E.D. Pa. Sept. 8, 2016)

Punch v. Dollar Tree Stores, Inc., 2015 WL 7769223, at \*5 (Mag. W.D. Pa. Nov. 5, 2015), adopted, 2015 WL 7776601 (W.D. Pa. Dec. 2, 2015)

Sliker v. National Feeding Systems, Inc., 2015 WL 6735548, at \*3-4 (C.P. Clarion Co. Oct. 19, 2015)

Renninger v. A&R Machine Shop, 2015 WL 13238604, at \*8 (Pa. C.P. Clarion Co. April 17, 2015)

**Risk/utility test requires expert testimony:**

Hatcher v. SCM Group, Inc., 167 F. Supp.3d 719, 724-25 (E.D. Pa. 2016)

Meyers v. LVD Acquisitions, LLC, 2016 WL 8652790, at \*2 (Pa. C.P. Mifflin Co. Sept. 23, 2016), aff'd mem., 2017 WL 1163056 (Pa. Super. March 28, 2017)

Dunlap v. American Lafrance, LLC, 2016 WL 9340617, at \*3 (Pa. C.P. Allegheny Co. April 4, 2016) (risks of alternative design)

Renninger v. A&R Machine Shop, 2015 WL 13238604, at \*4 (Pa. C.P. Clarion Co. April 17, 2015)

**Risk/utility test warrants jury instruction to compare risks of alternative designs:**

Renninger v. A&R Machine Shop, 2015 WL 13238603, at \*5-6 (Pa. C.P. Clarion Co. Nov. 3, 2015), aff'd, 163 A.3d 988 (Pa. Super. 2017)

**Tincher requires jury instruction on “unreasonably dangerous”:**

Tincher v. Omega Flex, Inc., \_\_\_ A.3d \_\_\_, 2018 WL 915007, at \*13 (Pa. Super. Feb. 16, 2018) (“Tincher II”)

Amato v. Bell & Gossett, Clark-Reliance Corp., 116 A.3d 607, 620-21 (Pa. Super. 2015), appeal dismissed, 150 A.3d 956 (Pa. 2016)

**Rejecting Azzarello guarantor/any element jury instruction:**

Tincher v. Omega Flex, Inc., \_\_\_ A.3d \_\_\_, 2018 WL 915007, at \*10-11 (Pa. Super. Feb. 16, 2018) (“Tincher II”)

Renninger v. A&R Machine Shop, 2015 WL 13238603, at \*3-4 (Pa. C.P. Clarion Co. Nov. 3, 2015), aff'd, 163 A.3d 988 (Pa. Super. 2017)

**Questioning viability of non-delegable duty jury instruction – not applicable where superseding cause evidence present:**

Renninger v. A&R Machine Shop, 2015 WL 13238603, at \*4 (Pa. C.P. Clarion Co. Nov. 3, 2015), aff'd, 163 A.3d 988 (Pa. Super. 2017)

**Proper to charge jury on Wade factors:**

Renninger v. A&R Machine Shop, 2015 WL 13238603, at \*5 (Pa. C.P. Clarion Co. Nov. 3, 2015), aff'd, 163 A.3d 988 (Pa. Super. 2017)

**Tincher allows jury instruction on state of the art principles in strict liability in proper cases:**

High v. Pennsy Supply, Inc., 154 A.3d 341, 350 n.5 (Pa. Super. 2017) (implicit in discussion of expert opinion concerning compliance, but no direct ruling on admissibility)

Webb v. Volvo Cars, LLC, 148 A.3d 473, 482-83 (Pa. Super. 2016) (maybe, but issue was not properly preserved)

Amato v. Bell & Gossett, Clark-Reliance Corp., 116 A.3d 607, 622 (Pa. Super. 2015) (harmless error), 150 A.3d 956 (Pa. 2016)

Morello v. Kenco Toyota Lift, 142 F. Supp.3d 378, 385-86 (E.D. Pa. 2015) (implicit in discussion of expert opinion concerning compliance, but no direct ruling on admissibility)

**Consumer expectation test requires unreasonably dangerous defect:**

High v. Pennsy Supply, Inc., 154 A.3d 341, 348-49 (Pa. Super. 2017)

**Consumer expectation test inappropriate:**

Igwe v. Skaggs, 258 F. Supp.3d 596, 611 (W.D. Pa. 2017)

Wright v. Ryobi Technologies, Inc., 175 F. Supp.3d 439, 452-53 (E.D. Pa. 2016)

DeJesus v. Knight Industries & Associates, Inc., 2016 WL 4702113, at \*8-9 (E.D. Pa. Sept. 8, 2016)

Punch v. Dollar Tree Stores, Inc., 2015 WL 7769223, at \*5 (Mag. W.D. Pa. Nov. 5, 2015), adopted, 2015 WL 7776601 (W.D. Pa. Dec. 2, 2015)

Capece v. Hess Maschinenfabrik GmbH & Co. KG, 2015 WL 1291798 (M.D. Pa. March 20, 2015) (conceded inappropriate to mechanical equipment – concrete block maker)

Meyers v. LVD Acquisitions, LLC, 2016 WL 8652790 (Pa. C.P. Mifflin Co. Sept. 23, 2016), aff'd mem., 2017 WL 1163056 (Pa. Super. March 28, 2017) (known risk)

**Consumer expectation test based on objective, reasonable consumer:**

High v. Pennsy Supply, Inc., 154 A.3d 341, 348-49 (Pa. Super. 2017)

Igwe v. Skaggs, 258 F. Supp.3d 596, 610 (W.D. Pa. 2017)

Yazdani v. BMW of North America, LLC, 188 F. Supp.3d 486, 493 (E.D. Pa. 2016)

Wright v. Ryobi Technologies, Inc., 175 F. Supp.3d 439, 450-52 (E.D. Pa. 2016)

DeJesus v. Knight Industries & Associates, Inc., 2016 WL 4702113, at \*7 (E.D. Pa. Sept. 8, 2016)

Bailey v. B.S. Quarries, Inc., 2016 WL 1271381, at \*15 (M.D. Pa. March 31, 2016), appeal dismissed, 674 F. Appx. 149 (3d Cir. 2017)

Lewis v. Lycoming, 2015 WL 3444220, at \*3 (E.D. Pa. May 29, 2015)

Meyers v. LVD Acquisitions, LLC, 2016 WL 8652790, at \*2 (Pa. C.P. Mifflin Co. Sept. 23, 2016), aff'd mem., 2017 WL 1163056 (Pa. Super. March 28, 2017)

**Strict liability only applies to a manufacturer's own products:**

Sikkelee v. AVCO Corp., 268 F. Supp.3d 660, 712 (M.D. Pa. 2017)

McLaud v. Industrial Resources, Inc., 2016 WL 7048987, at \*7 (M.D. Pa. Dec. 5, 2016), aff'd, \_\_\_ F. Appx. \_\_\_, 2017 WL 4857467 (3d Cir. Oct. 26, 2017)

Schwartz v. Abex Corp., 106 F. Supp.3d 626, 653-54 (E.D. Pa. 2015)

**Tincher principles apply to warning claims:**

Amato v. Bell & Gossett, Clark-Reliance Corp., 116 A.3d 607, 620 (Pa. Super. 2015), appeal dismissed, 150 A.3d 956 (Pa. 2016)

Igwe v. Skaggs, 258 F. Supp.3d 596, 609-10 (W.D. Pa. 2017)

Bailey v. B.S. Quarries, Inc., 2016 WL 1271381, at \*15 (M.D. Pa. March 31, 2016), appeal dismissed, 674 F. Appx. 149 (3d Cir. 2017)

Trask v. Olin Corp., 2016 WL 1255302, at \*9 n.20 (W.D. Pa. March 31, 2016)

Williams v. U-Haul International, Inc., 2015 WL 171846, at \*3 n.6 (E.D. Pa. Jan. 14, 2015) (subsequently vacated in part on other grounds – negligence, 2015 WL 790142)

Horst v. Union Carbide Corp., 2016 WL 1670272, at \*16 (Pa. C.P. Lackawanna Co. April 27, 2016)

**Product must be “unreasonably dangerous” without a warning:**

High v. Pennsy Supply, Inc., 154 A.3d 341, 351 (Pa. Super. 2017)

Meyers v. LVD Acquisitions, LLC, 2017 WL 1163056, at \*2 (Pa. Super. March 28, 2017) (noncitable)

Igwe v. Skaggs, 258 F. Supp.3d 596, 612, 614-15 (W.D. Pa. 2017)

Wright v. Ryobi Technologies, Inc., 175 F. Supp.3d 439, 453-54 (E.D. Pa. 2016)

Hatcher v. SCM Group, Inc., 167 F. Supp.3d 719, 725, 727 (E.D. Pa. 2016)

Inman v. General Electric Co., 2016 WL 5106939, at \*7 (W.D. Pa. Sept. 20, 2016)

**Lack of redundant warnings does not make a product unreasonably dangerous:**

Igwe v. Skaggs, 258 F. Supp.3d 596, 613 (W.D. Pa. 2017)

**Post-sale duty to warn continues to require defect at sale:**

Trask v. Olin Corp., 2016 WL 1255302, at \*9 (W.D. Pa. March 31, 2016)

**Evidence of product user's negligent conduct admissible as relevant to risk/utility:**

Punch v. Dollar Tree Stores, 2017 WL 752396, at \*11 (Mag. W.D. Pa. Feb. 17, 2017), adopted, 2017 WL 1159735 (W.D. Pa. March 29, 2017)

Sliker v. National Feeding Systems, Inc., 2015 WL 6735548, at \*4 (C.P. Clarion Co. Oct. 19, 2015)

**Evidence of third-party's negligent conduct admissible as relevant to risk/utility:**

Dodson v. Beijing Capital Tire Co., 2017 U.S. Dist. Lexis 158484, at \*5-6 (Mag. M.D. Pa. Sept. 27, 2017)

**Evidence of product user's knowledge admissible as relevant to consumer expectation:**

Igwe v. Skaggs, 258 F. Supp.3d 596, 611-12 (W.D. Pa. 2017)

Wright v. Ryobi Technologies, Inc., 175 F. Supp.3d 439, 452 (E.D. Pa. 2016)

**Evidence of product warnings relevant to consumer expectation:**

Igwe v. Skaggs, 258 F. Supp.3d 596, 610-11 (W.D. Pa. 2017)

Wright v. Ryobi Technologies, Inc., 175 F. Supp.3d 439, 452-53 (E.D. Pa. 2016)

**Evidence of product user's negligent conduct admissible as relevant to causation:**

Dodson v. Beijing Capital Tire Co., 2017 WL 4284417, at \*5 (Mag. M.D. Pa. Sept. 27, 2017)



Wright v. Ryobi Technologies, Inc., 175 F. Supp.3d 439, 450 (E.D. Pa. 2016)

**Applies identical causation standards to strict liability and negligence with respect to product user's conduct:**

Sikkelee v. AVCO Corp., 268 F. Supp.3d 660, 711, 715-16 (M.D. Pa. 2017)

Wright v. Ryobi Technologies, Inc., 175 F. Supp.3d 439, 455 (E.D. Pa. 2016)

DeJesus v. Knight Industries & Associates, Inc., 2016 WL 4702113, at \*11, 13 (E.D. Pa. Sept. 8, 2016) (Tincher does not affect causation)

**Evidence of a product's compliance with industry standards is relevant/admissible:**

High v. Pennsy Supply, Inc., 154 A.3d 341, 350 n.5 (Pa. Super. 2017) (implicit in discussion of expert opinion concerning compliance, but no direct ruling on admissibility)

Webb v. Volvo Cars, LLC, 148 A.3d 473, 482-83 (Pa. Super. 2016) (maybe, but issue was not properly preserved)

Cloud v. Electrolux Home Products, Inc., 2017 WL 3835602, at \*1-2 (E.D. Pa. Jan. 26, 2017)

Rapchak v. Haldex Brake Products Corp., 2016 WL 3752908, at \*3 (W.D. Pa. July 14, 2016)

Dunlap v. American LaFrance, LLC, 2016 WL 9340617, at \*3 (Pa. C.P. Allegheny Co. April 4, 2016)

Renninger v. A&R Machine Shop, 2015 WL 13238603, at \*2 (Pa. C.P. Clarion Co. Nov. 3, 2015), aff'd, 163 A.3d 988 (Pa. Super. 2017)

Sliker v. National Feeding Systems, Inc., 2015 WL 6735548, at \*6-7 (C.P. Clarion Co. Oct. 19, 2015)

Renninger v. A&R Machine Shop, 2015 WL 13238604, at \*8-9 (Pa. C.P. Clarion Co. April 17, 2015)

**Evidence of compliance with government standards is relevant/admissible:**

Renninger v. A&R Machine Shop, 2015 WL 13238603, at \*2 (Pa. C.P. Clarion Co. Nov. 3, 2015), aff'd, 163 A.3d 988 (Pa. Super. 2017) (OSHA)

Renninger v. A&R Machine Shop, 2015 WL 13238604, at \*8-9 (Pa. C.P. Clarion Co. April 17, 2015)

**Evidence of technological infeasibility under current state of the art is relevant/admissible:**

Igwe v. Skaggs, 258 F. Supp.3d 596, 611 (W.D. Pa. 2017) (on summary judgment)

**Plaintiff's contributory fault can be asserted by defendant:**

Cloud v. Electrolux Home Products, Inc., 2017 WL 3835602, at \*3 (E.D. Pa. Jan. 26, 2017)

**Evidence of lack of similar incidents admissible as relevant to risk/utility:**

Dodson v. Beijing Capital Tire Co., 2017 WL 4284417, at \*7 (Mag. M.D. Pa. Sept. 27, 2017)

**Existing crashworthiness elements apply after Tincher:**

Parr v. Ford Motor Co., 109 A.3d 682, 689 (Pa. Super. 2014) (en banc)

Rupert v. Ford Motor Co., 640 F. Appx. 205, 208 & n.20 (3d Cir. 2016) (Tincher not change enhancement requirement)

Cancelleri v. Ford Motor Co., 2015 WL 263476, at \*5 (C.P. Lackawanna Co. Jan. 9, 2015), aff'd mem., 2016 WL 82449 (Pa. Super. Jan. 7, 2016) (uncitable)

**Existing exclusion of prescription medical products from strict liability applies after Tincher:**

Bell v. Boehringer Ingelheim Pharmaceuticals, Inc., 2018 WL 928237, at \*3 (W.D. Pa. Feb. 15, 2018)

Krammes v. Zimmer, Inc., 2015 WL 4509021, at \*4-5 (M.D. Pa. July 24, 2015)

In re Zimmer Nexgen Knee Implant Products Liability Litigation, 2015 WL 3669933, at \*35 (N.D. Ill. June 12, 2015)

**Intended use doctrine survives Tincher:**

Wright v. Ryobi Technologies, Inc., 175 F. Supp.3d 439, 452 (E.D. Pa. 2016)

Punch v. Dollar Tree Stores, Inc., 2015 WL 7769223, at \*4 n.4 (Mag. W.D. Pa. Nov. 5, 2015), adopted, 2015 WL 7776601 (W.D. Pa. Dec. 2, 2015)

Renninger v. A&R Machine Shop, 2015 WL 13238604, at \*6 (Pa. C.P. Clarion Co. April 17, 2015)

**Unintended users may not assert consumer expectation defect theory:**

Wright v. Ryobi Technologies, Inc., 175 F. Supp.3d 439, 452 (E.D. Pa. 2016)

Punch v. Dollar Tree Stores, Inc., 2015 WL 7769223, at \*4-5 (Mag. W.D. Pa. Nov. 5, 2015),  
adopted, 2015 WL 7776601 (W.D. Pa. Dec. 2, 2015)

**Bystanders may not recover in strict liability:**

D'Antonio v. FMC Technologies, Inc., 2016 WL 7324151, at \*2 (W.D. Pa. Sept. 30, 2016)

**II. Unfavorable Rulings**

**Tincher is not retroactive unless the defendant preserved some anti-Azzarello argument**

Webb v. Volvo Cars, LLC, 148 A.3d 473, 483 (Pa. Super. 2016)

**Evidence of industry and compliance with government standards still excludable:**

American Honda Motor Co. v. Martinez, 2017 WL 1400968, at \*4 (Pa. Super. April 19, 2017)  
(uncitable)

Webb v. Volvo Cars, LLC, 148 A.3d 473, 482-83 (Pa. Super. 2016) (maybe, but issue was not  
properly preserved)

Morello v. Kenco Toyota Lift, 2015 WL 12844274, at \*1-2 (E.D. Pa. Dec. 23, 2015)

Cancelleri v. Ford Motor Co., 2015 WL 263476, at \*29-30 (C.P. Lackawanna Co. Jan. 9, 2015),  
aff'd mem., 2016 WL 82449 (Pa. Super. Jan. 7, 2016) (uncitable)

**Tincher did not change anything, only rejected the Third Restatement:**

Martinez v. American Honda Motor Co., 2015 WL 6408456, at \*6 (C.P. Philadelphia Co. Sept. 17,  
2015), aff'd, 2017 WL 1400968 (Pa. Super. April 19, 2017) (uncitable)

**Uses/allows guarantor language post-Tincher:**

American Honda Motor Co. v. Martinez, 2017 WL 1400968, at \*4 (Pa. Super. April 19, 2017)  
(uncitable)

Schwartz v. Abex Corp., 106 F. Supp.3d 626, 641 (E.D. Pa. 2015) (not a jury charge case)

**Failure to charge on unreasonably dangerous risk/utility not reversible error in crashworthiness  
case because crashworthiness charge was close enough to risk/utility**

American Honda Motor Co. v. Martinez, 2017 WL 1400968, at \*4 (Pa. Super. April 19, 2017) (uncitable)

Cancelleri v. Ford Motor Co., 2016 WL 82449, at \*3 (Pa. Super. Jan. 7, 2016) (uncitable)

**Recognizes independent negligence and strict liability design claims:**

Igwe v. Skaggs, 258 F. Supp.3d 596, 613-15 (W.D. Pa. 2017) (grants summary judgment on negligence)

Punch v. Dollar Tree Stores, 2017 WL 752396, at \*13 (Mag. W.D. Pa. Feb. 17, 2017), adopted, 2017 WL 1159735 (W.D. Pa. March 29, 2017)

English v. Crown Equipment Corp., 183 F. Supp.3d 618, 620 (M.D. Pa. 2016)

Wright v. Ryobi Technologies, Inc., 175 F. Supp.3d 439, 454-55 & n.4 (E.D. Pa. 2016)

DeJesus v. Knight Industries & Associates, Inc., 2016 WL 4702113, at \*11 (E.D. Pa. Sept. 8, 2016)

English v. Crown Equipment Corp., 2016 WL 614680, at \*11 (M.D. Pa. Feb. 16, 2016)

Schwartz v. Abex Corp., 106 F. Supp.3d 626, 642-43 (E.D. Pa. 2015)

Stellar v. Allied Signal, Inc., 98 F. Supp.3d 790, 807 (E.D. Pa. 2015)

Binieck v. Marmaxx Operating Corp., 2015 WL 5781636, at \*2 (M.D. Pa. Sept. 30, 2015)

McKenzie v. Dematic Corp., 2015 WL 3866633, at \*3 (W.D. Pa. June 23, 2015)

**Consumer expectation theory allowed with respect to complex product:**

Rapchak v. Haldex Brake Products Corp., 2016 WL 1019534, at \*14 (W.D. Pa. March 15, 2016)

Fassett v. Sears Holdings Corp., 2015 WL 5093397, at \*6 (M.D. Pa. Aug. 28, 2015) (lawnmower alleged to have inexplicably exploded)

Lewis v. Lycoming, 2015 WL 3444220, at \*4 (E.D. Pa. May 29, 2015)

**Unintended users may assert risk/utility defect theory:**

Punch v. Dollar Tree Stores, Inc., 2015 WL 7769223, at \*5 (Mag. W.D. Pa. Nov. 5, 2015), adopted, 2015 WL 7776601 (W.D. Pa. Dec. 2, 2015)

**Employs Azzarello-based Reott (“sole cause”) plaintiff conduct test:**

Punch v. Dollar Tree Stores, 2017 WL 752396, at \*12 (Mag. W.D. Pa. Feb. 17, 2017), adopted, 2017 WL 1159735 (W.D. Pa. March 29, 2017)

Wright v. Ryobi Technologies, Inc., 175 F. Supp.3d 439, 450 (E.D. Pa. 2016) (does not appear that inapplicability was argued)

DeJesus v. Knight Industries & Associates, Inc., 2016 WL 4702113, at \*10-11 & n.11 (E.D. Pa. Sept. 8, 2016)

Nathan v. Techtronic Industries North America, Inc., 92 F. Supp.3d 264, 275-76 (M.D. Pa. 2015) (does not appear that inapplicability was argued)

McKenzie v. Dematic Corp., 2015 WL 3866633, at \*6 (W.D. Pa. June 23, 2015) (does not appear that inapplicability was argued)

**Plaintiff's contributory fault cannot be asserted by defendant:**

Rapchak v. Haldex Brake Products Corp., 2016 WL 3752908, at \*6 (W.D. Pa. July 14, 2016)

Bailey v. B.S. Quarries, Inc., 2016 WL 1271381, at \*16 & n.12 (M.D. Pa. March 31, 2016), appeal dismissed, 674 F. Appx. 149 (3d Cir. 2017) (no defense opposition to motion)

**Strict liability under Tincher still not dependent on conduct of defendant:**

Nathan v. Techtronic Industries North America, Inc., 92 F. Supp.3d 264, 271 (M.D. Pa. 2015)

**Strict liability intended to be easier to prove than negligence:**

Sikkelee v. AVCO Corp., 268 F. Supp.3d 660, 716 (M.D. Pa. 2017)

Schwartz v. Abex Corp., 106 F. Supp.3d 626, 643 (E.D. Pa. 2015)

**Summary judgment denied on defect:**

Punch v. Dollar Tree Stores, 2017 WL 752396, at \*8-12 (Mag. W.D. Pa. Feb. 17, 2017), adopted, 2017 WL 1159735 (W.D. Pa. March 29, 2017)

DeJesus v. Knight Industries & Associates, Inc., 2016 WL 4702113, at \*10 (E.D. Pa. Sept. 8, 2016)

Rapchak v. Haldex Brake Products Corp., 2016 WL 1019534, at \*14 (W.D. Pa. March 15, 2016)

McKenzie v. Dematic Corp., 2015 WL 3866633, at \*7 (W.D. Pa. June 23, 2015)

Lewis v. Lycoming, 2015 WL 3444220, at \*4 (E.D. Pa. May 29, 2015)

McDaniel v. Kidde Residential & Fire & Commercial, 2015 WL 1326332, at \*7 (W.D. Pa. March 24, 2015)

Capece v. Hess Maschinenfabrik GmbH & Co. KG, 2015 WL 1291798, at \*6-8 (M.D. Pa. March 20, 2015)

Horst v. Union Carbide Corp., 2016 WL 1670272, at \*18 (Pa. C.P. Lackawanna Co. April 27, 2016)

**Tincher principles do not apply to warning claims:**

American Honda Motor Co. v. Martinez, 2017 WL 1400968, at \*5 (Pa. Super. April 19, 2017) (“unsettled”) (uncitable)

Hatcher v. SCM Group, Inc., 167 F. Supp.3d 719, 726 (E.D. Pa. 2016)

Yazdani v. BMW of North. America, LLC, 2016 WL 2755589, at \*6 n.5 (E.D. Pa. May 12, 2016)

**Tincher supports liability throughout supply chain:**

Stellar v. Allied Signal, Inc., 98 F. Supp.3d 790, 806 (E.D. Pa. 2015)

Bowers v. Adam & Eve Stores, 2015 WL 5883731, at \*3-4 (W.D. Pa. Oct. 8, 2015)

Williams v. U-Haul International, Inc., 2015 WL 171846, at \*3 (E.D. Pa. Jan. 14, 2015) (subsequently vacated in part on other grounds, 2015 WL 790142)

**Azzarello any element jury instruction was harmless error:**

American Honda Motor Co. v. Martinez, 2017 WL 1400968, at \*4 (Pa. Super. April 19, 2017) (uncitable)

Cancelleri v. Ford Motor Co., 2015 WL 263476, at \*31-32 (C.P. Lackawanna Co. Jan. 9, 2015), aff’d mem., 2016 WL 82449 (Pa. Super. Jan. 7, 2016) (uncitable)

**Lack of specific risk/utility instruction was harmless error:**

American Honda Motor Co. v. Martinez, 2017 WL 1400968, at \*4 (Pa. Super. April 19, 2017) (uncitable)

**Risk/Utility plaintiff entitled to cost information concerning designs:**

Horner v. Cummings, 2015 WL 13613261, at \*7 (M.D. Pa. Oct. 27, 2015)

**Existing exclusion of prescription medical products from strict liability may not apply after Tincher:**

Wagner v. Kimberly-Clark Corp., 225 F. Supp.3d 311, 317-18 (E.D. Pa. 2016) (manufacturing defect claims against medical devices only)

**Tincher continued pro-plaintiff social policy:**

Renninger v. A&R Machine Shop, 2015 WL 13238604, at \*8 (Pa. C.P. Clarion Co. April 17, 2015)

**Evidence that defendant offered a safety feature as an option inadmissible:**

Renninger v. A&R Machine Shop, 2015 WL 13238604, at \*9 (Pa. C.P. Clarion Co. April 17, 2015)

**III. Miscellaneous**

**Tincher does not change the law concerning manufacturing defects**

Dalton v. McCourt Electric LLC, 117 F. Supp.3d 692, 698 (E.D. Pa. 2015)

**Tincher does not change the law concerning intermediate seller liability**

Kleiner v. Rite Aid Corp., 2017 WL 4765329, at \*3 (E.D. Pa. Oct. 20, 2017)

**Tincher composite two-part test for design defect**

Renninger v. A&R Machine Shop, 163 A.3d 988, 996-97 (Pa. Super. 2017)

Igwe v. Skaggs, 258 F. Supp.3d 596, 609-10 (W.D. Pa. 2017)

English v. Crown Equipment Corp., 183 F. Supp.3d 618, 620 (M.D. Pa. 2016)

Wright v. Ryobi Technologies, Inc., 175 F. Supp.3d 439, 450 (E.D. Pa. 2016)

DeJesus v. Knight Industries & Associates, Inc., 2016 WL 4702113, at \*6 (E.D. Pa. Sept. 8, 2016)

Bailey v. B.S. Quarries, Inc., 2016 WL 1271381, at \*15 (M.D. Pa. March 31, 2016), appeal dismissed, 674 F. Appx. 149 (3d Cir. 2017)

Rapchak v. Haldex Brake Products Corp., 2016 WL 1019534, at \*13 (W.D. Pa. March 15, 2016)

English v. Crown Equipment Corp., 2016 WL 614680, at \*11 (M.D. Pa. Feb. 16, 2016)

Horner v. Cummings, 2015 WL 13613261, at \*7 (M.D. Pa. Oct. 27, 2015)

Binieck v. Marmaxx Operating Corp., 2015 WL 5781636, at \*3 (M.D. Pa. Sept. 30, 2015)

Fassett v. Sears Holdings Corp., 2015 WL 5093397, at \*6 (M.D. Pa. Aug. 28, 2015)

Lewis v. Lycoming, 2015 WL 3444220, at \*3 (E.D. Pa. May 29, 2015)

Meyers v. LVD Acquisitions, LLC, 2016 WL 8652790, at \*1 (Pa. C.P. Mifflin Co. Sept. 23, 2016),  
aff'd mem., 2017 WL 1163056 (Pa. Super. March 28, 2017)

High v. Pennsy Supply, Inc., 2016 WL 676409, at \*2 (C.P. Dauphin Co. Feb. 18, 2016), rev'd on  
other grounds, 154 A.3d 341 (Pa. Super. 2017)

Sliker v. National Feeding Systems, Inc., 2015 WL 6735548, at \*4 (C.P. Clarion Co. Oct. 19, 2015)

Renninger v. A&R Machine Shop, 2015 WL 13238604, at \*6 (Pa. C.P. Clarion Co. April 17, 2015)

#### **Substantial change governed by foreseeability after Tincher:**

Sikkelee v. AVCO Corp., 268 F. Supp.3d 660, 710-14 (M.D. Pa. 2017)

Roudabush v. Roundo, Inc., 2017 WL 3912370, at \*5 (W.D. Pa. Sept. 5, 2017)

Horst v. Union Carbide Corp., 2016 WL 1670272, at \*17 (Pa. C.P. Lackawanna Co. April 27, 2016)

#### **That warnings would be ignored remains unforeseeable:**

Roudabush v. Roundo, Inc., 2017 WL 3912370, at \*5-6 (W.D. Pa. Sept. 5, 2017)

Hatcher v. SCM Group, Inc., 167 F. Supp.3d 719, 727 (E.D. Pa. 2016)

#### **Factors for consumer expectation test**

High v. Pennsy Supply, Inc., 154 A.3d 341, 350-51 (Pa. Super. 2017)

Igwe v. Skaggs, 258 F. Supp.3d 596, 610 (W.D. Pa. 2017)

Wright v. Ryobi Technologies, Inc., 175 F. Supp.3d 439, 451 (E.D. Pa. 2016)

DeJesus v. Knight Industries & Associates, Inc., 2016 WL 4702113, at \*7 (E.D. Pa. Sept. 8, 2016)

#### **Product must be defective at sale**

Sikkelee v. AVCO Corp., 268 F. Supp.3d 660, 710 (M.D. Pa. 2017)

Wright v. Ryobi Technologies, Inc., 175 F. Supp.3d 439, 450 (E.D. Pa. 2016)

Horst v. Union Carbide Corp., 2016 WL 1670272, at \*15 (Pa. C.P. Lackawanna Co. April 27, 2016)