

Doing Business in United States: Pennsylvania

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Elizabeth W Brunins and Timothy Q Hudak
Eckert Seamans Cherin & Mellott LLC (Lex Mundi Member Firm)

LEGAL SYSTEM

1. What is the legal system (civil law, common law or a mixture of both)?

Pennsylvania has a common law legal system.

FOREIGN INVESTMENT

2. Are there any restrictions on foreign investment (including authorisations required by central or local government)?

Pennsylvania does not restrict foreign investment. Foreign companies doing business in Pennsylvania must obtain a certificate of authority from the Department of State. Once the certificate of authority is filed, foreign registrants must complete and file the Pennsylvania Enterprise Registration Form, a requirement for certain taxes and services administered by the Pennsylvania Department of Revenue and the Pennsylvania Department of Labor and Industry.

3. Are there any exchange control or currency regulations?

Pennsylvania does not impose any exchange control or currency regulations.

4. What grants or incentives are available to investors? Are any of these aimed specifically at foreign investors?

Pennsylvania has a number of programmes to provide economic assistance to companies locating to or expanding in Pennsylvania. These include:

- Loans.

- Loan guarantees.
- Bond financing.
- Technology investments.
- Workforce development.
- Grants.
- Tax credits.
- Technical assistance.

The level of assistance provided with each programme depends mainly on the size, needs and purpose of the company, with most incentives targeted towards creating or preserving jobs or infrastructure in Pennsylvania. In addition, several incentives are provided for specific enterprise and/or opportunity zones in the state. More information on most of these programmes is available at www.newpa.com.

Pennsylvania encourages foreign investors to locate or expand operations in Pennsylvania through investment opportunities including:

- Joint ventures.
- Licensing opportunities.
- Business partnerships.
- New facilities.

Pennsylvania has authorised international foreign direct investment and trade representatives in several overseas offices, all of whom are committed to eliminating the barriers that foreign companies might encounter in investing, expanding and operating a business in Pennsylvania.

BUSINESS VEHICLES

5. What is the most common form of business vehicle used by foreign companies to conduct business in your jurisdiction? In relation to this vehicle, please provide details on:

- Registration formalities (including timing).
- Minimum (and maximum) share capital.
- Whether shares can be issued for non-cash consideration, such as assets or services (and any formalities).
- Any restrictions on the rights that can attach to shares.
- Any restrictions on foreign shareholders.
- Management structure and any restrictions on foreign managers.
- Directors' liability.
- Parent company liability.
- Reporting requirements (including filing of accounts) and cost of compliance.

The most common forms of business vehicle used by foreign companies in Pennsylvania are PLC corporations or limited liability companies (LLCs).

- **Registration formalities.** To form a business corporation in Pennsylvania, a foreign company must file its articles of incorporation and a docketing statement form with the Corporation Bureau of the Pennsylvania Department of State (Corporation Bureau). To form an LLC in Pennsylvania, a foreign company must file its certificate of organisation and a docketing statement form with the Corporation Bureau. Both forms of entities take effect on filing, unless a later date is specified in the articles of incorporation or the certificate of organisation.
- **Share capital.** Pennsylvania does not impose any requirements on maximum or minimum share capital. For a corporation, the articles of incorporation must set out the aggregate number of shares authorised for issuance.
- **Non-cash consideration.** Corporate shares can be issued for:
 - money;
 - obligations (including the obligations of a shareholder);

- services performed (whether or not contracted for);
- contracts for services to be performed;
- shares or other securities or obligations of the issuing corporation;
- any other tangible or intangible property or benefit to the corporation.

If shares are issued for non-cash consideration, the board of directors determines the value of such consideration.

Membership interests in an LLC can be issued for:

- cash;
- tangible or intangible property;
- services provided;
- a promissory note or other obligations to contribute cash or tangible or intangible property or to perform services.

- **Rights attaching to shares.** A corporation's shares may have rights and restrictions as set out in the certificate of incorporation, bye-laws, or as set out by contract among the shareholders. Members' interests in an LLC are set out in the operating agreement.
- **Foreign shareholders.** Pennsylvania does not place restrictions on foreign shareholders.
- **Management structure.** Unless otherwise specified in its bye-laws, a Pennsylvania corporation is managed under the direction and authority of its board of directors. A Pennsylvania LLC can be managed by the members or one or more appointed managers; the default rule in Pennsylvania is that an LLC is managed by the members, unless otherwise specified in the certificate of organisation.
- **Directors' liability.** If a bye-law adopted by the shareholders provides, a corporation's directors are not personally liable for monetary damages or their actions unless a director has breached his fiduciary duty and the breach constitutes self-dealing, wilful misconduct or recklessness. Unless altered by the certificate of organisation, members of an LLC are not personally liable for the debts or obligations of the LLC or for the acts of any member, manager, agent or employee of the LLC.
- **Parent company liability.** Generally, a parent company is not liable for the obligations of its subsidiaries. If a court finds that a corporation is not a bona fide independent entity, it may "pierce the corporate veil" to reach otherwise non-liable parties. There is a presumption against piercing the corporate veil unless the entity is used to defeat public convenience,

justify wrong, protect fraud or defend crime. This principle has been applied to LLCs as well.

- **Reporting requirements.** There is no annual reporting requirement for for-profit corporations in Pennsylvania. However, every ten years, all entities must file a Decennial Report of Continued Existence whenever there has been no filing of any kind made with the Pennsylvania Department of State for the preceding ten-year period. LLCs must file an annual registration document and pay an annual fee on or before 15 April of each year.

EMPLOYEES

6. What are the main laws regulating employment relationships?

Pennsylvania employment relationships are governed by federal, state and local laws governing a range of issues, including:

- **Discrimination.** See *Question 9*.
- **Arbitration or mediation.** Pennsylvania has enacted an arbitration law that provides that private arbitration agreements, including those found in collective bargaining agreements, and resultant awards are legally enforceable.
- **Wages, hours and conditions of employment.** The Pennsylvania Labor Relations Act (enacted in 1937), Pennsylvania Wage and Hour Law, which consists of the Pennsylvania Minimum Wage Act of 1968 and the Pennsylvania Wage and Collection Law of 1961, and the Equal Pay Act of 1959, for the most part, parallel comparable federal legislation. Pennsylvania also has its own Prevailing Wage Act (enacted in 1961) for those employed on state works.
- **Strikebreakers.** The Strikebreakers Act of 1972 prohibits an employer from hiring a professional strikebreaker.
- **Labor injunctions.** The Labor Anti-Injunction Act of 1937 prevents courts in Pennsylvania from issuing a restraining order or injunction in a labour dispute, except under limited circumstances.
- **Whistleblowers.** Several Pennsylvania laws, including the Worker and Community Right-to-Know Act of 1986 and the Municipal Waste Planning, Recycling and Waste Act of 1988 include whistleblower provisions.
- **Public or civil servants.** Pennsylvania has several laws enacted to protect employees engaged in public

service and civic duty activities, including provisions relating to seniority, political opinions or acts, and firemen and emergency medical technicians.

While employment relationships can be governed by contract in Pennsylvania, the terms of any contract must not conflict with the mandatory provisions of the employment laws. These laws apply to all workers in Pennsylvania but do not apply to Pennsylvania workers in foreign jurisdictions.

7. Is a written contract of employment required? Are any agreements and/or implied terms likely to govern the employment relationship?

A written contract of employment is not required. Pennsylvania is an at-will state, meaning that an employment relationship can be terminated at any time with or without cause. The employment relationship may be governed by contract, if applicable, and/or other company policies related to employment generally.

8. Are employees entitled to management representation and/or to be consulted in relation to corporate transactions (such as redundancies and disposals)?

Employees are not entitled to management representation or to be consulted in relation to corporate transactions. However, union employees are guaranteed certain rights, including the right to representation when taking part in collective bargaining activities.

9. How is the termination of individual employment contracts regulated?

Pennsylvania adheres to the common law principles of employment-at-will. This means that employees are not employed for any definite period of time and either the employer or the employee can terminate the employment relationship at any time without prior notice and for no reason, provided this does not violate any definite contractual provision between them or that the reason for the termination is not an unlawful one.

Employers are not required to pay terminated employees any specific severance pay beyond accrued wages and benefits, unless contractual provisions between them require such payments. In addition, employers generally are not required to provide individuals with any reason for their termination of employment.

It is unlawful in Pennsylvania, under Pennsylvania's Human Relations Act of 1955, for employers of four or more persons to discriminate on the basis of:

- Race.
- Colour.
- Religious creed.
- Ancestry.
- Disability.
- Pregnancy.
- Age (if 40 and older).
- Sex.
- National origin.

In addition to the above, state employers in Pennsylvania cannot discriminate on the basis of sexual orientation, AIDS or HIV status, or union membership.

Pennsylvania has a very strong presumption of an at-will relationship, and the level of proof required to overcome this presumption is arduous. A variety of employment-related torts have been recognised by Pennsylvania courts, including:

- Wrongful discharge (only to the extent the discharge is made with a specific intent to harm or is contrary to public policy).
- Fraudulent misrepresentation.
- Defamation.
- Intentional infliction of emotional distress.
- Interference with a contractual relationship.
- Certain privacy-related claims.

10. Are redundancies/mass layoffs regulated? If so, please give details.

Pennsylvania does not have any state plant closing law or mass layoff law comparable to the federal Workers Adjustment and Retraining Notification Act of 1988. However, Pennsylvania employers that require their employees to give advance notice of intention to quit under forfeiture of wages are required to pay a sum equal to such forfeiture to any employee who is discharged without similar notice for any reason other than incapacity, misconduct or work stoppage.

11. Do foreign employees require work permits and/or residency permits? If so, how long does it take to obtain them and how much do they cost?

Pennsylvania does not have specific immigration laws with respect to work and residency permits. However, foreign employees must obtain work permits as required by federal law.

TAX

12. In relation to employees, what constitutes tax residency in your jurisdiction?

A "tax resident" of Pennsylvania is an individual who is domiciled in the state or who maintains a permanent place of abode and spends, in total, more than 183 days of the taxable year in the state. Resident employees receiving wages for work outside the state are subject to withholding.

13. What income tax or social security contributions must the following pay:

- Tax resident employees?
 - Non-tax resident employees?
 - Employers, in relation to their employees?
-

Tax resident employees

Compensation for employment is taxed at the rate of 3.07% for the taxable years 2004 to 2009. Residents are also subject to local income taxes at rates that vary between local taxing authorities.

Non-tax resident employees

Non-resident employees pay Pennsylvania income tax at the rate of 3.07% for all Pennsylvania source compensation for the taxable years 2004 to 2009.

Pennsylvania, Indiana, Ohio, Maryland, New Jersey, Virginia and West Virginia have entered into reciprocal income tax agreements. Under the reciprocal agreements, residents of one reciprocal state working in another reciprocal state pay income tax to their state of residence only. As a result, employers must withhold income tax for the taxpayer's state of residence, rather than for the state where the compensation is earned. For example, a West Virginia resident working in Pennsylvania will pay West Virginia, rather than Pennsylvania, income tax on his Pennsylvania source compensation.

Employers

The corporate net income tax rate is 9.99%. In addition to their obligations to pay income tax on net business profits, employers must withhold both state and local income tax for their employees. The withholding requirement extends to partnerships, associations, and Pennsylvania "S" corporations with Pennsylvania resident partners, members or shareholders. A Pennsylvania "S" corporation is an eligible corporation which has made a valid election to be taxed under subchapter S of the Internal Revenue Code of 1986, as amended. As a result of that election, the "S" corporation does not pay any corporate level income tax; rather, the corporation's income and losses flow through the corporation to the shareholders, who are taxed at the applicable rates. As of 6 January 2006, Pennsylvania "S" corporations are no longer required to make a separate election with the Pennsylvania Department of Revenue to qualify for "S" corporation status.

In addition to withholding personal income tax, all employers covered under the Pennsylvania unemployment compensation laws are required to withhold contributions to the Unemployment Compensation Fund from their employees. The amount of contribution required from covered employers depends on the solvency of the fund.

14. In relation to business vehicles, what constitutes tax residency in your jurisdiction?

In general, Pennsylvania resident entities include those entities either formed in Pennsylvania or which make their commercial domicile in Pennsylvania. "Commercial domicile" is defined as "the principal place which the trade or business of the taxpayer is directed or managed" (72 P.S. §7401(3)(2)(a)(1)(B)). In addition, a business entity is subject to Pennsylvania taxing jurisdiction if it carries on business activity within the state, and Pennsylvania requires it to file tax reports based on the business activity.

15. Please give details of the main taxes that potentially apply to a tax resident business vehicle (including rates).

Corporate net income tax

Pennsylvania's corporate net income tax (CNIT) is imposed on corporations under Article IV of the Tax Reform Code (1971). In Pennsylvania, the CNIT is a flat rate of 9.99%. Corporations are required to pay the CNIT to do business, carry on activities, have capital or property employed or used, or own property in Pennsylvania. Some groups are statutorily exempt, including banking institutions, real estate investment trusts, regulated investment

companies and non-profit organisations. The starting point to determine the tax base is the federal taxable income before the net operating loss deduction.

Corporations that transact business outside of Pennsylvania and are taxable in another state can allocate and apportion their income. Non-business income, such as in relation to rents and gains or losses on the sale of real estate located in Pennsylvania, is allocated to Pennsylvania. Apportionment is based on a three-factor apportionment fraction including:

- A property factor.
- A payroll factor.
- A sales factor.

For taxable years beginning after 2006, the property and payroll factors each constitute 15% of the apportionment factor and the sales factor constitutes 70%. The property factor is based solely on real and tangible personal property.

Capital stock and franchise tax

Capital stock tax is a property tax imposed on the value of a domestic corporation's capital stock based on the company's taxable property and assets within Pennsylvania. The franchise tax is imposed on a foreign corporation's value of capital stock apportioned to Pennsylvania. These taxes are levied on corporations, certain limited partnerships, joint stock associations, business trusts and LLCs.

As with the CNIT, certain entities are exempt from taxation. The tax rate for taxable years beginning in 2007 is 2.89 mills (where one mill is 1/1000 of a US\$). The tax rate will drop one mill in each subsequent year until it expires in 2011.

Sales and use tax

A tax of 6% is imposed on either:

- Each separate sale at retail (any transfer of tangible personal property, including the licence to use, or the provision of selected services, for a consideration).
- Use of tangible personal property or services as defined.

Philadelphia and Allegheny County (in southwest Pennsylvania) impose an additional sales and use tax at the rate of 1%.

Realty transfer tax

The state realty transfer tax is 1% of the value of the realty transferred. Local taxing authorities may impose an additional realty transfer tax. The typical local tax rate is an additional 1%, but rates vary by locality.

Certain transfers of realty are exempt from the tax. These are:

- Transfers by will.
- Transfers between husband and wife, parent and child, and between siblings.
- Transfers made in the course of a statutory merger.

A change in form of an entity which owns real estate, for instance a conversion of a general partnership to a limited partnership, may be exempt depending on the circumstances.

16. How are the activities of non-tax resident business vehicles taxed?

Pennsylvania taxable income for non-resident corporations is computed in the same way taxable income is computed for resident corporations, beginning with earned income as defined by the Internal Revenue Code of 1986, as amended. Once a non-resident corporation's income has been calculated, a non-resident corporation doing business in both Pennsylvania and another state in which the corporation is subject to income tax must allocate its income between the various states in which it is subject to tax. Apportionment is based on the three-factor apportionment fraction (see *Question 15, Corporate net income tax*).

In addition to the three factor formula for taxing business income, Pennsylvania has a corporate franchise tax that it imposes on foreign corporations who do business in Pennsylvania, as well as a sales and use tax (see *Question 15*).

17. Please explain how each of the following is taxed:

- Dividends paid to foreign corporate shareholders.
- Dividends received from foreign companies.
- Interest paid to foreign corporate shareholders.
- Intellectual property (IP) royalties paid to foreign corporate shareholders.

- **Dividends paid.** Non-residents are not subject to Pennsylvania tax on dividends from investments from sources within the state. However, non-residents are taxed on Pennsylvania source dividends to the extent that those dividends are realised in the operation of a business, profession or farm. Dividends that can reasonably be classified as net income generated in the ordinary course of the operation of a business, profession or farm are taxed as business income, rather than dividend income.
- **Dividends received.** Pennsylvania residents are taxed on their worldwide income. As a result, dividend income

from investments in foreign corporations is taxed as dividends. However, if those dividends can reasonably be classified as net income generated in the ordinary course of the operation of a business, profession or farm, then the dividends will be classified as such.

- **Interest paid.** Non-residents are not subject to Pennsylvania tax on interest income from Pennsylvania source investments. However, to the extent interest income from Pennsylvania sources is generated in the operation of a business, profession or farm, that income will be treated as business income.
- **IP royalties paid.** Income generated from IP is considered non-business income. Non-business income in the form of royalties from patents and copyrights can be allocated to Pennsylvania if and to the extent that either:
 - the patent or copyright is used by the payor in Pennsylvania;
 - the patent or copyright is used by the payor in a state in which the taxpayer does not pay tax, and Pennsylvania is the taxpayer's commercial domicile.

For the purposes of the above definition, a patent is deemed to be used in Pennsylvania to the extent that it is employed in production, fabrication, manufacturing or other processing in the state, or to the extent a patented product is produced in Pennsylvania. A copyright is used in Pennsylvania to the extent that printing or other publication originates in the state. If there is no feasible way to allocate the IP as outlined above, the income generated from the IP is to be allocated to the taxpayer's state of commercial domicile.

18. Are there any thin capitalisation rules (restrictions on loans from foreign affiliates)? If so, please give details.

Pennsylvania does not have any thin capitalisation rules.

19. Must the profits of a foreign subsidiary be imputed to a parent company that is tax resident in your jurisdiction (controlled foreign company rules)?

Pennsylvania does not include income from non-resident subsidiaries in the income of a parent corporation doing business in Pennsylvania.

20. Are there any transfer pricing rules? If so, please give details.

Pennsylvania does not have any transfer pricing rules.

21. How are imports and exports taxed?

There are no special provisions for the taxation of imports and exports.

COMPETITION

22. Are restrictive agreements and practices regulated by competition law in your jurisdiction? If so, please give brief details.

Pennsylvania has enacted the Unfair Trade Practices and Consumer Protection Law of 1968 (*73 P.S. § 201 et seq.*), which prohibits unfair methods of competition and unfair or deceptive acts or practices in the conduct of any trade or commerce. Pennsylvania does not have a separate anti-trust statute.

Restrictive covenants are governed by common law. A restrictive employment covenant is valid if it is:

- Reasonably limited in duration of time and geographic extent.
- Reasonably necessary to protect the employer without imposing an undue hardship on the employee, ancillary to an employment relation.
- Supported by consideration.

Restrictive covenants in employment agreements are strictly construed.

INTELLECTUAL PROPERTY

23. Please outline the main intellectual property rights that are capable of protection in your jurisdiction. In each case, please state:

- **Nature of right.**
 - **How protected.**
 - **How enforced.**
 - **Length of protection.**
-

Patents

Patents are governed by federal law. Pennsylvania has not enacted any patent laws.

Trade marks

- **Nature of right.** A trade mark is any word, name, symbol or device or any such combination adopted

and used by or intended for use in commerce to identify a unique product or to distinguish its origin or source. Pennsylvania law generally parallels the federal system, with the exception that one must use the mark in Pennsylvania before filing an application seeking registration (that is, there is no “intent to use” basis for filing).

- **How protected.** The trade mark holder can seek protection by filing an application with the USPTO. Pennsylvania affords protection to applicants who file with the Pennsylvania Department of State.
- **How enforced.** A registrant who has filed with the Department of State can, in addition to common law remedies:
 - enjoin the manufacture, use, display or sale of imitations of the trade mark;
 - require the defendant to pay over profits and damages;
 - seek treble damages and/or attorneys’ fees in instances of bad faith.

To recover profits or damages in a civil action, the claimant must show that the defendant infringed the mark with the intent to cause confusion, mistake or deception. Dilution of a mark that is famous in Pennsylvania is actionable for injunctive relief even if the parties are not in competition or there is no confusion as to source of goods.

- **Length of protection.** A federal trade mark registration has a length of protection of ten years from the date of filing with the USPTO and can be renewed as long as it is in continuous use. A Pennsylvania trade mark registration has a length of protection of five years and can be renewed for successive five-year periods if an application is filed within six months before any expiration and the trade mark is still in use in Pennsylvania.

Registered designs

Registered designs are governed by federal law. Pennsylvania has not enacted any laws providing formal protection for registered designs.

Unregistered designs

- **Nature of right.** An unregistered design may be treated as a trade mark (*see above, Trade marks*). It may include the non-functional elements of a product or its packaging. The owner of the unregistered design can sue in federal or state courts for infringement if the competing product is likely to cause a consumer to be confused as to the product’s origin.

- **How protected.** There is no formal protection specific to unregistered designs. Under federal law, state law and common law, certain principles of trade dress may protect the shape, appearance or layout that make a product or its packaging distinctive and recognisable such that it has acquired secondary meaning in the marketplace.
- **How enforced.** Unregistered designs are enforced via an injunction or recovery of monetary damages against the infringer.
- **Length of protection.** Protection lasts as long as the design continues to be distinctive in the minds of consumers and is used in commerce.

Copyright

Copyrights are governed by federal law. Pennsylvania has not enacted any copyright laws.

Confidential information

- **Nature of right.** A trade secret may consist of a formula, pattern, device or compilation of information that is used in one's business and provides an advantage over competitors without the knowledge of the trade secret. To be protectable, the trade secret must be the particular secret of the owner and not a secret generally known in the trade.
- **How protected.** Pennsylvania has adopted a version of the federal Uniform Trade Secrets Act. Trade secrets are protected by common law and statutory law (*12 Pa. C.S.A. §§5301-5308*).
- **How enforced.** The owner of a trade secret can sue for misappropriation and must establish that:
 - the claimant owns a trade secret;
 - the claimant disclosed the trade secret to the defendant or the defendant took the trade secret without authorisation;
 - the relationship between the defendant and the claimant was such that the use or disclosure of the secret was wrongful;
 - the defendant used or disclosed, or will use or disclose, the trade secret to the claimant's detriment.
- **Length of protection.** Trade secrets have a length of protection as long as the information is kept in confidence and not generally known in the industry. If the information is discovered by other means (for example, independent discovery), it is not protected.

MARKETING AGREEMENTS

24. Are marketing agreements regulated in your jurisdiction? If so, please give brief details in respect of the following arrangements:

- **Agency.**
 - **Distribution.**
 - **Franchising.**
-
- **Agency.** Pennsylvania does not have specific laws relating to agency relationships in the marketing agreement context.
 - **Distribution.** Pennsylvania does not generally regulate distribution relationships, but such agreements are subject to the Pennsylvania version of the Uniform Commercial Code (*13 Pa.C.S. § 1101 et seq*) if the distribution agreement relates to a sale of goods.
 - **Franchising.** Pennsylvania does not generally regulate franchise relationships. However, the sale of franchises must comply with federal and state regulations requiring substantial disclosures to purchasers (for example, the Federal Trade Commission regulations). Certain industries may be subject to special industry franchise laws.

E-COMMERCE

25. Are there any laws regulating e-commerce (such as electronic signatures and distance selling)? If so, please give brief details.

Pennsylvania adopted the Uniform Electronic Transactions Act in 2000 (*73 P.S. § 2260 et seq*). The Act includes provisions relating to:

- **Use of electronic records and electronic signatures.** The use of electronic records and signatures must be agreed on by both parties.
- **Legal recognition of electronic records and electronic signatures.** If a law requires a form, record or signature, electronic versions satisfy that law.
- **Notarisation.** If a document or signature requires notarisation, that requirement is satisfied if the electronic signature of a person authorised to carry out those services accompanies the document or signature.
- **Automated transactions.** Contracts can be formed by automated electronic agents, even if no individual was aware of such formation and did not review the terms and agreements.

If a consumer is a party to the transaction, the above provisions do not apply.

DATA PROTECTION

26. Are there any data protection laws? If so, please give brief details.

There are data protection laws in Pennsylvania. It is a felony to access, alter or damage computer systems, data, databases or similar items without authorisation (*18 Pa.C.S.A § 7611*).

Pennsylvania has also enacted the Breach of Personal Information Notification Act (*73 P.S. § 2301 et seq*), which requires notification of any system breach when an entity maintains computerised data including personal information.

PRODUCT LIABILITY

27. Are there any laws regulating product liability and product safety? If so, please give brief details.

Pennsylvania allows for product liability lawsuits under strict liability, negligence and breach of warranty. For

strict liability and negligence cases, causes of action must be brought within two years. For breach of warranty cases, the statute of limitation is four years. Pennsylvania has adopted Section 402A of the Restatement (Second) of Torts for product defects.

However, there are a few unique aspects of Pennsylvania product liability cases founded in negligence. Unlike strict liability cases, a manufacturer can be found negligent for foreseeable injury to an unintended user despite lack of a product defect. Although contributory negligence is a defence to such claims, comparative negligence applies unless the claimant is more than 50% at fault, in which case recovery is barred.

CONTRIBUTOR DETAILS

Elizabeth W Brunins and Timothy Q Hudak
Eckert Seamans Cherin & Mellott LLC

T +1 412 566 6000

F +1 412 566 6099

E ebrunins@eckertseamans.com

thudak@eckertseamans.com

W www.eckertseamans.com

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T: +44 (0)20 7202 1230

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