

# It's All in the Details: Contract Specification Defense

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In products liability cases, sometimes the best defense is, "I did what I was told to do." This logic forms the basis of the contract specification defense. The contract specification defense can apply when a product manufacturer faces claims for a defectively designed product. If the manufacturer does not participate in the product's design and produces a product according to design specifications provided by others, the defense bars design defect claims against the manufacturer.[\[1\]](#)

The United States Court of Appeals for the Sixth Circuit stated, "To hold [the manufacturer] liable for defective design would amount to holding a non-designer liable for design defect...logic forbids such result."[\[2\]](#) In applicable situations, the manufacturer acts more as an "independent contractor" than a designer and has no duty related to the design of the product.[\[3\]](#) Intuitively it makes sense that an entity with no role in designing a product should bear no liability if the product is defectively designed.

Courts also reasoned that imposing liability on a manufacturer for following designs provided by others would place an undue burden on manufacturers. Manufacturers are not required to, "sit in judgment of plans and specifications they are provided."[\[4\]](#) To avoid potential liability, manufacturers would be forced to retain independent experts to review specifications to evaluate the soundness and proposed use of the design.[\[5\]](#) Such added cost financially, and in terms of stifled innovation, outweighs the benefit of providing plaintiffs an additional pocket for recovery.[\[6\]](#)

In *Garrison*, Plaintiff filed suit against the manufacturer of a dolly that collapsed on him while the dolly was carrying a load larger than it was designed for.[\[7\]](#) The dolly was designed by Plaintiff's employer and was manufactured to the employer's design specifications.[\[8\]](#) The court found the manufacturer could not be held liable because it did not design the dolly and manufactured the dolly in accordance with the design specifications.[\[9\]](#) The court further found the manufacturer was not responsible for failure to warn because it knew of no hidden danger posed by the dolly and did not know its intended use. Finally, the court held the manufacturer had no duty to test the product.[\[10\]](#) Instead, responsibility for product testing rested with the product designer.[\[11\]](#)

The majority of courts addressing the contract specification defense have found that it shields a product manufacturer from liability.[\[12\]](#) "With a few exceptions, most jurisdictions apply the contract specification defense regardless of the theory of liability."[\[13\]](#) Courts of over 20 states have recognized the defense, including Alabama, Georgia, Illinois, New York, Pennsylvania, South Carolina and Tennessee.[\[14\]](#)

The primary exception to application of the defense arises when the design is so obviously dangerous that a reasonable manufacturer would not follow the design.<sup>[15]</sup> Some courts have also disallowed the defense when a manufacturer has specialized expertise regarding the design- subjecting the manufacturer to a higher standard of care.<sup>[16]</sup> Nevertheless, in some states, even if a design defect is open and obvious, the contract specification defense applies and a manufacturer following defective specifications is not liable for injuries arising out of the product's use.<sup>[17]</sup>

The minority of jurisdictions rejecting the contract specification defense applied strict liability to products liability actions.<sup>[18]</sup> Those jurisdictions reasoned that, "a defense based on an absence of fault is inconsistent with the policies that underlie the doctrine of strict liability."<sup>[19]</sup> "A strict liability case, unlike a negligence case, does not require that the defendant's act or omission be the cause of the defect. It is only necessary that the produce be defective when it leaves the defendant's control."<sup>[20]</sup> Courts applying the minority rule include those of New Jersey, Kansas, Texas and Wisconsin.<sup>[21]</sup>

Still other states have not addressed the viability of the defense, including Mississippi and North Carolina.

To employ the defense, establish Plaintiff's claims do not involve manufacturing defects. Also show the manufacturer followed the plans and specifications provided by others and did not participate in the design. It may also be necessary to prove the design was not obviously dangerous. The contract specification defense is a potentially powerful weapon, shielding manufacturers who have simply manufactured products designed by others.

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<sup>[1]</sup> *Parker v. Allentown, Inc.*, 891 F. Supp. 2d 773 (D. Md. 2012); *Moon v. Winger Boss. Co.*, 287 N.W.2d 430 (Neb. 1980); *Restatement (Second) of Torts* § 404, cmt. a (1965).

<sup>[2]</sup> *Garrison v. Rohm & Haas Co.*, 492 F.2d 346, 351 (6th Cir. 1974).

<sup>[3]</sup> *Hatch v. Trail King Indus., Inc.*, 656 F.3d 59 (1st Cir. 2011).

<sup>[4]</sup> *Hannah v. Johnson & Johnson, Inc.*, No. 18-1422, 2020 U.S. Dist. LEXIS 113284 (D. N.J. June 29, 2020) (citing *Restatement (Second) of Torts* § 404, cmt. a).

<sup>[5]</sup> *Orion Ins. Co. v. United Tech. Corp.*, 502 F. Supp. 173 (1980).

[6] *Id.*

[7] *Garrison*, 492 F.2d 346.

[8] *Id.*

[9] *Id.*

[10] *Id.*

[11] *Id.*

[12] *Williams v. Coleman Co.*, No. 4:11-cv-02384-KOB, 2015 U.S. Dist. LEXIS 87132 (N.D. Ala. July 6, 2015)

[13] *Herrod v. Metal Powder Prods.*, 886 F. Supp. 2d 1271 (D. Ut. 2012).

[14] *Cash-Darling v. Recycling Equip, Inc.*, 62 F.4th 969 (6th Cir. 2023); *Coleman*, 2015 U.S. Dist. LEXIS 87132; *Farrell v. Utilimaster*, No. 93 Civ. 6313, 1998 U.S. Dist. LEXIS 4097 (S.D.N.Y. Mar. 31, 1998); *Orion Ins. Co.*, 502 F. Supp. 173; *Duncan v. CRS Serrine Engr's, Inc.*, 524 S.E.2d 115 (S.C. Ct. App. 1999); *Collins v. Newman Machine Co.*, 380 S.E.2d 314 (Ga. App. 1989); *Hunt v. Blasius*, 384 N.E.2d 368 (Ill. 1978).

[15] *Moon*, 287 N.W.2d 430.

[16] *Bynum v. FMC Corp.*, 770 F.2d 556 (5th Cir. 1985).

[17] *McCabe Powers Body Co. v. Sharp*, 594 S.W.2d 592 (Ky. 1980).

[18] *Herrod*, 886 F. Supp. 2d at 1276 (collecting cases).

[19] *Id.*

[20] *Johnston v. United States*, 586 F. Supp. 351, 354 (D. Kan. 1983).

[21] *Challoner v. Day & Zimmerman, Inc.*, 512 F.2d 77 (5th Cir. 1990); *Janusz v. Symmetry Med., Inc.*, 256 F. Supp. 3d 995 (E.D. Wis. 2017); *Hendricks v. Comerio Ercole*, 763 F. Supp. 505 (D. Kan. 1991) *Michalko v. Cooke Color & Chem Corp.*, 451 A.2d 179 (N.J. 1982).