

SUPERIOR COURT OF PENNSYLVANIA

Burnley, D. v. Loews Hotel

2026 Pa. Super. 43 · No. 370 EDA 2023; 485 EDA 2023 · Decided March 5, 2026

SUMMARY

The Pennsylvania Superior Court, sitting en banc, affirmed the judgment entered in favor of Dana and Ralph Burnley in a products-liability action arising from Dana Burnley’s fall over a defective cable protector at a hotel. The court upheld application of Pennsylvania’s product-line exception to successor liability against Checkers Industrial Products, LLC and rejected Checkers’s challenges concerning JNOV, evidentiary rulings, trial procedure, and the verdict. The court also affirmed the trial court’s molding of the verdict challenged in the Burnleys’ cross-appeal.

CASE DETAILS

|                       |                                                                                                                                                                                                                                                                                                                                                                                                                                                                              |
|-----------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| COURT                 | Superior Court of Pennsylvania                                                                                                                                                                                                                                                                                                                                                                                                                                               |
| WRITING FOR THE COURT | Lane, J.; Lazarus, P.J.; Bowes, J.; Panella, P.J.E.; Dubow, J.; McLaughlin, J.; King, J.; Sullivan, J.; Beck, J.                                                                                                                                                                                                                                                                                                                                                             |
| JURISDICTION          | Pennsylvania Superior Court                                                                                                                                                                                                                                                                                                                                                                                                                                                  |
| DECIDED               | March 5, 2026                                                                                                                                                                                                                                                                                                                                                                                                                                                                |
| DOCKET                | 370 EDA 2023; 485 EDA 2023                                                                                                                                                                                                                                                                                                                                                                                                                                                   |
| DISPOSITION           | affirmed                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |
| PROCEDURAL POSTURE    | Checkers appealed from a judgment entered after a jury verdict in favor of the Burnleys in a products-liability action, and the Burnleys cross-appealed the trial court's molding and apportionment of the verdict.                                                                                                                                                                                                                                                          |
| STANDARD OF REVIEW    | Review of denial of JNOV is narrow; reversal is warranted only for an abuse of discretion or an error of law controlling the outcome, and the evidence is viewed in the light most favorable to the verdict winner. Denial of a new trial is reviewed for a clear abuse of discretion or controlling legal error. Evidentiary rulings are reviewed for abuse of discretion. A trial court's decision concerning special interrogatories is reviewed for abuse of discretion. |
| PRECEDENTIAL VALUE    | Published en banc Pennsylvania Superior Court precedent                                                                                                                                                                                                                                                                                                                                                                                                                      |
| PARTIES               | Checkers Industrial Products, LLC, Dana Burnley, Ralph Burnley v. Dana Burnley, Ralph Burnley, Checkers Industrial Products, LLC                                                                                                                                                                                                                                                                                                                                             |

## TOPICS

products liability   strict liability   appellate procedure   standard of review   civil procedure

## PRACTICE AREAS

products liability   successor liability   appellate procedure   civil procedure   damages

## QUESTIONS PRESENTED

1. Whether Checkers was entitled to JNOV because Pennsylvania had not expressly adopted the product-line exception to successor liability.
2. Whether the evidence was sufficient to support application of the product-line exception to Checkers.
3. Whether the trial court erred by allowing the jury, rather than the judge, to determine whether the product-line exception applied.
4. Whether the admission of evidence concerning IAT's lack of insurance required a mistrial or new trial.
5. Whether testimony concerning IAT's assets and the Burnleys' late-disclosed employment and medical evidence required a new trial.
6. Whether the trial court erred in rejecting Checkers's proposed detailed verdict sheet.
7. Whether Checkers waived its challenge to an allegedly inconsistent verdict.
8. Whether the Burnleys waived their challenge to the trial court's molding and apportionment of the verdict.

## HOLDINGS

1. Dawejko remains binding Pennsylvania precedent, and it continues to provide the controlling parameters of the product-line exception to the general rule that an asset purchaser does not ordinarily assume the seller's liabilities.
2. The Dawejko factors, including the Ray considerations, are relevant but not mandatory; the product-line exception is to be applied flexibly rather than through a finite checklist.
3. The evidence was sufficient for the jury to find that Checkers was a product-line successor and was liable for the defective Firefly cable protector.
4. The trial court did not err by submitting the product-line-exception issue to the jury.
5. The trial court did not abuse its discretion in admitting the evidence or denying a mistrial.
6. The trial court did not abuse its discretion in denying a continuance or excluding the evidence.
7. Checkers waived its inconsistent-verdict challenge by failing to object before the jury was discharged.
8. The Burnleys waived their challenge to the trial court's molding and apportionment of the verdict by failing to raise it in a post-trial motion.

## KEY QUOTATIONS

*“Accordingly, we hold that Dawejko continues to provide the controlling parameters of the product line exception, as adopted in this Commonwealth.” (at 15-16)*

*“The exception will more likely realize its reason for being, however, if such details are not made part of its formulation.” (at 21-23)*

*“In sum, we conclude that the evidence was sufficient to support a determination by the jury that each of the Dawejko factors was satisfied such that the product line exception should apply, and Checkers should be found liable to the Burnleys under the exception.” (at 33-34)*

## FACTUAL BACKGROUND

Dana Burnley tripped over a defective Firefly cable protector at a Philadelphia hotel conference in September 2014 and suffered a serious ankle injury requiring surgeries and other medical treatment. The cable protector was manufactured or distributed through entities associated with Industry Advanced Technologies, Inc. and FallLine Corporation. In 2015, Checkers purchased IAT's cable-protector business and related assets, including inventory, equipment, intellectual property, molds, customer lists, and the Firefly brand, while IAT retained its pre-sale liabilities. The jury found that Checkers was a successor subject to the product-line exception and liable for the defective product.

## PROCEDURAL HISTORY

The Burnleys sued multiple entities after Mrs. Burnley was injured by a defective cable protector. Most defendants settled or were dismissed, leaving Checkers as the sole defendant at trial. The jury found that Checkers was a successor corporation subject to Pennsylvania's product-line exception to successor liability and awarded damages; the trial court molded the verdict and entered judgment for the Burnleys. The trial court denied Checkers's post-trial motion and granted the Burnleys delay damages in part. The Superior Court affirmed.

## DISPOSITION

affirmed

## CASES CITED

- Phillips v. Lock, 86 A.3d 906, 919 (Pa. Super. 2014)
- Dawejko v. Jorgensen Steel Co., 434 A.2d 106 (Pa. Super. 1981)
- Ray v. Alad Corp., 560 P.2d 3 (Cal. 1977)
- Ramirez v. Amsted Industries, Inc., 431 A.2d 811, 825 (N.J. 1981)
- Schmidt v. Boardman Co., 11 A.3d 924, 944-46 (Pa. 2011)
- Schmidt v. Boardman Co., 958 A.2d 498 (Pa. Super. 2008)
- Hill v. Trailmobile, Inc., 603 A.2d 602 (Pa. Super. 1992)
- Keselyak v. Reach All, Inc., 660 A.2d 1350, 1354 (Pa. Super. 1995)
- McGrath v. Bureau of Prof'l & Occupational Affairs, 173 A.3d 656, 661 n.7 (Pa. 2017)

- Marks v. Nationwide Ins. Co., 762 A.2d 1098, 1101 (Pa. Super. 2000)
- Willard v. Interpool, Ltd., 758 A.2d 684, 686 (Pa. Super. 2000)
- Kaplan v. O'Kane, 835 A.2d 735, 737 (Pa. Super. 2003)
- Cooke v. Equitable Life Assurance Society of the United States, 723 A.2d 723, 729 (Pa. Super. 1998)
- Valentine v. Acme Mkts., 687 A.2d 1157, 1160 (Pa. Super. 1997)
- Dolan v. Carrier Corp., 623 A.2d 850, 853 (Pa. Super. 1993)
- Allied Elec. Supply Co. v. Roberts, 797 A.2d 362, 364 (Pa. Super. 2002)
- Baysmore v. Brownstein, 771 A.2d 54, 57 (Pa. Super. 2001)
- Ryan v. Berman, 813 A.2d 792, 794 (Pa. 2002)
- Straub v. Cherne Industries, 880 A.2d 561, 566-68 (Pa. 2005)
- Bert Co. v. Turk, 257 A.3d 93, 112 (Pa. Super. 2021)
- Picca v. Kriner, 645 A.2d 868, 871 (Pa. Super. 1994)
- Lane Enterprises, Inc. v. L.B. Foster Co., 710 A.2d 54 (Pa. 1998)
- Board of Supervisors of Willistown Township v. Main Line Gardens, Inc., 155 A.3d 39, 44 (Pa. 2017)
- Diamond Reo Truck Co. v. Mid-Pacific Industries, 806 A.2d 423, 428 (Pa. Super. 2002)
- Fisch's Parking v. Independence Hall Parking, 638 A.2d 217, 223 (Pa. Super. 1994)
- Estate of Lakatos, 656 A.2d 1378, 1381 (Pa. Super. 1995)
- Iron Age Corp. v. Dvorak, 880 A.2d 657, 665 (Pa. Super. 2005)
- Eichman v. McKeon, 824 A.2d 305, 319 (Pa. Super. 2003)
- Rohm & Haas Co. v. Continental Casualty Co., 781 A.2d 1172, 1176 (Pa. Super. 2001)
- Matthews v. Batrone, 220 A.3d 601, 604 (Pa. Super. 2019)
- Lanning v. West, 803 A.2d 753, 766-67 (Pa. Super. 2002)
- Bank of America, N.A. v. Scott, 271 A.3d 897, 910 n.7 (Pa. Super. 2022)