IN THE SUPREME COURT OF TEXAS

NO. 06-0322

OWENS & MINOR, INC. AND OWENS & MINOR MEDICAL, INC., APPELLANTS,

v.

ANSELL HEALTHCARE PRODUCTS, INC. AND BECTON, DICKINSON AND COMPANY, APPELLEES

ON CERTIFIED QUESTION FROM THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

Argued October 19, 2006

JUSTICE GREEN delivered the opinion of the Court, in which CHIEF JUSTICE JEFFERSON, JUSTICE HECHT, JUSTICE WAINWRIGHT, and JUSTICE BRISTER joined.

JUSTICE BRISTER filed a concurring opinion.

JUSTICE O'NEILL filed a dissenting opinion, in which JUSTICE MEDINA, JUSTICE JOHNSON, and JUSTICE WILLETT joined.

Section 82.002 of the Texas Civil Practice and Remedies Code entitles an innocent seller to seek indemnity for litigation costs from the manufacturer of a product alleged to be defective. The United States Court of Appeals for the Fifth Circuit certified to this Court the following question concerning the scope of the manufacturer's indemnity obligation under Section 82.002:

> When a distributor sued in a products liability action seeks indemnification from less than all of the manufacturers implicated in the case, does a manufacturer fulfill its obligation under Texas Civil Practice and Remedies § 82.002 by offering indemnification and defense for only the portion of the distributor's defense concerning the sale or alleged sale of that specific manufacturer's product, or must the manufacturer indemnify and defend the distributor against all claims and then seek contribution from the remaining manufacturers?

Burden v. Johnson & Johnson Med., 447 F.3d 371, 375 (5th Cir. 2006). In *Ansell Healthcare Products, Inc. v. Owens & Minor, Inc.*, the court of appeals concluded that the Section 82.002 indemnity duty is not fulfilled by a manufacturer's "offer to defend" only its own products. 189 S.W.3d 889, 896–98 (Tex. App.—Texarkana 2006, pet. filed). We disagree. Section 82.002 does not require a manufacturer to indemnify a distributor against claims involving products other manufacturers released into the stream of commerce. Therefore, a manufacturer that offers to defend or indemnify a distributor for claims relating only to the sale or alleged sale of that specific manufacturer's product fulfills its obligation under Section 82.002.

I

Owens & Minor, Inc. and Owens & Minor Medical, Inc. (Owens, collectively) distributed latex gloves manufactured by other companies. In January 2000, Kathy Burden and members of her family filed a products liability action in Texas state court. The plaintiffs alleged that Burden had developed a Type I systemic allergy from defective latex gloves manufactured and sold by Owens, Ansell Healthcare Products, Inc., Becton, Dickinson and Company, and more than thirty other manufacturers and sellers of latex gloves. It is undisputed that Owens was an innocent seller in the chain of distribution of these products and that Ansell and Becton manufacture latex gloves.

Owens rejected offers of defense and indemnity from both Ansell and Becton and chose instead to hire outside counsel. In March 2000, Owens requested that Ansell, Becton, and eleven other latex glove manufacturers defend it pursuant to Section 82.002 of the Texas Civil Practice and Remedies Code. Ansell responded with an offer to defend Owens. The offer limited Ansell's defense to gloves it manufactured, and Owens rejected it. Becton had made a similar offer to defend Owens in a latex glove case in July 1995. The offer said that Becton would "defend, indemnify and hold harmless" Owens against claims involving gloves it manufactured until it was determined that the plaintiff was not exposed to its gloves. Owens likewise declined Becton's offer. Four years later, Becton made a second offer to "defend and indemnify" Owens in all latex glove cases on the same terms as the original offer. But Owens again rejected Becton's offer.

On May 3, 2000, the underlying case was removed to the United States District Court for the Southern District of Texas, which transferred the case to the United States District Court for the Eastern District of Pennsylvania as part of a broader multi-district litigation process. Because the plaintiffs were unable to show that Owens sold any of the latex gloves that allegedly injured Burden, they nonsuited their claims against Owens. The case was then returned to the original federal district court in Texas, and thereafter the plaintiffs voluntarily dismissed the case against all defendants for the same or similar reasons. No court found any party acted negligently or caused Burden's alleged injuries. Owens filed cross-claims for indemnity against Ansell, Becton, Johnson & Johnson Medical, Inc., and Smith & Nephew, Inc. Owens eventually settled with Johnson & Johnson and Smith & Newphew, but it did not settle with Ansell or Becton. Ansell and Becton moved for summary judgment on the adequacy of their offers to defend and indemnify Owens. The district

court granted the motion and terminated the case, holding that Ansell and Becton had satisfied the Section 82.002 requirements when they offered to defend Owens against all claims involving their own products. *Burden v. Johnson & Johnson Med., Inc.*, 332 F. Supp. 2d 1023, 1029 (S.D. Tex. 2004). Owens appealed to the United States Court of Appeals for the Fifth Circuit, which in turn certified to this Court the question before us. *Burden,* 447 F.3d at 375.

Analysis

Our focus when construing a statute is the intent of the Legislature. *City of LaPorte v. Barfield*, 898 S.W.2d 288, 292 (Tex. 1995). To give effect to the Legislature's intent, we rely on "the plain and common meaning of the statute's words." *Liberty Mut. Ins. Co. v. Garrison Contractors, Inc.*, 966 S.W.2d 482, 484 (Tex. 1998). "[I]t is a fair assumption that the Legislature tries to say what it means, and therefore the words it chooses should be the surest guide to legislative intent." *Fitzgerald v. Advanced Spine Sys., Inc.*, 996 S.W.2d 864, 866 (Tex. 1999).

At common law, a seller was not entitled to indemnification from a manufacturer unless and until there was a judicial finding of negligence on the part of the manufacturer. *Humana Hosp. Corp. v. Am. Med. Sys., Inc.*, 785 S.W.2d 144, 145 (Tex. 1990). In 1993, the Texas Legislature supplemented the common law by enacting Section 82.002,[1] which allows an innocent seller to seek

[1] Section 82.002 provides:

(a) A manufacturer shall indemnify and hold harmless a seller against loss arising out of a products liability action, except for any loss caused by the seller's negligence, intentional misconduct, or other act or omission, such as negligently modifying or altering the product, for which the seller is independently liable.

(b) For purposes of this section, "loss" includes court costs and other reasonable expenses, reasonable attorney fees, and any reasonable damages.

indemnification from the manufacturer of an allegedly defective product. Act of Feb. 23, 1993, 73d Leg., R.S., ch. 5, § 1, 1993 Tex. Gen. Laws 13, 13; TEX. CIV. PRAC. & REM. CODE § 82.002(a); *see also Fitzgerald*, 996 S.W.2d at 866 ("The duty [to indemnify] is a new, distinct statutory duty . . . ."). Thus, under Section 82.002, the manufacturer is now liable to the seller regardless of how the injury action is resolved. § 82.002(e)(1). The manufacturer's duty begins when it is given notice that a seller has been sued. *See Meritor Auto., Inc. v. Ruan Leasing Co.*, 44 S.W.3d 86, 89 (Tex. 2001) (stating that the plaintiff's pleadings are sufficient to invoke the manufacturer's duty under Section 82.002).

Owens argues that Section 82.002 requires manufacturers to indemnify and hold harmless innocent sellers from all losses arising out of a products liability action. Owens thus contends that it may impose liability upon any manufacturer for Owens's costs in defending a products liability

---

> (c) Damages awarded by the trier of fact shall, on final judgment, be deemed reasonable for purposes of this section.
>
> (d) For purposes of this section, a wholesale distributor or retail seller who completely or partially assembles a product in accordance with the manufacturer's instructions shall be considered a seller.
>
> (e) The duty to indemnify under this section:
>
> > (1) applies without regard to the manner in which the action is concluded; and
> >
> > (2) is in addition to any duty to indemnify established by law, contract, or otherwise.
>
> (f) A seller eligible for indemnification under this section shall give reasonable notice to the manufacturer of a product claimed in a petition or complaint to be defective, unless the manufacturer has been served as a party or otherwise has actual notice of the action.
>
> (g) A seller is entitled to recover from the manufacturer court costs and other reasonable expenses, reasonable attorney fees, and any reasonable damages incurred by the seller to enforce the seller's right to indemnification under this section.

TEX. CIV. PRAC. & REM. CODE § 82.002.

action, even one that did not make the product. Owens argues that once this indemnity liability is placed on a manufacturer, it then falls to the manufacturer to seek contribution from other responsible parties. Ansell and Becton, on the other hand, contend that Section 82.002 requires a manufacturer to indemnify a seller only for claims related to the sale of that manufacturer's product.

Owens points to our decisions in *Fitzgerald v. Advanced Spine Systems, Inc.*, 996 S.W.2d 864, and *Meritor Automotive, Inc. v. Ruan Leasing Co.*, 44 S.W.3d 86, as supporting its position that a manufacturer's Section 82.002 obligation is not limited to defense or indemnification costs with respect to its own products alone. In *Fitzgerald*, the issue was whether manufacturers owe indemnification under Section 82.002 to sellers who are not in the chain of distribution. 996 S.W.2d at 865. We held that the statute requires manufacturers to indemnify a seller even if the seller did not sell the manufacturer's product. *Id.* at 869. In *Meritor*, we again refused to limit the indemnity obligation by holding that Section 82.002(a)'s exception to a manufacturer's general indemnity obligation is established only by a finding that a seller's independent conduct caused the plaintiff's injury. 44 S.W.3d at 88–91. Until such a finding is made, a mere allegation of negligence in the plaintiff's pleadings is sufficient to invoke the manufacturer's duty to indemnify the seller for all theories properly joined to a products liability claim. *Id.*

But our holdings in *Fitzgerald* and *Meritor* do little to support Owens's interpretation of Section 82.002. First, whereas *Fitzgerald* involved the issue of to whom a manufacturer owes indemnification, 996 S.W.2d at 865, this case concerns the scope of that duty of indemnification. Second, we held in *Meritor* that "the manufacturer's duty to indemnify the seller is invoked by the plaintiff's pleadings and joinder of the seller as defendant." 44 S.W.3d at 91; *see also Gen. Motors*

Corp. v. Hudiburg Chevrolet, Inc., 199 S.W.3d 249, 256 (Tex. 2006) ("The duty to indemnify is triggered by the injured claimant's pleadings."). Citing *Meritor*, Owens argues that the plaintiffs' broad, industry-wide allegations in their pleadings triggered an independent duty of indemnification by each of the companies that manufacture the latex gloves sold by Owens. But, while it is correct that the claimant's petition triggers each manufacturer's duty to indemnify an innocent seller under Section 82.002, the petition does not define the scope of that duty. Rather, to determine the scope of the duty, we must turn to the text of the statute itself.

The essence of Owens's argument is that, because Section 82.002(a) requires a manufacturer to hold an innocent seller "harmless," Ansell's and Becton's respective offers to defend and indemnify Owens only for claims against products each released into the stream of commerce did not go far enough. Instead, Owens contends that a manufacturer must indemnify a seller for all costs related to the entire products liability action. The only exception listed in the statute, Owens points out, is for "any loss caused by the seller's negligence, intentional misconduct, or other act or omission" resulting in the seller's independent liability. Owens correctly recognizes that the lone exception does not apply to this case.

But it is unmistakable that the duty under Section 82.002 is premised on a nexus between a given manufacturer and its product. This nexus is inherent in the statute that requires a "manufacturer" to hold a seller harmless against loss arising out of a products liability action. TEX. CIV. PRAC. & REM. CODE § 82.002(a). Section 82.001(4) defines the term "manufacturer" for purposes of chapter 82 as "a person who is a designer, formulator, constructor, rebuilder, fabricator, producer, compounder, processor, or assembler of any product or any component part thereof and

who places the product or any component thereof in the stream of commerce." *Id.* § 82.001(4). Thus, Ansell and Becton can be "manufacturers" under Section 82.002 only with respect to their own products.[2]

On at least two prior occasions, we have implied that requiring a manufacturer to defend or indemnify a seller against claims related to the products of its competitors is an absurd result that cannot have been the intent of the Legislature. First, we touched on this issue in *Fitzgerald* when responding to the dissent:

> The dissenting opinion contends that a literal reading of the statute would permit a seller to obtain indemnity from "every other manufacturer sued," not just the manufacturer whose product the seller sold. Our construction of the plain language of section 82.002(a) must avoid absurd results if the language will allow.

996 S.W.2d at 867. However, because the plaintiff in *Fitzgerald* did not sue multiple manufacturers, the Court did not reach the issue. *Id.* at 865, 867. Second, *Hudiburg* concerned the statutory duty of a component-part manufacturer to indemnify a seller. 199 S.W.3d at 253–54. In our decision construing the manufacturer's duty to indemnify under Section 82.002, we stated that "the claimant's pleadings must fairly allege a defect in the component itself, not merely a defect in the seller's product of which the component was part." *Id.* at 257. While this case does not involve the duty of a manufacturer of component parts, the principle we applied in *Hudiburg* remains the same.

---

[2] The plaintiffs in this case alleged that Ms. Burden's allergic reaction was caused by the latex protein inherent in all rubber latex gloves, but the manufacturers argued during discovery that not all latex gloves contain equal amounts of latex protein. Owens contends that the plaintiffs' petition merely alleged that latex gloves are defective and did not segregate any manufacturer's product from any other, but it does not deny that different manufacturers produce gloves containing different amounts of latex protein. However, regardless of whether one manufacturer's gloves are distinguishable from the gloves of another, for the reasons stated herein, we do not construe Section 82.002 to require a manufacturer to indemnify a seller for claims relating to products it did not produce.

There is no substantive difference between the position of the component-part manufacturer in *Hudiburg* and the position of Ansell and Becton in this case. In either case, the pleadings must properly allege that the named defendant is a manufacturer of the product under the statutory definition to establish a nexus between the defendant manufacturer and the product, and thus trigger the protection of the statute. In both instances, it would be contrary to the Legislature's intent to require a defendant to indemnify a seller for claims regarding products the defendant never manufactured.

At common law, the manufacturer was required to indemnify the seller only for claims involving defects in its own products. *See* RESTATEMENT (THIRD) OF TORTS: APPORTIONMENT OF LIABILITY § 22 cmt. c, illus. 1 (2000) (stating that, where no contractual indemnity exists, the seller of a defective product is not entitled to indemnity from the manufacturer if the seller is unable to prove that the manufacturer placed the defective product into the stream of commerce and therefore would itself have been liable to the injured third party). The rationale behind the common law concept of indemnification is that a party exposed to liability solely due to the wrongful act of another should be permitted to recover from the wrongdoer. In other words, the theory is that "[e]veryone is deemed responsible for the consequences of his or her own acts." *Muldowney v. Weatherking Prods., Inc.*, 509 A.2d 441, 443 (R.I. 1986). Accordingly, a wide array of courts have held that, absent statutory language or an indemnification contract to the contrary, an innocent seller can recover its attorney's fees under the common law from a manufacturer only if the manufacturer

"was or would have been liable in the products liability suit."[3] While these cases dealt specifically with the manufacturer's liability for attorney's fees incurred by the supplier in defending claims involving the manufacturer's products, the concept is equally applicable to other fees and costs incurred by the seller in defending such claims. Thus, courts have concluded that the manufacturer is liable for the supplier's legal expenses in defending strict liability and negligence claims only when the supplier occupied a place in the stream of commerce between the manufacturer and the injured third party. *See, e.g.*, *Palmer v. Hobart Corp.*, 849 S.W.2d 135, 144 (Mo. Ct. App. 1993) (citing *Hanover Ltd.*, 758 P.2d at 447). In this case, however, Owens asserts a right to indemnity under Section 82.002 from Ansell and Becton for liability it incurred as a result of its place in the stream of commerce between *other* manufacturers and the injured third party.

In the absence of language indicating that the Legislature intended for one manufacturer to hold an innocent seller harmless for losses caused by products made by another manufacturer, we decline to assign such broad liability. Doing so would lead to absurdities and inequities the Legislature certainly did not intend. *See C & H Nationwide, Inc. v. Thompson*, 903 S.W.2d 315, 322 n.5 (Tex. 1994) ("Statutory provisions will not be so construed or interpreted as to lead to absurd conclusions . . . if the provision is subject to another, more reasonable construction or

---

[3] 1 Robert L. Rossi, *Attorney's Fees* § 8:4 (3d ed. & Supp. 2006) (citing *Safeway Rental & Sales Co. v. Albina Engine & Mach. Works, Inc.*, 343 F.2d 129 (10th Cir. 1965); *Merck & Co. v. Knox Glass, Inc.*, 328 F. Supp. 374, 376–78 (E.D. Pa. 1971); *D.G. Shelter Prods. Co. v. Moduline Indus., Inc.*, 684 P.2d 839, 841 (Alaska 1984); *Trails Trucking, Inc. v. Bendix-Westinghouse Auto. Air Brake Co.*, 108 Cal. Rptr. 30, 34 (Cal. Ct. App. 1973); *Maple Chair Co. v. W. S. Badcock Corp.*, 385 So. 2d 1036, 1038 (Fla. Dist. Ct. App. 1980); *Rauch v. Senecal*, 112 N.W.2d 886, 888 (Iowa 1962); *Cent. Motor Parts Corp. v. E.I. duPont de Nemours & Co.*, 596 A.2d 759, 761–62 (N.J. Super. Ct. App. Div. 1991); *Krasny-Kaplan Corp. v. Flo-Tork, Inc.*, 609 N.E.2d 152, 154 (Ohio 1993); *Kamyr, Inc. v. Boise Cascade Corp.*, 519 P.2d 1031, 1032–34 (Or. 1974); *Hanover Ltd. v. Cessna Aircraft Co.*, 758 P.2d 443, 448 (Utah Ct. App. 1988); Thomas Malia, Annotation, *Attorneys Fees in Products Liability*, 53 A.L.R. 4TH 414 § 19 (1987)).

interpretation."). For example, Owens's interpretation of the scope of Section 82.002's duty to indemnify could result in manufacturers such as Ansell and Becton being placed in the awkward, if not impossible, position of defending someone else for injuries caused by products they did not make. It is one thing to have to defend a seller who has marketed your product and whose defense would therefore mirror your own. But it is quite another to have to defend a seller who marketed your competitors' products rather than your own, and on top of that try to defend that seller against allegations that your competitors' products were defective in manufacture or marketing. While the seller's interest might be served in either case, it is clearly not in the competing manufacturer's interest that one of its rivals is handed the task of defending its product. It is highly unlikely, for example, that a competing manufacturer would be willing to share its intellectual property with the indemnifying manufacturer, but absent that discovery, the defense of the seller might be problematic. Moreover, a manufacturer's ability to insure its indemnity obligation would be extremely impaired if its potential exposure was linked to some other manufacturer's product. For these reasons, a manufacturer's indemnity obligation only makes sense when its own product is implicated. While we acknowledged in *Fitzgerald* that Section 82.002 gives preference to innocent sellers, we also noted that it was designed to protect manufacturers. 996 S.W.2d at 868–69. It protects manufacturers by "establishing uniform rules of liability" so they can "make informed business decisions," such as gauging exposure to liability and obtaining liability insurance. *Id.*

In 1967, our decision in *McKisson v. Sales Affiliates, Inc.* established a party's strict liability for manufacturing or selling any type of defective product. 416 S.W.2d 787, 789 (Tex. 1967). As Owens points out, Section 82.002 was designed to remedy the fundamental unfairness inherent in

a scheme that holds an innocent seller liable for defective products manufactured by another by requiring the manufacturer to indemnify the seller unless the seller is independently liable for negligence, intentional misconduct, or any other act or omission. TEX. CIV. PRAC. & REM. CODE § 82.002(a). Yet Owens argues that limiting the manufacturer's obligation under Section 82.002(a) to products the manufacturer placed in the stream of commerce returns the seller to an unfair position by requiring it to defend claims relating to another company's products if that company refuses to provide a defense. In this sense, Owens contends, an innocent seller may be left in the same disadvantaged position Ansell and Becton seek to avoid (i.e., defending a product it did not manufacture). Because we recognized in *Fitzgerald* that Section 82.002 was designed to protect innocent sellers above all, *see* 996 S.W.2d at 869, Owens argues its formulation of Section 82.002 should prevail.

But Owens's argument is unconvincing for three reasons. First, the Legislature's intent that an innocent seller be held harmless is satisfied under Ansell's and Becton's construction of Section 82.002 because a manufacturer would either defend against claims relating to its own products or would later indemnify the seller. § 82.002(a). To invoke the manufacturer's obligation under Section 82.002(a), the seller must pursue its rights under the statute from each manufacturer by giving "reasonable notice to the manufacturer." *Id.* § 82.002(f). Should the seller be faced with a recalcitrant manufacturer, it is entitled to recover its costs incurred enforcing its indemnity rights. *Id.* § 82.002(g).[4] Second, in the event a seller ends up defending a manufacturer's products itself and

[4] The dissent claims that in cases such as this, where no determination was made as to which product was at fault, the Legislature intended for the manufacturers, not the seller, to bear the burden of determining how the parties should distribute the costs of providing the seller with indemnity. ___ S.W.3d at ___. But Section 82.002(g) specifically

thereafter seeks indemnity from the manufacturer, the seller's position is more favorable than that of the manufacturer forced to defend products produced by a competing manufacturer. In the former scenario, the seller, by virtue of its intermediary position in the stream of commerce, has a business relationship with the manufacturer of the product it sells. It stands to reason that such a pre-existing business relationship is more likely to facilitate the sharing of proprietary information that is necessary for a thorough products liability defense. Finally, we find useful the Utah Supreme Court's analysis in deciding an indemnification case involving two innocent parties. In *Bettilyon Construction Co. v. State Road Commission*, a road contractor sued the State Road Commission of Utah to recover legal expenses the contractor had incurred in connection with its successful defense of a lawsuit brought against it by a property owner whose land abutted a road construction project. 437 P.2d 449, 449–50 (Utah 1968). To facilitate the project, the road commission had leased a right of way to the contractor. *Id.* at 449. The property owner alleged the right of way encroached on his property. *Id.* In holding that the contractor was not entitled to common law or contractual indemnity from the road commission for its legal expenses, the Utah Supreme Court reasoned:

> One of the hazards of life which everyone is exposed to is the possibility of being required to defend a lawsuit. . . . But the fact that the party charged may be innocent of the claimed wrong and can successfully defend against such a suit does not entitle him to pass the burden on the [sic] some equally innocent third party.

Id. at 450. Here, as well, there is no basis for extending Ansell's and Becton's obligations under Section 82.002 to claims involving another manufacturer's products.

---

entitles the seller to recover costs incurred in enforcing his indemnity rights. If, as the dissent maintains, the burden should fall to a manufacturer to seek contribution from other manufacturers, then Section 82.002(g) would have provided that manufacturers as well as sellers could recover such costs.

Owens argues that interpreting Section 82.002 in this manner reverts to the common law by reinserting a "chain of distribution" requirement. But we conclude that the Legislature never altered this portion of the common law.[5] The Legislature specifically incorporated that requirement into the statute by defining a manufacturer as a person who "places the product or any component part thereof in the stream of commerce." TEX. CIV. PRAC. & REM. CODE § 82.001(4). If the Legislature intended to change the common law by establishing liability for another manufacturer's product, it would have done so expressly.[6]

Conclusion

The Fifth Circuit asks whether a manufacturer can fulfill its indemnity obligations under Section 82.002 when the manufacturer offered to indemnify and defend an innocent seller only for claims related to the sale of products the manufacturer released into the stream of commerce. We conclude that the statute does not extend a manufacturer's obligations under Section 82.002 to claims related to the sale of other manufacturers' products. When an innocent seller is forced to defend itself in a products liability action, its remedy under the statute is to seek indemnity from the

[5] The dissent suggests that today's holding results in the Court reading the phrase "plac[es] [the] product . . . in the stream of commerce" differently in the definitions of manufacturer and seller. ___ S.W.3d at ___. In *Fitzgerald*, we held that Section 82.002 does not require a seller to be proven to have been in the chain of distribution for the product at issue. 996 S.W.2d at 867. But the question in this case is not whether the seller stood in the chain of distribution. Instead, our decision in this case concerns only the legal question of whether a manufacturer's defense or indemnity obligation in Section 82.002 extends beyond its own products.

[6] The dissent asserts that our holding "creates an exception to the indemnity obligation that does not exist in the text." ___S.W.3d at ___. We disagree. We merely recognize the scope of indemnity obligation imposed by the Legislature. Under the statute, an innocent seller is guaranteed indemnity from any person who qualifies as a manufacturer under Section 82.001(4). Naming a party as a manufacturer in a lawsuit does not automatically trigger an unlimited indemnity obligation under Section 82.002. A party's indemnity obligation is limited by the definition of manufacturer, which relates specifically to a person's own products that have been placed in the stream of commerce.

product manufacturer. But where the plaintiff has sued multiple manufacturers, the statute does not authorize a seller to simply select one or more manufacturers and thereby obligate the chosen manufacturers to fully indemnify the seller's costs regardless of whether any connection to the product at issue exists. Rather, the product manufacturers satisfy their statutory duty to the seller by offering to indemnify and defend it only for any costs associated with their own products. And if, as in this case, there is no finding as to which manufacturer, if any, is liable for the plaintiff's injury, the innocent seller, like an innocent manufacturer, must assume responsibility for recovering the costs of its own defense. Our interpretation of the scope of a manufacturer's obligation under Section 82.002 comports with the Legislature's intent, as indicated by the plain language of the statute, the policy behind it, and its practical application. Accordingly, Ansell and Becton are not required to indemnify and defend Owens against all claims relating to all products.

_____

PAUL W. GREEN
JUSTICE

OPINION DELIVERED: March 28, 2008