

POSSESSION IN A MANNER WHICH WAS THE PROXIMATE AND SUBSTANTIAL CAUSE OF THE CLAIMANT'S INJURY, -OR -

~~(2) -- THE -- SELLER -- NEVER -- HAD -- THE -- PRODUCT -- IN -- HIS CUSTODY -- OR -- POSSESSION --~~

(C) THE DEFENSE PROVIDED IN SUBSECTION (B) OF THIS SECTION IS NOT AVAILABLE IF:

(1) THE MANUFACTURER IS NOT SUBJECT TO SERVICE OF PROCESS UNDER THE LAWS OF THIS STATE OR THE MARYLAND RULES;

(2) THE MANUFACTURER HAS BEEN JUDICIALLY DECLARED INSOLVENT IN THAT THE MANUFACTURER IS UNABLE TO PAY ITS DEBTS AS THEY BECOME DUE IN THE ORDINARY COURSE OF BUSINESS;

(3) THE COURT DETERMINES ~~IT IS HIGHLY PROBABLE~~ BY CLEAR AND CONVINCING EVIDENCE THAT THE CLAIMANT WOULD BE UNABLE TO ENFORCE A JUDGMENT AGAINST THE PRODUCT MANUFACTURER;

(4) THE CLAIMANT IS UNABLE TO IDENTIFY THE MANUFACTURER;

(5) THE MANUFACTURER IS OTHERWISE IMMUNE FROM SUIT; OR

(6) THE SELLER MADE ANY EXPRESS WARRANTIES, THE BREACH OF WHICH WERE THE PROXIMATE AND SUBSTANTIAL CAUSE OF THE CLAIMANT'S INJURY.

(D) (1) EXCEPT IN AN ACTION BASED ON AN EXPRESSED INDEMNITY AGREEMENT, IF THE SELLER SHOWS BY UNREBUTTED FACTS THAT HE HAS SATISFIED SUBSECTION (B) OF THIS SECTION AND THAT SUBSECTION (C) OF THIS SECTION DOES NOT APPLY, SUMMARY JUDGMENT SHALL BE ENTERED IN HIS FAVOR AS TO THE ORIGINAL OR THIRD PARTY ACTIONS.

(2) NOTWITHSTANDING THE GRANTING OF A MOTION FOR SUMMARY JUDGMENT UNDER PARAGRAPH (1) OF THIS SUBSECTION, THE SELLER WILL CONTINUE TO BE TREATED AS THOUGH THE SELLER WERE STILL A PARTY FOR ALL PURPOSES OF DISCOVERY INCLUDING THE USES OF DISCOVERY.

~~(2)~~ (3) ON A SUBSEQUENT SHOWING OF THE OCCURRENCE OF ANY CONDITION DESCRIBED IN SUBSECTION (C) OF THIS SECTION OR THAT ONE OR MORE OF THE CONDITIONS OF SUBSECTION (B) OF THIS SECTION DID NOT EXIST, DURING THE PENDING LITIGATION, THE ACTIONS SO DISMISSED BY SUMMARY JUDGMENT UNDER PARAGRAPH (1) OF THIS SUBSECTION SHALL BE REINSTATED AND ARE NOT BARRED BY THE PASSAGE OF TIME.