(NOTE: The status of this decision is **Unpublished**.)

NOT FOR PUBLICATION WITHOUT THE

APPROVAL OF THE APPELLATE DIVISION

SUPERIOR COURT OF NEW JERSEY

APPELLATE DIVISION

DOCKET NO. A-0

CENTRAL IRRIGATION SUPPLY, INC.,

Plaintiff-Appellant/Cross-

Respondent,

v.

POLYSTAR PRODUCTS, INC. and MERVIS

INDUSTRIES, INC.,

Defendants,

and

AMERICAN POLYMERS CORPORATION,

Defendant-Respondent/Cross-

Appellant.

November 18, 2014

Argued December 18, 2013 – Decided

Before Judges Grall, Waugh and Nugent.

On appeal from Superior Court of New

Jersey, Law Division, Mercer County,

Docket No. L-617-09.

John G. Fellinger argued the cause for appellant/cross-respondent.

Anthony J. Zarillo, Jr. argued the cause for respondent/cross-appellant (Bevan, Mosca, Giuditta & Zarillo, attorneys; Mr. Zarillo, of counsel and on the brief; Jason P. Gratt and Dana K. Ferrera, on the brief).

The opinion of the court was delivered by

GRALL, P.J.A.D.

The failure of irrigation pipe, allegedly caused by the fact that the pipe was made with resin not suitable for that purpose, led to multi-party litigation. This appeal and cross-appeal are interlocutory challenges to the judge's rulings on summary judgment motions involving two of the parties in a consolidated action — American Polymers Corporation (American), which purchased the resin from the producer with the intention of selling it to the manufacturer of the irrigation pipe; and Central Irrigation Supply, Inc. (Central), which purchased the irrigation pipe from its manufacturer and sold it to the irrigation installation contractors from its stores in several states and Canada. The producer of the resin, Mervis Industries, Inc. (Mervis), and the manufacturer of the irrigation pipe, PolyStar Products, Inc. (PolyStar), are not involved in this appeal.

Central's amended complaint includes four counts (four through seven) asserting the following claims against American: count four, breach of express and implied warranties under the Uniform Commercial Code (UCC), N.J.S.A. 12A:1-101 to 12-26; count five, negligent misrepresentation; count six, violation of the Consumer Fraud Act (CFA), N.J.S.A. 56:8-1 to -20; and count seven, liability under the Product Liability Act (PLA), N.J.S.A. 2A:58C-1 to -11. American filed two motions for partial summary judgment on those claims.

By order of October 26, 2010, the judge denied American summary judgment on Central's PLA claim.[1] The judge rejected American's argument that its role in the sale of the resin was that of a broker, not a "product seller" within the meaning of N.J.S.A. 2A:58C-8, because of evidence tending to support a determination that American played a role that qualified it as a seller under the PLA. Because discovery was not complete, the judge rejected American's alternative argument that even if it were a seller within the meaning of the PLA it would be entitled to seller's immunity provided in N.J.S.A. 2A:58C-9. The judge, however, granted American's motion for summary judgment on Central's claims of express and implied warranties and noted that those rulings on warranties "are preliminary in nature," because discovery is not complete.

The judge's rulings on American's second summary judgment motion are memorialized in an order of April 20, 2012.[2] The order states that the judge's findings and reasons were stated on the record on December 15, 2011. The order reflects that the judge granted American's motion for summary judgment and dismissed with prejudice Central's claims based on implied warranties, negligent misrepresentation and violation of the CFA. As her December 15 decision explains, those rulings were based on the judge's determination that Central's implied warranty, negligent misrepresentation and CFA claims were, as a matter of law, subsumed in or trumped by Central's PLA claim.

In that second summary judgment motion, American did not seek summary judgment on express warranties beyond the "preliminary" grant memorialized in the October 26, 2010 order. In the December 15 decision, however, the judge reversed her preliminary rulings granting American summary judgment on Central's express and implied warranty claims. As previously noted, the judge went on to state American was entitled to summary judgment on Central's implied warranty claim because it was subsumed in Central's PLA claim, but the judge did not address the express warranty claim.

Central and American both moved for reconsideration of the April 20, 2012 order. Central urged the judge to reverse the dismissal of its claims based on implied warranty, negligent misrepresentation and the CFA, arguing that the judge had misapplied the PLA. American sought reconsideration of the denial of its applications for summary judgment on American's PLA claim and sought summary judgment on its express warranty claims. By orders of July 13, 2012, the judge denied both motions for reconsideration — Central's on the merits for the reasons the judge had previously stated, and American's on the procedural ground that the cross-motion was not germane to the issues raised in Central's motion.

Following the denial of reconsideration, Central moved for leave to appeal the orders of April 20 and July 13, 2012. Although a panel of this court denied Central's motion, the Supreme Court

granted leave to appeal and remanded to this court. Subsequently American moved for leave to file a cross-appeal from the trial court's decision of December 15, 2011 and order of April 20, 2012, which a panel of this court granted. Finally, although Central acknowledges that it did not move for summary judgment on its express and implied warranty claims in the trial court, in its brief responding to American's cross-appeal Central asks us to exercise original jurisdiction and award Central summary judgment on its express and implied warranty claims.

In considering a summary judgment application, this court and the trial court apply the same standard. Brill v. Guardian Life Ins. Co. of Am., 142 N.J. 520, 523 (1995). A grant of summary judgment is appropriate when the facts, viewed in the light most favorable to the non-moving party, show no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. Id. at 528-29.

Applying the foregoing standard, we reach the following conclusions. Because American and Central are both links in the defective irrigation pipe's distributive chain and Central does not assert that it sustained damage to its property, American is entitled to summary judgment on Central's PLA and negligent misrepresentation claims as a matter of law. Spring Motors Distrib., Inc. v. Ford Motor Co., 98 N.J. 555, 578-82 (1985) (PLA and negligence); cf. Monsanto Co. v. Alden Leeds, Inc., 130 N.J. Super. 245, 256-60 (Law Div. 1974) (allowing a PLA claim by a commercial buyer in the distributive chain where the defective product damaged the commercial buyer's warehouse). Accordingly, we remand for dismissal of those claims with prejudice, but our determination is without prejudice to any claim for indemnification on its liability under the PLA for damage to an end user's property other than the irrigation pipe. Mettinger v. Globe Slicing Mach. Co., Inc., 153 N.J. 371, 379-80 (1998); Promaulayko v. Johns Manville Sales Corp., 116 N.J. 505, 509-14 (1989).

For reasons other than those asserted by the judge, we also conclude that American is entitled to judgment on Central's CFA claim. That claim must be dismissed with prejudice as a matter of

law because American and Central conducted no transaction constituting a "sale of merchandise" as defined in the CFA. Princeton Healthcare Sys. v. Netsmart N.Y., Inc., 422 N.J. Super. 467, 468 (App. Div. 2011).

We reverse the grant of summary judgment to American on the implied warranty claim. The judge's award of summary judgment on that claim is based on an erroneous interpretation of the PLA — that a claim for economic loss caused by a defective product is subsumed in Central's PLA claim. N.J.S.A. 2A:58C-1(b); Dean v. Barrett Homes, Inc., 204 N.J. 286, 294-98 (2010). Accordingly, it cannot be sustained.

Indemnification aside, Central, a commercial buyer and seller in the irrigation pipe's distribution chain, has no viable claims for economic loss other than the express and implied warranty provisions of the UCC. Dean, supra, 204 N.J. at 296. To date, there has been no decision on a motion for summary judgment addressing the merits of Central's warranty claims in light of the record. Because the judge's erroneous interpretation of the PLA resulting in the dismissal of the implied warranty claim was urged by American and because Central did not seek summary judgment on its warranty claims in the trial court, we decline to exercise our original jurisdiction to address either claim on the merits in the first instance and remand for further proceedings.

The record discloses the following. American was the first in the distribution leading to the irrigation pipe's placement into the stream of commerce. American's founder and president, Kevin Copeland, and a vice president for Mervis, Michael Smith, explained that the role of brokers in the plastics industry is not one of putting the buyer and seller together.

American identifies a person or entity that has and wants to sell plastics material and a person or entity that wants to buy the plastics material to manufacture a product. When both are in place, American buys the material at a pre-arranged price and sells at a pre-arranged higher

price. The profit is the broker's gross income. It is in business to sell materials for manufacturing products made of plastic.

American does its business by gathering information about the plastics industry, developing data bases, and contacting prospective sellers and buyers to assess their interest in either end of the transaction. But American, and other brokers in the industry, never put the sellers and buyers together or disclose their identities to one another.

Smith and Copeland explained what both understood to be the reason for brokers wanting to keep the information secret. If the seller and buyer come to know one another then they no longer need the broker. Without that knowledge, the seller and buyer cannot cut the broker out of their future transactions.

American's interest in maintaining buyer-seller anonymity dictates several practices. For example, deliveries from buyer to seller are blind. American insists that the plastics material it buys bear no label identifying the source, and American hires a common carrier to pick up its purchase and deliver it to his buyer. Only the carrier and American know the source and receiver.

Smith explained that Mervis, the producer of the resin used to make the irrigation pipe at issue here, accepts the broker-imposed secrecy because the producers are paid by and look to the creditworthiness of the so-called "brokers." Smith and Copeland agreed that a broker assumes the risk of product loss and is obligated to pay for the material once the broker's carrier picks it up.

Importantly, the secrecy means that any communication between the buyer and seller is through the broker. As previously noted, in this case the buyer was PolyStar, the manufacturer of the irrigation pipe. A salesperson for American, Nanette Passanante, called PolyStar's chief financial officer, Paul Mudd, early in 2008 to ask if PolyStar was interested in selling or

purchasing plastic. According to Passanante, Mudd said he was interested in purchasing reprocessed high density polyethylene (HDPE), extrusion grade pellets with a fractional melt range. He sent Passanante industry specifications detailing the properties of pipe-grade material. Those specifications contemplated the use of prime resin, referred to in the record as "virgin" materials, rather than the less-expensive reprocessed resins. The material Mervis supplied to PolyStar was reprocessed not virgin and Mudd knew that.

Passanante acknowledged significant differences between prime and reprocessed materials for Mudd:

> Had [Mudd] gone to a prime manufacturer and sampled once, that is [sic] most likely sufficient. If you're purchasing a reprocessed pellet, which is going through a reprocessing, and it's not guaranteed, then you might want [sic] to look at that material as you are going forward.
>
> . . . .
>
> [A] prime manufacturer is going to be spot-on with each specification. A reprocessed pellet can have variations, because of the feedstock . . . .

According to Passanante, she warned Mudd that she would be able to locate reprocessed resin within the melt range he specified, but because the resin would be reprocessed she could not assure that the material would conform to every specification in the document Mudd had provided. Mudd claimed otherwise.

Mudd also spoke to another employee of American, Marcia Frey. According to Mudd, Frey told him that Mervis had an abundance of uniform material from the same source that could be used to make a green-colored HDPE reprocessed pellet within the melt range Mudd specified. Mudd explained that the large volume of resin from a single "pile" appealed to him, because he would not have to test every load of resin pellets that arrived. American denied making any representations about the resin being made from the reprocessing of a single, uniform source.

At that time, PolyStar was one of the few manufacturers of irrigation pipe and doing a good business, outselling the stock PolyStar's facility had the capacity to produce. Testing required PolyStar to shut down some production lines that otherwise would be running pipe for sale. In Mudd's view, knowing that the resin he was buying over time would all come from the same "pile" would allow him to test the product only once, because it would be from a "consistent homogenous source."

The deposition testimony of the employees of the three companies involved in this sale, purchase, resale and repurchase of the resin used to make the irrigation pipe at issue is not consistent. According to Mudd, Passanante knew the specifications Mudd gave were for pipe, and she assured him that he would receive resin that met the specifications he had supplied and was suitable for pipe.

According to Richard Wayne Brittain of Mervis, who worked with Frey of American, he was never told that the purchaser of this resin intended to use it to make irrigation pipe. If he were selling the resin PolyStar purchased, he would have looked for a purchaser who wanted it for a different and less critical purpose. According to Brittain, he gave Frey the information that would have led an experienced person to the same conclusion about this sale, and he did that with the hope that she would convey that information to American's buyer.

Before agreeing to the purchase, Mudd ran and tested the irrigation pipe. PolyStar's testing consisted of visual inspection and stress testing and did not include tests for environmental stress crack resistance (ESCR). Subsequent testing of the resin, undertaken after the pipes began to fail, established that the Mervis materials were not pipe grade.

Expert opinion on the specific cause of the pipe failure is in conflict. According to Central's expert, Arnold Lustiger, the pipe failures resulted from the resin's poor ESCR, which he attributed to the material's high density, which Polystar's stress tests would not have revealed. Lustiger hypothesized that contaminants and Mervis' reprocessing methods had probably increased the risk of failures, but he could not determine the origin of the contamination because the color of the defective pipes suggested that PolyStar had added other ingredients during the manufacturing process.

American's expert, Anand Shah, disagreed with Lustiger's conclusions. He faulted PolyStar for deviating from the accepted industry practice of testing the resin's ESCR properties, particularly because it had blended the resin with other materials. Moreover, Shah asserted that the Mervis resin conformed to the melt rate and density in Mudd's specifications but that its suitability for piping depended on variables that Mudd did not consider or convey to American.

As previously noted, Central purchased the irrigation pipe PolyStar made with Mervis' resin and Central sold that pipe, some of which failed, to irrigation pipe installers. Central's claims for damages as stated in its amended and supplemental interrogatories submitted on the motions were as follows: economic losses in a total amount of $4,576,445.49; and "an unspecified amount in damages arising from harm to real property where" the failed irrigation pipe "leaked water." Central stated several categories of economic losses: the cost of the defective pipe not recovered from PolyStar; loss on account receivables for sale of materials other than PolyStar pipe; customer claims not offset against Central's account receivables; settlement amounts paid in customer lawsuits over the pipe; and lost profits.

There is no dispute that PolyStar is defunct.

The PLA provides a cause of action for a claimant who can establish that a "product causing the harm was not reasonably fit, suitable or safe for its intended purpose . . . ." N.J.S.A. 2A:58C-2. Harm is a defined term. As defined in the PLA, "harm" means

> (a) physical damage to property, other than to the product itself; (b) personal physical illness, injury or death; (c) pain and suffering, mental anguish or emotional harm; and (d) any loss of consortium or services or other loss deriving from any type of harm described in subparagraphs (a) through (c) of this paragraph.
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> [N.J.S.A. 2A:58C-1b(2).]

Central acknowledges that its claim for more than $4 million in economic loss it sustained is not a harm within the foregoing definition because it is attributable to damage to the product — the irrigation pipe PolyStar made with unsuitable resin that American sold to PolyStar. That concession is appropriate because that is the law. See Dean, supra, 204 N.J. at 294-98 (discussing the longstanding economic loss rule, its origins and rationale and extending application of rule to claims by non-commercial buyers); Spring Motors, supra, 98 N.J. at 578 (concluding that "[t]he policy considerations underlying both strict liability and the U.C.C. favor restricting a commercial buyer to an action for breach of warranty when seeking economic damages"). In Spring Motors, the Court held

> that a commercial buyer seeking damages for economic loss resulting from the purchase of defective goods may recover from an immediate seller and a remote supplier in a distributive chain for breach of

> warranty under the U.C.C., but not in strict liability or negligence. We hold also that the buyer need not establish privity with the remote supplier to maintain an action for breach of express or implied warranties.

[98 N.J. at 561.]

Under Spring Motors, Central had to pursue its claim for economic loss due to the allegedly defective pipe by way of express and implied warranty claims, rather than strict liability or negligence. Accordingly, the grant of summary judgment to American on the PLA and negligent misrepresentation claims is affirmed, albeit for reasons other than those stated by the judge. To the extent that there is a "preliminary" grant of summary judgment to American on Central's express warranty claim, we reverse it as inconsistent with Spring Motors and unsupported by any determination that the evidence, viewed in the light most favorable to Central, was inadequate to permit a verdict in its favor on express warranty made following completion of pertinent discovery.

For reasons not apparent to us, American took a position contrary to Spring Motors in the trial court. The judge, mistakenly accepting American's erroneous reading of N.J.S.A. 2A:58C-1(b)(2), granted American summary judgment and dismissed with prejudice Central's claims based on implied warranty, violation of the CFA and negligent misrepresentation. As discussed above, Spring Motors required dismissal of the negligence and strict liability claims. Accordingly, the judgments in favor of American on those claims are affirmed. Additionally, despite the fact that the same legal error led to the grant of summary judgment to American on Central's CFA, for reasons discussed later in this opinion, American is entitled to judgment on the CFA claim as well.

We turn to consider another argument Central presents to bring its PLA claim outside the economic loss rule. Central attempts to save its PLA claim by contending that Central's yet to be quantified loss for damage to property other than the failed irrigation pipe — meaning Central's obligation to pay all or a share of the cost of damage to real property of the pipe installers' customers — qualifies as harm. We reject that argument.

The PLA's strict liability is tort liability, Dean, supra, 204 N.J. at 294-95, and absent a viable claim of a product seller's immunity under the PLA, N.J.S.A. 2A:58C-8 to -9, Central's PLA liability to customers of the installers for damage to the customers' real property is that of a joint tortfeasor. From the perspective of the joint tortfeasors who are strictly liable for damage to an end user's property under the PLA, the loss is an economic loss as obligation to pay for the damage. Under tort law, allocation of that loss among those in the chain of distribution — that is, the obligation to pay for damage to the end user's property — is a matter of indemnification, contribution or comparative negligence. Mettinger, supra, 153 N.J. at 379-80; Promaulayko, supra, 116 N.J. at 509-14. See generally, Dreier, Keefe & Katz, New Jersey Products Liability & Toxic Tort Law, at 593-614 (2012 ed.) (in particular § 26:2-1, Implied Indemnity).

The PLA does not provide for a different approach. The PLA does not affect "matters not expressly addressed" therein. Senate Judiciary Committee Statement to Senate Committee Substitute for Senate, No. 2805 (Mar. 23, 1987) (reproduced in Dreier, Keefe & Katz, New Jersey Products Liability & Toxic Tort Law, at Appendix A, 952 (2012 ed.)). And the Committee Statement makes it clear that "[N.J.S.A. 2A:58C-1 does] not, for example, affect existing statutory and common law rules concerning contributory negligence and comparative fault or other matters not expressly addressed by this legislation." Ibid.

Generally, our courts look to legislative statements only to the extent necessary to determine the Legislature's intent, DiProspero v. Penn, 183 N.J. 477, 492 (2005), but the Legislature has directed courts to consider such statements about the PLA. In pertinent part, N.J.S.A. 2A:58C-

1(a) provides: "The Legislature further finds that such sponsors' or committee statements that may be adopted or included in the legislative history of this act shall be consulted in the interpretation and construction of this act." (emphasis added).

Given the clear statement of Legislative intent to leave intact statutory and common law rules governing allocation of responsibility, there is no reason to conclude that the Legislature intended to provide causes of action between those in the chain of distribution of a defective product over responsibility for damage to the real property of end users. We have little doubt that one of the customers whose property was damaged by the product could establish "harm" as defined in the PLA. But Central's claim for damages to the customers' property is in the end based on its status as the second to last of the commercial entities in the chain of distribution that led to placement of the pipe on the property of others. So viewed, Central's claim is for an economic loss attributable to Central's commercial transaction with PolyStar, the manufacturer of the failed irrigation pipe.

Long ago the Supreme Court concluded "[t]he policy considerations underlying both strict liability and the U.C.C. favor restricting a commercial buyer to an action for breach of warranty when seeking economic damages." Spring Motors, supra, 98 N.J. at 578. In rejecting the commercial plaintiff's opposing arguments on economic damages being recoverable, the Supreme Court distinguished a prior published opinion of a trial judge permitting a commercial buyer of defective chlorine to recover for resulting fire damage to its warehouse. The Court concluded plaintiff's reliance on Monsanto, "to support the availability of tort theories for recovery of purely economic loss in a commercial setting," was misplaced. The Court explained:

> In Monsanto, a corporate plaintiff sued the seller of allegedly defective chemicals for damages resulting from a fire caused by the chemicals, which had been sold to a related corporation and stored in the plaintiff's building. . . . One of the

> issues was whether strict liability in tort would apply to a commercial plaintiff in a suit for property damage and consequential economic loss. . . . Monsanto is distinguishable because it involved property damage, which is recoverable under strict liability.
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> [Ibid.]

Having distinguished Monsanto, the Court held that those in the distributive chain should pursue such claims under the UCC. Id. at 561 (quoted above).

In our view, the Court's discussion of Monsanto does not signal an exception to its holding that claims for economic damages between those in the distributive chain are cognizable under the UCC, not in strict liability or negligence. It is consistent with our conclusion. Any claim Central may have against others in the distributive chain for damage to the property of an end user of the irrigation pipe is by way of express or implied warranty under the UCC or a claim for indemnification.

For the foregoing reasons, we conclude that American is entitled to summary judgment as a matter of law on Central's limited PLA claim and its negligent misrepresentation claims.

That determination makes it unnecessary to consider American's argument that it was entitled to summary judgment on Central's PLA claim for a different reason — that it does not qualify as "product seller" or, if it does, is entitled to statutory immunity available to a "product seller." N.J.S.A. 2A:58C-8 to -9. We address the argument in the interest of judicial economy and to avoid any possibility that this opinion be read as suggesting that we have concluded that American's arguments on those points were persuasive. To the contrary, we find American's reliance on N.J.S.A. 2A:58C-8 and N.J.S.A. 2A:58C-9 wholly misplaced.

The facts, viewed in the light most favorable to Central, would permit a jury to find that American sold the resin produced by Mervis to PolyStar knowing that PolyStar would use it to make its irrigation pipe and without conveying information that could have avoided the introduction of irrigation pipe composed of unsuitable material into the line of commerce. On those facts, a jury could determine that American acted as a "product seller" because American was "involved in placing" the irrigation pipe "in the line of commerce" and because its sale of that resin was the very nature and purpose of, not incidental to, any "professional services" it rendered to Mervis and PolyStar. Ibid. Moreover, a jury could find that American exercised "some significant control" over the manufacture of the irrigation pipe by taking on the role of communicating pertinent information between Mervis and PolyStar and failing to do that. Ibid. American was not entitled to summary judgment on either the ground that it was not a "product seller" or the ground that it is immune from suit as "product seller."

We turn to consider Central's challenge to the grant of summary judgment to American on Central's CFA claim. As previously stated that grant of summary judgment cannot be sustained for the reason stated by the judge, which was that Central had a viable cause of action against American under the PLA that subsumed Central's CFA claim. Appeals, however, are taken from orders not decisions, Ellison v. Evergreen Cemetery, 266 N.J. Super. 74, 78 (1993), and our review on summary judgment is de novo, Davis v. Brickman Landscaping, Ltd., 219 N.J. 395, 405 (2014).

We conclude that American is entitled to judgment as a matter of law on the CFA claim because American's sale was not a "sale of merchandise" within the meaning of the CFA. We rely on Princeton Healthcare, supra, 422 N.J. Super. at 468. In that case Judge Skillman explained:

> The CFA only applies to sales of "real estate," which is obviously not involved in this case, and "sales of merchandise." N.J.S.A. 56:8-2. The CFA defines "merchandise" as

> including "any objects, wares, goods, commodities, services or anything offered, directly or indirectly to the public for sale." N.J.S.A. 56:8-1(c) (emphasis added). We have previously indicated that "the public," as used in this definition of "merchandise," refers to "the public at large." Finderne Mgmt. Co. v. Barrett, 402 N.J. Super. 546, 570 (App. Div. 2008); Marascio v. Campanella, 298 N.J. Super. 491, 499 (App. Div. 1997); see also Kugler v. Romain, 58 N.J. 522, 536 (1971) (recognizing that the CFA is directed primarily at "deception, misrepresentation and unconscionable practices engaged in by professional sellers seeking mass distribution of many types of consumer goods"); 539 Absecon Boulevard, L.L.C. v. Shan Enters. Ltd. P'ship, 406 N.J. Super. 242, 273-80 (App. Div.) (same), certif. denied, 199 N.J. 541 (2009). Thus, "[i]t is the character of the transaction, not the identity of the purchaser, which determines whether the CFA is applicable." Finderne Mgmt. Co., supra, 402 N.J. Super. at 570; accord Papergraphics Int'l, Inc. v. Correa, 389 N.J. Super. 8, 13 (App. Div. 2006) ("CFA applicability hinges on the nature of the transaction, requiring a case by case analysis.").
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> [422 N.J. Super. at 473.]

The contract at issue in Princeton Healthcare involved a request for proposals for upgrades to its computer system that called for a custom-made program to meet Princeton Healthcare's needs. It was not offered to the public at large and was not, therefore, "merchandise." Similarly, American did not offer the resin it purchased from Mervis to the public at large. American purchased the resin in order to sell it to a specific buyer, PolyStar. To that end, American gave

Mervis the specifications PolyStar provided for the resin it wanted to buy. These sales transactions between commercial entities in the plastics industry simply are not the type covered by the CFA.

We conclude as we began, by summarizing our determinations. 1) American is entitled to summary judgment on Central's PLA claim, and the order denying American summary judgment on the claim is reversed, without prejudice to a common law claim for indemnification; 2) American is entitled to summary judgment on Central's CFA claim for reasons other than those stated by the judge, and the order granting summary judgment on that claim is affirmed; 3) the orders granting American summary judgment on express and implied warranties are reversed and remanded for further proceedings on Central's claims for economic loss); and 4) the order granting American summary judgment on Central's negligent misrepresentation claim is reversed, because actions for economic loss between commercial entities in a product's distribution chain must be pursued under the UCC, not on strict liability or negligence claims.

Affirmed in part, reversed in part and remanded for further proceedings.

1 The judge heard oral argument and set forth on the record her findings and reasons on October 7, 2010.

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In the April 20, 2012 order, the judge reversed her preliminary rulings granting American summary judgment on Central's express and implied warranty claims and went on to state a different reason for granting American summary judgment on its implied warranty claim, which is discussed in the text following this note, but said nothing further on the express warranty claim.
