

Cadec admitted that it could have made the X-300 inoperable while in motion, but Roberts and the Appellate Division misapprehended that admission as a concession that Cadec could so design the computer without impairing its usefulness—a concession that the second exception to 3a(2) made the defense unavailable to Cadec. Even though it is technologically and economically feasible to redesign the product, it is not clear that that can be accomplished without impairing the usefulness of the X-300—without, that is, removing one of its inherent characteristics.

[15] Because the state/toll-road function is operable while in motion, it poses the danger of diverting the driver's eyes away from the road. Although Cadec could have eliminated that danger, the question remains whether Cadec could have done so without significantly impairing the intended function of the on-board computer. Hence, a jury must decide whether operability of all functions while in motion is an inherent characteristic of the X-300, and whether or not eliminating that feature in whole or in part would significantly diminish its intended use.

The section 3a(2) defense itself applies if full operability while in motion is an inherent characteristic of the X-300. The danger of diverting one's eyes from the road is open and obvious to any driver, and hence “known to the ordinary consumer or user.” The injury was caused (in part) by entering data while in motion, which may be an “inherent characteristic” of the computer that is “recognized by the ordinary [driver] who uses ... the product with the ordinary knowledge common to” drivers. *N.J.S.A. 2A:58C-3a(2)*. Accordingly, the trial court correctly charged the risk/utility analysis and the section 3a(2) defense.

However, the trial court also should have charged the exception to the section 3a(2) defense. We do not agree with the trial court that the proofs were sufficient as a matter of law to establish that making the X-300 inoperable in whole or in part while in motion \*384 would so impair the usefulness of

the product that an instruction on the “impairing the usefulness” exception to the 3a(2) defense was unnecessary. Nor do we agree with the Appellate Division's conclusion that the record establishes that Cadec could feasibly have eliminated the dangers that the X-300 poses without impairing its usefulness. Instead, on this record, we find that whether Cadec could have—without impairing the usefulness of the computer—eliminated the dangers posed by the X-300's being operable while in motion is a question of fact that a jury properly charged should decide. For example, Cadec may prove that the initial, one-touch data entry cannot be made inoperable while in motion without impairing the usefulness of the X-300. The record is unclear, however, on whether Lovette was attempting to make the initial entry or the follow-up entries as he entered the construction\*\*1375 area. Thus, Roberts may prove that Cadec could, without impairing the usefulness of the computer, feasibly have made only the ten-second follow-up procedure inoperable while in motion. All those considerations are properly for the jury to resolve.

As modified, the judgment of the Appellate Division is affirmed.

*For modification and affirmance*—Chief Justice [WILENTZ](#), and Justices [HANDLER](#), [POLLOCK](#), [O'HERN](#), [GARIBALDI](#) and [STEIN](#)-6.

*Opposed*—None.

N.J., 1995.

*Roberts v. Rich Foods, Inc.*

139 N.J. 365, 654 A.2d 1365, *Prod.Liab.Rep.* (CCH) P 14,192, 59 A.L.R.5th 823

END OF DOCUMENT