

Additional Reading: Products Liability Law

Products liability cases deal with the liability of those who manufacture or participate in manufacturing of a product that results in damages to an individual or group of individuals. A products liability claim can be based upon negligence, strict liability, breach of warranties or a violation of federal regulation pertaining to standards of care regarding a particular product. The basis for the claim depends upon a number of factors including, but not limited to, the nature of the product, where the claim originates and the nature of injury. Generally, product liability cases involving manufacturing defects proceed on a strict liability basis where the Plaintiff is only required to prove a defect in the product and the Defendant is liable regardless of how much care they have utilized in developing and manufacturing the product. The rationale for imposing more stringent burdens on a manufacturer and distributor is twofold: 1) the manufacturer or distributor is better able to financially absorb the costs associated with injuries sustained from dangerous or defective products and 2) to insulate an innocent/injured consumer from an unexpected defect or danger.

Types of product defects that result in liability are the following: design defect, manufacturing defects and defects in marketing. Design defects are inherent in the design and exist prior to production of the product. Translated, that means that the defects occurred as part and parcel of the intentional design of the product. While strict liability may be utilized as a legal theory of liability; the most common is negligence. Manufacturing defects are those that occur during the construction or manufacturing of the product where the product does not conform to the design or to manufacturing specifications. Manufacturing defect cases proceed under three basic theories of liability: negligence, strict liability, and *res ipsa loquitur*. Finally, defects in marketing occur where instructions on use and warnings of latent dangers are absent, improper, or unclear. Defective product litigation applies to tangible and intangible products, real estate, writings, and natural products. Examples of tangible products would be a lawn mower, intangible products would be gas, an example of real estate would be a house or land, and an example of a natural product would be a pet.

In addition to the foregoing theories of recovery on product liability claims, there are violations of federal laws such as the FDA, breaches of warranties, and tortious misrepresentation. In some instances, a product's safety and effectiveness has been the subject of federal regulation; such as pharmaceutical drugs and cars. In litigation involving product defects, violations of federal regulations may formulate the basis for liability. Another facet of product liability litigations are breaches of warranty; such as, implied warranty of merchantability, implied warranty of fitness of a particular purpose or express warranties provided on the packaging or by the seller. Clearly, a violation of those warranties by a defect, i.e. an inoperable automobile whose steering fails causing injuries, is recoverable. Finally, tortious misrepresentation applies to circumstances where a manufacturer provides false or misleading information regarding a product, a consumer relies upon that information, and is subsequently harmed.

Regardless of the theory utilized by a Plaintiff, product liability claims must be filed within the statute of limitation in the state the action is going to be filed. Typically, this begins to run when the injury occurs or when the injured person knew or should have known of the injury.