CONSUMER LAW GUIDE

Dangerous Products Law

An Introduction to Dangerous Products Law/Product Liability Law

Each year thousands of injuries are caused by dangerous or defective products resulting in loss of income, constant pain and even death. Product liability law or "dangerous products law" deals with the liability of the product manufacturer, wholesaler or retailer for injuries resulting from dangerous and defective products. An extensive number of products fall under the spectrum of dangerous products law, including prescription drugs, appliances, automobiles and food.

Under dangerous products law, the legal rules concerning who is responsible for these defective products are different than ordinary injury law, which can make it easier for an injured person to be compensated for their pain and suffering. Today's law has reached the point where almost anyone who is injured by a defective product can bring a suit for damages against any part of the product's distribution chain—from the manufacturer to the retailer and any step in between.

By law, a product must meet the consumer's expectations. But if the product has an unexpected defect or danger, it therefore doesn't meet these expectations—and the customer has the right to pursue damages.

Theories of liability

There are several theories or *counts* on which an injured party can pursue damages in product liability law. The victim, or *plaintiff*, can include a count for each theory, or choose to focus on just one. The theories are:

01
Negligence

02
Breach of Implied or Express Warranties

03
Strict Liability

Regardless of which theory of liability is used, the victim in a product liability case must prove the product that caused the injury was *defective* and that this defect made the product *unreasonably dangerous*.

To hold someone liable for your injuries, you must show that they were careless, that is, *negligent*, and that this carelessness resulted in your injuries. However, it would be very difficult and extremely expensive for one person to prove that a manufacturer was careless in the production of a certain product—looking for flaws in the entire production and packaging process would be expensive and time consuming. The theory of strict liability was developed for this very reason—to protect the consumer. This strict liability allows someone who was injured by a defective or unexpectedly dangerous product to gain compensation without having to prove that the manufacturer or the seller was actually negligent.

Do I Have a Dangerous Products Case?

If you've been injured by any sort of consumer product—from a hair dryer to a prescription medication—you may have a liability case against the product's manufacturers or distributors, and as such, may be entitled to compensation. For strict liability to apply, the product must have been sold as part of the regular sales chain—meaning if you bought the product at a garage sale, you wouldn't be able to pursue a product liability suit.

What counts as a "defect"

One of the most common terms in product liability litigation is "defect", which has a broad meaning in the eyes of the law. The law considers any product that is unreasonably dangerous during its intended use to be "defective"—with the focus on the definition of "unreasonably". In simpler terms, a product may be dangerous by its very nature but have such a usefulness that the danger is not considered unreasonable. For example, gasoline is an inherently dangerous product, but its usefulness far outweighs any danger it poses. Therefore, by law, gasoline isn't unreasonably dangerous for its proper use. When the day comes that a less dangerous and equally priced alternative fuel is developed, the law would permit a product liability action to prove that gasoline is an unreasonably dangerous product—and therefore defective.

There are three types of defects that might cause injury and result in the manufacturer's or supplier's liability: design defects, manufacturing defects and marketing defects.

Design defects

Design defects are present in a product from the beginning, even before it is manufactured, resulting in a product that is inherently unsafe from its basic design.

Manufacturing defects

Manufacturing defects occur as the product is made or assembled, resulting in a product that doesn't conform to the manufacturer's own specifications.

Marketing defects

Marketing defects are flaws in the way the final product is marketed, such as improper labeling, poor instructions or unsatisfactory safety warnings.

However, some products simply cannot be made safer without losing their effectiveness, such as electric knives or power tools. It's up to the manufacturers and suppliers of these "unavoidably unsafe products" to make sure proper warnings of the dangers and risks involved are clearly posted so that consumers can decide whether or not to use the product.

Drugs and medicines

Drugs and medicines are frequently the subject of product liability suits. Manufacturers of these pharmaceuticals must extensively test these products before releasing them to the market, using the U.S. Food and Drug Administration's (FDA) testing criteria. But even when a medication has been approved by the FDA, the manufacturer is still liable to an injured plaintiff should the drug prove to be defective in some way at a later date.

Some prescription drugs are considered to be "unavoidably unsafe" products, meaning they cannot be made completely safe no matter how they are manufactured. Drugs such as these may have harmful side effects but their use is beneficial to the user anyway. If this type of drug is properly prepared and has adequate warnings on

the packaging and inserts, they usually can't be the basis of a successful products liability lawsuit—a drug manufacturer has a duty to warn of known side effects but is not expected to warn of unknown dangers.

CASE IN POINT: ACCUTANE

A well-known prescription medication that has fallen under public scrutiny is Accutane, which is used to treat serious forms of cystic acne. Manufactured in the U.S. by a division of Hoffmann-La Roche Inc. and approved by the FDA in 1982, Accutane has clear benefits but the drug has been proven to cause birth defects in pregnant women.

The manufacturer has taken extreme measures to prevent the possibility of birth defects and possible legal action. In order to get a prescription of Accutane, a female patient must have two negative pregnancy tests, and must commit to using two forms of birth control from one month before treatment begins to at least one month after treatment ceases. She must also read and sign a consent agreement that explains the risk of birth defects associated with the drug. Yellow Accutane qualification stickers are then placed on the prescription and only prescriptions with the stickers attached can be filled.

As of March 2004, the FDA is also considering the creation of a national registry of Accutane users, which would only allow Accutane prescriptions to those listed in the registry. Recently, a new link between use of the acne drug and depression and/or suicidal tendencies was discovered and is under FDA investigation as well.

CASE IN POINT: BAYCOL

The Bayer Corporation halted production of their anti-cholesterol medication Baycol in 2001 due to the alarming number of serious side effects and other adverse events associated with the drug, including the deaths of at least 100 users. To date, Bayer has spent nearly $500 million in out of court settlements over Baycol.

> **~$500 million**
> *spent by Bayer in out-of-court settlements over Baycol*

CASE IN POINT: MERIDIA

Meridia, a drug for the long-term treatment of obesity, was approved by the FDA in 1997. In 2002, Public Citizen, a national non-profit consumer advocacy group founded by Ralph Nader, submitted a petition to the Department of Health and Human Services asking that the drug be removed from the market due to concerns over its safety. According to Public Citizen, Meridia had been involved in 29 deaths and hundreds of other negative reactions between 1998 and 2001. In July 2002, the FDA issued a formal warning to the manufacturer concerning delays in reporting adverse drug events related to Meridia.

Other medications or products that have been deemed too dangerous include: Prempro (a hormone treatment used to relieve menopause symptoms), Serzone (an anti-depressant) and Silica (a chemical compound found in a number of construction and building materials which is harmful when inhaled). If you have been injured by any of these products, consult with a product liability attorney immediately—you may be entitled to compensation.

The statute of limitations

Under a legal rule known as the "statute of limitations", any lawsuit arising from an accident or an injury must be filed within a certain time limit or the injured person loses their right to sue forever. While the statute of

limitations varies from state to state, the time period usually does not come into effect until the moment the person filing the suit knows, or should reasonably have known, that they suffered harm and the nature of that harm—otherwise known as the "discovery of harm".

If the discovery of harm isn't immediate, the delay must be reasonable under the circumstances—if a victim ignores their obvious symptoms for years on end before finally getting medical attention and pursuing legal action, the lawsuit may be dismissed because their statute of limitations has expired.

Finding a Dangerous Products Law Attorney

If you have been injured by a dangerous or defective product, seek professional legal help immediately. Product liability cases can be very complicated and establishing legal fault often requires the assistance of a whole team of experts. And deciding what particular theory to place your claim under is difficult—the knowledge of an experienced dangerous products law expert is needed.

In certain circumstances, you may be able to avoid taking your matter to court by filing a complaint with the Federal Trade Commission Consumer Response Center over the phone. You can reach the FTC by calling toll-free at 1-877-FTC-HELP (382-4357). But if you wish to pursue formal legal action, you will need to find a qualified, experienced attorney.

> FTC CONSUMER RESPONSE CENTER
>
> **1-877-FTC-HELP** (382-4357) · toll-free

One way to start the process is to ask for referrals from family and friends or do a search on www.lawyers.com. You can also use a search engine, such as Google, to find a lawyer in your area or let your fingers do the walking through the Yellow Pages.

In order to find the best lawyer for your case, you must carefully consider the background information on each potential lawyer. Find out whom they have represented in the past and what the outcome was. Contact your state bar association to find out if this particular lawyer is in good standing—most bar associations have sections in consumer law which allow you to do research on a certain lawyer.

Once you have a shortlist of 3 or 4 lawyers in hand, call each one and ask some preliminary questions before you commit to a formal face-to-face meeting. Some questions you might want to ask include:

QUESTIONS TO ASK ON THE PHONE

- ☐ Does the lawyer charge for the initial consultation?
- ☐ What type of fee arrangement does the lawyer use?
- ☐ Has the lawyer handled similar cases?
- ☐ What type of information should you bring to the meeting?
- ☐ Will this lawyer handle your case alone or will others work on it also?

As you narrow down your choices, you may decide to meet to discuss your case in person. Treat this meeting as a business consultation and act accordingly. Expect to be asked about the specifics of your case—come prepared with all the documents, contact information and medical details you have. You will need to provide your attorney with:

WHAT TO BRING TO YOUR FIRST MEETING

- ☐ The defective or dangerous product (if you still have it)
- ☐ Information about where you bought it
- ☐ Any manuals or instructions that came with the product
- ☐ Journal or paperwork listing time off work, timeline of events etc.

During your meeting, the lawyer may ask you to sign a form authorizing the release of your medical information so that he or she can obtain your medical records. They will also ask you about the current state of your injuries, unless they are obvious. If the lawyer decides to take on your case, you may be asked to sign a retainer contract or some other form of representation agreement which outlines the lawyer's fee schedule.

Product liability attorneys often work on a contingency fee basis, meaning if you lose your case, the lawyer does not get a fee. If your case is successful, however, their fee is based on a percentage of the amount awarded in the case. Contingency fee percentages vary from lawyer to lawyer but expect to pay approximately one-third of your award.

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of your award: the typical contingency fee. If you lose, the lawyer does not get a fee.

By the time your first meeting is completed, you should have a clear understanding of what your options are and have a plan of action laid out. Naturally, your lawyer will tell you not to talk about the case with others—listen to this advice and do what you're told! As a legal expert in these types of matters, your lawyer is looking out for your best interests—it's your job to cooperate fully to help ensure the best possible outcome for your case.

For Further Information

Top Law Firms

Search at: www.lawyer.com · www.lawforum.net · www.legaldirectory.ws

Websites

American Bar Association www.abanet.org

Martindale-Hubbell www.lawyers.com

- Making a Product Liability Claim
- Products Liability FAQ

Findlaw for the Public www.findlaw.com

- Time Limits for Bringing a Case: the Statute of Limitations
- Dangerous Products: Get Legal Help Now
- Reasons to Hire an Experienced Attorney
- Defective & Dangerous Products: What is Product Liability?
- Pharmaceutical Drug Liability
- Your First Meeting with an Attorney
- Accutane: Overview
- Baycol: Overview

Injuryboard.com www.injuryboard.com

- Baycol
- Defective & Dangerous Products: Overview
- Silicosis/Silica
- Meridia
- Prempro
- Serzone

General Law Message Boards www.prairielaw.com/messageboards/list.asp#channel22

Books

Products Liability in a Nutshell (Nutshell Series) by Jerry J. Phillips · Available at www.amazon.com

Product Liability Litigation by Mark A. Kinzie, Christine F. Hart · Available at www.amazon.com

Product Liability Entering the Twenty-First Century: The U.S. Perspective by Michael J. Moore, W. Kip Viscusi · Available at www.amazon.com

Product Liability Prevention: A Strategic Guide by Randall L. Goodden · Available at www.amazon.com

Reforming Products Liability by W. Kip Viscusi · Available at www.amazon.com