

Product Liability Actions in Washington State

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Product Liability Claim

If you ever sell a product that injures someone, or if you are injured by a product, the following information may be helpful to you. A product liability claim includes any claim or action brought for harm caused by a defective or unreasonably dangerous product. The claim is usually based on what is called "strict liability" and focuses on a defect in the manufacture, design, or labeling of a product.

Product Seller

A product seller is any person or entity that is engaged in the business of selling products, whether the sale is for resale, or for use or consumption. The term includes a manufacturer, wholesaler, distributor, or retailer of a product.

Exceptions to Product Seller Liability

A product seller does not include a seller of real property, a provider of professional services, a commercial seller of used products that, when resold, the used product is in essentially the same condition as when it was acquired for resale, a finance lessor and a licensed pharmacist.

Manufacturer

A manufacturer is a product seller who designs, produces, makes, fabricates, constructs, or remanufactures a product or component parts of a product before its sale to a user or consumer.

Liability of Manufacture

A product manufacturer is subject to liability to a claimant if the claimant's harm was proximately caused by the negligence of the manufacturer in that the product was:

1. Not reasonably safe as designed; or
2. Not reasonably safe because adequate warnings or instructions were not provided.

Not Reasonably Safe Standard

A product is not reasonably safe under one or more of the following conditions:

1. There are inadequate warnings or instructions with the product; or
2. Where a manufacturer learned, or where a reasonably prudent manufacturer should have learned, about a danger connected with the product after it was manufactured; or

3. Where the product was not reasonably safe in construction; or
4. Where the product was not reasonably safe because it did not conform to the manufacturer's express or implied warranties.

Liability of a Product Seller Other Than a Manufacturer

1. A product seller other than a manufacturer is liable to the claimant only if:
 - a. the claimant's harm is proximately caused by the negligence of the product seller;
or
 - b. there is a breach of an express warranty; or
 - c. there is an intentional misrepresentation of facts about the product.
2. A product seller other than a manufacturer can be liable to a claimant if:
 - a. no solvent manufacturer is subject to service of process under the laws of the claimant's domicile or in the State of Washington; or
 - b. the court determines that it is highly probable that the claimant would be unable to force a judgment against any manufacturer; or
 - c. the product seller is a controlled subsidiary of the manufacturer or the manufacturer is a controlled subsidiary of the product seller; or
 - d. the product seller provided the plans or specifications for the manufacture or preparation of the product and such plans or specifications were a proximate cause of the defect of the product; or
 - e. the product was marketed under a trade name or brand name of the product seller.

Relevance of Industry Custom, Technical Feasibility and Nongovernmental, Legislative or Administrative Regulatory Standards

The above-listed factors can be admitted into evidence in a product liability case. Also, if the injury causing aspect of the product was, at the time of manufacture, in compliance with a specific mandatory government contract specification relating to design or warnings, this is an absolute defense.

Useful Safe Life Defense

If the harm was caused more than 12 years after the time of delivery, a presumption arises that the harm was caused after the useful safe life of the product had expired. The "useful safe life" begins at the time of delivery of the product and extends for the time during which the product would normally be likely to perform or be stored in a safe manner.

Statute of Limitations

No claim may be brought more than 3 years from the date the claimant discovered or in the exercise of due diligence should have discovered the harm and its cause.

Personal Service and Jurisdiction

Any person or entity, whether or not a citizen or resident of the state, who personally or through an agent, does any of the following acts, submits itself to jurisdiction in Washington:

1. the transaction of any business within this state; or
2. the commission of a tortious act within this state; or
3. the ownership, use, or possession of any property, whether real or personal situated in this state; or
4. contracts to insure any person, property, or risk located within this state at the time of contracting.

Insurance Coverage

Usually your business insurance policy will cover you for the usual product liability claims. However, if you have any questions on your insurance coverage or whether your business may be facing a potential product liability claim, please give me a call.

Good luck!

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