Products Liability Litigation

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Overview

Hedrick Gardner's Products Liability Practice Group combines decades of experience defending manufacturers, distributors, and retailers in claims for bodily injury and wrongful death, property loss, and economic loss.

Our attorneys have a deep commitment to serving our clients, providing them with guidance and support that begins prior to litigation during product recalls and loss investigation, and continues through discovery, dispositive motions, and trial.

We have defended matters in virtually every county in North Carolina as well as all three federal courts in North Carolina, the three specialized Business Courts in North Carolina, and the Fourth Circuit Court of Appeals. Our lawyers have also tried to verdict cases in Virginia, South Carolina, Alabama, Arkansas, Oklahoma, and Puerto Rico. Additionally, lawyers in the Products Liability and Life Sciences Practice Group have expertise as national counsel in medical device litigation, multi-district litigation, and class action defense.

Products liability law in North Carolina is primarily governed by statute, specifically by Chapter 99B of the North Carolina General Statutes, which begins by confirming that North Carolina does not adhere to the strict liability standard in products liability cases, as do most other states.

FAQ's

Q: Does North Carolina follow the "economic loss rule?" Yes. With few exceptions, negligence claims are barred where the only damage sustained is damage to the product itself. In that situation, claimants are limited to claims for breach of contract or breach of warranty.

Q: Does North Carolina recognize strict liability in products liability cases? No. Although most other states adhere to strict liability in products liability cases, North Carolina is one of the few states that does not. Instead, products liability cases in North Carolina are governed by Chapter 99B of the North Carolina General Statutes, which is largely based on principles of negligence.

Q: Can a distributor or retailer face liability for a products liability claim where the distributor was not involved with the design or manufacture of the product? If the product remained in a sealed container throughout the time it was possessed by the distributor or retailer, then the "sealed container defense" found in N.C. Gen. Stat. §99B-2(a) insulates the distributor or retailer from liability. However, this defense only applies when the manufacturer or distributor is subject to jurisdiction on the North Carolina courts.

Q: What are the consequences of a product being designed or manufactured in a foreign country? The original product manufacturer is not subject to jurisdiction of U.S. federal and state courts in many of the cases in which products are manufactured in foreign countries. In such an event and absent contractual language allocating the risk of liability in an indemnification clause or otherwise, the importer steps into the shoes of the foreign designer/manufacturer and faces

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liability just as the designer/manufacturer would if based in the U.S.

Q: What is the statute of limitations applicable to products liability claims in North Carolina? Products liability claims are not viable if filed more than three years after the claimant knew or should have known of the alleged loss.

Q: Is there a statute of repose applicable to product liability claims in North Carolina? Yes. North Carolina recently modified its statute of repose to state that products liability claims are barred if filed more than 12 years after the product was initially purchased for use or consumption. In the past, the applicable statute of repose period was six years.

Q: In what contexts is preemption applicable in products liability cases? Preemption may act as a defense to state law claims where a federal statutory scheme addresses standards applicable to products in a certain field. For example, pharmaceuticals and medical devices that go through the FDA's extensive pre-market testing are immune from product liability claims under state law.

Q: Are products liability cases removable to federal court? In many cases, yes. Product designers and manufacturers often have grounds for removing cases to federal court based on diversity jurisdiction, given that product designers and manufacturers are often based in different states than the home state of the claimant.

Q: What are the most common and significant defenses to product liability claims? Common defenses to products liability claims include contributory negligence, product alteration/modification, and open/obvious hazard.

Q: Can breach of warranty claims be brought against a manufacturer by a remote end-user? Yes. According to N.C. Gen. Stat. § 99B-2(b), an end-user may bring a breach of implied warranty claim against a manufacturer even though there is no privity between the manufacturer and end-user (i.e., lack of privity of contract is not a defense to product liability actions in North Carolina).

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