

Liability Schemes In Products Liability Cases

At the onset of your products liability case, you must decide what legal theory to pursue against the defendants. For this area of law, there are three main routes you could take: negligence, strict liability, and breach of warranty. Here is a brief description of what you need to do to accomplish each of them.

Negligence in Products Liability

Negligence is a foundational aspect of tort law. Its application to products liability works similarly as it does in other legal sectors. Plaintiffs must show duty, breach, causation and damage. With regard to duty, a distinction should be made between this cause of action and a contractual one. In the later, there is privity of contract between the buyer and seller; here, that is not necessary. Duty arises when the defendant should have reasonably expected someone to get hurt. This incredibly broadens the scope of liability. Also, the duty is incurred not just by the maker but also by the designer and marketer. Breach exists whenever a product is placed into the stream of commerce that is unreasonably safe in either 1) its design 2) its manufacture or 3) its (inadequate or lack of) warning. Then, a plaintiff must prove that this breach caused damages to him or her.

Establishing negligence in products liability as the foregoing would you lead to believe. In manufacturing defect cases, the defendant-maker is entitled to deference if it illustrates it took reasonable care to avoid defects. If it can show this, then combating the deference will be hard and expensive for the plaintiff. Also, proving your design-defect case will not be a walk in the park either. You may need expert evidence to establish there was a design error in the first, that there was a reasonable alternative, and that that error caused you injuries. Finally, as if this was not enough, defendants may also raise typical negligence defenses to your action which you must be aware of (click [here](#) to read an article discussing these defenses entitled “Common Defenses In Products Liability Cases”).

Strict Products Liability

The hurdles in establishing a negligence cause of action for products liability are daunting. Proving a manufacturer, designer, or marketer was careless or inadequate in its creation and review systems is expensive and takes expertise. Thus, the emergence of strict liability for injuries related to products has emerged to support customers who are at an extreme disadvantage to defendants in these cases. This means that regardless of how careful defendants are, if their product hurt you, then they are liable to you assuming certain conditions are met. The first condition is that you were the direct buyer of the good. The second condition is that if the defendant is not a manufacturer/marketer/designer of the good then they must be in the regular business of selling/renting this specific good (i.e. a one-off transaction will not create liability for the seller). If these two conditions are met, then all a plaintiff has to show to win a strict product liability case is the following:

- The design, manufacture, or instructions regarding the product rendered it unreasonably safe and injured directly as a buyer.
- At the time of injury, you were reasonably using it in the manner for which it was intended.
- Between the sale and injury, the product was not substantially altered.

Breach of Warranty in Products Liability

You may be able to sue a company if they made promises to you about a product, and those statements were inaccurate. Under a breach of warranty cause of action, you can sue an entity or a person for false representations made about a product that harmed you. This breach can either be express or implied. In the first instance, a manufacturer makes an express warranty when it makes a direct promise (normally written) to you about a product. However, the universe of express warranties has been expanded to include testimonials, advertisements, and other remote displays of use. If you were using the product as displayed, you can still raise an express warranty claim. Implied warranties are a bit trickier. They are typically based on a reasonable consumer's expectations about a product. The two

most common forms of implied warrants are merchantability and fitness. The implied warranty of merchantability means that it is fine to be used in the manner it is marketed without risk of danger. The implied warranty of fitness is narrower than that of merchantability. It only attaches when the buyer relies on the impressions of the seller to purchase an item for a particular use. It is important to consider both express and implied warranties when bringing a product liability action.