

INDIANA PRODUCTS LIABILITY

I. INTRODUCTION

In Indiana, tort claims for product liability are governed by The Product Liability Act, Indiana Code 34-20-1-1 through 34-20-9-1. The Act governs all actions brought by a user or consumer against a manufacturer or seller for physical harm caused by a product regardless of the theory of liability. IC 34-20-1-1.

II. PRODUCTS LIABILITY CLAIMS

a. Grounds

A person who sells, leases, or otherwise puts into the stream of commerce any product in a defective condition unreasonably dangerous to any user or consumer or to the user's or consumer's property is subject to liability for physical harm caused by that product to the user or consumer or to the user's or consumer's property if that user is in the class of persons that the seller should reasonably foresee as being subject to the harm caused by the defective condition, the seller is engaged in the business of selling the product, and the product is expected to and does reach the user or consumer without substantial alterations in the condition in which the product is sold by the person sought to be held liable under the Act. IC 34-20-2-1.

This rule applies although the seller has exercised all reasonable care in the manufacture and preparation of the product and the user or consumer has not bought the product from or entered into any contractual relation with the seller. IC 34-20-2-2.

However, in an action based on an alleged design defect in the product or based on an alleged failure to provide adequate warnings or instructions regarding the use of the product, the party making the claim must establish that the manufacturer or seller failed to exercise reasonable care under the circumstances in designing the product or in providing the warnings or instructions. IC 34-20-2-2.

b. Defective Products

A product is in a defective condition if, at the time it is conveyed by the seller to another party, it is in a condition not contemplated by reasonable persons among those considered expected users or consumers of the product and it is in a condition that will be unreasonably dangerous to the expected user or consumer when used in reasonably expectable ways of handling or consumption. IC 34-20-4-1.

c. Failure to Warn

A product is defective if the seller fails to properly package or label the product to give reasonable warnings of danger about the product or fails to give reasonably complete instructions on proper use of the product when the seller, by exercising



reasonable diligence, could have made such warnings or instructions available to the user or consumer. IC 34-20-4-2.

d. Supplier Liability

A product liability action based on the doctrine of strict liability in tort may not be commenced or maintained against a seller of a product that is alleged to contain or possess a defective condition unreasonably dangerous to the user or consumer unless the seller is a manufacturer of the product or of the part of the product alleged to be defective. IC 34-20-2-3.

If a court is unable to hold jurisdiction over a particular manufacturer of a product or part of a product alleged to be defective, then that manufacturer's principal distributor or seller over whom a court may hold jurisdiction shall be considered, for the purposes of this chapter, the manufacturer of the product. IC 34-20-2-4.

e. Rebuttable Presumptions in Products Liability Action

In a product liability action, there is a rebuttable presumption that the product that caused the physical harm was not defective and that the manufacturer or seller of the product was not negligent if, before the sale by the manufacturer, the product was in conformity with the generally recognized state of the art applicable to the safety of the product at the time the product was designed, manufactured, packaged, and labeled or complied with applicable codes, standards, regulations, or specifications established, adopted, promulgated, or approved by the United States or by Indiana, or by an agency of the United States or Indiana. IC 34-20-5-1.

III. AFFIRMATIVE DEFENSES

a. Comparative Fault

In a product liability action, the fault of the person suffering the physical harm, as well as the fault of all others who caused or contributed to cause the harm, shall be compared by the trier of fact in accordance with IC 34-51-2-7, IC 34-51-2-8, or IC 34-51-2-9. In assessing percentage of fault, the jury shall consider the fault of all persons who contributed to the physical harm, regardless of whether the person was or could have been named as a party, as long as the nonparty was alleged to have caused or contributed to cause the physical harm. IC 34-20-8-1.

b. Statute of Limitations

In a product liability action in which the theory of liability is negligence or strict liability in tort, an action must be commenced within two (2) years after the cause of action accrues or within ten (10) years after the delivery of the product to the initial user or

consumer. However, if the cause of action accrues at least eight (8) years but less than ten (10) years after that initial delivery, the action may be commenced at any time within two (2) years after the cause of action accrues. IC 34-20-3-1.

c. Statute of Limitations for Asbestos-related Actions

A product liability action that is based on property damage resulting from asbestos or an action that is based on personal injury, disability, disease, or death resulting from exposure to asbestos must be commenced within two (2) years after the cause of action accrues. The subsequent development of an additional asbestos related disease or injury is a new injury and is a separate cause of action. A product liability action for personal injury, disability, disease, or death resulting from exposure to asbestos accrues on the date when the injured person knows that the person has an asbestos related disease or injury. A product liability action for property damage accrues on the date when the injured person knows that the property damage has resulted from asbestos. This section applies only to the product liability actions against persons who mined and sold commercial asbestos and funds that have, as a result of bankruptcy proceedings or to avoid bankruptcy proceedings, been created for the payment of asbestos related disease claims or asbestos related property damage claims. IC 34-20-3-2.

d. Use of Product with Knowledge of Defect and Danger

It is a defense to a product liability action that the user or consumer bringing the action knew of the defect, was aware of the danger in the product, and nevertheless proceeded to make use of the product and was injured. IC 34-20-6-3.

e. Misuse

It is a defense to an action for product liability that a cause of the physical harm is a misuse of the product by the claimant, or any other person, not reasonably expected by the seller at the time the seller sold or otherwise conveyed the product to another party. IC 34-20-6-4.

f. Product Made Safe for Reasonably Expectable Handling

A product is not defective if it is made safe for reasonably expectable handling and consumption. If any injury results from handling, preparation for use, or consumption that is not

reasonably expectable, the seller is not liable. IC 34-20-4-3.

g. Modification or Alteration of Product

It is a defense to an action for product liability that a cause of the physical harm is a modification or alteration of the product made by any person after the product's delivery to the initial user or consumer if the modification or alteration is the proximate cause of physical harm where the modification or alteration is not reasonably expectable to the seller. IC 34-20-6-5.

h. Unavoidably Unsafe Products

A product is not defective if the product is incapable of being made safe for its reasonably expectable use, when manufactured, sold, handled, and packaged properly. IC 34-20-4-4.

i. Compliance With Standards

Indiana does not have an enumerated compliance with standards defense, but Indiana Code 34-20-5-1 provides for a rebuttable presumption that the product was not defective if it conformed to the generally recognized state of the art or complied with applicable codes, standards, regulations, or specifications established, adopted, promulgated, or approved by the United States or by Indiana. IC 34-20-5-1.

IV. DAMAGES

The person who sells, leases, or otherwise puts into the stream of commerce any product in a defective condition unreasonably dangerous to any user or consumer or to the user's or consumer's property is subject to liability for physical harm caused by that product to the user or consumer or to the user's or consumer's property. IC 34-20-2-1. "Physical harm," for the purposes of IC 34-20, means bodily injury, death, loss of services, and rights arising from any such injuries, as well as sudden, major damage to property. IC 34-6-2-105. The term does not include gradually evolving damage or economic losses from such damage. IC 34-6-2-105.

a. Punitive Damages

A punitive damage award may not be more than the greater of three (3) times the amount of compensatory damages awarded in the action or fifty thousand dollars (\$50,000). 34-51-3-4.

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