

## OHIO PRODUCTS LIABILITY

### I. INTRODUCTION

Tort claims for product liability are governed by The Products Liability Act, Ohio Revised Code §2307.71 through §2307.80. The Act eliminates all common law products liability causes of action. The Products Liability Act is the sole avenue for plaintiff's wishing to pursue a products liability claim against a manufacturer or supplier of a product in Ohio.



**CLEVELAND OFFICE**  
200 Public Square  
Suite 1200  
Cleveland, Ohio 44114  
(216) 687-1311  
(216) 687-1841 fax  
CONTACT ATTORNEY:  
**Brian Gannon**  
bgannon@reminger.com

**AKRON OFFICE**  
400 Courtyard Square  
80 South Summit Street  
Akron, Ohio 44308  
(330) 375-1311  
(330) 375-9075 fax  
CONTACT ATTORNEY:  
**Bruce Fahey**  
bfahey@reminger.com  
**Andrew Jamison**  
ajamison@reminger.com

**COLUMBUS OFFICE**  
200 Civic Center Drive  
Suite 800  
Columbus, Ohio 43215  
(614) 228-1311  
(614) 232-2410 fax  
CONTACT ATTORNEY:  
**Ronald Fresco**  
rfresco@reminger.com

**SANDUSKY OFFICE**  
154 Columbus Avenue  
Second Floor  
Sandusky, Ohio 44870  
(419) 609-1311  
(419) 626-4805 fax  
CONTACT ATTORNEY:  
**Mike Murphy**  
mmurphy@reminger.com

**YOUNGSTOWN OFFICE**  
11 Federal Plaza Central,  
Suite 1200  
Youngstown, Ohio 44503  
(330) 744-1311  
(330) 744-7500 fax  
CONTACT ATTORNEY:  
**Thomas Prislipsky**  
tprislipsky@reminger.com

**CINCINNATI OFFICE**  
525 Vine Street  
Suite 1500  
Cincinnati, Ohio 45202  
(513) 721-1311  
(513) 721-2553 fax  
CONTACT ATTORNEY:  
**Joseph Borchelt**  
jborchelt@reminger.com

**TOLEDO OFFICE**  
One SeaGate  
Suite 1600  
Toledo, Ohio 43604  
(419) 254-1311  
(419) 243-7830 fax  
CONTACT ATTORNEY:  
**David Hudson**  
dhudson@reminger.com

**DAYTON OFFICE**  
1 South Main Street  
Suite 1800  
Dayton, Ohio 45402  
(937) 800-1311  
(937) 721-4030 fax  
CONTACT ATTORNEY:  
**Susan Blasik-Miller**  
sbmiller@reminger.com

### II. PRODUCT LIABILITY CLAIMS

#### A. Manufacturing Defect

A product is defective in manufacture or construction if, when it left the control of its manufacturer, it deviated in a material way from the design specifications, formula, or performance standards of the manufacturer, or from otherwise identical units manufactured to the same design specifications, formula, or performance standards. A product may be defective in manufacture or construction as described in this section even though its manufacturer exercised all possible care in its manufacture or construction. Ohio Revised Code §2307.74

#### B. Design Defect

Ohio Revised Code §2307.75 provides in part that a product is defective in design or formulation if, at the time it left the control of its manufacturer, the foreseeable risks associated with its design or formulation exceeded the benefits associated with that design or formulation. Foreseeable risks are defined at Ohio Revised Code §2307.71(6). Additionally, a plaintiff in a design defect case bears the burden to demonstrate that a practical and technically feasible alternative design or formulation was available at the time the product left the manufacturer that would have prevented the harm caused without substantially impairing the usefulness or intended purpose of the product. Ohio Revised Code §2307.75(F).

#### C. Failure to Warn

A manufacturer's duty to warn is codified in Ohio Revised Code §2307.76. A product is defective due to inadequate warning if the manufacturer knew, or in the exercise of ordinary care should have known, of the risk or hazard about which it failed to warn, and that a reasonable manufacturer would have taken such precautions in presenting the product to the public. A product is not defective due to either lack of warning and instruction or inadequate warning and instruction as a result of the failure of its manufacturer to warn or instruct about an open and obvious risk or a risk that is a matter of

common knowledge. Ohio Revised Code §2307.76(B).

#### D. Failure to conform to representations

A product is defective if it did not conform, when it left the control of its manufacturer, to a representation made by that manufacturer. A product may be defective because it did not conform to a representation even though its manufacturer did not act fraudulently, recklessly, or negligently in making the representation. Ohio Revised Code §2307.77

#### E. Supplier Liability

A "supplier" is defined at Ohio Revised Code §2307.71(15)(a). A supplier is not a manufacturer and they are mutually exclusive. A supplier is subject to liability based on a product liability claim if the supplier was negligent or the product did not conform, when it left the control of the supplier in question, to a representation made by that supplier. Ohio Revised Code §2307.78 Strict liability against a supplier can only be brought under very narrow circumstances as outlined in the Act.

### III. AFFIRMATIVE DEFENSES

#### A. Contributory Fault

Contributory fault can be asserted and established as an affirmative defense under Ohio Revised Code §2315.32 and 2307.711. See R.C. 2307.011. Contributory fault is an affirmative defense in all products liability claims.

#### B. Statute of Repose/Statute of Limitations

Ohio law also provides for a statute of repose/limitation for a product liability actions under Ohio Revised Code §2305.10. It establishes a ten year statute of repose for products liability claims. No cause of action for a product liability claim can

accrue against a manufacturer or supplier of a product later than ten years from the date that the product was delivered to the first purchaser. The statute also imposes a two (2) year statute of limitations for products liability and bodily injury claims from the date the cause of action accrues and provides that the accrual date is when the injury or loss to person or property occurs.

#### *C. Assumption of the Risk*

The Act specifically allows assumption of the risk as an affirmative defense. Ohio Revised Code §2307.711. It permits express or implied assumption of the risk to be asserted by manufactures as affirmative defenses to a product liability claim. It can be a complete bar to recovery of damages, except for intentional tort claims.

### **OTHER AVAILABLE DEFENSES AND CONSIDERATIONS**

#### *A. Misuse*

Unforeseeable misuse of a product is an affirmative defense to strict liability actions. A manufacturer is liable only for reasonably foreseeable uses of a product. Ohio Revised Code §2307.75.

#### *B. Alteration of Product*

It is an element of the plaintiff's product liability case that the alleged defect existed at the time the product left the control of the manufacturer. Ohio Revised Code §§2307.74, 2307.75, 2307.76, and 2307.77. However, where certain alterations to a product by the consumer are foreseeable by the manufacturer, the fact that such alterations are made does not, by itself, relieve the manufacturer of liability.

#### *C. Unavoidably Unsafe Products*

If at the time of the manufacture, the product was incapable of being made safe, a product is not defective in design. This is true if the harm for which plaintiff's seeks to recover was caused by an inherent characteristic of the product which is a generic aspect and cannot be eliminated without substantially compromising the product's usefulness. Ohio Revised Code §2307.75(E).

#### *D. Compliance with Standards*

In strict liability cases, compliance with administrative, industry, regulatory, or statutory standards or schemes is not a defense in a strict liability action because liability can be imposed regardless of a manufacturer's degree of care. However,

compliance with public or private standards can be admissible for jurors to consider under Ohio Revised Code §2307.75(B)(4).

### **IV. DAMAGES**

In products liability cases a claimant may recover compensatory damages for non-economic "harm" including pain and suffering. Claimants may also recover for any "economic loss". "Economic loss" means direct, incidental, or consequential pecuniary loss, including, but not limited to, medical expenses, lost profits, damage to the product in question, and nonphysical damage to property other than that product.

Tort reform limits the amount of non-economic damages that may be awarded to a plaintiff to the greater of \$250,000 or three times the amount of economic damages awarded, up to an absolute maximum of \$350,000, or \$500,000 per single occurrence. Ohio Revised Code §2315.18. There is an exception to these damages caps for individuals who suffer permanent and substantial deformity, loss of use of a limb, or an injury that prevents the claimant from caring for himself. There are no limits to the amount of economic damages recoverable by a claimant.

#### *A. Punitive Damages*

A manufacturer or supplier can be held liable for punitive damages pursuant to in Ohio Revised Code §2307.80. Punitive damages are not insurable under Ohio law. Punitive or exemplary damages shall not be awarded against a manufacturer or supplier unless the claimant establishes, by clear and convincing evidence, that harm was the result of misconduct that manifested a flagrant disregard of the safety of persons who might be harmed by the product in question. The amount of punitive damages shall be determined by the court. Ohio Revised Code §2307.80. The Act limits the amount of punitive damages that can be awarded under Ohio Revised Code §2307.80(E).

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