

## KENTUCKY PRODUCTS LIABILITY

### I. INTRODUCTION

In Kentucky, tort claims for product liability actions are governed generally by Restatement (Second) of Torts §402A. Certain defenses are governed by the Product Liability Act of Kentucky, Kentucky Revised Statutes (KRS) §§411.300 through 411.350.

### II. PRODUCT LIABILITY CLAIMS

#### A. Manufacturing Defect

A product is defective in manufacture if it is not manufactured or assembled according to specifications due to an error in the process of manufacturing or assembling.

#### B. Design Defect

A product's design is defective if a prudent manufacturer of similar products fully apprised of the condition and tendencies of the product "would not place it into the stream of commerce. Design defect cases may require proof of a feasible alternative design.

#### C. Failure to Warn

A manufacturer is required to provide adequate warnings to the user of its products regarding any dangers related to the use or misuse.

#### D. Supplier Liability

In a product liability action, if the manufacturer is identified and subject to the jurisdiction of the court, a wholesaler, distributor, or retailer who distributes or sells a product, upon his showing by a preponderance of the evidence that said product was sold by him in its original manufactured condition or package, or in the same condition such product was in when received by said wholesaler, distributor or retailer, shall not be liable to the plaintiff for damages arising solely from the distribution or sale of such product, unless such wholesaler, distributor or retailer, breached an express warranty or knew or should have known at the time of distribution or sale of such product that the product was in a defective condition, unreasonably dangerous to the user or consumer. KRS §411.340.

#### E. Presumptions in Products Liability Actions

In any product liability action, it shall be presumed, until rebutted by a preponderance of the evidence to the contrary, that the subject product was not defective if the injury, death or property damage occurred either more than five (5) years after the date of sale to the first consumer or more than eight (8) years after the date of manufacture.



**FT. MITCHELL OFFICE**  
250 Grandview Drive,  
Suite 270  
Ft. Mitchell, KY 41017  
(859) 426-7222  
(859) 283-6074 fax  
CONTACT ATTORNEY:  
**Mark Bush**  
mbush@reminger.com

**LEXINGTON OFFICE**  
Vine Center  
333 West Vine St., Ste. 1670  
Lexington, KY 40507  
(859) 233-1311  
(859) 233-1312 fax  
CONTACT ATTORNEY:  
**Anthony Pernice**  
apernice@reminger.com

**LOUISVILLE OFFICE**  
730 West Main Street  
Suite 300  
Louisville, KY 40202  
(502) 584-1310  
(502) 589-5436 fax  
CONTACT ATTORNEY:  
**B. Scott Jones**  
sjones@reminger.com

In any product liability action, it shall be presumed, until rebutted by a preponderance of the evidence to the contrary, that the product was not defective if the design, methods of manufacture, and testing conformed to the generally recognized and prevailing standards or the state of the art in existence at the time the design was prepared, and the product was manufactured. KRS § 411.310.

### III. AVAILABLE DEFENSES

#### A. Contributory Fault

In Kentucky, pure comparative fault principles apply to product liability cases. KRS §411.182.

#### B. Assumption of the Risk

Kentucky has abolished the defense of pure assumption of risk. Qualified assumption of the risk remains available to a defendant as contributory negligence.

#### C. Misuse

Product misuse is likely governed by the comparative fault defense.

#### D. Alteration of Product

In any product liability action, if the plaintiff performed an unauthorized alteration or an unauthorized modification, and such alteration or modification was a substantial cause of the occurrence that caused injury or damage to the plaintiff, the defendant shall not be liable whether or not the defendant was at fault or the product was defective. KRS §411.320.

### *E. Unavoidably Unsafe Products*

There are some products which, in the present state of human knowledge, are incapable of being made safe for their intended and ordinary use. Such products, properly prepared, and accompanied by proper directions and warning, are not defective, nor are they unreasonably dangerous. The seller of such products, again with the qualification that they are properly prepared and marketed, and proper warning is given, where the situation calls for it, is not to be held to strict liability for unfortunate consequences attending their use, merely because he has undertaken to supply the public with an apparently useful and desirable product, attended with a known but apparently reasonable risk. Restatement 2d of Torts, § 402A, comment k.

### *F. Compliance with Standards*

In strict liability cases, compliance or noncompliance with administrative, regulatory, or industry standards is admissible as evidence, but is not dispositive as to liability.

### *G. Statute of Limitations*

The statute of limitations for product liability actions is one year after the cause of action accrues. KRS §413.140(1)(a).

### *H. Statute of Repose*

Kentucky has no enforceable statute of repose for any product liability cause of action.

## **IV. DAMAGES**

In products liability cases a personal injury claimant may recover for pain and suffering, medical expenses, lost wages and earning impairment. Product liability property damages claims allow for compensation for the loss of use as well as the difference between the fair market value before and immediately after the damage. Incidental and consequential damages may also be recovered. There are no statutory damages caps in Kentucky for compensatory damages.

### *A. Punitive Damages*

Punitive damages are insurable in Kentucky. Punitive damages awards are governed by statute. KRS §411.184-186. They may be awarded upon a showing of clear and convincing evidence. The trier of fact determines the amount of punitive damages to be awarded.