

DEFECTIVE PRODUCTS

When you buy a product, you have certain rights as a consumer. The most basic is the right to be safe while using the item. Big companies have an obligation to design and manufacture safe products. When they fail in this obligation and you're hurt by a shoddy product, you should speak with the experienced defective product lawyers.

What is a defective product?

Unfortunately, defective products cases are not uncommon, and the aftermath for consumers who were harmed by a defective product can be severe. Defective products lawyers assist their clients in seeking compensation for any and all harm that resulted from the use of defective products. In many cases, lawsuits are large and include many injured parties, known as a class action lawsuit.

In Massachusetts, manufacturers of products are legally obligated to make sure that their products, when used in the intended manner, are not harmful to consumers. Too often, manufacturers spend far too much money and time on advertising and marketing a product, and far too little money and time making sure that the product will be safe for consumers. The "defect" in a product that is found to have been defective, could have occurred at several stages in the life of a product: It could be found to be in the design, manufacturing, distributing, advertising or even marketing of a product. This can be a broad definition, but in general, a product will usually be found to be "defective" if the danger the product posed could have been reasonably foreseen by either the manufacturer, or someone in the chain of production, distribution or marketing. It's a well-known fact that a wide variety of dangerous and defective products can lead to serious injuries even after thoroughly tested for safety. A product may be defective because of the way it was designed or the way it was manufactured, or even because the product carries insufficient warnings about potential dangers connected with its use. Injuries involving defective product cases include but are not limited to:

- Improperly packaged food
- Defective automobile parts
- Unsafe medical products
- Unsafe children's toys
- Lack of sufficient warnings or labeling

In general, there are at least three types of product defects that can eventually lead to an injury by the consumer or end user:

Design Defects – These occur in the product planning stages, before the product is created.

Three questions are asked to determine whether a design defect exists:

- Was the product's design unreasonably dangerous prior to production?
- Was it plausible to anticipate the design of the product could harm a potential user?
- Could the manufacturer have used a superior design that was economically feasible and would not alter the purpose of the product?

Manufacturing Defects – These occur as the product is being made. It need only take a minor flaw to render a product extremely dangerous. Based on the theory of strict liability, a manufacturer is liable for any manufacturing defects that occur as a result of faulty construction, regardless of whether they took care throughout the manufacturing process. The plaintiff needs to prove that the defect allegedly responsible for their injury was present at the time of departure from the factory where the good was produced.

Marketing Defects – These occur when sellers of the product – wholesale or retail – do not provide adequate warnings as to potential risk of injury, or do not provide proper instructions on the safe use of the product.

Types of Product Liability Lawsuits:

- A) Negligence:** The claimant must show that carelessness in the design or manufacture of the product led to his or her injuries. The injured party first must demonstrate that the defendant had a duty to sell a safe product. The consumer then must show that the defendant breached this duty. A “breach of duty” can be shown if the plaintiff can prove that the defendant knew or should have known that the product was defective. The plaintiff must also prove that the defective product caused their injuries.

There are many facets of product development in which negligence can occur, including, but not limited to:

- Drawing up or reviewing product plans
- Maintaining machines responsible for fabricating various components of the product
- Failing to foresee plausible uses for the product
- Failing to inspect or test the product sufficiently
- Releasing the product to the mainstream too hastily

- B) Strict Liability:** In general, products liability cases are pursued under the theory of strict liability. With these claims, the injured party is only required to prove that a defect in a product exists and that an injury was sustained as a result. If a defect exists, the manufacturer may be strictly liable for any resulting damages, regardless of whether they exercised extreme caution and care when manufacturing the product. For strict liability to

apply, the product must have been purchased in the chain of distribution. Products purchased second-hand are not eligible for strict liability claims.

Who Can Be Held Liable for a Defective Product Injury?

Depending on the specifics of the case, an injured consumer can seek compensation from one or more liable parties, including manufacturers, wholesalers, and/or retail outlets. Determining the defendant in a product liability case is not a matter of choosing one liable party over another; any party involved in a defective product's chain of distribution may be held accountable through a product liability lawsuit. When beginning to put together a claim for a defective product, it is important to include any party involved in the chain of distribution.

Manufacturer: This can include a large multi-national company, an individual working out of his or her garage, or any parties involved in the design or marketing of the product. Depending on the size of the product, claimants can include the manufacturer of the defective part, as well as the manufacturer of the entire product.

Retailer: When a retailer advertises an item for sale, it is impliedly ensuring the product is safe and suitable for use. If a consumer purchases a defective product, the seller of that item, even though they were not involved in its manufacture, can be held liable for damages.

When suing a retailer:

- You don't have to be the one who bought the defective product
- You don't have to be the one who used the defective product
- You might be able to recover compensation for used products (depending on the product, nature of the defect, and state law)

Wholesaler: The wholesaler is considered the "middleman" between the manufacturer and the retailer.