

# NAVIGATING LIABILITY CLAIMS UNDER THE STATUTE OF REPOSE

By Nathan Breen, DASMA Legal Counsel

## Products liability overview

U.S. products liability law imposes liability on a manufacturer or someone else in the chain of production and distribution for personal injury, property damage, or possible economic loss caused by the sale or use of a product. Traditional theories of liability involve causes of action for negligence, breach of warranty, and strict liability.

## Negligence

A defendant is negligent if it fails to meet the standard of care that a reasonable person (or company) should have exercised under the circumstances. Plaintiffs in product liability suits typically allege that a product seller was negligent in the design or manufacture of the product or in putting together the warnings, labels, and instructions meant to inform the consumer regarding the safe use of the product.

## Breach of warranty

Warranty claims arise from a contractual relationship between the product seller and the plaintiff. They allege that the product seller breached an express warranty, implied warranty of merchantability, or implied warranty of fitness for a particular purpose.

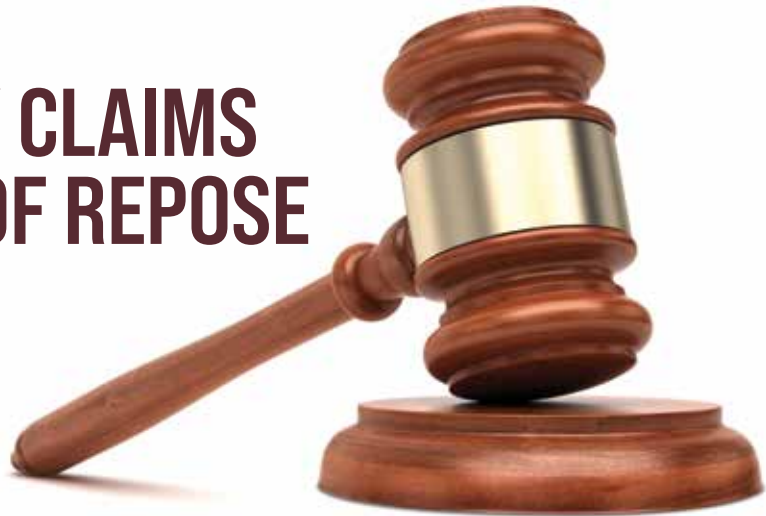
For breach of an express warranty, the plaintiff must show that the manufacturer made a false statement of material fact about the product and the buyer reasonably relied on the statement to its detriment.

An implied warranty of merchantability is a warranty that the product is suitable when used for its ordinary purposes. In contrast to an express warranty, an implied warranty of merchantability attaches to the sale of a product as a matter of law unless excluded or modified by the parties.

A claim for implied warranty of fitness arises when there is a special purpose for which the product is required, and the buyer relies on the product seller's skill or judgment to select a suitable item. For example, if a buyer requires a door that opens and closes at a certain speed, the dealer selling the door would warrant that it meets that requirement. An implied warranty of fitness arises as a matter of law and does not require an express representation by the product seller.

## Strict liability

Under a strict liability theory, one who sells any product in a defective condition that is "unreasonably dangerous" may be subject to liability for personal injury or property damage caused by the product defect even if the seller exercised all possible care (i.e., the seller was not negligent). No contract between the buyer and seller is required.



Unlike negligence, strict liability applies regardless of if the seller is at fault. Any entity in the chain of commerce may be strictly liable to a downstream user of the product even without a direct contractual relationship.

## Defending liability claims

The passage of time can serve as a key variable for the defense in a products liability action. It takes into account if the design of a product was reasonable considering what was "state of the art" at the time the product was sold. Operation of a statute of limitations or statute of repose can also bar a claim.

Statutes of limitation begin from the time that the plaintiff is injured or discovers he or she is injured. In most states, the statute of limitation for a products liability action is two or three years.

Statutes of repose extinguish liability at a certain time calculated from when a product is manufactured or first sold. The time period cannot be extended even if there is a delay in discovering the injury.

Statutes of repose apply to both construction and product liability claims. All fifty states currently have some form of a statute of repose, but most are geared toward construction claims as opposed to products liability actions. Nineteen states have statutes of repose limiting product liability claims.

## Case study #1: The distinction between products and real estate

In a 1990 federal district court case in Minnesota, the parents of a nine-year-old child, who suffocated when entrapped by an automati-



A defendant is negligent if it fails to meet the standard of care that a reasonable person (or company) should have exercised under the circumstances.



*continued on page 64*

cally operated garage door, sued the manufacturers of the garage door and garage door opener alleging negligence, breach of express and implied warranties, and strict liability.

The court determined that a garage door opener was an improvement to real estate and thus was subject to the state's ten-year statute of repose regarding construction claims. The court determined that the manufacturer was not liable as a matter of law.

## Case study #2: Risks of applying statute of repose to mass-manufactured products

A Texas appellate court affirmed the dismissal of an action brought by the parents of a six-year-old boy who was choked to death by a garage door allegedly as the result of a defective garage door opener. It had been installed more than 10 years prior to the accident.

The court conducted a thorough analysis of the extent to which the garage door opener was connected to the house. Thus, limiting its inquiry to the issue of whether or not the garage door opener constituted an improvement to real estate.

The Texas case was referenced in a 1996 Mississippi Supreme Court case in which the court took issue with the fact that liability hinged on whether or not the product in question is attached to real estate. It noted that applying the statute of repose to mass-manufactured products could lead to very dangerous and undesirable consequences.

The court reasoned that there are countless products used past the statute of repose as is common with products incorporated into

buildings and houses. Applying the statute of repose to such products might in effect serve as a signal to manufacturers that a lesser degree of care is required for products that will be used as improvements to real estate than other products.

For example, a manufacturer of gas or water pipes placed in buildings could manufacture the pipes using cheaper materials designed to last only as long as the statute of repose. The company would evade liability if the pipes leaked and caused injury beyond the statute of repose.

## Case study #3: Replacements parts and statute of repose

A 2014 Illinois Appellate Court case addressed the state's statute of repose as applied to replacement parts. The court noted that the statute applies only to strict liability claims alleging that either the component or the overall product unit was defectively designed.

While some of the unit's original components may have been replaced by new parts, the original design of the unit was unchanged, and the statute of repose should not be extended. However, nothing in the statute of repose affects claims that the replacement parts were defectively manufactured.

## Conclusion

Manufacturers should be aware that how the statute of limitations or statute of repose are applied in a product liability claim may dramatically alter the outcome. Since they provide an absolute defense to liability, these statutes should be the first issue considered when a product liability claim arises. ■



### Dominator® Hiro™

- Slim Fit Design
- Smart Phone Compatible
- 1400N Short-term Peak Force
- Suits door sizes up to 300ft<sup>2</sup>
- Battery Backup for operation during power outage

### Dominator® EasyRoller14™

- 14ft high sheet door operator
- 600N DC Motor
- Soft Start/ Soft Close
- Slim fit design
- LED Courtesy Light
- Intelligent Safety System

### Dominator® Shedmaster

- Weather Resistant Design
- Perfect for exposed area
- Secure Keyed Lockout
- Suits door sizes up to 165ft<sup>2</sup>

automatic  
TECHNOLOGY

SHEET DOOR  
OPERATORS

Contact us today  
for more information

sales@ata-america.com  
800-934-9892  
www.ata-america.com

automatic  
TECHNOLOGY