

# North Carolina Product Liability Law

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Our world continues to become increasingly more complex. And, as it does, so do our manufactured products—from medical devices, to everyday consumer goods, to automobiles, and toys. Such products improve our quality of life by making things easier, more enjoyable, and even saving lives when they work properly. Unfortunately, however, sometimes products are unexpectedly dangerous or fail to work properly. When they do, an injured individual potentially has a legal claim. The goal of this article is to provide an introduction to

product liability claims in North Carolina.

## North Carolina's Legal Framework

North Carolina product liability law is different from many other states. Some states apply "strict liability" to product liability cases. That basically means a manufacturer is automatically liable when its product injures someone—there is no need to prove fault or that the manufacturer of the product did not act reasonably in some manner.

North Carolina, on the other hand, applies a negligence standard to product liability cases, which is outlined in Chapter 99B of the North Carolina General Statutes. An injured party must prove one or more of the following allegations:

- The product that caused the injury was manufactured or designed in an unreasonable manner creating a risk of harm to the consuming public;
- The manufacturer failed to adequately warn consumers of dangers associated with the product; or,
- The manufacturer failed to give proper instructions for the product's use. For instance, if a piece of electronic equipment can cause burns if used in a certain manner, failing to warn that this could happen could lead to liability.

Even if the evidence shows negligence, manufacturers have potential defenses to such claims. While there are as many possible defenses as there are fact patterns, the most often asserted defenses in North Carolina include contributory negligence, the running of the applicable statute of limitations or statute of repose, and alteration or modification of the product.

The defense of contributory negligence applies if the injured party's own negligence—such as failing to use the product properly—contributed in any way, however small, to the occurrence of the injury. The running of the time period of an applicable statute of limitations or statute of repose may also prevent a potential product liability claim because the injured party waited too long to bring a lawsuit. Except in rare and unusual

cases, these are hard and fast time limits within which claims must be brought or forever lost. Finally, any alteration or modification of the product after it left the hands of the manufacturer or seller can make it impossible for the injured party to prove that the defect was in fact the result of an original defect for which the manufacturer or seller is responsible.

In addition to manufacturers, retailers and other sellers may be liable when a product injures someone. The test is whether the seller exercised reasonable care, and, if it did not, whether its failure to do so contributed to the injury. If the product was enclosed in a "sealed container" such that the seller could not have inspected it, it is likely the seller will not be liable for any injuries.

Finally, it's important to note that there may be other legal theories of recovery available to an injured party in addition to a product liability claim. In particular, an injured party may have a claim under North Carolina's "breach of warranty" legal theory. For example, if a manufacturer or seller either expressly or impliedly communicates that a product is safe for a particular purpose, and it is not, a warranty claim may be available. However, many of the defenses that apply in product liability actions also apply to breach of warranty claims.

### Damages

As with other personal injury cases, it is up to the injured party to prove damages. Types of damages that can be recovered include:

- Economic damages for lost income and expenses incurred, such as medical bills, that can be directly tied to the injuries sustained;
- Non-Economic damages such as compensation for pain and suffering; and,
- Punitive damages, which are more rarely awarded. They are not intended to compensate the injured party for losses, but are intended to punish the defendant. They can only be recovered when there are aggravating factors, such as willful or wanton conduct.

### Litigating a Product Liability Case

Product liability cases often require the involvement of expert witnesses. These experts provide opinions regarding the cause of the product failure resulting in the injury, as well as the reasonable manufacturing or design practices expected within a particular industry and whether those practices were breached.

Like other personal injury cases, many product liability claims settle out of court. An experienced attorney can help evaluate such a case, contact the opposing side, review and analyze all relevant information regarding the claim (including medical records), and seek to resolve the case pre-suit, if possible.

If the parties cannot resolve the case pre-suit, however, it will become necessary to litigate the case. The injured party will file a lawsuit against the manufacturer or other responsible party alleging liability based on a manufacturing or design defect, failure to warn, failure to give proper instructions, or breach of warranty, as discussed above. The defendant will file an "Answer" or other response, raising any applicable defenses. Once the lawsuit is under way, the parties will engage in discovery to investigate the claim, any alleged defenses, and the scope of the injuries.

North Carolina requires parties to mediate cases in an attempt to resolve them short of trial. If the parties cannot reach a settlement at mediation, there typically will be a jury trial to determine both liability and the amount of damages owed.

### Conclusion

Unfortunately, the same products that make our lives easier can sometimes cause serious personal injuries when they malfunction or otherwise fail. When that happens, an injured party may be entitled to compensation under North Carolina law if there is a causal link between the malfunction or failure and the injury and the manufacturer or seller does not have a legal defense.

Product liability cases are a specialized area of the law. Involving an experienced, committed attorney can help ensure that you, either as an injured party or as the manufacturer or seller of a product, protect your rights and also receive guidance through a challenging and stressful situation.

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