



Manufacturers' Products Liability

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By [Joe Walters](#)

A person required to pay damages to another must owe a legal duty to the injured person. This duty can be imposed by the federal or state constitution, federal or state statutes passed by the U.S. Congress or a state legislature, or the "common law". When an appeals court establishes a legal principle, this is known as the "common law" and is effective until it is overturned by a later decision or in some cases by Congress or the legislature.



Manufacturers' products liability is part of the common law. In 1974, the Oklahoma Supreme Court established the theory of manufacturers' products liability in the case of *Kirkland v. General Motors*. Manufacturers' products liability is different than other forms of liability because it is "strict liability," meaning the defendant can be found liable without fault. Thus, a manufacturer can be liable without bad intent, or if it followed existing standards for its product. So, old products which do not have modern safety devices can sometimes be the subject of a lawsuit. The statute of limitations, or time within which a case must be filed, runs from the date of personal injury or damage to property, not from the time the product is sold.

Oklahoma follows the consumer expectations test for determining if a manufacturer is liable. This requires the claimant to prove that the product was (1) unreasonably dangerous (2) beyond the expectation of the ordinary consumer (3) at the time it left the possession and control of the manufacturer and (4) caused the injury. It is not enough that the product is dangerous. It must be unreasonably dangerous from the viewpoint of its ordinary consumer. Chain saws, lawn mowers, welding machines, gasoline, pesticides, kitchen utensils, natural gas and numerous other products are dangerous, but usually not unreasonably so.

The ordinary consumer of the product is one who has knowledge of the characteristics of the product. Thus, whether a piece of construction or agricultural equipment is unreasonably dangerous is considered from the perspective of the average construction worker or farmer, not that of a teacher, accountant or clergy person.

Although called "manufacturers" products liability, the theory of liability applies to everyone in the

distribution network from the factory to the retail outlet. Thus, an injured person has a claim against the retail seller, wholesaler, and importer of a toaster that causes a fire without suing the manufacturer, which may be located in a part of the world where it is difficult to serve with process. Each person who distributes the product, however, has a claim upstream against its source for indemnity for any expenses of defending the claim and damages paid to the injured person.

The theory of liability applies to all products: food, tools, machinery, clothing, bedding, furniture and appliances. Many cases today concern drugs, although special rules apply to pharmaceuticals because consumers rely on their health care providers and the FDA for their knowledge of the effectiveness and safety of the drugs.

Manufacturers' products liability is generally fair to sellers and consumers. However, like all human activity, there are exceptional cases which generate adverse publicity for the legal process and anxiety for consumers and manufacturers. Usually, claimants do not recover damages against sellers of well-designed and manufactured products.

Joe Walters is a shareholder with McAfee & Taft who has handled many disputes involving claims of manufacturers' products liability.

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OKLAHOMA CITY
TENTH FLOOR
TWO LEADERSHIP SQUARE
OKLAHOMA CITY, OK 73102-7103
(405) 235-9621 office • (405) 235-0439 fax

TULSA
500 ONEOK PLAZA
100 WEST 5TH STREET
TULSA, OK 74103
(918) 587-0000 office • (918) 599-9317 fax