



The Consumer's Guide to
PRODUCTS LIABILITY
in South Carolina





When purchasing a product as a consumer, you research the item, read reviews, and check out the instructions when you bring it home. That's why it can be such a shock when a product malfunctions or comes with such dangerous defects that you or your loved ones suffer injuries.

If you recently suffered an accident due to a dangerous product, you might have grounds to file a lawsuit with the help of an experienced lawyer. Each state has specific laws to help consumers who are hurt because of dangerous products. These laws explain what rights a consumer has when bringing a case, how to file, and the statute of limitations or time limit for filing such a claim.

HOW CAN A PRODUCT BE DEFECTIVE?

There are three primary ways that a product could be categorized as defective in a product liability lawsuit. A consumer who has been injured or suffered damages might have more than one ground under which to bring their legal claim.

A manufacturer can be held liable for:

- Design defects, in which the consumer alleges that the product had a flaw in it before it was ever manufactured
- Manufacturing defects, which occur after the design and before the product was introduced to the market
- Marketing defects, which argue that there are flaws in the labeling or advertising of the product such as lack of warning labels, misinformation, or poor instructions

While any product purchased and used by a consumer could potentially be named in the case of a defective product, some items are more likely than others to cause injuries. These include vehicles and car parts, children's toys, appliances, industrial equipment, and medical devices.

WHAT IS SOUTH CAROLINA'S DEFECTIVE PRODUCTS LAW?

South Carolina Statute 15-73-10, the "Liability of Seller for Defective Product" rule, outlines when another party can be held liable for injuries sustained by a consumer due to a product that did not function properly or did not come with an adequate warning. This law states that anyone who sells a product in a defective condition that is unreasonably dangerous to the consumer or user or to the user's property could be held liable for physical harm caused by that product.

To bring a lawsuit, you must be able to show something known as proximate cause. This is a legal term used to describe the connection between the product's malfunction and your resulting accident/injuries.



proximate cause

[prok-suh-mit kawz]
noun

Proximate cause is a legal term used to describe the connection between the product's malfunction and your resulting accident and/or injuries.

THE ROLE OF FORESEEABILITY WITH DEFECTIVE PRODUCTS

Proximate cause requires proof of both causations in fact and legal cause. This is proved by establishing foreseeability. So, a question to ask yourself when considering whether you have been harmed due to a possible product liability claim is simply “was this injury foreseeable to the creator, seller and/or producer?” Since multiple parties could be named in your defective products lawsuit, you must consider whether the risks and injuries were foreseeable for each of those parties. If you can show that any of the parties involved in the manufacturing or chain of distribution should have known that the product was unreasonably dangerous and failed to correct the issue or warn consumers, this could lead to the recovery of damages on your part.

WHAT MEETS THE DEFINITION OF UNREASONABLY DANGEROUS?

In legal terms, the test used to evaluate whether or not a product meets the grounds of unreasonable danger is a “risk utility test” that shows a feasible alternative design without the same level of danger. Factors that are evaluated during such a test include:

- The cost involved for added safety
- The usefulness and desirability of the product
- The likelihood of injury
- The obviousness of the danger
- The potential seriousness of the danger

When a plaintiff can show that other designs would have provided the same benefit to consumers without the risks or expenses present in the current version of the product, that plaintiff is more likely to succeed with a product liability claim in South Carolina. The plaintiff, in order to meet the burden of proof, should be prepared to illustrate how another design would have kept the product from presenting so many risks.



WHO CAN FILE A PRODUCT LIABILITY CLAIM?

South Carolina statutes also govern who can initiate a product liability claim. Only a user or consumer of the product in question can initiate a lawsuit against the allegedly liable party. The consumer or user does not have to have directly purchased the product from the seller, so those consumers who buy through an intermediate seller are also eligible. Under South Carolina law, the term consumer can also include those people who prepare the product for consumption in addition to those who use it directly.

Consumption incorporates all the ultimate uses for which such a product is intended. A husband who opens a canned product for his wife to drink, for example, would meet the grounds as a consumer based on this definition. A user includes anyone who is passively enjoying the product's benefit, such as a passenger in a vehicle with a defective part.

In general, South Carolina courts have interpreted the terms "user" and "consumer" quite liberally; a person who suspects they might be eligible to bring a case should speak with an experienced products liability attorney to verify their status.

LEGAL THEORIES UNDER WHICH A CONSUMER CAN FILE A DEFECTIVE PRODUCT CLAIM

Statutory products liability is not the only way for an injured consumer to file a lawsuit. Several different legal theories might be pursued based on the specifics of the case.

The first of these is a **classic negligence claim** associated with the alleged defect. In these situations, the plaintiff has the responsibility to show that the defendant owed the plaintiff a duty of reasonable care under the circumstances.

The duty of reasonable care in typical product liability cases means that the manufacturer or seller is responsible for making or selling a product free from unknown risks and dangerous defects.



reasonable care

[ree-zuh-nuh-buhl kair]
noun

The duty of reasonable care means that the manufacturer or seller is responsible for making or selling a product free from unknown risks and dangerous defects.

The plaintiff must also show that the defendant's actions breached the duty of reasonable care, and that this was the primary cause of the plaintiff's injuries. Furthermore, a plaintiff must be prepared to submit evidence to show that he or she sustained some sort of injury.

The second kind of legal theory under which an injured consumer can pursue a product liability case is through a **claim of breach of warranty**. In these situations, the plaintiff must show that an implied or an express warranty that was applied to the product failed to meet the terms of the warranty. An implied warranty refers to two different categories; implied warranty of fitness and implied warranty of merchantability. Implied warranty of fitness is breached when:

- The seller knows that the consumer is buying that product for a particular purpose,
- The seller knows that the consumer is relying on the seller's skill in selecting the product.
- The product is not truly appropriate for the customer's purposes.

A product does not necessarily need to be defective in order to meet the legal grounds for an implied warranty of fitness. Implied warranty of merchantability is essentially a guarantee made by the creator that the product is not mislabeled or defective. The primary foundation of such a claim is that this product meets the general purposes for which it and other similar products are sold and matches any factual descriptions or promises listed on the packaging.

An express warranty, on the other hand, is either created by the seller's actions or by the sale's contract. In this situation, the seller has informed the consumer that a product is incapable of a certain result when in reality it is not. The final theory under which a product liability claim can be pursued is known as fraud. It is important for the plaintiff to meet the burden of proof in showing that the defendant made certain representations about the product that were not true, and also showing that the defendant knew these representations were not true or likely to be true.

The plaintiff should show that he or she was justified in relying on these representations made about the product, but was in some way damaged by these false representations.

COMMON LEGAL THEORIES FOR A DEFECTIVE PRODUCT CLAIM:

1

CLASSIC NEGLIGENCE

The plaintiff has the responsibility to show that the defendant owed the plaintiff a duty of reasonable care under the circumstances.

2

BREACH OF WARRANTY

The plaintiff must show that an implied or an express warranty that was applied to the product failed to meet the terms of the warranty.

STATUTE OF LIMITATIONS FOR A PRODUCT LIABILITY CLAIM

In order to bring a claim for product liability related to wrongful death, property damage or personal injury in the state of South Carolina, the plaintiff must generally bring this claim no later than 3 years after the incident.

If the product liability claim is based on breach of warranty, the statute of limitations can be extended to up to 6 years. The limitations period begins when the injured party either knows or should have known that he or she had a cause of legal action, excluding claims for wrongful death, which begin on the date of the injured party's death.

OTHER PARTIES WHO COULD POTENTIALLY RECOVER UNDER A DEFECTIVE PRODUCT CLAIM

The most common third party named in product liability claims is the injured party's spouse. This is typically brought under a legal concept known as loss of consortium also known as loss of companionship of spouse. A spouse can bring a claim due to the loss of companionship, aid, society, and services of a spouse that was injured by a defective product.

A spouse would bring his or her individual legal action based on loss of companionship of spouse, but can only do so until the actual loss of society, companionship and services have occurred. This is known as the point at which the spouse has sustained these injuries.

Another common third party who might be involved in a product liability claim is when parents argue that a product has caused injury to the child. A minor who receives personal injuries associated with a defective product also have rights against the responsible party, a cause of action can also arise in favor of the injured minor. That injured minor can maintain a suit to recover from the resulting damages, via a guardian ad litem or someone who is appointed to represent the children. A parent can serve in the role of guardian ad litem. The expenses that can be recovered on behalf of a minor are those associated with care and treatment from the injury, such as money that was actually paid for medical care.

statute of limitations

[stach-oot uhv
lim-i-tey-shuhns]
noun

The statute of limitations for a product liability claim is generally three years. If the claim is based on breach of warranty, the statute of limitations can be extended up to six years.



DAMAGE AMOUNTS IN PRODUCT LIABILITY CASES

Every case is unique when it comes to the amount of damages that might be awarded to an injured party. Product liability cases in South Carolina could award the plaintiff for actual damage and for punitive damages.

Punitive damages are typically awarded as a deterrent to keep the manufacturer, seller or other future defendants from similar behavior. Depending on the specifics of the case, the jury or the court could also award nothing at all or the case could be resolved in a settlement outside of court. A plaintiff must show through clear and convincing evidence that the defendant's conduct was willful, wanton, or reckless in order to request punitive damages.

WHAT TO DO IMMEDIATELY AFTER YOU'VE BEEN INJURED

If you think that you've been seriously hurt due to a defective product, follow the steps below to protect your right to a claim:

- Get medical treatment immediately to determine the extent of your injuries
- Keep the defective product and any packaging that came with it (do not dispose of it or hand it over to any company representative/investigator)
- Contact an attorney to discuss your case, bringing copies of your notes from medical appointments and, if possible, the defective product.



If you've been hurt, we're here to help. No one should have to cope with injuries from a dangerous and defective product.

Call us at (803) 779-7599 or visit bluesteinattorneys.com to learn more about products liability.



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