

# THIRD PARTY PRODUCT LIABILITY



## Third Party - Product Liability

PRODUCT LIABILITY IS THE RESULT OF PERSONAL INJURY CAUSED BY A DEFECTIVE PRODUCT. THE DESIGNER, MANUFACTURER, DISTRIBUTOR AND/OR RETAILER CAN BE HELD LIABLE

The product must have been used in the manner intended in most cases. Normal wear and tear of the product is not reason for cause. Misuse and abuse of the product are defenses in a product liability lawsuit. However, such issues are arguable. For example; in the case of the consumer who lost his toes when he placed his foot under his rotary lawnmower near the spinning blade while trying to lift it over the curb of his sidewalk. The consumer prevailed due to lack of warning against such use. Warnings of potential hazards of use and misuse must be provided. However, even if warning stickers are attached to the product, their location, size, color and statement may not provide sufficient warning to preclude product liability.

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### Statute of Limitations

The statute of limitations for product liability is eight years from the date the product enters the stream of commerce

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# For Example

A RIDING LAWNMOWER MANUFACTURED ON MAY 15, 1987, BUT REMAINS IN INVENTORY UNTIL SOLD DIRECTLY TO A CONSUMER ON SEPTEMBER 10, 1988; STATUTE RUNS FROM SEPTEMBER 10, 1988

Also, bear in mind that personal injury lawsuits have filing timelines and requirements. Be sure to know what rules and timeframes are in effect for your state. Modifications after manufacture may preclude product liability, depending on the types of modifications and who makes them. A typical modification is the removal of a guard on a piece of heavy machinery for easier, although unsafe, operation.

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*The following scenario may help you appreciate some of the complexities of a product liability investigation:*

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Wally Martin's Department Store hired Simpson Contractors to remodel the store. Simpson hired Fred Fender, an electrical consultant who recommended using POW Electric Company to rewire the overhead lighting. POW purchased a pre-wired fuse box from Stinky's Electrical Supply, who had purchased it from Elkhorn Electric Distributors, who had purchased it from Volt Manufacturing. When Susie Smith, one of POW's employees, installed and tested the fuse box, she was injured because of the faulty pre-wiring job. So, who is liable? Probably everybody! (except Smith and his employer). Remember the Investigators job is to collect all the pieces of the puzzle so that a thorough and total evaluation can be made.

Occasionally the product in question is bought and sold among two or more consumers, and what may appear to be a product liability at the time of injury could turn out to be negligence on the part of a previous owner due to modifications, improper usage, sale with knowledge of defect, etc.

During the investigation, interview the product owner, operator, and witnesses until you can describe the product in question, its normal operation, and how the worker was injured. Then obtain the following information and items:

- Date of manufacture or entry into the stream of commerce
- Model number
- Serial number
- Manufacturer's name
- Manufacturer's address
- Corporation information
- Distributor's name, address & phone
- Corporation information
- Retailer's name, address & phone
- Frequency and type of usage by all previous owners
- Modifications by all previous owners
- Maintenance and repairs by all previous owners
- Injuries caused by product while in possession of all previous owners
- Modifications by current owner
- Maintenance company name & records
- Manufacturer's manual, operating instructions, MSDS, etc.
- Photographs of the product / operation
- Diagram of the product / operation
- Detailed description of all warning stickers
- Assume possession of the product itself and parts thereof, if practical
- Complete an evidence form (if applicable) give a signed, dated receipt to the owner
- Tag product and parts with date, owner's name, your name and case name / number
- Store product and parts in evidence locker / room per company practice
- Detail the chain of custody of the evidence in the report of investigation and attach copy of evidence form to your third party evidence
- Type and extent of training provided to the injured party
- Liability insurance coverage of all potential defendants