Product liability reform

How to reduce your risk of lawsuits and protect your company

Interviewed by Matt McClellan

Tort reform has changed the way that Michigan companies approach product liability cases, those involving claims against manufacturers and sellers of allegedly defective products.

The law — which went into effect in 1996 but has only recently been tested and upheld in federal courts — has made it more difficult for consumers to win lawsuits in certain instances. Business owners shouldn't make the mistake, however, of believing that the reforms have eliminated the threat of product liability lawsuits.

"Companies should still be on guard for product liability and should not assume that these laws are going to shield them from litigation," says Terry S. Welch, executive partner at Secrest Wardle. "While they do help if you end up in court, still your best defense against product liability is having quality products with industry-approved warnings and instructions that reduce the likelihood that product liability accidents will occur."

Smart Business spoke with Welch about how your company should react to the reforms and how to keep yourself protected.

What does this tort reform mean to business owners?

The statutes provide protections for the product manufacturer and seller, and they help the product manufacturer and seller in cases where the product is misused. The reforms have been very helpful when a post-manufacturing alteration renders the product dangerous. The statutory scheme focuses claims on the condition of the product when it leaves the manufacturer's or seller's possession and not the condition of the product after it has been used (or misused) by others.

It allows the manufacturer to rely on industry standards to establish that a product is not defective and attempts to limit the plaintiff's experts from testifying contrary to acceptable engineering practices.

But, when confronted with a serious injury or property loss, an experienced product liability attorney will and must be focused on whether the product was reasonably safe when it left the control of the manufacturer or seller and whether a practical and technically feasible alternative production practice was available that would have prevented the harm without significantly impairing the usefulness of the product.

Terry S. Welch
Executive partner
Secrest Wardle

When the tort reform measures started, the plaintiff lawyers were generally hesitant to file almost any product case. But as time went on, they realized there were certain cases they could still win, notwithstanding these tort reform measures. So, these issues still require serious attention.

Should Michigan companies rely on the state's product liability tort reform measures to protect themselves?

Not exclusively. One cannot assume that these tort reform provisions will protect you if you find yourself in litigation. While these measures may be favorable to the defendant in some ways, legitimate product cases are still being pursued.

The best advice for avoiding product litigation rests with continued emphasis on good work in the engineering and marketing suite before your product is introduced to the marketplace. Good engineering can prevent these cases from being filed in the first place.

What can a distributor do to insulate itself from product liability lawsuits?

The companies that merely distribute another company's product are now generally protected by these tort reform laws, unless that distributor was actively at fault, altered the product or expanded upon the warranties that were given by the manufacturer. Often, a seller or distributor exposes itself to claims by the issuance of its own, independent warranty regarding the product.

If you are a distributor, any decision to either alter the product or extend additional or independent warranties that go beyond what the manufacturer provides should be carefully weighed and discussed with your attorney.

To what extent have tort reform measures decreased the number of product liability lawsuits?

There has been quite an impact, at least initially. The questionable, borderline, nuisance type of claim — such as the man who used his power lawnmower to trim his hedge and then injured himself and sued — those types of cases are certainly down. The plaintiff lawyers are more circumspect with respect to which cases they undertake.

They are cognizant of the tort reform measures and focus their attention on those cases that arguably have merit and can satisfy the more stringent criteria incorporated in the tort reform measures.

Additionally, and based only on the value of the potential recovery, cases involving very serious injuries are still often pursued, even though the scope of available defenses has been appreciably expanded. Before the effective date of the tort reform laws, a flurry of new cases was filed. Plaintiff lawyers filed product liability claims regardless of the statute of limitations date to avoid the radical changes.

Over time, however, fewer product liability filings have occurred. The Michigan trial lawyers argue that the capping of damages, together with the other statutory tort reforms, simply shifts the burden for caring for the injured onto the shoulders of the average taxpayer instead of where it belongs, on the tortfeasor.

The proponents of this legislation argued that the health of the state economy required that protective measures be taken to alleviate this 'hidden tax' on industry and make Michigan an attractive place in which to do business.

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