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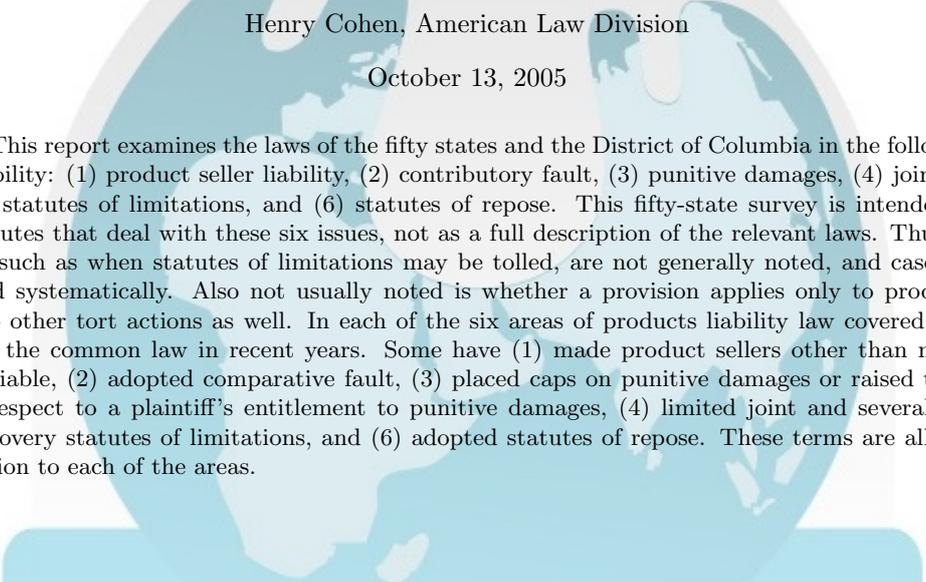
Report RL32560

Selected Products Liability Issues: A Fifty-State Survey

Henry Cohen, American Law Division

October 13, 2005

Abstract. This report examines the laws of the fifty states and the District of Columbia in the following areas of products liability: (1) product seller liability, (2) contributory fault, (3) punitive damages, (4) joint and several liability, (5) statutes of limitations, and (6) statutes of repose. This fifty-state survey is intended as a quick guide to statutes that deal with these six issues, not as a full description of the relevant laws. Thus, exceptions and details, such as when statutes of limitations may be tolled, are not generally noted, and case law has not been checked systematically. Also not usually noted is whether a provision applies only to products liability actions or to other tort actions as well. In each of the six areas of products liability law covered, many states have altered the common law in recent years. Some have (1) made product sellers other than manufacturers not strictly liable, (2) adopted comparative fault, (3) placed caps on punitive damages or raised the burden of proof with respect to a plaintiff's entitlement to punitive damages, (4) limited joint and several liability, (5) adopted discovery statutes of limitations, and (6) adopted statutes of repose. These terms are all explained in an introduction to each of the areas.



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CRS Report for Congress

Selected Products Liability Issues: A 50-State Survey

Updated October 13, 2005

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Prepared for Members and
Committees of Congress

Selected Products Liability Issues: A 50-State Survey

Summary

This report examines the laws of the 50 states and the District of Columbia in the following areas of products liability: (1) product seller liability, (2) contributory fault, (3) punitive damages, (4) joint and several liability, (5) statutes of limitations, and (6) statutes of repose.

This 50-state survey is intended as a quick guide to statutes that deal with these six issues, not as a full description of the relevant laws. Thus, exceptions and details, such as when statutes of limitations may be tolled, are not generally noted, and case law has not been checked systematically. Also not usually noted is whether a provision applies only to products liability actions or to other tort actions as well.

In each of the six areas of products liability law covered, many states have altered the common law in recent years. Some have (1) made product sellers other than manufacturers not strictly liable, (2) adopted comparative fault, (3) placed caps on punitive damages or raised the burden of proof with respect to a plaintiff's entitlement to punitive damages, (4) limited joint and several liability, (5) adopted discovery statutes of limitations, and (6) adopted statutes of repose. These terms are all explained in an introduction to each of the areas.

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Selected Products Liability Issues: A 50-State Survey

This report examines the laws of the 50 states and the District of Columbia in the following areas of products liability: (1) product seller liability, (2) contributory fault, (3) punitive damages, (4) joint and several liability, (5) statutes of limitations, and (6) statutes of repose.¹

This 50-state survey is intended as a quick guide to statutes that deal with these six issues, not as a full description of the relevant laws. Thus, exceptions and details, such as when statutes of limitations may be tolled, are not generally noted. Also not usually noted is whether a provision applies only to products liability actions or to other tort actions as well.

Product Seller Liability

Under state law, the manufacturer and any seller in the chain of distribution may be held strictly liable (liable even in the absence of negligence) for injuries and deaths caused by a product defect that was present at the time of manufacture. The potential harshness of this rule as applied to innocent sellers is mitigated by the fact that a seller who was subsequent to the manufacturer in the chain of distribution, and who is held liable for an injury caused by a defect that existed at the time of manufacture, may recover from a previous seller of the product, so that ultimately the manufacturer, if it still exists and is solvent, will be the only liable party. Nevertheless, even if they can recover, innocent sellers would prefer not to be sued in the first place, and some states have accommodated them. In the list below, “strict liability” means that the state follows the traditional rule that the seller may be held liable to the same extent as the manufacturer. “No strict liability” means that the seller may be held liable only for its own negligence or breach of warranty (with exceptions noted).

Alabama. Strict liability (*Casrell v. Altec Indus., Inc.*, 335 So.2d 128 (Ala. 1976)).

Alaska. Strict liability (*Swenson Trucking and Excavating, Inc. v. Truckweld Equipment Co.*, 604 P.2d 1113 (Alaska 1980)).

Arizona. Strict liability (*O.S. Stapley Co. v. Miller*, 447 P.2d 248 (Ariz. 1968)).

¹ For background on products liability law, including a glossary of terms used in this report and the status of pending federal legislation, see CRS Report RL33423, *Products Liability: A Legal Overview*, by Henry Cohen and Vanessa K. Burrows.

Arkansas. Strict liability (Ark. Code Ann. § 4-86-102).

California. Strict liability (*Barker v. Lull Engineering Co.*, 143 Cal. Rptr. 225 (Cal. 1978)).

Colorado. No strict liability except that, if jurisdiction cannot be obtained over a manufacturer, “then that manufacturer’s principal distributor or seller over whom jurisdiction can be obtained shall be deemed, for the purposes of this section, the manufacturer of the product” (Colo. Rev. Stat. Ann. § 13-21-402).

Connecticut. Strict liability (Conn. Gen. Stat. Ann. § 52-572m(a)).

Delaware. No strict liability in sales transactions. Strict liability in leases, bailments, and “nonsale transactions which are neither leases nor bailments where the products are provided to others as a means of promoting either the use of consumption of such products or some other commercial activity.” (*Beattie v. Beattie*, 786 A.2d 549, 559 (Del. Super. Ct. 2001)). No strict liability if the seller, lessor, or bailor acquired the product in a sealed container and could not have discovered the defect while exercising reasonable care, except that a seller may be held liable as a manufacturer if the claimant is unable to identify the manufacturer or the “manufacturer is insolvent, immune from suit or not subject to suit in Delaware” (Del. Code Ann. tit. 18 § 7001 (1975)).

District of Columbia. Strict liability (*Payne v. Soft Sheen Products, Inc.*, 486 A.2d 712 (D.C. 1985)).

Florida. Strict liability (*Adobe Building Centers, Inc. v. L.D. Reynolds*, 403 So.2d 1033 (Fla. 1981)).

Georgia. No strict liability. (Ga. Code Ann. § 51-1-11.1 (1987)).

Hawaii. Strict liability (*Stewart v. Budget Rent-A-Car Corp.*, 470 P.2d 240 (1970)).

Idaho. No strict liability, with exceptions including that the seller is a wholly-owned subsidiary of the manufacturer or vice versa, the seller had reason to know of the defect or sold the product after expiration date placed on the product or its package, or the manufacturer is not subject to service of process under the laws of the claimant’s domicile, or it is highly probable that the claimant would be unable to enforce a judgment against the manufacturer (Idaho Code § 6-1307).

Illinois. Strict liability (*Suvada v. White Motor Co.*, 210 N.E.2d 1182 (Ill. 1965)).

Indiana. Strict liability only if the “seller is manufacturer of the product or of a part of the product alleged to be alleged to be defective.” (Ind. Code Ann. § 34-20-2-3).

Iowa. No strict liability “upon proof that the manufacturer is subject to the jurisdiction of the courts of this state and has not been judicially declared insolvent” (Iowa Code § 613.18).

Kansas. No strict liability if the seller had no knowledge of defect, the manufacturer can be sued in Kansas or in the plaintiff's domicile, and any judgment against the manufacturer "would be reasonably certain of being satisfied" (Kan. Stat. Ann. § 60-3306).

Kentucky. No strict liability if the manufacturer is identified and subject to the jurisdiction of the court, and the seller shows by a preponderance of the evidence that the product was sold by him in its original manufactured condition or package (Ky. Rev. Stat. Ann. § 411.340).

Louisiana. No strict liability (La. Rev. Stat. Ann. § 9:2800.51-53(1)(d)).

Maine. Strict liability (Me. Rev. Stat. Ann. tit. 14, § 221).

Maryland. Strict liability (*Phipps v. General Motors Corporation*, 363 A.2d 955 (MD APP 1975)). A limited exception is made under the sealed container defense (Md. Cts. & Jud. Proc. §5-405).

Massachusetts. No strict liability (*Guzman v. MRM Elgin.*, 567 N.E.2d 929 (1991)).

Michigan. No strict liability (*Cova v. Harley Davidson Motor Co.*, 182 N.W.2d 800 (Mich. 1970)).

Minnesota. Strict liability, but if plaintiff sues seller, then seller can file an affidavit certifying the identity of the manufacturer. Once the plaintiff files an action against the manufacturer and the manufacturer has or is required to file an answer, the suit against the seller must be dismissed, unless the information given by the seller is incorrect, the manufacturer cannot be sued, or the manufacturer would be unable to satisfy a judgment (Minn. Stat. § 544.41).

Mississippi. Technically, Mississippi law holds that there is no strict liability for a seller who acts as a mere conduit. (*Sam Shainberg Co. v. Barlow*, 258 So.2d 242 Miss. 1972)). Though the Mississippi Supreme Court has not overruled *Shainberg*, the state's high court has characterized the holding in *Shainberg* as "anomalous if not irrational" (*Coca Cola Bottling Co., Inc. v. Reeves*, 486 So.2d 374, 379 n.4 (Miss. 1986)). Lower state courts, as a result, have expressed confusion as to the state of the law in this area. (See, e.g., *Butler v. R.J. Reynolds Tobacco Co.*, 815 F.Supp. 982 (S.D. Miss. 1993); *Curry v. Sile Distributors*, 727 F.Supp 1052 (N.D. Miss. 1990)).

Missouri. No strict liability if there is another defendant properly before the court against whom the entire damages may be recovered (Mo. Rev. Stat. § 537.762). However, this statute has been held to be procedural in nature and therefore not to apply in federal court (*Pruett v. Goldline Labs, Inc.*, 751 F. Supp. 1372 (W.D. Mo. 1990)).

Montana. Strict liability (Mont. Code Ann. § 27-1-719).

Nebraska. No strict liability (Neb. Rev. Stat. § 25-21,181).

Nevada. Strict liability (*Shoshone Coca-Cola Bottling Co. v. Dolinski*, 420 P.2d 855 (Nev. 1966)).

New Hampshire. Strict liability (*Buttrick v. Arthur Lessard & Sons, Inc.*, 260 A.2d 111 (N.H. 1969)).

New Jersey. Strict liability, but if plaintiff sues seller, then seller can file an affidavit certifying the identity of the manufacturer. Once the plaintiff files an action against the manufacturer and the manufacturer has or is required to file an answer, the suit against the seller must be dismissed, unless the information given by the seller is incorrect, the manufacturer cannot be sued, or the manufacturer would be unable to satisfy a judgment (N.J. Stat. Ann. § 2A:58C-9).

New Mexico. Strict liability (*Stang v. Hertz Corp.*, 479 P.2d 732 (N.M. 1972)).

New York. Strict liability (*Sukljian v. Charles Ross & Son Co., Inc.*, 511 N.Y.S.2d 821 (N.Y. (1986)).

North Carolina. No strict liability if product was in sealed container or seller otherwise had no reasonable opportunity to inspect the product. This limitation does not apply, however, if the manufacturer is not subject to jurisdiction in North Carolina or has been judicially declared insolvent (N.C. Gen. Stat. § 99B-2).

North Dakota. Strict liability, but if plaintiff sues seller, then seller can file an affidavit certifying the identity of the manufacturer. Once the plaintiff files an action against the manufacturer and the manufacturer has or is required to file an answer, the suit against the seller must be dismissed, unless the information given by the seller is incorrect, the manufacturer cannot be sued, or the manufacturer would be unable to satisfy a judgment (N.D. Cent. Code § 28-01.3-04).

Ohio. No strict liability unless the manufacturer is not subject to service of process in the state, the manufacturer is insolvent, the seller owns or is owned by manufacturer, or the seller created or furnished to the manufacturer the design used to make the product (Ohio Rev. Code Ann. § 2307.78).

Oklahoma. Strict liability (*Kirkland v. General Motors Corp.*, 521 P.2d 1353 (Okla. 1974)).

Oregon. Strict liability (Or. Rev. Stat. § 30.920).

Pennsylvania. Strict liability (*Webb v. Zern*, 220 A.2d 853 (Pa. 1966)).

Rhode Island. Strict liability (*Ritter v. Narragansett Elec. Co.*, 283 A.2d 255 (R.I. 1971)).

South Carolina. Strict liability (S.C. Code Ann. § 15-73-10).

South Dakota. No strict liability (S.D. Codified Laws § 20-9-9).

Tennessee. No strict liability unless the manufacturer is not subject to service of process in Tennessee or has been judicially declared insolvent (Tenn. Code Ann. § 29-28-106).

Texas. Strict liability (*McKisson v. Sales Affiliates, Inc.*, 416 S.W.2d 787 (Tex. 1967)).

Utah. Strict liability (*Hahn v. Armco Steel Co.*, 601 P.2d 152 (Utah 1979)).

Vermont. Strict Liability (*Zaleskie v. Joyce*, 333 A.2d 110 (Vt. 1975)).

Virginia. No strict liability (*Harris v. T.I. Inc.*, 413 S.E.2d 605 (Va. 1992)).

Washington. No strict liability unless seller is a controlled subsidiary of the manufacturer or vice versa, or no solvent manufacturer is subject to service of process under the laws of the claimant's domicile or the state of Washington, or it is highly probable that the claimant would be unable to enforce a judgment against any manufacturer (Wash. Rev. Code § 7.72.040).

West Virginia. Strict liability (*Morningstar v. Black & Decker Manufacturing Co.*, 253 S.E.2d 66 (W. Va. 1979)).

Wisconsin. Strict liability (*Dippel v. Sciano*, 155 N.W.2d 55 (Wis. 1967)).

Wyoming. Strict liability (*Ogle v. Caterpillar Tractor Co.*, 716 P.2d 334 (Wyo. 1986)).

Contributory Fault

Under state law, if the plaintiff is partially responsible for his own injury, then his recovery is either barred or is reduced in proportion to his percentage of responsibility. In the list below, “contributory” means that any fault on the plaintiff’s part totally bars his recovery. “Pure comparative” means that the plaintiff’s degree of fault reduces his recovery in proportion to his percentage of responsibility. “Modified comparative” means that the plaintiff’s degree of fault reduces his recovery proportionately, except that if his degree of fault is more than a specified level — usually “greater than” or “as great as” the defendant’s — then it bars any recovery.

Alabama. Contributory (*Williams v. Delta Int. Mach. Corp.*, 619 So.2d 1330 (Ala. 1993)).

Alaska. Pure comparative (Alaska Stat. § 09.17.080).

Arizona. Pure comparative (Ariz. Rev. Stat. § 12-2506).

Arkansas. Modified comparative (Ark. Code Ann. § 16-64-122).

California. Pure comparative (*Li v. Yellow Cab Co.*, 532 P.2d 1226 (Cal. 1975)).

Colorado. Pure comparative (Colo. Rev. Stat. § 13-21-406).

Connecticut. Pure comparative (Conn. Gen. Stat. § 52-572o).

Delaware. Modified comparative (Del. Code Ann. tit. 10, § 8132).

District of Columbia. Contributory (*Holmes v. Amerex Rent-A-Car*, 710 A.2d 846 (D.C. 1998)).

Florida. Pure comparative (Fla. Stat. Ann. § 768.81(2)).

Georgia. Modified comparative (*Union Camp Corp. v. Helmy*, 367 S.E.2d 796 (Ga. 1988)).

Hawaii. Modified comparative (Haw. Rev. Stat. § 663-31), but in cases based upon strict liability, pure comparative applies (*Armstrong v. Cione*, 738 P.2d 79 (1987)).

Idaho. Modified comparative (Idaho Code § 6-1304).

Illinois. Modified comparative (735 Ill. Comp. Stat. 5/2-1116)

Indiana. Modified comparative (Indiana Code §§ 34-51-2-5, 34-51-2-6).

Iowa. Modified comparative (Iowa Code § 668.3).

Kansas. Modified comparative (Kan. Stat. Ann. § 60-258a).

Kentucky. Pure comparative (Ky. Rev. Stat. Ann. § 411.182).

Louisiana. Pure comparative (La. Civil Code Ann. art. 2323).

Maine. Modified comparative (Me. Rev. Stat. Ann. tit. 14, § 156).

Maryland. Contributory (*Harrison v. Montgomery County Board of Education*, 456 A.2d 894 (Md. 1983)).

Massachusetts. Modified comparative (Mass. Gen. Laws Ch. 231, § 85).

Michigan. Pure comparative (Mich. Comp. Laws § 600.2957).

Minnesota. Modified comparative (Minn. Stat. § 604.01).

Mississippi. Pure comparative (Miss. Code Ann. § 11-7-15).

Missouri. Pure comparative (Mo. Rev. Stat. § 537.765).

Montana. Modified comparative (Mont. Code Ann. § 27-1-702).

Nebraska. Modified comparative (Neb. Rev. Stat. §§ 25-21,185.09).

Nevada. Modified comparative (Nev. Rev. Stat. § 41.141).

New Hampshire. Modified comparative (N.H. Rev. Stat. Ann. § 507:7-d).

New Jersey. Modified comparative (N.J. Stat. Ann. § 2A:15-5.1).

New Mexico. Pure comparative (*Scott v. Rizzo*, 634 P.2d 1234 (N.M. 1981)).

New York. Pure comparative (N.Y. C.P.L.R. § 1411).

North Carolina. Contributory (*Jones v. Rochelle*, 479 S.E.2d 231 (N.C. Ct. App. 1997)).

North Dakota. Modified comparative (N.D. Cent. Code § 32-03.2-02).

Ohio. Modified comparative in negligence cases; assumption of risk is a defense to a product liability claim (Ohio Rev. Code Ann. §§ 2315.19, 2315.20 repealed 4/9/2003). Pure comparative for causes of action that accrue on or after 4/9/2003 (Ohio Rev. Code Ann. §§§ 2307.23, 2315.44, 2315.46).

Oklahoma. Modified comparative (Okla. Stat. tit. 23, § 13).

Oregon. Modified comparative (Or. Rev. Stat. § 18.470).

Pennsylvania. Modified comparative (Pa. Const. Stat. Ann. § 7102).

Rhode Island. Pure comparative (R.I. Gen. Laws § 9-20-4).

South Carolina. Modified comparative (*Nelson v. Concrete Supply Co.*, 399 S.E.2d 783 (S.C. 1991)).

South Dakota. Plaintiff's contributory negligence does not bar suit if plaintiff's negligence was "slight" in comparison to that of defendant. In such a case, the damages shall be reduced in proportion to plaintiff's contributory negligence. Determination of whether plaintiff's negligence was "slight," however, must be made without reference to plaintiff's percentage of fault (S.D. Codified Laws § 20-9-2).

Tennessee. Modified comparative (*McIntyre v. Balentine*, 833 S.W.2d 52 (Tenn. 1992)).

Texas. Modified comparative (Tex. Civ. Prac. & Rem. Code Ann. §§ 33.001, 33.003).

Utah. Modified comparative (Utah Code Ann. § 78-27-38).

Vermont. Modified comparative (Vt. Stat. Ann. tit. 12, § 1036).

Virginia. Contributory, except in breach of implied warranty action (*Brockett v. Harrell Bros., Inc.*, 143 S.E.2d 897, 902 (Va. 1965)).

Washington. Pure comparative (Wash. Rev. Code § 4.22.005).

West Virginia. Modified comparative (*Bradley v. Appalachian Power Co.*, 256 S.E.2d 879 (W. Va. 1979)).

Wisconsin. Modified comparative (Wis. Stat. § 895.045).

Wyoming. Modified comparative (Wyo. Stat. Ann. § 1-1-109(b)).

Punitive Damages

Punitive (or exemplary) damages are awarded, in addition to compensatory damages, to punish and deter a defendant's egregious conduct. The list below describes two aspects of state punitive damages law in products liability cases: caps and standard of proof. With respect to caps on punitive damages, if no cap is listed, then none was found for the state in question. With respect to standards of proof, the traditional common law standard that a plaintiff must meet in civil cases is "preponderance of the evidence." The standard that the government must meet in criminal cases is "beyond a reasonable doubt." In between these two standards, in terms of the burden it places on a party to prove its case, is the standard of "clear and convincing evidence." The list below contains one of these entries for every state that permits awards of punitive damages.

Alabama. General cap of \$500,000 or three times compensatory damages, whichever is greater. However, there are a few exceptions to this general rule that affect products liability actions. First, if the defendant is a small business, then the cap is \$50,000 or 10 percent of the business's net worth, whichever is greater. Second, in a physical injury action, the cap is \$1.5 million or three times compensatory damages, whichever is greater. Lastly, these caps do not apply to class action suits unless there was a pattern or practice of intentional wrongful conduct or conduct involving actual malice not part of a pattern or practice, held to violate the right to a jury trial as guaranteed by the Alabama Constitution (Ala. Code § 6-11-21). Standard of proof: clear and convincing evidence of malice, oppression, fraud, or wantonness (Ala. Code § 6-11-20).

Alaska. Cap of \$500,000 or three times compensatory damages, whichever is greater. If the trier of fact finds that the conduct was motivated by financial gain and the defendant knew of the adverse consequences, then the cap is the greater of four times compensatory damages, four times the defendant's financial gain, or \$7 million. Standard of proof: clear and convincing evidence of outrageous or reckless conduct (Alaska Stat. § 09.17.020).

Arizona. The Arizona Constitution forbids caps on damages for injuries (Ariz. Const. art XVIII, § 6). Standard of proof: clear and convincing evidence of an "evil mind" and aggravated and outrageous conduct (*Linthicum v. Nationwide Life Ins. Co.*, 723 P.2d 675 (Ariz. 1986)).

Arkansas. In 2003, Arkansas enacted a cap amounting to the greater of \$250,000 or three times compensatory damages not to exceed \$1 million, but this figure is to be adjusted every three years (Ark. Code Ann. § 16-55-208). Standard of proof: clear

and convincing evidence that the defendant either knew or should have known the consequences of the defendant's actions or acted with the intent to harm (Ark. Code Ann. §§ 16-55-206, 16-55-207).

California. California does not cap punitive damages, and the standard of proof for such damages is clear and convincing evidence of oppression, fraud, or malice (Cal. Civil Code § 3294(a)).

Colorado. Punitive damages must not exceed amount of actual damages, but, if the defendant has continued the behavior or further aggravated the matter during the pendency of the case, then the court may increase an award of punitive damages to no more than three times the amount of actual damages (Colo. Rev. Stat. § 13-21-102). Standard of proof: beyond a reasonable doubt (Colo. Rev. Stat. § 13-25-127(2)).

Connecticut. Cap is twice the amount of compensatory damages awarded (applicable only in products liability cases) (Conn. Gen. Stat. § 52-240b), and plaintiff must prove, by a preponderance of the evidence, that the conduct was the result of the defendant's reckless disregard for the safety of the product users (*Freeman v. Alamo Management Co.*, 607 A.2d 370 (Conn. 1992)).

Delaware. No cap, and plaintiff must prove, by a preponderance of the evidence, outrageous conduct resulting from an evil motive or reckless indifference (*Jardel Co., Inc. v. Hughes*, 523 A.2d 518 (Del. 1987)).

District of Columbia. No cap, and plaintiff must prove, with clear and convincing evidence, egregious conduct (*Railan v. Katyal*, 766 A.2d 998 (D.C. 2001)).

Florida. Cap is the greater of three times compensatory damages or \$500,000. However, if it is determined that the defendant was motivated solely by unreasonable financial gain and knew the consequences of the wrongful conduct, then the cap is the greater of four times compensatory damages or \$2 million (Fla. Stat. Ann. § 768.73). Standard of proof: clear and convincing evidence (Fla. Stat. Ann. § 768.725).

Georgia. No cap on punitive damages for products liability cases, but "Only one award of punitive damages may be recovered from a defendant for any act or omission if the cause of action arises from product liability, regardless of the number of causes of action which may arise from such act or omission." Standard of proof: Clear and convincing evidence of willful misconduct, malice, fraud, wantonness, oppression, or entire want of care that would raise presumption of conscious indifference to consequences (Ga. Code Ann. § 51-12-5.1).

Hawaii. No cap, and the standard of proof is clear and convincing evidence (*Masaki v. General Motors Corp.*, 780 P.2d 566 (Hawaii 1989)).

Idaho. Cap is the greater of \$250,000 or three times compensatory damages. Standard of proof: clear and convincing evidence of oppression, fraud, malice, or outrageous behavior (Idaho Code § 6-1604).

Illinois. No cap (*Best v. Taylor Machine Works*, 689 N.E.2d 1057 (Illinois 1997) held cap statute (735 Ill. Comp. Stat. 5/2-1115.05) unconstitutional).

Indiana. Cap is the greater of three times compensatory damages or \$50,000 (Ind. Code § 34-51-3-4). Standard of proof: clear and convincing evidence (Ind. Code § 34-51-3-2).

Iowa. No cap, and the standard of proof is a preponderance of clear, convincing, and satisfactory evidence (Iowa Code § 668A.1).

Kansas. Cap equals the lesser of \$5 million or the annual gross income earned by the defendant, unless the court determines that such an amount is clearly inadequate to penalize the defendant, in which case the court can impose punitive damages of up to 50 percent of the defendant's net worth. However, if the profit that the defendant earns from his misconduct exceeds the amount stated above, the court may award punitive damages equal to 1½ times the amount of the profit the defendant gained or expected to gain as a result of the defendant's misconduct. Standard of proof: clear and convincing evidence of willful or wanton conduct, malice, or fraud (Kan. Stat. Ann. § 60-3702).

Kentucky. The Kentucky Constitution prohibits laws that limit the amount of damages that may be recovered for death or injury (Ky. Const. § 54). Standard of proof: clear and convincing evidence of oppression, fraud, or malice (Ky. Rev. Stat. Ann. § 411.184).

Louisiana. Louisiana does not allow the award of punitive damages in civil actions without specific statutory authorization, of which there is none for products liability actions (*Pittman v. Kaiser Aluminum and Chemical Corp.*, 559 So.2d 879 (La. App. 4th Cir. 1990)).

Maine. No cap, and the standard of proof is clear and convincing evidence of malice (*Tuttle v. Raymond*, 494 A.2d 1353, 58 ALR4th 859 (Me. 1985)).

Maryland. No cap, and the standard of proof is clear and convincing evidence of malice (*Owens-Illinois, Inc. v. Zenobia*, 601 A.2d 633 (Md. 1992)).

Massachusetts. Massachusetts does not allow the award of punitive damages in civil actions without specific statutory authorization, of which there is none for products liability actions. If wrongful death results from the plaintiff's negligence or breach of warranty, however, punitive damages are recoverable in proportion to the decedent's fair monetary value to the claimants, plus funeral/burial expenses and an additional sum in the case of willful, wanton, or reckless conduct or gross negligence (Mass. Gen. Laws ch. 229, § 2). Standard of proof: preponderance of the evidence (Massachusetts courts have not set out a separate standard of proof for punitive damages awards).

Michigan. No cap, and plaintiff must prove, by a preponderance of the evidence, malicious or reckless conduct (*Jackson Printing Co., Inc. v. Mitani*, 425 N.W.2d 791 (Mich. 1988)).

Minnesota. No cap, and the standard of proof is clear and convincing evidence of a deliberate disregard for the safety of others (Minn. Stat. § 549.20).

Mississippi. Mississippi's cap varies according to the defendant's net worth. There is a \$20 million cap for a defendant worth more than \$1 billion; a \$15 million cap for a defendant worth between \$750 million and \$1 billion; a \$10 million cap for a defendant worth between \$500 million and \$750 million; a \$7.5 million cap for a defendant worth between \$100 million and \$500 million; a \$5 million cap for a defendant worth between \$50 million and \$100 million; and a cap of 4 percent of the defendant's net worth if the defendant is worth \$50 million or less. Standard of proof: clear and convincing evidence of malice, gross negligence, or fraud (Miss. Code Ann. § 11-1-65).

Missouri. No cap, and the standard of proof is clear and convincing evidence of willful, wanton, malicious, or reckless conduct (*Rodriguez v. Suzuki Motor Corp.*, 936 S.W.2d 104 (Mo. 1996)).

Montana. Cap is the lesser of \$10 million or 3 percent of the defendant's net worth (Mont. Code Ann. § 27-1-220). Standard of proof: clear and convincing evidence of actual fraud or actual malice (Mont. Code Ann. § 27-1-221(5)).

Nebraska. Punitive damages prohibited (*Prather v. Eisenmann*, 261 N.W.2d 766, 772 (Neb. 1968)).

Nevada. The cap varies according to the compensatory damages awarded. The cap is three times the amount of compensatory damages if the amount of compensatory damages is \$100,000 or more, but the cap is \$300,000 if the amount of compensatory damages is less than \$100,000. These caps do not apply, however, to actions brought against the manufacturers, distributors, or sellers of defective products. Standard of proof: clear and convincing evidence of oppression, fraud, or malice (Nev. Rev. Stat. § 42.005).

New Hampshire. Punitive damages prohibited (N.H. Rev. Stat. Ann. § 507:16).

New Jersey. Cap is the greater of \$350,000 or five times the amount of compensatory damages (N.J. Rev. Stat. Ann. § 2A:15-5.14). Standard of proof: clear and convincing evidence of malice or willful and wanton disregard for those who could be harmed (N.J. Rev. Stat. Ann. § 2A:15-5.12).

New Mexico. No cap, and the standard of proof is preponderance of the evidence of malice, fraud, oppression, or wanton disregard (*United Nuclear Corp. v. Allendale Mutual Insurance Co.*, 709 P.2d 649 (N.M. 1985)).

New York. No cap, and standard of proof is apparently unsettled (see *Randi A.J. v. Long Island Surgi-Center*, 842 N.Y.S.2d 558, 568 (A.D. 2007)).

North Carolina. Cap is the greater of three times the amount of compensatory damages or \$250,000 (N.C. Gen. Stat. § 1D-25). Standard of proof: clear and convincing evidence of malice, fraud, or willful and wanton conduct (N.C. Gen. Stat. § 1D-15).

North Dakota. Cap is \$250,000 or twice the amount of compensatory damages, whichever is greater. Standard of proof: Clear and convincing evidence of oppression, fraud, or actual malice (N.D. Cent. Code § 32-03.2-11).

Ohio. No cap, and the standard of proof is clear and convincing evidence of manufacturer or supplier's flagrant disregard of safety of those who might be harmed by the product (Ohio Rev. Code Ann. § 2307.80).

Oklahoma. The cap varies according to the defendant's state of mind. Where there is clear and convincing evidence that the defendant recklessly disregarded the rights of others, the cap is the greater of \$100,000 or the amount of actual damages. Where there is clear and convincing evidence that the defendant acted intentionally and with malice, the cap is the greater of \$500,000, twice the amount of actual damages, or the increased financial benefit the defendant received as a direct result of the defendant's conduct, minus the amount the defendant previously paid in punitive damages for the same conduct (Okla. Stat. tit. 23, § 9.1).

Oregon. No cap, and the standard of proof is clear and convincing evidence of malice or reckless indifference to a highly unreasonable risk of harm and a conscious indifference to the safety of others (Or. Rev. Stat. § 18.537).

Pennsylvania. No cap, and the standard of proof is preponderance of the evidence of malicious, willful, wanton, or oppressive conduct, or reckless indifference (*SHV Coal, Inc. v. Continental Grain.*, 587 A.2d 702 (Pa. 1991)).

Rhode Island. No cap, and Rhode Island has not specifically addressed the standard of proof required for punitive damages, so it is likely a preponderance of the evidence.

South Carolina. No cap, and the standard of proof is clear and convincing evidence (S.C. Code § 15-33-135) of malice, ill will, or a conscious indifference to the rights of others (*King v. Allstate Insurance Co.*, 251 S.E.2d 194 (S.C. 1979)).

South Dakota. No cap, and the standard of proof is clear and convincing evidence of willful, wanton, or malicious conduct (S.D. Codified Laws § 21-1-4.1).

Tennessee. No cap, and the standard of proof is clear and convincing evidence of intentional, malicious, fraudulent, or reckless conduct (*Hodges v. S.C. Toof & Co.*, 833 S.W.2d 896 (Tenn. 1992)).

Texas. The cap is the greater of \$200,000 or twice the compensatory damages plus an amount four times the amount of any noneconomic damages found by the jury (but not to exceed \$750,000) (Texas Civ. Prac. & Rem. Code Ann. § 41.008). Standard of proof: clear and convincing evidence of malice, fraud, or gross negligence (Texas Civ. Prac. & Rem. Code Ann. § 41.003).

Utah. No cap, and the standard of proof is clear and convincing evidence of intentionally fraudulent or willful and malicious conduct, or reckless indifference (Utah Code Ann. § 78-18-1).

Vermont. No cap, and Vermont has apparently not addressed the question of what specific standard of proof applies to punitive damages claims, so the usual standard for civil cases (preponderance of the evidence) likely applies.

Virginia. The cap is \$350,000 (Va. Code Ann. § 8.01-38.1). Standard of proof: clear and convincing evidence of malice (*Great Coastal Express, Inc. v. Ellington*, 334 S.E.2d 846 (Va. 1985)).

Washington. Punitive damages prohibited absent express statutory authorization, (*Maki v. Aluminum Building Products*, 436 P.2d 186 (Wash. 1968)), of which there is none for product liability actions.

West Virginia. No cap, and West Virginia has apparently not addressed whether a different standard of proof applies to punitive damages claims, so the usual standard (preponderance of the evidence) likely applies.

Wisconsin. Clear and convincing evidence (*Wangen v. Ford Motor Co.*, 294 N.W.2d 437, 457 (Wis. 1980)) of malice or intentional disregard of plaintiff's rights (Wis. Stat. § 895.95(3)).

Wyoming. The Wyoming Constitution prohibits caps on damages (Wyo. Const. art. 10, § 4). Standard of proof: preponderance of the evidence (*Campen v. Stone*, 635 P.2d 1121 (Wyo. 1981)).

Joint and Several Liability

Joint and several liability means that, if more than one defendant is found liable, each is liable for the total damages incurred. The plaintiff may not recover more than his total damages, but he may seek recovery from any defendant found liable. If any defendant pays more than its proportionate share, then it may seek contribution from any defendant that pays less than *its* share.

“Joint and several” in the list below means that each responsible defendant may be held liable for 100 percent of the damages. “Several” means that each responsible defendant is liable only in proportion to its share of responsibility. Those states with no entry probably impose joint and several liability, as that is the common law rule.

Alabama. Joint and several (*Butler v. Olshan*, 191 So.2d 7 (Ala. 1966)).

Alaska. Several (Alaska Stat. § 09.17.080(d)).

Arizona. Several (Ariz. Rev. Stat. § 12-2506).

Arkansas. Joint and several (Ark. Code Ann. § 16-61-203).

California. Joint and several for economic damages only (Cal. Civil Code § 1431.2).

Colorado. Several (Colo. Rev. Stat. § 13-21-111.5).

Connecticut. Joint and several (Conn. Gen. Stat. § 52-572o(d)).

Delaware. Joint and several (Del. Code Ann. tit. 10, § 6301).

District of Columbia. Joint and several (*District of Columbia v. Washington Hospital Center*, 722 A.2d 332 (D.C. 1998)).

Florida. Several liability for non-economic damages; for economic damages, Florida law provides a tiered application of joint and several liability according to the plaintiff's and the defendant's relative percentages of fault (Fla. Stat. Ann. § 768.81).

Georgia. Joint and several (Ga. Code Ann. § 51-12-32), but can be disregarded if plaintiff is somewhat at fault (Ga. Code Ann. § 51-12-33).

Hawaii. Joint and several liability for products liability actions (Haw. Rev. Stat. § 663-10.9(2)(E)).

Idaho. Several (Idaho Code § 6-803).

Illinois. Joint and several liability for medical damages. For all other damages, defendants found to be less than 25 percent at fault are only severally liable, while defendants found to be more than 25 percent at fault are jointly and severally liable (735 Ill. Comp. Stat. 5/2/-1117; *Unzicker v. Kraft Food Ingredient Corp.*, 783 N.E.2d 1024 (Ill. 2002)).

Indiana. Several (Indiana Code § 34-20-7-1).

Iowa. Several liability, but if the defendant is at least 50 percent at fault, then that defendant is jointly and severally liable for economic damages only (Iowa Code § 668.4).

Kansas. Several (In *Brown v. Keill*, 580 P.2d 867 (Kan. 1978), the Kansas Supreme Court interpreted Kan. Stat. Ann. § 60-258a(d) to abolish joint and several liability).

Kentucky. Several (Ky. Rev. Stat. Ann. § 411.182).

Louisiana. Joint and several to the extent necessary for the plaintiff to recover 50 percent of his recoverable damages, but several if the plaintiff's contributory fault was greater than the defendant's fault (La. Civil Code Ann. Art. 2324).

Maine. Joint and several (Me. Rev. Stat. Ann. tit. 14, § 156).

Maryland. Joint and several (Md. Code Ann Cts. & Jud. Proc., §§ 3-1402 ; 3-1406).

Massachusetts. Joint and several (Mass. Gen. Laws Ann. Ch. 231B, §§ 1-4).

Michigan. Several (Mich. Comp. Laws § 600.6304.4)).

Minnesota. Joint and several except for defendants whose fault is less than the plaintiff's (Minn. Stat. Ann. § 604.02(3)).

Mississippi. Joint and several “only to the extent necessary for the person suffering injury, death or loss to recover fifty percent of his recoverable damages”; joint and several shall also “be imposed on all who consciously and deliberately pursue a common plan or design to commit a tortious act, or actively take part in it” (Miss. Code Ann. § 85-5-7).

Missouri. Joint and several (Mo. Ann. Stat. § 537.067).

Montana. Joint and several only for defendants more than 50 percent responsible for the injury (Mont. Code Ann § 27-1-703).

Nebraska. Joint and several for economic damages. Several for non-economic damages. (Neb. Rev. Stat. Ann. § 25-21,185.10).

Nevada. Joint and several (Nev. Rev. Stat. §§ 17.225 - 17.305).

New Hampshire. Joint and several for defendants 50 percent or more at fault (N.H. Rev. Stat. Ann § 507:7-e).

New Jersey. Joint and several for defendants 60 percent or more responsible. (N.J. Stat. Ann. § 2A:15-5.3).

New Mexico. Several in any cause of action to which the doctrine of comparative fault applies, except joint and several liability shall apply “to any persons strictly liable for the manufacturer and sale of a defective product, but only to that portion of the total liability attributed to those persons” (N.M. Stat. Ann. § 41-3A-1).

New York. Joint and several for defendants more than 50 percent responsible. Joint and several for economic damages only for defendants 50 percent responsible or less (N.Y. C.P.L.R. § 1601). However, if jurisdiction over the manufacturer cannot be obtained, then the defendant is also liable for the manufacturer’s share of noneconomic damages (N.Y. C.P.L.R. § 1602(10)).

North Carolina. Joint and several (N.C. Gen. Stat. §§ 1B-1 - 1B-6).

North Dakota. Joint and several (N.D. Cent. Code §§ 32-38-01 - 32-38-04).

Ohio. Joint and several liability for economic loss for defendants 50 percent or more at fault (Ohio Rev. Code Ann. §§ 2307.22(A)(1)).

Oklahoma. Joint and several (Okla. Stat. tit.12, § 832).

Oregon. Several (Or. Rev. Stat. § 31.610).

Pennsylvania. Several except joint and several for defendants 60 percent or more at fault, intentional tort, or intentional misrepresentation. (Pa. Stat. Ann. tit. 42, § 7102).

Rhode Island. Joint and several (R.I. Gen. Laws §§ 10-6-1 - 10-6-11).

South Carolina. Joint and several (S.C. Code Ann. §§ 15-38-20 - 15-38-50).

South Dakota. Joint and several, except a defendant less than 50 percent responsible is not liable for more than twice the percentage of fault allocated to it (S.D. Codified Laws §§ 15-8-12 - 15-8-15.1).

Tennessee. Several (*McIntyre v. Balentine*, 833 S.W.2d 52 (Tenn. 1992)).

Texas. Joint and several if defendant's share of responsibility is greater than 50 percent.(Tex. Civ. Prac. & Rem. § 33.013).

Utah. Several (Utah Code Ann. § 78-27-40).

Vermont. Several (Vt. Stat. Ann. tit. 12, § 1036).

Virginia. Joint and several (Va. Code Ann. § 8.01-443).

Washington. Joint and several if plaintiff was not at fault (Wash. Rev. Code Ann. § 4.22.070).

West Virginia. Joint and several (W. Va. Code Ann. § 55-7-13).

Wisconsin. Joint and several (Wis. Stat. Ann. §§ 113.01 - 113.11).

Wyoming. Several (Wyo. Stat. Ann. § 1-1-109(e)).

Statutes of Limitations

A statute of limitations specifies the number of years after an injury occurs within which suit must be filed. In the case of latent diseases, such as asbestosis, an illness may not manifest itself for years after exposure to the defective product that caused it, and it may take still longer to discover a causal relationship between the exposure and the disease. Many states, therefore, have adopted a "discovery" rule, under which the statute of limitations starts to run only when the plaintiff discovers or, in the exercise of reasonable diligence, should have discovered, his injury, or, sometimes, his injury and its cause.

The list below indicates the length of the statute of limitations applicable to products liability claims, and where stated in the statute, whether the state allows the statute to be postponed until the time that the plaintiff discovers his injury, or his injury and its cause. Occasionally, but not in every case, court decisions adopting a discovery rule are cited. It may generally be assumed, even where not stated in the list below, that a statute of limitations that includes a discovery rule begins when the plaintiff reasonably should have made the relevant discovery, even if in fact he did not.

Alabama. One year from time of injury or discovery of injury or within 10 years after the manufactured product is first put to use by any person or business entity who did not acquire the manufactured product for either resale or other distribution in its unused condition. (Ala. Code § 6-5-502).

Alaska. Two years (Alaska Stat. § 09.10.070) from when defendant discovered or reasonably should have discovered all elements of cause of action (*Pederson v. Zielski*, 822 P.2d 903 (1991)).

Arizona. Two years from discovery of injury and its cause (Ariz. Rev. Stat. § 12-542; *Lawhon v. L.B.J. Institutional Supply, Inc.*, 765 P.2d 1003 (Ariz. Ct. App. 1988)).

Arkansas. Three years from time of injury (Ark. Code Ann. § 16-116-103).

California. One year from date when plaintiff suspected or should have suspected that injury was caused by someone's wrongdoing (Cal. Code § 340(3); *Jolly v. Eli Lilly & Co.*, 245 Cal. Rptr. 658 (Cal. 1988)).

Colorado. Two years after cause of action "arises" (Colo. Rev. Stat. § 13-80-106). In the case of new manufacturing equipment, two years after the cause of action "accrues" (Colo. Rev. Stat. §§ 13-80-107(1)(a), 13-80-102), which is defined as "the date both the injury and its cause are known or should have been known by the exercise of reasonable diligence" (Colo. Rev. Stat. § 13-80-108(1)).

Connecticut. Three years from date of discovery, except, in asbestos cases: 60 years from last exposure in personal injury or death actions; 30 years from last exposure in property damages cases (Conn. Gen. Stat. § 52-577a).

Delaware. Two years from date "the harmful effect first manifests itself and become ascertainable" (Del. Code Ann. tit.10, § 8119; *Bendix Corp. v. Stagg*, 486 A.2d 1150 (Del. 1984))

District of Columbia. Three years from date of discovery (D.C. Code Ann. § 12-301; *Dawson v. Eli Lilly & Co.*, 543 F. Supp. 1330 (D.D.C. 1982)). One year after wrongful death (D.C. Code Ann. § 16-2702).

Florida. Four years from discovery of facts giving rise to the cause of action (Fla. Stat. Ann. §§ 95.031(2), 95.11(3)(e)).

Georgia. Two years from discovery (Ga. Code Ann. § 9-3-33; *Ballew v. A.H. Robins*, 688 F.2d 1325 (11th Cir. 1982)).

Hawaii. Two years from date of discovery (Haw. Rev. Stat. Ann. § 657-7; *Yamaguchi v. Queen's Medical Center*, 648 P.2d 689 (Hawaii, 1982)).

Idaho. Two years from time of wrongdoing (Idaho Code [§ 6-1403(3)]; [§ 5-219]).

Illinois. Two years "after the date on which the claimant knew, or through the use of reasonable diligence should have known, of the existence of the personal injury, death or property damage, but in no event . . . more than 8 years after the date on which such personal injury, death or property damage occurred" (735 Ill. Comp. Stat. 5/13-213(d)).

Indiana. Two years after cause of action accrues (Ind. Code Ann. § 34-20-3-1).
Discovery rule in asbestos cases (Ind. Code Ann. § 34-20-3-2).

Iowa. Two years from date of discovery (Iowa Code § 614.1(2); *Kracium v. Owens-Corning Fiberglass Corp.*, 895 F.2d 444 (8th Cir. 1990)).

Kansas. Two years from reasonable ascertainment of injury, but in no case more than ten years from action which gave rise to injury (Kan. Stat. Ann. § 60-513).

Kentucky. One year (Ky. Rev. Stat. Ann. § 413.140) from injury (*Caudill v. Arnett*, 481 S.W.2d 668 (Ky. 1972)).

Louisiana. One year (La. Civ. Code art. 3492) from time plaintiff knows of damage, wrongful conduct, and the connection between them (*Corsey v. State*, 375 So.2d 1319 (1979)).

Maine. Six years (Me. Rev. Stat. Ann. tit. 14, § 752) after injury (*Bozutto v. Oullette*, 408 A.2d 697 (Me. 1979)). Discovery rule for asbestos (*Bernier v. Raymark Indus.*, 516 A.2d 534 (Me. 1984)).

Maryland. Three years from discovery of possible causation and probable manufacturer wrongdoing or product defect (Md. Code Ann., Cts. & Jud. Proc. § 5-101; *Pennwalt Corp. v. Nasios*, 550 A.2d 1155 (Md. 1988)).

Massachusetts. Three years from date of discovery (Mass. Gen. Laws Ann. Ch. 260, § 2A; *Bowen v. Eli Lilly & Co.*, 557 N.E.2d 739 (Mass. 1990)).

Michigan. Three years (Mich. Comp. Laws Ann. § 600.5805(13)) from discovery (*Bonney v. The Upjohn Co.*, 342 N.W.2d 551, 559 (1983)).

Minnesota. Four years (Minn. Stat. § 541.05) from date when effects of injuries manifest themselves (*Dalton v. Dow Chemicals*, 158 NW2d 580 (Minn. 1968)).

Mississippi. Three years from date of discovery of the injury (Miss. Code Ann. § 15-1-49).

Missouri. Five years (Mo. Ann Stat. § 516.120) from when injury is reasonably ascertainable (*Krug v. Sterling Drug, Inc.*, 416 S.W.2d 143 (Mo. 1967)).

Montana. Three years (Mont. Code Ann. § 27-2-204(1)) from discovery of injury (*Bennet v. Dow Chemical Co.*, 713 P.2d 992 (Mont. 1986)).

Nebraska. Four years from date of injury except, in asbestos cases brought against manufacturers, four years from the date of discovery of the injury and its cause (Neb. Rev. Stat. Ann. § 25-224).

Nevada. Two years (Nev. Rev. Stat. Ann. § 11.190(4)(e)) from when plaintiff discovered or reasonably should have discovered injuries (*Petersen v. Bruen*, 792 P.2d 18 (Nev. 1990)).

New Hampshire. Three years from “the time the injury is, or should, in the exercise of reasonable diligence, have been discovered by the plaintiff” (N.H. Rev. Stat. Ann. § 507-D:2(I)).

New Jersey. Two years after injured party discovers “that he may have a basis for an actionable claim” (N.J. Stat. Ann. § 2A:14-2).

New Mexico. Three years from time of injury (N.M. Stat. Ann. § 37-1-8).

New York. Three years from date of injury, except date of discovery in cases involving “exposure to any substance or combination of substances” (N.Y. C.P.L.R. §§ 214(5), 214-c(2)).

North Carolina. Three years from discovery of injury (N.C. Gen. Stat. § 1-52(16)).

North Dakota. Six years (N.D. Cent. Code § 28-01-16) after injury (*Erickson v. Scotsman, Inc.*, 456 N.W.2d 535 (N.D. 1990)), except two years in wrongful death action (N.D. Cent. Code § 28-01-18(4)).

Ohio. Two years (Ohio Rev. Code Ann. § 2305.10) from when plaintiff knew or should have known of injuries *and* of the defendant’s role in causing them (*O’Stricker v. Jim Walter Corp.*, 447 N.E.2d 727 (Ohio 1983)).

Oklahoma. Two years from date (Ok. Stat. Ann. tit. 12, § 95) when plaintiff might prosecute claim to successful conclusion (*Oklahoma Brick Corp. v. McCall*, 497 P.2d 215 (Okla. 1972)).

Oregon. Two years from date of discovery (Or. Rev. Stat. § 30.905).

Pennsylvania. Two years (Pa. Stat. Ann. tit. 42, § 5524) from the date plaintiff knew or reasonably should have known of the causal relationship between the injury and the conduct causing that injury (*Hayward v. Medical Center of Beaver County*, 608 A.2d 1040 (Penn. 1992)).

Rhode Island. Three years (R.I. Gen. Laws § 9-1-14) after injury (*Plouffe v. Goodyear Tire & Rubber Co.*, 373 A.2d 492 (R.I. 1977)).

South Carolina. Three years from date of discovery of the cause of action (S.C. Code Ann. §§ 15-3-530(5), 15-3-535).

South Dakota. Three years from date of discovery of the injury (S.D. Codified Laws § 15-2-12.2).

Tennessee. One year from date of injury (Tenn. Code Ann. § 28-3-104(b)).

Texas. Two years (Tex. Civ. Prac. & Rem. § 16.003) after plaintiff knew or should have know of injury (*Willis v. Maverick*, 760 S.W.2d 642 (Tex. 1988)).

Utah. Two years from date of discovery of the harm and its cause (Utah Code Ann § 78-15-3).

Vermont. Three years from date of discovery of the injury (Vt. Stat. Ann. tit. 12, § 512(4)).

Virginia. Two years after injury (Va. Code Ann. §§ 8.01-243(A); 8.01-230).

Washington. Three years from date claimant discovered or should have discovered the harm and its cause (Wash. Rev. Code Ann. § 7.72.060(3)).

West Virginia. Two years (W. VA. Code Ann. § 55-2-12) after “plaintiff knows, or by the exercise of reasonable diligence should know: (1) That he has been injured; (2) the identity of the maker of the product; and (3) that the product had a causal relation to his injury” (*Hickman v. Grover*, 358 S.E.2d 810 (W. Va. 1987)).

Wisconsin. Three years from discovery of injury (Wisc. Stat. Ann. § 893.54; *Hansen v. A.H. Robins, Inc.*, 335 N.W.2d 578 (Wis. 1983)).

Wyoming. Four years (Wyo. Stat. Ann. § 1-3-105(a)) after plaintiff knows or has reason to know of existence of cause of action (*Olson v. A.H. Robins Co.*, 696 P.2d 1294 (Wyo. 1985)).

Statutes of Repose

A statute of repose specifies the number of years after a product is first sold within which suit must be filed. The General Aviation Revitalization Act of 1994, Public Law 103-298, established an 18-year statute of repose for products liability suits against manufacturers of small aircraft. 49 U.S.C. § 40101 note. Apart from this, statutes of repose are created by state law. They supplement statutes of limitations; thus, a statute of repose may expire, precluding a lawsuit, even before an injury occurs and a statute of limitations begins to run.

In the list below, those states with no entry have no statute of repose, except that some may have a statute of repose, which we do not note, applicable only to improvements of real property.

Alabama. Ten year statute of repose (Ala. Code § 6-5-502) declared to violate Alabama Constitution (*Lankford v. Sullivan, Long & Hagarty*, 416 So.2d 996 (Ala. 1982)).

Alaska. Ten year statute of repose, but not for injuries from “defective” products (Alaska Stat. § 09.10.055).

Arizona. Twelve year statute of repose, applicable unless manufacturer or seller was negligent or breached an express warranty (Ariz. Rev. Stat. §12-551) held to violate the right to recover damages for injuries guaranteed by Art. 18 of the Arizona Constitution (*Hazine v. Montgomery Elevator Co.*, 861 P.2d 625 (1993)).

Arkansas.

California.

Colorado. After ten years, it is rebuttably presumed that a product was not defective (Colo. Rev. Stat. § 13-21-403(3)). Colorado also has a seven year statute of repose applicable to new manufacturing equipment, “except when the claim arises from injury due to hidden defects or prolonged exposure to hazardous material,” or “if the manufacturer, seller, or lessor intentionally misrepresented or fraudulently concealed any material fact concerning said equipment which is a proximate cause of the injury, death, or property damage” (Colo. Rev. Stat. § 13-80-107).

Connecticut. If claimant is entitled to workers’ compensation, then, except in asbestos cases, a claim is barred ten years from the date defendant last parted with possession or control of the product; for other claimants, the ten year period does not apply if they prove that the harm occurred during the useful safe life of the product (Conn. Gen. Stat. § 52-577a).

Delaware.

District of Columbia.

Florida. Twelve year statute of repose for products with expected useful life of ten years or less (Fla. Stat. Ann. § 95.031(b)).

Georgia. Ten years unless damages arise out of manufacturer’s negligence that causes a disease or birth defect, or out of conduct that manifests a willful, reckless, or wanton disregard for life or property (Ga. Code Ann. § 51-1-11).

Hawaii.

Idaho. Length of “useful safe life,” which is presumed to be ten years (unless harm was caused by prolonged exposure to the product or the injury-causing aspect of the product was not discoverable until more than ten years after delivery) but subject to rebuttal by clear and convincing evidence (Idaho Code § 6-1403).

Illinois. Twelve years from first sale or ten years from delivery to initial user or non-seller, whichever is earlier (735 Ill. Comp. Stat. 5/13-213(b)).

Indiana. Ten year statute of repose (Ind. Code Ann. §34-20-3-1(b)(2)).

Iowa. Fifteen years except as otherwise expressly warranted for a longer period or when a latent disease is discovered (Iowa Code Ann. §614.1(1B)).

Kansas. Length of “useful safe life,” which is presumed to be ten years (unless harm was caused by prolonged exposure to the product or the injury-causing aspect of the product was not discoverable until more than ten years after delivery) but subject to rebuttal by clear and convincing evidence (Kan. Stat. Ann. § 60-3303).

Kentucky. “In any product liability action, it shall be presumed, until rebutted by a preponderance of the evidence, that the subject product was not defective if the injury, death, or property damage occurred either more than five (5) years after the date of sale to the first consumer or more than eight (8) years after the date of manufacture” (Ky. Rev. Stat. Ann. § 411.310(1)).

Louisiana.

Maine.

Maryland.

Massachusetts.

Michigan. “[I]n the case of a product which has been in use for not less than 10 years, the plaintiff, in proving a prima facie case, shall be required to do so without the benefit of any presumption” ((Mich. Comp. Laws Ann. § 600.5805(13)).

Minnesota. Length “of the ordinary useful life of the product,” to be determined case by case (Minn. Stat. Ann. § 604.03), but expiration of useful life is a factor to be weighed, not an absolute defense (*Hodder v. Goodyear Tire & Rubber Co.*, 426 N.W.2d 826 (Minn. 1988), *cert. denied*, 492 U.S. 926 (1989)).

Mississippi.

Missouri.

Montana.

Nebraska. Ten years from first sale or lease for use or consumption of product manufactured in Nebraska. For products manufactured outside Nebraska, the statute of repose of the state in which the product was manufactured controls, unless it is longer than ten years. These rules are inapplicable in asbestos cases (Neb. Rev. Stat. Ann. § 25-224(2)).

Nevada.

New Hampshire. Twelve year statute of repose (N.H. Rev. Stat. Ann. §507-D:2) held to violate New Hampshire Constitution (*Heath v. Sears, Roebuck & Co.*, 464 A.2d 288 (N.H. 1983)).

New Jersey.

New Mexico.

New York.

North Carolina. Six years after the date of initial purchase for use or consumption (N.C. Gen. Stat. § 1-50(a)(6)).

North Dakota. Ten years from the date of initial purchase for use or consumption, or eleven years from the date of manufacture except six years from date of discovery in asbestos cases (N.D. Cent. Code § 28-01.3-08) declared unconstitutional (*Dickie v. Farmers Union Oil Co.*, 611 N.W.2d 168 (N.D. 2000)).

Ohio. Ten years from the date that the product was delivered to its first purchaser or lessor who was not engaged in a business in which the product was used as a component in the production ... of another product” (Ohio Rev. Code Ann. §2305.10(C)(1)).

Oklahoma.

Oregon. Eight years after the product was first purchased for use or consumption, except in cases involving intrauterine devices and asbestos (Or. Rev. Stat. § 30.905).

Pennsylvania.

Rhode Island. Ten year statute of repose (R.I. Gen. Laws 9-1-13) declared to violate Rhode Island Constitution (*Kennedy v. Cumberland Engineering Co.*, 471 A.2d 195 (R.I. 1984)).

South Carolina.

South Dakota. Former six-year statute of repose was repealed in 1985 (S.D. Codified laws § 15-2-12.1).

Tennessee. Ten years from date product was first purchased for use or consumption, or within one year after expiration of the anticipated life of the product, whichever is shorter; inapplicable in asbestos silicon gel breast implant cases (Tenn. Code Ann. § 29-28-103).

Texas. Fifteen years from date of sale (Tex. Civil Practice and Remedies Code § 16.012).

Utah. Statute of repose (formerly codified at Utah Code Ann. § 78-15-3) held unconstitutional as applied to tort-based claims (*Berry v. Beech Aircraft Corp.*, 717 P.2d 670 (Utah 1985)).

Vermont.

Virginia.

Washington. Useful safe life, unless harm caused by exposure during useful safe life did not manifest itself until after useful safe life; useful safe life rebuttably presumed to be twelve years (Wash. Rev. Code Ann. § 7.72.060).

West Virginia.

Wisconsin.

Wyoming.