



Products Liability – What’s Reasonable?

“Reason is called the soul of the law; for when the reason ceases, the law itself ceases.” One would believe that as the primary spiritual component of the law the fundamental question of, “What’s Reasonable?” would be more clearly defined. Within the answer to this little question lays the judgment to many cases of Products Liability. It is generally understood that reason is the power by which we distinguish truth from falsehood, and right from wrong; and by which we are enabled to combine means for the attainment of particular ends. A forensic engineer with industrial experience who is knowledgeable in the areas of design, manufacturing, assembly and product use is uniquely qualified to assist in answering, “What’s Reasonable?” when considering Products Liability.

In an extreme example, nearly every key aspect of a definition employs the “reasonable” criteria. Negligence may be defined as a breach of a duty to maintain a standard of reasonable care by the manufacturer in the design, manufacture, assembling, instructing and warning of the product, which is not unreasonably dangerous (i.e., reasonably safe?), to the user in light of the reasonably anticipated harm arising from all reasonably foreseeable uses of the product by a reasonable person.

A product gives rise to strict liability only if it meets the twin requirements of “defective” and “unreasonably dangerous.” In the determination of “defective,” one must distinguish between a “manufacturing defect” and a “design defect.” A manufacturing defect relates to a flaw in the creation of the product resulting in an attribute or condition which does not correspond to the product design, manufacturing or assembly intent. In the case of a design defect, all the similar products manufactured are the same, and they all bear a feature whose design is itself defective, and unreasonably dangerous. Most forensic engineers can determine a design defect which is “structural” indicating a material or design condition resulting in a weakness causing the product to break or otherwise become dangerous. Most “design defect” claims include a heavy negligence aspect in that it must be shown that the design poses an unreasonable danger. A forensic engineer which is not only knowledgeable but experienced in design, manufacturing, assembly and product use can better assess feasible, cost-effective design alternatives which inherently incorporate safety features and design precautions to guard against danger from the intended use and foreseeable misuse of the product.

A product is “unreasonably dangerous” if it is “dangerous to an extent beyond that which would be contemplated by the ordinary consumer who purchases it, with the ordinary knowledge common to the community as to its characteristics.” Therefore, if a product *obviously* presents a particular danger to all reasonable consumers, it is not defective or unreasonably dangerous because of that condition.

“Reasonable person” is a phrase used to denote a hypothetical person who exercises qualities of attention, knowledge; intelligence, and judgment that society requires of its members for the protection of their own interest and the interests of others. Thus, the test of negligence is based on either a failure to do something that a reasonable person, guided by considerations that ordinarily regulate conduct, would do, or on the doing of something that a reasonable and prudent (wise) person would not do.

A forensic engineer with knowledge and experience in the products area can formulate an expert opinion which understandably answers the many aspects of “What’s reasonable?” and explain complex, technical claims. Early involvement of an engineer in the products liability analysis is instrumental in assuring that critical data, evidence and questions/answers are obtained.

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