MATTHIESEN, WICKERT & LEHRER, S.C.
Hartford, WI ❖ New Orleans, LA ❖ Irvine, CA
❖ Austin, TX ❖ Jacksonville, FL
Phone: (800) 637-9176
rschuster@mwl-law.com
www.mwl-law.com

PRODUCT LIABILITY IN ALL 50 STATES

Strict product liability is a legal doctrine that holds manufacturers and sellers responsible for placing defective products into the hands of consumers, regardless of whether they acted negligently. The related concept of enterprise liability is rooted in the idea that businesses that profit from potentially dangerous products should bear the costs of injuries those products cause, rather than innocent consumers. These doctrines promote public policy goals such as encouraging product safety, spreading the cost of injuries through insurance, and ensuring that victims are compensated. However, product liability law varies significantly from state to state. For example, some states, like California, impose strict liability on both manufacturers and retailers, while others, like Michigan, limit liability when a product complies with federal safety standards. Similarly, some states recognize the malfunction theory to prove a defect, while others require more direct evidence. These differences reflect varying balances between consumer protection and limiting business liability. Product liability law varies significantly across the United States, with each state applying its own statutes, judicial precedents, and legal principles to govern claims involving defective or dangerous products.

The challenge of being familiar with product liability law in all 51 jurisdictions can be daunting for even the most experienced insurance claims or subrogation professional. This chart provides a comprehensive overview of each state's approach to product liability law, categorized into key areas that affect litigation outcomes. Below is a detailed introduction to each category included in this chart and its significance in product liability cases.

Statute of Limitations and Statute of Repose

The statute of limitations dictates the timeframe within which a plaintiff must file a product liability lawsuit, while the statute of repose sets an absolute deadline beyond which claims are barred, regardless of when the injury occurred. The statute of limitations typically begins when the plaintiff discovers or reasonably should have discovered the injury, whereas the statute of repose often starts from the date the product was first sold or manufactured. These statutes vary by state and can significantly impact the ability to bring claims against manufacturers and sellers.

Liability Standards

States impose different liability standards for product liability claims, including:

Negligence – Requires proof that a manufacturer or seller failed to exercise reasonable care in the design, manufacturing, or marketing of a product.

Breach of Warranty – Includes express warranties (specific promises about a product) and implied warranties (merchantability and fitness for a particular purpose), which hold sellers accountable for defective products.

Strict Product Liability – Holds manufacturers liable for injuries caused by a defective product, regardless of fault, if the product is unreasonably dangerous. The application of these standards influences the burden of proof and potential defenses in a lawsuit.

Contributory Negligence / Comparative Fault Laws

The doctrine of "pure contributory negligence", which bars recovery if a plaintiff is even slightly at fault in tort cases, originated in English common law and was adopted by U.S. courts in the 19th century. Over time, many states rejected this harsh rule in favor of comparative fault systems—either through legislation or court decisions—allowing damages to be apportioned based on each party's degree of fault, leading to the varied approaches seen across the 50 states today.

Pure Contributory Negligence – "Contributory negligence" is negligent conduct on the part of the plaintiff/injured party which, along with the negligence of the defendant, combines to cause the injury or damage. The doctrine of "pure contributory negligence", which bars recovery if a plaintiff is even slightly at fault in tort cases, originated in English common law and was adopted by U.S. courts in the 19th century. In states which follow the pure contributory negligence model, a damaged party cannot recover any damages if it is even 1% at fault. The pure contributory negligence defense has been criticized for being too harsh on the plaintiff, because even the slightest amount of contributory negligence by the plaintiff which contributes to an accident bars all recovery no matter how egregiously negligent the defendant might be. Only four (4) states and the District of Columbia recognize the Pure Contributory Negligence Rule, although the District of Columbia applies a Modified Comparative Fault 51% Bar Rule for pedestrians and bicyclists as of 2025.

Pure Comparative Fault – The term "comparative fault" refers to a system of apportioning damages between negligent parties based on their proportionate shares of fault. Under a comparative fault system, a plaintiff's negligence will not completely bar recovery like states that employ the harsh Pure Contributory Negligence Rule, but it will reduce the amount of damages the plaintiff can recover based on the plaintiff's percentage of fault. The Pure Comparative Fault Rule allows a damaged party to recover even if it is 99% at fault, although the recovery is reduced by the damaged party's degree of fault. The pure comparative fault system has been criticized for allowing a plaintiff who is primarily at fault to recover from a lesser-at-fault defendant some portion of its damages. Twelve (12) states recognize the Pure Comparative Fault Rule.

Modified Comparative Fault – Under Modified Comparative Fault System, each party is held responsible for damages in proportion to their own percentage of fault, unless the plaintiff's negligence reaches a certain designated percentage (*e.g.,* 50% or 51%). If the plaintiff's own negligence reaches this percentage bar, then the plaintiff cannot recover any damages. There are competing schools of thought in the 33 states that recognize the Modified Comparative Fault Rule. This system has been questioned because of the complications resulting from multiple at-fault parties and the confusion it causes for juries. Ten (10) states follow the 50% Bar Rule, meaning a damaged party cannot recover if it is 50% or more at fault, but if it is 49% or less at fault, it can recover, although its recovery is reduced by its degree of fault. Twenty-three (23) states follow the 51% Bar Rule, under which a damaged party cannot recover if it is 51% or more at fault but can recover if it is 50% or less at fault, the recovery would be reduced by its degree of fault.

Non-Economic Damage Caps and Limits on Actual Damages

Some states impose caps on non-economic damages (e.g., pain and suffering) or total compensatory damages in product liability cases. These statutory limitations aim to prevent excessive verdicts but can also restrict compensation for seriously injured plaintiffs. Some states differentiate between personal injury and wrongful death claims in setting these limits. The impact of these caps varies, with some states imposing strict limits, while others allow for exceptions in cases involving egregious misconduct or catastrophic injuries. Actual damages, including medical expenses, lost wages, and other economic losses, may also be subject to statutory limits or reductions based on comparative fault rules.

Punitive Damages Limits

Punitive damages are awarded to punish egregious misconduct and deter future wrongdoing. States differ in their approach to punitive damages. Some require "clear and convincing" evidence of intentional or reckless misconduct. Others impose statutory caps, often linking the maximum punitive award to a multiple of compensatory damages. A few states prohibit punitive damages altogether in product liability cases. These variations significantly affect litigation strategies and case valuation.

Heeding Presumption

In failure-to-warn cases, some states recognize a "heeding presumption," which allows a jury to presume that had an adequate warning been provided, the plaintiff would have followed it and avoided injury. This presumption shifts the burden to defendants to prove that the plaintiff would have disregarded the warning regardless. The heeding presumption is particularly relevant in marketing defect claims, where the adequacy of warnings and instructions is at issue. Courts applying this presumption evaluate whether a different or stronger warning would have altered consumer behavior. This doctrine plays a critical role in pharmaceutical and hazardous product litigation, often determining whether a manufacturer is held liable for failure to provide sufficient warnings. The purpose of the presumption is two-fold: (1) It addresses the difficulty of proving hypothetical behavior ("what the plaintiff *would have done*"), and (2) It encourages manufacturers to provide proper warnings. The heeding presumption is not uniformly adopted, but several states recognize it in varying degrees.

Innocent Seller Statutes

The enterprise liability public policy theory behind strict product liability holds that the costs of injuries from defective products should be borne by the businesses that profit from their sale, rather than by the injured consumers. This theory justifies holding not only manufacturers but also retailers strictly liable, as both are part of the broader enterprise that introduces products into the marketplace. Retailers play a crucial role in the distribution chain and are often in the best position to exert pressure on manufacturers to ensure product safety. Additionally, consumers typically have no way of knowing whether a defect originated with the manufacturer or the seller. Roughly half of the states hold retailers strictly liable alongside manufacturers for defective products, reflecting a widespread adoption of this policy rationale. Many states have enacted innocent seller statutes that protect retailers and non-manufacturing sellers from liability unless they:

- Were involved in the defect's creation or marketing,
- Modified the product in a way that contributed to the harm, or
- Knew of the defect at the time of sale.

These statutes impact who can be named as a defendant and help shield retailers from unwarranted liability. In the United States, twenty-six states have enacted "innocent seller" statutes that offer varying levels of protection for retailers in product liability cases. These statutes generally aim to shield retailers from liability when they are not responsible for the defect in the product and have not engaged in negligent behavior. The specifics of these statutes, including the extent of protection and the conditions under which they apply, vary by state. While some states have established case law interpreting these statutes, others may not have significant case law on the subject. Additionally, some states, such as California, Florida, New York, and Pennsylvania, do not provide statutory protection for innocent sellers, relying instead on common law principles.

Malfunction Theory

The Malfunction Theory (also known as the indeterminate product defect theory) allows a plaintiff to prove a product defect without identifying a specific defect. This theory is most useful in fire subrogation cases where the product is very often so heavily damaged or completely destroyed by the fire that no physical evidence exists to prove the product defect. The specific elements of the malfunction theory vary considerably from state to state, but is contained within Section 3 of the

Restatement (Third) of Torts: 402A (see below). Generally, however, a plaintiff in such cases can generally establish a manufacturing defect strict product liability claim by proving the following:

- Proof that the fire originated in or at the product;
- The product was relatively new, i.e., early in its useful life;
- The product was properly used by the plaintiff;
- There was never any trauma or damage to the product;
- Identification of one or several ways in which the product could have been defective and started the fire; and
- The product was not misused or altered.

The malfunction theory essentially provides a circumstantial evidence path for strict product liability claims when direct evidence of the defect is unavailable. This doctrine is especially useful when the product is destroyed or too complex to determine the precise defect. This theory eases the plaintiff's burden when they cannot pinpoint a specific defect but can reasonably demonstrate that the product did not perform as intended and was defective when it left the manufacturer's control. The malfunction theory allows plaintiffs to establish a defect through "circumstantial evidence" when direct evidence (such as the defective product itself) is unavailable due to destruction in an accident. The reason the product must be relatively new is that if a product functioned well for many years before the accident is because this "circumstance" suggests that perhaps something other than a defect may have caused the failure—such as external damage over the long life of the product or misuse.

The Malfunction Theory seemingly runs counter to the "notice pleading" standard under Rule 8(a) of the Federal Rules of Civil Procedure, which requires a complaint in federal court to contain more than a recitation of bare legal conclusions or the elements of a cause of action. *Bell Atlantic Corp. v. Twombly,* 550 U.S. 544 (2007); *Ashcroft v. Iqbal*, 556 U.S. 662 (2009). If the complaint does not state, specifically, what "defect" existed in the product, recent case law suggests that so long as the complaint delineates the facts required to prove a defect under the relevant state's version of the Malfunction Theory, the failure to describe a specific defect does not render the complaint subject to dismissal. *Genaw v. Garage Equipment Supply Co.*, 856 Fed.Appx. 23 (6th Cir. 2021).

Available Defenses

Defendants in product liability cases can assert various defenses, including:

Assumption of Risk – Plaintiff knowingly accepted the danger of using the product.

Preemption – Federal law overrides state law claims (common in pharmaceutical and medical device cases).

Learned Intermediary – A warning to a knowledgeable intermediary, such as a physician, satisfies the duty to warn.

Product Alteration – The product was modified after sale, causing the defect.

Sophisticated User – The user had sufficient knowledge to recognize the risks.

Misuse – The plaintiff used the product in an unintended and unforeseeable way.

Compliance with Government Standards – The product complied with applicable safety regulations. These defenses can limit or negate liability, depending on the jurisdiction and case facts.

Restatement of the Law of Torts

The Restatement of the Law of Torts is a series of treatises published by the American Law Institute (ALI) that summarizes and clarifies the general principles of tort law, aiming to distill and modernize the common law. Restatements are only a source of persuasive authority and do not replace precedents and controlling statutes. These Restatements are intended to reflect the "best" rules of law as developed by common law judges in different states. However, individual state courts and/or legislatures may choose to adopt or cite approvingly to Restatement provisions as law, thereby making that provision mandatory authority .

Restatement (Second) of Torts §402A. In 1965, the American Law Institute drafted and adopted Restatement (Second) of Torts §402A. This Restatement emphasizes strict liability for defective products under §402A, holding manufacturers responsible if a product is unreasonably dangerous, regardless of negligence. This approach prioritizes consumer protection but can lead to broad liability. This section states:

- One who sells any product in a defective condition unreasonably dangerous to the user or consumer or to his property is subject to liability for physical harm thereby caused to the ultimate user or consumer, or to his property, if
    - the seller is engaged in the business of selling such a product, and
    - the product is expected to and does reach the user or consumer without substantial change in the condition in which it is sold.
    - the seller is engaged in the business of selling such a product and (b) it is expected to and does reach the user or consumer without substantial change in the condition in which it is sold.
- The rules stated in subsection (1) apply even though
    - the seller has exercised all possible care in the preparation and sale of his product, and
    - the user or consumer has not bought the product from or entered into any contractual relation with the seller (no privity required).

Many states have adopted statutory versions of the Restatement. However, there is some variation among states in the way §402A is applied. It should be noted that along with Restatement (Second) of Torts §402A, a sister restatement was created—**Section 402B: Strict Liability for Misrepresentation**. It applies to sellers engaged in the business of selling any type of product, making the seller strictly liable for physical harm to consumers caused by justifiable reliance on misrepresentations about the character or quality of the chattel, even if the misrepresentation is innocent.

Restatement (Third) of Torts §402A. The Restatement (Third) of Torts was written in 1998, and for those states which have adopted it, it supersedes the Restatement (Second) of Torts § 402A, outlines liability for sellers of defective products, establishing three categories of product defect (manufacturing, design, and inadequate warnings/instructions), and sets forth special rules for specific products or markets. The Restatement (Third) of Torts introduces a risk-utility balancing test, emphasizing product design and foreseeable risks. It narrows strict liability by requiring plaintiffs to prove a reasonable alternative design and eliminates the consumer expectation test (except for cases involving food items). It is generally more favorable to manufacturers. Under this Restatement (Third), a plaintiff (or subrogated carrier) has the additional burden of proving that the risk of the product is not outweighed by its utility and that a *reasonable alternative design* was available which would have prevented the injury or accident. This requires special testimony from an expert with product design experience, making product liability cases more involved and more expensive to litigate.

States differ in their adherence to one or both of the above Restatements, affecting the legal framework under which product liability claims are evaluated. Some states apply one, some the other. Some states have adopted a blend of both, or a hybrid approach. While no state has formally "adopted" the Restatement of Torts in its entirety, many state courts frequently cite and rely on the Restatements, particularly the Restatement (Second) of Torts and Restatement (Third) of Torts, as persuasive authority when interpreting and applying common law principles in tort cases. It is not possible in a chart such as the one below to simply state that a state

has adopted one or the other, because some states have adopted only specific sections or delineated portions or one or the other. Other states have adopted one or the other with specific exceptions. Still other states have stated that they "generally follow" one or the other without adopting either. For those reasons, in the chart below we simply direct the reader to the statute or case citations(s) most applicable and which describe that state's adherence to one or the other, or neither, of these Restatements.

The following chart provides a state-by-state analysis of the above critical aspects of product liability law, allowing claims and subrogation professionals to navigate the complexities of product-related litigation. Product liability cases are fact-dependent, making each case unique. If you have questions, comments, or require additional information on any of the topics in this chart, we appreciate your feedback and encourage you to contact Attorney Rich Schuster at rschuster@mwl-law.com.

STATE	Statute of Limitations/ Repose	Liability Standards	Fault Allocations	Non-Economic Caps/Limits on Actual Damages	Heeding Presumption	Innocent Seller Statute	Malfunction Theory	Available Defenses	*Restatement* 2nd or 3rd
ALABAMA	2 Years Personal Injury Wrongful Death Ala. Code § 6-2-38(1)	Negligence Warranty Other (Alabama Extended Manufacturer's Liability Doctrine)	Pure Contributory Negligence	Wrongful Death Purely Punitive	No *Deere & Co. v. Grose*, 586 So.2d 196, 198 (Ala. 1991).	Yes. Ala. Code §§ 6-5-501(2)(a), 6-5-521.	No.	Assumption of Risk; Preemption; Learned Intermediary; Alteration; Sophisticated User; Misuse; Compliance with Government Standards; Seatbelts	Both
ALASKA	2 Years Personal Injury Wrongful Death Alaska Stat. § 09.10.070 Discovery Rule Applies 10 Years Statute of Repose Alaska Stat. § 09.10.055 (2005)	Negligence Strict Liability Consumer Expectation Warranty	Pure Comparative Fault Alaska Stat. § 09.17.080	Non-Economic Cap	No *Ellis v. Coleman Co.,* 2000 WL 1131893, at *2 (9th Cir. 2000).	No	No	Assumption of Risk; Misuse; Alteration; Learned Intermediary; Seatbelts; State of Art; Alcohol/Drugs	Both

STATE	Statute of Limitations/ Repose	Liability Standards	Fault Allocations	Non-Economic Caps/Limits on Actual Damages	Heeding Presumption	Innocent Seller Statute	Malfunction Theory	Available Defenses	*Restatement* 2nd or 3rd
ARIZONA	2 Years Personal Injury Wrongful Death A.R.S. § 12-542	Negligence Strict Liability Warranty Other	Pure Comparative Fault A.R.S. § 12-2505.	No	Yes, Vanishing Presumption *Golonka v. General Motors Corp.,* 65 P.3d 956, 968-69 (Ariz. App. 2003); *Dole Food Co. v. N. Carolina Foam Industries, Inc.,* 935 P.2d 876, 883 (Ariz. App. 1996).	No. Indemnity Statute (Manufacturer must indemnity retailer). A.R.S. § 12-684.	No A.R.S. § 12-2506	Misuse; Alteration; Learned Intermediary; Inherently Unsafe Products; State of Art; Preemption; Seatbelts; Alcohol/Drugs; Sophisticated User	Both
ARKANSAS	3 Years Personal Injury Wrongful Death A.C.A. § 16-116-103	Negligence Strict Liability Warranty	Modified Comparative Fault A.C.A. § 16-64-122	No	Yes *Bushong v. Garman Co.,* 843 S.W.2d 807, 811 (Ark. 1992).	No	No, Unless "In Concert"	Compliance With Government Standards; Government Contractor Defense; Learned Intermediary	Both
CALIFORNIA	2 Years Personal Injury Wrongful Death Cal. Civ. Proc. Code § 335.1 Discovery Rule Applies 4/10 Years Statute of Repose Cal. Civ. Proc. Code § 337.15	Negligence Strict Liability Consumer Expectation Warranty Other	Pure Comparative Fault	Yes	No *Huitt v. Southern California Gas Co.,* 116 Cal. Rptr.3d 453, 467-68 (Cal. App. 2010).	No	Yes, for Economic Damage Cal. Civ. Code § 1431.2.	Assumption of Risk; Misuse; Government Contractor Defense; Alteration; Learned Intermediary; Inherently Unsafe Products; State of Art; Presumption; Compliance with Government Standards; Seatbelts; Alcohol/Drugs; Sophisticated User	Both

STATE	Statute of Limitations/ Repose	Liability Standards	Fault Allocations	Non-Economic Caps/Limits on Actual Damages	Heeding Presumption	Innocent Seller Statute	Malfunction Theory	Available Defenses	*Restatement* 2nd or 3rd
COLORADO	3 Years Personal Injury Wrongful Death C.R.S. § 4-2-725 Discovery Rule Applies 10 Years Statute of Repose C.R.S. § 13-21-403(3)	Negligence Strict Liability Warranty	Pure Comparative Fault C.R.S. § 13-21-406(1)	Non-Economic Cap	Yes *Staley v. Bridgestone/ Firestone, Inc.,* 106 F.3d 1504, 1509 (10th Cir. 1997)	Yes C.R.S. § 13-21-402(1),(2)	No C.R.S. § 13-21-111.5	Assumption of Risk; Misuse; Alteration; Learned Intermediary; Inherently Unsafe Products; State of Art; Presumption; Compliance with Government Standards; Seatbelts; Alcohol/Drugs	*Restatement* 3rd
CONNECTICUT	3 Years Personal Injury Wrongful Death C.G.S.A. § 52-577a Discovery Rule Applies 10 Years Statute of Repose C.G.S.A. § 52-577a(a)	Negligence Strict Liability Warranty Other C.G.S.A. 52-572m, *et seq*.	Pure Comparative Fault C.G.S.A. § 52-572(h)	No	No *DeJesus v. Craftsman Machine Co.,* 548 A.2d 736 (Conn. App. 1988)	No C.G.S.A. § 52-572m(b)	Yes C.G.S.A. § 52-572o	Assumption of Risk; Misuse; Alteration; Learned Intermediary; Inherently Unsafe Products; State of the Art; Government Contractor Defense; Presumption; Sophisticated User	Both
DELAWARE	2 Years Personal Injury Wrongful Death 10 Del. C. § 8119 6 Years Statute of Repose 10 Del. C. § 8127	Negligence Warranty	Modified Comparative 10 Del. C. § 8132	No	No Never adopted strict liability or *Restatement (Second) of Torts* § 402A (1965)	Yes 18 Del. C. § 7001	Yes 10 Del. C. § 6301, *et seq.*	Assumption of Risk; Misuse; Alteration; Learned Intermediary; Inherently Unsafe Products; Presumption; Sophisticated User	Neither

STATE	Statute of Limitations/ Repose	Liability Standards	Fault Allocations	Non-Economic Caps/Limits on Actual Damages	Heeding Presumption	Innocent Seller Statute	Malfunction Theory	Available Defenses	*Restatement* 2nd or 3rd
DISTRICT OF COLUMBIA	3 Years Personal Injury D.C. Code § 12-301 1 Year Wrongful Death D.C. Code § 12-301 Discovery Rule Applies	Negligence Strict Liability Warranty	Pure Contributory Negligence Except Strict Liability	No	Yes	No	Yes	Assumption of Risk; Misuse; Alteration; Learned Intermediary; State of the Art; Government Contractor Defense; Presumption; Sophisticated User	Both
FLORIDA	2 Years Personal Injury F.S.A. § 95.11 (3)(e) 12 Years Statute of Repose F.S.A. § 95.031(2)(b)	Strict Liability	Modified Comparative Fault F.S.A. § 768.81(2)	Paid Meds	No	No	No F.S.A. § 768.81	Assumption of Risk; Misuse; Learned Intermediary; Inherently Unsafe Products; State of the Art; Presumption; Seatbelts; Government Contractor Defense; Compliance with Government Standards	*Restatement* 3rd
GEORGIA	2 Years Personal Injury Wrongful Death O.C.G.A. § 9-3-33 Discovery Rule Applies 10 Years Statute of Repose O.C.G.A. § 51-1-11(b)(2)	Negligence Strict Liability Warranty	Modified Comparative Fault O.C.G.A. §§ 51-12-31, 51-12-33 (2011)	No	Unresolved	Yes. O.C.G.A. § 51-1-11.1(b)	No O.C.G.A. § 51-12-33	Assumption of Risk; Misuse; Alteration; Learned Intermediary; State of the Art; Compliance with Government Standards; Presumption; Sophisticated User	*Restatement* 3rd

STATE	Statute of Limitations/ Repose	Liability Standards	Fault Allocations	Non-Economic Caps/Limits on Actual Damages	Heeding Presumption	Innocent Seller Statute	Malfunction Theory	Available Defenses	*Restatement* 2nd or 3rd
HAWAII	2 Years Personal Injury Wrongful Death Haw. Rev. Stat. § 657-13 Discovery Rule Applies	Negligence Strict Liability	Modified Comparative Fault (Pure For Strict Liability) Haw. Rev. Stat. § 663-31	No	No	No	No Haw. Rev. Stat. § 663-10.9	Misuse; Government Contractor Defense; Alteration; Inherently Unsafe Products	Both
IDAHO	2 Years Personal Injury Wrongful Death Idaho Code § 6-1403(3) 10 Years Statute of Repose Idaho Code § 6-1403(2)	Negligence Strict Liability Warranty	Modified Comparative Fault Idaho Code § 6-1404	Non-Economic Cap	Limited	Yes Idaho Code § 6-1407	No Idaho Code § 6-803	Assumption of Risk; Misuse; Alteration; Learned Intermediary; Inherently Unsafe Products; State of the Art; Presumption; Alcohol/Drugs; Seatbelts; Sophisticated User	*Restatement* 2nd
ILLINOIS	2 Years Personal Injury Wrongful Death 735 I.L.C.S. § 5/13-202 Discovery Rule Applies 12 Years Statute of Repose 735 I.L.C.S. § 5/13-213(b)	Negligence Strict Liability Warranty	Modified Comparative Fault 735 I.L.C.S. § 5/2-1116	No	No	Yes 735 I.L.C.S. § 5/2-621(a)-(c)	Yes 735 I.L.C.S. § 5/2-1117	Assumption of Risk; Misuse; Alteration; Learned Intermediary; Inherently Unsafe Products; State of the Art; Government Contractor Defense; Presumption; Compliance with Government Standards; Sophisticated User	Both

STATE	Statute of Limitations/ Repose	Liability Standards	Fault Allocations	Non-Economic Caps/Limits on Actual Damages	Heeding Presumption	Innocent Seller Statute	Malfunction Theory	Available Defenses	*Restatement* 2nd or 3rd
INDIANA	2 Years Personal Injury Wrongful Death I.C. § 34-20-3-1(b) Discovery Rule Applies 10 Years Statute of Repose I.C. § 34-20-3-1(b)(2)	Negligence Strict Liability Warranty	Modified Comparative Fault I.C. § 34-51-2-7, 8, and 9	No	Yes *Ortho Pharmaceutical Corp. v. Chapman,* 388 N.E.2d 541, 555 (Ind. App. 1979).	Yes I.C. § 34-20-2-3	No I.C. § 34-51-2-8	Assumption of Risk; Misuse; Alteration; Learned Intermediary; State of the Art; Government Contractor Defense; Presumption; Compliance with Government Standards; Sophisticated User	Neither
IOWA	2 Years Personal Injury Wrongful Death I.C.A. § 614.1 Discovery Rule Applies 15 Years Statute of Repose I.C.A. § 614.1(2)(A) (2011)	Negligence Strict Liability Warranty	Modified Comparative Fault I.C.A. § 668.3(1)(b).	No	No	Yes I.C.A. § 613.18	Yes, if ≥ 50%. I.C.A. § 668.4 (2011).	Assumption of Risk; Misuse; Alteration; State of the Art; Presumption; Seatbelts	*Restatement* 3rd
KANSAS	2 Years Personal Injury Wrongful Death K.S.A. § 60-513 (1996) Discovery Rule Applies 10 Years Statute of Repose K.S.A. § 60-513 (1996)	Negligence Strict Liability Warranty	Modified Comparative Fault K.S.A. § 60-258a(a) (1987)	Yes	Yes *Wooderson v. Ortho Pharmaceutical Corp.,* 681 P.2d 1038, 1057-58 (Kan. 1984).	Yes K.S.A. § 60-3306	No K.S.A. § 60-258a	Sophisticated User; Presumption; Misuse; Alteration; Learned Intermediary; Inherently Unsafe Products; Compliance with Government Standards; Assumption of Risk	Both

STATE	Statute of Limitations/ Repose	Liability Standards	Fault Allocations	Non-Economic Caps/Limits on Actual Damages	Heeding Presumption	Innocent Seller Statute	Malfunction Theory	Available Defenses	*Restatement* 2nd or 3rd
KENTUCKY	1 Year Personal Injury Wrongful Death K.R.S. § 413.140 Discovery Rule Applies	Negligence Strict Liability Warranty	Pure Comparative Fault K.R.S. § 411.182	No	Yes *Snawder v. Cohen,* 749 F. Supp. 1473, 1479-80 (W.D. Ky. 1990).	Yes K.R.S. §411.340	No K.R.S. § 411.182	Misuse; Alteration; Learned Intermediary; Inherently Unsafe Products; State of the Art; Government Contractor Defense; Presumption; Compliance with Government Standards; Seatbelts; Alcohol/Drugs; Sophisticated User	Both
LOUISIANA	1 Year Art. § 3492 (On or before 7/1/24) 2 Years Art. § 3493.1 (After 7/1/24)	Other	Pure Comparative Fault L.S.A.-C.C. Art. 2323	No	Yes Rebuttable *Bloxom v. Bloxom*, 512 So.2d 839, 850 (La. 1987).	Yes L.S.A.-C.C. Art. 2531	Yes La. Civ. Code Art. 2324	Assumption of Risk; Misuse; Alteration; Learned Intermediary; Inherently Unsafe Products; State of the Art; Presumption; Alcohol/Drugs; Sophisticated User	*Restatement* 3rd
MAINE	6 Years Personal Injury 14 M.R.S.A. § 752 2 Years Wrongful Death 18-A M.R.S.A. § 2-804(b)	Negligence Strict Liability Warranty Other	Modified Comparative Fault 14 M.R.S.A. § 156	Yes	No	No	Yes 14 M.R.S.A. § 156-A	Assumption of Risk; Misuse; Alteration; Learned Intermediary; State of the Art; Government Contractor Defense; Sophisticated User	*Restatement* 3rd

STATE	Statute of Limitations/ Repose	Liability Standards	Fault Allocations	Non-Economic Caps/Limits on Actual Damages	Heeding Presumption	Innocent Seller Statute	Malfunction Theory	Available Defenses	*Restatement* 2nd or 3rd
MARYLAND	3 Years Personal Injury Wrongful Death Md. Cts. & Jud. Proc. § 5-101 Discovery Rule Applies	Negligence Strict Liability Warranty	Pure Contributory Negligence Except Strict Liability	Non-Economic Cap Md. Cts. & Jud. Proc. § 11-108(b)	Yes *U.S Gypsum Co. v. Mayor of Baltimore*, 647 A.2d 405, 413 (Md. 1994); *Eagle-Picher Industries, Inc. v. Balbos,* 604 A.2d 445, 468-69 (Md. 1992).	Yes Md. Cts. & Jud. Proc. § 5-405	Yes Md. Code § 3-1401	Assumption of Risk; Misuse; Alteration; Learned Intermediary; State of the Art; Presumption; Sophisticated User	Both
MASSACHUSETTS	3 Years Personal Injury Wrongful Death M.G.L.A. 260 § 2A Discovery Rule Applies 7 Years Statute of Repose M.G.L.A. 260 § 2B	Negligence	Modified Comparative Fault M.G.L.A. 231 § 85	No	Yes *Evans v. Lorillard Tobacco Co.,* 990 N.E.2d 997, 1023-24 (Mass. 2013) (following *Harlow v. Chin*, 545 N.E.2d 602, 606 (Mass. 1989)).	No	Yes Ann L. Mass. Ch. 231B, § 1	Assumption of Risk; Misuse; Alteration; Learned Intermediary; Inherently Unsafe Products; State of the Art; Presumption; Alcohol/Drugs; Sophisticated User	Both
MICHIGAN	3 Years Personal Injury Wrongful Death M.C.L.A. § 600.5805(13) 6/10 Years Statute of Repose M.C.L.A. § 600.5839(1)(a),(b)	Negligence Wrongful Death	Pure Comparative Fault M.C.L.A. § 600.2959	Non-Economic Cap	No	Yes M.C.L.A. § 600.2947 (6)	No M.C.L.A. § 600.6304	Assumption of Risk; Misuse; Alteration; State of the Art; Presumption; Compliance with Government Standards; Seatbelts; Alcohol/Drugs; Sophisticated User	*Restatement* 3rd

STATE	Statute of Limitations/ Repose	Liability Standards	Fault Allocations	Non-Economic Caps/Limits on Actual Damages	Heeding Presumption	Innocent Seller Statute	Malfunction Theory	Available Defenses	*Restatement* 2nd or 3rd
MINNESOTA	6 Years Personal Injury M.S.A. 541.05 3 Years Wrongful Death M.S.A. § 573.02 (4 Years – Strict Liability) M.S.A. § 541.07	Negligence Strict Liability Warranty	Modified Comparative Fault M.S.A. § 604.01(1)	No	No	Yes M.S.A. § 544.41	Yes, if > 50%. M.S.A. § 604.02	Assumption of Risk; Misuse; Alteration; Learned Intermediary; Inherently Unsafe Products; State of the Art; Presumption; Compliance with Government Standards; Alcohol/Drugs; Sophisticated User	Neither
MISSISSIPPI	3 Years Personal Injury Wrongful Death M.C.A. § 15-1-49 Discovery Rule Applies	Negligence Strict Liability Warranty	Pure Comparative Fault M.C.A. § 11-7-15	Yes	Yes *Thomas v. Hoffman–La-Roche, Inc.,* 949 F.2d 806 (5th Cir. 1992).	Yes M.C.A. § 11-1-63(h)	No M.C.A. § 85-5-7	Assumption of Risk; Misuse; Alteration; Learned Intermediary; Inherently Unsafe Products; State of the Art; Presumption; Alcohol/Drugs; Sophisticated User	*Restatement* 3rd
MISSOURI	5 Years Personal Injury Mo. Rev. Stat. § 516.120(4) (2002) 3 Years Wrongful Death Mo. Rev. Stat. § 537.100 (2000) Discovery Rule Applies	Negligence Strict Liability Warranty	Pure Comparative Fault Mo. Rev. Stat. § 537.765.1 (2000)	No	Yes *Moore v. Ford Motor Co.,* 332 S.W.3d 749, 762-63 (Mo. 2011); *Arnold v. Ingersoll-Rand Co.,* 834 S.W.2d 192, 194 (Mo. 1992).	Yes Mo. Rev. Stat. § 537.762.1 and .2 (2000)	Yes Mo. Rev. Stat. § 537.067	Assumption of Risk; Misuse; Alteration; Learned Intermediary; Inherently Unsafe Products; State of the Art; Government Contractor Defense; Presumption; Alcohol/Drugs; Sophisticated User	Both

STATE	Statute of Limitations/ Repose	Liability Standards	Fault Allocations	Non-Economic Caps/Limits on Actual Damages	Heeding Presumption	Innocent Seller Statute	Malfunction Theory	Available Defenses	*Restatement* 2nd or 3rd
MONTANA	3 Years Personal Injury Wrongful Death Mont. Stat. § 27-2-202 Discovery Rule Applies	Negligence Strict Liability Warranty	Modified Comparative Fault Mont. Stat. § 27-1-702	No	No	No (Upstream Indemnity) Mont. Stat. § 27-1-719	Yes, if ≥ 51%. Mont. Stat. § 27-1-703	Assumption of Risk; Misuse; Alteration; Learned Intermediary; Inherently Unsafe Products; State of the Art; Government Contractor Defense; Presumption; Alcohol/Drugs; Sophisticated User	Neither
NEBRASKA	4 Years Personal Injury Neb. Rev. Stat. § 25-224 (Reissue 1995) 2 Years Wrongful Death Neb. Rev. Stat. §§ 30-809, 30-810 10 Years Statute of Repose Neb. Rev. Stat. § 25-224(2)	Negligence Strict Liability Warranty	Modified Comparative Fault Neb. Rev. Stat. §§ 25-21 and 185.11.	No	Yes (Competing Authorities)	Yes Neb. Rev. Stat. § 25-21,181	Yes Neb. Rev. Stat. §§ 25-21, 185.10	Assumption of Risk; State of the Art; Misuse; Learned Intermediary; Inherently Unsafe Products; Presumption; Sophisticated User; Alteration	*Restatement* 2nd
NEVADA	2 Years Personal Injury Wrongful Death N.R.S. § 11.190(4)(e) Discovery Rule Applies	Negligence Strict Liability Warranty	Modified Comparative Fault N.R.S. § 41-141(5)(a) and (3)	No	No *Rivera v. Philip Morris, Inc.,* 209 P.3d 271 (Nev. 2009)	No	Yes N.R.S. § 41-141	Assumption of Risk; Misuse; Alteration; Learned Intermediary; Inherently Unsafe Products; State of the Art; Government Contractor Defense; Presumption; Compliance with Government Standards; Alcohol/Drugs	Both

STATE	Statute of Limitations/ Repose	Liability Standards	Fault Allocations	Non-Economic Caps/Limits on Actual Damages	Heeding Presumption	Innocent Seller Statute	Malfunction Theory	Available Defenses	*Restatement* 2nd or 3rd
NEW HAMPSHIRE	3 Years Personal Injury Wrongful Death N.H. Rev. Stat. Ann. § 508:4 Discovery Rule Applies 8 Years Statute of Repose (Construction) N.H. Rev. Stat. Ann. § 508: 4-b	Negligence Strict Liability Warranty	Modified Comparative Fault N.H. Rev. Stat. Ann. § 507:7(d)	No	No	No	Yes, if > 50%. N.H. Rev. Stat. Ann § 507:7-e	Assumption of Risk; Misuse; Alteration; Learned Intermediary; State of the Art; Presumption	Both
NEW JERSEY	2 Years Personal Injury Wrongful Death N.J.S.A. § 2A:14-2 Discovery Rule Applies N.J. statute of repose applies only to construction claims, not product claims	Strict Liability Consumer Expectation Warranty	Modified Comparative Fault N.J.S.A. § 2A:15-5.1.	Yes	Yes, Rebuttable	Yes N.J.S.A. 2A:58C-9(b)	Yes, if ≥ 60%. N.J.S.A. § 2A:15-5.3	Assumption of Risk; Misuse; Alteration; Learned Intermediary; Inherently Unsafe Products; State of the Art; Government Contractor Defense; Presumption; Seatbelts; Alcohol/Drugs; Sophisticated User	*Restatement* 3rd
NEW MEXICO	3 Years From Injury N.M.S.A. § 37-1-8 (1978)	Negligence Strict Liability Warranty	Pure Comparative Fault	No	No	No	Yes, in Chain of Distribution N.M.S.A. § 41-3A-1	Assumption of Risk; Misuse; Alteration; Learned Intermediary; State of the Art; Sophisticated User; Presumption	*Restatement* 3rd

STATE	Statute of Limitations/ Repose	Liability Standards	Fault Allocations	Non-Economic Caps/Limits on Actual Damages	Heeding Presumption	Innocent Seller Statute	Malfunction Theory	Available Defenses	*Restatement* 2nd or 3rd
NEW YORK	3 Years Personal Injury N.Y. C.P.L.R. § 214, *et seq*. 2 Years Wrongful Death N.Y. Est. Powers & Trusts Law § 5-4.1 Discovery Rule Applies (Toxic Substance)	Negligence Strict Liability Warranty	Pure Comparative Fault N.Y. C.P.L.R. § 1411	No	Unresolved	No	Yes, (With Exceptions) N.Y. C.P.L.R. § 1601	Assumption of Risk; Misuse; Alteration; Learned Intermediary; Inherently Unsafe Products; State of the Art; Government Contractor Defense; Presumption; Compliance with Government Standards; Seatbelts; Alcohol/Drugs; Sophisticated User	*Restatement* 3rd
NORTH CAROLINA	3 Years Personal Injury N.C.G.S.A. § 1-52(1) 2 Years Wrongful Death N.C.G.S.A. § 1-53(4) 4 Years Uniform Commercial Code Unfair and Deceptive Trade Practices N.C.G.S.A. § 25-2-725(1) 12 Years Statute of Repose N.C.G.S.A. § 1-46.1(1)	Negligence Warranty	Pure Contributory Negligence. Plaintiff may not recover if his negligence proximately caused his injury. *Smith v. Fiber Controls Corp.*, 268 S.E.2d 504 (N.C. 1980); N.C. Gen. Stat. § 1-139 (2026) (general civil procedure); N.C.G.S.A. § 99B-4(3) (Product Liability).	Yes (Paid/ Incurred Medical Expenses)	No Never adopted strict liability or *Restatement (Second) of Torts* § 402A (1965).	Yes N.C.G.S.A. § 99B-2(a)	Yes N.C.G.S.A§ 1B-2	Assumption of Risk; Misuse; Alteration; Learned Intermediary; Presumption; Sophisticated User	*Restatement* 3rd

STATE	Statute of Limitations/ Repose	Liability Standards	Fault Allocations	Non-Economic Caps/Limits on Actual Damages	Heeding Presumption	Innocent Seller Statute	Malfunction Theory	Available Defenses	*Restatement* 2nd or 3rd
NORTH DAKOTA	6 Years Personal Injury N.D.C.C. § 28-01-16 2 Years Wrongful Death N.D.C.C. § 28-01-18(4) Discovery Rule Applies	Negligence Strict Liability Warranty	Modified Comparative Fault	No	Yes *Crowston v. Goodyear Tire & Rubber Co.,* 521 N.W.2d 401, 410 (N.D. 1994); *Butz v. Werner,* 438 N.W.2d 509, 517 (N.D. 1989).	No Indemnity N.D.C.C. § 28-01.3-05	No N.D.C.C. § 32-03.2-02	Assumption of Risk; Misuse; Alteration; Compliance with Government Standards	Neither
OHIO	2 Years Personal Injury Wrongful Death O.R.C.A. § 2305.10(A) Discovery Rule Applies 10 Years Statute of Repose O.R.C.A. § 2305.10(C)(1)	Strict Liability	Modified Comparative Fault O.R.C.A. § 2315.33	Yes (With Exceptions)	Yes Rebuttable *Seley v. G.D. Searle Co.,* 423 N.E.2d 831, 838 (Ohio 1981).	Yes O.R.C.A. § 2307.78	Yes O.R.C.A. § 2307.22	Assumption of Risk; Unforeseeable Misuse; Alteration; Learned Intermediary; Inherently Unsafe Products; Sophisticated User	Both
OKLAHOMA	2 Years Personal Injury Wrongful Death Okla. Stat. Ann. Tit. 12 § 95(3) Discovery Rule Applies 10 Years Statute of Repose Okla. Stat. Ann. Tit. 12 § 109	Negligence	Modified Comparative Fault Okla. Stat. Ann. Tit. 23 § 13	Yes (With Exceptions)	Yes *Cunningham v. Charles Pfizer & Co.,* 532 P.2d 1377, 1382 (Okla. 1974).	Yes 76 Okla. Stat. Ann. § 57.2 (rebuttable presumption)	Several Only 23 Okla. Stat. Ann. § 15	Assumption of Risk; Misuse; Alteration; Learned Intermediary; Inherently Unsafe Products; State of the Art; Government Contractor Defense; Presumption; Alcohol/Drugs; Sophisticated User	Both

STATE	Statute of Limitations/ Repose	Liability Standards	Fault Allocations	Non-Economic Caps/Limits on Actual Damages	Heeding Presumption	Innocent Seller Statute	Malfunction Theory	Available Defenses	*Restatement* 2nd or 3rd
OREGON	2 Years Personal Injury O.R.S. § 30.905(1) 3 Years Wrongful Death O.R.S. § 30.905(3) Discovery Rule Applies 10 Years Statute of Repose O.R.S. § 30.905(2)(a)	Negligence Strict Liability Warranty	Modified Comparative Fault O.R.S. § 31.600	Yes (With Exceptions)	No *McPike v. Enciso's Cocina Mejicana, Inc.,* 762 P.2d 315, 319 (Or. App. 1988).	No (Upstream Indemnity)	Several Only (With Exceptions) O.A.R. § 31-610	Misuse; Alteration; Learned Intermediary; Inherently Unsafe Products; State of the Art; Presumption; Compliance with Government Standards; Seatbelts	Both
PENNSYLVANIA	2 Years Personal Injury Wrongful Death 42 Pa. C.S.A. § 5524(2) Discovery Rule Applies	Strict Liability Warranty	Modified Comparative Fault 42 P.S. § 7102	No	Yes *Coward v. Owens-Corning Fiberglas Corp.*, 729 A.2d 614, 620-21 (Pa. Super. 1999).	No	Yes, if ≥ 60%. 42 P.S. § 7102	Assumption of Risk; Misuse; Alteration; Learned Intermediary; Government Contractor Defense; Presumption; Sophisticated User	*Restatement* 3rd
RHODE ISLAND	3 Years Personal Injury Wrongful Death R.I.G.L. § 9-1-14(b) Discovery Rule Applies	Negligence Strict Liability Warranty	Pure Comparative Fault R.I.G.L. § 9-20-4	No	Yes	No	Yes R.I.G.L. § 10-6-2	Assumption of Risk; Misuse; Alteration; Learned Intermediary; Government Contractor Defense; Presumption; Sophisticated User	*Restatement* 2nd

STATE	Statute of Limitations/ Repose	Liability Standards	Fault Allocations	Non-Economic Caps/Limits on Actual Damages	Heeding Presumption	Innocent Seller Statute	Malfunction Theory	Available Defenses	*Restatement* 2nd or 3rd
SOUTH CAROLINA	3 Years Personal Injury Wrongful Death S.C. Code Ann. §§ 15-3-530, 535, 545 (1976) Discovery Rule Applies 8 Years Statute of Repose (Improvements) S.C. Code Ann. § 15-3-640	Negligence Strict Liability Warranty	Modified Comparative Fault	No	No *Branham v. Ford Motor Co.,* 701 S.E.2d 5, 14-16 (S.C. 2010).	No	Yes, if ≥ 50%. S.C. Code Ann. § 15-38-15	Assumption of Risk; Misuse; Alteration; Learned Intermediary; Inherently Unsafe Products; State of the Art; Presumption; Sophisticated User	*Restatement* 3rd
SOUTH DAKOTA	3 Years Personal Injury Wrongful Death S.D.C.L. § 15-2-12.2 Discovery Rule Applies	Negligence Strict Liability Warranty	Modified Comparative Fault S.D.C.L. § 20-9-2	No	No	Yes S.D.C.L. § 20-9-9	Yes S.D.C.L. § 15-8-11	Assumption of Risk; Misuse; Alteration; State of the Art; Presumption	Neither

STATE	Statute of Limitations/ Repose	Liability Standards	Fault Allocations	Non-Economic Caps/Limits on Actual Damages	Heeding Presumption	Innocent Seller Statute	Malfunction Theory	Available Defenses	*Restatement* 2nd or 3rd
TENNESSEE	1 Year Personal Injury Wrongful Death T.C.A. § 28-3-104 3 Years Property Damage T.C.A. § 28-3-105 4 Years Breach of Warranty T.C.A. § 47-2-725(1) Discovery Rule Applies 10 Years Statute of Repose T.C.A.§ 29-28-103	Negligence Strict Liability Warranty	Modified Comparative Fault *McIntyre v. Balentine*, 833 S.W.2d 52 (Tenn. 1992).	Yes	No *Payne v. Novartis Pharmaceutical Corp.,* 767 F.3d 526 (6th Cir. 2014).	Yes T.C.A. § 29-28-106	Limited	Misuse; Alteration; Learned Intermediary; State of the Art; Compliance with Government Standards; Seatbelts; Alcohol/Drugs	*Restatement* 2nd
TEXAS	2 Years Personal Injury Wrongful Death Tex. Civ. Prac. & Rem. Code Ann. § 16.003(a) (Vernon 2006) Discovery Rule Applies 15 Years Statute of Repose Tex. Civ. Prac. & Rem. Code Ann. § 16.012	Negligence Strict Liability Warranty	Modified Comparative Fault Tex. Civ. Prac. & Rem. Code Ann. §§ 33.001-33.017	Yes	Limited	Yes Tex. Civ. Prac. & Rem. Code Ann. §82.003	Yes, if > 50%. Tex. Civ. Prac. § 33.013	Assumption of Risk; Misuse; Alteration; Learned Intermediary; Inherently Unsafe Products; State of the Art; Government Contractor Defense; Presumption; Compliance with Government Standards; Seatbelts; Alcohol/Drugs; Sophisticated User	*Restatement* 3rd

STATE	Statute of Limitations/ Repose	Liability Standards	Fault Allocations	Non-Economic Caps/Limits on Actual Damages	Heeding Presumption	Innocent Seller Statute	Malfunction Theory	Available Defenses	*Restatement* 2nd or 3rd
UTAH	2 Years Personal Injury Wrongful Death U.C.A. § 78B-6-706	Negligence Strict Liability Warranty	Modified Comparative Fault U.C.A. § 78B-5-818(2)	No	Yes *House v. Armour of America, Inc.,* 929 P.2d 340, 347 (Utah 1996).	No *Bylsma v. R.C. Willey*, 416 P.3d 595 (Utah 2017)	No U.C.A. § 78B-5-818	Assumption of Risk; Misuse; Alteration; Learned Intermediary; Inherently Unsafe Products; State of the Art; Presumption; Compliance with Government Standards; Sophisticated User	*Restatement* 2nd
VERMONT	3 Years Personal Injury Vt. Stat. Ann. Tit. 12, § 512(4) 2 Years Wrongful Death Vt. Stat. Ann. Tit. 14, § 1492 Discovery Rule Applies 4 Years U.C.C. Warranty Vt. Stat. Ann. Tit. 9A, § 2-725	Negligence Strict Liability Warranty	Modified Comparative Fault Vt. Stat. Ann. Tit. 12, § 1036	No	Yes Rebuttable *Needham v. Coordinated Apparel Group,* 811 A.2d 124, 129 (2002); *Menard v. Newhall,* 373 A.2d 505, 506 (Vt. 1977).	No	Yes 12 Vt. Stat. Ann. § 1036	Assumption of Risk; Presumption; Misuse; Alteration; Learned Intermediary; Inherently Unsafe Products; State of the Art; Government Contractor Defense; Compliance with Government Standards; Alcohol/Drugs	*Restatement* 2nd
VIRGINIA	2 Years Personal Injury Wrongful Death Va. St. § 8.01-243(A) Discovery Rule Applies	Negligence Warranty	Pure Contributory Negligence	No	Yes	No	Yes Va. St. § 8.01-443	Assumption of Risk; Presumption; Misuse; Alteration; Learned Intermediary; Sophisticated User	Neither

STATE	Statute of Limitations/ Repose	Liability Standards	Fault Allocations	Non-Economic Caps/Limits on Actual Damages	Heeding Presumption	Innocent Seller Statute	Malfunction Theory	Available Defenses	*Restatement* 2nd or 3rd
WASHINGTON	3 Years Personal Injury Wrongful Death R.C.W.A. § 4.16.080	Negligence Strict Liability Warranty	Pure Comparative Fault R.C.W.A. §§ 4.22.005-015	No	Yes *Luttrell v. Novartis Pharmaceutical Corp.,* 894 F. Supp.2d 1324, 1345 n.16 (E.D. Wash. 2012).	Yes R.C.W.A. § 7.72.040	Several Only (w/Exceptions) R.C.W.A. § 4.22.070	Assumption of Risk; Presumption; Misuse; Alteration; Learned Intermediary; State of the Art; Government Contractor Defense; Compliance with Government Standards; Seatbelts; Alcohol/Drugs	Both
WEST VIRGINIA	2 Years Personal Injury Wrongful Death W. Va. Code § 55-2-12 Discovery Rule Applies	Negligence Strict Liability Warranty	Modified Comparative Fault W. Va. Code § 55-7-13a to § 55-7-13d (effective 5/15/15)	No	No *Muzichuck v. Forest Laboratories, Inc.,* C.A. No. 1:07CV16, slip op. at 30 (N.D.W. Va. Jan. 13, 2015).	No	Several Only (With Exceptions) W. Va. Code § 55-7-13a to § 55-7-13d (amended 3/5/15)	Assumption of Risk; Presumption; Misuse; Alteration; Learned Intermediary; Inherently Unsafe Products; State of the Art; Government Contractor Defense; Compliance with Government Standards; Seatbelts; Sophisticated User	Undecided
WISCONSIN	3 Years Personal Injury with Discovery Rule Applies Wis. Stat. § 893.54(1m) 3 Years Wrongful Death Wis. Stat. § 893.54(2) 15 Years Statute of Repose Wis. Stat. § 895.047(5)	Negligence Strict Liability Other	Modified Comparative Fault Wis. Stat. § 895.045(1)	Yes	No Wis. Stat. § 895.047(1)(e)	Yes Wis. Stat. §895.047(2)	Yes, if > 50%. Wis. Stat. §895.045	Alcohol/Drugs; Alteration; Assumption of Risk (Contrib.); Inherently Unsafe Products; Presumption; Misuse; Seatbelts; State of the Art; Sophisticated User	*Restatement* 3rd

STATE	Statute of Limitations/ Repose	Liability Standards	Fault Allocations	Non-Economic Caps/Limits on Actual Damages	Heeding Presumption	Innocent Seller Statute	Malfunction Theory	Available Defenses	*Restatement* 2nd or 3rd
WYOMING	4 Years Personal Injury/ Strict Liability Wyo. Stat. §1-3-105(a)(iv)(C) 2 Years Wrongful Death Wyo. Stat. §1-38-102(d) 10 Years Statute of Repose Wyo. Stat. §1-3-111	Negligence Strict Liability Warranty	Pure Comparative Fault Wyo. Stat. § 1-1-109(b)	No	Limited	No	No Wyo. Stat. § 1-1-109	Assumption of Risk; Presumption; Misuse; Alteration; Learned Intermediary; Inherently Unsafe Products; State of the Art; Government Contractor Defense; Compliance with Government Standards; Seatbelts; Alcohol/Drugs; Sophisticated User	*Restatement* 2nd

These materials and other materials promulgated by Matthiesen, Wickert & Lehrer, S.C. may become outdated or superseded as time goes by. If you should have questions regarding the current applicability of any topics contained in this publication or any publications distributed by Matthiesen, Wickert & Lehrer, S.C., please contact Rich Schuster at rschuster@mwl-law.com. This publication is intended for the clients and friends of Matthiesen, Wickert & Lehrer, S.C. This information should not be construed as legal advice concerning any factual situation and representation of insurance companies and\or individuals by Matthiesen, Wickert & Lehrer, S.C. on specific facts disclosed within the attorney\client relationship. These materials should not be used in lieu thereof in anyway.