Caveats

- State Laws Vary
- Express Warranties
- Implied Warranties
- Other Theories of Recovery
- Other Compliance Issues
- Other Insurance Needs
Overview of U.S. Products Liability Law

- History
- All State Law except Louisiana evolved from English Common Law
- Case Law
- Products Liability began 19th Century Britain
- Former Privity Requirement
- Abolition of Privity Requirement
Overview Continued

- Defective Product
- Who bears the burden?
- Injured party?
- Manufacturer?
- Taxpayer?
- U.S. Taxes generally lower than Europe
Elements of Product Liability Case

- Restatement of Torts §402A
- One who sells product
- Defective Condition
- Unreasonably Dangerous
- Physical Harm to User
- Or Property Damage

- Seller engaged in business of selling product
- Product reaches consumer without substantial change in condition
- Care not a defense
- Privity not required
- Strict Liability
Defective Condition

- Risk Utility Analysis
- Consumer Expectation Analysis
- Combination of Both
Risk Utility Analysis

- Balancing Test
- Usefulness of Product
- Gravity/Severity of danger
- Likelihood of danger
- Avoidability of danger
- Users Knowledge
Risk Utility Analysis Continued

- Publicity surrounding danger
- Common knowledge
- Expectation of danger
- State of the Art
- Cost to eliminate danger
Risk Utility Analysis Continued

- Feasibility of spreading loss/insurance
- Compliance with Government Regulations
- Subjective Analysis
Consumer Expectation Analysis

- Reasonable Man Test
- Expectations of average consumer
- Obvious and known dangers

- Individual’s expectations not controlling
- Assumption of risk defense
- More objective than Risk Utility Analysis
Unreasonably Dangerous

- More dangerous than expectations
- Average reasonable consumer
- Known vs. Unknown characteristics of product
Physical Harm or Property Damage

- Must have personal injury
- Or damage to property
Theories:
Manufacturing Defect

- Manufactured Improperly
- Defective at time sold
- Design proper but mistake made
- Injury to person or property
Theories: Defective Warnings

- No duty for obvious, known hazards
- Duty to warn of dangers known by manufacturer/not average consumer
- Where to draw the line?
- Opinions vary
Theories:
Design Defects

- Risk Utility Analysis
- And/or Consumer Expectation Analysis
- Cost to manufacture with different design

- Feasibility
- Loss of functionality
- Cosmetics
Damages

- Special Damages
- Pain and suffering
- Punitive
General Insurance Issues

- General Liability
  - Protect the company
  - Protect Officers and Directors
  - Protect Business Owners
  - Product Liability
  - Reservation of rights

- Umbrella Policies
  - Respondeat
  - Superior
  - Workers Comp
  - Research Insurance Company
  - Read Insurance Policy
The Legends of Bigfoot, The Lochness Monster and The Abominable McDonald’s Case

- 3rd degree burns, 6% of body
- Thighs, Buttocks, Genitals
- 8 days in hospital
- Skin grafting

- $30,000 in medical bills
- $20,000 presuit demand
- Evidence of 700 prior cases
McDonald’s Case Continued

- High Temperature
- Evidence of knowledge of danger
- $200,000 compensatory damages
- $2.7 million punitive

- Award reduced to $640,000
- Appealed and settled
- Defensive verdicts not publicized
Conclusion

- U.S. Market offers great opportunities
- Buy good insurance
- Hire team of professionals from day one
- Legal, accounting, insurance

Useful Links

- Jury System works most of the time
- A Judge’s view of the Jury system