

LAW OFFICE OF  
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*Board Certified Personal Injury Trial Law  
Texas Board of Legal Specialization*

# Texas Law Alert

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## Q&A About Products Liability

### What Is a Products Liability Claim?

“Products liability” is a generic name for any lawsuit for damage or injuries that are caused by the use of a product. Usually, a products liability lawsuit involves a claim that the product was defective or that it was unfit for its intended use.

### Who Can Be Held Liable in a Products Liability Case?

Although liability often depends on the kind of defect that exists, defendants commonly named in a products liability lawsuit are the product’s designer, manufacturer, and distributor, including the store where the defective product was purchased.

### Isn’t the Rule “Let the Buyer Beware”?

Products liability lawsuits serve two purposes. First, they allow people who have been injured by dangerous or defective products to recover for their injuries, their pain and suffering, and their lost wages. Second, such lawsuits encourage designers and manufacturers to

build safer products that won’t injure users and to remove from the market dangerous products that cannot be made more safe.

### Are There Different Kinds of Products Liability Lawsuits?

Because products can cause injuries in different ways, there are different kinds of products liability suits. The four main kinds are:

- Negligence suits, which claim that the defendant did not use reasonable care in designing, making, or marketing the product;
- Breach-of-warranty suits, which claim that the defendant made some promise about the product that turned out to be untrue;

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## If You Are Injured by a Defective Product . . .

- Contact our firm immediately.
- **SAVE THE DEFECTIVE PRODUCT!** Also, do not alter or tamper with the product because this could make it difficult to prove your case.
- Save everything related to the defective product, including the sales receipt, instructions, warnings, and accessories.
- Photograph or videotape the product at the scene of the injury or as soon afterward as possible.
- Photograph or videotape your injuries as soon as possible.

*Products liability cases are extremely complex!* In some cases, the dispute involves more than one victim bringing a claim against a manufacturer. Manufacturers often try to blame you or some other party to avoid liability. Our firm will help you negotiate the legal pitfalls.

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# Your Rights as a Tenant

Unfortunately, disputes between landlords and their tenants are not uncommon, and because they involve tenants' homes they can often become emotional. In order to prevent unnecessary disputes, it is helpful to know your rights as a tenant.

The relationship between a landlord and a tenant is governed by the terms of the lease. Most landlords will insist that you sign a written lease. Before signing, read the lease carefully. Generally, all of the lease terms, including the amount of rent, the place where payment is due, the procedure for requesting repairs, etc., can be enforced as written.

A landlord has the obligation to provide a tenant with certain things. For example, a landlord must ensure your "quiet enjoyment" of the property you lease. "Quiet enjoyment" means that you not only have a right to peace and quiet, but it also means that your landlord cannot evict you or otherwise disturb your right to live in peace as long as you pay your rent and follow the rules.

A landlord must repair conditions that materially endanger a tenant's health and safety, or that make the property unfit to inhabit. A landlord must do certain things to protect tenants, such as providing residential tenants with smoke detectors, deadbolts on exterior doors, and a peephole.

The question of repairs is often contentious. It is important to understand that, even if a landlord refuses to make a necessary repair, you *cannot* simply not pay your rent. Instead, you must mail the landlord written notice of the problem by certified mail and give him a chance to fix it. If your landlord still refuses to make the repair, you

may be able to end the lease, repair the problem yourself and deduct the amount due in rent, or have a court order that the repairs be made. Because the procedure for doing this is complex, it is best to consult a lawyer before trying this remedy.

When the lease ends, a landlord must refund to you any security deposit you have paid, unless he has a valid reason for keeping some

or all of it. A valid reason for keeping a deposit includes paying to repair damage to the property caused by you, although the landlord cannot charge you for normal wear and tear. Your landlord must refund your deposit within 30 days after you move out, as well as provide you with a list of deductions and the reasons for them. You are required to give him your forwarding address in writing.

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## Dangerous Drugs

The FDA has recently issued an alert about the dangers of exposing pregnant women to valproate sodium, most commonly sold under the name Depakote.

Depakote and related drugs, such as Depacon, Depakene, and Stavzor, are most frequently used for the treatment of seizures, such as those associated with epilepsy, although they are also prescribed for the treatment of manic-depressives, for individuals suffering from migraines, and for other, off-label conditions.

The dangers associated with the use of Depakote, such as liver failure and suicidal thoughts, are well known. However, Depakote has also been linked to various kinds of birth defects, including defects in the development of a child's brain, spinal cord, face, heart, or blood vessels.

In order to manage this risk, the FDA has issued several guidelines for Depakote use. Women taking the drug who do not plan to become

pregnant are urged to use effective birth control. Women who wish to become pregnant, or who do become pregnant, are urged to contact their doctors immediately. However, women taking Depakote are urged not to simply stop taking it, even if they are pregnant, because suddenly stopping a regime of valproate drugs can cause serious problems.

### Thank You

*Thank you for trusting our firm with your legal needs. If you or someone you know has been injured due to somebody else's carelessness, please call us. We want to help.*

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## Case by Case

### Negligent Truck Driver

A Texas woman was killed when a truck lost part of its load: a 4,200-pound weight used to counterbalance construction cranes. The weight hit the woman's car, smashing the car and causing her death.

The trucking company claimed that the accident was not its fault. It pointed to the fact that when the weight fell off, the truck driver was going 30 miles an hour in a 55-mile-an-hour zone, and it blamed the accident on a fault in the road that caused the load to become unbalanced and fall off.

It was discovered that the 21-year-old truck driver did not have the license that federal law requires to drive the truck, and the trucking company admitted that it had no procedure to train its drivers in securing loads. Further checking showed that the heavy load was secured by only two chains instead of the four chains required by federal law. Finally, an expert could find no defect in the road.

Rather than allow the victim's family to argue that the trucking company's driver was negligent and that the trucking company had tried to falsify its records to hide the driver's lack of qualifications, the company settled on the eve of trial. The family will split a \$16 million settlement.

### Lack of Planning

We have all heard the phrase "accidents happen." This might be true some of the time, but, more often than not, accidents can be prevented by foresight and planning. A recent case illustrates this point.

A company was using four cranes to move a 1,200-ton load. While the load was being moved, it

slipped, sending a boom into the cab of one of the cranes. The crane's operator was pinned in the cab for more than two hours, and, once freed, he bled to death on the way to the hospital.

The evidence showed that the crane operator's death was the product of a series of preventable mistakes. The ground over which the cranes were driving was muddy, causing them to slip. The company did not hire a professional to do a lift plan (relying on an inexperienced employee), nor did it remove obstructions in the cranes' path. Because the obstructions were not re-

moved, the cranes had to change the angles of their booms.

The employee who did the calculations did not know that changing the booms' angles would change the load that the cranes could carry. As a result, the cranes had to bear more than their capacities. The evidence also showed that the company "lost" a video that had been taken of the incident.

All of these mistakes caused the crane operator's death. The death cost a family its husband and father, and the company \$11 million. A little planning and common sense could have prevented all of this.

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## Auto Safety Tips

Most of us at some point will have to deal with a car that has broken down. Whether the problem is a simple flat tire or something more serious, here are some safety tips for handling a breakdown:

- If you notice a problem with your car while driving, **REMAIN CALM**. Keeping a level head is the most important thing in any emergency.
- Be sure to steer to a safe spot before stopping. Park the car as far from the flow of traffic as you can before getting out to check on the problem.
- If you cannot fix the problem, it is usually safer to stay with your car than to set out on foot, especially in an area you are not familiar with. Use a cell phone to call for help or wait for the police to come by.

- Carry flares and reflectors to mark your location on the side of the road, and be sure to turn on your car's hazard lights any time you stop beside a roadway.
- If the problem is something you can repair, move to a safe place before trying to fix it. The cost of replacing a flat tire or even your wheel rim is minor, especially when compared to the cost of a serious injury.
- If you have to drive in severe weather or in a remote area, consider putting together an emergency kit. Items such as a blanket, nonperishable food, and water can make all the difference if you break down far from help.

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## Products Liability

*Continued from page one.*

- Misrepresentation suits, which claim that the defendant made the product seem safer than it was or did not effectively warn about the product's dangers; and
- Strict liability suits, which claim that the defendant should be held liable for the damage caused by the use of the product, even if the defendant has otherwise done nothing wrong.

### Do You Mean That a Company Can Be Liable Even If the Injury Is Not Its Fault?

Yes. The basis of the strict liability theory is that the designers, manufacturers, and sellers of products are all likely to know more about the products they make and sell than the consumers who buy

the products do. The possibility that they can be found liable for any injury that occurs while using the product is supposed to encourage them (1) to make products as safe as they know how, (2) to give consumers complete and accurate warnings about how to use the product safely, and (3) to discourage the sale of unsafe products.

### What Kind of Product Can Support a Products Liability Lawsuit?

Products commonly involved in products liability suits include cars, power tools, ladders, medical devices, chemicals, and drugs, but almost any kind of product that is bought and sold and that has caused some injury can provide the basis of a products liability suit. Many of the tobacco lawsuits covered in the media are actually products liability lawsuits. Although a manufac-

turer will often recall a defective product to prevent it from injuring more users, a products liability claim may exist even if the product is not being recalled.

### What Facts Weaken a Products Liability Claim?

We all know people who have hurt themselves while doing things they should have known better than to do. In a products liability case, this is called "misuse," and if the injury is caused by using the product for a purpose for which it was neither designed nor intended, this fact may make it harder to show that someone else is liable for the injury.

Also, a person who is injured after ignoring or not reading clear instructions or warning labels may not have a good products liability case.

*Actual resolution of legal issues depends upon many factors, including variations of facts and Texas law. This newsletter is not intended to provide legal advice on specific subjects, but rather to provide insight into legal developments and issues. The reader should always consult with legal counsel before taking action on matters covered by this newsletter.*

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