If you are in the business of selling, assembling, testing, or installing manufactured products, there are important legal rules of which you will want to be aware.

A plaintiff injured as the result of a defective product may attack the seller and/or manufacturer of the product. The two most common actions are for negligence and breach of implied/express warranties under contract.

Which category do you fall in: Manufacturer or Seller?

Case law and statutes suggest that a seller who is owned in significant part by a manufacturer, or who owns a significant part of the manufacturer’s business, will be considered a manufacturer by the Court. This distinction is important because the law requires manufacturers to do more than sellers.

Negligence

A seller who is a “mere conduit” (receive and resell) between the manufacturer and buyer generally has no duty, if he doesn’t know of defects or problems, to inspect the product and warn buyers of dangers. Nationally the conduit theory will apply to sellers where they are pipeline and are not involved in installation or on-site assembly. It isn’t easy to draw clear lines in this area, and the only sure way for a seller to be safe is to avoid assembly and installation altogether. But it’s impractical to think non-retail businesses sell products that won’t need some assembly/installation.

Where a seller is involved in handling beyond the sale, he must use reasonable care in assembling and installing the product, and must inspect the product for hidden defects. The seller must warn the buyer of any defects discovered and of any dangerous characteristics about which the buyer wouldn’t likely know.

To minimize your liability for negligent assembly/installation of products you should:

• Create and record a written procedure for inspection, and warning

if necessary, of each product that you/your employees will be installing. Be sure that the form is carried to the installation by the installing employee and verified by signature when the job is complete.

• Keep abreast of recurring problems or defects in the products that you sell, assemble and/or install. Make the necessary changes in your inspection procedure to cover these problems, and make sure that you warn later buyers of any dangerous propensities.

• Create a “Notice of Warning” clause in the final receipt form to be signed by the buyer when the product has been installed. Ask the buyer to read before signing off on the installation, and initial that clause.

• Finally, always notify the manufacturer any time a defect is discovered.

Manufacturers are subject to greater liability than sellers.

Breach of Warranty

A warranty is any promise or representation you make to a buyer, oral or written, but doesn’t include “sales talk.”

As a general principle, a buyer must have a contract with you before he can seek damages for a breach of that contract. But a majority of states allow the original buyer, family or household members, and even guests in the buyer’s home, because they may reasonably be expected to use and be affected by the product, to sue a seller for breach of express/implied warranties made by the manufacturer!

Most courts won’t allow an employee of a buyer to recover from
the seller/installer. This distinction is significant to sellers of commercial products, who may not want to take the risk of selling to consumers.

Where an express warranty is involved, not only may an ultimate purchaser sue the manufacturer where a warranty was directed to that purchaser but also may members of the buyer’s “family or household.” In addition to these possible plaintiffs, an employee of a buyer may sue a manufacturer where an implied warranty is involved.

It is important to note that where the manufacturer has properly limited its warranties underprovisions of the U.C.C. the manufacturer may escape liability.

So, the key is to ensure that, as a manufacturer, you not only develop and distribute safe products but also implement a warranty policy. Careful planning now will reduce the chances of being sued later. Sellers need to develop a sound installation procedure to limit liability for product defects.

About the Author:
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