ADLER POLLOCK & SHEEHAN P.C.

PRODUCTS LIABILITY | FREQUENTLY ASKED QUESTIONS

What Manufacturers, Suppliers and Distributors Need to Know About Products Liability in Rhode Island

Answers to the questions in-house counsel and out-of-state counsel most often ask about defending products liability litigation in Rhode Island courts.

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THE BASICS

Does Rhode Island have a products liability statute?

No. Rhode Island does not have a comprehensive products liability act. Products liability claims are governed principally by common law, supplemented by targeted statutes.

Which Restatement does Rhode Island follow?

Rhode Island adopted strict products liability under Section 402A of the Restatement (Second) of Torts in *Ritter v. Narragansett Electric Co.*, 109 R.I. 176, 283 A.2d 255 (1971).

The Rhode Island Supreme Court has adopted Section 5 of the Restatement (Third) of Torts: Products Liability, which governs the liability of component-part suppliers. *Buonanno v. Colmar Belting Co.*, 733 A.2d 712, 715–16 (R.I. 1999). It has not adopted the Restatement (Third) design-defect test.

Do component-part suppliers face the same liability in Rhode Island as manufacturers of the finished product?

Generally not. Rhode Island follows Section 5 of the Restatement (Third) of Torts: Products Liability. A component supplier may be liable to the ultimate user mainly when it substantially participated in integrating the component into the design of the final product. *Buonanno v. Colmar Belting Co.*, 733 A.2d 712, 715–16 (R.I. 1999).

DESIGN DEFECTS & BURDEN OF PROOF

What test does Rhode Island use for design defects?

Rhode Island applies the consumer-expectation test, not the risk-utility test. *Castrignano v. E.R. Squibb & Sons, Inc.*, 546 A.2d 775, 781-82 (R.I. 1988). The Rhode Island Supreme Court has not required proof of a reasonable alternative design, and the U.S. District Court for the District of Rhode Island has predicted that it would not. *Guilbeault v. R.J. Reynolds Tobacco Co.*, 84 F. Supp. 2d 263, 276–78 (D.R.I. 2000). That court acknowledged, however, that as a practical matter a plaintiff may well have to prove a safer, feasible alternative design to persuade a factfinder that the product is defective. *Id.* The Rhode Island Supreme Court has not decided the question.

Who bears the burden of proof on a design defect claim in Rhode Island?

The plaintiff. The plaintiff must prove by a preponderance of the evidence that the product was defective when it left the defendant's control and that the defect caused the injury. *Ritter v. Narragansett Electric Co.*, 109 R.I. 176, 190–91, 283 A.2d 255, 262–63 (1971). The burden does not shift to the manufacturer on defect or causation. The one exception is the "unavoidably unsafe" defense for prescription drugs, which the defendant must prove. *Castrignano v. E.R. Squibb & Sons, Inc.*, 546 A.2d 775, 781–83 (R.I. 1988).

EXPERTS

What standard applies to expert testimony in Rhode Island state court?

Rhode Island Rule of Evidence 702, applied through a gatekeeping inquiry into whether the expert's testimony is scientifically valid and will assist the jury. In *DiPetrillo v. Dow Chemical Co.*, 729 A.2d 677 (R.I. 1999), a case AP&S tried for Dow, the Rhode Island Supreme Court declined to formally adopt *Daubert* but endorsed its principles. The Court treated the *Daubert* factors as instructive rather than mandatory, noting they need not be given equal weight.

STATUTE OF LIMITATIONS & REPOSE

What is the statute of limitations for product liability claims in Rhode Island?

Three years from accrual for personal injury. R.I. Gen. Laws § 9-1-14(b). For latent injuries, including injuries from prescription drugs, Rhode Island applies a discovery rule: the clock starts when the plaintiff discovers, or reasonably should have discovered, the manufacturer's wrongful conduct. *Anthony v. Abbott Laboratories*, 490 A.2d 43, 46 (R.I. 1985). Wrongful death claims must be brought within three years of death, with a discovery extension where the cause of death was unknown. R.I. Gen. Laws § 10-7-2.

Does Rhode Island have a statute of repose for product claims?

No. Although a ten-year products repose provision remains in the state's General Laws at R.I. Gen. Laws § 9-1-13(b), the Rhode Island Supreme Court held it unconstitutional in *Kennedy v. Cumberland Engineering Co.*, 471 A.2d 195 (R.I. 1984). The Court found that it violated the Rhode Island Constitution's guarantee of access to the courts and a remedy for every injury. R.I. Const. art. I, § 5.

Rhode Island's ten-year repose for improvements to real property does not protect product manufacturers. It applies only to architects, engineers, contractors, and material suppliers. R.I. Gen. Laws § 9-1-29.

WARNINGS

When is a manufacturer liable for failure to warn in Rhode Island?

A manufacturer must warn of dangers that were reasonably foreseeable and knowable when it marketed the product. *Castrignano v. E.R. Squibb & Sons, Inc.*, 546 A.2d 775, 783 (R.I. 1988); *Thomas v. Amway Corp.*, 488 A.2d 716, 722 (R.I. 1985). Because of this knowledge component, the standard for strict liability failure to warn is effectively equivalent to the negligence standard. *Castrignano*, 546 A.2d at 783; *see also Raimbeault v. Takeuchi Mfg. (U.S.), Ltd.*, 772 A.2d 1056, 1063–64 (R.I. 2001).

What is the learned intermediary doctrine, and does Rhode Island follow it?

The learned intermediary doctrine holds that a manufacturer of a prescription drug or medical device satisfies its duty to warn by adequately informing the prescribing or implanting physician, rather than warning the patient directly. The physician, as the "learned intermediary," weighs the risks and benefits for the individual patient. *Trevino v. Davol Inc.*, No. PC-2018-8437, 2022 WL 3223845, at *6 (R.I. Super. Ct. July 26, 2022); *Providence v. Davol, Inc.*, No. PC 07-4701, 2011 WL 496532, at *2 (R.I. Super. Ct. Feb. 9, 2011).

The U.S. District Court for the District of Rhode Island has repeatedly predicted that the Rhode Island Supreme Court would adopt it, although that Court has not yet done so. *See Franks v. CooperSurgical, Inc.*, 722 F. Supp. 3d 63, 92 (D.R.I. 2024); *Costa v. Johnson & Johnson*, No. CV 17-452 WES, 2023 WL 2662903, at *3 (D.R.I. Mar. 28, 2023). The doctrine is recognized in some form in the overwhelming majority of U.S. jurisdictions.

Does a manufacturer have a post-sale duty to warn in Rhode Island?

The Rhode Island Supreme Court has not imposed a post-sale duty to warn. *Sweredoski v. Alfa Laval, Inc.*, No. PC 2011-1544, 2013 WL 3835907, at *1 (R.I. Super. Ct. July 18, 2013) ("[O]ur Supreme Court has not formally imposed on product manufacturers a post-sale duty to warn.").

The duty to warn is measured by the dangers that were reasonably foreseeable and knowable at the time of marketing. *Castrignano v. E.R. Squibb & Sons, Inc.*, 546 A.2d 775, 783 (R.I. 1988). A manufacturer's duty includes an obligation to inspect, test, and stay informed about its product's risks. *Scittarelli v. Providence Gas Co.*, 415 A.2d 1040, 1043 (R.I. 1980).

Does Rhode Island apply a heeding presumption?

The question is open. No Rhode Island court has adopted or rejected a presumption that a plaintiff would have read and followed an adequate warning.

DEFENSES

Is there a state-of-the-art defense in Rhode Island?

Not as a general defense. *Baumgartner v. American Standard, Inc.*, No. PC-13-4151, 2015 WL 4523476, at *8 (R.I. Super. Ct. July 22, 2015) ("Rhode Island . . . has not enacted a statute providing for the so-called 'state-of-the-art defense,' nor has such a defense been recognized by our Supreme Court.").

For design and manufacturing defects, a seller is strictly liable even if it exercised all possible care. *Ritter v. Narragansett Electric Co.*, 109 R.I. 176, 283 A.2d 255 (1971); *Castrignano v. E.R. Squibb & Sons, Inc.*, 546 A.2d 775, 781–83 (R.I. 1988). The state of scientific knowledge matters in two contexts. First, the duty to warn extends only to dangers that were knowable at the time of marketing. Second, for prescription drugs, a manufacturer may prove that its product was "unavoidably unsafe" given the state of knowledge. *Castrignano*, 546 A.2d at 781–83.

How does Rhode Island allocate fault between the plaintiff and the defendant?

Rhode Island is a pure comparative fault jurisdiction. A plaintiff's recovery is reduced by their percentage of fault but is never barred, even if the plaintiff is more at fault than the defendant. R.I. Gen. Laws § 9-20-4. Comparative fault applies to negligence, strict liability and implied warranty claims. *Fiske v. MacGregor, Div. of Brunswick*, 464 A.2d 719, 726–28 (R.I. 1983).

Does Rhode Island recognize the assumption of the risk defense?

Yes. If a plaintiff knowingly and voluntarily encountered a known danger, the assumption of the risk doctrine bars recovery. A merely negligent encounter with the danger reduces recovery under comparative fault. *Fiske v. MacGregor, Div. of Brunswick*, 464 A.2d 719, 726–29 (R.I. 1983).

Is post-sale alteration of a product a defense in Rhode Island?

A manufacturer or seller is not liable for product liability damages where a substantial cause of the injury was a subsequent alteration or modification of the product. R.I. Gen. Laws § 9-1-32(b). A 2021 amendment created an exception for alterations made by the injured person: if the injured person made an alteration that was a significant contributing factor to the injury, the defense is governed by the comparative fault statute and reduces the plaintiff's recovery proportionally rather than barring it. *Id.*; R.I. Gen. Laws § 9-20-4. The amendment applies only to claims arising after July 13, 2021. P.L. 2021, ch. 387, § 2; P.L. 2021, ch. 388, § 2.

Is compliance with government regulations a defense in Rhode Island products liability cases?

Compliance is evidence that a product was reasonably designed and labeled, but it is generally not a complete defense under Rhode Island law. The Rhode Island Supreme Court has declined to treat regulatory approval as establishing that a product is reasonably safe as a matter of law. *Castrignano v. E.R. Squibb & Sons, Inc.*, 546 A.2d 775, 781–83 & n.4 (R.I. 1988).

JOINT LIABILITY, CONTRIBUTION & SETTLEMENT

Does Rhode Island follow joint and several liability?

Yes. Each defendant found liable for the same injury can be held responsible for the plaintiff's full damages. Contribution among defendants is apportioned by relative fault. R.I. Gen. Laws §§ 10-6-2, 10-6-3.

Can a manufacturer seek contribution from other responsible parties in Rhode Island?

Yes, under Rhode Island's Uniform Contribution Among Joint Tortfeasors Act, R.I. Gen. Laws § 10-6-1 *et seq.*, a defendant may seek contribution through third-party practice in the same case or in a separate action. A separate contribution action must be brought within one year after the defendant's first payment that discharged the common liability or exceeded its pro rata share. R.I. Gen. Laws § 10-6-4. Pro rata shares are determined by the defendants' relative degrees of fault. R.I. Gen. Laws § 10-6-3. The Rhode Island Supreme Court has described this comparative-fault provision as "the heart of the act." *Hawkins v. Gadoury*, 713 A.2d 799, 802 (R.I. 1998).

Can a defendant that goes to trial in Rhode Island seek contribution from a co-defendant that settled?

No. Since July 14, 2021, Rhode Island law provides that when the injured person releases one joint tortfeasor, that tortfeasor is relieved of any liability to make contribution to the other joint tortfeasors. R.I. Gen. Laws § 10-6-7(2).

How does a co-defendant's settlement affect the verdict against the defendants who go to trial in Rhode Island?

The plaintiff's claim against the non-settling defendants is reduced by the amount the settling defendant paid. R.I. Gen. Laws § 10-6-7(1). The credit is dollar-for-dollar. It is not tied to the settling defendant's share of fault.

This is a change from prior law. Before the 2021 amendment, the claim was reduced by the greater of the amount paid or the settling tortfeasor's pro rata share. *See Augustine v. Langlais*, 121 R.I. 802, 402 A.2d 1187 (1979).

How does R.I. Gen. Laws § 10-6-7 work in practice?

Suppose three defendants are jointly liable for the same injury. One settles before trial, and the jury returns a verdict against the other two. The settlement amount is deducted from the verdict. R.I. Gen. Laws § 10-6-7(1). The two defendants who went to trial are then jointly and severally liable for the full remaining balance. R.I. Gen. Laws § 10-6-2. Neither can seek contribution from the defendant that settled. R.I. Gen. Laws § 10-6-7(2).

DAMAGES & TRIAL EVIDENCE

Does Rhode Island cap damages in product liability cases?

No. Rhode Island does not cap non-economic damages, such as pain and suffering. The only statutory caps apply to tort claims against the State and its municipalities, which are generally limited to $100,000 unless the claim arises from a proprietary function. R.I. Gen. Laws §§ 9-31-2, 9-31-3.

Are punitive damages available in Rhode Island, and are they capped?

Punitive damages are available and uncapped, but the standard is demanding. The plaintiff must show willfulness, recklessness, or wickedness amounting to criminality. Whether the plaintiff has met that standard is a question of law for the trial justice. *Palmisano v. Toth*, 624 A.2d 314, 318–21 (R.I. 1993). Rhode Island has no special pleading requirement for punitive damages. Before obtaining discovery of a defendant's net worth or income, however, the plaintiff must make a prima facie showing at an evidentiary hearing. *Id.*

Does Rhode Island add prejudgment interest to product liability verdicts?

Yes, and it is substantial. In civil actions for personal injury, death, or property damage, the clerk adds prejudgment interest at 12 percent per year to pecuniary damages, running from the date the cause of action accrued. R.I. Gen. Laws § 9-21-10. Because interest accrues from the injury rather than from suit, it can add significantly to the value of a long-pending claim.

How are a plaintiff's medical bills presented to the jury in Rhode Island?

Itemized, sworn medical bills and records are admissible by affidavit, without live testimony from the provider. They serve as evidence of the fair and reasonable charge for the services, as well as necessity, diagnosis, causation, and permanency. R.I. Gen. Laws § 9-19-27. The offering party must give the opposing party written notice and a copy by certified mail, return receipt requested, at least ten days before introducing them, and a party objecting to the affidavit must file a specific objection within ten days of receiving it or the objection is waived. *Id.*

Rhode Island also follows the collateral source rule. A defendant generally cannot reduce its liability by showing that the plaintiff's expenses were paid by insurance or another independent source. *Esposito v. O'Hair*, 886 A.2d 1197, 1199–1200 (R.I. 2005).

OTHER THEORIES OF LIABILITY

Do Rhode Island consumer protection laws apply to product manufacturers?

Rarely in personal injury cases. Rhode Island's Deceptive Trade Practices Act allows private actions only by consumers who purchased goods primarily for personal, family, or household purposes and suffered an ascertainable loss. R.I. Gen. Laws § 6-13.1-5.2.

The Act also exempts activities permitted under laws administered by a regulatory body. R.I. Gen. Laws § 6-13.1-4. The Rhode Island Supreme Court has read that exemption broadly, to cover activities subject to agency monitoring. *Chavers v. Fleet Bank (RI), N.A.*, 844 A.2d 666, 669–70, 676–77 (R.I. 2004); *State v. Piedmont Funding Corp.*, 119 R.I. 695, 382 A.2d 819 (1978). The exemption is narrower for claims brought by the Attorney General. R.I. Gen. Laws § 6-13.1-4(b).

Is public nuisance a viable theory against product manufacturers in Rhode Island?

The Rhode Island Supreme Court rejected a public nuisance theory against former lead pigment manufacturers in *State v. Lead Industries Ass'n*, 951 A.2d 428 (R.I. 2008). The Court held that public nuisance law protects shared public resources, such as air, water, and public rights of way. It also held that the defendants did not control the pigment when it caused harm, and that the proper vehicle for claims against a manufacturer is a products liability action. AP&S defended Atlantic Richfield in that case, which included the longest jury trial in Rhode Island history.

Public nuisance theories continue to surface in other contexts, including in opioid, climate change, and wind turbine litigation. AP&S has defended manufacturers and distributors against these claims.

Is a manufacturer required to recall a product in Rhode Island?

No Rhode Island court has recognized a common-law duty to recall or a claim for negligent failure to recall.

HOW CAN AP&S HELP?

AP&S has defended manufacturers, suppliers, and distributors in Rhode Island state and federal courts, including Atlantic Richfield in the State's lead pigment public nuisance case, which included the longest jury trial in Rhode Island history. The firm's products liability and toxic tort practice spans aviation and aerospace, chemical, medical device and a wide range of industrial and consumer products, and it has defended manufacturers and distributors against public nuisance claims in opioid, climate change, and wind turbine litigation. With offices in Rhode Island, Massachusetts, New Hampshire, and New York, AP&S works with in-house counsel and national counsel as lead or local counsel, from early case assessment through trial and appeal.

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