

# Products Liability Claims

A Primer for Equipment Lessors

**“Products Liability” lawsuits represent the greatest legal threat to rental operators today.**

**Definition of “Products Liability”:** A broad legal theory of liability that permits injured parties to sue *all parties in the “chain of distribution,” including equipment lessors* for injuries and damages arising from the use of equipment. Such liability is generally premised on one of four legal theories: (1) Negligence; (2) Breach of Warranty; (3) Misrepresentation; and (4) Strict Liability in Tort when a product is rendered “unreasonably dangerous” as a result of: (a) Design Defects: When the foreseeable risks of harm posed by the product could have been reduced or avoided by the adoption of a reasonable alternative design; (b) Manufacturing Defects: When the product departs from its intended design; and/or (c) Warning Defects: When the “foreseeable” risks of harm posed by the product could have been reduced or avoided by the provision of reasonable instructions or warnings.

**Warning Defects** (typically, claims that lessors have failed to properly warn their customers of potential hazards associated with “foreseeable” uses of leased equipment) generate the majority of Strict Products Liability claims against equipment lessors.

## **Requirements for Strict Products Liability Claims:**

In short, an equipment seller or lessor may be liable for all personal injuries and property damage caused by any piece of equipment it provides if:

1. **Participation**: It participated in the design, manufacture, and/or **provision of warnings** regarding the safe use, operation, transportation, storage, distribution, lease or rental of, any product made available to customers;
2. **Defect**: The equipment was defective, and therefore unreasonably dangerous, in terms of its design, manufacture or the warnings provided at the time it was provided; and
3. **Causation**: As a result of the defect, any person suffers personal injuries and/or property damage.

**Note:** **A showing that the lessor was negligent may not be required.** In fact, the equipment owner/lessor may not even know of the defect. Such claims may be made by any affected party (*even a bystander*).

As one might guess, the fact that a plaintiff need not prove that an equipment lessor did anything wrong (or failed to do something it should have done) has resulted in a raft of litigation against rental operators throughout the country, *most of whom never participate in the design, manufacture or alteration of their equipment*.

## **Origins:**

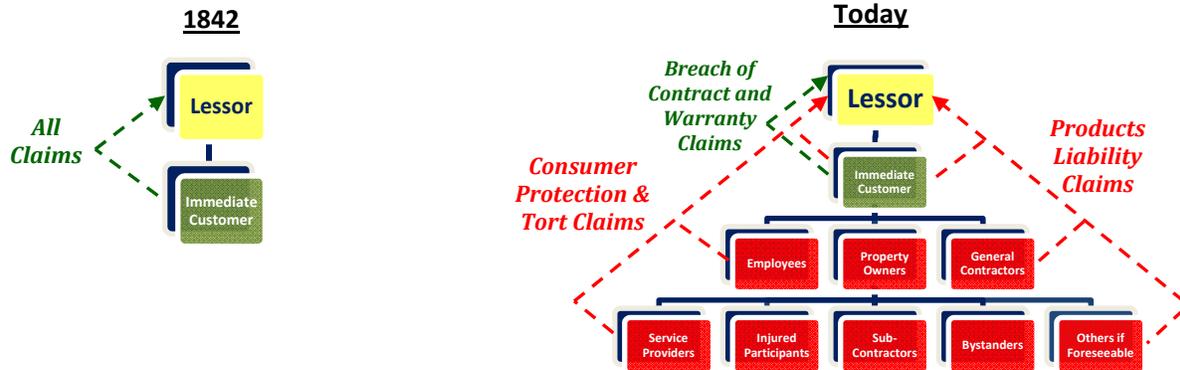
How did such a broad form of liability come to exist in the first place? It began as a reaction to the old English “privity rule” which provided that **only direct customers could sue providers of goods and services** (*Winterbottom v. Wright*, 10 M&W, 109, England, 1842). In 1852, a New York Appeals Court departed from the privity rule in the famous case of *Thomas v. Winchester* (6 N.Y. 397), establishing the “imminent danger to human life” doctrine by finding a party who incorrectly labeled deadly belladonna as harmless “extract of dandelion” liable to the wife of a druggist’s customer, even though the labeler and the customer’s wife had no direct relationship (*i.e.*, they were not “in privity”). The Court eluded the “lack of privity” issue by adopting the rule that a party who “puts human life in imminent danger” (in this case, by putting falsely labeled poison into the market), should be held liable to the ultimate consumer, even if he doesn’t know who that might be.

Thus began, slowly at first, a series of cases which expanded the concept of “products liability,” including:

- (a) *MacPherson v. Buick* (217 N.Y. 382, 111 N.E. 1050, 1916), a case in which a driver injured as a result of a collapsed wheel was permitted to recover damages from Buick Motor Company despite a lack of privity; and
- (b) *Greenman v. Yuba Power Products* (59 Cal. 2d 57, 1963), arguably the pivotal moment in the expansion of products liability law because it dispensed with the “fault” concept, holding a manufacturer liable to a consumer injured by a shop tool that none of the parties even knew was defective (*i.e.*, *the manufacturer was not shown to have done anything wrong*).

## The Result:

Through the 1960s and 70s, defect standards were reduced, and liability was extended to *all* parties (other than lenders) involved in the “chain of distribution,” **including lessors**. Just as importantly, the array of potential *plaintiffs* was geometrically expanded. A plaintiff can now be *anyone who might be affected by a product*; even bystanders (see below):



## Protections for Equipment Lessors:

Three (3) Primary Sources of Protection are Available to Lessors:

- 1. Corporate Limited Liability Shield:** **Incorporate** or organize a limited liability company (many states also permit limited partnerships and limited liability partnerships) to limit your potential liability.  
**Primary Shortcoming:** Company assets are still exposed to all claims.
- 2. Insurance:** **Obtain Insurance:** Offers financial protection for many types of claims as well as equipment loss/damage.  
**Primary Shortcomings:** Deductibles, policy limits and coverage exclusions.
- 3. Rental/Lease Contract:** **Use your Rental/Lease Contract:** Your rental/lease contract can limit or eliminate claims, transfer liability to other parties, and discourage potential plaintiffs from filing suit.  
**Primary Shortcoming:** Enforcement differs among jurisdictions and circumstances. Use of several similar (but very different) liability limiting provisions in your contract is strongly recommended.

## Conclusion:

The New York Appeals Court opened *Pandora's Box* back in 1852. Since then, plaintiffs' attorneys and state courts have pried the lid off and thrown it away. Because there appears to be no end to the expansion of products liability lawsuits in sight, equipment lessors must use every tool at their disposal to limit or eliminate claims. **Your Rental/Lease Contract can reduce claims dramatically and may enable you to avoid a financially devastating lawsuit.**

## About the Author:

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