

# PRODUCTS LIABILITY AND SAFETY

CASES AND MATERIALS

FIFTH EDITION

DAVID G. OWEN

JOHN E. MONTGOMERY

MARY J. DAVIS

FOUNDATION PRESS

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# PRODUCTS LIABILITY AND SAFETY

FIFTH EDITION

*by*

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*To the memory of*  
Nathan and Janet Owen

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J.E.M.  
*To Bonnie, John B., Kelli, Carter, and Riley Montgomery*

\*

M.J.D.  
*To Stuart and Virginia Davis Scales*

\*

and

\*

*To the memory of*  
Page Keeton

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## PREFACE TO THE FIFTH EDITION

The fifth edition captures recent developments in products liability and continues our ongoing quest to enhance the portrait of products liability law, theory, and practice revealed by the cases and materials assembled in prior editions. Although the rate of doctrinal change has slowed substantially from the period of tumultuous growth during the 1960s, 1970s, and early 1980s, courts, legislatures, and commentators continue to search for improved approaches to a large variety of products liability problems. Moreover, products liability “reform” in legislatures and the courts, sometimes as captured by the American Law Institute’s *Restatement (Third) of Torts: Products Liability*, continues to affect certain aspects (usually peripheral) of this field of law.

This edition includes a number of new cases and legislative developments, but we have kept the additions modest and have continued to streamline the book, which now is the shortest it has ever been. The new edition continues to stress developments in the evolving meaning of “defectiveness” and problems of proof arising in particular from the Supreme Court’s *Daubert v. Merrell Dow* decision. As in previous editions, we have updated and otherwise enriched the chapter exploring class actions and other mass tort developments in toxic substance products liability litigation.

Most footnotes are omitted from the principal materials; original numbering is retained for footnotes that remain. Asterisks designate footnotes of the editors. Ellipses, brackets, and asterisks indicate omissions. Within cases, formatting and citation form generally are standardized; page references to trial transcripts, exhibits, and pleadings ordinarily are omitted without notation; parties generally are identified by their trial designations; some citations are omitted without notation from quotations in the Notes; and certain other minor technical revisions are designed to enhance clarity of presentation.

In the process of revisions, we may have dropped or altered certain materials which various users wish we had retained. To them, we extend our permission to reproduce selected materials from earlier editions for classroom use. Many improvements in the book reflect comments from

users of previous editions. We appreciate all such suggestions and hope that users of the fifth edition will continue to pass along their ideas on how the book may be improved.

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Prior to the fourth edition, we lost our co-author, the late Dean W. Page Keeton Emeritus of the University of Texas. Dean Keeton played an instrumental role in launching the first edition in 1980, and he continued to contribute to the book in the years that followed. In the 1960s and 1970s, Page Keeton's perceptive and prolific scholarship on products liability law, together with his service as Adviser for the Restatement (Second) of Torts, played a significant role in shaping the direction of products liability law. We continue to miss him as a founding member of the products liability league of scholars, as a collaborator, and as a friend. We are aware of no better tribute to the life of Werdner Page Keeton than the marvelous memorial biography by his colleagues at the University of Texas, David Robertson, David Anderson, and the late Charles Alan Wright. See <http://www.utexas.edu/faculty/council/1999-2000/memorials/Keeton/keeton.html>, or google "W. Page Keeton."

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Bogus, War on the Common Law: The Struggle at the Center of Products Liability, 60 Mo.L.Rev. 1 (1995). Reprinted with the permission of the Missouri Law Review.

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Cowan, Some Policy Bases of Products Liability, 17 Stan.L.Rev. 1077 (1965). Copyright © 1965 by the Board of Trustees of the Leland Stanford Junior University. Reprinted with permission of the Stanford Law Review.



- Dickerson, Products Liability: How Good Does a Product Have to Be?, 42 Ind.L.J. 301 (1967). Reprinted with the permission of the Indiana Law Journal and Fred B. Rothman & Co.
- Eaton, Revisiting the Intersection of Workers' Compensation and Product Liability: An Assessment of a Proposed Federal Solution to an Old Problem, 64 Tenn. L. Rev. 881 (1997). The full text of this article was published originally at 64 Tenn.L.Rev 881 (1997) and this excerpt is reprinted with permission of the author and the Tennessee Law Review Association, Inc.
- Epstein, Products Liability: The Search for the Middle Ground, 56 N.C. L.Rev. 643 (1978). Reprinted with the permission of the author.
- Feezer, Manufacturers' Liability for Injuries Caused by His Products: Defective Automobiles, 37 Mich.L.Rev. 1 (1938). Reprinted with the permission of the Michigan Law Review.
- Gillam, Products Liability in a Nutshell, 37 Or.L.Rev. 119 (1958). Reprinted with the permission of the Oregon Law Review.
- Goldberg, Manufacturers Take Cover. Reprinted with permission from the July 1986 issue of ABA Journal, The Lawyer's Magazine, published by the American Bar Association.
- Hamilton, The Ancient Maxim Caveat Emptor. Reprinted by permission of The Yale Law Journal Company and Fred B. Rothman & Co. from The Yale Law Journal, Vol. 40, pp. 1133-65 (1931).
- Henderson, Coping With The Time Dimension In Products Liability. Copyright © 1981 California Law Review, Inc. Reprinted from the California Law Review, Vol. 69, No. 4, July 1981, pp. 919-949, by permission.
- Henderson, Manufacturers' Liability for Defective Product Design: A Proposed Statutory Reform, 56 N.C.L.Rev. 625 (1978). Reprinted with the permission of the author.
- James A. Henderson, Jr. & Aaron D. Twerski, Closing the American Products Liability Frontier: The Rejection of Liability Without Defect, 66 N.Y.U.L.Rev. 1263, 1316-18, 1322-23, 1325-26, 1329-31 (1991). Reprinted with the permission of the New York University Law Review.
- Hensler & Peterson, Understanding Mass Personal Injury Litigation: A Socio-legal Analysis, 59 Brook.L.Rev. 961 (1993). Reprinted with the permission of the Brooklyn Law Review.
- James, Products Liability (pt. 2), 34 Tex.L.Rev. 227 (1955). Reprinted with the permission of the Texas Law Review.
- W.P. Keeton, Torts, Annual Survey of Texas Law, 32 Sw.L.J. 1 (1978). Reprinted with permission of the copyright holder. Copyright © 1978 by Southern Methodist University.
- Klemme, The Enterprise Liability Theory of Torts, 47 Colo.L.Rev. 153 (1976). Reprinted with the permission of the Colorado Law Review.

- Larson, Workmen's Compensation: Third Party's Action Over Against Employer, 65 Nw.U.L.Rev. 351 (1970). Reprinted with the permission of the Northwestern Law Review.
- Leidy, Another New Tort?, 38 Mich.L.Rev. 964 (1940). Reprinted with the permission of the Michigan Law Review.
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- Montgomery & Owen, Reflections on the Theory and Administration of Strict Tort Liability for Defective Products, 27 S.C.L.Rev. 803 (1976). Copyright © 1976 by the South Carolina Law Review. Reprinted by permission.
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- Owen, The Graying of Products Liability Law: Paths Taken and Untaken in the New Restatement, 61 Tenn.L.Rev. 1241 (1994). Originally published by the Tennessee Law Review Association, Inc. Reprinted with permission.
- D. Peck, Decision At Law (1961). Reprinted by permission of Dodd, Mead and Company, Inc. from DECISION AT LAW by David W. Peck. Copyright © 1961 by David W. Peck.
- Phillips, Contribution and Indemnity in Products Liability. Reprinted with permission of the author and the Tennessee Law Review Association, Inc. from 42 Tennessee Law Review 85 (1974).
- Posner, A Theory of Negligence, 1 J.Leg.Stud. 29 (1972). Reprinted with the permission of the Journal of Legal Studies.
- Posner, Strict Liability: A Comment, 2 J.Leg.Stud. 205 (1973). Reprinted with the permission of the Journal of Legal Studies.
- R. Pound, Social Control Through Law (1942). Copyright © 1942 by Yale University Press from Social Control Through Law by Roscoe Pound. Reprinted in 1968 by Archon Books, Hamden, Connecticut. Reprinted with the permission of the publisher.
- Prosser, The Assault Upon the Citadel (Strict Liability to the Consumer). Reprinted by permission of The Yale Law Journal Company and Fred B. Rothman & Co. from The Yale Law Journal, Vol. 69, pp. 1099, 1120-21 (1960).
- Prosser, The Fall of the Citadel (Strict Liability to the Consumer). 50 Minn. L.Rev. 791 (1966). Reprinted with the permission of the Minnesota Law Review.

- Prosser, *The Implied Warranty of Merchantable Quality*, 27 Minn.L.Rev. 117 (1943). Reprinted with the permission of the Minnesota Law Review.
- Rahdert, *Covering Accident Costs* (1995). Originally published by Temple University Press. Reprinted with the permission of the publisher.
- Rheingold, *The Expanding Liability of the Product Supplier: A Primer*, 2 Hofstra L.Rev. 521 (1974). Reprinted with the permission of the Hofstra Law Review.
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- Rothschild, *The Magnuson-Moss Warranty Act: Does It Balance Warrantor and Consumer Interests?*, 44 Geo.Wash.L.Rev. 335 (1976). Reprinted with the permission of The George Washington Law Review.
- Russell, *Manufacturers Liability to the Ultimate Consumer*, 21 Ky.L.J. 338 (1933). Reprinted with the permission of the Kentucky Law Journal.
- William W. Schwarzer, Alan Hirsch & Edward Sussman, *Judicial Federalism: A Proposal to Amend the Multidistrict Litigation Statute to Permit Discovery Coordination of Large-Scale Litigation Pending in State and Federal Courts*. Published originally in 73 Texas Law Review 1529 (1995). Copyright © 1995 by The Texas Law Review Association. Reprinted by permission.
- Shapo, *A Representational Theory of Consumer Protection: Doctrine, Function and Legal Liability for Product Disappointment*, 60 Va.L.Rev. 1109 (1974). Reprinted with the permission of the Virginia Law Review Association and Fred B. Rothman & Co.
- Speidel, *The Virginia "Anti-Privacy" Statute: Strict Products Liability Under the Uniform Commercial Code*, 51 Va.L.Rev. 804 (1965). Reprinted with the permission of the Virginia Law Review Association and Fred B. Rothman & Co.
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- Twerski, The Many Faces of Misuse, 29 Mercer L.Rev. 403 (1978). Reprinted with the permission of the author and the Mercer Law Review.
- Twerski, Weinstein, Donaher & Piehler, The Use and Abuse of Warnings in Products Liability—Design Defect Litigation Comes of Age, 61 Cornell L.Rev. 495 (1976). Copyright © 1976 by Cornell University. Reprinted with the permission of the authors, the Cornell Law Review and Fred B. Rothman & Co.
- Wade, On the Nature of Strict Tort Liability for Products, 44 Miss.L.J. 825 (1973). Reprinted with the permission of the Mississippi Law Journal.
- The Wall Street Journal, Litigation Load. Reproduced by permission of the Wall Street Journal. Copyright © Dow Jones & Company, Inc. 1976. All rights reserved worldwide.
- Weinstein, Ethical Dilemmas in Mass Tort Litigation, 88 Nw.U.L.Rev. 469 (1994). Originally published by The Northwestern University School of Law. Reprinted with permission of the author.
- Weintraub, Disclaimers and Limitation of Damages for Breach of Warranty Under the UCC, 53 Tex.L.Rev. 60 (1974). Reprinted with the permission of the Texas Law Review.
- Wertheimer, The Smoke Gets in Their Eyes: Products Category Liability and Alternative Feasible Designs in the Third Restatement, 61 Tenn.L. Rev. 1429 (1994). Reprinted by permission of the Tennessee Law Review Association, Inc. from 61 Tenn.L.Rev. 1429 (1994).
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- AALAR, Ltd. v. Francis, 716 So.2d 1141 (Ala. 1998), 633
- Abadie v. Metropolitan Life Ins. Co., 784 So.2d 46 (La.App. 5 Cir.2001), 62
- Abbot v. American Cyanamid Co., 844 F.2d 1108 (4th Cir.1988), 372
- Abrego Abrego v. The Dow Chemical Co., 443 F.3d 676 (9th Cir.2006), 899
- Ackerman v. American Cyanamid Co., 586 N.W.2d 208 (Iowa 1998), 250
- Acord v. General Motors Corp., 669 S.W.2d 111 (Tex.1984), 288
- Acosta v. Honda Motor Co.**, 717 F.2d 828 (3rd Cir.1983), 653, 661, 662, 676
- Adams v. Fuqua Industries, Inc., 820 F.2d 271 (8th Cir.1987), 467
- Adams v. Great Atlantic & Pacific Tea Co., 251 N.C. 565, 112 S.E.2d 92 (N.C.1960), 219
- Adams v. Murakami, 284 Cal.Rptr. 318, 813 P.2d 1348 (Cal.1991), 674
- Adkins v. K-Mart Corp., 204 W.Va. 215, 511 S.E.2d 840 (W.Va.1998), 688
- Aetna Cas. & Sur. Co. v. Ralph Wilson Plastics Co., 202 Mich.App. 540, 509 N.W.2d 520 (Mich.App.1993), 309
- Agent Orange Product Liability Litigation, In re**, 597 F.Supp. 740 (E.D.N.Y. 1984), 917, 926
- AgriStor Leasing v. Meuli, 634 F.Supp. 1208 (D.Kan.1986), 776
- Airco, Inc. v. Simmons First Nat. Bank, 276 Ark. 486, 638 S.W.2d 660 (Ark.1982), 662
- Air Crash Disaster Near Chicago, Ill. on May 25, 1979, In re, 507 F.Supp. 21 (N.D.Ill. 1980), 625
- Airport Rent-A-Car, Inc. v. Prevost Car, Inc., 660 So.2d 628 (Fla.1995), 642
- A.J. Decoster Co. v. Westinghouse Elec. Corp., 333 Md. 245, 634 A.2d 1330 (Md. 1994), 643
- Alharb v. Sayegh, 199 A.D.2d 229, 604 N.Y.S.2d 243 (N.Y.A.D. 2 Dept.1993), 787
- Allen v. Chance Mfg. Co., Inc., 398 Mass. 32, 494 N.E.2d 1324 (Mass.1986), 610
- Allen v. Delchamps, Inc., 624 So.2d 1065 (Ala.1993), 225
- Allen v. LTV Steel Co., 2003 WL 21461633 (7th Cir.2003), 297
- Allison v. Merck & Co., 110 Nev. 762, 878 P.2d 948 (Nev.1994), 346
- Amchem Products, Inc. v. Windsor**, 521 U.S. 591, 117 S.Ct. 2231, 138 L.Ed.2d 689 (1997), 872, 883, 884, 885, 894, 896
- American Cyanamid Co. v. Roy, 498 So.2d 859 (Fla.1986), 662
- American Family Ins. Group v. JVC Americas Corp., 2001 WL 1618454 (D.Minn.2001), 259
- American Medical Systems, Inc., In re, 75 F.3d 1069 (6th Cir.1996), 884
- American Motorcycle Assn. v. Superior Court, 146 Cal.Rptr. 182, 578 P.2d 899 (Cal.1978), 755
- American Motors Corp. v. Ellis, 403 So.2d 459 (Fla.App. 5 Dist.1981), 853
- American Safety Equipment Corp. v. Winkler, 640 P.2d 216 (Colo.1982), 89
- American Tobacco Co. v. Grinnell, 951 S.W.2d 420 (Tex.1997), 382
- Ammerman v. Ford Motor Co., Marion Cty.Super.Ct., Ind., Oct. 30 (Ind.Super.1995), 674, 853
- Anderson v. Dreis & Krump Mfg. Corp.**, 48 Wash.App. 432, 739 P.2d 1177 (Wash. App. Div. 3 1987), 558, 564
- Anderson v. Glynn Const. Co., 421 N.W.2d 141 (Iowa 1988), 773
- Anderson v. Owens-Corning Fiberglas Corp.**, 281 Cal.Rptr. 528, 810 P.2d 549 (Cal.1991), 315, 316, 483, 485, 490
- Anderson v. Sears, Roebuck & Co.**, 377 F.Supp. 136 (E.D.La.1974), 617
- Andrade v. General Motors Corp., 336 Ill. App.3d 827, 271 Ill.Dec. 563, 785 N.E.2d 214 (Ill.App. 2 Dist.2003), 56
- Andre v. Mecta Corp., 186 A.D.2d 1, 587 N.Y.S.2d 334 (N.Y.A.D. 1 Dept.1992), 345
- Andrews v. Harley Davidson, Inc., 106 Nev. 533, 796 P.2d 1092 (Nev.1990), 839
- Angus v. Shiley Inc., 989 F.2d 142 (3rd Cir. 1993), 629
- Anzalone v. Westech Gear Corp., 141 N.J. 256, 661 A.2d 796 (N.J.1995), 710
- Apels v. Murjani Intern. Ltd., Prod. Liab. Rep. (CCH) ¶ 11,229 (D.Kan.1986), 292
- Apperson v. E.I. du Pont de Nemours & Co.**, 41 F.3d 1103 (7th Cir.1994), 691, 695, 696
- Aqua Slide 'N' Dive Corp. v. Consumer Product Safety Commission, 569 F.2d 831 (5th Cir.1978), 363



- Arceneaux v. Lykes Bros. S.S. Co., 890 S.W.2d 191 (Tex.App.-Beaumont 1994), 720
- Arena v. Owens Corning, 74 Cal.Rptr.2d 580 (Cal.App. 1 Dist.1998), 292
- Armentrout v. FMC Corp., 842 P.2d 175 (Colo.1992), 264, 405
- Armstrong v. Cione, 69 Haw. 176, 738 P.2d 79 (Hawai'i 1987), 787
- Arnaud's Restaurant v. Cotter, 212 F.2d 883 (5th Cir.1954), 219
- Asbestos Litigation, In re, 832 A.2d 705 (Del. Supr.2003), 687
- Asbestos Litigation, In re, 829 F.2d 1233 (3rd Cir.1987), 490, 869
- Ashland Oil, Inc. v. Miller Oil Purchasing Co., 678 F.2d 1293 (5th Cir.1982), 459
- Atkins v. American Motors Corp., 335 So.2d 134 (Ala.1976), 587
- Auburn Mach. Works Co. v. Jones, 366 So.2d 1167 (Fla.1979), 401
- Auld v. Sears, Roebuck & Co., 261 A.D. 918, 25 N.Y.S.2d 491 (N.Y.A.D. 2 Dept.1941), 450
- Ault v. International Harvester Co., 117 Cal. Rptr. 812, 528 P.2d 1148 (Cal.1974), 291, 861
- Austin v. Will-Burt Co., 361 F.3d 862 (5th Cir.2004), 321
- Avner v. Longridge Estates, 272 Cal.App.2d 607, 77 Cal.Rptr. 633 (Cal.App. 2 Dist. 1969), 786
- Ayers v. Johnson & Johnson Baby Products Co., 117 Wash.2d 747, 818 P.2d 1337 (Wash.1991), 307, 313
- Ayers v. Township of Jackson, 106 N.J. 557, 525 A.2d 287 (N.J.1987), 951
- Azzarello v. Black Bros. Co., Inc., 480 Pa. 547, 391 A.2d 1020 (Pa.1978), 260, 261
- Bagley v. Mazda Motor Corp., 864 So.2d 301 (Ala.2003), 214
- Bailey v. Edward Hines Lumber, 308 Ill. App.3d 58, 241 Ill.Dec. 317, 719 N.E.2d 178 (Ill.App. 1 Dist.1999), 720
- Bainter v. Lamoine LP Gas Co., 24 Ill.App.3d 913, 321 N.E.2d 744 (Ill.App. 3 Dist.1974), 764
- Baker v. Chrysler Corp., 55 Cal.App.3d 710, 127 Cal.Rptr. 745 (Cal.App. 1 Dist.1976), 610
- Bakunas v. Life Pack, Inc., 531 F.Supp. 89 (E.D.La.1982), 603
- Balido v. Improved Machinery, Inc., 29 Cal. App.3d 633, 105 Cal.Rptr. 890 (Cal.App. 2 Dist.1972), 453, 566
- Balke v. Central Missouri Elec. Cooperative, 966 S.W.2d 15 (Mo.App. W.D.1997), 800
- Ballou v. Trahan, 133 Vt. 185, 334 A.2d 409 (Vt.1975), 108
- Banks v. ICI Americas, Inc., 264 Ga. 732, 450 S.E.2d 671 (Ga.1994), 269, 270
- Banks v. Koehring Co., 538 F.2d 176 (8th Cir.1976), 63
- Banner v. Hoffmann-La Roche Inc., 383 N.J.Super. 364, 891 A.2d 1229 (N.J.Super.A.D.2006), 325
- Barb v. Wallace**, 45 Md.App. 271, 412 A.2d 1314 (Md.App.1980), 111
- Barbee v. Rogers, 425 S.W.2d 342 (Tex.1968), 773
- Barker v. Lull Engineering Co.**, 143 Cal. Rptr. 225, 573 P.2d 443 (Cal.1978), 261, 263, 264, 272, 490
- Barnard v. Kellogg, 77 U.S. 383, 19 L.Ed. 987 (1870), 20
- Barnard v. Saturn Corp., a Div. of General Motors Corp., 790 N.E.2d 1023 (Ind.App. 2003), 614
- Barnes v. American Tobacco Co., 161 F.3d 127 (3rd Cir.1998), 951
- Barnes v. American Tobacco Co., 176 F.R.D. 479 (E.D.Pa.1997), 885, 894
- Barnes v. Harley-Davidson Motor Co., Inc., 182 Ga.App. 778, 357 S.E.2d 127 (Ga.App. 1987), 603
- Barnes v. Litton Indus. Products, Inc., 555 F.2d 1184 (4th Cir.1977), 446
- Barnette v. Dickens, 205 Va. 12, 135 S.E.2d 109 (Va.1964), 554
- Barr v. Rivinius, Inc., 58 Ill.App.3d 121, 15 Ill.Dec. 591, 373 N.E.2d 1063 (Ill.App. 3 Dist.1978), 610
- Barrash v. Dewalt Ind. Tool Co., 1999 WL 1486278 (N.D.Ga.1999), 38
- Barry v. Ivarson Inc., 249 So.2d 44 (Fla.App. 2 Dist.1971), 125
- Barry v. Quality Steel Products, Inc., 280 Conn. 1, 905 A.2d 55 (Conn.2006), 751
- Barry v. Quality Steel Products, Inc., 263 Conn. 424, 820 A.2d 258 (Conn.2003), 569
- Bartkewich v. Billinger, 432 Pa. 351, 247 A.2d 603 (Pa.1968), 398
- Barton v. Owen, 71 Cal.App.3d 484, 139 Cal. Rptr. 494 (Cal.App. 2 Dist.1977), 770
- Baryo v. Philip Morris U.S.A., Inc., 435 F.Supp.2d 961 (W.D.Mo.2006), 81
- Basko v. Sterling Drug, Inc., 416 F.2d 417 (2nd Cir.1969), 343, 522
- Bass v. Air Products & Chemicals, Inc., 2006 WL 1419375 (N.J.Super.A.D.2006), 252
- Bates v. Dow Agrosciences LLC, 544 U.S. 431, 125 S.Ct. 1788, 161 L.Ed.2d 687 (2005), 393, 395, 396
- Bates v. Richland Sales Corp., 346 Ill.App.3d 223, 281 Ill.Dec. 356, 803 N.E.2d 977 (Ill. App. 4 Dist.2004), 404
- Baughn v. Honda Motor Co., Ltd., 107 Wash.2d 127, 727 P.2d 655 (Wash.1986), 539
- Baxter v. Ford Motor Co.**, 168 Wash. 456, 12 P.2d 409 (Wash.1932), 83, 84
- Bayer v. Winton Motor Car Co., 194 Mich. 222, 160 N.W. 642 (Mich.1916), 782
- Becker v. IRM Corp., 213 Cal.Rptr. 213, 698 P.2d 116 (Cal.1985), 787
- Behnke v. Shiley, Inc., 169 Wis.2d 468, 487 N.W.2d 661 (Wis.App.1992), 629

- Bell v. Industrial Vangas, Inc., 179 Cal.Rptr. 30, 637 P.2d 266 (Cal.1981), 730
- Bell v. Montgomery Ward, 792 F.Supp. 500 (W.D.La.1992), 448
- Bell v. T.R. Miller Mill Co., Inc., 768 So.2d 953 (Ala.2000), 198
- Belling v. Haugh's Pools, Ltd.**, 126 A.D.2d 958, 511 N.Y.S.2d 732 (N.Y.A.D. 4 Dept. 1987), 402
- Bellotte v. Zayre Corp., 531 F.2d 1100 (1st Cir.1976), 577
- Bellotte v. Zayre Corp., 116 N.H. 52, 352 A.2d 723 (N.H.1976), 236, 237
- Bendectin Litigation, In re, 857 F.2d 290 (6th Cir.1988), 914
- Benitez v. Synthes, Inc., 199 F.Supp.2d 1339 (M.D.Fla.2002), 198
- Benjamin v. Wal-Mart Stores, Inc., 185 Or. App. 444, 61 P.3d 257 (Or.App.2002), 330
- Bennett v. Matt Gay Chevrolet Oldsmobile, Inc., 200 Ga.App. 348, 408 S.E.2d 111 (Ga.App.1991), 147
- Benson v. Tennessee Valley Elec. Co-op., 868 S.W.2d 630 (Tenn.Ct.App.1993), 198
- Berg v. Underwood's Hair Adaption Process, Inc., 751 F.2d 136 (2nd Cir.1984), 446
- Berkebile v. Brantly Helicopter Corp., 462 Pa. 83, 337 A.2d 893 (Pa.1975), 89, 259
- Berkovitz v. United States**, 486 U.S. 531, 108 S.Ct. 1954, 100 L.Ed.2d 531 (1988), 698, 704
- Berry v. Eckhardt Porsche Audi, Inc., 578 P.2d 1195 (Okla.1978), 405
- Beshada v. Johns-Manville Products Corp.**, 90 N.J. 191, 447 A.2d 539 (N.J. 1982), 468, 475, 485, 486, 489, 869
- Bexiga v. Havir Mfg. Corp., 60 N.J. 402, 290 A.2d 281 (N.J.1972), 289, 290, 566, 567
- Beyette v. Ortho Pharmaceutical Corp., 823 F.2d 990 (6th Cir.1987), 95
- Bigbee v. Pacific Tel. & Tel. Co., 192 Cal. Rptr. 857, 665 P.2d 947 (Cal.1983), 568
- Billy v. Consolidated Mach. Tool Corp., 432 N.Y.S.2d 879, 412 N.E.2d 934 (N.Y.1980), 730
- Birkliid v. Boeing Co., 127 Wash.2d 853, 904 P.2d 278 (Wash.1995), 731, 956
- Birmingham v. Fodor's Travel Publications, Inc., 73 Haw. 359, 833 P.2d 70 (Hawai'i 1992), 793
- Birmingham Asbestos Litigation, In re, 619 So.2d 1360 (Ala.1993), 719
- Bishop v. Faroy Sales, 336 So.2d 1340 (Ala. 1976), 125
- Bishop v. Firestone Tire & Rubber Co., 814 F.2d 437 (7th Cir.1987), 602
- Bishop v. GenTec Inc., 48 P.3d 218 (Utah 2002), 231
- Bitler v. A.O. Smith Corp.**, 391 F.3d 1114 (10th Cir.2004), 530, 534, 535
- Bittner v. American Honda Motor Co., 194 Wis.2d 122, 533 N.W.2d 476 (Wis.1995), 290, 297
- Black v. ACandS, Inc., 752 N.E.2d 148 (Ind. App.2001), 956
- Blackburn v. Dorta, 348 So.2d 287 (Fla.1977), 613
- Blair v. Martin's, 78 A.D.2d 895, 433 N.Y.S.2d 221 (N.Y.A.D. 2 Dept.1980), 451
- Blankenship v. Cincinnati Milacron Chemicals, Inc., 69 Ohio St.2d 608, 433 N.E.2d 572 (Ohio 1982), 731, 956
- Blaw-Knox Food & Chemical Equipment Corp. v. Holmes, 348 So.2d 604 (Fla.App. 4 Dist.1977), 597
- Bloomquist v. Wapello County, 500 N.W.2d 1 (Iowa 1993), 927
- Bloomsburg Mills, Inc. v. Sordoni Const. Co., 401 Pa. 358, 164 A.2d 201 (Pa.1960), 771
- Blue v. Drackett Products Co., 143 So.2d 897 (Fla.App. 3 Dist.1962), 545
- Blue v. Environmental Engineering, Inc., 215 Ill.2d 78, 293 Ill.Dec. 630, 828 N.E.2d 1128 (Ill.2005), 43, 260, 401
- Blue v. Environmental Engineering, Inc., 345 Ill.App.3d 455, 280 Ill.Dec. 957, 803 N.E.2d 187 (Ill.App. 1 Dist.2003), 597
- Bly v. Otis Elevator Co., 713 F.2d 1040 (4th Cir.1983), 339
- Bly v. Tri-Continental Industries, 663 A.2d 1232 (D.C.1995), 942
- BMW of North America, Inc. v. Gore, 517 U.S. 559, 116 S.Ct. 1589, 134 L.Ed.2d 809 (1996), 677, 678, 679, 680
- Boatland of Houston, Inc. v. Bailey**, 609 S.W.2d 743 (Tex.1980), 463
- Bocci v. Key Pharmaceuticals, Inc., 190 Or. App. 407, 79 P.3d 908 (Or.App.2003), 681
- Bocci v. Key Pharmaceuticals, Inc., 178 Or. App. 42, 35 P.3d 1106 (Or.App.2001), 681
- Bockrath v. Aldrich Chemical Co., Inc., 86 Cal.Rptr.2d 846, 980 P.2d 398 (Cal.1999), 521
- Bocre Leasing Corp. v. General Motors Corp., 621 N.Y.S.2d 497, 645 N.E.2d 1195 (N.Y. 1995), 642
- Boeken v. Philip Morris Inc., 26 Cal.Rptr.3d 638 (Cal.App. 2 Dist.2005), 80, 673
- Boelens v. Redman Homes, Inc., 748 F.2d 1058 (5th Cir.1984), 151
- Bohnstedt v. Robscon Leasing L.L.C., 993 P.2d 135 (Okla.Civ.App. Div. 1 1999), 339
- Bolduc v. Herbert Schneider Corp., 117 N.H. 566, 374 A.2d 1187 (N.H.1977), 775
- Boos v. Claude, 69 S.D. 254, 9 N.W.2d 262 (S.D.1943), 82
- Booth v. Black & Decker, Inc.**, 166 F.Supp.2d 215 (E.D.Pa.2001), 210
- Booth v. Mary Carter Paint Co., 202 So.2d 8 (Fla.App. 2 Dist.1967), 756
- Borel v. Fibreboard Corp., 493 F.2d 1076 (5th Cir.1973), 301, 864, 868, 870
- Bourgeois v. Garrard Chevrolet, Inc., 811 So.2d 962 (La.App. 4 Cir.2002), 452
- Bourne v. Marty Gilman, Inc., 452 F.3d 632 (7th Cir.2006), 236, 408
- Bowen v. Cochran**, 252 Ga.App. 457, 556 S.E.2d 530 (Ga.App.2001), 587, 603
- Bowling v. Heil Co., 31 Ohio St.3d 277, 511 N.E.2d 373 (Ohio 1987), 592, 612

- Boyer v. Empiregas, Inc. of Chillicothe, 734 S.W.2d 828 (Mo.App. W.D.1987), 292
- Boyl v. California Chemical Co.**, 221 F.Supp. 669 (D.Or.1963), **70**
- Boyle v. United Technologies Corp., 487 U.S. 500, 108 S.Ct. 2510, 101 L.Ed.2d 442 (1988), 709, 710
- Braniff Airways, Inc. v. Curtiss-Wright Corp., 411 F.2d 451 (2nd Cir.1969), 499
- Bravman v. Baxter Healthcare Corp., 984 F.2d 71 (2nd Cir.1993), 292, 343, 546, 630
- Bray v. Marathon Corp., 356 S.C. 111, 588 S.E.2d 93 (S.C.2003), 632
- Brazzell v. United States, 788 F.2d 1352 (8th Cir.1986), 346
- Breast Implant Product Liability Litigation, In re, 331 S.C. 540, 503 S.E.2d 445 (S.C. 1998), 769
- Brennaman v. R.M.I. Co., 70 Ohio St.3d 460, 639 N.E.2d 425 (Ohio 1994), 788
- Bressler v. Graco Children's Products, Inc., 43 F.3d 379 (8th Cir.1994), 512
- Brewer v. Dodson Aviation, 447 F.Supp.2d 1166 (W.D.Wash.2006), 514
- Brewer v. Payless Stations, Inc., 412 Mich. 673, 316 N.W.2d 702 (Mich.1982), 755
- Bridgestone/Firestone, Inc., In re, 288 F.3d 1012 (7th Cir.2002), 896
- Briscoe v. Amazing Products, Inc., 23 S.W.3d 228 (Ky.App.2000), 577
- Bristol-Myers Co. v. Gonzales, 548 S.W.2d 416 (TexCivApp.-Corpus Christi 1976), 448
- Britt v. Arvanitis, 590 F.2d 57 (3rd Cir.1978), 514
- Brocklesby v. United States, 767 F.2d 1288 (9th Cir.1985), 793
- Brody v. Overlook Hospital, 127 N.J.Super. 331, 317 A.2d 392 (N.J.Super.A.D.1974), 488
- Broin v. Philip Morris Companies, 641 So.2d 888 (Fla.App. 3 Dist.1994), 895
- Brooks v. Beech Aircraft Corp., 120 N.M. 372, 902 P.2d 54 (N.M.1995), 253, 482
- Brooks v. Chrysler Corp., 786 F.2d 1191 (D.C.Cir.1986), 802
- Brooks v. Howmedica, Inc., 273 F.3d 785 (8th Cir.2001), 393
- Brooks v. Lewin Realty III, Inc., 378 Md. 70, 835 A.2d 616 (Md.2003), 787
- Brooks v. Medtronic, Inc., 750 F.2d 1227 (4th Cir.1984), 345
- Brown v. Crown Equipment Corp., 181 S.W.3d 268 (Tenn.2005), 252, 259
- Brown v. E.I. duPont de Nemours & Co., 820 A.2d 362 (Del.Super.2003), 955
- Brown v. General Elec. Corp., 648 F.Supp. 470 (M.D.Ga.1986), 612
- Brown v. General Foods Corp., 117 Ariz. 530, 573 P.2d 930 (Ariz.App. Div. 1 1978), 192
- Brown v. Glade & Grove Supply, 647 So.2d 1033 (Fla.App. 4 Dist.1994), 311
- Brown v. Link Belt Corp., 565 F.2d 1107 (9th Cir.1977), 610
- Brown v. Sears, Roebuck & Co., 328 F.3d 1274 (10th Cir.2003), 236
- Brown v. Stone Mfg. Co., Inc., 660 F.Supp. 454 (S.D.Miss.1986), 520
- Brown v. Superior Court, 245 Cal.Rptr. 412, 751 P.2d 470 (Cal.1988), 481, 485, 490
- Brown v. United Blood Services, 109 Nev. 758, 858 P.2d 391 (Nev.1993), 489
- Brown v. United States Stove Co., 98 N.J. 155, 484 A.2d 1234 (N.J.1984), 567
- Browning-Ferris Industries v. Kelco Disposal, Inc., 492 U.S. 257, 109 S.Ct. 2909, 106 L.Ed.2d 219 (1989), 677
- Brown & Williamson Tobacco Corporation v. Gault, 280 Ga. 420, 627 S.E.2d 549 (Ga. 2006), 662
- Broyles v. Brown Engineering Co., 275 Ala. 35, 151 So.2d 767 (Ala.1963), 771
- Bruce v. Martin-Marietta Corp.**, 544 F.2d 442 (10th Cir.1976), 460, **462**
- Bruner v. Anheuser-Busch, Inc.**, 153 F.Supp.2d 1358 (S.D.Fla.2001), **409**
- Bruzga v. PMR Architects, P.C., 141 N.H. 756, 693 A.2d 401 (N.H.1997), 770
- Bryant v. Hoffmann-La Roche, Inc., 262 Ga. App. 401, 585 S.E.2d 723 (Ga.App.2003), 481, 483
- Bryant v. Technical Research Co., 654 F.2d 1337 (9th Cir.1981), 338
- Bryant v. Tri-County Elec. Membership Corp.**, 844 F.Supp. 347 (W.D.Ky.1994), **795**
- Budding v. SSM Healthcare System, 19 S.W.3d 678 (Mo.2000), 769
- Buell-Wilson v. Ford Motor Co., 46 Cal. Rptr.3d 147 (Cal.App. 4 Dist.2006), 853
- Buettner v. R.W. Martin & Sons, Inc., 47 F.3d 116 (4th Cir.1995), 136, 137, 143
- Bukowski v. CooperVision Inc., 185 A.D.2d 31, 592 N.Y.S.2d 807 (N.Y.A.D. 3 Dept. 1993), 345
- Bullara v. Checker's Drive-In Restaurant, Inc., 736 So.2d 936 (La.App. 3 Cir.1999), 222
- Burch v. Amsterdam Corp., 366 A.2d 1079 (D.C.1976), 307, 371
- Burch v. Sears, Roebuck and Co., 320 Pa.Super. 444, 467 A.2d 615 (Pa.Super.1983), 362, 605
- Burgess v. Eli Lilly & Co., 66 Ohio St.3d 59, 609 N.E.2d 140 (Ohio 1993), 512
- Burgos v. Lutz**, 128 A.D.2d 496, 512 N.Y.S.2d 424 (N.Y.A.D. 2 Dept.1987), **804**, 806
- Burke v. Dow Chemical Co., 797 F.Supp. 1128 (E.D.N.Y.1992), 345
- Burton v. R.J. Reynolds Tobacco Co., 397 F.3d 906 (10th Cir.2005), 544
- Busch v. Busch Const., Inc., 262 N.W.2d 377 (Minn.1977), 597
- Butaud v. Suburban Marine & Sporting Goods, Inc., 555 P.2d 42 (Alaska 1976), 592