Montana Significantly Revises Its Product Liability Laws

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5.15.23

On May 4, 2023, Montana changed its product liability laws when the Governor signed SB 216, which was effective upon passage and applies to claims that accrue on or after May 4, 2023. Among the changes is the adoption of a sealed container defense and the application of comparative negligence principles in strict liability actions. Montana also adopted a defense based on certain actions not being brought within 10 years. In addition, Montana adopted a rebuttable presumption with respect to a product's defective condition. A jury must be informed about this rebuttable presumption with respect to certain warnings claims, premarket licensing procedures or claims involving drugs and/or medical devices. The changes to the Montana Code are further described below.

- In situations where there are multiple defendants, a defendant in a strict liability or breach of warranty action may now assert, as a defense, that the damages of the claimant were caused in full or in part by a person with whom the claimant has settled or released from liability. See MCA § 27-1-703(6)(a) (as revised). Comparative negligence or fault defenses are also available in actions against sellers, even where there are not multiple defendants. See MCA § 27-1-719(4)(e) (discussing a seller's defenses in situations other than multiple defendant situations) (as revised).
- Among the defenses a seller can assert is that the product was unreasonably misused. The unreasonable misuse of a product has been defined to include the use of a product in a manner that contravenes express warnings or instructions, or if the user or consumer knew or should have known of the instructions or warnings. See MCA § 27-1-719(4)(b) (as revised). The defenses described in these first two bullet points, see MCA § 27-1-716(4), mitigate or bar recovery in accordance with the principles of comparative negligence set forth in MCA § 27-1-702. See MCA § 27-1-719(5) (as revised).
- A seller named as a defendant may also assert the following defenses against the claimant, user or consumer (or their legal representatives) or any person claiming damages by reason of injury to the user or consumer:
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        - a) the product could not have been made safer by the adoption of a reasonable alternative that was available at the time the product was first sold;
        - b) the action was not commenced within 10 years of the date on which the product was first sold or leased or otherwise placed into the stream of commerce, unless:
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                - the seller knowingly concealed the defect or knowingly concealed negligence in the product's construction, manufacture or assembly, if the matter so concealed directly resulted in the damages for which the action was brought;
                - the product was subject to a government-mandated recall, provided that the action is limited to the extent that the subject of the product liability action and the underlying reason for the recall are the same;
                - the product liability action is brought with respect to a product that is real property or an improvement to real property;
                - the defect alleged is that the product is unreasonably dangerous because it causes a respiratory or malignant disease with a latency of more than 10 years and the seller at issue is also the manufacturer of the product; or

- the seller or person who first placed the product into the stream of commerce has stated in a written warranty or an advertisement to the public that the product has an expected useful life for a period certain that is more than 10 years, in which case an action that is not otherwise barred must be brought no later than 2 years following the expiration of that period certain.

See MCA § 27-1-719(6) (as revised).

- In product liability actions, there is a rebuttable presumption that the product was not in a defective condition that was unreasonably dangerous, and that the manufacturer or seller was not negligent. Juries must be informed of this presumption if, at the time the product was first sold, leased or otherwise placed into the stream of commerce:
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    - the product's design, labeling, warning or instructions complied with mandatory safety statutes, etc., that were applicable to the product at issue at the time of its manufacture and that address the product risk that allegedly caused harm;
    - the product was subject to premarket licensing or approval by the federal or state government, the seller complied with all procedures and the product was approved or licensed by the government; or
    - the product was:
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        - a drug medical device;
        - approved for safety and efficacy by the United States Food and Drug Administration ("FDA");
        - in compliance, in addition to its labeling, with the FDA's approval at the time it left the seller's control; and
        - not sold in the United States after the effective date of any order of the FDA to remove the product from the market or to withdraw its approval.

See MCA § 27-1-719(7) (as revised).

- A product liability action[1] cannot be commenced or maintained against a seller who is not also a manufacturer unless the claimant also proves that:
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    - the seller actually exercised substantial control over some aspect of the product that was a proximate cause of the claimant's damages;
    - the seller altered, modified or installed the product after it left the manufacturer's possession in a manner that was not authorized or requested by the manufacturer, the alteration, modification or installation was not performed in compliance with the manufacturer's instructions, and was a direct cause of the claimant's damages;
    - the seller failed to exercise reasonable care with regard to the assembly, maintenance, service or repair of the product, or in conveying the manufacturer's labels, warnings, or instructions and this failure was a proximate cause of the claimant's damages;
    - the manufacturer, despite the good-faith exercise of due diligence, cannot be identified;
    - personal jurisdiction over the manufacturer cannot be obtained in the state;
    - the manufacturer has been adjudicated bankrupt and a judgment is not otherwise recoverable from the manufacturer's bankruptcy estate; or

- the seller had actual knowledge that the product was defective when the seller placed the product into the stream of commerce and the defect was a proximate cause of the damages the claimant seeks.

See MCA § 27-1-719(8) (as revised).

Based on the foregoing, when pursuing targets based upon Montana's product liability law, subrogation practitioners should be aware that there are changes in the law. In addition, subrogation practitioners should familiarize themselves with these changes and proceed accordingly.

[1] The phrase "product liability action" is defined as any action brought against a manufacturer or seller, regardless of the substantive legal theory or theories on which the action is brought, for or on account of personal injury, death or property damage caused by or resulting from the manufacturer, construction, design, formula, installation, preparation, assembly, testing, packaging, labeling or the sale of any product, the failure to warn or protect against a danger or hazard in use, misuse, or unintended use of any product, or the failure to provide proper instructions for the use of any product. See MCA § 27-1-719(9)(c) (as revised).