petence in product safety, and should exercise it Exposure to a moving part or dangerous chemical is fairly obvious, so is exposure to electrical fault, in most cases Safe packaging and distributing of products should pose no problem for a qualified safety engineer, he should be called in to help

Bases for claims

The two bases upon which manufacturers of defective products are likely to be sued are negligence and breach of warranty, express or implied * Small as well as large companies are vulnerable to these types of injury claims

Manufacturers' responsibility for negligence It is now generally recognized that manufacturers of goods may have a responsibility to the consumer even though no direct relationship exists between them The duty is based on the fact that the manufacturer has made or sold goods which are likely to come into the hands of another and do harm if they are defective

The consumer usually has a cause of action in negligence against the manufacturer, if

- There was a defect in the design or manufacture of the product which made it unreasonably dangerous, and
- The condition existed at the time that it left the seller's control, and
- The defect was the direct cause of the injury

A cause of action in negligence may result from

- Failure to test to discover defects
- Inadequate or misleading directions for use
- Failure to give adequate warnings of possible danger to the user (In many cases it would be prudent to warn of the dangers of improper use)
- Failure to explore the consequences of normal wear, tear and abuse

Manufacturers' responsibility for warranty There are several types of warranties imposed on (or assumed by) manufacturers A warranty may be implied by law simply by virtue of the sale of the product, usually referred to as warranty of fitness and warranty of merchantability Warranties may also be implied from the facts surrounding a transaction An example of this might be wording on labels, instruction pamphlets and even sales literature, any one of which might be found to imply warranties even though none were intended And of course, there is always the obligation to abide by an obligation expressly assumed *Sometimes these express* warranties result in exposures unanticipated by the maker

Strict liability of manufacturers. Selling of defective food is generally credited with prompting the Pure Food and Drug Acts of 1906 A majority of courts impose strict liability in cases involving defective food and drink The strict liability rule is rationalized by the contention that the burden of accidental injuries caused by defective products should be placed upon the seller because he is best able to distribute the loss to the general public by means of insurance or price structure One prominent writer on tort law has suggested that imposition of strict liability for products amounts to a system of levying damages as a part of the cost of doing business

After beginning with food and drink and their containers, the courts have since extended the doctrine to other products for use on the human body, such as shampoo, detergents, permanent wave solutions and drugs

Cases of historic importance have been decided in the 1960's They have applied the strict liability to automobiles, power tools, airplanes, tires, furniture and consumer chemicals These cases have discarded the old requirement of foreseeability, have outright rejected attempted disclaimers by the seller, and without adhering to conventional theories of tort law and contract law, have declared the seller strictly liable in tort

---

*This section and the next are based on *Product Liability—What It Is, and What You Can Do About It*, Kemper Insurance Co , Chicago, 1967 (See "References ")