

# Introduction

The third edition of this DRI compendium describes the law in all 50 states and the District of Columbia, plus 12 foreign countries and the European Union, on two of the most important legal subjects in product liability.

For decades, the pre-sale duty to warn and instruct has been and continues to be the basis of much litigation against manufacturers and product sellers and has provided challenges for many defense lawyers trying to defend such cases. Professor David Owen, in his *Products Liability Law* handbook (Third Edition), said:

Lurking within the duty to warn lies a paradox: The duty to warn is at once the most important, yet least effective, duty in the law of products liability. \*\*\*\* Its ineffectiveness springs from how easy it is to assert a warning claim, even if unjustified; how elusive such claims are to adjudicate rationally; and what little impact warnings have on product safety—since mounting studies reveal that they often are ignored.

A manufacturer who doesn't do sufficient analysis about what might be effective and defensible warnings and instructions might wind up with all their products being deemed defective. These products then might need to be recalled.

The second duty is this compendium involves a manufacturer's post-sale duty to warn which has served as the basis for many awards of punitive damages and has been referred to by Professors Henderson and Twerski, Reporters to the American Law Institute's Restatement of Torts (Third): Products Liability, as "the most expansive area in the law of products liability."

In addition to common law post-sale duties, we have seen ever expanding regulatory requirements in the United States and around the world to report safety problems to government agencies and to possibly take corrective actions such as recalls to fix the affected products.

A manufacturer that makes an inappropriate decision involving post-sale duties anywhere in the world can incur significant fines from government agencies, bad publicity, new accidents, an increased risk of liability for compensatory and punitive damages, decreased goodwill with suppliers and vendors, decreased sales to consumers, and the potential of incurring huge costs for recalls and other corrective actions.

The bottom line is that a manufacturer whose products are involved in accidents where the injured party claims a failure to warn or whose warning labels are deemed defective by a jury has a difficult decision to make concerning whether to recall its products or revise its warning labels on products already in the hands of customers.

Therefore, the subject of pre-sale warnings is inextricably intertwined with the post-sale duty to warn or duty to fix a defective product. The difference is when does the duty to warn arise—before or after sale?

This compendium was assembled to give readers a comprehensive summary of the current U.S. common law and international common and civil law and regulatory law in these two subject areas. Recognizing that product liability has become global and that accidents, court rulings, regulatory activities, and settlements anywhere in the world can be easily discovered, it is clear that manufacturers and product sellers must consider all geographical areas in which they sell their products when trying to decide on how to comply with pre-sale and post-sale duties and how to defend claims and litigation based on these duties.

This compendium does not contain a comprehensive review of preventive techniques that could be employed by manufacturers to meet these pre-sale and post-sale duties. And, there is no extensive discussion of U.S. regulatory laws. Next year, DRI plans to publish another compendium that will gather articles on these subjects.

In order to help readers identify jurisdictions that made substantive changes in the law, the compendium starts out with a summary of changes since 2012.

I want to thank former and current DRI Product Liability Chairs Anne Talcott and Nick Pappas for allowing me to help with this effort and thank all of the authors who contributed to this compendium.

Lastly, I want to thank the staff at DRI for putting these chapters in a readable form. I hope you find this compendium useful in your daily practice.

**Kenneth Ross**

Editor-in-Chief

Product Liability Compendium: *Warnings, Instructions and Recalls*