

§ 99B-6. Claims based on inadequate design or formulation.

(a) No manufacturer of a product shall be held liable in any product liability action for the inadequate design or formulation of the product unless the claimant proves that at the time of its manufacture the manufacturer acted unreasonably in designing or formulating the product, that this conduct was a proximate cause of the harm for which damages are sought, and also proves one of the following:

- (1) At the time the product left the control of the manufacturer, the manufacturer unreasonably failed to adopt a safer, practical, feasible, and otherwise reasonable alternative design or formulation that could then have been reasonably adopted and that would have prevented or substantially reduced the risk of harm without substantially impairing the usefulness, practicality, or desirability of the product.
- (2) At the time the product left the control of the manufacturer, the design or formulation of the product was so unreasonable that a reasonable person, aware of the relevant facts, would not use or consume a product of this design.

(b) In determining whether the manufacturer acted unreasonably under subsection (a) of this section, the factors to be considered shall include, but are not limited to, the following:

- (1) The nature and magnitude of the risks of harm associated with the design or formulation in light of the intended and reasonably foreseeable uses, modifications, or alterations of the product.
- (2) The likely awareness of product users, whether based on warnings, general knowledge, or otherwise, of those risks of harm.
- (3) The extent to which the design or formulation conformed to any applicable government standard that was in effect when the product left the control of its manufacturer.
- (4) The extent to which the labeling for a prescription or nonprescription drug approved by the United States Food and Drug Administration conformed to any applicable government or private standard that was in effect when the product left the control of its manufacturer.
- (5) The utility of the product, including the performance, safety, and other advantages associated with that design or formulation.
- (6) The technical, economic, and practical feasibility of using an alternative design or formulation at the time of manufacture.
- (7) The nature and magnitude of any foreseeable risks associated with the alternative design or formulation.

(c) No manufacturer of a product shall be held liable in any product liability action for a claim under this section to the extent that it is based upon an inherent characteristic of the product that cannot be eliminated without substantially compromising the product's usefulness or desirability and that is recognized by the ordinary person with the ordinary knowledge common to the community.

(d) No manufacturer of a prescription drug shall be liable in a product liability action on account of some aspect of the prescription drug that is unavoidably unsafe, if an adequate warning and instruction has been provided pursuant to G.S. 99B-5(c). As used in this subsection, "unavoidably unsafe" means that, in the state of technical, scientific, and medical knowledge generally prevailing at the time the product left the control of its manufacturer, an aspect of that product that caused the claimant's harm was not reasonably capable of being made safe.

(e) Nothing in this section precludes an action against a manufacturer in accordance with the provisions of G.S. 99B-5. (1995, c. 522, s. 1.)