

## TABLE OF CONTENTS

1	Product Liability .....	9
1.1	Overview .....	9
1.2	Statute .....	10
1.2.1	Background .....	10
1.2.2	Scope of the Statute .....	11
1.2.3	Statutory Requirements .....	12
1.2.4	Statute of Limitations.....	14
1.2.5	Statute of Repose .....	15
1.3	A New Case (From the Plaintiff's Attorney Perspective) .....	16
1.4	The New Case (From the Defense Attorney Perspective).....	19
2	Theories of Liability .....	21
2.1	Design.....	21
2.2	Manufacturing .....	23
2.3	Breach of Implied Warranty.....	24
2.4	Breach of Express Warranty .....	26
2.5	Failure to Warn.....	27
2.5.1	Obvious Danger Doctrine .....	27
2.5.2	Sophisticated Users .....	28
2.6	Non-Manufacturing Sellers .....	28
2.7	Post-Sale Duty to Warn .....	29
2.8	Consumer Protection Statutes .....	30
2.9	Other Theories .....	31
2.9.1	Duty to Recall .....	31
2.9.2	Fraudulent Misrepresentation .....	32
2.9.3	Negligent Infliction of Emotional Distress .....	32
3	Causation .....	34
3.1	Standard .....	34
3.2	Instructions.....	34
3.3	Implied Warranty Claims.....	35
3.4	Common Issues .....	36
3.4.1	Crashworthiness & Apportionment of Fault .....	36
3.4.2	Threshold for Noneconomic Damages and Small Cases ...	37
3.4.3	Seat Belt Rule.....	37
3.4.4	Survivability in Catastrophic accidents .....	38
4	Damages.....	39
4.1	Collectible.....	39
4.2	Cap on Noneconomic Damages.....	39
4.2.1	Knowledge of Defect.....	41

4.2.2	Gross Negligence .....	42
4.3	Economic Damages .....	43
4.3.1	Prior Medical Costs .....	43
4.3.2	Future Medical Costs.....	43
4.3.3	Lost Earnings Capacity .....	44
4.3.4	Other Economic Damages .....	45
4.4	Loss of Consortium.....	45
4.5	Wrongful Death Claims .....	45
4.6	Collateral Source Rule .....	46
5	Pleading & Jurisdiction.....	49
5.1	Pleading .....	49
5.1.1	Generally.....	49
5.1.2	Federal Standard.....	50
5.2	Subject Matter Jurisdiction.....	50
5.3	Personal Jurisdiction .....	52
5.3.1	General Jurisdiction .....	52
5.3.2	Specific Jurisdiction .....	53
6	Interstate, Intrastate, and International Issues .....	56
6.1	Generally .....	56
6.2	Conflicts of Laws .....	56
6.3	Statute of Limitations & Borrowing Statute.....	57
6.4	Forum Non Conveniens .....	58
6.5	International Litigation .....	61
6.6	Importers .....	61
7	Discovery .....	63
7.1	Scope of Discovery .....	63
7.1.1	Legal Standards.....	63
7.1.2	Temporal Scope.....	64
7.1.3	Substantive Scope .....	65
7.2	Confidentiality & Protective Orders .....	65
7.2.1	Scope of Discovery .....	66
7.2.2	What may be Protected .....	66
7.2.3	Burden of Establishing Confidentiality.....	66
7.2.4	Procedure and Mechanism to Challenge Confidentiality ..	67
7.2.5	Sharing Protective Orders .....	67
7.2.6	Second Tiers of Confidentiality .....	69
7.2.7	Treatment of Confidential Documents at Trial.....	70
7.2.8	Return of Documents.....	70
7.3	Initial Disclosures .....	71

7.4	Interrogatories .....	71
7.5	Requests for Production .....	72
7.6	Electronically Stored Information.....	73
7.7	Depositions.....	74
7.8	Corporate Designees.....	75
7.9	Discovery of Evidence from Related Entities.....	77
7.10	Other Similar Incidents.....	78
7.11	Inspection of Evidence.....	79
7.11.1	Ownership of Evidence .....	80
7.11.2	Inspection Protocols.....	81
7.11.3	Spoliation .....	82
7.11.4	Inspections of Property .....	84
7.12	Obtaining Out of State Evidence.....	85
7.13	Obtaining Michigan Discovery for Out of State Cases .....	86
8	Experts .....	88
8.1	Expert Reports.....	88
8.1.1	Rules & Timing.....	88
8.1.2	Non-retained Experts.....	89
8.1.3	Retained Experts .....	90
8.2	<i>Daubert</i> Challenges .....	91
8.2.1	Generally.....	91
8.2.2	Sixth Circuit.....	92
8.2.3	Michigan .....	93
8.2.4	Strategy & Planning Ahead .....	96
8.3	Non-Testifying Experts .....	97
8.4	Defect Experts .....	98
8.5	Life Care Planners .....	99
8.6	Vocational Rehabilitation Experts.....	100
8.7	Life Expectancy .....	101
8.8	Economists .....	101
9	Special Problems .....	103
9.1	Feasible Alternative Design .....	103
9.2	Risk Utility & Consumer Expectations .....	104
9.3	Alteration.....	105
9.4	Misuse .....	106
9.5	Inherently Dangerous Products .....	107
9.6	Simple Tools.....	108
9.7	Assumption of Risk.....	108
9.8	Multi-District Litigation .....	109

9.9	Preemption .....	110
9.10	Governmental Standards .....	111
9.11	The Vaccine Injury Compensation Program.....	113
9.12	Drug Immunity .....	114
10	Case Types.....	117
10.1	Airbags.....	117
10.2	Roof Crush .....	117
10.3	Post Collision Fuel Fed Fires.....	118
10.4	Other Automotive Products.....	118
10.5	Tires .....	118
10.6	Child Restraint Systems.....	119
10.7	Ladders.....	119
10.8	Consumer Goods .....	119
10.9	Metallurgical Failures .....	119
10.10	Novel Products .....	120
	Appendix A: Michigan Product Liability Statutes .....	122
	Appendix B: Michigan Consumer Protection Act (Excerpt) .....	130