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Keith Moheban

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Hodder v. Goodyear: End of the Road for the Useful Life Defense?

INTRODUCTION

In December 1981, service station mechanic Dale Hodder was replacing a tire on a logging truck when the tire’s rim exploded, seriously injuring him. The tire rim, manufactured by Goodyear Tire and Rubber Company, was an old model discontinued years earlier when Goodyear realized the danger of explosion when installing the rim. Goodyear publicized the dangers in using the rim, but Hodder claimed he did not see the warnings and sued Goodyear for failure to warn. Goodyear asserted, among other defenses, Minnesota’s untested useful

1. The tire rim was a model KWX multi-piece assembly made by Goodyear in 1955. Hodder v. Goodyear Tire & Rubber Co., 426 N.W.2d 826, 829 (Minn. 1988), petition for cert. filed, 57 U.S.L.W. 3296 (U.S. Oct. 14, 1988) (No. 88-626). The multi-piece rim design was common before the development of the single-piece rim in the 1950s. Although the rim involved in Hodder’s accident was corroded and worn, there were indications in the record that the rim was still serviceable. Id.

2. Goodyear discontinued manufacture of the KWX model in 1962, seven years after it learned of the possible pressurized separation of the multi-piece rim. Id. at 829.

3. Goodyear conducted an extensive campaign to warn of the dangers of the multi-piece rim, but did not recall the product. The manufacturer did, however, discuss the possibility of recall with the National Highway Safety Administration. Brief for Dale Hodder at 8, Hodder v. Goodyear Tire & Rubber Co., 426 N.W.2d 826 (Minn. 1988) (Nos. C3-87-419, C2-97-511).

4. Failure to warn is a violation of the manufacturer’s duty of care under product liability law. AMERICAN LAW OF PRODUCTS LIABILITY § 1.13 (3d ed. 1987). A manufacturer must exercise due care to avoid unreasonable risks of harm to persons using the product for foreseeable purposes. Id. This duty of care extends to all phases of the manufacturing process, including design, choice of materials, tests to discover potential hazards, and warnings provided to users. Id.

Hodder withdrew his original claim for manufacturing defect and the jury found no design defect in the rim. Hodder, 426 N.W.2d at 829.

5. Goodyear also contended it had no continuing duty to warn, primarily because it had no knowledge of the danger at the time of sale, and that post-sale knowledge of danger is not a basis for a duty to warn. Hodder, 426 N.W.2d at 832-33. In the alternative, Goodyear argued that it met its duty to warn by

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life statute, which makes expiration of a product's useful life prior to an accident "a defense" to any subsequent claim. The Minnesota Supreme Court held for Hodder even though the jury found that the useful life of the rim had expired before the accident. The court determined that the statute made expiration of a product's useful life a factor relevant to determining the comparative fault between the user and the manufacturer.

Hodder v. Goodyear Tire & Rubber Co. is the first case in the nation making a substantive interpretation of a statute incorporating the useful life concept. The central issue in Hodder was whether Minnesota's legislature intended the statute to make expiration of a product's useful life evidence of the user's fault or to bar the user's claim altogether. Holding that the statute did not bar claims, the court found the statute ambiguous and incoherent and questioned the practicality of the useful life concept. The Hodder decision is significant nationally because the Minnesota statute was a model for useful life statutes extensively advertising the dangers of the KWX rim through dealer contact, brochures, films, and other warnings. Id. at 834. Goodyear argued also that failure to warn was not the proximate cause of Hodder's injuries, because Hodder should have been aware of the dangers. Id. at 833.

The trial court held for Hodder on all these issues and the Minnesota Supreme Court affirmed, reasoning that Goodyear's decision to continue selling K-rims despite knowledge of the dangers and Goodyear's voluntary efforts to warn gave rise to a continuing duty to warn. Id. at 832-34. The court also upheld the jury's findings that Goodyear's efforts to warn were inadequate and that failure to warn was the proximate cause of the accident. Id.

The court also considered Goodyear's arguments concerning allocation of fault among Goodyear and the other defendants, as well as a variety of other issues relating to evidence, punitive damages, attorney's fees, and pre-verdict interest. Id. at 835, 838-41. Hodder also appealed on the issues of post-verdict interest and allocation of the compensatory verdict. Brief for Dale Hodder at 47-49, Hodder v. Goodyear Tire & Rubber Co., 426 N.W.2d 826 (Minn. 1988) (Nos. C3-87-419, C2-87-511).

The court awarded $3,368,916 in compensatory damages and $4,000,000 in punitive damages, but remanded the case to make minor adjustments in allocation of the award. Hodder, 426 N.W.2d at 841. Goodyear's petition for certiorari to the United States Supreme Court on October 14, 1988, argued that the punitive damages award violated Goodyear's due process rights under the fourteenth amendment. 57 U.S.L.W. 3296 (U.S. Oct. 14, 1988) (No. 88-626).

6. MINN. STAT. § 604.03 (1986).
7. Id.
8. Hodder, 426 N.W.2d at 829.
9. Id. at 832.
11. Use of the word bar in this Comment connotes an absolute prohibition against bringing a product liability claim.
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in other states. The court's observations in Hodder thus apply to most useful life statutes.

This Comment analyzes Hodder to determine whether the court interpreted the statute correctly and whether the court correctly implied that useful life may not be a workable concept. Part I reviews the common-law treatment of prolonged safe use of a product as a consideration in determining liability and discusses the events preceding the enactment of the useful life statute. Part II details the holding in Hodder. Part III analyzes the holding and argues that the court reached the correct result even though it incorrectly found the statute ambiguous. Part IV addresses the problems with Minnesota's useful life statute that became evident in Hodder and offers possible solutions. The Comment concludes that careful drafting can produce a workable useful life statute and proposes a model statute that aims to resolve some of the problems that the Minnesota Supreme Court encountered in Hodder.

I. HISTORICAL TREATMENT OF TIME-LAPSE IN PRODUCTS LIABILITY CASES

Throughout the development of product liability law, courts have refined the law in an effort to allocate properly the responsibility between the manufacturer and the user when a product causes injury. Through the rise and fall of the privity rule, the advent of strict liability, and the assortment of

12. This Comment uses the phrase manufacturer liability broadly, recognizing that product liability has been extended in many jurisdictions to retail sellers, distributors, designers, and others. See AMERICAN LAW OF PRODUCTS LIABILITY §§ 1:14-15 (3d ed. 1987).

13. The United States Circuit Court of Appeals for the Eighth Circuit defined the rule of privity as the principle that "a contractor, manufacturer, or vendor is not liable to third parties who have no contractual relations with him for negligence in the construction, manufacture, or sale of the article he handles." Huset v. J.I. Case Threshing Mach. Co., 120 F. 865, 868 (8th Cir. 1903); see also Winterbottom v. Wright, 10 M & W 109, 152 Eng. Rep. 402 (1842) (one of earliest cases establishing rule of privity).

Minnesota began its abandonment of the privity rule long before the leading cases of Macpherson v. Buick Motor Co., 217 N.Y. 382, 389, 111 N.E. 1050, 1054 (1916), and Henningsen v. Bloomfield Motors, 32 N.J. 355, 161 A.2d 69 (1960). In Schubert v. J.R. Clark Co., 49 Minn. 331, 51 N.W. 1103 (1892), the Minnesota Supreme Court held that a ladder manufacturer had a duty of care in tort to the employee of the purchaser of the ladder, irrespective of any contract. Id. at 340, 51 N.W. at 1105. Much later, the court abolished privity in contract with respect to implied warranties, see Beck v. Spindler, 256 Minn. 543, 551, 99 N.W.2d 670, 672-83 (1959), and express warranties, see McCormack v. Hanksraft Co., 278 Minn. 322, 340-41, 154 N.W.2d 468, 503-05 (1967).
common-law and statutory defenses against liability, courts and legislatures have attempted to develop a system that generally equates liability with fault. In dealing with liability for older products, many courts find that when a consumer uses a product safely for a prolonged period of time, the user's conduct rather than a product defect is the more likely cause of a subsequent accident. These courts reason that if a defect makes the product dangerous, an accident will occur either as soon as a consumer uses the product or early in the product's life. Prolonged use of the product also provides more opportunity for the user's contributory negligence.

Common law originally provided that prolonged safe use of a product conclusively proved that the product was not defective. Commentators now reject such a conclusive presump-

15. See infra notes 27-30 and accompanying text.
16. The fault principle has ancient roots, but perhaps was stated most clearly in Brown v. Kendall, 60 Mass. (6 Cush.) 292, 295-96 (1850) (establishing that plaintiff must show that defendant acted with unlawful intention or that defendant otherwise was at fault). See generally Rabin, The Historical Development of the Fault Principle: A Reinterpretation, 15 GA. L. REV. 925, 925-28 (1981) (outlining traditional analysis of development of fault principle, but suggesting a different genesis).
17. Acknowledging the drawbacks of this inference, the New York Court of Appeals endorsed the idea, stating: We are willing to sacrifice the small percentage of meritorious claims that might arise after the statutory period has run in order to prevent the many unfounded suits that would be brought and sustained against manufacturers ad infinitum. Surely an injury resulting from a defective product many years after it has been manufactured, presumptively at least, is due to operation and maintenance. . . . [W]e must make that presumption conclusive.
18. See infra note 22.
tion, however, because many defects do not become obvious or cause an accident until the user subjects the product to certain conditions.\textsuperscript{21} To provide flexibility for such cases, courts adjusted the common law to make prolonged use of a product only one factor in determining whether a defect was the proximate cause of the accident.\textsuperscript{22}

A. TREATMENT OF TIME-LAPSE IN MINNESOTA COMMON LAW

Minnesota courts are among those holding that prolonged safe use of a product gives rise to an inference that the product was not defective.\textsuperscript{23} In \textit{Kerr v. Corning Glass Works},\textsuperscript{24} for example, the court found that a consumer's use of a glass baking dish for at least seven months supported an inference that the user's handling of the dish, rather than a defect, caused the dish to explode in an oven.\textsuperscript{25} Lacking any evidence of a defect, the court denied the claim.\textsuperscript{26}

Minnesota courts also acknowledge affirmative defenses to product liability based on more tangible evidence of the user's improper conduct. Liability thus exists only when the consumer uses the product as intended or as reasonably foreseen

\begin{itemize}
\item \textsuperscript{21} See Schwartz, \textit{New Products, Old Products, Evolving Law, Retroactive Law}, 58 N.Y.U. L. Rev. 796, 844-45 (1983). Professor Schwartz uses the example of an automobile bumper that has a defect which makes it not crashworthy. This defect likely will not be noticed until the automobile's first crash, which could occur late in the product's life. Other product defects actually might \textit{require} the passage of time to become evident; improperly labeled drugs, for example, may cause diseases whose symptoms do not surface for many years. Barring old claims on these kinds of products results in complete immunity for the manufacturer. \textit{Id.}
\item \textsuperscript{22} Prolonged use of a product was held to be "one factor, albeit an important one, in the determination of the factual issue whether the [defect or] negligent manufacture proximately caused the harm." \textit{Pryor}, 262 F.2d at 675; see also Frederick v. American Export Lines, Inc., 227 F.2d 450, 452 (2d Cir. 1955) (holding that "[t]he passage of time confers no immunity upon a negligent wrongdoer; but it has relevance to the likelihood, depending upon the circumstances of a particular case, that deterioration due to use, perhaps accelerated by misuse, will be mistaken by a jury for a defect due to negligent manufacture or fabrication"), \textit{cert. denied}, 350 U.S. 989 (1956).
\item \textsuperscript{23} See Kerr v. Corning GlassWorks, 284 Minn. 115, 119, 169 N.W.2d 587, 589 (1969); see also Cerepak v. Revlon, Inc., 294 Minn. 268, 271, 200 N.W.2d 33, 38 (1972) (following \textit{Kerr} in principle but distinguishing its facts); Holkestad v. Coca-Cola Bottling Co., 288 Minn. 249, 255-56, 180 N.W.2d 880, 885 (1970) (upholding judgment against beverage bottling company, distinguishing \textit{Kerr} because insufficient time had passed to give rise to inference that plaintiff's conduct caused accident).
\item \textsuperscript{24} 284 Minn. 115, 169 N.W.2d 587 (1969).
\item \textsuperscript{25} \textit{Id.} at 118-19, 169 N.W.2d at 589.
\item \textsuperscript{26} \textit{Id.}
\end{itemize}
by the manufacturer, and the manufacturer can escape liability when using the product involves a reasonable and obvious risk. Proof that the user mishandled, modified, or failed to perform proper maintenance on the product may provide a defense. A court also may find that a user assumes the risk of injury if he consents to or knows of the defect.

27. A product is defective, and the manufacturer consequently liable, only if the product "fails to perform reasonably, adequately and safely the normal, anticipated or specified use to which the manufacturer intends that it be put, and it is unreasonably dangerous to the plaintiff." Daleiden v. Carborundum Co., 438 F.2d 1017, 1021 (8th Cir. 1971) (applying Minnesota law). In Holm v. Sponco Mfg., 324 N.W.2d 207 (Minn. 1982), however, the Minnesota Supreme Court may have broadened manufacturer's liability by holding that:

[A] manufacturer is obligated to exercise that degree of care in this plan or design so as to avoid any unreasonable risk of harm to anyone who is likely to be exposed to the danger when the product is used in the manner for which the product was intended, as well as an unintended yet reasonably foreseeable use. Id. at 212 (quoting Micallef v. Miehle Co., 39 N.Y.2d 376, 385-86, 348 N.E.2d 571, 577-78, 384 N.Y.S.2d 115, 120-21 (1976)). The language in Holm appears to extend a manufacturer's obligation beyond anticipated use to include "unintended yet reasonably foreseeable use." Id.

28. Holm, 324 N.W.2d at 212. The plaintiff in Holm was injured severely when he contacted a high voltage power line while operating an aerial ladder manufactured by the defendant. Id. at 209. When the plaintiff claimed that the ladder was defective in design because it was not insulated and equipped with safety devices to guard against electrocution, the defendant argued that a manufacturer has no duty to guard against hazards which should be obvious to the user. Id. at 208 (citing Halvorson v. American Hoist & Derrick Co., 307 Minn. 48, 57, 240 N.W.2d 303, 308 (1976)). In overruling Halvorson, the court established a "reasonable care" balancing test in which the manufacturer has a duty to design products that do not present unreasonable risks to the user, and the user's duty includes recognition of obvious risks. The import of this change is that liability for truly defective products will not be excused merely by virtue of being obvious, and both the manufacturer and the user have an incentive to use care. Holm, 324 N.W.2d at 211-13.

29. In a product liability case involving a manufacturer's failure to warn a user of dangers inherent in use of the product, the duty to warn depends on the foreseeability of the injury; the manufacturer need not foresee improper use of the product resulting from improper maintenance. Westerberg v. School District 792, 276 Minn. 1, 7-9, 148 N.W.2d 312, 316-17 (1967). Later cases refined Westerberg, providing that a duty to warn may exist when the manufacturer should anticipate the user's improper maintenance and "the manufacturer has no reason to believe that users will comprehend that risk." Germann v. F.L. Smithe Mach. Co., 395 N.W.2d 922, 925 (Minn. 1985).

Courts also recognize modification of a product as a product liability defense. See Westerberg, 276 Minn. at 9, 148 N.W.2d at 317 (citing Tuttle v. U.S. Slicing Mach. Co., 335 F.2d 63, 64 (4th Cir. 1964) (per curiam) (holding that user's removal of safety grill on meat grinder defeated claim against manufacturer)).

30. Armstrong v. Mailand, 284 N.W.2d 343, 351-53 (Minn. 1979) (holding that fireman killed by explosion of allegedly defective gas tank assumed risk
B. THE PRODUCT LIABILITY CRISIS AND STATUTORY REFORM

Although these common-law defenses to products liability evolved to protect manufacturers when a defect probably was not the cause of the accident, popular perception of a product liability crisis\(^{31}\) motivated consideration of additional limits on liability. Manufacturers complained that strict product liability resulted in an avalanche of product liability claims, creating uncertainty as to the manufacturer’s potential liability.\(^{32}\) Manufacturers further claimed that this uncertainty led to steep liability insurance rate increases and in some cases made insur-

\(^{31}\) The nature of the “product liability crisis” was studied exhaustively by the Interagency Task Force on Product Liability, organized by the United States Department of Commerce. See U.S. DEP’T OF COMMERCE, INTERAGENCY TASK FORCE ON PRODUCT LIABILITY: FINAL REPORT, (1977), reprinted in 5 L. FRUMER & M. FRIEDMAN, PRODUCTS LIABILITY App. G at 585-1288 (1988) [hereinafter TASK FORCE REPORT]. Compiling information from manufacturers, the insurance industry, consumer interests, and its own studies, the task force characterized the product liability problem as follows:

In 1975, an apparent problem (some sources said “crisis”) arose in the field of product liability. A number of manufacturers and business periodicals alleged that product liability insurance had become unavailable or unaffordable. The consequences of this situation included the possibilities that businesses might terminate because they were unable to get coverage; that injured persons would be unable to enforce product liability judgments; and that manufacturers would be hesitant to produce some products that would be useful in our society. It was also alleged that the system of private insurance in the field of product liability was breaking down. Finally, it was alleged that relatively few injured persons benefited from the system.

Id. at 646.

The task force identified three major causes of the product liability problem: liability insurance ratemaking procedures; the tort-litigation system; and manufacturing practices. Id. at 667. After extensive study, the task force recommended solutions to these problems. See infra notes 60-65 and accompanying text (discussing Model Uniform Product Liability Act).

The “product liability crisis” was perceived clearly in Minnesota in the late 1970s. Manufacturers and insurance company representatives testified before legislative committees that liability insurance rates were rising and unavailability of insurance might become a problem. An Act Relating to Civil Actions: Hearings on H.F. 338 Before Senate Judiciary Committee, 70th Minn. Leg. (1978) (on audiotape available at Legislative Reference Library, State Office Building, St. Paul, Minnesota) [hereinafter Judiciary Committee Tape]; see also Heins, Statutory Changes in Minnesota Tort Law, HENNEPIN LAW., Sept.-Oct. 1978, at 6, 6-9 (summarizing products liability problem); Industry Threatened by Slew of Liability Suits, St. Paul Pioneer Press, Aug. 4, 1976, § A, at 2, col. 1.

Manufacturer complaints led eventually to the formation of the Interagency Task Force on Product Liability, which investigated the product liability crisis and suggested improvements in product liability law. One suggestion was that legislatures enact statutes of limitation and statutes of repose to increase certainty for manufacturers by barring claims not brought within specified deadlines.

C. STATUTES OF LIMITATION AND STATUTES OF REPOSE

Statutes of limitation and statutes of repose both bar claims after a specified time period, but they do so in different ways. Statutes of limitation set a specified period during which a plaintiff may bring a claim, commencing when the injury occurs. These statutes reflect the principle that a plaintiff has a duty to bring a timely claim. Statutes of repose also limit the time period in which a user may bring a claim, but this time period commences once the user receives the product. Statutes of repose stem partly from the premise that a product liability claim involving an older product actually has less merit.

One underlying assumption of the product liability statute of repose parallels the common-law theory that use of a product over time decreases the likelihood that a product defect caused an accident and increases the likelihood that an intervening factor caused the product to fail. Another premise underlying statutes of repose is that a manufacturer's records may become stale or unavailable the longer a consumer uses the product, diminishing the accuracy of product liability judgment.

33. TASK FORCE REPORT, supra note 31, at 646.
34. See supra note 31.
35. The task force published these recommendations in the TASK FORCE REPORT in 1977. See supra note 31. The MODEL UNIFORM PRODUCT LIABILITY ACT (Dep't of Commerce 1979), reprinted in 44 Fed. Reg. 62,714 (1979) [hereinafter MUPLA], was based on the findings in this report. See infra text accompanying notes 60-65 (describing MUPLA). All citations and references to MUPLA are to the 1979 version reprinted in the Federal Register.
36. TASK FORCE REPORT, supra note 31, at 1040-49.
37. Minnesota's statute of limitation for product liability claims, for example, requires a plaintiff to make a claim within six years from the date of injury. MINN. STAT. § 541.05(5) (1988).
38. Finley v. Erickson, 122 Minn. 235, 239, 142 N.W. 198, 199 (1913).
40. Id. at 582-87.
41. See supra note 22.
ments. A further policy argument for statutes of repose is that business planning requires "certainty" and that liability for older products creates an excessive burden.

These reasons for a product liability statute of repose have some intuitive appeal, but commentators raise strong criticisms. Although many defects become evident early in the product's life, some defects remain hidden, causing accidents only later in the life of the product. When an uncommon event, such as extreme temperature, is necessary to expose the defect, a statute of repose could bar an otherwise meritorious claim. The same is true when a consumer uses a product less often or less rigorously than normal, and consequently does not test the product's limits as early as a typical user might. Critics doubt that staleness of records really presents a significant problem for manufacturers and question whether uncertainty from old product liability claims really causes high liability insurance rates.

Despite these criticisms, many legislatures accepted the prospect of barring a few meritorious claims as a necessary trade-off in meeting the manufacturer's need for certainty. In response to the perceived product liability crisis and the Inter-

42. See Schwartz, supra note 21, at 845-46.
44. See Schwartz, supra note 21, at 848-49.
45. Many defects are so obvious that they prevent use of the product. Examples are the tire that does not hold air due to a defective seal and the lawn-mower that will not start because of a defective ignition.
46. See Schwartz, supra note 21, at 844-45.
47. See Schwartz, supra note 21, at 846-47.
48. See Phillips, An Analysis of Proposed Reform of Product Liability Statutes of Limitations, 56 N.C.L. REV. 663, 664 n.10 (1978) (citing insurance industry studies that fail to show substantial connection between old-product liability and higher insurance rates).
49. See, e.g., An Act Relating to Civil Actions: Debate on H.F. 338 Before the Minnesota Senate, 70th Minn. Leg. (1978) (on audiotape available at the Legislative Reference Library, State Office Building, St. Paul, Minnesota) [hereinafter Floor Debate Tape] (statement of Senator Dieterich) (describing act as "a limitation on the consumer's right to recover").
agency Report, twenty-one states enacted statutes of repose. Most commonly, states enacted fixed-term statutes of repose, barring claims not brought within a specified number of years after the user receives the product. A minority of states, however, attempted to address the inherent inequities of imposing an arbitrary repose period on all types of products by making the repose period depend on the “useful life” of the product.

D. THE USEFUL LIFE STATUTE OF REPOSE

Under a useful life statute of repose, the time period for bringing a claim corresponds with the duration the product is safely available for use. Assessing a manufacturer’s liability for each product individually, the useful life approach refines the statute of repose concept by accommodating the different periods of durability reasonably expected from a rubber automobile tire, for example, and a steel automobile tire rim. The useful life approach creates a new trial issue because a court must determine the useful life of the product involved in the


53. See supra note 52.

54. The fundamental infirmity of the fixed-term statute of repose is its imposition of one useful life period on all products. No one expects an automobile tire to last as long as the rim it is mounted on, for example, but a fixed-term statute of repose treats both products identically. For durable products, a fixed-term statute of repose overprotects the manufacturer by barring claims long before the useful life of the product expires. The fixed-term statute also may cause underdeterrence—reducing the manufacturer’s incentive to make products that will remain safe beyond the term of the statute.

55. See supra note 52.

56. See, e.g., MINN. STAT. § 604.03 (1988) (defining useful life as “the period during which with reasonable safety the product should be useful to the user”).

57. For a sampling of the varying life expectancies of different products, see THE DURABILITY FACTOR (R. Yepson ed. 1982).
case. Once a court determines the useful life of a product, manufacturer liability extends only to the end of that life.

The states have implemented the useful life concept in various ways, but most follow the approach set forth in the Model Uniform Product Liability Act ("MUPLA"). MUPLA bars a claim when a manufacturer proves by a preponderance of the evidence that the useful life of the product expired before the accident. Manufacturers can meet their burden of proof by using MUPLA’s presumption that the useful life of any product expires after ten years. The plaintiff, however, can overcome that presumption with clear and convincing evidence that the product’s useful life did not expire. To measure the useful life of a product, MUPLA sets forth five considerations: wear and tear on the product; the effect of natural deterioration due to climate and conditions; repair and maintenance practices of the user, similar users, and the seller; representations of the seller as to the useful life of the product; and any modification of the product by the user. Finally, MUPLA exempts from its coverage claims involving fraud or misrepresentation by the seller, express warranties, and cases of prolonged exposure to a product where the injury is not manifested until after the repose period expires.

Statutes of repose in Connecticut, Idaho, Kansas, and Washington mirror the MUPLA useful life provisions with minor deviations. Arkansas and Tennessee also have statutes.

58. In applying a fixed-term statute of repose, the only issue for the court is whether the plaintiff brought the claim within the prescribed period of time, already fixed by the statute. Useful life statutes require the court to determine the period of time during which claims will be allowed, based on the product involved in the claim. After determining the repose period, the court then can determine if the claim is timely.


60. See MUPLA § 110.
61. Id. § 110(A)(1).
62. Id. § 110(B)(1).
63. Id.
64. Id. § 110(A)(1)(a-e).
65. Id. § 110(B)(2).
70. Connecticut’s useful life statute follows MUPLA § 110 using slightly different language, but omits MUPLA’s exclusion for claims involving prolonged exposure. CONN. GEN. STAT. ANN. § 52-577a (West Supp. 1988). Con-
incorporating useful life principles. Although most of these statutes have been in effect for nearly a decade, few cases cite them and they have not received significant judicial construction.

E. MINNESOTA'S USEFUL LIFE STATUTE

Minnesota was the first state to enact a useful life statute, and the statute's legislative history reveals that the statute arose in response to a perceived product liability crisis. Minnesota was the first state to enact a useful life statute, and the statute's legislative history reveals that the statute arose in response to a perceived product liability crisis. Connecticut does provide an exclusion for asbestos-related claims. Connecticut also does not specify that the presumption that useful life has expired must be rebutted with clear and convincing evidence. See id. § 52-577a(c).

Washington's more liberal statute presumes expiration of useful life after twelve years and allows rebuttal of the presumption by a preponderance of the evidence. WASH. REV. CODE § 7.72.060(2) (Supp. 1988).

1. Arkansas uses the term anticipated life and defines it as the period of time during which the product is reasonably useful to the user. ARK. STAT. ANN. § 16-116-102(6) (1987). Unlike MUPLA, the Arkansas statute does not bar claims, instead making a finding that the accident occurred after the product's anticipated life expired only evidence of the consumer's fault. Id. § 16-116-105(c). Tennessee has both a ten-year statute of repose and a useful life provision, and the shorter of the two time periods applies. TENN. CODE ANN. § 29-28-103 (1980).

2. Useful life statutes have received only passing mention in reported cases, and apparently no case before Hodder squarely addressed the construction of a useful life statute.

In Morse v. City of Toppenish, 46 Wash. App. 60, 729 P.2d 638 (1986), review denied, 108 Wash. 2d 1007 (1987), a failure to warn case involving a municipal swimming pool allegedly not filled to the proper depth, the court held that Washington's useful life statute applied, but remanded to determine the issue of fact whether the useful life of the pool's diving board had expired. Id. at 641, 729 P.2d at 641. The court went no further, however, in interpreting the useful life statute.


In Siruta v. Hesston Corp., 232 Kan. 654, 659 P.2d 799 (1983), the dissenting opinion considered the Kansas useful life statute as evidence of the legislature's intent that a manufacturer should not be obligated to make a product that will never wear out. Id. at 684, 659 P.2d at 818-19 (Schroeder, C.J., dissenting).

Although useful life statutes are not prominent in reported cases, their impact might be greater in the context of settlement negotiations.

72. MINN. STAT. § 604.03 (1988) reads as follows:

604.03. Useful life of product

Subdivision 1. In any action for the recovery of damages for personal injury, death or property damage arising out of the manufacture, sale, use or consumption of a product, it is a defense to a claim against a designer, manufacturer, distributor or seller of the product...
Minnesota's statute was a source for MUPLA, but the two statutes have some major differences. Minnesota's statute differs most significantly from MUPLA by not creating a presumption that the useful life of a product expires after a fixed period of time. Instead, Minnesota's statute simply terms expiration of a product's useful life "a defense" against a claim concerning that product. Minnesota's statute measures useful life with criteria very similar to those in MUPLA, emphasizing that the defense applies only upon expiration of the time during which the product can be used safely. Finally, Minnesota's statute is unique among useful life statutes because it states expressly that the useful life of the product is "not necessarily the life inherent in the product, but is the period during which with reasonable safety the product should be useful to the user."
statute differs from MUPLA by not providing for exemptions.81

Although many states followed Minnesota's initiative by enacting useful life statutes, commentators remained skeptical about the value of the useful life concept.82 These scholars observed that useful life statutes attempt to accommodate conflicting goals: providing certainty for manufacturers while also creating a flexible standard that varies for each product.83 Scholars questioned whether a statute could meet these goals and remain workable.84 While commentators speculated, however, courts were not confronted with cases under useful life statutes,85 and the efficacy of the statutes awaited testing in an actual case.

having to prove that the product was safe in order to avoid the useful life defense while also showing that the product was defective.

The key to resolving this enigma might be the legislature's language that useful life is the period in which the product "should" be useful. This seems to create an objective standard, suggesting that the individual product which caused the accident might be compared to other similar products to determine the period of time it should have been available had it lacked any defect. Under this interpretation, the plaintiff can argue with consistency that the individual product was defective, while also arguing that the product should have had a useful life equal to that of similar products.

81. See supra text accompanying note 65 (listing MUPLA's exemptions).

82. See Schwartz, supra note 21, at 848-51. Professor Schwartz, although sympathetic to the goals of the useful life concept, found useful life statutes in their present form to be "incoherent both theoretically and operationally." Id. at 848. One problem is that useful life statutes do not make clear whether useful life is founded on the increased likelihood of contributory negligence or on the decreased chance of a defect surfacing over time. Also, definitions of useful life seem to encompass both the useful life of the specific product causing the accident and of the group of products generally. A court could determine useful life differently under either method, but the statutes instruct a court to do both concurrently.

Another commentator criticizes useful life because a statutory bar "measured by the product's useful life or useful safe life, even if limited by a fixed-term presumption, involves transaction costs that would seem largely to negate the possible benefits of the statute." Martin, supra note 43, at 770. To Professor Martin, the primary benefit of a statute of repose is certainty for the manufacturer. See also Comment, Statutes of Repose in Products Liability: The Assault upon the Citadel of Strict Liability, 23 S.D.L. Rev. 149, 177-79 (1978) (considering administrative problem of measuring useful life); Comment, Washington's Useful Safe Life: Snipping off the Long Tail of Products Liability?, 57 Wash. L. Rev. 503, 517 (1982) (arguing that useful life concept is too amorphous to assist in business liability planning). Even the Task Force Report was less than enthusiastic about the prospects for using the useful life concept. TASK FORCE REPORT, supra note 31, at 1045-49.

83. Schwartz, supra note 21, at 848-49.

84. Id. at 848-51.

85. See supra note 72.
II. **HODDER V. GOODYEAR: FIRST TEST FOR THE USEFUL LIFE CONCEPT**

The facts in *Hodder* made useful life a central issue. The tire rim that exploded and injured Hodder was twenty-six years old, so old that a jury reasonably could find that the tire rim's useful life expired before the accident. Further, the severity of Hodder's injuries and the alleged failure of Goodyear to respond adequately to the dangers of its product created a significant risk of liability for substantial damages. This situation led Goodyear to advocate an interpretation of the useful life statute that would bar the claim, while Hodder argued that the statute did not bar claims. The *Hodder* case thus demanded that the court interpret the statute.

No court had interpreted Minnesota's useful life statute before *Hodder*, and there was little case law from other jurisdictions concerning useful life statutes. At trial, the jury found that the tire rim's useful life expired before the accident. The trial court nonetheless awarded Hodder enormous compensatory and exemplary damages. The trial court reconciled its holding with the jury's verdict by finding that the useful life statute did not apply. Because Goodyear manufactured and sold the rim without proper warnings, there never was a period during which the rim was, in the words of the statute, "useful to the user with reasonable safety." The court reasoned that because the rim never had a useful life, its useful life could not expire. Because only expiration of the product's useful life triggered the statute, Goodyear could not assert the defense.

On appeal, the parties abandoned the trial court's interpretation of the statute and debated instead whether the statute made expiration of a product's useful life a complete bar to claims or merely evidence of the consumer's fault to be consid-

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87. *Id.* at 829.
88. *See supra* note 3.
89. *See supra* note 72.
90. *Hodder*, 426 N.W.2d at 829.
91. The Minnesota Supreme Court upheld the award of $3,368,916 in compensatory damages, but reduced the punitive damages from $12,500,000 to $4,000,000. *Id.* at 841.
92. *Id.* at 830.
93. *Id.*
94. *Id.*
The Minnesota Supreme Court affirmed the trial court's ruling that the useful life statute did not bar Hodder's claim, but rejected the trial court's conclusion that the useful life statute did not apply to the case. Instead, the court interpreted the statute, assuming that it applied to Hodder's facts.

In its analysis, the court found ambiguity in the language of the statute that described expiration of a product's useful life as "a defense." The court reasoned that because the statute did not say "absolute defense," the language could mean less than that, particularly when the legislature in the same session rejected a true statute of repose that clearly was an absolute defense. Looking to the legislative history for interpretive gui-
dance, with cursory analysis, the court declared the statute's history ambiguous, although the court found that the statute clearly was intended to limit product liability to some degree.

After acknowledging the statute's ambiguities, the court next examined the problems in its implementation. The court noted that the statute failed to clarify whether courts should measure useful life in comparison with the expected life of the specific product involved in the accident, against similar products made by other manufacturers, or against an industry norm. The court also questioned whether the statute barred claims arising from "originally defective" products which, despite defects, last as long as typically nondefective products. Finally, the court thought it unclear whether the statute required a finding that the user knew the product's useful life.

find that this offends a variety of federal and state constitutional doctrines, including the equal protection clause, the due process clause, and, most prominently, the "access to courts" provision of some state constitutions. The last requires a remedy to be available for every injury. See McGovern, supra note 39, at 600-12.

Useful life statutes also are susceptible to constitutional challenge, because they also bar claims before they accrue. Hodder challenged the constitutionality of Minnesota's statute, but the court did not reach the issue. Hodder, 426 N.W.2d at 830 n.3.

100. The court stated, "[w]e think the legislative history is inconclusive." Hodder, 426 N.W.2d at 830.

101. Id.

102. Id. at 830-31.

103. The court stated:

There are other problems. The statute surely is meant to cover a product originally nondefective which becomes "defective" with age. But how long must a product last to avoid being labelled originally defective? Does the statute also cover an originally defective product? A product may be defective ab initio, but not cause injury until the normal life span of a nondefective like product expires. If these products are not covered, as the trial court ruled, the useful life statute is irrelevant to most products liability claims.

Hodder, 426 N.W.2d at 831.

The court's difficulty with this issue may derive from its faulty definition of defect. The court's use of the term original defect is improper, because under Minnesota law, all defects are by definition original. In other words a defect must be present at the time of manufacture and sale. Worden v. Gangelhoff, 308 Minn. 252, 254-55, 241 N.W.2d 650, 651 (1976) (holding that under any theory of product liability plaintiff must prove that defect existed when product was in care of defendant); see also W. PROSSER, TORTS § 103 (4th ed. 1971) (collecting cases).

Products do not become "defective" with age, as the court suggested; they are either defective initially, or not at all. Beyond this definitional hurdle, the court's issue disappears. The statute covers all product liability claims, which by definition can include only defective products.
had expired.\textsuperscript{104} Although the court posed these questions, it attempted to answer them only through a limited interpretation of the statute.\textsuperscript{105} After a brief effort at interpretation, the court found the statute hopelessly ambiguous and incoherent\textsuperscript{106} and consequently gave the statute a very limited effect.\textsuperscript{107} Expiration of the useful life of a product does not bar claims, the court held, but rather is merely evidence of fault for consideration by the jury in determining comparative liability.\textsuperscript{108} As a final note, the court expressed its skepticism about the useful life concept and queried whether a workable useful life statute is possible.\textsuperscript{109}

III. THE COURT'S INTERPRETATION OF MINNESOTA'S USEFUL LIFE STATUTE: CORRECT RESULT, WRONG REASONING

Although the useful life concept presents a variety of technical problems, the Minnesota Supreme Court's focus on these problems obscured the real task that \textit{Hodder} presented—to determine what the legislature intended the statute to do. The court's cursory analysis of the statute's language and history laid an improper foundation from which to determine how to implement the statute.

A thorough analysis of the statute demonstrates that the legislature intended it to bar claims. The statute's contradic-

\textsuperscript{104} \textit{Hodder}, 426 N.W.2d at 831. Although the user's knowledge was an important issue for the court in \textit{Hodder}, the statute does not support a requirement that the user know that the product's useful life has expired. The court reasoned that because the statute considered the user's actions in measuring life, the user's knowledge somehow was implicated. \textit{Id.} The court offered no basis for that conclusion, however, and the statutory language does not suggest one. The court did not hold that the user's constructive knowledge of the expiration of the product's useful life was required under that statute. \textit{Id.} at 831-32.

\textsuperscript{105} The court restricted its interpretation largely to what the statute did not do. \textit{Id.} at 830-32.

\textsuperscript{106} \textit{Hodder}, 426 N.W.2d at 830, 832.

\textsuperscript{107} Although the court failed to explain its rationale, this is the best explanation for what the court did. The court explicitly found the statute ambiguous, \textit{id.} at 836, and although the court made a number of observations about the statute, it concluded only that the statute did not constitute an absolute defense, \textit{id.} at 832. The court implied that, in the absence of better legislative guidance, the statute would be limited to the narrowest possible construction. \textit{Id.} at 832.

\textsuperscript{108} \textit{Id.}

\textsuperscript{109} \textit{Id.}
tory language and uncertain statements by legislators suggest, however, that the legislature was unsure how to accomplish that goal. The resulting statute is incoherent or at best vague, and therefore difficult to implement. This situation would justify a court's decision to invalidate the statute. In giving limited effect to the statute, however, the court partially implemented the legislature's intent while avoiding unintended or absurd results. A narrow construction of the statute thus fostered a proper result, even though the court based its construction on the incorrect finding that the statute was ambiguous. The following interpretive analysis of the useful life statute demonstrates that the court could have discerned the legislature's intent.

A. THE PLAIN LANGUAGE OF THE USEFUL LIFE STATUTE

In statutory construction, the plain, unambiguous language of the act is the preferred source for interpretive guidance. The critical language in Minnesota's useful life statute is the provision stating that expiration of the useful life of a product is "a defense" to any claim. The phrase a defense intuitively might appear absolute, representing a statute of repose barring claims. This language, however, does not resemble the language of Minnesota statutes that clearly do bar claims. For example, Minnesota's Good Samaritan statute provides that one who renders assistance in an emergency "is not liable for any civil damages." Minnesota's product liability statute of limitation also makes an absolute statement, requiring that "any action . . . shall be commenced within four years." The language of these statutes suggests that when the Minnesota legislature intends to eliminate liability it will state so explicitly in the statute, using absolute language stronger than the useful life statute's phrase, a defense.

Similarly, true statutes of repose explicitly state that the effect of the statute is to bar claims. Washington's useful life

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110. The statute's language presents ambiguities, but the legislative history makes clear the intent to bar claims. The statute's purpose is thus unambiguous and the court therefore should look to implementing the legislature's intent. At that point the incoherence of the statute would become evident, because the flawed language makes the statute unworkable.


114. Minn. Stat. § 541.05(2) (1988).
statute employs the phrase "a product seller shall not be subject to liability," 115 while Connecticut's useful life statute provides that "no such action may be brought." 116 Only Arkansas's useful life statute 117 appears to make expiration of useful life "a defense," but that statute explicitly makes expiration of useful life only evidence of the user's fault and not a bar to claims. 118

Other language in the Minnesota statute suggests that the legislature did not intend a bar to claims. The caption of the bill that became the useful life statute refers to the useful life provision as "codifying a useful life defense." 119 Under Minnesota common law at the time of enactment, courts considered expiration of useful life only as evidence in determining comparative negligence. 120 The bill's caption thus supports the interpretation that the drafters intended the statute to continue the common law system, in which a manufacturer introduced evidence of the useful life of the product to show that a user's contributory negligence, rather than a defect, caused the accident. 121

B. LEGISLATIVE HISTORY OF MINNESOTA'S USEFUL LIFE STATUTE

The language of the statute suggests that it does not bar claims, but because the statute does not explicitly address this point, it is necessary to consider the statute's legislative history. 122 The useful life statute evolved from a bill proposing a

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117. ARK. STAT. ANN. § 16-116-105(c) (1987). The section of the Arkansas code containing the "anticipated life" provision is entitled "[d]efenses generally." Id. Subdivision (b) of the statute provides that "[s]upplying of a product after its anticipated life may be considered as a defense by the manufacturer as between manufacturer and supplier." Id. § 16-116-105(b). Subdivision (c) provides that "[u]se of a product beyond its anticipated life by a consumer where the consumer knew or should have known the anticipated life of the product may be considered as evidence of fault on the part of the consumer." Id. § 16-116-105(c).
118. Id.
120. See supra note 23 and accompanying text.
121. That the sponsor of the bill stated in committee that the bill did nothing more than codify existing law reinforces this conclusion. See infra note 128.
122. Courts routinely use legislative history to supplement the language of a statute and to aid in its interpretation. See W. ESKRIDGE & P. FRICKEY, CASES AND MATERIALS ON LEGISLATION 698-98 (1988). Although the Minnesota legislature does not generate committee reports, audio tapes of the Senate
fixed-term statute of repose clearly intended to bar claims after a fifteen-year period. Fearing constitutional problems, the Senate abandoned the fixed-term statute of repose and re-drafted the bill, incorporating the useful life concept. Parts of the legislative history indicate that the legislators intended the rewritten bill to bar claims just as its predecessor had.

The sponsor, Senator Jack Davies, first introduced the useful life bill to the Subcommittee on Judicial Administration in the Minnesota Senate, describing useful life as the principle that as a consumer uses a product over time the burden for making sure that the product is safe shifts from the manufacturer to that user. Addressing the Senate Judiciary Committee, Senator Davies similarly described the useful life provision

hearings and floor debate provide insight into the legislature's intent. Courts traditionally have not considered legislative hearings in determining legislative intent, but the modern trend is one of increasing reliance on such evidence. Id. at 717-18.

Minnesota courts may consider audiotapes of legislative hearings when conducting statutory interpretation. Handle With Care, Inc. v. Department of Human Servs., 406 N.W.2d 518, 522 (Minn. 1987) (holding that although "the rules of both houses state that the testimony and discussion preserved by the [legislative] tapes are not to be admissible in any court on an issue of legislative intent, we do not believe this statement countermands our consideration of the tapes as authorized by Minn. Stat. 645.16(7). We should not turn a blind eye to what may be helpful and to what is before us." See also Stearns-Hotzfield v. Farmers Ins. Exch., 360 N.W.2d 384, 389 (Minn. Ct. App. 1985) (allowing inquiry into legislative history to determine legislative intent).

The legislators discussed the useful life bill in three recorded debates: on February 1 and 3, 1978, before the Senate Subcommittee on Judicial Administration, An Act Relating to Civil Actions: Hearings on H.F. 338 Before the Subcommittee on Judicial Administration, 70th Minn. Leg. (1978) (on audiotape available at Legislative Reference Library, State Office Building, St. Paul, Minnesota) [hereinafter Subcommittee Tape]; on February 6, 1978, before the Senate Judiciary Committee, Judiciary Committee Tape, supra note 31; and on February 16, 1978, on the Senate Floor, Floor Debate Tape, supra note 51.

123. H.F. 338, 70th Minn. Legislature (1978); see also id. (stating that useful life provision was a substitute for 15-year statute of repose which was abandoned due to constitutional concerns).

124. See supra note 123.

125. Subcommittee Tape, supra note 122 (statement of Senator Davies).

126. Senator Davies introduced his bill as follows:

The useful life idea is a substitute for a statute of limitations and it recognizes the fact that products vary tremendously in the period of time . . . that you should anticipate using them with safety. So we say that after a product has been used for the period of time in which it is reasonable to expect it to be safe that the burden for making sure it is still safe to use it shifts away from the manufacturer and to the person who has control of the product and that person can inspect and repair and keep that product under continuous surveillance to make sure that it does not become a hazard.

Id.
as representing the principle that, at a certain point in time, responsibility for safe use of a product shifts to the user.\textsuperscript{127} Both of these statements suggest that a manufacturer's responsibility terminates at a certain point in time, which accords with an interpretation that the legislature intended the statute to bar claims.

The sponsor's other statements, however, seem inconsistent with such an interpretation, and apparently indicate some confusion about the useful life concept. After introducing the useful life provision in subcommittee, Senator Davies stated that the useful life provision would only codify existing law and mandate a proper jury instruction.\textsuperscript{128} Later, he asserted his opposition to a "statute of limitation" measured from the date of manufacture—a statute of repose.\textsuperscript{129} Neither of these statements appear consistent with Senator Davies's introductory statements about the bill or the more concise statements he

\textsuperscript{127} Introducing the bill in the Senate Judiciary Committee, Senator Davies stated:

What we're attempting to do here ... is perhaps to get a more helpful jury instruction which describes the fact that somewhere along the line in the passage of time the control and the responsibility for the safety of a particular product has to pass from ... the manufacturer to the person who has control of it ....

\textit{Judiciary Committee Tape, supra} note 31 (statement of Senator Davies).

\textsuperscript{128} Senator Davies added:

I think [the useful life provision] probably is very much existing law—except by having it in the statute would make it a more appropriate kind of jury instruction in some cases as to how the burden or responsibility for the safety of a product shifts away from the manufacturer to the ... user of the product—as time goes on.

\textit{Subcommittee Tape, supra} note 122 (statement of Senator Davies).

\textsuperscript{129} Senator Davies stated:

What the industry wants and which I'm unwilling to go with and which I think was really knocked out by the \textit{Pacific Indemnity} case is a statute of limitations that's measured from the day that the manufacturer or builder lets go of the product, rather than from the date of injury. I just don't think that that holds together and I just wanted to establish my position on that.

\textit{Subcommittee Tape, supra} note 122 (statement of Senator Davies). During the floor debate, Senator Davies explained that the useful life provision was not a statute of repose, "which is that after the product is put out on the marketplace, at some date in the future no matter when the person might be injured, there can be no claim made." \textit{Floor Debate Tape, supra} note 31 (statement of Senator Davies).
made later in the Senate floor debate.\textsuperscript{130} Moreover, insurance industry representatives testified that the useful life provision would have a negligible impact on the product liability problem and expressed their preference for a statute of repose.\textsuperscript{131} The insurance industry thus believed that the bill was not a statute of repose (a bar to claims), and no one in the committee hearings stated that the useful life provision would make a significant impact on product liability law.\textsuperscript{132} Senator Davies, the other senators, and the lobbyists apparently believed that the useful life provision merely codified existing law and that the bill would not change product liability law significantly.

Despite the conflicting descriptions of the bill in committee, Senator Davies clearly presented it as a bar to claims during the Senate floor debate. During that debate Senator Davies stated that “when the normal useful life of the product has expired [and] similar products would have been discarded by [then] . . . the manufacturer would no longer be liable.”\textsuperscript{133} Senator Dieterich stated the intent of the bill most precisely, explaining that the “jury can decide that the useful life of that product has expired and that even though the design may have been defective you cannot recover against that manufacturer. That's a limitation on the consumer's right to recover . . . .”\textsuperscript{134} Both these statements reveal an intent to bar claims.

To determine legislative intent, the statements of Senator Davies and Senator Dieterich during the floor debate deserve

\textsuperscript{130} On the Senate floor Senator Davies succinctly stated the purpose of the useful life provision: “When the normal useful life of the product has expired—similar products would have been discarded by that time—that the manufacturer would no longer be liable.” \textit{Floor Debate Tape, supra note 51} (statement of Senator Davies).

\textsuperscript{131} One insurance representative expressed his concern that the useful life provision “makes only a marginal contribution to the problem in products liability. And it will not affect in any significant way that I can see or that my insurance companies can see, the [availability] or the pricing of products liability insurance in Minnesota.” \textit{Judiciary Committee Tape, supra note 31} (statement of Mr. John Cairns, American Insurance Association). Others made similar comments. \textit{Id.}

\textsuperscript{132} \textit{See Subcommittee Tape, supra note 122; Judiciary Committee Tape, supra note 31; Floor Debate Tape, supra note 51.}

\textsuperscript{133} \textit{Floor Debate Tape, supra note 51} (statement of Senator Davies).

\textsuperscript{134} Senator Dieterich added: “And that's a provision which many of us were reluctant to accept, and there have been additions to that provision—which include the provision that a court or jury can consider the useful life stated in a pamphlet or brochure furnished with the product. That's another limiting provision.” \textit{Floor Debate Tape, supra note 51.} (statement of Senator Dieterich).
substantial weight. Unlike the statements in committee, the senators made these statements before the entire Senate immediately prior to the final vote on the bill. Consequently, senators likely relied on these statements to inform themselves of the nature of the bill, while they may not have been present for the committee debates. Both senators stated unambiguously that the bill would bar claims, and most importantly, no senator rebutted these statements. Although the inconsistent statements made in committee might indicate some confusion about the intent of the bill, the clear statements on the floor suggest that any confusion was resolved in favor of barring claims. Considered in light of the purpose of the bill to limit manufacturer liability, the weight of the evidence supports interpreting the statute as a bar to claims.

Because the purpose of statutory interpretation is to effectuate legislative intent, a clear statement of legislative intent should prevail over the statute's ambiguous but somewhat countervailing language. One consideration imposed on the

135. As noted, supra note 122, courts have relied more frequently on legislative dialogue and debate in recent years. These statements made during the floor debates possess all the elements that tend to make such statements reliable indicators of the legislature's intent. One of the speakers is the sponsor of the bill, likely to know better than anyone else the intent of the bill. The statements were unambiguous, consistent, and unrebutted. Made before the entire Senate immediately prior to voting on the bill, the remarks were fresh in the minds of the senators as they voted. If the remarks did not represent a senator's belief as to the intent of the bill, a senator would have stated that different view during the legislative debates.

Some commentators criticize reliance on legislative debates for interpretive guidance in light of some legislators' practice of inserting "planned colloquies" into the record to improperly manipulate the record and create a skewed appearance of legislative intent. See W. Eskridge & P. Frickey, supra note 122, at 735. Although it is possible that the remarks of Senator Davies and Dieterich were planned in this manner, this theory still does not explain the failure of other legislators to challenge their statements of the bill's intent.

136. See Floor Debate Tape, supra note 51.

137. These contradictory statements and the inapt language of the statute also might be the result of the legislature's experimentation with a new concept. The legislators had little guidance from other statutes when they drafted and debated the statute. Although the sponsor did rely on the Interagency Report, Judiciary Committee Tape, supra note 31 (statement of Senator Davies), that document was a preliminary report and did not recommend specific language.

138. Minn. Stat. § 645.16 (1988) reads as follows:

  Legislative Intent Controls.

  The object of all interpretation and construction of laws is to as-
court under Minnesota law, however, is examination of the consequences of a particular interpretation of a statute. Consideration of the consequences of a particular interpretation is especially important when that interpretation would be impractical and lead to absurd results. In *Hodder*, the prospect of barring claims pursuant to the statute’s incoherent criteria for measuring useful life properly concerned the court.

C. PROBLEMS IN IMPLEMENTING MINNESOTA’S USEFUL LIFE STATUTE

The primary problem with Minnesota’s useful life statute became apparent when the court attempted to use the statute’s criteria for measuring the useful life of a product. The statute defines useful life as “the ordinary useful life of the prod-

certain and effectuate the intention of the legislature. Every law shall be construed, if possible, to give effect to all its provisions.

When the words of a law in their application to an existing situation are clear and free from all ambiguity, the letter of the law shall not be disregarded under the pretext of pursuing the spirit.

When the words of a law are not explicit, the intention of the legislature may be ascertained by considering, among other matters:

1. The occasion and necessity for the law;
2. The circumstances under which it was enacted;
3. The mischief to be remedied;
4. The object to be obtained;
5. The former law, if any, including other laws upon the same or similar subjects;
6. The consequences of a particular interpretation;
7. The contemporaneous legislative history; and
8. Legislative and administrative interpretations of the statute.

Ibid.; see also Mankato Citizens Tel. Co. v. Commissioner of Taxation, 275 Minn. 107, 112, 145 N.W.2d 313, 317 (1966) (stating that purpose of statutory interpretation is to give effect to legislative intent).

139. MINN. STAT. § 645.16(6) (1988).

140. See Industrial Rubber Applicators v. Eaton Metal Prods. Co., 285 Minn. 511, 515, 171 N.W.2d 728, 731-32 (1969) (per curiam) (allowing the court to make a “practical construction” of the statute, interpreting the statute to allow for logical and practical implementation), overruled on other grounds, Standslast v. Reid, 304 Minn. 358, 231 N.W.2d 98 (1975); see also State v. West, 285 Minn. 188, 197, 173 N.W.2d 466, 474 (1969) (requiring interpretation of statute to avoid absurd results).

141. The six criteria in subdivision 2 are: wear and tear or deterioration from natural causes; the progress of the art, economic changes, inventions and developments within the industry; the climatic and other local conditions peculiar to the user; the policy of the user and similar users as to repairs, renewals, and replacements; the useful life as stated by the designer, manufacturer, distributor, or seller of the product in brochures or pamphlets furnished with the product or in a notice attached to the product; and any modification of the product by the user.
which is determined "by reference to the experience of users of similar products." Use of the term ordinary and the statute's reliance on the experience of "users of similar products" suggests the statute is meant to measure useful life based on some type of objective standard. Such a standard might be the experience of a "reasonable user," for example, and would be established by considering evidence of a product's durability as experienced by all users.

The statute's criteria for measuring "ordinary" useful life, however, require consideration of "present conditions and past developments," including any product modifications by the user, the user's repair policies, or specific climate conditions that might affect the useful life of the product. In contrast to the objective standard for determining "ordinary" useful life of a product, these criteria refer to the individual user's habits of product use.

Considering the individual user's habits with respect to a product is inapposite to an inquiry intended to determine an "ordinary" useful life. If the statute really intends to determine the ordinary useful life of a product, the individual user's habits should be irrelevant. The court's inquiry should focus on the "ordinary" or typical case and not the specific instance. If an ordinary consumer safely uses a wheel rim, for example, for ten years, a particular user's modification of his rim is irrelevant. The standard in the statute is ordinary useful life, which is still ten years. The user's modifications should be relevant only as a separate defense.

143. Id.
144. The word ordinary is defined as: "Regular; usual; normal; common; often recurring; according to established order; settled; customary; reasonable; not characterized by peculiar or unusual circumstances; belonging to, exercised by or characteristic of, the normal or average individual." Black's Law Dictionary 989 (5th ed. 1979).

Evidence of the product's durability as experienced by all users might include manufacturer's tests and inspections made during the development of the product, records of complaints concerning product performance, other litigation concerning the product, safety tests by government agencies, consumer groups or industry associations, surveys of users, accident reports, and other similar evidence.

147. Modification of a product may support a defense against a product liability claim under Minnesota law. See supra note 29.
Measuring ordinary useful life by reference to particular acts of the user thus presents a confusing, if not impossible, task for a jury. For this reason, the Hodder court correctly found the statute internally inconsistent.\textsuperscript{148} Although workable interpretations are possible,\textsuperscript{149} a court could only guess how the legislature intended to measure useful life.\textsuperscript{150} The Minnesota useful life statute’s position as the first in the nation exacerbates this interpretive difficulty, because the legislature developed the statute’s language without guidance from any model code or other statute.\textsuperscript{151} The court consequently had little experience from other states to guide its interpretation.\textsuperscript{152}

Faced with the predicament of a discernible legislative purpose but unworkable statutory language, the court reasonably might have invalidated the statute and required the legislature to articulate a more coherent definition of useful life.\textsuperscript{153}

\textsuperscript{148} Hodder, 426 N.W.2d at 830-31.

\textsuperscript{149} One possible interpretation is to consider the statute’s references to the user to mean the “ordinary” user and not the plaintiff. The criteria for measuring useful life then become consistent with the definition of useful life. Consideration of the user’s conduct would be generalized—that is, a consideration of how “ordinary” use of the product affects durability of the product.

\textsuperscript{150} Legislative history suggests, however, that the legislature intended consideration of the plaintiff’s specific use of the product. As an example of the statute’s intended effect, Senator Davies stated that the statute would bar the claim of a consumer who let a lawnmower’s noise muffler rust off. Hodder, 426 N.W.2d at 831 n.4. Consideration of the user’s repair policies, one of the criteria for measuring useful life in the statute, is used in the example to mean consideration of the plaintiff’s specific repair policies.

\textsuperscript{151} As the court noted, the statute could be intended to measure the useful life of the product involved in the accident, all similar products made by the same manufacturer, or a generic or industry norm. Hodder, 426 N.W.2d at 830-31.

\textsuperscript{152} The Task Force Report, supra note 31, preceded Minnesota’s statute and was a source for the legislature. Floor Debate Tape, supra note 51 (statement of Senator Davies). The Task Force Report made only general recommendations, however, and proposed no specific language. MUPLA, which was based on the findings of the Task Force Report, was published in 1979, after enactment of Minnesota’s statute.

\textsuperscript{153} For a discussion of what little case law exists concerning useful life statutes, see supra note 72.

\textsuperscript{154} The statute might be invalidated as too vague. See Getter v. Travel Lodge, 260 N.W.2d 177, 180 (Minn. 1977) (holding that statute should be upheld unless its terms are so uncertain and indefinite that after exhausting all rules of construction it is impossible to ascertain legislative intent). In Hodder, the court could not determine the legislature’s intended method to measure useful life because the language of the statute did not clarify whether useful life should be measured with regard to an individual product, a group of products, or a generic standard. See supra note 102. Without a method to measure useful life, the statute arguably cannot be implemented. Cf. In re Adams, 619 F.2d 216, 222 (2d Cir.) (stating that “result of an obvious mistake should not be
in this light, the Minnesota Supreme Court’s decision to construe the statute narrowly was generous and served two purposes. The court avoided the absurd and unintended result of barring claims based on an incoherent standard. Additionally, the court implemented the legislature’s intent to limit product liability, at least to some degree, by adding statutory emphasis\textsuperscript{154} to the common-law prolonged safe use doctrine.\textsuperscript{155}

Although the result in \textit{Hodder} is proper considering the statute’s incoherence, the court leaves the legislature’s intent largely unfulfilled. \textit{Hodder} is a step toward fulfilling the legislature’s intent, however, because it outlines the definitional problems legislatures must resolve before courts can allow a useful life statute full effect.

IV. IMPLICATIONS OF \textit{HODDER} FOR USEFUL LIFE STATUTES

The interpretive problems encountered in \textit{Hodder} reveal the complexities inherent in the useful life concept. It is particularly important to address problems arising from Minnesota's statute because MIPLA and the useful life statutes of several other states borrowed heavily from the language of the Minnesota statute.\textsuperscript{156} Significantly, MIPLA and most state useful life statutes use criteria for measuring useful life that are nearly identical to those in Minnesota’s statute.\textsuperscript{157}

A. WORKABLE CRITERIA FOR MEASURING USEFUL LIFE

As discussed above, \textit{Hodder} demonstrates that Minnesota's statutory criteria for measuring useful life do not accord with the statute’s definition of useful life.\textsuperscript{158} The statute’s definition of useful life creates an objective “ordinary user” standard, while the criteria for measuring useful life mandate considera-
tion of individual user habits.\textsuperscript{159} To make useful life statutes more workable, useful life should be measured in the same manner in which it is defined—that is, measured separately from any consideration of an individual user's conduct. This makes useful life solely an objective "ordinary user" standard. This approach simplifies the process of measuring useful life and comports with the conceptual underpinnings of useful life. Moreover, nothing is lost by using this measure, because a finder of fact still may consider the user's conduct through other affirmative defenses.

Consideration of the user's conduct needlessly complicates the process of measuring useful life. The common law recognizes a variety of product liability defenses based on the user's conduct,\textsuperscript{160} and common-law defenses already exist for the kinds of user conduct specified in the statutory criteria.\textsuperscript{161} Thus, the statute's consideration of the individual user's conduct overlaps existing common-law defenses, and is redundant unless consideration of such conduct is essential in determining useful life. Closer analysis shows that, far from being essential, the individual user's conduct is not even relevant in measuring useful life.

The useful life concept is based on a generalization that product liability claims involving older products have less merit. Three premises support this generalization: prolonged safe use of a product gives rise to an inference that there is no defect;\textsuperscript{162} prolonged safe use of a product allows greater chance for contributory negligence;\textsuperscript{163} and manufacturer's records become stale over time, diminishing the accuracy of judgments.\textsuperscript{164} None of these propositions depend for their validity on any specific evidence of the individual user's conduct. As an obvious example, manufacturer's records become stale at the same rate, irrespective of the user's conduct. The two other propositions

\textsuperscript{159} Of the statute's six criteria for measuring useful life, only the provisions covering "wear and tear from natural causes" and representations of useful life made by the manufacturer are objective criteria that would lead to the determination of a product's "ordinary" useful life. The statute's other considerations of "climate and local conditions peculiar to the user," the user's repair policies, and the user's modification of the product all bear on how the individual plaintiff acted. The remaining criterion, "progress of the art," seems entirely irrelevant to measuring useful life.

\textsuperscript{160} See supra notes 27-30.

\textsuperscript{161} Id.

\textsuperscript{162} See supra note 22.

\textsuperscript{163} Id.

\textsuperscript{164} See supra note 42 and accompanying text.
do not depend on specific evidence because they operate in lieu of specific evidence. They rationalize a statute of repose by lending support to the idea that a court can bar claims without specific consideration of fault and with minimal risk of barring meritorious claims. These propositions are essentially conclusive presumptions that the product had no defect or the user was contributorily negligent. Because the presumptions are conclusive, specific evidence of the user's conduct is superfluous.

Because a statute of repose supplants the need for specific evidence of fault, such a statute bars claims irrespective of the user’s conduct. With a fixed-term statute of repose the only element to consider is time—that is, whether the specified time has passed after which claims are barred. A useful life statute of repose introduces only one other element, consideration of each individual product's durability in determining the repose period. Measuring useful life, then, should depend on only two variables—the product and lapse of time. The court's inquiry thus focuses on how long the product safely lasts over time. The answer is inherent in the product, not in the actions of the individual user, and the relevant facts are evidence of the product’s durability as experienced by the product’s users as a group.

To implement the useful life concept properly, a statute should eliminate all references to the individual user's habits with respect to the product. This does not mean that a court should not consider factors like user modification or improper maintenance of a product. Such evidence is relevant, but it should be considered apart from the useful life issue, as a separate defense. An ideal statute makes expiration of a product's useful life an outside limit to manufacturer liability, retaining evidence of the user's conduct as an affirmative defense that may further limit liability. This Comment proposes a model statute incorporating these ideas in the following section.

B. A Model Useful Life Statute

I. Definition of Useful Life

The useful life of a product is the period during which the product ordinarily is useful and reasonably safe to use.

165. Actions of users in general, however, would contribute to the determination of an "ordinary" useful life.

166. For examples of such evidence, see supra note 145.
II. Statute of Repose

Except as provided in section V of this Act, no product liability claim may be brought when the useful life of the product causing the accident expired before the accident.

III. Measurement of Useful Life

(a) The useful life of a product is measured by considering the typical experience of the ordinary user of the product or a similar product. Relevant evidence in this inquiry shall include, but is not limited to, statistics, surveys, other records documenting the durability of the product type, and the manufacturer's representations at the time of sale of the product's useful life.

(b) Evidence of the manufacturer's representations, at the time of sale, of the product's useful life may be considered to the extent they are supported by reliable evidence.

(c) Useful life of a product may be measured in units of time or in other units that accurately gauge the useful life of the product.

IV. Evidence of the User's Conduct

Evidence of a particular user's conduct or the plaintiff's conduct with respect to the product shall not be considered in measuring the useful life of the product. Nothing in this Act, however, shall be construed to limit or abridge any common-law or statutory defense to a product liability claim based on the user's or plaintiff's conduct.

V. Exemptions

This Act does not apply to claims involving fraud or misrepresentation by the manufacturer, distributor or seller, express warranties, or cases where prolonged exposure to a defective product before the expiration of the product's useful life results in injury discovered after the product's useful life expired.

The proposed model statute has several advantages over the Minnesota or the MUPLA approach. The primary advantage lies in the provisions for defining and measuring useful life. Both provisions make clear that useful life is measured by an objective standard considering ordinary useful life and not the facts from the individual case. Unlike Minnesota's Act, the model statute uses appropriate language indicating that its purpose is to bar claims, and expressly separates the useful life defense from affirmative defenses based on the user's conduct. The proposal incorporates MUPLA's provision for exemptions, and also provides that useful life may be measured in units other than time when appropriate.

In sum, the provisions of the model statute eliminate the

\[167. \text{See Model Useful Life Statute §§ I & III, supra text preceding note } 167.\]
\[168. \text{Model Useful Life Statute § II, supra text preceding note } 167.\]
\[169. \text{Model Useful Life Statute § IV, supra text preceding note } 167.\]
\[170. \text{Model Useful Life Statute § V, supra text preceding note } 167.\]
\[171. \text{Model Useful Life Statute § III(c), supra text preceding note } 167.\]
unnecessary and troublesome consideration of user conduct in determining useful life and also provide clear and flexible standards for determining useful life. Although the model statute will not relieve a court of its complex task of determining useful life in a given case, the proposal at least clarifies what the task is, and provides reasonable guidance for the finder of fact.

As an illustration of how this statute would work, consider a case involving a ten-year-old automobile tire rim that causes injury to a plaintiff. The court determines the useful life of the rim by considering evidence such as the experience of other users of similar rims; available government, consumer group, or industry safety studies concerning the rim; and the representations of the manufacturer. If the ordinary useful life of the rim exceeds ten years, the claim is allowed. This would not resolve the issue of liability, however, because the manufacturer could then assert the next tier of defenses based on the actions of the plaintiff, such as modification, improper maintenance, and other affirmative defenses. In this analysis, the user's actions still might be superseding causes or might otherwise limit the manufacturer's liability.

C. The Future of Useful Life Statutes

Measuring useful life through an objective, “ordinary user” standard makes a useful life statute internally consistent and conceptually rigorous. Along with this improvement to Minne-

172. Representations of the manufacturer are helpful but should not be dispositive, as is provided by the Arkansas statute. See ARK. STAT. ANN. § 16-116-105(b) (1987). The problem with the Arkansas approach is that a manufacturer may be biased toward a short useful life, which would limit its own liability. Although this risk is mitigated by a manufacturer's business incentive to promote the durability of its product, the risk of bias is significant enough to impel a court to make an independent judgment of the useful life of the product. See MUPLA § 110 analysis.


174. The criteria relating to the individual user's habits with respect to the product are all covered by common-law defenses. Thus, modification, the obviousness of the hazard, improper use, and other common-law defenses serve to protect the manufacturer as the legislature intended, but they constitute separate defenses. For a discussion of the common-law defenses, see supra notes 27-30 and accompanying text.

Separating these common-law defenses from the useful life defense makes clear the role of a useful life statute. Not a catch-all mixing a variety of product liability defenses, useful life statutes enforce the principle that manufacturers are not liable for injuries caused by products used after they should no longer be expected to perform safely. This time-dependent principle has its roots in the common law. See supra notes 17, 22. The useful life statute emphasizes the common law and makes it permanent.
sota's statute, the legislature should consider refinements made to useful life statutes in other states after the enactment of Minnesota's statute. Some states, for example, provide exemptions for special cases such as fraud, express warranties, and prolonged exposure to a defective product, allowing claims when a bar offends public policy.175

A more fundamental need is re-evaluation of the policy basis for barring product liability claims at all. Commentators have demonstrated the conceptual flaws in the notion that old-product liability claims have less merit, and statutes of repose really were not enacted with the conceptual basis in mind.176 Legislatures instead responded to a perceived product liability crisis and sought to bar claims to relieve manufacturers of liability.177 Certainty was the goal, and if legislatures now find that the added certainty of a statute of repose is not necessary to make product liability insurance affordable and available, there is no valid argument for a statute of repose. The evidence available today indicates that the product liability crisis was much more a perception than a reality.178

Although legislatures should reconsider whether a statute of repose of any kind is desirable, a legislature choosing to enact a statute of repose should not reject useful life as an unworkable concept. Despite its complexities, useful life is a valuable improvement over a fixed-term statute of repose, be-

175. See MUPLA § 110 analysis (discussing rationale of these exclusions); see also proposed MODEL USEFUL LIFE STATUTE § V, supra text preceding note 167.
177. See supra notes 31-36, 51-53, 74.
178. Critics have expressed skepticism about the “product liability crisis” since its first stirrings in the mid-1970s. See Phillips, supra note 50, at 664-65. The conceptual basis for a product liability statute of repose is flawed, Schwartz, supra note 21, at 842-48, and insurance industry studies contradict manufacturer's claims that certainty is essential to reduce excessive liability insurance rates, see Phillips, supra note 50, at 644-45 n.31; cf. MINNESOTA JUSTICE FOUNDATION, MINNESOTA JURY VERDICTS 1982-1987 (1988) (available from Minnesota Justice Foundation, University of Minnesota Law School) (showing no trend of increasing jury verdicts for plaintiffs in Minnesota courts). Even the Department of Commerce, when developing MUPLA, stopped short of validating the alleged relationship between older-product liability claims and insurance rates, stating that “[t]he limited available data show that insurers' apprehension about older products may be exaggerated.” MUPLA § 110 analysis. The MUPLA analysis concluded only that older-product liability claims had the potential to affect insurance rates adversely. Id. If the product liability crisis is indeed an illusion, legislatures should find that a healthy business environment does not require the strong medicine of barring otherwise meritorious claims through enactment of a statute of repose.
cause the useful life statute will bar fewer meritorious claims than an arbitrary fixed-term statute of repose. Although this Comment does not purport to solve all the problems associated with the useful life concept, the proposed statute set out above addresses the main problem the Hodder court faced: the inherent contradiction of determining “ordinary” useful life by considering an individual user’s habits. By eliminating examination of the individual user’s conduct, useful life is measured properly by considering the only relevant elements, the product and lapse of time.

CONCLUSION

The Minnesota legislature enacted a useful life statute to limit product liability claims arising after the useful life of the product expired. Hodder v. Goodyear Tire & Rubber Co. is the first case interpreting a useful life statute. The court held that Minnesota’s useful life statute did not bar claims, but only made expiration of a product’s useful life evidence of the user’s fault. The court also found the statute incoherent and questioned the value of the useful life concept. The court’s observations have broad import, because many states have enacted useful life statutes similar to the Minnesota statute.

This Comment argues that Minnesota’s useful life statute was intended to bar claims, but that the statute’s language is internally incoherent and unworkable. The statute’s primary problem is that it defines useful life objectively as a product’s “ordinary” life, but sets out criteria for measuring useful life that include consideration of the individual user’s conduct. The difficulty in applying the statute’s subjective criteria to its objective standard makes the court’s narrow construction acceptable as the best means to effect the legislature’s intent.

Although Minnesota’s statute is internally incoherent, the

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179. By accounting for variability in the useful lives of different products, a useful life statute avoids the inequity of barring claims for products with useful lives longer than an arbitrary repose period. Although useful life statutes avoid the problem of arbitrariness, they still may bar meritorious claims when a defect does cause the injury. Manufacturers are culpable for a defective product even if the defect does not cause an injury until after the product’s useful life expires. The useful life statute frees manufacturers from liability in this situation. Barring some valid defect claims is the cost of providing certainty for manufacturers, and although useful life mitigates this problem, it does not eliminate it. A legislature should consider carefully whether such a bar to claims is really necessary.

180. See supra text preceding note 167.
useful life concept is workable. This Comment proposes a model useful life statute that separates affirmative defenses based on the user's conduct from the useful life concept. Separating examination of the individual user's conduct from useful life makes the useful life statute coherent, because useful life is measured by considering the only relevant elements—the product and lapse of time. The proposed statute thus addresses the main problem confronting the Hodder court by providing coherent standards for measuring useful life. The proposed statute should improve useful life statutes in other states as well, because MUPLA and most state statutes follow the Minnesota model to some degree.

Keith Moheban