

December 1972

U.C.C. - Statute of Limitations - Conflict Between Personal Injury and Sales Contract Statutes of Limitations

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Recommended Citation

Harvey D. Peyton, *U.C.C. - Statute of Limitations - Conflict Between Personal Injury and Sales Contract Statutes of Limitations*, 75 W. Va. L. Rev. (1972).

Available at: <https://researchrepository.wvu.edu/wvlr/vol75/iss2/12>

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meaning of "proximate cause" does not exclude substantial but non-dominant causes,³⁰ a strict interpretation of the regulations might reasonably lead one to arrive at the "significant" motivation test as that intended by the draftsmen.

The Court, however, has opted for a decision consistent with its own earlier holdings. The decision is justifiable since "dominant" motivation is a more precise test. Perhaps the major importance of the decision in *Generes* is not that the Court adopted one test over the other, but that it did adopt a test by which similar cases can be decided consistently by lower courts in the future.

Joseph S. Beeson

U.C.C. — Statute of Limitations — Conflicts Between Personal Injury and Sales Contract Statutes of Limitations

In October, 1966, Roy Lee Heavner purchased a trailer and eight new Uniroyal truck tires. Mr. Heavner was operating this vehicle in April of the following year when an accident occurred resulting in damage to the trailer and severe injuries to himself. In September, 1970, Heavner brought an action against Uniroyal, the tire manufacturer, and Pullman, the seller of the trailer, asserting that both were liable for breach of express and implied warranties.¹ Uniroyal and Pullman moved to have the personal injury action dismissed on the grounds it was barred by the two year New Jersey statute of limitations governing personal injury actions.² Heavner contended that he

³⁰ Professor Prosser points out that instructions to the jury that they must find defendant's conduct to be the "sole cause" of the injury in order to give relief should be and are strongly condemned as improper. Damages may be apportioned between separate causes according to the degree to which they contributed to the harm. Although one cause may have been responsible for a greater degree of injury, each cause is proximate if each alone would have caused the injury to occur. W. PROSSER, *THE LAW OF TORTS* §§ 41-42 (4th ed. 1971).

¹ Heavner also sought relief on the grounds of strict liability in tort, strict liability for misrepresentation, and negligence.

² N.J. STAT. ANN. § 2A:14-2 (1952) provides:

"Every action at law for an injury to the person caused by the wrongful act, neglect or default of any person within this state shall be commenced within 2 years next after the cause of any such action shall have accrued." This is similar to W. VA. CODE ch. 55, art. 2, § 12 (Michie, 1966), which provides a two year limitation on the commencement of actions to recover for personal injury but does not require the injury to be the result of the wrongful act, default, or neglect of another.

was seeking recovery for breach of express and implied warranty; hence the four year statute of limitations on Uniform Commercial Code sales contract actions was applicable.³ The trial court ruled in favor of the defendants and *Heavner* appealed. *Held*, affirmed.⁴ The New Jersey Superior Court employed two lines of reasoning. First, actions such as this are essentially personal injury actions controlled by the two year statute of limitations. Although they may arise from contracts of sale, any difference from other personal injury tort actions is more fancied than real. Second, the court found no intent on the part of the legislature to alter the basic two year statute of limitations by adoption of the Uniform Commercial Code. *Heavner v. Uniroyal, Inc.*, 118 N.J. Super. 116, 286 A.2d 718 (App. Div. 1972).

A conflict between the Uniform Commercial Code's [hereinafter referred to as the UCC] four year statute of limitations governing all actions arising out of contracts of sale and the various state statutes of limitations for personal injury actions has arisen in several jurisdictions. Although the reasoning employed in *Heavner* has been used in almost every case,⁵ the results have been widely divergent. Some courts have applied the UCC four year statute of limitations to all actions based upon sales contracts, including those that seek damages for personal injuries. Others have applied the personal injury statute of limitations to all actions seeking to recover for personal injury even though some may have arisen out of contracts of sale.

In *Heavner* the court reasoned that since an action seeking recovery for personal injuries brought on the theory of warranty was no different from any other personal injury action, the statute of limitations should be the same. There are two considerations in this conclusion: First, actions against manufacturers in New Jersey are based on strict liability in tort;⁶ second, the essence or gravamen of the action was the personal injury. Since consumer actions against manufacturers in New Jersey are founded on strict liability in tort, this would indicate that all such actions are identical. Hence the presence

³ N.J. STAT. ANN. § 12A:2-725(1) (1962) provides:

"An action for breach of any contract for sale must be commenced within four years after the cause of action has accrued." This is identical to W. VA. CODE ch. 46, art. 2, § 725(1) (Michie 1966).

⁴ This case has been appealed to the New Jersey Supreme Court but no argument date has been set as of this writing.

⁵ Apparently only one case has accepted the application of the UCC's four year statute of limitations to actions seeking recovery for personal injury as a foregone conclusion. *Moody v. Sears, Roebuck & Co.*, 324 F. Supp. 844 (S.D. Ga. 1971).

⁶ *Rosenau v. New Brunswick*, 51 N.J. 130, 238 A.2d 169 (1968).

of a commercial relationship between the parties would add nothing to the cause of action to make the two year statute of limitations inapplicable. In *Abate v. Barkers of Wallingford, Inc.*,⁷ a Connecticut Common Pleas Court incorporated similar reasoning into its decision and held a four year statute of limitations inapplicable in an action against the manufacturer of defective ice skates. It noted that a previous case in that state had relied upon the Restatement (Second) of Torts⁸ to define the responsibility of the manufacturer to the consumer. The court stated that such actions were better regarded as founded on strict liability in tort and not properly within the confines of the implied warranty sections of the UCC. Therefore the three year statute of limitations for tort actions was held to apply.⁹ This reasoning has been severely criticized because, although an action for breach of warranty may arise from the same set of circumstances as a tort action, the four year statute of limitations must be applied to the warranty pleadings in order to achieve the national uniformity intended by the UCC.¹⁰ This criticism seems justified when one considers that Connecticut law compels an interpretation of the UCC that will help promote uniformity in the laws of the various jurisdictions.¹¹

The conclusion in *Heavner* that all personal injury actions are basically the same was reinforced by the court's consideration of the essence of the action. There is considerable authority in New Jersey to support the proposition that any action to recover for personal injury is, in essence, a personal injury action regardless of the denomination given it by the pleader, or that it may have arisen from a breach of warranty.¹² This same idea formed the basis of the ruling in *Tyler v. R.R. Street & Co.*,¹³ where the harm alleged, not the form

⁷ 27 Conn. Supp. 46, 229 A.2d 366 (C.P. New Haven 1967).

⁸ RESTATEMENT (SECOND) OF TORTS § 402A (1965). This section subjects the seller in certain instances to strict liability and extends that coverage to ultimate users and consumers.

⁹ CONN. GEN. STAT. ANN. § 52-577 (1960) provides:

"No action founded upon a tort shall be brought but within three years from the date of the act or omission complained of."

¹⁰ W. WILLIER & F. HART, U.C.C. REP. & DIG. 2-693 (1969).

¹¹ CONN. GEN. STAT. ANN. §§ 42a-1-102(1),(2)(c) (1960) provide:

"(1) This title shall be liberally construed and applied to promote its underlying purposes and policies."

"(2) Underlying purposes and policies of this title are . . . (c) to make uniform the law among the various jurisdictions." West Virginia has adopted this provision. W. VA. CODE ch. 46, art. 1, §§ 102(1),(2)(c) (Michie 1966).

¹² *Garfield v. Furniture Fair-Hanover*, 113 N.J. Super. 509, 274 A.2d 325 (Law Div. 1971); *Raskin v. Shulton, Inc.*, 92 N.J. Super. 315, 223 A.2d 284 (App. Div. 1966).

¹³ 322 F. Supp. 541 (E.D. Va. 1971). The plaintiff was injured in March

of action, was held to determine which of the various statutes of limitations should apply. The court felt that since cases decided prior to the UCC had held the two year personal injury statute¹⁴ applicable to all actions seeking recovery for personal injury, whether based on contract or tort, the mere adoption of another contract statute of limitations¹⁵ would not vary that application.

The essence of the action to which the courts referred in *Heavner* and *Tyler* is whether the damages sought are for injury to the person. The New York courts have taken a different approach to this question. *Bort v. Sears, Roebuck & Co.*,¹⁶ held the essence of warranty actions against manufacturers is the breach of a special contract that goods are fit for the purpose sold. Thus such actions are based upon contracts and the UCC four year statute of limitations on contracts of sale is applicable whether the damages sought are for injury to the person or for purely economic loss.

The court in *Heavner* also based its decision on its interpretation of the legislative intent manifested by the enactment of the UCC. The reasoning in this area has generally centered around two points: First, the actual wording of the later statute insofar as it is inconsistent with prior law, and second, the basic policy the legislature wished to promote as extracted from certain code sections and comments. The first point illustrates a basic rule of statutory construction. Implied repealers are disfavored by law. Older and more traditional law is not repealed by implication unless completely irreconcilable with the later enactment.¹⁷ Although the presumption against implied repealers was not explicitly mentioned in *Heavner*, the court did reason that if the

1967, by the fumes of a product known as "Picrin", which was manufactured by the defendant. The action was commenced in June 1969. The court rejected application of the UCC four year statute of limitations and held that the action was barred by Virginia's two year statute of limitations for personal injury actions.

¹⁴ VA. CODE ANN. § 8-24 (1957) provides:

"Every action for personal injuries shall be brought within two years next after the right to bring the same shall have accrued." This statute is almost identical to West Virginia's statute of limitations on personal injury actions. W. VA. CODE ch. 55, art. 2, § 12 (Michie 1966), *infra* note 40.

¹⁵ VA. CODE ANN. § 8.2-725(1) (1965) provides:

"An action for breach of any contract for sale must be commenced within four years after the cause of action has accrued." This is identical to W. VA. CODE ch. 46, art. 2, § 725(1) (Michie 1966).

¹⁶ 58 N.Y. Misc. 2d 889, 296 N.Y.S.2d 739 (Syracuse City Ct. 1969). This line of reasoning was later affirmed by the Court of Appeals of New York. *Mendel v. Pittsburgh Plate Glass Co.*, 25 N.Y.2d 340, 253 N.E.2d 207, 305 N.Y.S. 2d 490 (1969).

¹⁷ *Bradberry v. Buffington*, 74 W. Va. 529, 82 S.E. 321 (1914); 1 J. SUTHERLAND, STATUTORY CONSTRUCTION § 20.14, at 64 (4th ed. 1972).

legislature had intended to alter the two year statute of limitations it would have done so expressly as it did with another statute of limitations dealing with contract actions.¹⁸ Yet, the Supreme Court of Tennessee adopted the four year UCC statute for all actions arising out of sales contracts.¹⁹ It found the UCC irreconcilable with prior law because it contains a specific statute of limitations for actions based on contracts of sale²⁰ and includes personal injuries as an element of damages in such actions.²¹

The second point, that legislative intent may be extracted from the subject matter of the new enactment, is basically an embodiment of the criticism of the presumption against implied repealers. This position recognizes that the basic purpose of most new legislation is to change existing law. Absent express repealers, the extent to which earlier laws are repealed is determined by the subject matter of the new enactment.²² Decisions in New York,²³ Pennsylvania,²⁴ and Ohio²⁵ have apparently adopted the latter position by considering not only the UCC sections dealing with damages and statutes of limitations, but also certain introductory sections directing that the UCC be construed liberally to promote "its underlying purposes and policies".²⁶ The official comment to the statute of limitations section of the UCC clearly states that one of the section's purposes is to introduce a uniform statute of limitations for sales contracts. This purpose is carried out by removing sales contracts from laws limiting commencement

¹⁸ N.J. STAT. ANN. § 2A:14-1 (Supp. 1971), amending N.J. STAT. ANN. § 2A:14-1 (1952). The existing six year statute of limitations on express or implied contracts not under seal was amended to eliminate its applicability to actions "for breach of any contract for sale governed by section 12A:2-725 of the New Jersey Statutes." *Id.* West Virginia has made no such change.

¹⁹ *Layman v. Keller Ladders, Inc.*, 224 Tenn. 396, 455 S.W.2d 594 (1970).

²⁰ TENN. CODE ANN. § 47-2-725(1) (1964) provides:

"An action for breach of any contract for sale must be commenced within four (4) years after the cause of action has accrued."

²¹ TENN. CODE ANN. § 47-2-715(2)(b) (1964) provides:

"Consequential damages resulting from the seller's breach include . . . injury to person or property proximately resulting from any breach of warranty." This section is identical to W. VA. CODE ch. 46, art. 2, § 715(2)(b) (Michie 1966).

²² 1 J. SUTHERLAND, STATUTORY CONSTRUCTION § 2016, at 472-73 (3d ed. 1943).

²³ *Bort v. Sears, Roebuck & Co.*, 58 N.Y. Misc. 2d 889, 296 N.Y.S.2d 739 (Syracuse City Ct. 1969).

²⁴ *Gardiner v. Philadelphia Gas Works*, 413 Pa. 420, 197 A.2d 612 (1964).

²⁵ *Val Decker Packing Co. v. Corn Prod. Sales Co.*, 411 F.2d 850 (6th Cir. 1969) (applying Ohio law).

²⁶ N.Y. UCC § 1-102 (McKinney 1964); OHIO REV. CODE ANN. § 1301.02 (1962); PA. STAT. ANN. tit. 12A § 1-102 (1954). West Virginia has enacted the same provision. W. VA. CODE ch. 46, art. 1, § 102 (Michie 1966).

of other contract actions and imposing a four year limitations period "as the most appropriate to modern business practice".²⁷ Prior to enactment of the UCC, each of these courts had recognized that the right sought to be enforced, whether personal or purely economic, determined which statute of limitations applied. Each felt, however, that the policy enunciated by the UCC was sufficiently illustrative of the requisite legislative intent to repeal the pre-existing statutes of limitations to the extent of their inconsistency with the UCC.

In attempting to resolve the *Heavner* question, courts have virtually ignored the basic reasoning underlying the variances between statutory limitation periods. To answer that question, it may be helpful to survey the considerations upon which such variances are based.

The purpose of all statutory limitations is fairness to the defendant, courts, and the public in general, by protecting them from the disruptive effect of tenuous claims asserted after witnesses and evidence have been lost.²⁸ As a general rule, in order to serve this purpose better, the statutory periods allotted vary with the permanence of the evidence required to prove liability or extent of damage, or with the degree of favor or disfavor with which legislative bodies view particular actions.²⁹ Since the evidence necessary to prove or disprove the cause and extent of personal injury generally rests in the minds of the witnesses, it is better to compel the bringing of such actions before memories fade or witnesses scatter. This is in contrast to disputes involving real property or contract rights where either the subject matter or the written instrument is generally available at time of trial.³⁰ This rationale was apparently the basis for the original English statute of limitations, the root of most American statutes, that provided shorter limitation periods for tort actions.³¹ These early limitations on personal injury actions were generally shortened during the Industrial Revolution by legislative bodies favoring unrestricted in-

²⁷ N.Y. UCC § 2-725, Comment (McKinney 1964); OHIO REV. CODE ANN. § 1302.98, Comment (1962); PA. STAT. ANN. tit. 12A § 2-725, Comment (1954). This comment has been adopted in West Virginia. W. VA. CODE ch. 46, art. 2, § 725, Comment (Michie 1966).

²⁸ Note, *Developments in the Law—Statutes of Limitations*, 63 HARV. L. REV. 1177, 1185-86 (1950).

²⁹ *Id.*

³⁰ Callahan, *Statutes of Limitation—Background*, 16 OHIO ST. L.J. 130, 134 (1955).

³¹ Limitation Act, 21 Jac. I, c. 16 (1623). This act placed a six year limitation on actions such as debt, detinue, replevin and account. Actions for trespass, assault, battery, and wounding were limited to four years and actions on the case for words, two years. *Developments, supra* note 28, at 1192 n.148.

dustrial growth unhindered by employee claims. This lends credence to the theory that limitation periods are also effected by legislative bias, as well as by evidentiary considerations.³² Of course, one could infer the upswing of personal injury actions prompted a tightening of the evidentiary considerations to further guard against tenuous actions.

The proposition that limitation periods vary according to the nature of evidence needed to prove or disprove liability is subject to an obvious criticism: Why should the limitation period for libel, a tort action in which the proof of defendant's act is preserved in the written word, be shorter than that provided for oral contracts, where proof of the contract rests solely in the minds of the speakers?³³ This seems little more than a restatement of the *Heavner* problem of how to reconcile variances in limitation periods when the action asserted contains elements of both tort and contract. Consideration of this critical question has led some to conclude that it cannot be answered.

Those critical of the view that statutory periods vary according to evidentiary considerations contend that protection from stale claims is secondary to the dominant purpose of social stability. The obvious way to prevent any disruptive actions is to forbid all actions. Since fairness to prospective plaintiffs will not allow this, the ends of social stability would best be served by a shortening of all limitations to the point where stability is outweighed by the need for fairness to those having claims.³⁴ It seems more consistent with the history of statutes of limitations, however, to consider the variances of periods according to evidentiary considerations and legislative bias as a means of achieving the end purpose of stability. That is, we eliminate the disruption caused by the assertion of claims after the ability to defend has been lost or diminished.

When one considers the UCC warranty action in relation to the evidentiary theory, the distinction between evidentiary considerations of tort and contract becomes blurred since warranty actions contain characteristics of both. With sales contracts, a great deal of attention is given to the warranties attaching to purchased goods. Thus witnesses to such a transaction are more likely to give accurate testimony about the nature of the transaction after a longer period of time than are witnesses to a negligent act that, by its nature, catches the parties unaware. This is particularly true in UCC cases since once the buyer

³² *Developments, supra* note 28, at 1193.

³³ Callahan, *supra* note 30, at 134.

³⁴ *Id.* at 138.

establishes that the seller was a merchant or had reasonable knowledge of buyer's reliance on seller's skill or judgment, the terms of the warranties are set out either in the sales contract or by statute.³⁵ Were this the only proof required for recovery, personal injury warranty actions would be more analogous to contract evidentiary considerations, and the contract statute should apply. Of course, proof of sale is not enough. The plaintiff must also prove some injury and show that it was caused by a defect in the product that violated either an express or implied warranty. Generally these facts are proved with evidence much like that on which tort recoveries are based. Therefore, the evidentiary considerations of personal injury tort actions are also applicable. Yet, the scale tips decidedly in favor of the contract statute when one considers that the injury resulted from the sale of a defective product and, more importantly, that evidence necessary to prove negligence need not be relied on because the duty of care is set by the terms of the agreement and not by the reasonable man standard.

Whether one accepts the idea that time variances are based upon evidentiary considerations or adheres to a view critical of that stance, it must be acknowledged that the overriding purpose of statutes of limitations is to protect society from the disruption caused by perpetual liability. This is accomplished by offering prospective defendants the protection of a statutory bar while allowing injured plaintiffs a fair opportunity to initiate their actions.³⁶ On both the evidentiary and societal considerations, the UCC four year statute of limitations could be considered a compromise. The evidentiary consideration is relaxed by allowing warranty claims seeking personal injury damages to be brought up to four years from the date of sale. This may allow some plaintiffs to recover on unworthy claims because defendant's evidence has been lost or witnesses have scattered. Conversely, some meritorious warranty claims will be barred because the statute runs four years from the date of sale irrespective of when the injury occurs.³⁷

³⁵ W. VA. CODE ch. 46, art. 2, §§ 312-14 (Michie 1966).

³⁶ Callahan, *supra* note 30, at 138-39.

³⁷ Hoffman v. A.B. Chance Co., 339 F. Supp. 1385 (M.D. Pa. 1972). The defective product was delivered in May 1965, and the injury occurred in October 1969. The statute was held to have run in May 1969, four years after the delivery of the product. See also Howard v. United Fuel Gas Co., 248 F. Supp. 527 (S.D. W. Va. 1965). A gas pipe was installed sometime in 1953 and the injury that resulted from the pipe's alleged defectiveness occurred in 1963. The action was commenced in 1964, seeking recovery for personal injuries on theories of negligence and implied warranty. The implied warranty counts were held barred by the five year statute of limitations on

Application of *Heavner* in West Virginia is a matter of speculation since no cases have decided the question presented.³⁸ In *Jones v. Jones*,³⁹ the West Virginia Supreme Court of Appeals stated the prevailing rule governing the application of statutes of limitations is that the period of time allotted varies to the nature of the right of action. The court distinguished property rights from purely personal rights, such as personal injury. The court did not, however, reduce its denomination of actions into classes of tort and contract. The same is true of the West Virginia statute of limitations. It is not limited to actions in tort, but rather applies to all actions seeking damages for personal injury.⁴⁰ Thus it is unclear whether the statute merely encompasses tort evidentiary considerations, in which case the contract statute could be applied, or whether the shorter statute is motivated primarily by the unsatisfactory nature of the evidence needed to prove personal injury, in which case the court should follow *Heavner*.⁴¹ Should the West Virginia court care to justify application of the four year statute of limitations to personal injury warranty actions it

contracts not in writing. W. VA. CODE ch. 55, art. 2, § 6 (Michie 1966). This case applied pre-UCC principles and dealt briefly with the applicability of the contract statute of limitations to the personal injury aspects of the action. However, the application of the pre-UCC contract statute of limitations to bar a personal injury action even before the injury occurred gives some indication that the code contract statute of limitations may be applied to personal injury warranty actions in West Virginia.

³⁸ This conflict may arise since West Virginia has enacted the UCC four year contract statute of limitations and the section making personal injuries an element of damages in actions on sales contracts. W. VA. CODE ch. 46, art. 2, §§ 715, 725 (Michie 1966). An early West Virginia case held that either assumpsit or case was appropriate in a personal injury action against a physician and that in either instance the personal injury statute of limitations would apply. However, the warranty breached there was one of due care, making the action identical to a negligence action and subject to the same considerations. *Kuhn v. Brownfield*, 34 W. Va. 252, 12 S.E. 519 (1890).

³⁹ 133 W. Va. 306, 58 S.E.2d 857 (1949). Plaintiff was injured in October 1946, and this action was commenced in August 1948. The statute of limitations in effect at that time provided for a one year period to commence actions that would not survive at common law (basically personal injury actions). The trial court held that this action was barred by the one year statute of limitations and the plaintiff appealed. He contended that a revival statute, which allowed personal representatives of parties to a personal injury action to sue and be sued, actually made all personal injury actions survivable, and therefore subject to a longer limitations period. The court rejected this contention. Actions that survived the death of the parties were actions for recovery of property or some damage to the estate; purely personal actions did not survive. Since this action was purely personal, the court rejected a construction of the survival statute that would subject the action to a longer statute of limitations.

⁴⁰ W. VA. CODE ch. 55, art. 2, § 12 (Michie 1966) provides: "Every personal action for which no limitation is otherwise prescribed shall be brought . . . within two years next after the right to bring the same shall have accrued if it be for damages for personal injuries . . ."

⁴¹ *Developments, supra* note 28, at 1194-95.

could do so with authority. The introductory section and official comment to the UCC, relied upon by the courts that have held in favor of the four year statute, have been enacted in West Virginia.⁴² Nevertheless, in view of the statement in *Jones*,⁴³ it is clear the West Virginia Supreme Court of Appeals has authority for rejection of any compromise on evidentiary considerations.

Rejection of the four year UCC limitation period in West Virginia would impose a burden on the business community of defending warranty claims long after the dates of sale. This imposition would be balanced, however, by the plaintiff's equally heavy burden of proving that a defect existed in the product while it was still within the control of the manufacturer and that the product's failure to meet commercial expectations was not the result of extended usage.⁴⁴ Adoption of the UCC statute would mean that all warranty actions would be barred four years from the date of tender of delivery, regardless of when injury occurs.⁴⁵ This would relieve the manufacturer from the burden of defending against such claims long after the date of sale, but in turn would sacrifice those valid warranty claims that may result from injuries incurred more than four years after delivery.⁴⁶ The only apparent alternative is the adoption of the four year statute of limitations that begins to run when the defect is or reasonably should be discovered. The UCC, however, clearly states that warranty actions accrue on the date of tender of delivery.⁴⁷

West Virginia should consider the alternatives carefully. While analysis of cases indicates that nationwide business firms are concerned only with the statute of limitations most favorable to them in each particular case,⁴⁸ the establishment of a uniform national statute of limitations on sales contract actions seems to be a worthwhile consideration. Adoption of the four year statute of limitations in a state

⁴² W. VA. CODE ch. 46, art. 1, § 102 (Michie 1966); W. VA. CODE ch. 46, art. 2, § 725, Comment (Michie 1966).

⁴³ 133 W. VA. 306, 308-09, 58 S.E.2d 857, 858 (1949).

⁴⁴ Note, *Manufacturer's Strict Tort Liability to Consumers for Economic Loss*, 41 ST. JOHNS L. REV. 401, 411 (1967).

⁴⁵ *Hoffman v. A.B. Chance Co.*, 339 F. Supp. 1385 (M.D. Pa. 1972).

⁴⁶ *Mendel v. Pittsburgh Plate Glass Co.*, 25 N.Y.2d 340, 253 N.E.2d 207, 305 N.Y.S.2d 490 (1969).

⁴⁷ UCC § 2-725(2) (1962 Official draft) provides: "A cause of action accrues when the breach occurs, regardless of the aggrieved party's lack of knowledge of the breach. A breach of warranty occurs when tender of delivery is made"

⁴⁸ Compare *Bort v. Sears, Roebuck & Co.*, 58 N.Y. Misc. 2d 889, 296 N.Y.S.2d 739 (Syracuse City Ct. 1969) (Sears argued in favor of the two year limitation), with *Moody v. Sears, Roebuck & Co.*, 324 F. Supp. 844 (S.D. Ga. 1971) (Sears argued in favor of the four year limitation).

that has not extended strict liability to products liability actions⁴⁹ would assure those persons doing business in such state that all actions arising from the sale of a particular product, and commenced more than four years after tender of delivery, would necessarily be based upon negligence.

Harvey D. Peyton

⁴⁹ Strict liability for product related personal injuries has not been adopted in West Virginia. Cady, *Law of Products Liability in West Virginia*, 74 W. VA. L. REV. 283, 301 (1972).