In a little over a year, the Oregon Supreme Court has issued a trilogy of major interpretations of Oregon’s product liability statutes: Gladhart v. Oregon Vineyard Supply Co., 332 Or 226, 26 P3d 817 (2001); Kambury v. Daimlerchrysler Corp., 334 Or 367 (2002); and Griffith v. Blatt, 334 Or 456 (2002). All three of the decisions have focused on statutory construction, and the results demonstrate the reluctance of Oregon’s highest court to insert common law precepts into the product liability statutory scheme. The cases further spotlight the continuing struggle to identify the contours of Oregon’s product liability law, which arguably encompasses far more than the doctrine of strict liability.

In Gladhart, the Court interpreted ORS 30.905(2), the “product liability” statute of limitations. 332 Or at 229. ORS 30.905(2) mandates that a product liability action “shall be commenced not later than two years after the date on which the death, injury, or damage complained of occurs.” The Court rejected the application of the “discovery rule” to this statute, noting that “[a] discovery rule cannot be assumed, but must be found in the statute of limitations itself.” Id. at 230. In the absence of explicit language that the statute runs upon “discovery” or “accrual,” the Court concluded that “[t]he words ‘death, injury, or damage’ as used in ORS 30.905(2) refer to events, not to abstractions or ideas. Accordingly, when considered without reference to other contextual clues, the term ‘occurs’ describes the happening of an event, not its eventual discovery.” Id. at 232. As further support for its interpretation, the Court cited to other statutes of limitations (applying to asbestos, intrauterine device, and breast implant actions) which expressly provide a discovery rule. Id. at 232-33. According to the Court, “[t]he legislature knows how to express a discovery rule when it desires to do so.” Id. at 234.

Subsequently, in Kambury v. Daimlerchrysler Corp., supra, the Oregon Supreme Court held that the two-year statute of limitations contained in ORS 30.905(2) applies to a product liability wrongful death claim. In doing so, it rejected the applicability of ORS 30.020, which generally governs wrongful death claims and provides a three-year limitations period. In light of Gladhart, the application of ORS 30.905(2) is more beneficial to defendants not only because of the shorter statute of limitations, but because there is a “discovery rule” in wrongful death actions. ORS 30.020(1).

The trial court in Kambury applied ORS 30.905(2) to all of plaintiff’s causes of action, which included claims for negligence, breach of warranty, negligent misrepresentation and intentional misrepresentation. 334 Or at 370-371, n 1. Neither the Court of Appeals nor the Supreme Court
addressed the applicability of ORS 905(2) to these claims. However, the Oregon Supreme Court’s decision directed the Court of Appeals to reconsider plaintiff’s argument that ORS 30.905(2) should not apply to these additional claims. Id. at 375 n 3.

In both Kambury and Gladhart, the Court at times uses the terms “product liability” interchangeably with “strict liability.” Kambury, 334 Or at 370; Gladhart, 332 Or at 229. This distinction is important because the absence of a discovery rule in ORS 30.905(2) only has the potential to cleanly cut off claims filed more than two years after the actual injury if it covers all product defect related claims. If plaintiffs can circumvent its application by recrafting their claims in negligence, the ultimate effect of Gladhart is diminished.

Existing precedent would dictate that the Court of Appeals find for the defendants on remand in Kambury. Indeed, the Court of Appeals and the Ninth Circuit have made clear that ORS 30.905(2) applies to any “product liability” action, which includes claims based on both strict liability and negligence, as well as other theories. See ORS 30.900 (defining a product liability action, in part, as any action brought against a manufacturer arising out of “any failure to warn regarding a product” or “any failure to properly instruct in the use of a product”); Sease v. Taylor’s Pets, Inc., 74 Or App 110, 118, 700 P2d 1054 (1985) (“ORS 30.900 covers actions based on negligence as well as strict liability.”); Marinelli v. Ford Motor Co., 72 Or App 268, 273, 696 P2d 1 (1985) (product liability “embraces all theories a plaintiff can adduce in an action based on a product defect”); Philpott v. A.H. Robins Co, Inc., 710 F2d 1422, 1424-25 (9th Cir 1983) (ORS 30.905 encompasses “all causes of action associated with product design, inspection, testing, manufacturing, and warning”); Bancorp Leasing and Financial Corp. v. Augusta Aviation Corp., 813 F2d 272, 277 (9th Cir 1987) (ORS 30.905(2) governed strict liability, negligence and breach of warranty claims).

Finally, Griffith follows this interpretation of ORS 30.905(2). In Griffith, the Court reiterated that there is no discovery rule in a strict liability claim. The plaintiff utilized the product at issue on February 26, 1993 for five to six days, and experienced symptoms within a week or two. 334 Or at 463. She filed a strict liability claim against a manufacturer on February 23, 1995. Id. at 460. However, she did not name the correct manufacturer, and the correct party was not added until she amended her complaint on June 21, 1995. Id. at 463. While the Court did not specifically determine the exact date the “injury” occurred, it held that the injury happened more than two years before she filed the amended complaint. The Court affirmed the trial court’s grant of summary judgment to the drug manufacturer (See also Griffith v. Blatt in Case Notes in this edition as it pertains to the “learned intermediary doctrine.”)

While the Griffith Court once again used the terms “product liability” and “strict liability” interchangeably, the Court stated that “[p]laintiff’s strict liability and negligence claims [based on the alleged inadequacy of warnings and instructions] each constituted a ‘product liability civil action’” as defined by ORS 30.900. In a footnote, the Court also quoted John W. Wade et al. Prosser, Wade and Schwartz’s Cases and Materials on Torts (9th Ed 1994):

"Products liability’ is the umbrella term for the liability of a manufacturer, seller or other supplier of chattels, to one with whom he is not in privity of contract, who suffers physical harm caused
by the chattel. The liability may rest upon the supplier’s negligence or upon a warranty, or it may be based on strict liability in tort.”

334 Or at 461, n 3.

While we can expect to see attempts to circumvent the effect of the foregoing precedents, ultimately, the products liability statute should apply whenever the gravamen of the claim is a product defect. *Philpott v. A.H. Robins Co., Inc.*, supra, 710 F2d at 1424 (“In accordance with [the] legislative intent to limit a manufacturer’s liability exposure *** the broad language of ORS 30.900 can reasonably be construed as encompassing all *** product related claims”); *Marinelli v. Ford Motor Co.*, *supra*, 72 Or App at 273 (Nothing in the statutory language suggests that it was “intended to apply to defects or failures that give rise to strict liability but not to defects or failures that result from negligence. Moreover, although the legislature is free to attach different limitation periods to different allegations that are highly likely to be made in the same action, we do not think that it intended to do so here.”)