

New Theories of Product Liability Develop in the Age of Artificial Intelligence and Increased Automation



Devin Bates

dbates@mwlaw.com
(501) 688.8864



Benjamin Jackson

bjackson@mwlaw.com
(501) 688.8887

05/15/2023

In recent years, products liability law has been significantly impacted by advancements in technology, particularly with the rise of artificial intelligence (AI) and automation. As more companies adopt these technologies to improve their manufacturing processes and product design, new theories of products liability will emerge. In this blog post, we will explore some new theories of product liability claims that are emerging.

Traditionally, products liability claims have focused on the manufacturer's failure to warn consumers of a product's potential dangers or defects, failure to recall or correct a known safety issue, or other more traditional and tangible alleged harm. However, with the increased reliance on AI, the focus of some litigation will shift to the manufacturer's failure to adequately design and test their products to account for the risks and unintended consequences that can arise from these technologies. Some of these newly emerging theories include:

Cybersecurity Defects: With the rise of the Internet of Things (IoT), products are becoming increasingly connected and reliant on software. This creates new opportunities for product liability claims based on uncontrolled cybersecurity threats and defects. If a product is designed with allegedly inadequate cybersecurity protections, it could be vulnerable to hacking, which could result in consumer injury or loss. For example, a hacker could take control of a self-driving car or medical device, causing a serious accident or injury. As a result, the plaintiff's bar will be looking for test cases to hold manufacturers liable for "cybersecurity defects" in their products.

Failure to Warn of Privacy Risks: Another emerging area of product liability law is the alleged failure to warn of privacy risks. As more products collect and store personal data, there is a risk of that data being stolen or misused. If a manufacturer fails to adequately warn consumers of these risks, the plaintiff's bar will advance cases on the theory that a manufacturer should be held liable for any resulting harm. For example, if a fitness tracker collects personal health data that is then stolen by hackers, a plaintiff may later attempt to argue that the manufacturer could be held responsible for failing to warn consumers of the risk of data theft.

Design Defects Caused by Artificial Intelligence: As more products rely on AI and machine learning, there is a risk that these technologies could introduce design defects. For example, an AI system used to control a vehicle could malfunction and cause an accident. If the design of the AI system is found to be defective, a plaintiff will inevitably bring a claim against the manufacturer for the resulting injuries or damages. Products claims alleging AI defects will be intensely technically and complex, sorting through layers of design, testing, and manufacturing.

Liability for Third-Party Add-Ons: Manufacturers are already very mindful of liability injected into the equation through third-party add-ons to their products. For example, if a consumer installs a Bluetooth enabled aftermarket part on their car that causes a malfunction, that consumer may attempt to allege that the car manufacturer should still be held liable for any resulting injuries or damages. A pioneering plaintiff will inevitably argue that this theory of liability recognizes that manufacturers have a duty to design their products to be safe even when used with third-party add-ons. Of course on the defense side, this type of case would provide many opportunities for testing the boundaries of comparative fault.

Failure to Monitor Social Media for Product Issues: Finally, with many manufacturers employing the services of social media managers either in-house or through contractors, it is only a matter of time before a plaintiff's lawyer will argue that manufacturers should be held liable for failing to monitor social media for product issues. If consumers are reporting problems with a product on social media, it may later be alleged that the manufacturer had a duty to investigate and address those issues. This theory of liability recognizes the importance of social media as a source of information about product defects and the need for manufacturers to comprehensively monitor social media for more than just public relations concerns.

In conclusion, as products become more complex and interconnected, new theories of product liability litigation are emerging. While technology continues to evolve and products cases lag several steps behind, savvy products lawyers will need to stay abreast of new technologies and the complex new theories of cases that come with them.