Hot Topics in Products Liability Law: Collection and Use of Data is THE Products Liability Issue of the Future



Devin Bates
dbates@mwlaw.com
(501) 688.8864

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Data is arguably *the* products liability issue of the future. Dealing with data is often already a critical part of products liability lawsuits, but with the rise of artificial intelligence and automation, product manufacturers must deal with the reality that there is more data being generated than ever before. This blog post will discuss the various appearances of data in products liability cases, and offer some thoughts about why this will become *the* products liability issue of the future.

Data Generated Throughout the Lifecycle of Products

One of the primary ways that data has historically been used in products liability lawsuits is through product testing. Throughout various stages of research and development, manufacturers conduct thorough testing to identify potential risks or defects in their products. This testing can include collecting data on how the product functions, its performance under different conditions, and any issues that arise during use.

Throughout the manufacturing process, data continues to be gathered, compiled, and relied upon for a variety of purposes, including for quality assurance. As manufacturing in many industries increasingly involves computers and complex artificial intelligence, the opportunities for data gathering are prevalent.

Data is of course also gathered throughout the sales and marketing process. Sales people increasingly use digital means to conduct their jobs, leading to more opportunities in which data can be created and stored.

And further, even after the point of sale, data continues to be gathered as products are serviced and tested by use in the field over time. In many industries, fierce competition squeezes margins and drives a lower price for consumers. Some companies are willing to sell products at cost or even at a loss, recognizing that there is a large market for ongoing service throughout the life of the product. In industries where ongoing servicing presents the largest opportunity for profit, companies will understandably be very interested in tracking customers over time, and sending notifications when it is time for servicing. For some products, servicing customers after a sale presents many opportunities for data gathering, which can result in the reality that this ongoing data gathered is itself the market to be tracked and commoditized.

Data That Can Become Relevant in Products Liability Lawsuits

In the event of a product failure or injury, data can play a crucial role in litigation. Of course, data can go a long was in pinpointing cause and allocating liability.

Data can be used defensively and affirmatively by defendants to demonstrate that the manufacturer took reasonable steps to test product safety, and to ensure quality control throughout the manufacturing process. Of course, the plaintiffs' counsel can comb through data to support their theory of the case. Both parties could possibly use experts to pick apart the data used by their opponent.

But the litigation uses highlighted here only scratch the surface, as data can take many forms, and can be generated rapidly from seemingly everywhere around us.

Consider the following examples of data that may be in existence:

- Data generated from a product's sensors that monitor daily use, collected and stored on the user's smartphone or computer.
- Metadata about the data mentioned in the previous bullet point, including, when that data was reported from the user's smartphone to the manufacturer, how it was received and stored by the manufacturer, and what the manufacturer did upon receiving the data.
- Data downloaded from a product to a computer, as gathered and stored by the servicer of the product in the normal course of maintenance or service. Also, the metadata about that data, including when it was reported to the manufacturer.
- Data created by a manufacturer's algorithm that predicts anticipated use, or monitors actual use, of a product, created and used for the purpose of suggesting timelines of service. For example, if a product issue is identified during routine maintenance, does a manufacturer's/servicer's algorithm send additional notices or warnings to the user about future suggested maintenance or follow up?
- Data collected from customer feedback. This feedback could be submitted to the manufacturer through conventional means, for example verbal reports to a salesperson. Alternatively, and for some products, the feedback could be submitted in less conventional means, for example, in comments left in reviews posted online or submitted through the comments section available on the platform where a manufacture distributes its app.

A plaintiff's lawyer may be interested in collecting and analyzing these data sources to pursue their theory of the case. Of course, this data could also prove helpful to the defense. How this various data will be used in products liability cases is a hot topic, and one that continues to be tested.

Conclusions

The examples shared above merely scratch the surface. But they should all support one conclusion: in the future, some products liability cases will be won and lost based on the collection, management, and use of data.