



Product Liability: A Growing Practice Area Amidst the COVID-19 Pandemic

A Case Filing Surprise

It's no secret that the Coronavirus and related quarantine measures are having a big impact on lawyers and law firms. Yet while activity in many practice areas is slowing, one in particular is bucking the trend: product liability. In fact, [data has shown an uptick of over 300 percent](#) in product liability case filings in civil federal court.

Three. Hundred. Percent.

So attorneys are still filing cases—which means, despite many lawyers seeing activity in their particular practice areas slow, there are potential opportunities to grow business. And product liability looks like a good place to start.

Why is Product Liability a Growing Legal Practice Area Now?

To be clear, it's [not just product liability that's up](#). Employment, insurance and a handful of other practice areas also showed an increase in filings.

While it's pretty obvious why those practice areas have an increase in activity, product liability (again, at 300 percent!) was a curious outlier. Here are a few possible reasons why.

You've probably seen the acronym PPE in COVID-19-related news stories. That stands for personal protective equipment, which includes things like face masks, gloves and visors. Any manufacturer of products that fall into this broad product category could see an increase in liability claims from individuals who've used them yet contracted the virus anyway. The same holds true for manufacturers of sanitizing and cleaning products.

Moreover, since President Trump has authorized the [Defense Production Act](#), companies aren't just increasing output, many are [retooling factories](#) to produce different end products. A large-scale increase in production, coupled with new production operations, could point to the increase in product liability filings. (It may also portend a greater number of cases as the crisis moves forward.)

Product Liability and Medicine

Additionally, over the past months, several medical remedies have been touted as curative/preventative measures. While these claims range from potentially helpful to downright dubious, there could be a rise in claims from users who felt misled—citing reasons like inaccurate “news” stories or misinterpreted packaging.

The cacophony of messaging on the COVID-19 crisis is exacerbating the issue too. It’s often difficult to tell the science-based remedies from the snake-oils sold by folks looking to make a quick buck. Expect a lot of involvement from both the FDA and the FTC in many future Coronavirus-related product liability claims.

But there’s an important distinction, speaking strictly of product liability, between the medical remedies outlined above (even the well-intended, potentially effective ones) and the vaccines being developed specifically for the COVID-19 pandemic.

Product Liability and the PREP Act

As doctors and scientists race to develop a vaccine, pharmaceutical companies are simultaneously gearing up for mass production. While most of the world would applaud any effort to speed up tests and trials to confront the crisis, it does open those companies up to potential tortious actions. To shield them from product liability claims, the federal government passed the Public Readiness and Emergency Preparedness (PREP) Act in 2005.

The argument was made that a vaccine’s speed-to-market was a key factor in preventing a pandemic from worsening (and ergo causing significantly greater damage). The PREP Act was enacted to help pharma companies produce and deploy vaccines at scale, without concerns for tortious entanglements later.

While it is still unclear what exact role the [PREP Act](#) will play in any upcoming personal liability claims stemming from a potential COVID-19 vaccine, it is likely to enter the conversation if/when the time comes.

Consumer Protection Litigation

Interestingly, the same report that said product liability was up 300 percent, revealed that consumer protection litigation was trending down (albeit slightly). It’s reasonable to assume that it will rebound as the Coronavirus pandemic matures and quarantine orders are slowly rolled back.

You can expect a growth of cases centering around key topics like health care provider liability and the risks/safety protocols taken by the newly christened essential businesses—think places like grocery stores and auto repair shops.

As you would imagine, similarly-focused legislation will probably follow many of these developments, although those efforts will most undoubtedly lag behind the courts.

Should You Add Product Liability to Your Practice Specialization?

For a lawyer, expanding one’s specialization should never be a knee-jerk reaction to the current business environment. That said, the COVID-19 pandemic could have broad, long-lasting impacts to attorneys and others in the legal profession—and we may already be seeing the evidence. It could be prudent to explore this spiking practice area, particularly if other areas in your firm are facing a decline (short- or long-term).

The good news? [There are tools that can help you get up to speed.](#)