Litigating a Products Liability Personal Injury Case a Plaintiff's Perspective

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About the Presenter

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Michael Alkaraki is a Partner and Trial Lawyer at Leahy Hoste Alkaraki, where he represents plaintiffs in cases of catastrophic personal injury, medical malpractice, product liability and wrongful death. He has recovered over $50,000,000 in verdicts, arbitration awards and settlements for his clients, including numerous seven figure results for clients in product liability cases involving defective medical devices and consumer goods.

An active member of the bar and community, Mr. Alkaraki is an Adjunct Professor at Loyola University Chicago School of Law, where he teaches Advocacy, Trial Practice and Professional Identity Formation and serves on the Dean's Diversity Council and the Alumni Board of Governors. He serves on the Board of Managers of the Chicago Bar Association, the Board of Directors of the Illinois Bar Foundation and the Board of Directors of Opportunity Knocks, a local not-for-profit organization addressing the needs of the young adult developmentally disabled community.

He has been published in the Chicago Daily Law Bulletin, the Illinois Bar Journal, the Illinois Trial Lawyers Association's Trial Journal and numerous bar association newsletters and is a regular speaker on topics related to his practice areas. In 2021, Loyola University Chicago School of Law recognized Mr. Alkaraki with the St. Robert Bellarmine Award, which honors alumni who have distinguished themselves within their first 15 years of practice by their contributions to the profession and the School of Law. In 2019, the Illinois State Bar Association recognized Mr. Alkaraki with the Civic Education Award for his dedication to advancing public understanding of the judicial process and the role of attorneys in society, and in 2017, Mr. Alkaraki was recognized as one of "Forty Under 40 Illinois Attorneys to Watch" by the Chicago Daily Law Bulletin/Chicago Lawyer Magazine for his success in the courtroom and commitment to the profession and broader community.

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Table of Contents

Course Description

Course Presentation

This program provides an in-depth look at products liability and the legal liability of manufacturers and sellers. Provides an overview of product liability law including legal theories, common defenses and settlement considerations with case illustrations and current trends

The program examines what product liability law is, as well as elements of strict liability, common defenses, and settlement considerations. Additionally, case examples are provided throughout the program to further illustrate the different aspects of product liability cases.

The course materials will provide the attendee with the knowledge and tools necessary to identify the current legal trends with respect to these issues. The course materials are designed to provide the attendee with current Illinois law, impending issues and future trends that can be applied in practical situations

This material is intended to be a guide in general. As always, if you have any specific question regarding the state of the law in any particular jurisdiction, we recommend that you seek legal guidance relating to your particular fact situation.

Course Material

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Course Learning Objectives and Outcomes

This course is designed to provide the following learning objectives:

After this course, the participant will understand the duties, roles and responsibilities of counsel in situations involving product liability with focus on strict liability and negligence theories.

After this course, the participant will learn the following practice tips how to identify and build evidence in support of a product liability case, along with trial considerations.

After this course, the participant will develop an understanding about how to identify and build evidence in support of a product liability case.

After this course the participant will have learned the skills about gathering evidence and building themes in product liability cases.

After this course, the participant will develop an understanding about the foundations of product liability; pleading and theories, limitations periods, elements of strict liability.

Upon completion of the course, the participant will develop an understanding about the seller's exception /distributor statute, the consumer expectation test risk, the utility test and inadequate warning or instructions.

Upon completion of the course, the participant will develop an understanding about products liability, wilful and wanton conduct, medical devices and pharmaceuticals liability, multidistrict litigation.

Upon completion of the course, the participant will develop an understanding about common defenses to product liability claim, discovery requests to admit, pretrial motions in limine, and demonstrative exhibits at trial.

Upon completion of the course, the participant will develop an understanding about emerging issues, "special" industries & immunities.

Upon completion of the course, participants should be able to apply the course material; improve their ability to research, plan, synthesize a variety of sources from authentic materials, draw conclusions; and demonstrate an understanding of the theme and concepts of the course by applying them in their professional lives.

Timed Agenda:

Presenter Name: Michael Alkaraki

CLE Course Title: Litigating a Products Liability Personal Injury Case: a Plaintiff's Perspective

Time Format (00:00:00 - Hours:Minutes:Seconds)	**Description**
00:00:00	ApexCLE Company Credit Introduction
00:00:20	CLE Presentation Title: Litigating a Products Liability Personal Injury Case: a Plaintiff's Perspective
00:00:32	CLE Presentation Start
00:08:24	Foundations of Product Liability
00:14:43	Pleading and Theories
00:18:30	Negligence
00:22:18	Limitations Periods
00:24:32	Elements of Strict Liability
00:27:51	Seller's Exception /Distributor Statute
00:33:12	Consumer Expectation Test Risk - Utility Test
00:37:38	Inadequate Warning or Instructions
00:41:42	Wilful and Wanton Conduct
00:47:52	Medical Devices and Pharmaceuticals
00:54:46	Multidistrict Litigation
00:59:51	Common Defenses to Product Liability Claims
01:05:59	Requests to Admit
01:10:31	Pretrial Motions in Limine
01:14:50	Demonstrative Exhibits
01:18:45	Illinois Supreme Court Rule 219
01:20:36	Emerging Issues, "Special" Industries & Immunities
01:26:51	Other Industries with Immunities
01:29:50	Evolution of Legal Principles
01:30:33	Presenter Closing
01:30:35	ApexCLE Company Closing Credits
01:30:39	End of Video

Litigating a Products Liability Personal Injury Case: a Plaintiff's Perspective

Course Material

Products Liability

- Refers to the legal liability of manufacturers and sellers to compensate buyers, users, and even bystanders, for damages or injuries suffered because of defects in goods purchased.

- A tort which makes a manufacturer liable if his product has a defective condition that makes it unreasonably dangerous to the user or consumer.

> Although the ultimate responsibility for injury or damage in a products liability case most frequently rests with the manufacturer, liability may also be imposed upon a retailer, occasionally upon a wholesaler or middleman, a bailor or lessor, and infrequently upon a party wholly outside the manufacturing and distributing process, such as a certifier. This ultimate responsibility may be imposed by an action by the plaintiff against the manufacturer directly, or by a claim for indemnification, asserted by way of a cross-claim or third party claim by the retailer or wholesaler, or others who might be held liable for the injury caused by a defective product.
>
> Under modern principles of products liability, and with the elimination of privity requirements in most instances, recovery is no longer limited to the purchaser of the product, or even to a user, but may extend to the non-user; the bystander who is injured or damaged by a defective product, for example. However, the term

"products liability" normally contemplates injury or damage caused by a defective product, and if loss occurs as a result of a condition on the premises, or as a result of a service, as distinguished from loss occasioned by a defective product, a products liability claim does not ordinarily arise, even though a product may be involved.

Black's Law Dictionary, 6th Edition, West Publishing Co. (1990).

Overview

- Foundations of Product Liability Law
- Pleading & Theories of Recovery
- Medical Devices & Pharmaceuticals
- Common Defenses
- Discovery & Requests to Admit
- Motion Practice – *Daubert, Frye* and Motions in *Limine*
- Trial Themes & Persuasion
- Spoliation of Evidence
- Settlement Considerations
- Notes on Emerging Issues, "Special" Industries & Immunities

Foundations of Product Liability

- ***Winterbottom v. Wright*** - 1842 English common law case in which Plaintiff, a mail carrier injured when a horse-drawn carriage collapsed, could not recover from the manufacturer who sold the carriage to the Postmaster (Plaintiff's employer) because of a lack of privity between manufacturer and Plaintiff.
- ***MacPherson v. Buick Motor Co.***, 217 N.Y. 382 (1916) – Judge Benjamin Cardozo recognized that a product liability claim could be asserted in the absence of privity of contract.
- ***Henningsen v. Bloomfield Motors, Inc.***, 32 N.J. 358 (N.J. 1960) – recognized an implied warranty of safety with respect to any foreseeable use of a product, regardless of privity.
- ***Greenman v. Yuba Power Products***, 59 Cal. 2d 57 (1963) – California Supreme Court recognized product liability claims in tort, entirely distinct from limitations of privity and contract law in general.

Pleading and Theories

- **Strict Liability** – Plaintiff's injuries caused by "unreasonably dangerous" condition of product that existed at time product left control of manufacturer, distributor, or seller. *Coney v. J.L.G. Industries, Inc.*,97 Ill.2d 104 (1983).
- **Negligence** – Plaintiff's injuries caused by failure to exercise ordinary care in the design, manufacture, distribution, or sale of, and/or warning regarding, a product. *Byrne v. SCM Corp. et al.*, 182 Ill.App.3d 523 (4th Dist. 1989), *Eaves v. Hyster Co.*, 244 Ill. App. 3d 260 (1st Dist. 1993).
- **Breach of Warranty** – Plaintiff's injuries caused by breach of express warranty or implied warranties of merchantability or fitness for a particular purpose. *Haley v. Merit Chevrolet, Inc.*, 67 Ill.App.2d 19 (1st Dist. 1966), 810 ILCS 5/2-314, 810 ILCS 5/2-315.

Limitations Periods

- **Statute of Limitations**: Generally, 2 years, per 735 ILCS 5/13-202, with exceptions for the "discovery rule" and incapacity due to minority or disability as set forth in 735 ILCS 5/13-213(d).
- **Statute of Repose**: Generally 12 years from the date of first sale, lease or delivery of possession by a seller or 10 years from the date of first sale, lease or delivery of possession to its initial user, consumer, or other non-seller, whichever period expires earlier, unless the defendant expressly has warranted or promised the product for a longer period and the action is brought within that period, per 735 ILCS 5/13-213(b).

Elements of Strict Liability

To recover under a theory of strict liability, Plaintiff must show:

1. Injury resulted from a condition of the product.
2. Condition was "unreasonably dangerous"; and
3. Condition existed at the time the product left the control of the

manufacturer, distributor, or seller.
Hunt v. Blasius, 74 Ill. 2d 203 (1978).

Potential Defendants – The "Distributive Chain"

Persons in the "distributive chain" can be held liable for injuries result from a defective product, including but not limited to suppliers, distributors, wholesalers, and retailers. *Kaiser v. Agricultural Chemicals*, 81 Ill. 2d 206 (1980).

- **Manufacturer** – One who by labor, art, or skill transforms raw material into some kind of finished product or article of trade.
- **Distributor** – Any individual, partnership, corporation, association, or other legal relationship which stands between the manufacturer and the retail seller in purchases, consignments, or contracts for the sale of consumer goods. A wholesaler, jobber, or other merchant middleman authorized by the manufacturer to sell chiefly to retailers and commercial users.
- **Wholesaler** – One who buys in comparatively large quantities, and then resells, usually in small quantities, but never to the ultimate consumer.
- **Jobber** – In general, a middleman in the sale of goods; one who buys from a wholesaler and sells to a retailer.
- **Retailer** - A person engaged in making sales to ultimate consumers. One who sells personal or household goods for use or consumption.

Black's Law Dictionary, 6th Edition, West Publishing Co. (1990).

Seller's Exception/Distributor Statute

A non-manufacturing defendant (NMD) may be entitled to dismissal of strict liability claims where the following factual and procedural requirements are met as set forth in 735 ILCS 5/2-621:

1. Upon answering or otherwise pleading, NMD must file an affidavit certifying the correct identify of the manufacturer.
2. Plaintiff cannot show that NMD had no knowledge of nor role in the creation of the defect which caused the injury.
3. The manufacturer, with regards to whom the applicable statute of limitations or repose has not expired after properly identified by the

NMD, is susceptible to service of process, subject to the jurisdiction of the Illinois courts and able to satisfy a reasonable judgment or settlement as determined by the court.

Note: See "Perfecting Distributor Liability for Dangerous Products," Michael Alkaraki, Illinois State Bar Association - Tort Trends, June 2017, Vol. 52, No. 4 2017)

Strict Liability – Types of Defects

Products can be defective and unreasonably dangerous in any of three ways. First, a particular item may contain a **manufacturing flaw**. Second, the product may be **defectively designed**. Third, the product may have an **informational defect** (inadequate warnings, directions, or instructions affixed to or accompanying the product). IPI 400 Series, Introduction.

1. **Manufacturing Defect** - A particular unit of a product may be defective because of an imperfection resulting from some miscarriage during the manufacturing process. See, e.g., *Tweedy v. Wright Ford Sales, Inc.*, 64 Ill.2d 570 (1976) (automobile with defective brakes); *McKasson v. Zimmer Mfg. Co.*, 12 Ill.App.3d 429 (2nd Dist. 1973) (imperfections in surgical rod); *Kappatos v. Gray Co.*, 124 Ill.App.2d 317 (1st Dist. 1970) IPI 400 Series, Introduction.
2. **Design Defect** - A product may be defective because its design renders it unreasonably dangerous according to the "consumer expectation" or "risk-utility test," whichever applies. *See, e.g.Mikolajczyk v. Ford Motor Co.,* 231 Ill.2d. 516 (2008).
3. **Informational Defect** - A product may be unreasonably dangerous because of a failure to adequately warn of a danger or a failure to adequately instruct on the proper use of the product. *See, e.g.,*Hammond v. N. Am. Asbestos Corp., 97 Ill. 2d 195 (1983) See, IPI 400 Series, Introduction.

Consumer Expectation Test

IPI 400.06 Strict Product Liability—Definition Of "Unreasonably Dangerous"

"When I use the expression "unreasonably dangerous" in these instructions, I mean unsafe when put to a use that is reasonably foreseeable considering the nature and function of the [product]."

Risk - Utility Test

IPI 400.06A Strict Product Liability--Definition of "Unreasonably Dangerous"--Risk-Utility Test--Design Defects

"When I use the expression "unreasonably dangerous," I mean that the risk of danger inherent in the design outweighs the benefits of the design when the product is put to a use that is reasonably foreseeable considering the nature and function of the product."

Mikolajczyk v. Ford Motor Company, 231 Ill. 2d 516 (2008)

- **Facts**: Driver of Ford Escort died from massive brain hemorrhage when driver's seat collapsed upon rear impact, resulting in driver being propelled to backseat of car.
- **Plaintiff's Theory**: Design allowing for seat to collapse upon rear impact was unreasonably dangerous because it was "unsafe when put to a use that is reasonably foreseeable considering the nature and function of the product."
- **Procedural History**: $27 million verdict for Plaintiff. Affirmed in part, reversed in part. Defendant's petition for leave to appeal denied but remanded to appellate court with instructions to reconsider in light of *Calles v. Scripto-Tokai Corp.*, 224 Ill. 2d 247 (2007). Affirmed in part, reversed in part, finding damages awarded for loss of society to be excessive and remanded to trial court for determination of proper amount of remittitur. Defendant's petition for leave granted and Plaintiff's petition for cross-relief on damages granted.
- **Issue**: Whether the trial court erred by instructing the jury on the consumer expectation test and rejecting Defendant's risk-utility instruction.

- **Held**: Both the consumer expectation and risk-utility test may be utilized in a strict liability design defect case to prove that a product is "unreasonably dangerous." Whether an instruction is required on either test or both tests will depend on the issues raised in the pleadings and the evidence presented at trial. When both tests are employed, consumer expectation is to be treated as one factor in the multi-factor risk-utility analysis. Appellate Court judgment reversed; circuit court judgment reversed; cause remanded.

Inadequate Warning or Instructions

- A product may be unreasonably dangerous because of a failure to adequately warn of a danger or to adequately instruct on the proper use of the product. *Hammond v. N. Am. Asbestos Corp*., 97 Ill.2d 195 (1983) (distributor of bags of asbestos without warnings strictly liable for asbestos related disease contracted by person who breathed in asbestos dust when opening bags).

- No duty to warn/instruct where (1) danger is open and/or obvious, or (2) Defendant neither knew nor should have known of danger. *See, e.g., Smith v. Am. Motors Sales Corp*., 215 Ill.App.3d 951 (1st Dist. 1991) (no duty to warn where dangers associated with driver's operation of vehicle with his barefoot outside passenger compartment were open and obvious); and McColgan v. Envtl. Control Sys., Inc., 212 Ill.App.3d 696 (1st Dist. 1991) (mine worker struck by vehicle which traveled through opaque ventilation curtain could not sustain a strict product liability claim against curtain manufacturer based on failure to warn).
- Summary: Strict product liability claims based on a failure to warn of dangers and/or adequately instruct on the use of a product may succeed where (1) the manufacturer knows or, through the exercise of reasonable care, should know of the danger; (2) the danger is not "open and/or obvious" or otherwise generally appreciated by laypersons; and (3) the warning and/or instruction, if any, does not adequately inform of the nature, type and extent of the danger and how it is likely to manifest.

Negligence

- **Definition**: The failure to do something which a reasonably careful person would do, or the doing of something which a reasonably careful person would not do. See, IPI 10.01 and comments citing *Pierson v. Lyon & Healy*, 243 Ill. 370 (1909) and *Rikard v. Dover Elevator Co.*, 242 Ill. 269 (5th Dist. 1984).
- **Elements**: (1) duty, (2) breach, (3) causation and (4) damages. *See, e.g.*, *Blue v. Environmental Engineering*, Inc., 345 Ill.App.3d 455 (1st Dist. 2003) (product liability action asserting a claim based in negligence falls within the framework of common law negligence and is governed by principles of negligence law).
- **Duty**: Generally recognized as being to provide (whether through manufacture, design and/or distribution) a product that "is reasonably safe for its intended use and for any reasonably foreseeable use." *Blue*, supra.

Note: Unlike in the context of strict liability claims, Defendant's conduct is not only admissible, but central to claims of negligence.

Willful & Wanton Conduct

- **Definition**: A course of action which shows actual or deliberate intention to harm or which, if not intentional, shows an utter indifference to or conscious disregard for a person's own safety or the safety of others. *See*, IPI 14.01 and comments citing *Ziarko v. Soo Line R.R. Co.*, 161 Ill.2d 267 (1994) and *Poole v. City of Rolling Meadows,* 167 Ill.2d 41 (1995).
- Willful and wanton conduct is a form of negligence and, but for the requirement that "aggravated" misconduct be alleged, is established by proving the same four elements of a negligence claim, including duty, breach, causation, and damages. *See, Sparks v. Starks*, 367 Ill.App.3d 834 (1st Dist. 2006).
- Courts have recognized two tiers of willful and wanton conduct, one being closer to "gross negligence" or "recklessness" (depending on the facts, potentially sufficient to serve as a basis for punitive damages) and another being "intentional" (almost always sufficient to serve as a basis for punitive damages). *See, e.g.*, *Barton v. Chicago and North Western Transp. Co.*, 325 Ill. App. 3d 1005 (1st Dist. 2001), *Proctor v. Upjohn*, 291 Ill. App. 3d 265 (1st Dist. 1997) and *Bresland v. Ideal Roller & Graphics Co.*, 150 Ill. App. 3d 445, 451, 501 N.E. 2d 830, 835 (1st Dist. 1986).

Note: In addition to potentially serving as a basis for punitive damages, counts for willful and wanton misconduct may allow introduction of additional evidence (particularly helpful where liability and/or negligence is admitted) and, further, are not subject to contributory and/or comparative negligence defenses which, while not applicable to strict product liability claims, do apply to product liability claims based on negligence.

Res IpsaLoquitur

"*Res Ipsa Loquitur*," Latin for "The thing speaks for itself," is a method of providing liability in the absence of direct evidence establishing the wrongful conduct.

- **Elements**: (1) Plaintiff was injured; (2) The injury was received from an instrumentality under the defendant's control; and (3) In the normal course of events, the injury would not have occurred in the absence of negligence. *See,* IPI 22.01
- ***Semansky v. Rush-Presbyterian St. Luke's Medical Center***, 208 Ill. App. 3d 377 (1st Dist. 1990) – Plaintiff filed *res ipsa* claims alleging medical malpractice and product liability (negligence and strict liability) after sustaining injuries when a central venous pressure catheter line fractured following placement during a coronary bypass procedure. Circuit court dismissal of Plaintiff's complaint reversed and remanded by appellate court, which found that (1) in the absence of direct evidence, circumstantial evidence can support an inference that a product was defective; (2) *res ipsa* principles are applicable to product liability claims founded on negligence; and (3) *res ipsa* principles may, in some circumstances, apply to claims of strict product liability.

Breach of Warranty

Principles of contract law give rise to causes of action for breach of implied and express warranties.

- **Implied Warranty of Merchantability** – For goods to be merchantable, they must (a) pass without objection in the trade under the contract description, (b) in the case of fungible goods, be of fair average quality

within the description; (c) be fit for the ordinary purposes for which such goods are used; (d) run, within the variations permitted by the agreement, of even kind, quality and quantity within each unit and among all unites involved; (e) be adequately contained, packaged and labeled; and (f) conform to the promises or affirmations of fact made on the container or label, if any. 810 ILCS 5/2-314.

- **Implied Warranty of Fitness for a Particular Purpose** - Where the seller at the time of contracting has reason to know any particular purpose for which the goods are required and that the buyer is relying on the seller's skill or judgment to select or furnish suitable goods, there is unless excluded or modified under the next section an implied warranty that the goods shall be fit for such purpose. 810 ILCS 5/2-315
- **Express Warranty** – Any promise or affirmation of fact, description of the goods or use of sample or model that forms part of the basis for the bargaining creates an express warranty.

Note on Excluding Warranties: Implied warranties of merchantability and fitness for a particular purpose can be excluded through conspicuous use of language such as, "as is", "with all faults" or other language which in common understanding calls the buyer's attention to the exclusion of warranties and makes plain that there is no implied warranty.

Note on Moorman "Economic Loss" Doctrine: While solely economic losses may not be recovered under tort theories, when a product is sold in a defective condition that is unreasonably dangerous to the user or consumer or to his property, strict liability in tort is applicable to physical injury to plaintiff's property, as well as to personal injury. See, *Moorman Mfg. Co. v. National Truck Co.*, 91 Ill.2d 69 (1982).

Medical Devices and Pharmaceuticals

Product liability matters involving medical devices and pharmaceuticals may implicate additional considerations, including preemption, multi-district litigation and physician error.

All three issues should be explored at the outset to determine whether and where a lawsuit may be filed, what relief may be available to the plaintiff and what additional claims and defenses may arise due to the conduct of the physicians or other healthcare providers involved in the use or administration of the drug or device.

Federal Preemption of State Law Claims

- Article VI, Clause 2 of the U.S. Constitution ("Supremacy Clause)":

> This Constitution, and the laws of the United States which shall be made in pursuance thereof; and all treaties made, or which shall be made, under the authority of the United States, shall be the supreme law of the land; and the judges in every state shall be bound thereby, anything in the Constitution or laws of any State to the contrary notwithstanding.

- By virtue of the Supremacy Clause, any conflict between state and federal law will be resolved by the federal law displacing or "pre-empting" the state law, regardless of whether the federal law comes from the legislative, judicial or executive branch (i.e., an administrative agency such as the Food and Drug Administration).
- *Riegel v. Medtronic, Inc.*, 128 S. Ct. 999 (2008) – Patient injured when a cardiac balloon catheter ruptured during inflation could not maintain a lawsuit against the device manufacturer because the device underwent a "rigorous" federally regulated pre-market approval process and the Medical Device Amendments to the Food, Drug and Cosmetic Act expressly preempts state requirements "different from, or in addition to," those imposed under the FDCA.
- *Mutual Pharmaceutical Co. v. Bartlett*, 133 S. Ct. 2466 (2013) – $21 million verdict for patient severely injured due to use of anti-inflammatory pain reliever affirmed by First Circuit Court of Appeals and reversed on grounds of preemption because the "FDCA requires a generic drug to have the same active ingredients, route of administration, dosage, form, strength and labeling as the brand-name drug on which it is based."

Note: Most medical devices enter the market through an abbreviated Section 510(k) approval process based on "substantial equivalence" to currently marketed devices such that preemption would generally not be implicated. Regarding pharmaceuticals, preemption issues are likely to be highly fact specific, depending upon, among other things, the nature of the claim (mfg,

design, warning), whether the drug is branded or generic and whether and to what degree to drug was prescribed for an “off label” use.

Multidistrict Litigation - Background

- The United States Judicial Panel on Multidistrict Litigation, known informally as the MDL Panel, was created by an Act of Congress in 1968 – 28 U.S.C. §1407.
- The job of the Panel is to (1) determine whether civil actions pending in different federal districts involve one or more common questions of fact such that the actions should be transferred to one federal district for coordinated or consolidated pretrial proceedings; and (2) select the judge or judges and court assigned to conduct such proceedings.
- The purposes of this transfer or “centralization” process are to avoid duplication of discovery, to prevent inconsistent pretrial rulings, and to conserve the resources of the parties, their counsel, and the judiciary. Transferred actions not terminated in the transferee district are remanded to their originating transferor districts by the Panel at or before the conclusion of centralized pretrial proceedings.

Info from U.S. Judicial Panel on Multidistrict Litigation website http://www.jpml.uscourts.gov/

Multidistrict Litigation - Procedure

- While the Judicial Panel can transfer cases of its own accord, transfer is generally done pursuant to motion by a party.
- 28 U.S.C. § 1407 (a) requires, at a minimum, that (1) the actions share common issues of fact; (2) transfer is convenient for the parties and the witnesses; and (3) transfer advances the just and efficient conduct of the actions.
- Additional criteria considered by the panel in deciding whether to transfer actions to an MDL include, but are not limited to (1) the number of pending actions; (2) positions of the parties with regard to transfer; (3) nature of the case, claims being brought and identify of the

defendants; (4) conflicts associated with transfer; (5) the potential effect of res judicata and/or collateral estoppel.

- Upon transfer to MDL, further actions can be generally filed directly into the transferee court or filed in a local district court and transferred pursuant to a "conditional transfer order" entered by the transferee court.
- MDL matters are generally litigated through discovery in the MDL and remanded to the transferor or local district courts for trial.
- As a practical matter, MDLs which survive dispositive motions often result in one or more "bellwether" trials which may serve as a basis for subsequent settlement negotiations and case valuations.

Claims and Defenses Based on Conduct of Healthcare Providers

The role of physicians and other healthcare professionals in the use and administration of medical devices and pharmaceuticals implicates additional claims and defenses that should be considered when evaluating and litigating certain product liability claims.

Hansen v. Baxter Healthcare Corp.,

198 Ill. 2d 420 (2002)

- **Background**: Patient suffered air embolism and died when an intravenous tube detached from a catheter inserted in her jugular vein. Estate filed medical malpractice and product liability claims, settled the malpractice claims and secured a multi-million-dollar jury verdict against the product manufacturer. Appellate court affirmed in part and the Illinois Supreme Court granted the manufacturer's petition for leave to appeal.
- **Issue**: Whether the manufacture had a duty to warn of dangers inherent in its "friction-fit" catheter connectors.
- **Held**: While a prescribing doctor with sufficient information from the manufacturer may make a medical judgment that insulates manufacturers, distributors and suppliers from product liability claims, doctors who have not been sufficiently warned of the harmful effects of a drug cannot be considered "learned intermediaries" and the adequacy of warnings is a question of fact, not law, for the jury to determine. Appellate and circuit court affirmed.

Note: While not addressed here, product liability defendants may, in addition to asserting the "learned intermediary" defense, argue that physician error or medical negligence was the "sole proximate cause" of the plaintiff's injuries.

Common Defenses to Product Liability Claims

From initial case evaluation through litigation and trial, Plaintiffs should prepare for common defenses likely to be asserted by identifying the claims to which they apply and classifying them as true "affirmative defenses" or *prima facie* case rebuttals (the difference being which party has the burden of production or proof) so they can be overcome with proper evidence and argument. Some of the most common defenses including the following:

- Misuse
- Modification or Alteration
- Assumption of Risk
- Contributory Neglgience
- Due Care
- Feasibility
- Sole Proximate Cause
- Preemption

Misuse

- May be plead as an affirmative defense but, practically, operates to rebut Plaintiff's evidence on the issue of "unreasonable dangerousness" (strict liability) or breach of duty (negligence).
- *Mata v. Clark Equipment Co.*, 58 Ill.App.3d 418 (1st Dist. 1978) – Forklift operator who suffered injuries when he lost his balance and fell while standing on a forklift seat could not sustain a product liability claim because the manufacturer could not have reasonably foreseen this use of its product.

Modification or Alteration

- May be plead as an affirmative defense but, practically, operates to rebut Plaintiff's evidence on the issues of "unreasonable

dangerousness," "seller's control"(strict liability) and/or breach of duty (negligence).

- *Augenstine v. Dico Co., Inc.*, 135 Ill.App.3d 273 (1st Dist. 1985) – Plaintiff who removed manufacturer's non-conductive remote crane control and replaced it with a conductive remote control could not recover for electrical injuries sustained when the crane he operated made contact with power lines.

Assumption of Risk

- Affirmative defense that must be pleaded and supported by evidence in order to submit to jury.
- Applicable to strict liability and negligence claims. *See, Coney v. J.L.G. Industries, Inc.,*97 Ill.2d 104 (1983).
- Defendant bears burden to prove that Plaintiff knew of the specific product defect, understood and appreciated the risk of injury from that defect and nevertheless used the product in disregard of the known danger. *See, e.g.Calderon v. Echo, Inc.*, 244 Ill. App. 3d 1085 (1st Dist. 1993), *Court v. Grzelinski*, 72 Ill. 2d 141 (1978), and Restatement (Second) of Torts sec. 402A, comment n, at 356 (1965).
- If Plaintiff's fault is 50% or less, then damages are reduced by that percentage.
- If Plaintiff's fault is more than 50%, then Plaintiff is barred from recovery.

Contributory Negligence

- Affirmative defense that must be pleaded and supported by the evidence in order to submit to the jury.
- Applies to product liability claims based upon negligence but does not apply to strict product liability.

> [*P]laintiff's fault is a defense only if it constitutes assumption of the risk. Plaintiff's ordinary contributory negligence is not a defense to strict product liability when that negligence consists merely in a failure to discover the defect in the product, or to guard against the possibility of its existence. [citation omitted] A consumer's unobservant, inattentive, ignorant, or awkward failure to discover or guard against a defect,*

as opposed to assuming a known risk, is not a defense to a strict product liability claim. IPI 400 Series, Introduction – Assumption of Risk.

Due Care

- Not an affirmative defense, but a rebuttal of Plaintiff's evidence on the issues of duty and breach in a product liability claim based on negligence.
- The basis of strict liability in tort is the condition of the product, and the conduct of the defendant is not an issue. *See,Nave v. Rainbo Tire Service, Inc.*, 123 Ill App. 3d 585 (2nd Dist. 1983).
- "Negligence concepts have no place in an action for strict products liability." *Id.* citing *Liberty Mutual Insurance Co. v. Williams Machine & Tool Co.*, 62 Ill. 2d 77 and *Thornton v. Mono Manufacturing Co.*, 99 Ill. App. 3d 722 (1981).

Feasibility (or "Unfeasibility")

- Not an affirmative defense, but a rebuttal of Plaintiff's evidence on the issues of "defect" in a strict liability claim and of duty and breach in a product liability claim based on negligence.
- Example – Lawsuits brought by Firefighters in Illinois, Massachusetts, New Jersey, New York and Pennsylvania against Federal Signal Corp. involved noise level injuries and hearing loss from sirens. Defendant argued that reduced noise levels and modifications that divert sound away from where firefighters are located in the trucks could pose dangers to motorists who need to hear the fire trucks coming from far distances.

Sole Proximate Cause

- Not an affirmative defense, but a rebuttal of Plaintiff's evidence on the issues of proximate cause.
- Can implicate other elements of case, including duty and breach (negligence) and "unreasonably dangerous" (strict liability).
- Can implicate other persons or things or a combination of multiple persons or things alleged by Defendant to constitute 100% of the cause of Plaintiff's injury.

- Proximate Cause Jury Instruction - “When I use the expression “proximate cause,” I mean a cause that, in the natural or ordinary course of events, produced the plaintiff's injury. [It need not be the only cause, nor the last or nearest cause. It is sufficient if it combines with another cause resulting in the injury.]” IPI 15.01

Preemption & Statues of Limitations and/or Repose

- Statute of limitation and repose defenses are typically addressed by the court in motions to dismiss prior to discovery or trial, but may potentially involve factual disputes appropriate for determination by the jury.
- Preemption issues are purely questions of law, not fact, which are to be addressed by the court, typically at the outset of the litigation.

Discovery

Pretrial Evidence Gathering v. “Discovery”

- Ideally, knowledge of theunreasonably dangerous condition or nature of Defendant’s negligence may be known at the beginning stages of litigation, in which case pre-trial discovery should be tailored to confirm theories and gather evidence to prove claims at trial.
- Often times, however, this may not possible, as knowledge of the precise defect at issue may be solely with the manufacturer who can be presumed to know more about the strengths, weaknesses, alternative designs and manufacturing processes than even highly experienced product liability attorneys.

Discovery – Basic Requests

While discovery should be tailored to the specific facts of the case and theories being pursued, some common requests include the following:

- **IL SCR 213 Interrogatories**: other failures; prior claims or lawsuits; recalls of any component parts; identities of distributors; identities of inventors and designers; identity of any third-party engineering or consulting firm who conducted pre-market testing and/or failure

analysis; materials lists; history of materials rejection; governmental standards; industry standards; insurance coverage, etc.

- **IL SCR 214 Production Requests**: test reports; failure analysis reports; prior claims or lawsuits; recall notices or warnings; design and engineering specifications; documents submitted to governmental agencies or regulatory bodies; correspondence with governmental agencies and regulatory bodies; documents demonstrating modifications or alterations; quality assurance and control procedures and reports; materials specifications; patent applications; marketing materials; warning, instructions and product inserts; research papers and presentations; photographs/films, etc.

Requests to Admit

IL SCR 216. Admission of Fact or of Genuineness of Documents

- **Request for Admission of Fact** - A party may serve on any other party a written request for the admission by the latter of the truth of any specified relevant fact set forth in the request.
- **Request for Admission of Genuineness of Document** - A party may serve on any other party a written request for admission of the genuineness of any relevant documents described in the request. Copies of the documents shall be served with the request unless copies have already been furnished.
- **Admission in the Absence of Denial** - Each of the matters of fact and the genuineness of each document of which admission is requested is admitted unless, within 28 days after service thereof, the party to whom the request is directed serves upon the party requesting the admission either (1) a sworn statement denying specifically the matters of which admission is requested or setting forth in detail the reasons why he cannot truthfully admit or deny those matters or (2) written objections on the ground that some or all of the requested admissions are privileged or irrelevant or that the request is otherwise improper in whole or in part […].

- **Special Considerations** – Generally considered to be a "discovery tool," though there is some confusion as to the extent to which typical discovery rules apply. While often used to refine issues for trial toward or after the end of discovery, requests to admit served after the close of discovery may draw objection on grounds of timeliness, though there is not direct support for the proposition that they may not be served after discovery closure. *See, Application of Discovery Rules to Requests to Admit*, K. Lovellette, *Illinois Bar Journal,* June 2012, vol. 13, no. 4.

Motion Practice – *Daubert & Frye*

- ***Daubert v. Merrell Dow Pharmaceuticals,*** 509 U.S. 579 (1993) – Federal rule of evidence regarding admissibility of expert witness testimony, later codified, in part, in amended Federal Rule of Evidence 702, which provides as follows:

  A witness who is qualified as an expert by knowledge, skill, experience, training, or education may testify in the form of an opinion or otherwise if:

  a. the expert's scientific, technical, or other specialized knowledge will help the trier of fact to understand the evidence or to determine a fact in issue.
  b. the testimony is based on sufficient facts or data;
  c. the testimony is the product of reliable principles and methods; and
  d. the expert has reliably applied the principles and methods to the facts of the case.

- ***Frye v. United States***, 293 F. 1013 – 1923 Federal Court of Appeals holding that expert opinions based on scientific techniques are admissible only where the techniques are generally accepted in the scientific community. While superseded *Daubert* as it relates to Federal Rules of Evidence, the Frye "general acceptance" test is the standard applied by Illinois courts, as identified in the recently codified Illinois Rules of Evidence.

- **IRE 702** - If scientific, technical, or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience,

training, or education, may testify thereto in the form of an opinion or otherwise. Where an expert witness testifies to an opinion based on a new or novel scientific methodology or principle, the proponent of the opinion has the burden of showing the methodology or scientific principle on which the opinion is based is sufficiently established to have gained general acceptance in the particular field in which it belongs.

Note: "Rule 702 confirms that Illinois is a *Frye* state. The second sentence of the rule enunciates the core principles of the *Frye* test for admissibility of scientific evidence as set forth in *Donaldson v. Central Illinois Public Service Co.*, 199 Ill.2d 63, 767 N.E.2d 314 (2002)." IRE, Comments to Rule 702.

Pretrial Motions in *Limine*

Like discovery requests, pretrial motions in *limine* will depend on the specific facts of the case and theories being pursued. However, some basic examples of motions addressing issues that frequently arise in product liability claims include the following:

- Barring Defendant, through its experts or otherwise, from commenting on potential causes of the occurrence not supported by the evidence. *See, e.g. Modelski v. Navistar Int'l Trasp. Corp.*, 302 Ill. App. 3d 879 (1st Dist. 1999) and *Dyback v. Weber*, 114 Ill. 2d 232 (1986) (expert's opinions speculative and unreliable due lack of adequate basis in evidence).
- Barring Defendant, through their experts or otherwise, from making comments to the effect that some other person or party had a duty or otherwise should have taken steps to make the product safe. *See, e.g.*, *Baley v. Federal Signal Corp.*, 982 N.E. 2d 776 (1st Dist. 2012) (one who markets an unreasonably dangerous product is not entitled to expect that others will make it safe) and *Scott v. Dreis&Krump Mfg. Co*., 26 Ill. App. 3d 971 (1975) (manufacturer has a non-delegable duty to produce a product that is reasonably safe and cannot introduce evidence to show that the duty to incorporate safety devices falls upon the purchaser or user of the product).
- Barring laypersons from offering expert opinions (including Defendant's expert from criticizing a professional's use of a product where the expert lacks knowledge and/or experience in that professional's field - such as in mounting a sole proximate cause and/or 3d party fault defense) *See,*

e.g., Cleveringa v. J.I. Case Co., 230 Ill. App. 3d 831 (1st Dist. 1991) (party proffering expert has burden to show that he or she possesses the necessary learning, skill or practical experience to enable him or her to testify as an expert).

- Barring evidence or arguments concerning Defendant's "due care" or "degree of care" as it relates to strict product liability claims. *See, e.g.*, *Nave v. Rainbo Tire Service, Inc.*, 123 Ill. App. 3d 585 (2nd Dist. 1981) (negligence concepts have no place in an action for strict products liability as basis of strict liability is condition of product, not the conduct of the defendant).

Note: Where Plaintiff is proceeding on counts of strict liability and negligence, evidence of "due care" or "degree of care" is relevant and admissible as to the issues of duty and breach. Depending on the case, it may be advantageous to voluntarily dismiss any negligence count and proceed solely on a theory of strict liability. In the alternative, Plaintiff should ask the court to instruct the jury that evidence of "due care" or "degree of care" is not relevant to strict liability be considered only as it relates to Defendant's alleged negligence.

Trial Themes and Persuasion

Product liability cases may involve complex principals of science and engineering such that technical satisfaction of legal elements may be lost upon the jury in the absence of a persuasive narrative complete with compelling themes. Some common themes include the following:

- **Profits over People** – emphasizing Defendant's willingness to accept risks borne by consumers as a "cost of doing business."
- **Illusion of Safety v. Known Danger** – juxtaposing consumer's trust with Defendant's intimate knowledge of its product.
- **Corporate Responsibility** – when Defendants suggest that a dangerous product is "consistent with industry standards" or "common in the marketplace," it should be imparted upon the jury that, "The public expects more from corporations than it does children, who even at an early age understand that 'everybody's doing it' is no excuse.
- **Doing the Bare Minimum** – when Defendants suggest that a dangerous product has value which, on the whole, outweighs the risks, establish feasible design alternatives which eliminated and/or reduce the risk.

- **Corporate Power v. Consumer Rights** – encompassing all of the above themes, contrasting Defendant's great ability to "do the right thing" with its failure to so, against the backdrop of consumer expectation that corporate power be exercised responsibly.

Demonstrative Exhibits

- Because the difference between a safe product and an unreasonably dangerous one can be both complex and subtle, demonstrative exhibits should be used to aid and persuade the jury.
- Definition (Demonstrative "Evidence"): *Physical evidence that one can see and inspect (such as a model or photograph) and that, while of probative value and usually offered to clarify testimony, does not play a direct part in the incident in question. […] See "Nonverbal testimony" - a photograph, drawing, map, chart or other depiction used to aid a witness in testifying – witness need not have made it, but it must accurately represent something that the witness saw.* Black's Law Dictionary, 2nd Pocket Edition, West Group (2001).
- Foundation: Party proffering exhibit must demonstrate that it assists the trier of fact in comprehending the verbal testimony of a witness. *Dillon v. Evanston Hospital*, 199 Ill. 2d 483 (2002). Only where the demonstrative exhibit is grossly inaccurate or tends to mislead the jury in a material way will its admission constitute an abuse of discretion. *Hernandez v. Schittek*, 305 Ill. App. 3d 925 (5th Dist. 1999).
- No probative value in itself, but serves merely as a visual aid to the jury. *Cisarikv. Palos Community Hospital*, 144 Ill. 2d 339 (1991). (*cf.* definition above regarding "probative value")

Spoliation of Evidence

Spoliation: *The intentional destruction, mutilation, alteration, or concealment of evidence, usually a document. If proved, spoliation may be used to establish that the evidence was unfavorable to the party responsible.* Black's Law Dictionary, 2nd Pocket Edition, West Group (2001).

Elements of a Spoliation Claim:

1. Duty: Defendant owed a duty to Plaintiff to preserve evidence;
2. Breach: Defendant breached that duty by losing or destroying the evidence;

3. Causation: Defendant's loss or destruction of the evidence was the "proximate cause" of Plaintiff's inability to prove the underlying lawsuit; and
4. Damages: As a result, Plaintiff suffered "actual damages."

Martin v. Keeley & Sons, Inc, 979 N.E.2d 22 (2012)

Spoliation - Duty

- General Rule: There is no duty to preserve evidence. *Martin v. Keeley & Sons, Inc.*, 979 N.E.2d 22 (2012)
- Exception: Plaintiff must show that (1) an agreement, contract, statute, special circumstance or voluntary undertaking has given rise to a duty to preserve evidence; and (2) a reasonable person in Defendant's position should have foreseen that the evidence was material to a potential civil action. *Boyd v. Travelers Insurance Company*, 166 Ill. 2d 188 (1995).
- Miller v. Gupta, 174 Ill. 2d 120 (1996) and Illinois X-Ray Retention Act, 210 ILCS 90/1.

Spoliation – Proximate Cause

- Loss or destruction of the evidence caused Plaintiff to be unable to prove the underlying lawsuit
- Not required to show that Plaintiff would have prevailed, only that Plaintiff had a "reasonable probability of success"
    - *Boyd v. Travelers Insurance Company*, 166 Ill.2d 188 (1995) – Reasonable probability of success may be found where Defendant's loss allegedly defective heater deprived Plaintiff of opportunity to inspect and/or conduct testing to determine the cause of an explosion.
    - *Midwest Trust Services, Inc. v. Catholic Health Partners Services*, 392 Ill. App.3d 204 (1st Dist. 2009) – No reasonable probability of success where Plaintiff's expert had sufficient information to render his opinion regarding standard of care even without certain cardiac monitoring strips which were missing and altered.

Spoliation – Damages

- *Jones v. O'Brien Tire & Battery Service Center, Inc.*, 374 Ill. App. 3d 918 (5th Dist. 2007) (measure of damages for business was not the amount of the settlement in the underlying action, but rather difference between the settlement and the amount of the likely settlement had the evidence been preserved)
- *Schussev. Pace Suburban Bus*, 334 Ill. App. 3d 960 (1st Dist. 2002) (damages in a spoliation of evidence claim will be similar to that which could have been obtained in an underlying tort action)

Illinois Supreme Court Rule 219

Failure to comply with an order compelling production of documents or tangible things may result in the following sanctions:

- Offending party barred from filing other pleadings involving any issue to which the refusal or failure relates;
- Offending party barred from maintaining any particular claim, counterclaim or third-party complaint relating to that issue;
- Witness(es) barred from testifying on that issue;
- Any portion of the offending party's pleadings relating to that issue may be stricken and judgment entered on that issue;
- Monetary sanctions; and/or
- Default judgment or dismissal
- Application:
    - *Shimanovsky v. GMC*, 181 Ill.2d 112 (1998) – Dismissal of lawsuit appropriate only when the party's actions show a deliberate, contumacious or unwarranted disregard of the court's authority and Plaintiff's destructive testing of allegedly defective product, while sanctionable, did not warrant dismissal.
    - *Graves v. Daley*, 172 Ill. App. 3d 35 (3d Dist. 1988) – Order granting Defendant's motion for sanctions and barring evidence regarding the defective condition of a missing furnace upheld.

Illinois Pattern Jury Instruction 5.01

IPI 5.01 – Failure to Produce Evidence or Witness

If a party to this case has failed [to offer evidence] [to produce a witness] within his power to produce, you may infer that the [evidence] [testimony of the witness] would be adverse to that party if you believe each of the following elements:

1. The [evidence] [witness] was under the control of the party and could have been produced by the exercise of reasonable diligence;
2. The [evidence] [witness] was not equally available to the adverse party;
3. A reasonably prudent person under the same or similar circumstance would have [offered the evidence] [produced the witness] if he believed [it to be] [the testimony would be] favorable to him; and
4. No reasonable excuse for the failure has been shown.

Settlement Considerations in Product Liability Cases

Unlike typical injury claims which may arise out a unique set of circumstances, product liability claims often involve widely distributed goods subject to the same defect or dangerous condition. The existence of or potential for similar occurrences implicates a number of factors relevant to settlement negotiations, including but not limited to the following:

- Unique occurrence/injury or one of several/many
- Potential exposure of Defendants to additional claims/litigation
- Res Judicata and Collateral Estoppel
- Confidentiality – almost always requested by Defendants, particularly manufacturers.
- Res Judicata and Collateral Estoppel
- Potential exposure of Defendants to punitive damages for conscious disregard of known risks

Note: While compensatory damages for personal injury are not taxable, confidentiality may potentially create a taxable event. For other concerns related to confidentiality, see "Confidentiality in Settlement Agreements Is Bad for Clients, Bad for Lawyers, Bad for Justice," ABA GP Solo Newsletter, Vol. 29 No. 6, Ronald L. Burdge (Nov./Dec. 2013).

Notes on Emerging Issues, "Special" Industries & Immunities

Autonomous/Self-Driving Vehicles

- Global market valued at ~$76 billion in 2020, projected to exceed 20X that size by 2030*
- Purported Benefits: improved safety, limited fuel use, traffic congestion & emissions
- Sensors: LiDAR (light detection and ranging – 3D modeling via pulsed laser), RADAR (radio detection and ranging, camera, GPS
- Safety Issues: Higher rate of accidents (9.1 per million miles v. 4.1 per million) though injuries generally less severe, false sense of security, fire risks, imperfect technology, cyber-attacks, system complexity, lack of regulation*
- 2018 death of Elaine Herzberg
    - First case of pedestrian fatality involving autonomous vehicle
    - Prompt confidential settlement with Uber with no criminal charges
    - Negligent homicide charges pending against test driver
    - "Moral Crumple Zones" – moving responsibility from manufacturer to driver*

*Autonomous Vehicle Market by level of Automation, Abhay Singh, Sonia Mutreja, Allied Market Research, (February 2022), available at www.alliedmarketresearch.com/autonomous-vehicle-market

*The Dangers of Driverless Cars, *The National Law Review,* Volume XII, Number 220 (May 5, 2021)

*Moral Crumple Zones: Cautionary Tales in Human-Robot Interaction, Data & Society Research Institute (2019), available at https://estsjournal.org/index.php/ests/article/view/260/177

Firearms Manufacturers

- Protection of Lawful Commerce in Arms Act (PLCAA, 2005) – manufacturers cannot be held liable for the use of their products in a crime (foreseeability)
- PLCA does not immunize manufacturers from liability on other theories of negligence, negligent entrustment, strict liability (product defect), breach of contract and exposure arising out of marketing practices.
- *Remington Arms Co., LLC v. Soto et al.*, U.S.S.C. Docket No. 19, 168 – U.S. Supreme Court denied certiorari in a case in which the Connecticut Supreme Court found that a wrongful advertising theory was not barred by the PLCAA – case settled for $73,000,000 to be distributed 9 plaintiff families.
- Federal Assault Weapons Ban – signed into law by President Clinton in 1994, expired in 2004
- Bipartisan Safer Communities Act – signed into law in June of 2022, expanding background check system for purchasers under 21, giving authorities up to 10 business days to review juvenile and mental health records, set aside funds for states to utilize in intervention programs
- State legislative efforts to curb gun violence and hold manufacturers responsible

Other Industries with Immunities

- Lobbies from virtually all industries have sought similar protections. See, e.g., Domestic Fuels Act – Proposed legislation sought to immunize purveyors of ethanol and other additives from certain liabilities that would be common under state law

- Vaccine Manufacturers – National Childhood Vaccine Injury Act (NCVIA), 42 U.S.C. §§ 300aa-1 *et seq.* (1986) – Created National Injury Compensation Program (VICP), no-fault alternative to tort system with stated objections of ensuring adequate supply of vaccines, stabilizing vaccine costs and establishing and maintaining an accessible and efficient forum for those found to be injured by certain vaccines

- Public Readiness and Emergency Preparedness Act (PREP Act), 42 U.S. Code § 247d–6d (2005): Tort liability immunity from actions related to the manufacture, testing, development, distribution, administration and use of medical countermeasures against chemical, biological, radiological and nuclear agents of terrorism, epidemics and pandemics.

- FDA Medical Devices & Pharmaceuticals – Federal pre-emption due to full pre-market approval process (as opposed to abbreviated 510(k) process) and "impossibility" preemption (inability to comply with disparate/conflicting federal and state laws)

- Social Media Companies – Section 230 of Communications Decency Act Issues may provide immunity for "third party content," but in May of 2021, the 9th Circuit Court of Appeals in *Lemon v. Snap Inc.*, found no immunity for negligent design product liability theory.

Program Transcript

There is no program transcript for this course.

Resources

Resources Specific to this Course

In addition, please see the resources cited within the material.

Resources for the Legal Professional

ABA Center for Professional Responsibility - www.abanet.org/cpr

Chicago Bar Association - www.chicagobar.org

Commission on Professionalism - www.2civility.org

Judicial Inquiry Board - http://www.illinois.gov/jib

Illinois Board of Admissions to the Bar - www.ilbaradmissions.org

Illinois Department of Financial and Professional Regulation - www.idfpr.com/default.asp

Illinois Lawyers' Assistance Program, Inc - www.illinoislap.org

Illinois State Bar Association - www.isba.org

Illinois Supreme Court - www.state.il.us/court

Lawyers Trust Fund of Illinois - www.ltf.org

MCLE Program - www.mcleboard.org