Answers to Unanswered Questions for SPSP webinar

on Product Liability Law and Product Safety

Question 1



Answer from Cheryl Possenti

Any factor of safety should take into consideration how critical-to-safety the tested component or product part is, the expected range of manufacturing variations, the nature of the product and many other factors.

As a general proposition, if a product or component just barely passes tests that call for components to be of a certain minimum or maximum dimension,  but could  fail the test if dimensional variance occurs, adding an internal requirement for a safety margin, perhaps of 5 to 10 percent, to account for possible manufacturing variance and possible testing lab variance, will avoid unexpected non-compliance based on a manufacturing/process issue. Depending on the product, or component, a more refined statistical calculation of the “margin of safety” can be made taking into consideration the known and measured range of manufacturing variation, and expected potential variation over time.

In a related vein, if a product or component just barely passes tests that include performance requirements such as  strength, durability, life cycling etc. but fails if the cycles/weight/onerousness of the tests are increased, this may form the basis for a claim of design defect.

It may be important for companies to know, at the early pre-production stages, what would occur if the products are tested to failure, or at least tested in excess of the minimum requirements, so that they can be assured that the products will fail safely, and so that they are aware of any expected limitations of the product, which may be capable of being modified or improved before the final design and construction is determined.

In some circumstances, a company that has conducted testing to failure, or more robust testing than is required, may be able to use this information to show affirmatively that it established the robustness of the product design, and the extent to which the product exceeds mandatory requirements.

Question 2



Answer from Ken Ross

There is no good way to find all litigated cases that relate to product liability in the U.S. Cases are filed in state court and federal court. The federal courts do keep track of case filings nationwide but I don’t think they separate out product liability cases from tort cases.

State court filings are even harder to find through the state court systems. Each state can keep records differently and you would have to go into each state court system to find the cases.

If you have a name of a case, you can go to the docket and get copies of the pleadings in the case. But you probably wouldn’t be able to access the discovery (depositions and answers to interrogatories) in these cases. And most settlements are confidential and therefore don’t appear anywhere that is accessible by the public.

Jury verdicts in state and federal court are public information and can be accessed in Verdictsearch and Jury Verdict Reporter and other websites such as Law360. The easiest way to find cases and verdicts is with the Product Liability reporter in Law360. But this is pretty expensive and may not capture everything.

You could go to a law library and ask the librarian to look for certain things that they have access to. Or you can ask a lawyer with Law360 access to search their database for cases involving certain products that you are interested in. Lastly, you can sign up for a free Google Alert on product liability (and products liability) and product safety. You will receive a daily alert on all articles that contain these terms.