

Beyond the Point of Sale:

Emerging Risks and Evolving Duties in the Modern Product Lifecycle

I. Introduction

The traditional product liability paradigm focused primarily on defects existing at the time of sale. Under this model, a manufacturer's or seller's exposure was defined by the condition of the product when it left the defendant's control. Over the past several decades, however, courts and legislatures have increasingly held that a manufacturer's responsibilities do not terminate at the point of sale. Post-sale duties, including obligations to warn, to recall, and to monitor products in the field, have become a significant component of the modern product liability landscape.

We review the state of post-sale product liability law and the changing landscape faced by manufacturers during the later phases of the product lifecycle. Specifically, we discuss the foundations of post-sale duties to warn and recall obligations, the emerging liability framework for refurbished and remanufactured products re-entering commerce, international regulatory developments reshaping the compliance environment for U.S. manufacturers, and risk management strategies for corporate counsel and their clients.

II. Overview of Post-Sale Product liability

a. Historical Development

The modern law of product liability traces its origins to the landmark adoption of Section 402A of the Restatement (Second) of Torts, which imposed strict liability on sellers of defective products for physical harm caused to users or consumers. *See* Restatement (Second) of Torts § 402A. While Section 402A revolutionized the liability framework for products that were defective at the time of sale, it did not expressly address a manufacturer's continuing obligations once a product entered the stream of commerce.

The recognition of post-sale duties emerged through common law decisions in the 1970s and 1980s; courts began to acknowledge that manufacturers who learn of previously unknown hazards in their products may owe a duty of reasonable care to warn consumers already in possession of those products. Early decisions imposed post-sale duties primarily in contexts involving high-value, traceable products sold to identifiable purchasers where the manufacturer maintained a continuing relationship with known users.

b. The Restatement (Third) Framework

The American Law Institute's Restatement (Third) of Torts: Product liability, adopted in 1998, formally codified several post-sale obligations. Section 10 addresses liability for harm caused by post-sale failure to warn; Section 11 addresses liability for failure to recall; and Section 13 addresses the circumstances in which a successor corporation may owe a post-sale duty to warn

purchasers of products manufactured by a predecessor. *See* Restatement (Third) of Torts: Prods. Liab. §§ 10, 11, 13 (1998).

Section 10 provides that a seller is subject to liability for failing to warn of a product risk after sale when a reasonable person in the seller's position would provide such a warning. The factors include: (a) the seller knows or reasonably should know of a substantial risk of harm; (b) those to whom a warning might be provided can be identified and are likely unaware of the risk; (c) a warning can be effectively communicated and acted upon; and (d) the risk of harm is sufficiently great to justify the burden of providing a warning. *Id.* § 10.

Section 11 addresses recall obligations, providing that a manufacturer or seller is not liable for failure to recall unless: (a) a governmental directive issued pursuant to statute or regulation specifically requires the recall; or (b) having undertaken a voluntary recall, the manufacturer or seller fails to act as a reasonable person in recalling the product. *Id.* § 11(a). This formulation reflects courts' general reluctance to impose an affirmative common-law duty to recall absent statutory or regulatory compulsion. *In re Gen. Motors LLC Ignition Switch Litig.*, 202 F. Supp. 3d 362, 371-72 (S.D.N.Y. 2016).

c. Current Landscape

Today, more than half of U.S. jurisdictions have adopted some form of post-sale duty to warn. Jill Wieber Lens, *Warning: A Post-Sale Duty to Warn Targets Small Manufacturers*, 2014 Utah L. Rev. 1013, 1020. The scope and application of these duties vary among jurisdictions, creating a complex environment for manufacturers distributing products nationally and internationally. The tension between encouraging safety improvements and imposing post-sale monitoring continues to shape the law's development.

III. Post-Sale Duty to Warn

a. The Multi-Factor Test

Courts assessing whether a post-sale duty to warn exists generally apply a multi-factor balancing test derived from the Restatement (Third) § 10 and its common law precedents. In determining whether to impose post-sale duties on manufacturers to warn about or remedy defects, courts generally consider four key factors: (1) whether the manufacturer undertook a duty to correct the defect but failed to fulfill that obligation; (2) whether the defect is capable of being remedied; (3) whether the product remains in use; and (4) whether the product's users can be readily identified and contacted. *Ierardi v. Lorillard, Inc.*, 777 F. Supp. 420, 422 (E.D. Pa. 1991).

In *Ierardi*, the court declined to impose a continuing post-sale duty to warn on a tobacco manufacturer, reasoning that: the defect was not remediable; the product was no longer in use by the plaintiff; and users of mass-marketed consumer goods could not be easily identified and contacted. *Id.* at 422-23. The court contrasted the situation with *Walton v. Avco Corp.*, 557 A.2d 372 (Pa. Super. 1989), where a helicopter manufacturer owed a post-sale duty to warn given the

small, traceable market of helicopter owners with whom the manufacturer maintained a direct relationship. *Id.* at 421-22.

b. The “Unique and Traceable Product” Limitation

A recurring limitation on the post-sale duty to warn is the distinction between unique, traceable products—such as aircrafts, specialized industrial equipment, and custom machinery—and mass-produced consumer goods sold through multiple retail channels. Courts have consistently held that the former category more readily supports post-sale warning obligations because manufacturers can feasibly identify and contact product users.

This traceability limitation was recently reaffirmed in *Liebig v. MTD Products Inc.*, 688 F. Supp. 3d 236 (E.D. Pa. 2023), where the court declined to impose a post-sale duty to warn on the manufacturer of a mass-produced snow thrower that had passed through several unknown hands, including a flea-market sale, before reaching the plaintiff. The court explained that a mass produced device, like a snow thrower, is an ordinary household good found in as many as 130,000 homes, and that the product’s untraceable path through the secondary market made it precisely the kind of item that gets “swept away in the currents of commerce.” *Id.* at 241-42.

c. Successor Liability and Continuing Relationships

The post-sale duty to warn has taken on heightened significance in the context of corporate succession. In *In re General Motors LLC Ignition Switch Litig.*, 202 F. Supp. 3d 362 (S.D.N.Y. 2016), the court held that the successor manufacturer owed a continuing post-sale duty to warn based on its assumption of the predecessor’s warranty and Safety Act notification obligations, and its “direct and continuing relationship” with the predecessor’s consumers. *Id.* at 369-371. The court relied on the following factors: (a) the successor’s succession to service contracts; (b) coverage of the customer’s product by a contract; (c) service of the product by the successor; and (d) the successor’s knowledge of the defect and the customer’s identity and location. *Id.* at 369-370.

d. The Standard for an Adequate Warning

When evaluating the adequacy of a warning, factors to consider include: (1) whether the warning clearly communicates the potential harmful consequences of product misuse; (2) whether its language, size, and color appropriately reflect the level of danger involved; and (3) whether it is readily accessible to consumers through measures such as the use of multiple languages, the inclusion of images or pictograms to overcome language barriers, and prominent placement on the product. *See Pinchinat v. Graco Children’s Prods., Inc.*, 390 F. Supp. 2d 1141, 1146 (M.D. Fla. 2005).

In *Ford v. Ford Motor Co.*, 311 F. Supp. 3d 667 (D.N.J. 2017), the court addressed the adequacy of a warning under New Jersey’s Product liability Act, N.J. Stat. Ann. § 2A:58C-4. That statute defines an adequate warning as one that “a reasonably prudent person in the same or similar circumstances would have provided,” communicating sufficient information about the danger and

safe use of the product in light of the ordinary knowledge of the persons expected to use it. *Id.* at 681-82. The *Ford* court recognized that a manufacturer is obligated “to take reasonable steps to notify purchasers and consumers of [a] newly-discovered danger,” and held that whether a recall notice sent only to the vehicle’s prior owner—without any public statement—satisfied that obligation as to a subsequent owner was a question for the jury. *Id.* at 682. Thus, the adequacy of a warning depends not only on the substance of the information conveyed, but also on whether the manufacturer employed reasonable measures to ensure that the warning reached the foreseeable users of the product.

IV. Post-Sale Recall Obligations

a. The General Rule: No Common-Law Duty to Recall

Courts have been reluctant to impose a common-law duty to recall defective products. The prevailing rule, reflected in Restatement (Third) of Torts: Product liability § 11, is that a manufacturer or seller is not liable for failure to recall a product absent: (a) a governmental directive issued pursuant to statute or regulation; or (b) a negligent failure to execute a recall that has been voluntarily undertaken.

This principle was recently applied in *Klein by Klein v. Caterpillar, Inc.*, 684 F. Supp. 3d 610 (E.D. Mich. 2023), where the court held that, under Michigan law, a manufacturer has no post-manufacture duty to retrofit or recall a product that was not defective when manufactured, even where subsequent technological advances might have reduced the risk of harm. *Id.* at 618-19 (applying *Gregory v. Cincinnati, Inc.*, 450 Mich. 1, 538 N.W.2d 325 (1995)). The court reasoned that a post-manufacture duty arises only where a danger existed at the point of manufacture and the manufacturer knew or should have known of the problem while the product remained within its control. *Id.* Because the plaintiff’s product-liability claim challenged only the original design and manufacture, no duty could attach based on later safety improvements incorporated into subsequent models. *Id.*

b. Negligent Recall Administration

While courts decline to impose a duty to initiate a recall, the “negligent recall administration” theory, recognized in Restatement (Third) § 11(a)(2), is an exception. Once a manufacturer voluntarily undertakes a recall—or is required to do so by a governmental directive—it assumes a duty to execute that recall with reasonable care. *In re Gen. Motors LLC Ignition Switch Litig.*, 154 F. Supp. 3d at 44. Failure to provide adequate notice to affected consumers, to offer an effective remedy, or to follow through on promised corrective action may give rise to liability.

c. Regulatory Recall Authority

The Consumer Product Safety Commission (“CPSC”) is the principal federal agency, tasked with “protect[ing] the public against unreasonable risks of injury associated with consumer products.” 15 U.S.C. § 2051(b)(1). The CPSC has broad authority under the Consumer Product Safety Act to address “substantial product hazards,” including authority to require notice, repair, replacement,

refund, and other corrective action for consumer products presenting such hazards. 15 U.S.C. § 2064(a)-(d).

The National Highway Traffic Safety Administration (“NHTSA”) exercises recall authority over motor vehicles and motor vehicle equipment under the National Traffic and Motor Vehicle Safety Act, including defect and noncompliance notification and remedy obligations. 49 U.S.C. §§ 30118–30120. In 2000, the Transportation Recall Enhancement, Accountability, and Documentation Act (“TREAD Act”) was passed, requiring manufacturers to report information and communications that may help identify safety-related defects and noncompliance with federal motor vehicle safety standards. *See* 49 U.S.C. §§ 30101–30170.

d. Federal Preemption After *Monsanto Co. v. Durnell*

A recent Supreme Court decision outside the automotive context may nevertheless affect how regulated-product manufacturers frame post-sale warning defenses. In *Monsanto Co. v. Durnell*, the Court held that the Federal Insecticide, Fungicide, and Rodenticide Act (“FIFRA”) expressly preempted a state-law failure-to-warn claim alleging that Roundup should have included a cancer warning that EPA had not required on the approved pesticide label. No. 24-1068 (2026). The Court reasoned that a state tort judgment requiring an additional cancer warning would impose a labeling requirement “in addition to or different from” the requirements imposed under FIFRA and therefore could not stand. *Id.*

The Court treated product-specific agency label approval as a federal “requirement” capable of displacing conflicting state-law duties. In that respect, the decision aligns FIFRA more closely with the Medical Device Amendments preemption framework applied in *Riegel v. Medtronic, Inc.*, 552 U.S. 312, 321-30 (2008), and narrows the space that plaintiffs had invoked under *Bates v. Dow Agrosciences LLC*, 544 U.S. 431, 443-54 (2005), for state-law claims characterized as merely parallel to federal misbranding requirements.

Durnell supports the broader proposition that individualized federal agency determinations can have preemptive force, particularly where a plaintiff’s theory would require a manufacturer to provide warnings or design features that conflict with a specific federal decision. The lesson for manufacturers is that preemption arguments are strongest where the federal agency has made a concrete, product-specific labeling or safety determination rather than merely exercising general regulatory oversight.

The National Traffic and Motor Vehicle Safety Act contains both an express preemption clause and a savings clause. *See* 49 U.S.C. § 30103(b), (e). The savings clause provides that “[c]ompliance with a motor vehicle safety standard prescribed under this chapter does not exempt a person from liability at common law.” 49 U.S.C. § 30103(e). As a result, compliance with federal motor vehicle safety standards does not automatically bar state-law tort claims, unlike the preemption framework under FIFRA. Because the Vehicle Safety Act preserves common-law liability and because NHTSA standards often operate as minimum performance standards,

automotive manufacturers should continue to analyze preemption on a standard-by-standard basis, with close attention to the text, purpose, and regulatory history of the specific action at issue.

V. Refurbished and Remanufactured Products

a. The Expanding Secondary Market

The growth of secondary markets for refurbished and remanufactured products, ranging from consumer electronics to industrial equipment, has created liability questions that existing product liability frameworks were not designed to address. When a product is refurbished, remanufactured, or rebuilt before re-entering commerce, the allocation of responsibility among the original manufacturer, the refurbisher or remanufacturer, the retailer, and the used-goods dealer can become a contested and jurisdiction-dependent inquiry.

This allocation-of-responsibility inquiry was discussed in *Klein by Klein v. Caterpillar, Inc.*, 684 F. Supp. 3d 610 (E.D. Mich. 2023), where the plaintiff sought to hold an original equipment manufacturer vicariously liable for an authorized, independent dealer's allegedly negligent performance of a certified rebuild of heavy mining equipment. *Id.* at 616-17. The court held that the manufacturer could not be held vicariously liable for the dealer's negligence because the dealer was not the manufacturer's agent: although the manufacturer provided instructions as to the scope and parameters of the rebuild, the dealer's own employees performed all of the rebuild work without any direction from the manufacturer as to methods or means, and the manufacturer retained no right to control anything but the ultimate results of the work. *Id.* at 619-21. *Klein* illustrates that an original manufacturer's specification of rebuild parameters or participation in a certification program, standing alone, does not create the kind of control necessary to impute liability for a downstream refurbisher's independent conduct.

b. The Split of Authority on Strict Liability for Used-Goods Sellers

Courts addressing whether strict product liability applies to sellers of used goods have adopted three principal approaches. Although strict liability was originally developed in the context of new products distributed through the chain of manufacture and sale, jurisdictions have differed on whether the policy considerations underlying the doctrine—such as risk allocation, consumer protection, and incentivizing product safety—justify extending liability to downstream sellers of used products. The resulting case law reflects a spectrum of views, with some jurisdictions treating used-goods sellers no differently than sellers of new products, others refusing to impose strict liability absent exceptional circumstances, and a third group recognizing liability only when the seller has materially altered, rebuilt, or reconditioned the product before resale.

First, a number of jurisdictions apply strict liability to used-goods sellers on the same basis as new-product sellers. These include Wisconsin (*Nelson v. Nelson Hardware, Inc.*, 160 Wis. 2d 689, 467 N.W.2d 518 (1991)), Arizona (*Jordan v. Sunnyslope App. Prop. & Plumbing*, 135 Ariz. 309, 314, 660 P.2d 1236 (Ct. App. 1983)), Indiana (*Kennedy v. Guess, Inc.*, 806 N.E.2d 776, 780 (Ind. 2004)), New Jersey (*Turner v. International Harvester Co.*, 133 N.J. Super. 277, 336 A.2d 62 (1975)),

Texas (*Hovenden v. Tenbush*, 529 S.W.2d 302 (Tex. Civ. App. 1975)), Washington (*Thompson v. Rockford Mach.*, 49 Wash. App. 482, 744 P.2d 357 (1987)), Connecticut (*Stanton v. Carlson Sales, Inc.*, 45 Conn. Supp. 531, 728 A.2d 534 (1998)) and Kansas (*Gaumer v. Rossville Truck and Tractor Co., Inc.*, 257 P.3d 292 (Kan. 2011)).

Second, jurisdictions such as Oregon (*Tillman v. Vance Equipment Co.*, 286 Or. 747, 596 P.2d 1299 (1979)), Oklahoma (*Allenberg v. Bentley Hedges Travel*, 22 P.3d 223 (Okla. 2001)), Idaho (*Peterson v. Idaho First Nat. Bank*, 117 Idaho 724, 791 P.2d 1303 (1990)), Iowa (*Grimes v. Axtell Ford Lincoln–Mercury*, 403 N.W.2d 781 (Iowa 1987)), New Hampshire (*Grimes v. Axtell Ford Lincoln–Mercury*, 403 N.W.2d 781 (Iowa 1987)), and Illinois (*Peterson v. Lou Bachrodt Chevrolet Co.*, 61 Ill.2d 17, 329 N.E.2d 785 (Ill.1975)) decline to extend strict liability to used-goods sellers absent evidence that the seller performed remanufacture or repair, or maintained a special relationship with the original manufacturer.

Third, some jurisdictions take a middle ground: California, for example, limits strict liability to used-goods sellers who “rebuilt or reconditioned” the product before sale. *Arriaga v. CitiCapital Commercial Corp.*, 167 Cal. App. 4th 1527, 85 Cal. Rptr. 3d 143 (2008). Similarly, South Dakota (*Crandell v. Larkin & Jones Appliance Co.*, 334 N.W.2d 31 (S.D. 1983)) and Alaska (*Kodiak Electric Ass’n v. DeLaval Turbine, Inc.*, 694 P.2d 150 (Alaska 1985)) extend strict liability where the used product was remanufactured or repaired prior to resale. This “remanufacture/repair” trigger has emerged as the dominant doctrinal fulcrum in determining whether strict liability attaches to downstream sellers.

VI. International and Standards-Based Obligations

a. The EU General Product Safety Regulation

The European Union’s General Product Safety Regulation represents a significant expansion of post-market surveillance and recall obligations for products sold in the EU market. The General Product Safety Regulation (“GPSR”) imposes affirmative obligations on manufacturers, importers, and distributors to: (a) conduct ongoing monitoring of the safety of products placed on the market; (b) take corrective action when a product is found to present a risk; (c) maintain internal traceability systems enabling identification of suppliers and recipients throughout the distribution chain; and (d) notify competent authorities through the EU Safety Gate and Safety Business Gateway rapid alert notification systems when a dangerous product is identified. Regulation (EU) 2023/988, 2023 O.J. (L 135) 1.

For U.S. manufacturers exporting to Europe, the GPSR creates obligations that go beyond traditional U.S. product liability principles. Unlike the U.S. system, which generally relies on post-hoc litigation to enforce safety standards, the EU framework imposes proactive, continuous surveillance duties backed by administrative enforcement and substantial penalties for non-compliance.

b. International Standards

A U.S. manufacturer recalling a product overseas must first report the defect or hazard to the CPSC, then work with the Commission to develop a corrective action plan that expressly addresses the disposition of products located abroad—whether through return, repair, replacement, or destruction—and must exercise ordinary care throughout the entire recall process. 16 C.F.R. § 1115.20.

c. Navigating Overlapping Obligations

Practical guidance for multinational manufacturers includes: (a) establishing a centralized product safety function with authority to coordinate cross-jurisdictional responses; (b) developing internal reporting protocols that capture information required by all applicable governing agencies; (c) pre-positioning recall logistics and communication templates for quick distribution; and (d) engaging local regulatory counsel in key markets to ensure timely compliance with jurisdiction-specific notification requirements. Failure to coordinate effectively across jurisdictions could result in regulatory enforcement actions, inconsistent public communications, and reputational harm that compounds the underlying product safety issue.

VII. Conclusion

The post-sale product liability landscape continues to evolve, driven by judicial decisions expanding the scope of manufacturer obligations, regulatory developments at both the domestic and international levels, and the growing complexity of product lifecycles in which refurbishment, remanufacture, and global distribution have become routine. The central trend of modern product liability law is that a manufacturer's responsibility follows the product throughout its lifecycle, demanding ongoing vigilance, systematic monitoring, and readiness to act when post-sale risks emerge.

Whether through post-sale warnings, recall obligations, successor liability principles, product tracking systems, or evolving regulatory requirements, courts and regulators increasingly expect manufacturers to act upon information learned after sale. The question is no longer whether post-sale duties exist, but how far do those duties extend. Modern manufacturers will be well served to recognize the evolving landscape of liability beyond the point of sale and plan accordingly.