



Issue 1, 2019

## ● Welcome

Welcome to the first 2019 issue of *Product Lines* – our quarterly e-newsletter that focuses on toxic torts and products liability issues.

For this edition, we are reporting on several important and timely legal issues. As you will see, we strive to make these e-blasts both informative and valuable by having our attorneys comment on WHY these issues are important and how they could affect your business.

As always, if you have a particular topic you would like to hear more about, please let us know. Thank you for reading.

The [Toxic Tort Litigation](#) and [Product Liability Litigation](#) Practice Groups

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## ● Lawsuit by Sandy Hook Victims Against Gun Manufacturer Allowed to Move Forward

*"After months of silence, the Connecticut Supreme Court on Thursday reinstated a wrongful death lawsuit filed by the families of nine victims of the Sandy Hook Elementary School shooting against Remington Arms, the manufacturer of the rifle used in the shooting."*

**Why this is important:** In the widely reported Sandy Hook Elementary mass shooting in December 2012, Adam Lanza took a semiautomatic rifle, lawfully purchased by his mother, and in four minutes shot and killed 26 children and teachers at Sandy Hook Elementary School in Newtown, Connecticut. Administrators of nine of the estates of the victims brought claims against the manufacturers, distributors, and direct seller of the rifle, asserting violations of Connecticut's Unfair Trade Practices statute by the defendants negligently entrusting to civilians a military-grade assault rifle that was suitable only for military and law enforcement when they knew civilians might share the rifle with other civilian uses; and by marketing the rifle by emphasizing its military and assaultive qualities. The victims' families asserted that the assault rifle was marketed differently than rifles, which were intended for hunting. The defendants moved to strike the complaint, relying on the federal Protection of Lawful Commerce in Arms Act ("PLCCA"), which provides civil immunity to manufacturers, distributors, and sellers of firearms that were used for crimes committed by third parties. The case was allowed to proceed in the trial court, but the superior court dismissed the case, relying upon PLCCA. On March 14, 2019, the Connecticut Supreme Court in a 4-3 decision reversed the superior court and held, for the first time, that wrongful marketing is not covered by the federal civil immunity provided by PLCCA. The Connecticut Supreme Court remanded the case to the lower court for further proceedings including, potentially, a trial. Gun manufacturers, distributors, and sellers have universally been successful in receiving immunity from civil

liability for criminal conduct of third-parties who use their guns to harm others. This Connecticut decision may create a path for civil liability against manufacturers, distributors, and sellers of assault rifles for crimes committed with assault rifles. --- [Neva G. Lusk](#)

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## ● **Broken Nike Basketball Shoe Could be Product Liability Case**

*"We are obviously concerned and want to wish Zion a speedy recovery," Nike said by email. "While this is an isolated occurrence, we are working to identify the issue."*

**Why this is important:** Watching Zion Williamson's Nike basketball shoe blow up during the Duke vs. UNC game was shocking to all viewers. The surprising "failure" of a shoe led to an injury that took Duke's number 1 player out of one of the hottest games in the nation and caused him to miss three more consecutive games. From a products liability standpoint, Nike could be facing serious liability on either design defect or manufacturing defect grounds. Given Williamson's talent and projected career in the NBA, the value of such a case would be significant. Fortunately for Nike, its rumored sponsorship talks with Williamson may help it to skirt legal action. However, if the injury results in lasting harm to Williamson's ability to play basketball in the future, Nike could be facing serious consequences. --- [Heather Heiskell Jones](#)

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## ● **Federal Government Backs Oil Companies Fighting NYC Climate Suit**

*"The Trump administration is supporting the five oil companies being sued by New York City to pay for damages related to climate change, filing a friend-of-the-court brief asking the Second Circuit Court of Appeals to uphold the dismissal of the case."*

**Why this is important:** The United States government joined with oil companies being sued by the City of New York. The United States' amicus (friend-of-the-court) brief advocates in favor of jurisdiction in Federal Court, rather than state court. This development is important because the fight over jurisdiction of climate change cases is a critical initial step, and the federal government is uniquely positioned to argue the importance of foreign policy, international relations, and the regulation of foreign commerce as considerations in determining the appropriate jurisdiction for such claims. --  
- [Clifford F. Kinney Jr.](#)

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## ● **Insurers Remain Cautious About Marijuana Insurance Market**

*"One of the key barriers is the federal government still classifies it as a controlled substance, continuing its status as an illegal drug even as individual states increasingly legalize its use."*

**Why this is important:** As the budding marijuana industry continues to grow, those involved in the industry face problems common to manufacturers and retailers of more conventional products. One such problem involves securing adequate insurance coverage. Due to the federal government's classification of marijuana as a Schedule 1 drug, however, many insurance carriers have yet to enter the insurance market related to the marijuana industry. Those carriers that have entered the market are offering only basic

commercial general liability and product liability policies with low limits that might not provide adequate coverage for marijuana-related business owners. Until more insurance carriers enter the market and begin writing policies that specifically address the needs of the marijuana industry, business owners should take other precautions to prepare for potential product liability lawsuits in the future. --- [Joseph A. Ford](#)

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## ● **Pet Owners File Civil Suits Against Hill's Pet Nutrition in Relation to Dog Deaths**

*"Pet owners have filed a total of three separate civil lawsuits in federal court against Hill's Pet Nutrition Inc. following the company's recent admission that some of its pet foods contained excessive levels of Vitamin D. The consumers are seeking class action status."*

**Why this is important:** Hill's Pet Nutrition is facing individual civil actions and class actions as the result of allegations its canned dog food contained excessive and dangerous amounts of vitamin D. Hill's issued an initial recall and later expanded it to cover additional canned dog food products. According to Hill's recall notice, the excessive vitamin D is linked to a vitamin premix received from a U.S. supplier. Hill's is working with the FDA in connection with the problem. Excessive vitamin D can cause vomiting, loss of appetite, increased thirst, increased urination, excessive drooling, weight loss, and death in dogs. These cases are of interest for many reasons. Will a class will be certified? Will the certification stand? How will damages be calculated for beloved pets and in what amount? Meanwhile, Hill's may want to consider changing its trademark "Transforming Lives." --- [Heather Heiskell Jones](#)

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