

# Author's Introduction

## 2025-2026 Edition

This annual update offers an overview of novel technologies and legal challenges that are raising new issues in the prevention of product liability. Such liability can arise from personal or property injuries, environmental remediation, or costly recalls. Fortunately, these risks are also amenable to management through proactive assessment and management of knowable hazards. With increasing knowledge comes the expectation for what is “foreseeable”—this becomes ever broader as the “state of the art” encompasses new fields from epigenetic toxicogenomics to barely foreseeable economic impacts from emerging technologies marketed with US regulatory approval, but not approved for export to major overseas markets. New risk management tools are arriving with the emergence of advanced knowledge systems like artificial intelligence. These tools will yield more precise analysis of product liability threats. Liability metrics will be more widely used in industries to predict and prevent emerging tort liability, and sustainability initiatives will reduce liability risks over time.

In agricultural biotechnology, 2025 once again saw massive tort liability potentially coming home to roost with genetic editing in agriculture potentially raising mass tort class action. Legal decisions in any future case could redraw boundaries of tort liability for economic impacts to allow recovery for distant but arguably foreseeable economic impacts of negligent conduct involving every new technology from nanotechnology to artificial intelligence. The parties to the Biosafety Protocol are calling genetic editing a form of “synthetic biology” and more parties to that treaty will follow the EU’s lead to regulate this technology in more countries than just the EU as time goes on. These overseas approval requirements raise trade barriers that could lead to mass tort liability after markets are negligently disrupted. While nearly all biotech seed companies recognize the risks of not having major market approval, it is now clear that US regulatory approval of biotech crops will not preempt state tort law. In the aftermath of Syngenta’s various lawsuits with growers and grain traders, all biotech seed companies and particularly genetic editing companies will be potentially liable for failing to secure approval in many major overseas markets. To date, however, no mass tort liability suits have been filed against any genetic editing company.

Even more alarming is the threat of litigation and regulation of PFAS-etc. (various poly-fluorinated compounds). Rough

estimates of potential liability go as high as \$17 trillion per year in costs. Another published estimate projects that the global GDP of \$106 trillion would be needed to remove all PFAS. This PFAS cleanup issue will stand as the most preventable and perhaps biggest mass tort in the history of litigation. With a potential superfund listing still pending and Clean Water Act NPDES permits issuing, the EPA is starting to regulate PFAS. As this unfolds, the costs of environmental remediation could skyrocket. Litigation over the health effects of PFAS could go on for years to come. A 2025 study found none of the cancer risks identified by the historic C8 joint expert group were actually reproduced in subsequent study. The only study finding a health effect under current science was on childhood obesity. More study will be needed to document the health effects of PFAS.

Climate change lawsuits around the world are increasingly meeting judicial acceptance, as liability for climate change rapidly evolves in various jurisdictions. The first judicial decision in Montana points toward a future where costs will escalate, with the Supreme Court of Montana affirming this historic decision in December 2024.

The world is getting ready for the widespread launch of unmanned autonomous vehicles on highways worldwide, with more deaths being reported from use of a new driving technology that will ultimately lead to a significant reduction in driving-related deaths and disability. Uber and other ride services, along with trucks on the highway, are starting to enter US roadways. Globally, agriculture is using robo-tractors and drones, while struggling to keep the “big data” generated thereby safe from prying eyes. These new tools will potentially reduce liability risks while posing a challenge to regulators and consumers (widespread acceptance of autonomous vehicles remains uncertain). Using the risk management tools set forth in this book, manufacturers of unmanned vehicles can avoid undue exposure to enterprise-threatening liabilities.

The novel technology of editing the genes of human beings, like all emerging technologies, poses liability risks once it becomes commonplace and not banned worldwide by agreed ethical standards. Industry conferences have addressed liability standards, and tools are available to manage liability for negligence or strict liability for the genetic editing of a new child.

**What’s New in the 2025-2026 Edition:**

- Genetic editing of people is in its infancy, with only a couple of Chinese infants known to have been edited. The industry has convened to discuss liability. New sections profile the modes of liability prevention emerging for this new technology. [See §§ 24:27 et seq.]

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- The U.S. National Highway Traffic Safety Administration published an order that requires details of any and all crashes involving self-driving cars from automakers within one day of them knowing about the accident. Many vehicles equipped with Automated Driving Systems (“ADS”) are being tested in manufacturer or operator-owned fleets in specific communities for a limited purpose such as taxi or delivery services. [§ 26:4]

- PFAS litigation and regulation could become the most controversial and litigated topic of the coming decade, with estimates as high as \$17.4 trillion per year to address the threat. State legislative creation of a right to medical monitoring costs for wrongful toxin exposure, as well as judicial recognition of such claims, may help states to fill the gaps left by the EPA’s ongoing failure to regulate PFAS and the continuing Congressional deadlock on national legislation addressing PFAS risks and the time lag between exposure to toxins and onset of symptoms. [See § 27:4]

- Artificial Intelligence (AI) has arrived in various products, and the US continues to face the decision of whether to keep its lead in AI by regulating on a product basis while leaving liability for the process or general AI intelligence to the liability system to address, or giving in to critics seeking containment of still-coming general intelligence. [See Chapter 32]

Thank you for subscribing to *Products Liability: Design and Manufacturing Defects 2d* (2025-2026 Edition). We work hard throughout the year compiling new developments to ensure this publication meets reader needs and provides an important resource on this topic. We trust that you will continue to find it useful for your company’s risk management efforts, your law practice, consulting practice or research interests.

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