

5 Signs You're Not Suited To Be A Product Liability Lawyer

By **Emily Field**

Law360, New York (August 19, 2016, 5:04 PM ET) -- Product liability law isn't for every attorney. Hours spent poring through documents rife with technical details and scientific information, and viewing the often tragic and gruesome injuries and deaths that are at the center of many cases, takes a special kind of lawyer.

The practice of product liability law also requires attorneys to juggle multiple deadlines while maintaining good working relationships with teams of other attorneys, regardless if one is working on the defense side or for the plaintiffs, as mass torts comprise much of the caseload for product liability attorneys.

"There are a number of traits that are good indicators that an attorney should find another practice area," said Gary Wolensky of Buchalter Nemer PLC. "For example, if someone does not have the work ethic to handle volume litigation that is highly adversarial and driven by tight deadlines, then that attorney is not suited for high-stakes product litigation."

Here, attorneys share five signs that you might not be cut out to practice product liability law.

You Don't Have a Head for Science

While a background in science isn't necessary for product liability law, attorneys need to have an interest in science and engineering and the willingness to learn, experts agreed.

"I'd say it's a bad thing if you don't like to read scientific or technical papers, because in a product liability case, you are going to get very deep into the science and engineering and human factors in every last little field you can imagine," said Max Kennerly, of counsel at Tor Hoerman Law LLC.

Many law students seem to be averse to math or science, but practicing product liability law requires working with experts to understand how a product is made, its history and its use, according to Doug Robinson of Shook Hardy & Bacon LLP.

If you don't know a product forward and backward, you're going to be in trouble once you're out in front of a jury, Kennerly noted.

Also essential to practicing product liability law is an understanding of statistics, according to Lee Teichner of Holland & Knight LLP.

"When you see a sampling of uses of a product that show its usefulness and safety, and there's one incident that contradicts that, that requires you to look to see why one of these things is not like the other," Teichner said. "Remember 'Sesame Street.' You'd be a bad product liability attorney if you ignore statistics and fail to drill down on why this outcome is different from the great statistical sampling that shows why the product is safe."

You Have a Weak Stomach

Unfortunately, many product liability cases involve allegations of gory injuries and untimely deaths, and an attorney who can't handle those kinds of details may not be well-suited for product liability law.

"I often have to review fairly gruesome photographs of injuries when helping companies decide whether they have to report a product defect to the Consumer Product Safety Commission," said Ivan Wasserman of Manatt Phelps & Phillips LLP. "I have to warn associates before getting help on a project."

Product liability cases are often highly charged with emotion and sympathy, and balancing those human emotions with the science side of the cases is a tough tightrope to walk, attorneys said.

"Everyone is human, and empathy and sympathy are key traits everyone should have," Robinson said. "You see some things, but you have to compartmentalize and learn the facts and how things actually happen. Just because someone is tragically injured doesn't necessarily mean someone is at fault."

You Have No Patience

Product liability cases tend to be large and complex, with long timelines for discovery and motions, attorneys said. That requires attorneys to be patient and take a long view of cases.

These aren't the types of cases where a settlement or other final outcome can be expected within a few months of a complaint, experts said.

"The odds are that you won't have a settlement offer until you're right on the courthouse steps," Kennerly said.

And if a case does go to trial, even a win can become just part of the process. The law and technology are so hotly disputed that a favorable verdict can be appealed and retried, attorneys noted.

You're a Lone Wolf

An inability to work well with others will also doom an attorney's chances of succeeding in product liability law, attorneys said.

Working on a product liability case means working with other lawyers representing different firms or different plaintiffs to set up tasks like depositions to keep the case moving forward, experts said.

Even beyond those scheduling details, being able to work well with others becomes hugely important once a case is in front of a jury, attorneys said.

"Juries can tell who is on same page and who are good teammates, and I think it makes a difference,"

Robinson said.

You Fail to Keep Up on the News

Unlike a number of other areas of law, the landscape of product liability is constantly changing, and attorneys who aren't interested in making time to keep up on those developments will find themselves at a disadvantage, attorneys said.

"In product liability law, there are big changes all the time — even district court opinions on Daubert motions you need to watch like a hawk," Kennerly said.

For example, the Pennsylvania Supreme Court in 2014 issued a significant ruling known as the Tincher opinion that restructured product liability law in the state when it declined to redirect the focus in these cases from products themselves to the responsibilities of the manufacturer.

"Right now, anyone practicing in that area needs to know not just Tincher, but every case decided since at any level of Pennsylvania court system," Kennerly said. "That's how open and hotly disputed the issues are."

--Editing by Katherine Rautenberg and Philip Shea.