

Lawyer Insights

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3D Printing and Its Uncertain Products Liability Landscape

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There is general consensus that 3D printing has potentially revolutionary implications for industry and, along with it, for the law. In terms of products liability law, its consequences for industry and consumers injured by 3D-printed products are potentially just as far-reaching.

Consider a fact pattern under which an auto parts manufacturer makes CAD files available to auto parts stores so that they may 3D print replacement auto parts on demand and on-site in response to customer needs. An auto parts store sells the 3D-printed part to a customer, who later is involved in an accident and blames the 3D-printed part for causing the accident.

In this fact pattern, the injured consumer may have recourse against the auto parts manufacturer and the auto parts store, although the manufacturer and store are likely to have agreements with indemnification and liability provisions. The injured consumer may even have recourse against the company that manufactured the 3D printer if there is evidence that it malfunctioned in an unreasonable and unforeseeable way.

But now consider this fact pattern: A company in China uploads a CAD file for the 3D printing of a replacement auto part and offers it for sale; an individual in the United States purchases the CAD file and 3D prints the replacement auto part at a local store that prints from customer files; the individual then sells the 3D-printed auto part to another, who then is involved in a car accident and blames the 3D-printed part for causing it.

What recourse does the injured customer have under this fact pattern? Against whom? For what? Will U.S. law even apply? And where can a suit be filed? A consideration of these issues suggests the consumer will have few options under current U.S. law and suggests that there may be movement towards legislative change.

The Individual Who 3D-printed the Replacement Auto Part and Sold it to the Accident Victim

The accident victim may not be able to recover against the person who printed the auto part and from whom he purchased the part. That is because strict liability cannot apply unless the seller is a “commercial seller,” i.e., a person engaged in the business of selling products, like a manufacturer, distributor or retailer. It does not apply to an occasional seller, like someone who downloads 3D files, prints products for personal use and only occasionally sells a product. If the person who printed the auto part and sold it to the accident victim is a mere occasional seller, he will not be found liable in strict liability.

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While the accident victim might pursue the seller for negligence, he would have to prove that the seller caused his injury, rather than the printing store, the printer, the CAD file or any other cause. And, even if successful, his victory would be hollow if the individual seller has limited resources.

The Local Store that 3D-printed the Replacement Auto Part

The accident victim also is not likely to recover against the local store that 3D-printed the replacement part. The store basically provides customers access to 3D printers (i.e., a service) to print items from CAD files the customers provide. The local store does not sell 3D products, so is not engaged in the “sale of goods” as defined by the UCC. Thus, the local store likely has little exposure – if any – to strict liability, implied warranty and negligence claims. At best, the accident victim might have claims for the negligent maintenance of the 3D printer used to print the replacement part, but only assuming that its insufficient maintenance actually contributed to his injuries.

The 3D Printer Manufacturer

The accident victim will likely have a tough road against the 3D printer manufacturer, as well. To recover against the manufacturer, the consumer would need to prove (1) that the printer was defective in manufacturing or design when it left the manufacturer’s possession and control, or was sold with inadequate instructions or warnings, and (2) that this defect was the cause of his injuries, rather than any conduct of the Chinese downloader, the U.S. seller or the local print store. These are difficult elements of proof.

The Chinese Company that Uploaded and Sold the CAD File

The accident victim’s likelihood of recovery against the Chinese company that uploaded and sold the CAD file also is remote because products liability law applies only to the sale of “products.” A product generally is defined as “tangible” personal property; “intangible” personal property is not a product. While caselaw is not definitive on this issue, it seems unlikely that a CAD file would be considered a tangible product. In analogous contexts, courts have held that information in media, like information in books, is intangible personal property. Thus, the Chinese company’s CAD file likely would be deemed a service, not a product, and another party in the 3D supply chain would avoid liability.

And even if viable legal theories existed against the Chinese entity, its involvement in the 3D supply chain raises key jurisdictional and choice of law issues: Could a U.S. court even obtain personal jurisdiction over it? And, if so, would it apply U.S. or Chinese law? And would jurisdiction and a judgment be in vain if the Chinese company merely defaulted and a judgment could not be enforced against it? All of these questions likely leave the accident victim empty-handed against the Chinese entity.

The non-traditional manufacturing and supply chain that is coming of age with 3D printing appears likely to make recovery difficult for consumers injured by 3D printed products. The question, then, is whether this state of affairs will lead to efforts at legislative change, and particularly legislative change that has unintended consequences for legitimate enterprises that participate in a more traditional manufacturing and supply chain. Companies should be aware of the changes in the marketplace resulting from the growth in 3D printing and monitor legislative efforts that may have negative impacts on their own, legitimate business.

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