When The Platform Is A Product, Strict Liability Can Attach

By **Thomas Kurland, Newton Portorreal and Joshua Goldman** (May 14, 2024)

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Can social media platforms be considered products for the purpose of a product liability action in New York? At least one court seems to think so — but as we explain below, its opinion appears to be the first of its kind, although there is limited precedent in New York either way.

On March 18, Justice Paula Feroleto of the New York Supreme Court, Erie County, denied a motion to dismiss in Patterson v. Meta Platforms Inc. In that case, the estates of various victims of the 2022 Buffalo supermarket shooting sued internet and social media platforms like Meta, Google LLC, Snap Inc., Discord Inc., Reddit Inc., Amazon.com Inc. and 4chan.

The plaintiffs alleged that the shooter was motivated by concepts he picked up from the defendants' platforms.[1] These platforms, the plaintiffs contended, are "negligently, defectively and harmfully designed 'products'," and the defendants were "therefore liable based on product liability theories."[2]

Whether a social media platform is a product is a threshold question for determining whether strict product liability attaches. But as the New York Appellate Division, Fourth Department, explained in its 2019 opinion in In re: Eighth Judicial District Asbestos Litigation, whether or not something is a product is "often assumed" — and "none of [the appellate division's] strict products liability case law provides a clear definition of a 'product.'"[3]

Ultimately, the appellate division found, "'[a]part from statutes that define 'product' for purposes of determining products liability, in every instance it is for the court to determine as a matter of law whether something is, or is not, a product.'"[4]

Among other arguments, the defendants in Patterson asserted that Section 230 of the Communications Decency Act gave them immunity for user-created content hosted on their platforms.[5]

But the court concluded that the plaintiffs sufficiently alleged that the defendants' algorithmic provision of content on users' feeds demonstrated that the "defendants' platforms are more than just message boards containing third-party content" and could be "sophisticated products designed to be addictive to young users and ... specifically directed [the perpetrator] to further platforms or postings that indoctrinated him with 'white replacement theory.'"[6]

In reaching this determination, the court cited New York's three factor test for determining whether something is a product:

> (1) a defendant's control over the design and standardization of the product, (2) the party responsible for placing the product into the stream of commerce and deriving a

> financial benefit, and (3) a party's superior ability to know — and warn about — the dangers inherent in the product's reasonably foreseeable uses or misuses.[7]

Curiously, it noted that the defendants had "attempted to establish that their platforms are mere message boards and/or do not contain algorithms. ... This may ultimately prove true."[8] The court continued, "some defendants may yet establish that their platforms are not products or that the negligent design features plaintiffs have alleged are not part of their platforms."[9]

But ultimately, the court reasoned, that "at this stage of the litigation the Court must base its ruling on the allegations of the complaint and not 'facts' asserted by the defendants in their briefs or during oral argument."[10]

The Patterson decision appears to be unique in New York's product liability jurisprudence, although similar authority is scant. In Intellect Art Multimedia Inc. v. Milewski, the New York Supreme Court, New York County, concluded that websites are not products as a matter of law.[11]

In that case, defendant Xcentric Ventures LLC operated a website under the name "Ripoff Report."[12] Allegedly, a user posted a defamatory review of the plaintiff's services, and the plaintiff brought a claim sounding in strict product liability.[13]

In dismissing the claim, the Milewski court observed that the "plaintiff's claims arise from the fact that the website is a forum for third-party expression."[14] As a result, the court was "not persuaded that this website in the context of plaintiff's claims is a 'product' which would otherwise trigger the imposition of strict liability."[15]

The plaintiff's claims were not saved by the fact that it pled that the defendant in fact "created defamatory headings" for the review in question, or that the defendant's business model was to solicit the businesses that were the subject of posts on Ripoff Report and "following up with posters and resolving their complaints."[16]

Additionally, in Walter v. Bauer, a case decided in 1981 — before the internet was widely adopted — Justice Joseph Kuszynski of the New York Supreme Court, Erie County, held that a student injured from doing a science experiment described in a textbook could not hold the publisher liable because the textbook was not a "product" for purposes of strict product liability.[17]

There, the court reasoned that the book itself was not a product because the plaintiff's injury was not caused by using the book "for the purpose for which it was designed, i.e., to be read."[18] Taken together, these decisions do not support Justice Feroleto's holding that the social media platforms are products under New York law.

In another potential analogue, particularly in the context of mass shootings, New York courts have also declined to permit victims and families of victims of gun violence to sue gun manufacturers. In a 2001 opinion, Hamilton v. Beretta U.S.A. Corp., the Court of Appeals, following certification of questions by the U.S. Court of Appeals for the Second Circuit, concluded that gun manufacturers did not owe the public at large a duty to "exercise reasonable care in the marketing and distribution of the handguns they manufacture."[19]

The plaintiffs argued that such a duty existed in New York law "on foreseeability of harm and ... products liability cases."[20] But the Hamilton court reasoned that "foreseeability, alone, does not define duty," and that the plaintiffs' action raised "practical concerns both

about potentially limitless liability and about the unfairness of imposing liability for the acts of another."[21]

In the case of gun manufacturers, specifically, "[t]he pool of possible plaintiffs is very large — potentially, any of the thousands of victims of gun violence," and "the connection between defendants, the criminal wrongdoers and plaintiffs is remote."[22]

In Patterson, the defendants operate websites, which have not traditionally been recognized as products. Although the defendants allegedly serve their content algorithmically, the gravamen of the Patterson plaintiffs' complaint is that the perpetrator of the 2022 Buffalo shooting was shown the content of third parties posted to the defendants' websites.

Given their massive reach, the implications of liability for these companies could be incredibly far-reaching, at least as much as gun manufacturers as described in Hamilton. And, as in Hamilton, it appears that the same concerns of extending liability to defendants for the wrongful acts of others are equally present.

Thus, if Patterson holds or is adopted by other courts, it represents a potentially very significant expansion of product liability for social media companies. We will be keeping an eye on any potential appeal of this decision, as well as any future summary judgment motions.

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[1] Patterson v. Meta Platforms Inc., Index No. 805896/2023, slip op. at 3 (N.Y. Sup. Ct. March 18, 2024).

[2] Id.

[3] In re: Eighth Jud. Dist. Asbestos Litig., 129 N.E.3d 891, 897 (N.Y. 2019).

[4] Id. (quoting Restatement (Third) of Torts, Products Liability § 19, Comment a (1998)).

[5] Patterson, slip op. at 4.

[6] Id.

[7] Id. at 6 (quoting In re Eighth Jud. Dist. Asbestos Litig, 129 N.E.3d at 897).

[8] Id. at 6-7.

[9] Id. at 7.

[10] Id.

[11] Intellect Art Multimedia Inc. v. Milewski, 2009 WL 2915273, at *7 (N.Y. Sup. Ct. Sept. 11, 2009).

[12] Id. at *1.

[13] Id. at *7.

[14] Id.

[15] Id.

[16] Id. at 6-7. A point of distinction between Patterson and Milewski is that, in Patterson, the algorithm serving user content itself may separately be a product, even if the websites themselves may not be.

[17] Walter v. Bauer, 439 N.Y.S.2d 821, 822-23 (N.Y. Sup. Ct. 1981).

[18] Id.

[19] 750 N.E.2d 1055, 1059 (N.Y. 2001).

[20] Id. at 1062.

[21] Id. at 1061.

[22] Id. at 1061-62.