

MOTORCYCLE DEFECTS



CLAIMS AND
ACCOUNTABILITY

A WHITE PAPER
PRESENTED BY



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CLAIMS AND ACCOUNTABILITY



No one knows for sure how many motorcycle accidents are caused by product defects or faulty repairs. Crashes can occur for no readily apparent reason, not because of another driver, speed or other observable conditions. In these cases, later inspection may find that a defect in the motorcycle or a faulty repair caused the crash.

As a rider, you certainly want to take all appropriate measures to minimize your risk of injury. But if your machine starts to wobble or the brakes lock up for no detectable reason, that's not something you can control.

At Schmitt Mulhern, LLC, we are passionately committed to promoting motorcycle safety and pursuing justice for people injured in motorcycle accidents. Attorney Ben Schmitt is an avid rider who focuses much of his legal practice on these issues.

What legal claims for compensation can be brought when the cause of the accident involves defects or servicing errors? And what can a rider do to protect against accidents caused by those problems?



THE EMERGENCE OF PRODUCT LIABILITY LAW

Prior to the 1960s, courts generally allowed manufacturers and sellers to avoid responsibility for injuries caused by product defects. The prevailing practice was called *caveat emptor*, otherwise known as buyer beware.

The law has changed radically, however, in the last 50 years. Manufacturers and sellers of products can now be held liable for

injuries caused by defective products without showing fault. This is known as strict liability.

Strict liability claims are often asserted along with claims based on other grounds for recovery. These include tort law (fault or negligence) and contract law (warranty). As a result, if you are injured in an accident caused by a defective product, faulty repair or a dealer's misrepresentation, you may be able to bring a lawsuit under several different theories of liability.

PRODUCT LIABILITY CLAIMS FOR MOTORCYCLE DEFECTS

Let's start with claims based on strict product liability. There are three main types of claims:



DEFECTIVE DESIGN

The motorcycle had an unreasonably dangerous design, given the available engineering alternatives.



DEFECTIVE MANUFACTURE

A flaw in the production of a particular part or a mistake at any step in production caused the motorcycle to be unreasonably dangerous.



FAILURE TO WARN

The manufacturer or vendor did not warn about known risks or provide adequate instructional materials for using and maintaining the motorcycle.

Because these claims are based on strict liability, they do not require a showing of negligence. Under a strict liability theory, injured parties can bring claims not only against motorcycle manufacturers but also against sellers.

OTHER THEORIES OF LIABILITY

Strict liability for a defective product or failure to warn is not the only possible way to recover for a motorcycle accident caused by problems with the machine. Other possibilities include:



NEGLIGENT DESIGN OR FAILURE TO WARN

This is similar to the claim for defective design or failure to warn, but requires a showing of fault.



MISREPRESENTATION

A manufacturer or seller of motorcycles may make unjustified safety claims about motorcycles, breach an implied warranty of safety or fail to disclose a relevant fact.

INADEQUATE REPAIR OR SERVICING

Another basis for bringing a legal claim for compensation for motorcycle accident injuries is that errors by a service shop in maintaining or fixing the motorcycle resulted in defective performance, leading to an accident.

Negligent repair or servicing can happen in many different ways, given all the moving parts that motorcycles have. Errors in fixing the brakes are very serious, for example, because brake failure can leave you without the effective ability to stop. Brakes are also among the most commonly repaired parts, along with the electrical system and accessories.¹

Regardless of which motorcycle part was repaired or serviced, however, faulty work by the shop can cause a breakdown in performance that causes an accident. It may well be true that some motorcycle brands are more repair-prone than others. Yet even the most reliable brands require regular servicing, and when the shop doesn't do that right it puts riders at undue risk.

As we have described, someone injured in a motorcycle accident due to a product defect or service error has numerous potential legal claims. The next question becomes: How are defects identified and what issues must an injured party overcome in order to hold the responsible parties accountable?



WHAT ARE THE POTENTIAL DEFECTS?

With so many moving parts, there are all sorts of product defects that can affect motorcycle safety. Manufacturing defects are currently more common than design defects, but design defects still occur.

Examples of design defects include inadequately sized throttle cables and swingarm/suspension designs that cause excessive wobble at higher speeds. And as motorcycles evolve to incorporate increasingly ambitious digital safety designs, more design defect cases are likely to occur.

Right now, a steady stream of manufacturing defects keeps coming to light. These defects often involve the use of aftermarket parts, which can change the handling characteristics of the machine they are used on.

COMMON DEFECTS INCLUDE:



Brake Malfunctions



Faulty Ignition Systems



Tire Defects



Clutch Malfunctions



Crankshaft Failure

This is by no means an exclusive list. Leaking shock absorbers, defective chain guards and software issues in the engine control system are among the many other types of defects that have been documented.

All of these defects cause motorcycle accidents. And all of them have resulted in recent recalls.

DEFECTIVE AFTERMARKET PARTS

In some cases, a motorcycle may not have been defective when purchased, but became defective because the aftermarket parts used to modify it were defective. Many parts made by companies other than the original manufacturer fail to meet federal safety standards.

Besides parts, there are of course many apparel items for sale, including helmets, boots and jackets. For example, many sellers offer so-called novelty helmets, which do not look like traditional helmets meant to protect riders in a crash.

If a helmet fails to comply with the applicable federal safety standard for motorcycle helmets, it is subject to recall. This happened in August 2016, when Tegol Inc. issued a recall for a type of helmet known as a beanie helmet.

Recalls are actually an important part of the process in identifying product defects.

What is the role of recalls in safety protection?

Vehicle recalls can be initiated either by a manufacturer or by the National Highway Traffic Safety Administration (NHTSA). This is supposed to happen when a group of vehicles or equipment poses an unreasonable risk of accidents due to a defect in construction or performance.



Under the law, manufacturers are required to fix the problem free of charge. Normally, this means repairing or replacing defective parts, but in some cases it could involve refunds or even buying back the vehicle. Kansas and more than 20 other states have lemon laws that can potentially be used for this purpose.²

If the defective parts involved are consumer products, the agency that oversees safety recalls is the Consumer Product Safety Commission, rather than the NHTSA.



How do federal safety agencies and manufacturers decide which vehicles to recall?

The NHTSA's Office of Defects Investigation reviews consumer complaints and other related data concerning possible safety-related defects. The NHTSA then analyzes the information and decides whether to investigate the issue.

If an investigation confirms the existence of a safety defect, the next step is a recall by the NHTSA. Manufacturers can also initiate a voluntary recall.

But if manufacturers don't cooperate with the NHTSA or commit serious violations of federal law on defect reporting, the agency has the authority to issue fines. In 2015, for example, it fined Triumph Motorcycles \$2.9 million for failing to report safety defects in a timely manner.³

**TRIUMPH FINED
\$2.9 MILLION**



RECENT INVESTIGATIONS OR RECALLS OF MOTORCYCLE DEFECTS

Recalls by motorcycle manufacturers have increased in recent years. Here are some of the most prominent examples:



312,000
MOTORCYCLES
RECALLED IN
2016

Harley-Davidson — In July 2016, the NHTSA announced an investigation into brake failure defects on about 430,000 motorcycles from model years 2008 to 2011. That same month, Harley recalled no fewer than 14 models because of an issue with the clutch lever, affecting more than 27,000 bikes from the 2016 model. Harley-Davidson also recalled more than 312,000 motorcycles in 2014 — 10 times as many as in 2013.



40,000
MOTORCYCLES
RECALLED IN
2015

BMW — In September 2016, BMW recalled nearly 1,400 motorcycles for model years 2013 to 2016 because of a software problem in the engine control unit that could cause stalls. In 2015, BMW issued a safety recall for more than 40,000 motorcycles with a defective flange on the rear wheel that posed undue risk of brake failure or of the rear wheel falling off.



1,200
MOTORCYCLES
RECALLED IN
2016

Kawasaki — In July 2016, Kawasaki issued a recall notice for its popular new 125 Mini because of concerns about leaking shock absorbers that could affect handling of the cycle, increasing the risk of a crash. The recall affects more than 1,200 new motorcycles.

Going into the dealership to get defects fixed seems to happen so often that some manufacturers may even view it as an up-sell opportunity.⁴ But every defect adds to the dangers riders face.

WHAT CAN A RIDER DO TO LIMIT RISKS ASSOCIATED WITH DEFECTS?

Whether there is a recall or not, motorcycle defects add more danger to an activity that already comes with significant crash risks.

New riders should register for an appropriate safety training course, and all riders should certainly make it a point to never ride while distracted or impaired. Wearing a helmet can't prevent a crash, but it can reduce the severity of injuries.

Other steps include:

Maintaining your bike regularly

In the anti-lock brake recall that Harley-Davidson issued in July 2016, corrosion caused by dirty brake fluid may have contributed

to sudden brake failures. When something seems off or a bike is acting in an unusual way, get it inspected. Keeping a vehicle properly maintained limits risks and ties in with recall awareness, because a dealer or shop may be aware of safety recalls.

Getting updates on recalls

Motorcycle owners can stay informed about safety recalls by downloading a mobile app from the NHTSA or signing up for email alerts about a particular model. The NHTSA also makes information about recalls available on Facebook and Twitter.⁵



Ultimately, however, even the most well-informed, well-trained rider can be blindsided by a sudden motorcycle defect. That is perhaps the scariest part of motorcycle defects – especially considering the accident risks that already exist.



STATISTICAL SNAPSHOT ON MOTORCYCLE ACCIDENTS

National and regional statistics on motorcycle accidents are available from several sources. In round numbers, in 2015:

| | |
|---------------------------|---|
| 80,000 INJURED | 88,000 motorcyclists were injured . |
| 5,000 FATAL | 5,000 motorcycle crashes ⁶ were fatal . |
| 5 X INJURED | Motorcyclists were 5 times as likely to be injured as occupants of cars. |
| 27 X FATAL | Motorcyclists were 27 times as likely to be killed as occupants of cars. |



The motorcyclists who lost their lives included 90 people in Missouri and 41 in Kansas.



ACCIDENTS CAUSED BY OTHERS' NEGLIGENCE

Factors that cause motorcyclists to be injured or killed in accidents caused by others' negligence are no secret. Car and truck drivers often fail to drive safely around motorcycles. About 1 in 5 fatal motorcycle accidents is caused by motorists making negligent left turns.



**1 IN 5 FATAL
MOTORCYCLE
ACCIDENTS
IS CAUSED BY
MOTORISTS MAKING
NEGLIGENT LEFT
TURNS**

In some other cases, government agencies are to blame for accidents, due to defective roadway designs that make certain stretches of the road unreasonably dangerous.

Given the well-documented dangers of motorcycle accidents, riders may choose to carry uninsured/underinsured (UM/UIM) insurance. This coverage offers protection against drivers who fail to carry adequate insurance. Having the additional coverage can be very important considering the severity of many motorcycle accident injuries.

BRINGING LEGAL ACTION FOR DEFECTS

It may not be known at the time of an accident whether it was a defective part or someone else's negligence that caused the accident.

There are, however, some specific points to keep in mind about motorcycle defect litigation. They include:

Keeping the bike — No matter how mangled the motorcycle may be after an accident, it is important to preserve it as evidence. After all, an engineering expert will have to examine it. Even if the bike is totaled, hold onto it.



Similar cases — Can evidence of a recall be used to show that defects existed? If the recall happened after the accident and the case goes all the way to trial, this can be problematic. The law of evidence generally does not allow for the introduction of evidence about remedial measures (actions taken by a defendant after an injury to address an unsafe situation).

Legal theories of recovery — The legal theory of recovery depends on the facts of a particular case. As noted earlier in this paper, if a manufacturing defect causes an accident, there may be a product liability claim against the manufacturer and the seller. But if servicing errors cause an accident, that claim is based on negligence and is against the shop that made the errors.



Other issues may arise as well. You may be wondering whether you can still recover if you were partly at fault. Perhaps you are the family member of someone killed in a motorcycle crash and are considering a wrongful death action.

UNDERSTAND YOUR LEGAL OPTIONS

No matter what your particular circumstances, if you've been injured, it is important to understand your legal options by talking with a knowledgeable attorney.

An attorney skilled in handling motorcycle accident cases can use experts and other evidence to identify the role of defects or servicing errors in causing a crash. Once a lawsuit is filed, your attorney can aggressively pursue compensation on your behalf for pain and suffering, lost wages, medical bills and other damages.

Pursuing compensation may mean going to trial, where that is the best way to get maximum results, or involve negotiating with insurance companies and other responsible parties for a fair settlement.

As this paper has shown, many types of legal claims are possible when a motorcycle accident was caused by defects or servicing errors. Your attorney can bring claims that fit your specific situation and hold responsible parties accountable.

SOURCES

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⁴ Motley Fool, "Harley-Davidson Recalls 312,000 Bikes – And That's Good News?" (Rich Smith), October 10, 2015.

⁵ National Highway Traffic Safety Administration, "Recalls and Defects" (accessed November 9, 2016)

⁶ Insurance Information Institute, "Motorcycle Crashes," November 2016



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