Quarterly Review

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Ohio Association *of* Civil Trial Attorneys

A Quarterly Review of Emerging Trends in Ohio Case Law and Legislative Activity...

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President's Note

Elizabeth T. Smith, Esq.
Director, Ohio Board of Professional Conduct
2025 President, OACTA

As I move a stack of books around at my house that I have carted from my former law office, I note that I have a number of books on leadership that I have never read. It's not that I don't think self-improvement isn't necessary; it always is. I think I'm like many lawyers. We read during much of our days, whether the reading be depositions, medical records, piles of discovered documents, expert reports, and research and whether it be on the computer or in hard copy. We read and we read. Often, I find that I don't want to read when I go home at night and I have heard from others whom I greatly respect and admire that such is not unusual. I'd rather, now that I don't have to worry with homework or other kids' activities, watch my favorite NCIS episode.

But as I leave this year which has entailed leadership responsibilities and reflect over a career where I have been entrusted with many leadership roles and responsibilities, I hope that I have been a good leader and a good follower when necessary. I've heard a number of speakers on leadership and believe that many of the concepts should be common sense, but apparently they are not for many. I've been fortunate to have had good mentors who taught me how to lead and whom I was able to observe practicing good leadership.

Since this is my last President's Message, indulge me while I offer the leadership traits that I've observed from mentors:

- Treat those with whom you work and those who report to you with dignity, including when you must deliver criticism or bad news to someone;
- Know that you are prepared to and will take on any job that you might ask anyone else to do;
- Know how to be led; you cannot always be the lead. This is so despite the doormat I have in my office that says: "If you ain't the lead dog, the scenery never changes." It doesn't mean you should never let others lead. Rather, prepare yourself to lead and take the opportunity when it presents;
- Know when to admit your mistakes, to take criticism, and to know when to put your boots back on and step back into the fray;
- Build a collaborative team and empower others to reach their potential;
- As the leader, the buck does stop with you; don't blame others and don't hog the glory;
- Work hard—there absolutely is no substitute for hard work in our profession;
- Never stop learning;
- Never take yourself too seriously and it is good to have an appropriate sense of humor.

To all of you who are reading this, I know you all know this. But it is up to all of us to mentor and help to raise up future leaders. It is an important reason to join OACTA and the opportunities to learn leadership skills are such an integral part of what the organization does so well.

Thank you for the opportunity to lead this organization this past year. Thank you for the years of guidance that prepared me. I look forward to being led by President Dan and our future presidents! Good luck Dan! You clearly have this!

Introduction

Product Liability and Toxic Tort Committee & Business & Commercial Litigation Committee

Nina I. Webb-Newton, Esq.

In this issue, the Product Liability and Toxic Tort Committee has brought two very different articles that will be interesting to both product liability and toxic tort defense counsel practicing in both state and federal courts. First, in Frivolous Conduct and Rule 11 in Product Cases: Knowing When and How to Push Back, **Megan Bosak, Esq.** of Gordon Rees Scully Mansukhani, LLP takes on an issue that irritates most defense counsel in toxic torts litigation, frivolous pleadings and conduct from plaintiffs' counsel. Next, in Loper Bright Enterprises v. Raimondo and the End of Judicial Deference and Chevron Two-Step Review, I provide an analysis of Loper Bright Enterprises v. Raimondo, the United States Supreme Court case overruling Chevron deference, and look at the potential impact on product manufacturers.

Gregory R. Farkas, Esq.

On behalf of the Business & Commercial Litigation Committee, I want to thank you for taking the time to read this addition of the *OACTA Quarterly Review*. **Zachary Pyers** and **Logan Speyer** have authored a thought-provoking article discussing a growing trend of treating software platforms as traditional products under various theories of tort liability and analyze how that trend may be extended under Ohio law. I also have contributed a short piece analyzing civil liability for human trafficking under Ohio and federal law and discussing how these statutes apply more broadly than businesses might think.

I hope that you find these articles useful in your practice, and more importantly, that you and your families stay safe and healthy into the New Year.

In closing, I want to thank and congratulate Zachary Pyers, who is stepping down as the Vice Chairperson of the Business & Commercial Litigation Committee. Zachary has been a fixture on the Committee and his leadership will be greatly missed. I also will take tis opportunity to introduce and welcome Steven Chang as the new Vice Chairperson of the Committee. I look forward to working with him in the coming year. If you have any thoughts on topics the Committee should address, or are interested in participating, please let either of us know.

Loper Bright Enterprises v. Raimondo and the End of Judicial Deference and *Chevron Two-Step Review*

Nina I. Webb-Lawton, Esq.
Gordon Rees Scully Mansukhani, LLP

I. *Loper Bright Enterprises v. Raimondo*[1]

For forty years, *Chevron U.S.A., Inc. v. National Resources Defense Council, Inc.*[2] set the standard for judicial review of agency interpretations of ambiguous statutes. Under *Chevron*, a reviewing court was to engage in a two-step evaluation. First, the court had to determine "whether Congress has directly spoken to the precise question at issue."[3] If Congress had spoken, "that is the end of the matter; for the court, as well as the agency, must give effect to the unambiguously expressed intent of Congress."[4] If Congress had not directly spoken to the question or if the statute was ambiguous, "the question for the court is whether the agency's answer is based on a permissible construction of the statute."[5] It was not for the reviewing court to substitute its own view if the agency's view was a permissible construction of the statute at issue.[6] In reaching its decision, the *Chevron* Court explained that judges should not be inserting themselves into policy. Instead, "[w]hen a challenge to an agency construction of a statutory provision, conceptualized, really centers on the wisdom of the agency's policy, rather than whether it is a reasonable choice within a gap left open by Congress, the challenge must fail. In such a case, federal judges – who have no constituency – have a duty to respect legitimate policy choices made by those who do."[7]

While the Supreme Court created several limitations on the applicability of *Chevron*, it had not overruled it – until last year. On June 28, 2024, at the end of October 2023 term, the United States Supreme Court issued its decision in *Loper Bright Enterprises v. Raimondo*,[8] a decision that represented a radical change in the standard for judicial review of agency decisions. The *Loper Bright* Court accepted certiorari on a single question – should *Chevron* be overruled or clarified.

In *Loper Bright*, the Court held that *Chevron* deference cannot be reconciled with the requirements of the Administrative Procedures Act (the APA). With respect to judicial review of agency actions, Section 706 of the APA provides that "'the reviewing court shall decide all relevant questions of law, interpret constitutional and statutory provisions, and determine the meaning or applicability of the terms of an agency action.'"[9] According to the Court, Congress could have included provisions requiring courts to give deference to agency policymaking and fact finding, but it did not.[10] Therefore, *Chevron's* two-step approach calling for judicial deference violates the provisions of the APA. While the Court limited its holding to *Chevron's* conflict with the provisions of the APA, it began its analysis with the separation of powers and *Marbury v. Madison* arguing that *Chevron* deference encroaches on the "province and duty of the judicial department to say what the law is."[11]

In arguing for the maintenance of *Chevron*, the government argued that "Congress must generally intend for agencies to resolve statutory ambiguities because agencies have subject matter expertise regarding the statutes they administer; . . ." [12] The majority was unswayed by this argument, noting that courts can and do address scientific and technical issues. Further, the Court explained that the courts "do not decide such questions blindly."[13] Instead, according to the Court, reviewing courts will have access to the technical guidance they need from the parties and

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amici, who "are steeped in the subject matter, . . ."[14] This argument, however, ignores the limitations inherent in relying on limited briefing to educate a court sufficiently to make a well-reasoned decision.

II. State Changes

While *Loper Bright* changed the landscape at the federal level, judicial deference to agency interpretations has been on the way out at the state level for several years.[15] In December 2022 the Ohio Supreme Court issued its decision in *TWISM Enterprises, L.L.C. v. State Board of Registration for Professional Engineers & Surveyors*.[16] In TWISM, the Court relied on the Ohio Constitutional separation of powers to find that the courts are not required to give deference to an agency's interpretation of law, even where the law is ambiguous. Where the court finds that there is statutory ambiguity, it may consider administrative interpretation of the statute. However, "[t] he weight, if any, the court assigns to the administrative interpretation should depend on the persuasive power of the agency's interpretation and not on the mere fact that it is being offered by an administrative agency. . . . What a court may not do is outsource the interpretive project to a coordinate branch of government."[17]

III. Impacts of *Loper Bright* on Product Manufacturers

Loper Bright will invariably lead to bad decisions, at least in the realm of statutory construction implicating issues of science and technology. The majority's assessment of judges' ability to understand complicated scientific or technical issues is overly optimistic. Unlike the judiciary, agencies are staffed with subject matter experts. Agency staff can be further educated on technical issues, as well as the impacts of proposed regulations, through the comment process inherent in rulemaking. And, while the court may always look to the agency's interpretation of statutory silence or ambiguity, it is not bound to do so. It cannot be doubted that many decisions under Loper Bright will be based on a misunderstanding of the science or technology, "jeopardizing science-based policymaking . . ."[18]

Further, under *Chevron*, an agency could change its interpretation of statutory ambiguities, so long as the new interpretation still represented a reasonable construction of the statute. Under *Loper Bright,* however "[o]nce a court interprets an ambiguous statutory term" that interpretation gets "lock[ed] in . . . preventing the agency from changing its interpretation in the future."[19] Further, scientific knowledge is growing at a rapid pace. But, once a court has locked in its interpretation of an ambiguous statute involving issues of science or technology, the relevant agency cannot take steps to account for this new scientific understanding and knowledge.[20]

Loper Bright has also imposed "an uncertainty tax on businesses large and small . . ."[21] Businesses will no longer be able to rely on the viability of science-based regulations promulgated by agencies staffed with subject matter experts. Under *Chevron*, businesses could make plans for the future, including future products, based on the knowledge that the courts would defer to the agency when regulations were challenged. Whether businesses agreed with agency regulatory outcomes or not, at least they knew that there was a strong likelihood that deference would be given to agency actions and that regulations would be upheld, at least until there was a change of administration with differing regulatory priorities.[22] Under *Loper Bright*, however, businesses face the uncertainty of potentially bad decisions being made by judges who lack the necessary understanding of complex scientific or technological issues.

Adding another layer of uncertainty, product manufacturers and other businesses cannot rely on existing regulations that had previously been the subject of judicial deference to agency interpretations.[23] The *Loper Bright* Court stated that it did not "call into question prior cases that relied on the *Chevron* framework. The holdings in those cases that specific agency actions are lawful . . . are still subject to statutory *stare decisis* despite our change in interpretive methodology."[24] Despite this statement, just days later the Court issued its opinion in *Corner Post, Inc. v. Board of Governors of the Federal Reserve System*.[25] In *Corner Post*, the Court held that a claim does not accrue and the six-year statute of limitations does not begin to run until the plaintiff is injured by the agency action.[26] Previously,

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six circuits had held that the limitations period for facial challenges to agency action began on the date of final agency action.[27] What this means is that business will not be able to rely on settled agency interpretations when planning for the future. Instead, any agency interpretation is subject to challenge and review by the courts under *Loper Bright*, no matter how longstanding that interpretation is. Of course, this is a double-edged sword as businesses in regulated industries can also challenge settled agency interpretations.[28]

IV. Conclusion

Loper Bright Enterprises v. Raimondo upended forty years of jurisprudence regarding judicial review of agency action by jettisoning *Chevron* deference, even in areas involving complex scientific and technological issues. The ultimate result of this change is not fully known; however it is likely to have several negative impacts on product manufacturers.

ENDNOTES

1 *Loper Bright* was decided along with a second case, *Relentless, Inc. v. Dept. of Commerce.*

2 467 U.S. 837 (1984).

3 *Id.* at 842.

4 *Id.* at 842-43.

5 *Id.* at 843.

6 *Id.* at 845.

7 *Id.* at 866.

8 603 U.S. 369 (2024).

9 *Id.* at 391, *quoting* 5 U.S.C. §706.

10 *Id.* at 392.

11 *Id.* at 385, *quoting Marbury v. Madison*, 1 Cranch 137, 177, 2 L.Ed. 60 (1803).

12 *Id.* at 401.

13 *Id.* at 402.

14 *Id.*

15 Tennessee, for example, has codified its rule against deference to state agencies at Section 4-5-326 of the Tennessee Code ("In interpreting a statue statute or rule, a court presiding over the appeal of a judgment in a contested case shall not defer to a state agency's interpretation of the statute or rule and shall interpret the statute or rule de novo."). In 2018, the Mississippi Supreme Court held that deference to agency statutory interpretations violated "Mississippi's strict constitutional separation of powers." *King v. Mississippi Military Dept.*, 245 So.3d 404, 407 (Miss. 2018). In 2020, the Court went further, holding that any attempt by the legislature to require deference to agency interpretation would be invalid as a violation of separation of powers. *See HWCC-Tunica Inc. v. Mississippi Dep't of Revenue*, 296 So.3d 668, ¶¶ 33-34 (Miss. 2020).

16 2022-Ohio-4677.

17 *Id.* at ¶ 45.

18 Sapna Kumar, *Scientific and Technical Expertise after Loper Bright*, 74 DUKE L.J. 1749, 1764 (2025), available at https://scholarship.law.umn.edu/faculty_articles/1115 ("Kumar").

19 *Id.* at 1781 (quoting Justice Scalia's observation in his dissent that "'[o]nce the court has spoken, it becomes unlawful for the agency to take a contradictory position.'").

20 Kumar, at 1781 (*quoting U.S. v. Mead*, 533 U.S. 218, 247 (2001) (Scalia, J., dissenting).

21 *In the Wake of the Chevron Decision*, Yale Sch. Env't (July 16, 2024), https://environment.yale.edu/news/article/wake-chevron-decision (Professor Daniel Esty: "The chaos that will result as lower courts pass judgment individually on regulations in areas that are often quite technical and in which the judges involved often lack any expertise will translate into risk and cost for all regulated parties and impose, in effect, an uncertainty tax on businesses large and small, . . .").

22 Under *Chevron*, agencies could change their interpretation of statutes and promulgate new regulations, often based on new or differing priorities of the executive.

23 *See* Kumar at 1768-69 (discussing the combined effects of *Loper Bright* and *Corner Post*).

24 *Loper Bright*, 603 U.S. at 412.

25 603 U.S. 799 (2024).

26 *Id.* at 826.

27 *Id.* at 806-07. The Sixth Circuit, on the other hand, has held that the limitations period begins to run when the plaintiff is injured by the agency action, even if this is more than six years after the final agency action.

28 Kumar at 1769.

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Frivolous Conduct and Rule 11 in Product Cases: Knowing when and How to Push Back

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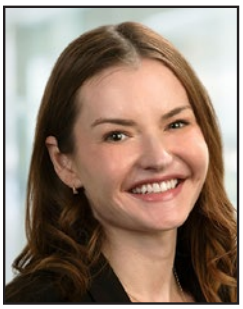

I. Introduction – The Problem of Over-Pleading in Product Litigation

Defending product liability cases often feels like chasing ghosts—defect theories multiply before discovery, and complaints read more like wish lists than pleadings. While early-stage tolerance for broad allegations is expected, there is a line between creative pleading and improper purpose. That line is drawn by two underutilized tools: Ohio Civ.R. 11 and R.C. 2323.51, along with their federal counterpart, Fed. R. Civ. P. 11. Each aims to ensure that pleadings and conduct are grounded in fact and law, not conjecture or harassment.

Defense lawyers sometimes hesitate to invoke these provisions, fearing the optics of combativeness or retribution from opposing counsel. Yet, used thoughtfully, sanctions practice serves not as a weapon but as a corrective – helping to restore focus, efficiency, and professionalism. This article explores how defense counsel can recognize and respond to frivolous conduct in product litigation, emphasizing Ohio's standards while drawing brief comparisons to federal practice under Rule 11, and providing practical and ethical guidance for knowing when and how to push back.

II. Ohio Civil Rule 11 – The Importance of the Signature and the Subjective Standard

Under **Ohio Civ.R. 11**, every pleading or motion must be signed by an attorney or a *pro se* party, certifying that there are good grounds to support it and that it is not interposed for purposes of delay. If not signed – or if signed with an intent to defeat the rule's purpose – the court may strike the pleading. A willful violation may result in "appropriate action," including the award of reasonable attorney's fees.

Ohio's rule employs a subjective bad-faith standard. The violation must be willful. *See State ex rel. Bardwell v. Cuyahoga Cty. Bd. of Comm'rs*, 2010-Ohio-5073, ¶ 8. The Ohio Supreme Court has described bad faith as implying the "conscious doing of wrong," akin to fraud. *Slater v. Motorists Mut. Ins. Co.*, 174 N.E.2d 45, 48 (Ohio 1962), overruled on other grounds by *Zoppo v. Homestead Ins. Co.*, 644 N.E.2d 397 (Ohio 1994).

In *Ceol v. Zion Indus., Inc.*, 610 N.E.2d 1076, 1078 (Ohio Ct. App. 1992), the court distinguished Ohio's approach from the 1983 federal amendment that imposed an objective "reasonable inquiry" requirement. Ohio continues to apply the subjective bad-faith approach – meaning sanctions are appropriate only where the signer knew or should have known of the impropriety and proceeded anyway. Unlike its federal counterpart, Ohio's rule also contains no safe-harbor service requirement before filing.

III. R.C. 2323.51 – A Broader, Objective Sanctions Framework

In contrast, R.C. 2323.51 offers a broader mechanism to address frivolous conduct by attorneys or parties. The statute's reach extends beyond filings to encompass any conduct "in connection with a civil action." As the Eighth District noted in *Lansky v. Brownlee*, 2018-Ohio-3952, ¶ 41 (8th Dist.), Civ.R. 11 and R.C. 2323.51 both authorize fee awards for frivolous conduct but differ in scope and proof.

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R.C. 2323.51 applies an objective standard, asking whether no reasonable attorney would have engaged in the conduct under existing law. *See Krohn v. Krohn*, 2017-Ohio-408, ¶31 (6th Dist.); *Crenshaw v. Integrity Realty Grp. LLC*, 2013-Ohio-5593, ¶ 8 (8th Dist.). Its purpose is to deter egregious or unjustifiable conduct, not to punish mere misjudgment. *Turowski v. Johnson*, 590 N.E.2d 434, 437 (Ohio Ct. App. 1991). In this way, R.C. 2323.51 aligns more closely with the objective standard of Fed. R. Civ. P. 11. However, unlike Ohio's Civ.R. 11, the statute requires notice and a hearing before sanctions are imposed, providing procedural safeguards.

IV. When Both Apply: Sequential Use and Overlap

In practice, both provisions may operate sequentially. A complaint lacking factual basis may violate Civ.R. 11, while continuing to litigate after discovery disproves those allegations may violate R.C. 2323.51. Practitioners can view Civ.R. 11 as an "entry-gate safeguard" and R.C. 2323.51 as a "case-wide accountability mechanism." This sequential approach mirrors federal practice, distinguishing between Rule 11's focus on signed filings and 28 U.S.C. § 1927's broader reach to conduct during litigation. *See ABN AMRO Mtge. Grp., Inc. v. Evans*, 2011-Ohio-5654 (8th Dist.).

V. Distinctions Between Ohio and Federal Rule 11

Key procedural and substantive differences between Ohio Civ.R. 11 and Fed. R. Civ. P. 11 include

- Standard: Ohio applies a subjective bad-faith test; federal courts apply an objective reasonableness test.
- Safe Harbor: Fed. R. Civ. P. 11(c)(2) requires 21-day advance service before filing; Ohio has no such requirement.
- Scope: Federal sanctions may target the party or counsel; Ohio focuses primarily on the signer's certification and intent

a. Spotting Frivolous Conduct in Product Cases: Over-Pleading and the Duty of "Reasonable Inquiry"

Determining whether counsel performed a reasonable prefiling investigation can be challenging, particularly in technical product cases. Courts consider factors such as the time available for investigation, reliance on client information, and dependence on prior counsel. *See Riston v. Butler,* 777 N.E.2d 857, 865 (Ohio Ct. App. 2002) (attorney may rely on representations of client); *Newman v. Al Castrucci Ford Sales, Inc.*, 561 N.E.2d 1001, 1004 (Ohio Ct. App. 1988) (in relying on client representations, burden for truthfulness of pleadings is placed on the attorney); *Wagner v. Cormeg, Inc.*, 2011-Ohio-1205, ¶ 42 (5th Dist.) (frivolous conduct found in trial court when attorney learned of new evidence and was delayed in acting on same, appellate court determined no frivolous conduct existed); *Kozar v. Bio-Med. Applications of Ohio, Inc.*, 2004-Ohio-4963, ¶12 (9th Dist.) (failure to research claim was sufficient to establish subjective bad faith). From these cases and other applicable caselaw, some principles are evident:

- Some prefiling inquiry is required and helps to establish good faith.
- Filing in the face of a clear defense risks sanctions even if the defense is waivable.
- Adverse information from an opponent creates a duty to investigate further, without delay.
- Relying on other attorneys' work is permissible if the information is credible and sufficient.

b. Unsupported Causation Allegations and Rule 11 Exposure

Causation remains the Achilles' heel of many product liability complaints. A plaintiff must show the defect proximately caused the injury, often requiring expert support. Complaints that allege causation through generic or conclusory language – without expert or factual grounding – risk violating Civ.R. 11. Specifically, in mass-tort contexts, "cookie-cutter" pleadings using identical causation language across

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claimants amplifies this risk. Courts expect at least minimal case-specific factual content to justify each plaintiff's causation theory. *Grove v. Gamma Ctr.*, 2015-Ohio-1180 (3rd Dist.).

c. Recognizing Rule 11 Red Flags in Product Cases

Examples of conduct that may trigger Rule 11 scrutiny include:

- Alleging a product defect and injury without factual description, testing, or expert analysis.
- Relying solely on generic industry literature without linking it to the plaintiff's exposure or device.
- Continuing to litigate after discovery undermines causation allegations.
- Asserting alternate causation theories without factual or expert foundation.

VI, Strategic Use of Sanctions: How and When to Act

Knowing when to act – and how – is as important as identifying conduct that warrants a sanction. Timing, preparation, and tone determine whether a sanctions motion will resonate with the court or backfire. Sanctions should be pursued only after deliberate evaluation, not as a reflexive tactic. Early in litigation, Ohio Civ.R. 11 is the appropriate vehicle when a pleading or motion is facially baseless or interposed for delay. Its focus on the signer's certification makes it ideal for pleadings that lack factual foundation, such as speculative defect allegations unsupported by evidence. By contrast, R.C. 2323.51 is most useful once discovery reveals that claims or defenses lack merit and counsel persists in pursuing them. Courts may still hear motions on sanctions even after voluntary dismissal, ensuring that improper conduct does not go unchecked. *See* 2011-Ohio-5654 (8th Dist.).

While Ohio lacks a formal "safe harbor," practitioners should still consider a warning letter before filing a motion. Judges often appreciate this professional courtesy, and it strengthens the movant's appearance of reasonableness. A Civ.R. 11 motion must tie directly to the signed filing at issue, while R.C. 2323.51 requires service and a hearing before sanctions can be issued. Supporting affidavits, billing records, and key documents demonstrating the link between the conduct and resulting fees help establish credibility. Above all, counsel should frame the motion as a defense of judicial efficiency rather than a personal attack. A concise, well-documented, and respectful motion underscores professionalism and enhances the likelihood that the court views it as corrective rather than punitive.

VII. Practice Pointers for Counsel – Be Aware of Coverage Issues

These practical considerations distill the strategic guidance above into actionable steps. Select the correct vehicle for sanctions: use Civ.R. 11 for willful misconduct tied to a specific filing, and R.C. 2323.51 for broader, objectively frivolous conduct. Mind the differing standards; Civ.R. 11 requires subjective bad faith, whereas R.C. 2323.51 applies an objective test. Exercise caution, as a weak sanctions motion can invite a cross-motion. Finally, consult with insurer or ethics counsel before targeting opposing counsel, as collateral coverage issues may arise.

Counsel should also be mindful of professional and insurance implications. Most legal malpractice policies exclude coverage for intentional acts, so a Civ.R. 11 sanction, which is based on willful conduct, may fall outside coverage. If your firm faces or files a sanctions motion, notify your carrier promptly to preserve coverage and avoid potential notice issues. Additionally, insurers sometimes view sanctions disputes as "litigation conduct risk," potentially affecting renewals or premiums. When sanctions are sought against counsel, a reservation of rights or coverage conflict may arise, necessitating independent counsel. Coordination with ethics counsel ensures compliance with professional obligations while mitigating collateral exposure.

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VIII. Conclusion – Sanctions as a Statement of Standards

Frivolous filings and discovery abuse waste resources and erode confidence in the judicial system. In complex product cases, discipline in pleadings and professionalism in advocacy safeguard both efficiency and credibility. Ohio Civ.R. 11, R.C. 2323.51, and Federal Rule 11 function not as punitive devices but as **guardrails** ensuring litigation remains evidence-driven, not emotion-driven. Properly applied, these mechanisms promote stewardship rather than retribution. The message should not be "we will seek sanctions from you," but rather, "we will uphold the standard." Professionalism itself is a litigation strategy – one that earns enduring respect.

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Civil Liability For Human Trafficking: Statutory Remedies

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In recent years, increasing attention has been focused on the prevalence of human trafficking. While most of that attention has been properly focused on punishing those guilty of trafficking and protecting the victims, there are also statutory civil causes of action for human trafficking.

Under those statutory schemes, individuals may bring standalone civil claims detached from the criminal offense. Plaintiffs have also recently began utilizing the civil provisions to expand the scope of defendants who may be liable under these anti-trafficking statutes. Because these statutes can be applied in contexts that are not readily apparent, businesses should be aware of potential civil liability risks.

Ohio's civil trafficking statute, R.C. 2307.51, creates a standalone civil cause of action for victims of criminal trafficking under R.C. 2905.32. The statute allows the victim to recover compensatory and punitive damages from the trafficker. This cause of action is in addition to any common law remedies the victim may have.

Under the federal Trafficking Victim Protection Reauthorization Act's ("TVPRA") civil provision, 18 U.S.C. §1595, an individual

> "may bring a civil action against the perpetrator or whoever knowingly benefits, or attempts or conspires to benefit, financially or by receiving anything of value from participation in a venture which that person knew or should have known has engaged in an act in violation of this chapter [18 U.S.C §§ 1581 et seq.])."

Broadly speaking, the act imposes liability where a defendant (1) knowingly benefits, from (2) participation in a venture, that (3) the defendant knew or should have known engaged in a trafficking act prohibited by anti-trafficking laws. Courts have struggled to define:

- what constitutes a "venture" for purposes of the TVPRA,
- what constitutes "participation" in the venture, and
- what it means to knowingly benefit from such participation.

Significantly, civil liability under the TVPRA is not limited to conduct that is necessarily criminal. Rather, the act applies to "a broad range of conduct which is not limited * * * to appalling criminal conduct and shocking depravity." *Burrell v. Staff*, 60 F.4th 25, 37 (3d Cir. 2023). Civil claims under the TVPRA have been brought against manufacturers who purchase goods allegedly made with forced labor; hotels and landlords whose premises have been used for prostitution; websites that hosted advertisements promoting prostitution; and even employers whose employment contracts were onerous enough that they could be considered "coercive." Two recent Ohio decisions illustrate some of these complexities.

In one representative decision, Judge Marbley of the Southern District of Ohio allowed plaintiff's claims under TVPRA to proceed against franchisors, managers, and operators of the Red Roof Inn ("RRI") hotel chain. In *L.M.H. v. Red Roof Inn,* 2025 U.S. Dist. LEXIS 60573 (S.D. Ohio Mar. 31, 2025), the plaintiff alleged that the RRI

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defendants had control and supervision over the hotel where the incidents occurred, and therefore, defendants "knew or should have known about the pervasive sex trafficking at the St. Louis RRI" based on "obvious indicators" and "well-known red flags for sex trafficking in the hospitality industry," including paying with cash or prepaid cards, high volumes of unregistered guests arriving and leaving at unusual times, arriving with few possessions for extended stays, among other signs. The plaintiff sought to hold the RRI Defendants liable as both direct perpetrators and beneficiary perpetrators under § 1591(a) for knowingly "harbor[ing]" her in violation of 18 U.S.C. § 1591(a)(1) and for benefitting from knowingly "assisting, supporting, or facilitating" her trafficking in violation of 18 U.S.C. § 1591(a)(2).

In denying RRI defendants' motion to dismiss the plaintiff's perpetrator claim, the court concluded that the plaintiff's allegations established a reasonable inference that

> "(1) RRI Defendants had a reasonable opportunity to observe that the plaintiff, a minor, was engaging in commercial sex acts; (2) they knew that they financially benefitted from her traffickers' continuous room rentals; and (3) they knew they were "assisting, supporting, or facilitating" the plaintiff's trafficking by accepting cash payments, foregoing identification requirements, and providing extra housekeeping services to cover the traffickers' tracks after they left. The plaintiff's allegations establish the hotel staff's knowledge, which is imputed to RRI Defendants, that the plaintiff's traffickers caused her to "engage in . . . commercial sex act[s]."

The court also concluded that the allegations in the plaintiff's complaint concerning her "beneficiary" claim were sufficient to survive dismissal. In doing so, the court noted that the "should have known" standard for a beneficiary claim is much lower than the "knowing" standard under the perpetrator claim. Further, the court reasoned that the "knowing benefit" element merely requires that the defendant knowingly receive financial benefit, not that the defendant have actual knowledge of an illicit venture.

The plaintiff also does not need to show that the defendant has actual knowledge of the sex trafficking to have "participated in the venture." Rather, the allegations must show that the defendants had a continuous business relationship with the trafficker "such that it would appear that the trafficker and the hotels have established a pattern of conduct or could be said to have a tacit agreement."

The court therefore concluded that RRI defendants do not need to have actual knowledge of trafficking crimes for potential beneficiary liability to attach. This is just one example of a host of TVPRA claims that have been brought against the hospitality industry in recent years. *See, e.g., M.S. v. Gg Hosp., LLC,* 2025 U.S. Dist. LEXIS 193228 (S.D. Ohio Sept. 30, 2025) (denying motion to dismiss by hotel franchisor and holding plaintiff had stated a claim under both direct and vicarious liability theories); *M.A. v. Wyndham Hotels & Resorts, Inc.*, 2025 U.S. Dist. LEXIS 185758 (S.D. Ohio Sept. 22, 2025) (noting more than 70 civil lawsuits under the TVPRA were pending in the Southern District of Ohio and skyrocketing number of claims across the country and denying motion for summary judgment by hotels); *S.C. v. Wyndham Hotels & Resorts, Inc.*, 728 F. Supp. 3d 771 (N.D. Ohio 2024) (holding that general knowledge of sex trafficking by hotel franchisors, as opposed to individual hotels where plaintiff was trafficked, was not sufficient to constitute participation in venture and granting summary judgment).

The TVPRA also has been applied in less obvious settings. In 2024, the Southern District of Ohio permitted an individual to pursue claims under TVPRA against an assisted living facility where he was previously employed. In *Healthcare Facility Mgt. LLC v. Malabanan,* 2024 U.S. Dist. LEXIS 19649 (S.D. Ohio Feb. 5, 2024), the plaintiff, CommuniCare, alleged that the defendant, Jedkreisky Malabanan, breached his employment agreement when Malabanan terminated his employment before his contractually obligated three-year term expired and failed to repay the amount that his employer advanced for his relocation from the Philippines to the United

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States. Malabanan, in turn, asserted counterclaims under sections 1589, 1590, and 1594 of the TVPRA for violations of the Act's prohibitions against forced labor.

Malabanan alleged

> "that he was forced to enter into a letter-contract of employment containing the repayment provision on a take-it-or-leave-it basis and faced substantial harm if he did not sign the letter-contract, including potentially having his immigration sponsorship withdrawn or having his green card revoked, or having his employment rescinded, and any of such would be financially ruinous to him."

The court determined that the employment agreement did not specify an exact dollar figure for repayment as would be typical for an enforceable liquidated damages figure and, instead, estimated the stipulated damages amount by including the amount that the plaintiff intended to advance Malabanan. The court also noted it was unclear whether Malabanan, who professed to be an inexperienced immigrant unfamiliar with the U.S. legal system, was ever advised of the total that he would be expected to pay if he terminated the agreement. It therefore denied the employer's motion to dismiss the TVPRA counterclaim.

These rulings illustrate that civil claims for human trafficking can arise in unexpected ways. Businesses should be cognizant of the statute and the growing trend for claims being made beyond the perpetrators.

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Doe v. Lyft: A New Frontier in Gig Economy Product Liability

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In *Doe v. Lyft*, 756 F. Supp. 3d 1110 (D. Kan. 2024), the U.S. District Court for the District of Kansas issued a decision that may reshape how courts evaluate liability for gig economy platforms. The ruling, which partially denied Lyft's motion to dismiss, opens the door for plaintiffs to pursue claims against software-based service providers under theories traditionally reserved for product manufacturers. For attorneys practicing in Ohio and beyond, this case signals a potential shift in how courts interpret product liability, especially in the context of digital platforms and user agreements.

I. Gig Economy Platforms and Product Liability: A Shifting Landscape

Historically, product liability law has focused on tangible goods, such as cars, appliances and pharmaceuticals. However, as the economy digitizes, courts are increasingly asked to consider whether software platforms, particularly those facilitating real-world services, can be treated as "products" under tort law.

In *Doe v. Lyft*, the plaintiff alleged that Lyft's platform facilitated a sexual assault by negligently allowing a dangerous driver to operate under its brand. While Lyft argued that it merely provides a communication service between riders and drivers, the court allowed certain negligence claims to proceed, suggesting that the platform's design and operation may be subject to scrutiny akin to that applied in product liability cases.

This raises a critical question: **Can software platforms be considered products for the purposes of strict liability?** While the Kansas court did not explicitly rule on strict product liability, its willingness to entertain negligence claims based on platform design and operation hints at a broader interpretation of duty and foreseeability.

Building on that reasoning, the court in *Ameer v. Lyft*, 711 S.W.3d 534 (Mo. Ct. App. 2025), expressly cited and agreed with *Doe v. Lyft*, holding that a mobile ridesharing application may constitute a "product" for purposes of product liability law if the facts alleged establish sufficient similarities to a tangible good. The *Ameer* court articulated a two-part test: (1) whether the application's design and deployment demonstrate characteristics analogous to a physical product placed into the stream of commerce, and (2) whether the alleged injury arose from a defect in the application itself, such as its design or functionality, rather than from the developer's broader business model. Applying this framework, the court concluded that the plaintiff's allegations were sufficient to survive a motion to dismiss, finding that the Lyft app's design choices, including alleged failures to incorporate safety verification technologies, could constitute a defective condition under traditional product liability principles. *Ameer* thus

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represents one of the first decisions to formally recognize a software platform as a "product" subject to tort-based scrutiny, signaling that *Doe*'s rationale is gaining traction beyond Kansas.

Additionally, courts in other jurisdictions have begun to grapple with similar issues. In *Lemmon v. Snap Inc*., 995 F.3d 1085 (9th Cir. 2021), the Ninth Circuit allowed claims to proceed against Snapchat for allegedly designing a feature that encouraged reckless driving. These cases suggest a growing judicial willingness to treat software features as actionable design elements, potentially subjecting tech companies to liability under product-based theories.

II. Terms of Service: Shield or Sword?

A central issue in *Doe v. Lyft* was the role of Lyft's **Terms of Service (ToS)** in limiting liability. Lyft argued that its ToS, which users agree to upon registration, disclaimed liability and defined the company's role narrowly. However, the court found that these provisions did not categorically shield Lyft from negligence claims, especially where public policy and statutory duties may override contractual disclaimers.

This aspect of the decision is particularly important for attorneys advising tech clients. While ToS agreements are often drafted to minimize exposure, courts are increasingly scrutinizing their enforceability, especially in cases involving personal injury or public safety.

In Kansas, as in Ohio, courts apply a reasonableness standard to exculpatory clauses. If a clause is deemed unconscionable or contrary to public policy, it may be invalidated. In *Doe v. Lyft*, the court emphasized that contractual language cannot absolve a company of duties imposed by tort law or statute. This aligns with Ohio precedent, such as *Main St. Marathon v. Maximus Consulting*, holding that exculpatory clauses must be narrowly construed and cannot shield parties from gross negligence or willful misconduct. 2014-Ohio-2034, ¶ 25, 30 (Ohio Ct. App.).

For attorneys, this underscores the importance of drafting ToS agreements with an eye toward enforceability, not just breadth. Clauses that attempt to disclaim all liability may backfire if courts perceive them as overreaching or inconsistent with consumer protection norms.

III. Implications for Ohio Product Liability Law

Ohio's product liability statute, codified in **Ohio Revised Code § 2307.71 et seq.**, defines a "product" as any tangible personal property. On its face, this would exclude software platforms like Lyft. However, the *Doe* decision invites a reexamination of this definition, particularly where software directly facilitates physical interactions, such as transportation, lodging, or delivery.

Ohio courts have not yet squarely addressed whether digital platforms can be considered products under § 2307.71. Nevertheless, the reasoning in *Doe* could influence future litigation, especially if plaintiffs frame their claims around negligent design or failure to warn. For example, if a rideshare app fails to implement adequate safety features or background checks, plaintiffs may argue that the app's design constitutes a defective product under a broader interpretation of the statute.

Moreover, Ohio's common law negligence framework may provide an alternative path to liability. In *Doe*, the court allowed claims to proceed based on Lyft's alleged failure to exercise reasonable care in vetting drivers and responding to safety complaints. Ohio courts have long recognized a duty of care where a party undertakes to provide services that impact public safety. If a platform like Lyft is found to have assumed such a duty, it may be held liable under traditional negligence principles, even if strict product liability does not apply.

IV. Strategic Considerations for Attorneys

For attorneys litigating or advising in this space, *Doe v. Lyft* offers several strategic takeaways:

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1. **Reevaluate the Scope of Product Liability**

   Consider whether software platforms may be analogized to products, especially where their design directly impacts user safety. While statutory definitions may be narrow, courts are increasingly receptive to broader interpretations in the gig economy context.

2. **Scrutinize Terms of Service**

   Ensure that ToS agreements are not only comprehensive but also enforceable. Avoid blanket disclaimers that may be deemed unconscionable or contrary to public policy. Tailor clauses to reflect reasonable limitations and include clear language about the scope of services and responsibilities.

3. **Monitor Emerging Case Law**

   Decisions like *Doe, Ameer* and *Lemmon* suggest a judicial trend toward holding tech companies liable for platform design. Stay abreast of appellate rulings and legislative developments that may redefine liability standards for digital services.

4. **Prepare for Hybrid Claims**

   Plaintiffs may pursue both negligence and product liability theories, especially in jurisdictions with flexible definitions. Be prepared to address both statutory and common law claims and consider how platform features may be framed as design defects.

V. Conclusion

Doe v. Lyft marks a pivotal moment in the evolution of product liability and negligence law in the digital age. As gig economy platforms become integral to daily life, courts are increasingly willing to hold them accountable for the safety of their users. For attorneys in Ohio and beyond, this case serves as a reminder that the boundaries of liability are shifting. Software is no longer immune from scrutiny traditionally reserved for physical products.

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