AI Product Safety Insights May Expand Foreseeability

By **Donald Fountain** (October 29, 2025)

Donald Fountain

Artificial intelligence is no longer confined to labs or science fiction. It is already inside the products we use every day, from vehicles and power tools to home appliances and medical devices.

Earlier this month, families of two college students filed wrongful death lawsuits, Nelson v. Tesla Inc. and Tsukahara v. Tesla Inc., in the Superior Court of California, Alameda County, alleging that a November 2024 Tesla Cybertruck crash in Piedmont, California, turned fatal when the vehicle's electronic doors failed to open after impact.

Cases like these have reignited public discussion about technology, foreseeability and safety design. They underscore a broader issue that reaches far beyond any single company: When AI detects a potential hazard, will courts treat that hazard as foreseeable, and will juries find these products defective?

The answer is yes. Product liability law has long held that companies are responsible for risks they knew about or should have known about. AI does not shrink that duty — it expands it.

Ignored AI safety insights could soon become plaintiffs' strongest evidence that a manufacturer had notice of a defect. Manufacturers that do not employ AI to assess hazards during the design process do so at their own peril.

A Tradition of Hazard Analysis

For decades, product makers have relied on structured engineering tools such as failure modes and effects analysis to anticipate how a product might fail. Engineers assign severity scores to potential failures, and redesign accordingly to eliminate or guard against known and anticipated hazards.

If, for example, a lithium-ion battery explodes, engineers score that failure at the maximum severity level. The required response is clear: Redesign the battery to avoid explosion.

The process is rooted in foreseeability. It forces manufacturers to identify how products might cause harm and to prevent those outcomes before release.

AI now offers a new dimension to that process.

How AI Could Transform Safety

AI systems can analyze design schematics, field performance data, defect reports and expected consumer behavior. That analysis could predict how children might play with a toy, how consumers might misuse a power tool or how a design flaw might cascade into injury.

AI could effectively provide manufacturers with predictive notice of hazards, even before a product left the factory. Used responsibly, it could reduce injuries, prevent lawsuits and

save lives.

It could also give companies an opportunity to redesign products earlier in development, when changes are less costly and more effective. Over time, this could set a new benchmark for what courts view as reasonable safety practice.

But the same technology creates a paper trail that plaintiffs will use. If an AI system flags a hazard and a manufacturer ignores it, juries will want to know why.

The Litigation Consequences of Ignored AI

AI is not just a design tool. It is evidence. Courts have consistently expanded the scope of foreseeability as technology evolves. Hazards once considered unforeseeable become foreseeable as knowledge advances.

Today, plaintiffs in autonomous vehicle crashes point to well-documented limitations in object recognition that manufacturers failed to correct despite widespread technical literature. In the medical field, device makers face suits alleging that diagnostic algorithms missed conditions in ways foreseeable from published AI safety research.

Once AI insights exist, discovery will capture them. Juries will be asked why a company chose to save money rather than heed warnings generated by its own systems.

New Dimensions of Defect

AI reshapes the familiar categories of product defects.

Design Defects

Algorithms trained on biased or incomplete data may misidentify hazards. Courts will increasingly treat such flaws as foreseeable when the risks are known in the AI safety community.

Manufacturing Defects

In software, these may include failures to implement up-to-date safety protocols or testing methods recognized as industry standards.

Failure to Warn

AI can identify the need for, and even create, safety warnings. Companies that fail to instruct users or provide real-time warnings about known AI limitations may be liable for harms that safety research had already highlighted.

What once seemed like advanced risk management is becoming a baseline legal duty.

Continuous Learning and Expanded Duty

Unlike traditional products, AI systems can change behavior after sale. They learn in the field, sometimes in unpredictable ways.

That reality is pushing courts toward recognizing a post-sale duty to monitor, warn and perhaps recall. Even for products released to the marketplace before the existence of AI

safety evaluations, AI can now be used to evaluate real-world accidents and injuries and recommend post-sale remedial measures.

This creates a living record of how products evolve once they are in the hands of consumers. Courts are unlikely to ignore that kind of real-time evidence when determining whether risks were reasonably addressed.

If a product changes in ways that increase risk, manufacturers may be expected to detect and correct it. Plaintiffs will argue that once the technology community has identified a vulnerability, subsequent incidents are foreseeable.

That argument follows the historical trajectory of product liability. What begins as best practice often becomes standard practice, and then legal obligation.

Regulatory Signals

Regulators are moving in the same direction. The European Union's AI Act already requires providers to demonstrate robust risk management and post-market monitoring.

In the U.S., evolving federal guidance to enhance the Transportation Recall Enhancement, Accountability and Documentation Act could point toward the same expectation: proactive oversight, transparency and continuous updating when new risks are identified.

The lesson for manufacturers is simple: Courts and regulators will not excuse ignorance when credible AI safety concerns are already part of the public record.

The Double-Edged Sword

The future of AI in product safety cuts both ways.

For responsible manufacturers, AI is an opportunity to design safer products, avoid injuries and reduce exposure. Courts are unlikely to fault companies that proactively use AI insights to improve safety.

When used well, AI can be another layer of due diligence that demonstrates a genuine commitment to consumer protection. It shows that a company was not only aware of potential risks but also took steps to address them.

For negligent manufacturers, however, AI will be a plaintiff's witness. The failure to use AI safety technology or ignored warnings will be framed as evidence of indifference, with jurors asked why profit outweighed consumer safety.

Conclusion

AI is reshaping industries from finance to healthcare, and product safety will not be an exception.

Courts will treat AI safety insights as notice of foreseeable risks. Plaintiffs will argue that ignored AI data is evidence of negligence.

Manufacturers that embrace AI safety analysis will not only protect consumers — they will also protect themselves. By weaving AI into their safety programs, they can show that they acted on the best information available at the time. That record of action may be the

difference between liability and a successful defense.

Those that resist may soon find that the most damaging evidence against them comes not from outside experts, but from their own AI systems.

Donald R. Fountain Jr. is a founding partner at Clark Fountain Littky-Rubin & Whitman.