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Hidden gold in plain sight

HOW TO LEVERAGE PUBLIC RECORDS IN PRODUCT-DEFECT CASES

Most product cases turn on internal corporate documents the defendant doesn't want you to see. But an underrated competitive edge can be gained from documents the government wants *everyone* to see, including data, reports, technical presentations, safety advisories, meeting decks, and historical guidance that all live in plain sight on public websites. When used correctly, these materials don't just "add color" to your case. They help establish notice, prove feasibility of safer alternatives, validate causation, and set you up to beat motions and win trials.

Why free government info matters

Government agency information is especially important to product-defect lawsuits for three key reasons.

First, it is available on day one, before you have even filed your complaint – so you can frame the case with credible facts from the outset. This is especially important if you are pursuing punitive damages. Using published historical data and chronological event timelines, you can support your punitive conduct allegations before you even get to discovery, and have concrete evidence to use in your opposition to a motion to strike.

Second, it is inherently trusted, because it is generated, vetted, and published by public agencies whose mission is public safety. Also, numbers don't lie. Agencies often post statistics, historical timelines, and other indisputable facts. The information is also being provided by a government authority, making it credible and powerful.

Third, agency information goes right to the core elements of your case – knowledge/notice (defect), feasibility of a safer alternative design (defect), and foreseeability (defect and causation).

What to look for

Knowledge/notice

In many product-defect cases, especially against well-defended corporate defendants, the case is centered on knowledge and foreseeability. What did the company know, and when did they know it? Defendants will grind discovery to a halt over internal documents everyone knows exist. That is why public, agency-backed records are so powerful: They already memorialized warnings, complaints, recalls, hazard bulletins,

timelines, and more, which provide concrete evidence of corporate knowledge and notice. Centering your written discovery requests and eventual motions to compel around agency-backed information helps focus discovery and prevent the defense from weaseling out of your valid requests and motions to compel.

Government agencies, such as the National Highway Traffic Safety Administration (NHTSA) and Consumer Product Safety Commission (CPSC) chronicle hazards over time. These agencies collect mountains of technical data, complaints, recalls, inspection results, summaries, fatality counts, technical briefs, and more, most of which remain publicly available. In many cases, the agencies will also notify the business of reports involving their products. When agencies flag a risk year after year, and when companies are notified, defendants lose the ability to claim they did not know about the danger.

Safer alternative design

Government demonstrations and standards work often showcase that feasible fixes and safer alternative designs were available and known to the company prior to your incident. Safer alternative designs may have been identified or even mandated

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by regulators prior to your incident. Additionally, public complaints and recalls emphasize the particular dangers a product presents and how it could and should have been fixed, often much earlier than the official recall.

For example, in some recent cases involving carbon monoxide (CO) poisoning resulting from portable generator use, the corporate defendants maintained that emission-control technology was novel and state of the art, to support their position that it is sensible to continue selling portable generators without automatic CO-detection and shutoff technology. We found that CPSC research on portable generator exhaust began prior to 2000, and showed that generator-emission control research and the development of technology to mitigate harmful exhaust and CO existed since as early as 2000, with the CPSC demonstrating the viable use of CO-detection systems as early as 2005.

Another great source of evidence for safer alternative design is right on the company's own website. Nowadays, many companies brag that their technology is state of the art and lifesaving, often dedicating entire website pages to highlight just how amazing it is. Yet, they will continue selling lower-tier (less safe) versions of the product without that technology that they claim is essential. Selective adoption, when the company itself is bragging about it being life-saving technology, is powerful evidence that the lower models, without the technology, are defective.

Foreseeability and misuse

Agency epidemiology summaries show where, how, and why injuries occur. CPSC and NHTSA routinely post statistics, chronological history, and other official materials that track the number of injuries and/or deaths relating to the specific harmful nature of a product, roadway, etc. Documented patterns of harm counter defenses that your incident was isolated and unforeseeable. These statistics can be essential to proving the alleged misuse was foreseeable to the company well before your incident.

For example, we found that the CPSC documented thousands of portable-generator deaths due to carbon monoxide poisoning since 2004, and that approximately three fourths of them occurred within a fixed-structure home. The CPSC also estimated tens of thousands of emergency room visits from portable generator-related carbon-monoxide injuries during that same timeframe. When the data and evidence is that overwhelming, the defendant has no way of hiding from the truth. Consumers clearly do not adequately understand and appreciate the risk of using portable generators inside, so that foreseeable misuse cannot simply be ignored by the manufacturer and blamed on the victim. The manufacturer has the duty to provide a safer product when it knows it will likely be dangerously misused by a large number of their customers.

Warnings adequacy

Public advisories and consumer warnings reveal what manufacturers already tell the public in some contexts – and what they do not say clearly enough on the product. When a company touts a safety feature on some models while selling others without that safety feature, you have good evidence that their warnings were inadequate and/or misleading.

For example, in our generator cases, the corporate defendants tried to lean on their inadequate written warnings about the risks associated with carbon-monoxide poisoning from indoor generator use. However, using CPSC historical timelines, we were able to highlight that the risks associated with using portable generators inside remains unknown to most consumers, and remains an ongoing cause of injury and death to unsuspecting users.

We found CPSC posts from before 2000, stating generators were becoming increasingly popular and available to provide electricity to homes, particularly during power outages. In 2017, the CPSC wrote a letter that the problems from "unreasonable risk of injury and death associated with portable generators" became "even more urgent after the many deaths following the recent hurricanes in Florida, Texas, and Puerto Rico." This is direct evidence of specific misuse that has remained widely known by the manufacturers for decades. Yet, the manufacturers continue selling versions without carbon monoxide detection and shutoff technology. This longstanding history directly supported our position that the average consumer does not understand and appreciate the risks involved with portable generator use inside, demanding a design response from the manufacturer beyond mere paper warnings.

Punitive exposure

Punitive damages live or die on proof of what was known and when – and how easy the fix was. Government presentations, public standards, and a defendant's own public-facing safety pages paint a chronology of deliberate choices that jurors and courts understand. Government agency information is free and accessible before you even file your lawsuit, giving you a mountain of evidence to support your claim for punitive damages and oppose the defense's motion to strike.

Focus your punitive claims on selective adoption. When a defendant touts a lifesaving safety feature on certain models but not all of them, and the feature was an easy and cheap add, you have a strong foundation for seeking punitive damages. That neutral, time-stamped record is exactly the kind of evidence you need to prove the defendant knew of the risk, had the fix, but chose not to implement it, to satisfy the conscious-disregard standard and defeat a motion to strike.

Where to look

National Highway Traffic Safety Administration (NHTSA)

For automobile cases, start with the National Highway Traffic Safety Administration (NHTSA). NHTSA provides multiple, mutually reinforcing threads: Early Warning Reports

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(manufacturer submissions about deaths, injuries, and field data), consumer-filed Vehicle Owner Questionnaires (VOQs), defect investigations, Technical Service Bulletins (TSBs), and recall files with clean timelines. VOQs are searchable, time-stamped complaints that map patterns across models, years, and driving conditions. Combined with TSBs and recall chronology, you can anchor dates in your pleadings and discovery to concretely prove knowledge and foreseeability. Together, these sources show that the same failure mode was known before your client's incident – even if the manufacturer hadn't yet recalled the product.

The caveat to keep in mind with NHTSA records is that for years the agency has been headed by automobile-industry lifers. As a result, NHTSA has not always pushed the manufacturers as hard as it could to more timely and efficiently implement safer alternative designs. That said, there is much useful information that can be accessed from NHTSA.

Consumer Product Safety Commission (CPSC)

For consumer product cases, start with the Consumer Product Safety Commission (CPSC). The CPSC's SaferProducts.gov database is a goldmine of injury reports that often mirror your fact pattern. Product testing summaries and staff memoranda frequently describe the failure mechanism in plain language – useful for discovery, depositions, motion practice, and expert framing. Often, when a consumer lodges a complaint on SaferProducts.gov, CPSC's team of product safety experts investigates the report to determine what actions should be taken to protect the public. At times, if the CPSC determines a complaint is legitimate and serious, they will notify all companies within the supply chain and give them an opportunity to respond. In many cases, the manufacturer will post a public response and acknowledgement of the report(s), with date stamps for the entire timeline of events, which you can use in depositions and discovery to prove notice of prior similar incidents.

But don't stop at the .gov pages: Manufacturers' own websites and major e-commerce sites listing public reviews often include detailed complaint threads about the same defect and situation as your client's. Similar to CPSC reports, manufacturers will monitor these reviews and often respond to them. Time-stamped acknowledgments make it difficult for a defendant to deny notice; the more of these you can find, the harder it becomes for the company to argue that the hazard was minimal.

State and local agencies

Fire departments and fire marshals maintain investigation reports and inspector notes for fires, explosions, and code violations. DMV records, collision reports, and city traffic-engineering files show how the roadway and signage was designed, installed, what sight lines existed, what safety devices existed, what was evaluated to determine what would be installed, and the history of prior collisions or incidents involving the same stretch of roadway. Public Works or Streets Services keep service requests, work orders, and dangerous-condition logs for streets and sidewalks, including potholes, construction zones, vault covers, trench plates, and more. Parks and Recreation agencies document trail, beach, and facility maintenance. Building departments hold permits, plan checks, correction notices, and inspection photos that go directly to code compliance and product installation. Because these records often fly under the radar, a straightforward public records request can surface applicable rules and regulations, prior violations, correction orders, and maintenance gaps that neatly bracket your incident in time.

The clearest timeline of what was required, what was inspected, and what went wrong usually lives with state and local regulators. Local ordinances, codes, and regulations provided by public agencies may establish the applicable standard of care. Violation of any of these is negligence per se and establishes a rebuttable presumption of breach as a matter of law. (See Evid. Code, § 669.)

Certified code copies, permits, inspection notes, NOVs, and photos establish the requirement(s), the defendant's noncompliance, and the timing – especially where local codes adopt national standards (e.g., California Building Code/California Fire Code based on the International Building Code/ International Fire Code and National Fire Protection Association, and California Manual on Uniform Traffic Control Devices based on the National Manual on Uniform Traffic Control Devices.) Be sure to check applicability dates, exceptions/ exemptions, and grandfathering, but when you get past those, a code violation turns into very powerful evidence of breach.

Occupational Safety & Health Administration (OSHA)

In workplace cases, the Occupational Safety & Health Administration (OSHA) provides a ready framework for both negligence and strict liability cases. OSHA inspection reports, citations, abatement documents, and employer incident logs can show not only what went wrong at your site, but also whether the employer – or the same machine or model – has been flagged elsewhere. Standards citations (and especially repeat-offender status) demonstrate whether the hazard was recognized, the remedy was feasible, and compliance was expected. Citations involving the identical equipment at other job sites can be powerful when pursuing punitive damages. Tie those prior records back to your facility's training materials, company policies and procedures, maintenance files, and job-hazard analyses to complete the chain and show all the various ways they could have prevented your incident but chose not to.

Using the public information you've gathered

Drafting the complaint

Put the historical event timeline and history of knowledge/notice prior to your incident directly in the complaint. Invest the time at the beginning to make sure

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you can generate as much momentum as possible, as early as possible.

Targeted written discovery

Reverse-engineer your RFPs, RFAs, and interrogatories from the public record. For example, if an agency flagged a particular hazard in 2018, ask for "all risk assessments, design reviews, and internal analyses or materials reviewed or received on or after Jan. 1, 2018." If Public Works logged prior incidents at the location of your incident, request maintenance tickets, correction notices, and re-inspection results keyed to those dates. Tying each request to a public document as an exhibit makes motions to compel straightforward and easier to win.

Depositions: PMQ/30(b)(6) and fact witnesses

Use the timeline as your outline. Start with "what did you know and when," move to "what safer alternatives were evaluated and when," then "how warnings were chosen," and finish with "why did some models receive the upgrade/enhancement/fix while others did not?" For premises/infrastructure cases, walk witnesses through permits, NOVs, and traffic-control plans to lock down who approved what and when. Documentation proof keeps answers grounded and prevents defendants from answering that they don't recall/know.

Expert framing and efficiency

Use regulatory findings to strengthen your experts' opinions. Courts and jurors are more likely to credit an expert who relies on peer-reviewed safety data or federal reports. Give your experts the agency science, statistics, and standards history early so they can get a jumpstart before you even get to discovery.

Trial exhibits and storytelling

Public data and statistics often translate into clean visuals, including pattern charts (where/when injuries happen,) historical event timelines (compare and contrast agency milestones with the defendant's choices,) or feature maps (which product models have safety feature upgrades.) Jurors instinctively trust government-backed visuals; they simplify the expert testimony and anchor your narrative to a credible source.

Authentication and admissibility

Plan on establishing foundation early. Many agency records qualify as public records or are suitable for judicial notice; others can be admissible by a custodian declaration. For manufacturer webpages, you can authenticate with a custodian declaration from Internet Archive or a corporate witness deposition.

Negligence per se with local codes

Where a local ordinance, adopted code, or incorporated standard sets the duty, prove applicability and noncompliance to establish negligence per se. Tie the rule to the exact harm it was designed to prevent. In California, Evidence Code section 669 turns a code violation into a rebuttable presumption of breach, often narrowing the fight to causation and damages.

Preservation and follow-up on records

Once you have pulled initial public files, send targeted preservation letters: internal complaint logs, design reviews, field-failure data, website content, and communications with regulators. Refresh your public-records requests near the discovery cut-off to capture late-breaking updates (new recalls, amended standards, re-inspections) so your timeline stays current through trial.

Causation and damages linkage

Use the agency science to connect the mechanism of harm to your specific injury to show how the safer alternative would have prevented or mitigated the injury. Pair the technical statistics going to notice/knowledge with the medical science on causation and damages to form a single cohesive story from beginning to end – grounded in neutral evidence the defense can't easily spin.

Conclusion

In the end, the playbook is simple: know what to look for, know where to find it, and use it relentlessly. In an era of increasingly complicated products and well-funded defense teams, government agency data helps level the playing field and simplify your case. These resources are often free, admissible, and incredibly persuasive. They reveal patterns, prove notice, and expose systemic design flaws – sometimes years before your client ever touched the product.

Attorneys who know how to mine this public information will be better prepared in discovery, deposition, motion practice, and trial. The gold is out there – not just buried in boxes, but also in .gov websites. Go dig it up.

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