

Lithium-Ion Battery Litigation An Overview of a Burgeoning Area of Claims and Litigation

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[Lithium-ion batteries] (LIBs) serve as the predominant form of rechargeable batteries used in portable consumer electronics today, powering devices ranging from smartphones to laptop computers to cameras to cordless power tools. An LIB cell stores and releases electricity through chemical means. The cell consists of four basic components: a cathode, an anode, electrolyte, and separators. After manufacture, one or more cells are "packed" inside a casing, sometimes with protective circuitry. The casing makes the cell usable as a battery, or, in the case of multiple cells in a single casing, as a battery pack.¹

“In 1991, defendant Sony Corporation invented lithium ion batteries....”² But it was not until the late aughts that claims for personal injury and property damage began to filter into the courts as defective batteries overheated, caught fire, or exploded.³ In 2016 the Samsung Galaxy Note 7 resulted in a number of fires, explosions, and ultimately lawsuits surrounding those claims. In 2017, over 500,000 hoverboards were recalled after burning down homes, catching fire underfoot while in use, or exploding while charging. Today, hundreds of new products every year utilize lithium-ion batteries and there is a corresponding increase in claims surrounding losses including personal injury, wrongful death, property damage, and coverage concerns. Despite the known risk, these batteries are desirable as an inexpensive, small, rechargeable, and extremely powerful way to power everything from toys to electric vehicles and toothbrushes to vape pens.

¹ *In re Lithium Ion Batteries Antitrust Litig.*, No. 13-MD-2420 YGR, 2017 U.S. Dist. LEXIS 57340, at *62 (N.D. Cal. Apr. 12, 2017).

² *Id.*

³ See *Messier v. Dell Comput. Corp.*, No. 04-cv-28-JD, 2007 U.S. Dist. LEXIS 32887, at *1 (D.N.H. May 3, 2007) (laptop); *Messier v. United States Consumer Prod. Safety Comm'n*, 741 F. Supp. 2d 572, 574 (D. Vt. 2010) (laptop); *Allstate Ins. Co. v. Hewlett-Packard Co.*, No. 8:08CV39, 2010 U.S. Dist. LEXIS 71686, at *2 (D. Neb. July 16, 2010) (laptop); *Inan v. Samsung Telcoms. Am.*, No. 1:09cv158, 2010 U.S. Dist. LEXIS 157016, at *3 (N.D.W. Va. Oct. 8, 2010) (cellphone).

While fire and explosion cases are the most common, newer areas are continuing to develop and it is important for those in claims and legal to familiarize themselves with potential areas of exposure and coverage.

I. Burgeoning Areas of Exposure and Coverage

a. Property damage claims in leased spaces

Whose policy covers the loss when a property damage claim arises in a leased space? In New York, boroughs are considering restrictions on leases forbidding renters from storing personal e-bikes and scooters inside the building.⁴ Owners may include such restrictions within their lease agreement, but the impact on whether a breach of that term may result in an exclusion of coverage for any future losses becomes a considerable concern. Outside of the technical lithium-ion battery realm of claims, many have argued that any such widespread restrictions are discriminatory and result in direct harms to those who cannot afford vehicles or who choose to use e-bikes for convenience or accessibility reasons.⁵ Additional coverage concerns can arise in instances where neither the lessor nor the lessee are the negligent party, rather a third person is responsible for the use, maintenance, or storage of the lithium-ion battery that caused the damages.

b. Product liability claims are on the rise and create jurisdictional concerns

Because of the rise in the number of products and demand for lithium-ion batteries, production facilities and manufacturers have popped up all over the world. Jurisdictional issues are a significant concern in cases where a small manufacturer in South Korea or China manufactures a defective battery which is then sold in the United States. Obtaining jurisdiction to

⁴ The New York City Fire Code was updated in 2022 to place some restrictions on the number and type of electronic transportation devices that can be stored in newer buildings. This change and others have come in the wake of hundreds of lithium-ion battery fires across the city every year, causing significant property damage, personal injury, and death. FC Section 309.3.

⁵ Limitations in lease agreements may also conflict with existing programs such as New York City's "Bikes in Buildings Program."

sue the manufacturer for a defective product has been an ongoing battle in many states with mixed success for Plaintiff's seeking jurisdiction based on the manufacturer's participation in the supply chain.⁶ Early investigation into where the manufacturer is located and whether they have been involved in cases within the US where jurisdiction has been established is a first and significant step in determining exposure for any given loss.

Warning labels on new and poorly regulated manufacturers often lack the necessary forceful language that is required to warn of dangers – and thereby avoid liability. Evaluation of the warning information provided to the consumer is an important first step when evaluating the exposure on a claim. In *Dilworth v. LG Chem* the plaintiff alleged she was severely injured when a vape pen exploded in her pocket. The plaintiff claimed she purchased the battery from a local store where it was sold with no warning and no instructions for use.⁷ Absent an effective warning, a company may be unable to limit exposure for such a claim.

II. Coverage Issues to Consider

Exclusions including chemical contamination can result in a direct denial of coverages for lithium-ion fires. Considerations should be given to whether the damages result from the lithium itself, or the resulting damage—primarily fire or flood. Business interruption for large loss cases can also have a role in considering potential recovery exposures.

III. Retention of the Appropriate Expert

⁶ See *Eisenhauer v. LG Chem, Ltd.*, No. 4:21-CV-964 RLW, 2022 U.S. Dist. LEXIS 109428, at *24 (E.D. Mo. June 21, 2022) and see *Williams v. LG Chem, Ltd.*, No. 4:21-cv-00966-SRC, 2022 U.S. Dist. LEXIS 53107, at *19 (E.D. Mo. Mar. 24, 2022). The Court denied the defendant's, LG Chem, Ltd.'s Motion to Dismiss for Lack of Personal Jurisdiction finding that Plaintiff had plausibly alleged sufficient contacts with the forum state even if Plaintiff did not allege that LG Chem, Ltd., sold their batteries directly to consumers in the forum state. The Court embraced a theory of personal jurisdiction based on a "slightly more complex supply chain." But see *Heit v. LG Chem, Ltd.*, No. 21-cv-00771-HFS, 2023 U.S. Dist. LEXIS 22812, at *4 (W.D. Mo. Feb. 10, 2023). Granting LG Chem, Ltd.'s Motion to Dismiss for Lack of Personal Jurisdiction on the same facts.

⁷ *Dilworth v. LG Chem, Ltd.*, 355 So. 3d 201, 211 (Miss. 2022).

Early retention of experienced and competent experts in lithium-ion claims and litigation is essential.⁸ One of the most common and critical concerns for exposure is when battery failure results in overheating which then can cause an explosion or fire. Lithium fires spread quickly, often in a matter of seconds, require chemical extinguishers rather than water, and can cause significant injury or damage. In July 2021, a massive fire in a 70,000 square foot warehouse in Illinois storing over 100 tons of lithium-ion batteries caught fire.⁹ In response, firefighters promptly responded to the loss by spraying it down with water, resulting in a fire that burned for two weeks.¹⁰

Documenting any loss scene is critical to evaluating a lithium-ion battery claim. It is important to bring in educated and experienced experts and attorneys to assist in documenting and capturing the entirety of the loss. It is not enough to simply have the item or battery photographed; context is key. Make sure that the entire scene is documented by photos, videos and notations that can be referenced later by investigators.¹¹ Consider where the battery was located, how it was being charged, what items surrounded the battery, what type of charging cords were being utilized to permit experts to evaluate causation as well as damages.

Important questions to ask during the investigation can include whether the battery/device has been certified by a safety testing lab like Underwriters Laboratories (UL), whether the charger was compatible with the battery, and whether the charging cable utilized was approved or recommended by the manufacturer.¹² The behavior of the battery can also provide insight into its

⁸ See *Gopalratnam v. Hewlett-Packard Co.*, Civil Action No. 13-cv-618-pp, 2017 U.S. Dist. LEXIS 40386, at *53 (E.D. Wis. Mar. 21, 2017).

⁹ *Supra* note 8.

¹⁰ *Id.*

¹¹ Experts should use the National Fire Protection Association's Guide for Fire & Explosion Investigations or another similar standardized protocol.

¹² Underwriters Laboratories provides product certifications and publishes standards for consumer products. They are considered the standard for product safety testing in the lithium-ion battery market.

failure. The claimant should provide details of the battery's overall condition, any visible damage, whether it had been taking longer to charge than typical and whether it routinely got hot. All can be signs of an impending failure.

Expert retention in lithium-ion cases early is a critical component to successfully defending a liability claim. It is imperative that your expert be knowledgeable within this specific area of expertise and that they be provided with proper guidance and direction to fully investigate and document coverage and liability issues.

IV. Conclusion

You should expect to see more issues arising out of the use, manufacturing and storage of lithium-ion batteries. This is an increasing area of claims and coverage concerns on the cutting edge of technology and the law.