Product Liability Forum
Thursday 12 October 2006

Product recalls, regulation and insurance coverage
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Introduction

- Expenses and liabilities
- Potential coverage issues
- General product safety regulations 2005
General product safety regulations

Producer
- Manufacturer in EU
- The EU agent
- The brander

Obligations
- Unsafe product
- Monitor product safety
- Notification
- Action

Distributors
- Unsafe
- Co-operate in monitoring
- Notification
General product safety regulations

Decision to recall
- Tylenol
- Perrier
- Cadbury

General product safety regulations

- Criminal penalties
- Recall notice
- Appeal

A recall example

- M is manufacturer
- R is retailer
- R requires M has recall cover
- M notifies TSO
- DTI £39,000
Insurance coverage

- Recall not liability
- Sister ship exclusion

"Any loss arising from withdrawal, recall, replacement"

Insurance coverage

M’s policy

- Product liability
- Product guarantee
- Financial loss
- Recall

Insurance coverage

M’s costs – trigger

“recall expenditure incurred by the Insured as a result of a decision taken by the Insured and notified to Insurers during the Period of Insurance … because their use may cause the Insured to incur a legal liability …”
Insurance coverage

“Which causes the Insured to have reasonable cause to believe that the use or consumption of the Products has led or would lead to … bodily injury, sickness or disease … manifesting itself within 120 days of use or consumption …”

Insurance coverage

M’s costs – extent of cover

“Recall Expenditure shall mean … the reasonable and necessary financial outlay incurred by the Insured in arranging for the return of the Product … to include correspondence, advertising, media announcements and transportation costs …”

Insurance coverage

Exclusions

“The Insurers shall not be liable for any Recall Expenditure arising from the Insured’s decision … when such decision is forced upon the Insured by any Government or Public Authority …”
Insurance coverage

“… which have not been delivered to customers by the Insured and which remain in the care custody and control of the Insured …”

Insurance coverage

“Product Guarantee:
...the Insured is indemnified … for the costs of repair, alteration, treatment or replacement of any Product (or part thereof) which fails to fulfil its intended function …”

Insurance coverage

“Financial Loss:
The Insured is indemnified … for damages and costs … arising as a result of any financial loss which is incurred by customers or third parties as a result of any Product (or part thereof) which fails to perform its intended function …”
Insurance coverage

Notification

“… any claim or circumstance which may/is likely to give rise to a claim …”

- Handling safety notice
- Minimising costs escalation
- Time limits for appeal

Insurance coverage

- Notification requirement to reflect possible involvement of authorities

Insurance coverage

Defence costs

- Prosecuted for an offence
- Appeal of notice
- Other dealings with authority
The future

- Increased interest; compulsory insurance?
- Broader insuring clauses
- Tighter notification provisions
- Increased claims control by Insurers
- More specific defence costs cover

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