



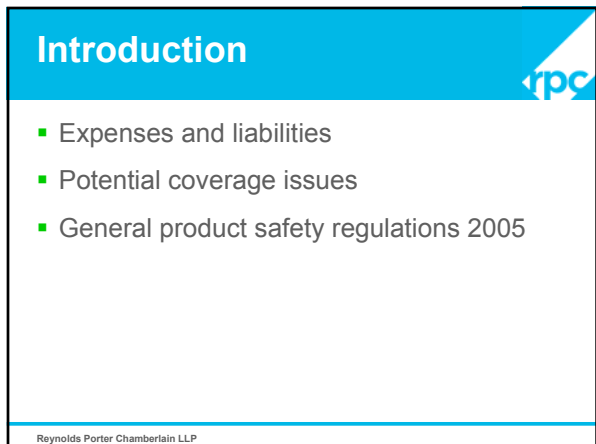
Product Liability Forum
Thursday 12 October 2006

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Product recalls, regulation and insurance coverage
Mark Kendall

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Introduction

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

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General product safety regulations 

Producer

- Manufacturer in EU
- The EU agent
- The brander


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General product safety regulations 

Obligations

- Unsafe product
- Monitor product safety
- Notification
- Action


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General product safety regulations 

Distributors

- Unsafe
- Co-operate in monitoring
- Notification

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General product safety regulations 

Decision to recall


- Tylenol
- Perrier
- Cadbury

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General product safety regulations 


- Criminal penalties
- Recall notice
- Appeal

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A recall example 

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

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Insurance coverage 

- Recall not liability
- Sister ship exclusion

“Any loss arising from withdrawal, recall, replacement”


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Insurance coverage 

M’s policy

- Product liability
- Product guarantee
- Financial loss
- Recall

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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 ...”

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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 ...”*

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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 ...”*

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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 ...”***

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Insurance coverage



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

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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 ...”*


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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 ...”*

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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

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Insurance coverage 

- Notification requirement to reflect possible involvement of authorities


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Insurance coverage 

Defence costs

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

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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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