

expert ease

Product Liability

Liability

Make sure your clients are not left holding the baby

Under the Consumer Guarantees Act, an importer or distributor is often treated as the “manufacturer”. Therefore the rise in issues with Chinese manufactured goods has seen a corresponding rise in New Zealand in insurance exposure.

China is one of New Zealand’s major trading partners for imports. It is now second only to Australia on import volumes to New Zealand with 13% of total New Zealand imports worth NZ\$6.4 billion (Source: Glen Riddell, Gen Re, Lumley Liability Symposium 2009). In addition, labour costs in China are up to 20-times lower than in Australia and New Zealand, keeping overall expenditure and cost-per-unit low.

When it comes to product liability, many manufacturers in China have very low insurance policy limits. Also, there may be territorial limitations of the cover for a specific country, which would often not cover accidents occurring in New Zealand. In addition, manufacturers in China may also sub-contract to other companies, which may not have product liability insurance. In these circumstances, the New Zealand importer is frequently left “holding the baby” when there is a product failure.

Under the Consumer Guarantees Act, importers and distributors can be considered the “manufacturer” and be held responsible for product failures. Therefore there is a need to check their Contracts of Sale in detail to consider what they may not be able to recover from the actual manufacturer.



Importers should also be aware that when a company has no assets in New Zealand, recovery from an overseas manufacturer is severely limited and is also very expensive.

When importing from any country, including China, it is important to check the territorial cover under the manufacturer’s policy and the policy limits held. Chinese policies often have territorial limits for China only, which means the policies may not be any use if a problem occurs in New Zealand. It is also important to check if the policy limits are adequate – in many instances your clients might be lucky to see a Chinese policy have a limit of NZ\$500,000.

These factors mean that your clients can not really rely on the manufacturer’s insurance policy being there to help out should things go wrong. One option you could advise them to explore would be trying to get their business added as an additional insured in the policy, however, getting rights to this if there is a claim is likely to be very difficult.

Another point to consider is that when manufacturing in another country there are differing levels of quality control, and the importer’s focus should be on ensuring that the manufacturers it partners with have strong quality control practices. For those New Zealand companies outsourcing part or

all of their manufacturing to China, a good way of offsetting the potential loss of quality control is to engage specialist companies who, for a fee, can conduct audits and spot quality checks.

While the ACC scheme in New Zealand means that there is limited exposure to accidental personal injury risk, some of the largest product liability claims involve third party property damage, such as the burning down of a building and the resultant consequential loss. Consequential loss is, for example, when a business has to shut down or not be able to operate because the imported equipment caused some form of damage. Many property claims are due to fire caused by electrical faults from items like electrical heaters, down lights and ovens which may have been imported with poor quality control from overseas markets.

In addition, there appears to be a marked shift in social behaviour in regards to liability, reflected in greater demand for accountability, less tolerance, deeper acrimony and a growing appetite for class actions. This trend has been further accelerated by the recession.

There are also exposures for New Zealand manufacturers which export overseas. Those exporting to more litigious markets such as Australia and the US are exposed to risks where damages for bodily injury to others and the costs of litigation can be extremely high. The best advice for clients in these situations is to action a claim quickly with expert legal advice, and to evaluate the risk of an expensive legal process which in many cases may involve reaching a settlement instead of going to a final verdict in the courts.

These issues are particularly critical for SME's which seldom have the resources and capital to weather issues of product liability in the same way as large corporates.

For further information on Product Liability, contact our Liability experts on 09 308 1100.

In September Lumley held a symposium which highlighted trends in legal liabilities. It covered a range of topics including professional indemnity, D&O insurance, employment issues, health and safety, product liability, technology liability and emerging risks. To read the presentations from the Symposium, visit – www.lumley.co.nz/youredge

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If you have any questions, please call Lumley Liability on 09 308 1100 and ask to discuss this cover with one of our experts.
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