

Loss Prevention

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- Owner
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Imported products liability

If someone asks if your automotive business is a manufacturer, your first instinct is probably to say “no, I’m in the automotive aftermarket parts and service industry.” But under certain circumstances, the courts could determine that for tort liability purposes, you are a tire, brake or perhaps a wheel manufacturer, or at least stand in the shoes of the manufacturer in the eyes of the law.

Historical perspective on product liability

In the past, the United States was the center of the manufacturing world and many products were labeled “Made in the USA.” Product liability insurance for most American manufacturers was a necessity in order to do business in the U.S. and abroad. It would have been unwise to sell their products without this essential protection which also benefited their distributors and ultimately, the consumer. This risk allocation system worked well even when companies began exploring manufacturing opportunities in foreign countries where labor, land and facilities are cheaper.

Some of the first manufacturing plants to move out of the U.S. were relocated to Canada, Mexico and other nearby Latin American countries. However, most of the companies owning these plants maintained their headquarters, other manufacturing facilities and substantial assets in the U.S.; and continued to carry product liability insurance coverage as an essential standard business practice. This standard practice began to change, however, as independent manufacturers began making whole products or parts in other areas of the world, most notably in the Pacific Rim.

Manufacturing shift may mean no products liability protection

Manufacturers in Pacific Rim countries, including China, now produce everything from plastic toys and furniture to tires and many other automotive parts. This is no surprise to many of our customers, but you need to be aware that this explosive growth in foreign manufacturing has resulted in some unwanted consequences. Many of these foreign manufacturers have no U.S.-based assets and are not compelled to obtain product liability coverage for the products they export to distributors and retailers here in the U.S. Many distributors are so anxious to purchase these less expensive (compared to products manufactured in the U.S. and Europe) products that they ignore the fact that the manufacturer does not carry product liability insurance. The “traditional model” of the manufacturer standing behind its product, being financially responsible for damage and personal injury caused by their product and being amenable to suit in the U.S. is not always today’s reality.

What happens when someone sues after suffering bodily injury or property damage caused by a foreign made product? Who will be held responsible for recalls and warranty returns?

How you became the manufacturer

Retailers and distributors all over the U.S. are making agreements with these overseas manufacturers (often on just a hand shake) and acting as direct importers of their products. If you are one of these retailers or distributors, you may have just become the manufacturer for tort liability purposes. For example, consider a company in China that manufactures steering components (pick any type of product – tires, brake rotors, etc.) which you have arranged to

import and sell to your customers. A local repair shop installs one of these steering components on Mr. John Q. Public's automobile and then Mr. Public is involved in a terrible accident. The cause of the accident is determined to be the failure of a critical steering component – and it just so happens that the part you distribute is identified as the culprit. A plaintiff attorney files suit and begins his search for the “deep pockets.”

Let's say, for this hypothetical example, the repair shop installed the part properly so its liability is minimal. Next in line in the plaintiff's search for deep pockets is the distributor who, under the old rules, was viewed as only a “middle man” with a little responsibility for the product. In the past the attorney would then focus on the manufacturer (and their insurance company) because they usually have the deepest pockets and because they are ultimately responsible and accountable for the “defective” product they designed, manufactured and sold. But in this case, the new rules might include a manufacturer that carries no product liability coverage and has no assets in the U. S.; consequently, the manufacturer becomes a tougher and less desirable target. Where does the attorney turn to now? Right back to you, the distributor, since you are the last entity in the chain and there is no one else left to defend the product. So, you now step into the shoes of the “manufacturer” of the product for purposes of product liability.

Protecting your company, assets and reputation

The only way to protect yourself from becoming a “manufacturer” is to do business with reputable companies that provide you with proof of product liability insurance coverage. Require suppliers to provide a current certificate of insurance with you named as an additional insured under the vendor's endorsement on the manufacturer's product liability policy. Pay particular attention to the limits of liability stated on the form. Limits of \$10, \$15 or \$25 million dollars or more are

appropriate for a manufacturer. How much is really enough? Safety-related and other critical components may require much higher limits. How much protection would a policy showing limits of \$500,000 really offer to your business? How safe would a mere \$500,000 make you feel and, to use an old risk management adage, “how well would you sleep at night?”

Zurich offers the following suggestions if you decide to negotiate a deal to import products directly. You should at a minimum:

- Consult qualified legal counsel regarding the negotiations. Discuss your potential liability and how to obtain certificates of insurance;
- Negotiate and commit to writing how you and the manufacturer will jointly handle recall and warranty issues;
- Obtain a certificate of insurance from the manufacturer's liability insurance carrier that does a substantial amount of business in the U.S. and make sure the manufacturer has adequate limits (have your insurance representative and qualified legal counsel review the certificate);
- Obtain additional insured vendor's status on the certificate and get 30-day notice of any cancellation or non-renewal; and
- Once you get it, place the certificate in a dated file to follow up 30 days prior to expiration. Even if you think products are manufactured in the U.S., it is good security to get certificates of insurance. It might reduce your own insurance costs.

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Loss prevention information

For questions about this loss prevention topic, contact the Zurich Risk Engineering Department at 800-821-7803.

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For more information about Zurich's products and Risk Engineering services, visit www.zurichna.com/zdu or call us at 800-840-8842 ext. 7449.

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