U.S. Liability for Foreign-Made Products

The media coverage recently generated by the discovery of a number of defective products made in China reveals a very significant liability risk for U.S. importers of foreign-made goods. A New Jersey tire distributor has been sued in a wrongful death action in which the deaths were allegedly caused by a defective Chinese-made tire. The importers of pet food made with tainted Chinese ingredients have been subjected to several lawsuits. Importers of toothpaste, of counterfeit glycerin that made its way into cold medicines, of certain seafoods, and of toys with lead-based paint have all been sued. Even where litigation has not resulted, many Chinese-made products have been subject to recalls resulting in substantial expense for the U.S. importers. The fact that literally thousands of tainted Chinese imports are rejected as a result of routine border inspections shows the widespread nature of the problem and the scope of the risk for U.S. businesses that import and sell such products. Chinese-made goods are not the only source of potential difficulty for U.S. companies, of course. Regardless of where a product comes from, it can be the basis for making U.S. companies liable and those companies may then face a range of complex legal issues.

U.S. products liability law varies considerably from state to state but, as a general rule, anyone in the chain of commercial distribution of a consumer product, including manufacturers, importers or other intermediate distributors, and retail sellers, may be liable if the product is defective and injures someone. Typically, the manufacturer can be forced to indemnify a distributor or retailer who becomes liable to one who is injured by a defective product so that the liability ultimately falls back on to the manufacturer. And several states protect non-manufacturer intermediaries such as distributors and retail sellers from being made liable in the
first place, but only if the actual manufacturer can be subjected to liability. If, however, the manufacturer cannot be sued in the U.S. or is judgment-proof, then those other parties will be liable even if they did not make the product or provide any input into its design or accompanying safety information. U.S. companies that provide product design specifications to foreign manufacturers or that put their own name on a foreign-made product so that it appears to consumers that the importer is actually the product’s manufacturer face additional risk potential.

A comprehensive product safety program, designed to minimize liability potential, should be part of any product design and manufacturing process. However, foreign manufacturers may be much less likely to incorporate liability-prevention processes into their overall approach to business. Forty percent of U.S. consumer imports come from China and Chinese officials themselves admit that they need to improve implementation of product safety standards and that it will take them awhile to catch up with the West. This determination to do better on product safety was given particular emphasis recently when China executed the former head of that nation’s food and drug agency for accepting bribes that allowed tainted products on to the market. Nevertheless, deficiencies remain in many foreign product safety laws and such deficiencies emphasize the need for U.S. importers to proactively and carefully conduct their own evaluation of product safety by imposing comprehensive quality checks on their foreign suppliers and by making sure they know the identity of their suppliers and the identity of component parts suppliers for assembled products. Importers of foreign-made goods should also seek contract terms that require their foreign suppliers to indemnify them for any liability that arises from defects in the suppliers’ products and carefully assess the enforceability of such contracts in foreign courts. Tiny damage awards and frequently hostile local judges may make litigation in some foreign courts pointless.
In an increasingly globalized economy, a mistake made by a foreign manufacturer may quickly become the mistake of the U.S. supplier. And the mistake can be fatal to a company’s fortunes. The New Jersey tire distributor sued for two deaths allegedly caused by a defective imported tire is a sixteen-employee, family-owned business now hurtling toward bankruptcy as it begins a recall of 450,000 imported tires at a projected cost of $90 million. Any U.S. company that imports parts or products should have a comprehensive product safety and liability prevention program in place. An attorney with expertise in U.S. products liability law and familiar with the complexities arising out of dealing with foreign manufacturers can help design a product safety and liability prevention program, or assess an existing one, to help minimize the possibility of disastrous consequences.

For more information on foreign-made products liability issues or the design/assessment of product safety and liability prevention programs, please contact David Prince [link to bio]. Read more about Larson · King’s Products Liability practice here [link to products page].