

Risk Insights™

Managing Product Liability Risk

Consequences of product liability for manufacturers and distributors



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1.0

Introduction

How confident are you that your company has the right plans in place to avoid the potential disaster that can be associated with product liability? Each year the number of product recalls continues to climb, along with the number of product liability lawsuits filed against manufacturing companies of all types and sizes.

Effectively managing that risk will play a key role in a company's success.

This white paper provides an overview of best practices that you can apply in your business to help to minimize your risk.



2.0

Why it's worth addressing now

The case to deal with the risk associated with product liability is a compelling one.

The statistics on the frequency and severity of product liability are staggering:

\$2 MILLION: The median jury award for a product liability case in the US, according to Jury Verdict Research, a firm that tracks the results of personal injury lawsuits in the United States

3,253: Number of product recalls in the US in 2012 reported by the Stericycle ExpertRECALL Quarterly Recall Index (includes pharmaceuticals, food, consumer products, children's and infant products and medical devices).

\$2 MILLION TO \$35 MILLION: Cost per recall for US companies, according to a 2010 Deloitte/ Grocery Manufacturers Association of America study

1,070: Total vehicle recalls in Canada in 2012, according to Transport Canada

1,603: Total recalls & advisories (non-vehicle) in Canada in 2012, according to Health Canada and the Canadian Food Inspection Agency

2.0

WHY IT'S WORTH ADDRESSING NOW

The direct and indirect costs associated with recalls and product liability lawsuits—including lost sales, reputation damage, employee retraining, time spent preparing for trial—can easily chip away at already tight profit margins.

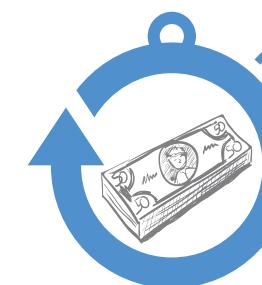
Looking at the big picture, today's business climate and customer expectations are also bringing about enormous change in product liability prevention and risk management. Regulations in Canada, the United States and abroad are influencing manufacturing and quality control standards, not to mention public health and safety.

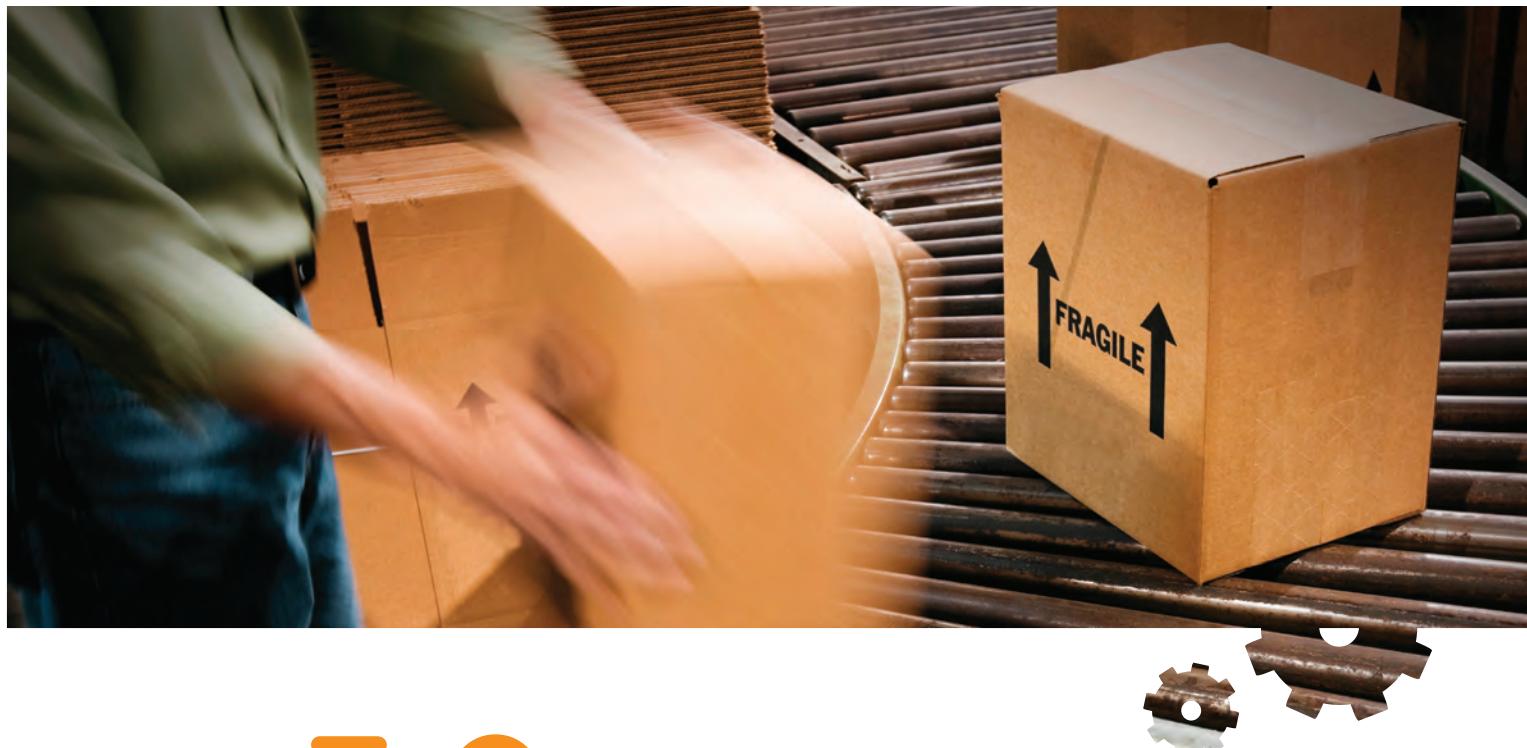
What's more, the electronic age means information is available 'immediately' to customers, be it truth or rumour. A loss of reputation can be equally financially debilitating to a business when word spreads that your products, manufacturing processes and/or product aftercare programs are not deemed safe.

It is important to realize that the Canadian legal environment, both under Common Law and the Civil Code of Québec, extends product liability to wholesalers, distributors and retailers. Distributors (and other entities in the chain) may be held liable for breaching the duty of care owed. When products are manufactured outside of North America, the same holds true and in certain circumstances, courts do hold wholesale distributors to a very high standard of care.

All of this points to the importance for manufacturing companies of all sizes to take a serious and critical look at their product safety management programs now and ensure they are taking steps to reduce their risk.

The statistics on the frequency and severity of product liability are staggering. Associated costs can easily chip away at already tight profit margins. All of this points to the importance of taking the necessary steps to reduce your risk..





3.0

Preventing Problems Before They Occur

Having the right insurance coverage in place is one way to protect your business from disaster, but that's only part of the solution. To truly reduce the risk that product liability represents you need to take steps to eliminate problems before they arise. That means creating an effective product safety management program.

3.0

PREVENTING PROBLEMS BEFORE THEY OCCUR

This type of program will help you look at the risk across your entire organization and embed product safety practices throughout your operations, and even your supply chain relationships. Manufacturers need to be looking at areas such as:

- Product design
- Document control
- Quality assurance
- Supplier management
- Marketing
- Warranties
- Contracts
- Loss reporting and investigation

It sounds like a daunting task, and while it requires a substantial amount of effort, the payoff comes in the form of reduced incidences, fewer recalls, lower insurance costs associated with fewer claims, a better defence in the case of a lawsuit, and a higher quality product. All of which contribute to an improved bottom line.

The level and complexity of your product safety management program will depend on your company's specific needs, which are best identified by conducting a product liability assessment. An assessment like this is best conducted by a loss prevention expert. You can speak with your insurance company about this or hire a consultant to assist you.

To give you a basic idea of how you are doing now, take our self-evaluation audit that is part of this guide.

Is your company protecting itself from product liability? Northbridge Insurance customers can request a copy of our self-evaluation audit through our Risk Services department at 1.855.620.6262.





4.0

Key Roles for a Successful Product Safety Management Program

The Product Safety Manager

This person may go by many titles depending on the organization, but his/her job is oversee all company operations with an eye towards product safety. Typically, the role is assisted by a team of cross-functional representatives from key departments.

By placing accountability with one individual, you can ensure complete focus on the job at hand with no conflicting priorities. When conflicts do arise between safety considerations and other business priorities, management can make the decision, but there will always be a champion looking to reduce exposure to product liability.

4.0

KEY ROLES FOR A SUCCESSFUL PRODUCT SAFETY MANAGEMENT PROGRAM

The Product Safety Committee

If you can't support a full-time employee dedicated to product safety, a product safety committee is a viable alternative. The committee should consist of representatives from key functions such as engineering, quality control, legal, marketing, product development, etc.

Smaller companies can also look beyond their walls for assistance. Insurance companies can be a vital resource in reviewing your company's operations and assessing product liability risks. Lawyers, suppliers and other professionals who support your business can also provide advice and guidance. Size should not be a deterrent to setting up a sound product safety management program. In fact, the opposite is true. By trying to cut corners and cut costs for economic reasons, smaller companies can put themselves at even greater risk should a problem occur.

Regardless of which route you choose to create your product safety management program, there are some common activities to get started with.

Choosing highly qualified and capable insurance partners, professional advisors and other service providers should never be based on cost alone. The best will put your best interests first and foremost and have the expertise to carefully guide you toward sound product safety management program.





5.0

Getting Started: Role of the Product Safety Manager/Committee

The primary role of the product safety manager or committee is to develop and implement a product safety management program with an over-arching goal to produce, market, deliver and maintain a safe product for its intended users and to minimize product hazards. Their goal is to infuse the company culture with a commitment to safety and risk control.

5.0

GETTING STARTED: ROLE OF THE PRODUCT SAFETY MANAGER/COMMITTEE

The activities undertaken to achieve this include working with other key departments to:

- Create a product safety policy that is implemented by all departments by taking a holistic view of the organization's operations and is not siloed in any one area.
- Ensure compliance with all applicable laws, regulations and standards for your industry. In areas where no codes or standards exist, adhering to recognized industry best practice can attest to product quality and serve as an element of defense in court.
- Establish guidelines and criteria for the identification and quantification of product hazards.
- Perform design reviews and other analyses to minimize product risk to an acceptable level.
- Take appropriate action when a hazardous product or condition exists or is suspected to exist.
- Establish guidelines and criteria for creating warning labels and instruction manuals.
- Establish guidelines for creating advertising, promotional brochures, and other printed sales material.
- Establish guidelines for the creation of product warranties, exculpatory clauses, and contractual disclaimers in contracts and purchase orders.
- Analyze product problems and determine a need to notify government agencies and/or the need to recall products, retrofit products or issue safety warnings.
- Create a document retention policy and procedure as it relates to safety and reliability, ensuring that all meetings and decisions are documented for management and defence in potential lawsuits.
- Be the point of contact driving all communication and developments concerning product liability.

Your goal: Infuse your company culture with a commitment to safety and risk control with these activities.





6.0

Departmental Roles

The following section provides a more detailed look at how a product safety management program can be implemented in departments that are typically involved in the creation and selling of a product.

Your company may not have these defined departments, but chances are you do have the responsibilities of each somewhere in your organization. All company employees, regardless of organizational structure, must be well trained in their role and responsibilities toward product liability prevention.

6.1

RESEARCH, DESIGN AND ENGINEERING

1. Develop the safest product possible based on latest standards
2. Develop and implement a thorough product testing program
3. Create appropriate warning literature
4. Draft instructions for installation, use, service
5. Develop standards and instructions for proper packing/shipping

6.2

QUALITY CONTROL

1. Develop testing programs for:
 - a. Inspecting all received goods
 - b. Testing manufacturing processes & finished product
 - c. Testing packing/shipping procedures
2. Develop a system for rating vendors
3. Document all methodology in a quality control manual

6.3

MANUFACTURING

1. Develop and maintain workflow and machine acquisition/maintenance plans
2. Create operation sheets for each major operation

6.4

MARKETING

1. Ensure accuracy in all marketing materials
2. Ensure hazard warnings appear in all user literature
3. Make sure that labels contain simple language and clear instructions

6.5

LEGAL

1. Establish a process to review all advertising, manuals, brochures, labels, disclaimers and contracts

6.6

RECORD KEEPING

1. Ensure that all departments have processes in place to keep accurate records of activities related to the safety management program
2. Audit record keeping practices regularly
3. Ideally, records should be kept for a period that reflects the normal life expectancy of the products. Be conservative and add in a safety factor in establishing your record keeping and document archiving policy.



7.0

Summary

By taking a proactive approach to managing risk associated with product liability and embedding these best practices into your organization, you greatly reduce the chance and severity of a loss. These steps, along with the right insurance policy to protect your business in the event that a loss does occur, will help to safeguard your bottom line.

7.0

SUMMARY

*Northbridge Insurance® Manufacturers' Choice™**—more than a policy*

Through our *Manufacturers' Choice* insurance policy and support package, *Northbridge Insurance* offers a complete solution, tailored to the specific needs of your manufacturing business. With industry leading underwriting, risk services expertise, efficient claims processing, strong regional support and cross-border capabilities, we're ready to protect your business.

As part of our risk services for manufacturers, *Northbridge Insurance* has a team of dedicated manufacturing risk consultants who can offer customized, preventative, risk management services and training to improve safety, reduce costly losses and minimize downtime.

Contact your insurance broker or a representative from *Northbridge Insurance* at 1-855-620-6262 to learn more today.

OTHER RESOURCES

The Canadian Standards Association:

www.csa.ca

The Canadian Manufacturers & Exporters Association:

www.cme-mec.ca

The Canadian Food Inspection Agency:

www.inspection.gc.ca

Hazard Analysis and Critical Control Points Canada:

www.haccpcanada.net

ISO9000:

www.iso.org/iso/home/standards/management-standards/iso_9000.htm

The Canada Consumer Product Safety Act:

www.hc-sc.gc.ca/cps-spc/legislation/acts-lois/ccpsa-lcspc/index-eng.php

The Consumer Packaging and Labeling Act:

www.laws.justice.gc.ca/eng/acts/C-38/index.html

Office de la protection du consommateur

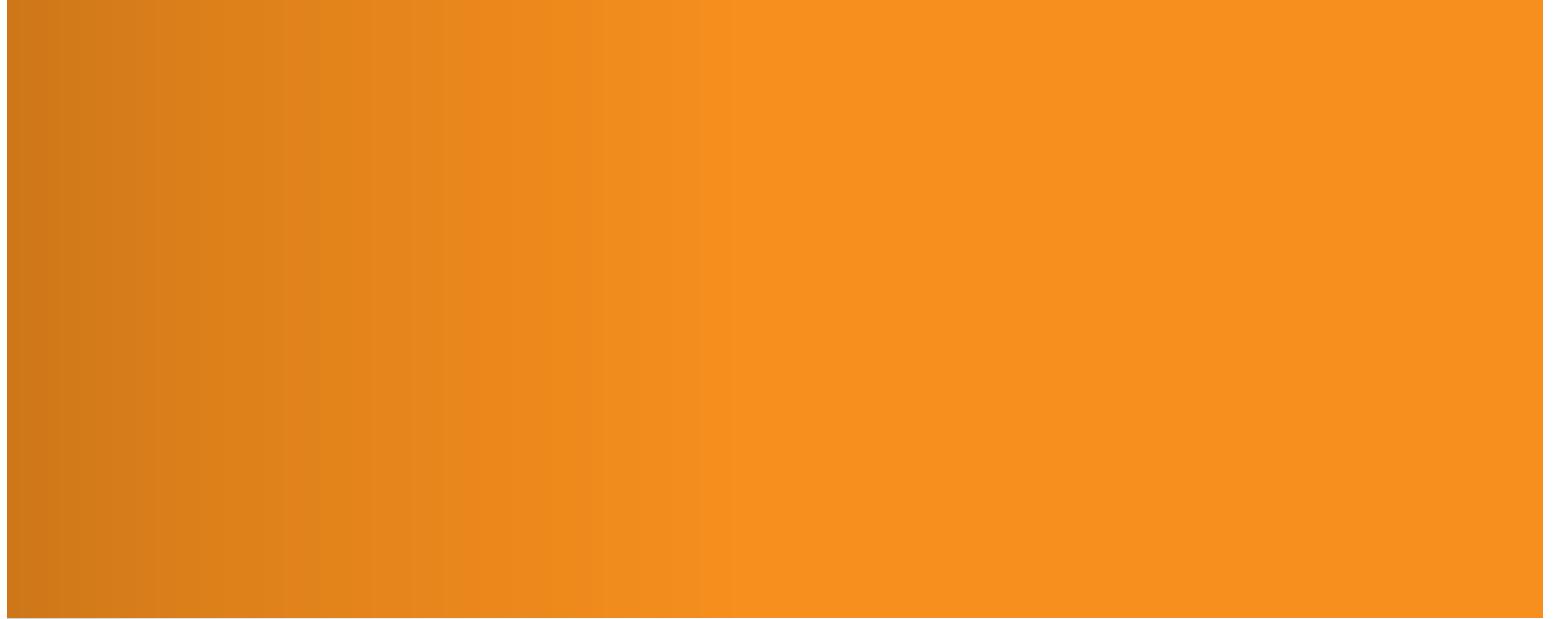
(Québec)

www.opc.gouv.qc.ca/en/home

The Civil Code of Québec Articles 1468 and 1469

www.justice.gouv.qc.ca/english/sujets/glossaire/code-civil-a.htm





About Northbridge Insurance Risk Services

Our Risk Services team provides valuable insights, consulting and training to help Canadian businesses manage and mitigate risk across their operations. We rely upon our industry-specific expertise and decades of experience to recommend leading solutions and best practices to our broker partners and our mutual customers.

About Northbridge Insurance

Northbridge Insurance is a leading Canadian commercial insurer. With regional operations across the country, we are ready to provide you with the outstanding service you need, when you need it.

We understand that not every customer or business is the same, so by focusing on specific industry sectors we, in collaboration with your broker, are able to make a difference to your success.

www.nbins.com

For more information please visit:

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