



# Product Liability Clause

Time to Understand your Exposure before it is too Late - Pankaj Jain

**A** manufacturer is not through with his customer when a sale is completed. **He has then only started with his customer.**

**Henry Ford, Founder of Ford Motor Company In My Life and Work (Co-written with Samuel Crowther, 1922)**

● **Product liability law refers to the body of legal rules governing civil lawsuits for losses and harms resulting from a defendant's furnishing of defective goods**

● Rule was caveat emptor (buyer beware), but has shifted over the past century to caveat venditor (let the seller beware) since sellers are better able than consumers to bear the costs of defective products

In today's litigious society, can manufacturers / companies escape being sued, all the more when you are on a global platform?

Let's see few classic examples from Auto Industry from the most quality conscious and reputed companies:

- As early as 2000, **Bridgestone** recalled 6.5 Million Tyres
- In 2006, **Ford** recalled 8 million Pick-up Trucks for an ignition switch issue
- In 2012, **Toyota** had to recall 7.4 Million vehicles for faulty power window switches
- The recent issue of **Volkswagen** affected more than 11 million vehicles resulting into a settlement of approximately USD 18 Billion in compensation.

Very simply put, a product recall is calling back a product which is not in conformity with the standards committed (stated or implied) to its buyers. There is no doubt that the automobile manufacturers highlighted in above examples have the highest standards in design, manufacturing, inspection and safety standards. **Despite the best efforts, possibility still exists of lapses happening somewhere leading to irreparable losses.**

In case of such an incidence, the major consequences are:

- (a) **Cost** – Replacement, Rectification, Logistics and compensation: This can be HUGE and Direct.
- (b) **Production Schedule** – Can just throw the schedule out of gear
- (c) **Legal expenses**
- (d) Brand Image, credibility and **reputation** – and company's **market cap** and stock.

The crucial liability questions confronting corporations today are:

- Ultimately, **what are manufacturers, be it steel or component manufacturers – or for that matter – any product from any industry - liable for in case of any dispute ?**
- What **product design standards** must we meet ?
- How **rigorously** do we have to **test our products** ?
- What are the **risks of packaging** ?
- What is the **effect of product service on liability** ?

- What **defenses** are available in a **liability suit** ?
- What care needs to be taken, all the more, when **doing business of a foreign soil** ?

Above questions do not have any right or a wrong answer; but few basic initiatives, if taken are likely to mitigate the risks involved:

(a) During negotiations and PRIOR to contract execution, one must conclude whether the risks inherent to the relationship are satisfactorily addressed by specific language in the agreement, via representation, warranty, default, and allocation of risk clauses. **This is best accomplished by having the final draft version reviewed by a knowledgeable person.**

(b) One should always include **“Limitation of Liability”** clause to have a clear understanding of the limit of liability that may arise in the worst eventuality.

(c) Quality has to be at the **core of every act that is being done**. In the race of beating competition or to stay ahead, one should never get into a myopic mindset of allowing productivity overtake or compromising quality.

(d) Doing business is a serious affair. Lapses can happen anywhere – from design to delivery. And it is very important that everybody – understands the risks involved. It is a fact that in most of the cases, the person / department responsible for the lapse, never knew that a silly mistake might result into a damage of a lifetime.

If we take the recent example of Volkswagen, there was a software defect in many of their vehicles which showed lower emissions in a certified test laboratory than the actual amount of emission the vehicle would emit on the road.

The guys who might have done this (deliberately or by ignorance) never would have imagined – in their wildest of their dreams – that this act of theirs would result into the company making provision of USD 18.2 Billion Compensation (More than twice the revenue [USD 8.7 Billion – in 2016] of India's largest car manufacturer – Maruti Suzuki India Limited. This was a Tsunami callback. Volkswagen, a USD 214 Billion company could somehow survive. But most of the Indian companies might not.....

Irrespective of whether we do business domestically or globally, we need to understand it well that **“Product Liability”** may be the **“Single Greatest Potential Risk”** for the entire organisation.

The writing on the wall is crystal clear. Business in today's time is not a video game where you get a second chance. For most of the readers – whether they belong to steel, forgings or anything to do with any engineering industry, it is a game of one single chance. One small mistake or a lapse may be to save a few pennies might lead to huge and irreparable losses.

It's time to take a deep dive – **time to understand one's exposure before it is too late.**