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YOUR CUSTOMERS' **PRODUCT
LIABILITY RISK EXPOSURE**
IS INCREASING

Is Their Coverage Keeping Up?

WHITE PAPER



Your Customers' Product Liability Risk Exposure Is Increasing: Is Their Coverage Keeping Up?

No matter how you look at the data, companies across all sectors are more at risk for product recalls than ever—and the cost is rising.

New regulations have allowed steeper fines than ever before. In 2014, the National Highway Traffic Safety Administration (NHTSA) issued \$126 million in fines—the most in its history. The Consumer Product Safety Commission (CPSC), issued more than \$12 million in fines—another historic first.¹

Here's a look at the recall developments in a range of industries over the last quarter of 2014 and early 2015:

✔ **Automotive**

According to the Stericycle Product Recall Index of 2014, a record-breaking 74 million automotive components were recalled in 2014—up 166% from 2013.² Honda was fined \$70 million in 2014 for failing to submit warranty claims and reports on deaths and injuries.³

✔ **Food**

The number of units recalled per event increased 142% over the 3rd quarter—meaning the scale of recall events was much larger by the end of 2014, even though the total number of events was down.⁴ Blue Bell Creameries recalled its entire product line in early 2015 after a listeria contamination killed three people.⁵

✔ **Medical Devices**

The total number of units recalled increased 27% over the last quarter, and 60% of those went global.⁶ In August 2014, the Costumed recall affected an



astonishing 233 devices at a Class I level—meaning there is a reasonable possibility these products could cause serious injury or death.⁷

✔ **Consumer Products**

The total number of units recalled increased 32% over the previous quarter.⁸ More recently, in 2015, Graco Children’s Products was fined \$10 million after it failed to report defects in approximately 6 million defective child car seats within an acceptable timeline.⁹

Why the Risk for Product Recalls Is Increasing


✔ **Better Testing Procedures**

The technology used to test and identify contaminations, packaging issues, and other problems is more sensitive than ever. Companies are more likely to catch potential problems more quickly than in times past—and issue recalls fast.

✔ **Stronger Regulations**

A series of new regulations and measures have increased the power of government agencies to demand recalls and issue larger sanctions. They include:

- ➡ The 2011 Food Safety Modernization Act (FSMA 101). This act requires food manufacturers to document their food safety, manufacturing, and packaging processes, giving the FDA the right to insist on a recall, including for contaminated or misbranded food.¹⁰
- ➡ The Consumer Product Safety Improvement Act of 2008. This act strengthens regulation of products that contain phthalates and lead;



mandates 3rd-party testing, certification, and tracking; and enhances regulatory oversight of children's products and imports.¹¹

- ➡ The European Union's 2010 RAPEX rapid alert system. This circulates information between EU member states and the European Commission regarding potentially dangerous product flaws, enabling national authorities to demand recalls more quickly than ever.¹²
- ➡ The Office of Pharmaceutical Quality (OPQ). This new organization, introduced in 2015, is dedicated to improving the quality of pharmaceuticals, and the rigorousness of inspection programs, both domestically and internationally.¹³
- ➡ The Vehicle Safety Improvement Act. If this proposal passes in Congress, it will improve the public's access to information regarding vehicle defects and increase the amounts of fines levied by the NHTSA.¹⁴

✔ **Increased Complexity**

Product recalls are going global—especially in the pharmaceutical and medical device industries. This increases the cost of recall management, and the risk that companies will fall afoul of complicated and frequently-changing international rules.

✔ **Increased Consumer Awareness**

Consumers are more informed about recalls now due to greater connectivity over social media and search, as well as recall alert services. This increases the public relations fallout for companies.



Why Your Clients' Product Liability Insurance May Not Cut It in Today's Recall Environment

Despite the need for product recall insurance coverage, many companies have only general liability policies. These policies sometimes cover recall expense, but the coverage is limited. It often includes only the cost of the recall itself—not the loss of gross profit from a recall, brand rehabilitation costs, replacement of contaminated products, and other expenses.

In today's environment, your clients may need to purchase product recall or product contamination insurance in addition to their general liability coverage.

It is important to know about nuances in coverage provided by these policies. For instance, potential gaps in a typical product contamination policy (PCI) may include:

✔ **Government Recall Coverage**

In the past, the FDA did not have the authority to mandate product recalls, and PCI policies did not specifically address government recalls. However, the Food Safety Modernization Act expanded the FDA's power to force recalls, and policies are changing to reflect that.

Some policies now include wording that specifically allows coverage for mandated recalls, while others offer endorsements for it. The definition of a mandated recall can vary between carriers, but most require that there be a reasonable possibility that the product will cause serious health issues.

✔ **Adverse Publicity**

Increased consumer use of social media means that news of a recall spreads



fast these days—and the publicity fallout for insureds is more costly than ever. Adverse publicity coverage is more necessary now than in years past.

Most PCI policies cover negative publicity resulting from malicious tampering; however, this is less common than accidental contaminations, which are rarely covered under adverse publicity except by endorsement.

✔ **Product Refusal**

This covers the cost of redistribution if the insured's product is rejected by a customer because a competitor's similar product has been recalled.

✔ **Crisis Consulting**

This is a service offered by carriers that help insureds develop recall contingency plans, run mock recall programs, and assist during a recall crisis. This service can be priceless to insureds involved in recalls. Various carriers use different third-party crisis consulting firms. It is important to know who the crisis consultants are and what services they provide before or after a recall event.

What to Look for in a Wholesale Insurance Broker for Product Recall Insurance

Product recall insurance is unique and each policy must be tailored to the insured's needs. The right wholesale insurance broker must have an in-depth understanding of markets and forms, as well as fluency in the language that affects coverage. Here's what to look for when choosing a broker to help you sell this product:

➔ **Familiarity with Current Markets**

New carriers in London and the United States are starting to offer product recall insurance and enhancing their coverage. These days, wholesale



brokers need an up-to-the-minute understanding of new markets and emerging coverage options.

➔ **Effectiveness as a Sales Partner**

A good wholesale broker should be able to serve as a sales partner, answering insured questions on changing markets, coverage options, and risks.

➔ **Claims Advocacy**

Look for a wholesale insurance broker who has relationships with carrier senior management and claims personnel. A broker with these connections can be the client's advocate in navigating the claims process, providing adjudication support, and speeding up reimbursement.

Carriers and underwriters are creating new enhancements to product recall policies to keep up with the changing regulatory environment. The insurance agent who can serve as an expert resource will be highly valuable to insureds.

Notes

¹ Stericycle Expert Solutions: *Stericycle Recall Index Q4 2014*. <http://www.stericycleexpertsolutions.com/wp-content/uploads/2015/03/Q4-2014-US-Recall-Index.pdf>. (Accessed April 25, 2014).

² Ibid.

³ Ivory, Danielle. “Honda Fined for Violations of Safety Law.” *New York Times*, January 8, 2015.

⁴ Stericycle Expert Solutions: *Stericycle Recall Index Q4 2014*. <http://www.stericycleexpertsolutions.com/wp-content/uploads/2015/03/Q4-2014-US-Recall-Index.pdf>. (Accessed April 25, 2014).

⁵ Fox, Maggie. “Blue Bell Listeria Outbreak Has Been Going On for Five Years, CDC Says.” *NBC News*, April 21, 2015.

⁶ Stericycle Expert Solutions: *Stericycle Recall Index Q4 2014*. <http://www.stericycleexpertsolutions.com/wp-content/uploads/2015/03/Q4-2014-US-Recall-Index.pdf>. (Accessed April 25, 2014).

⁷ Gaffney, Alexander. “Massive Recall of Medical Devices Largest Ever Recorded by FDA.” *Regulatory Affairs Professionals Society*, September 2, 2014.

⁸ Stericycle Expert Solutions: *Stericycle Recall Index Q4 2014*. <http://www.stericycleexpertsolutions.com/wp-content/uploads/2015/03/Q4-2014-US-Recall-Index.pdf>. (Accessed April 25, 2014).

⁹ Gross, Doug. “Graco Fined \$10 Million for Defective Child Safety Seats.” *Christian Science Monitor*, March 23, 2015.

¹⁰ US Food and Drug Administration: “Full Text of the Food Safety Modernization Act (FSMA).” <http://www.fda.gov/Food/GuidanceRegulation/FSMA/ucm247548.htm#SEC206>. (Accessed April 25, 2015).



¹¹ US Consumer Product Safety Commission: “The Consumer Product Safety Improvement Act.” <http://www.cpsc.gov/en/Regulations-Laws--Standards/Statutes/The-Consumer-Product-Safety-Improvement-Act/>. (Accessed April 25, 2015).

¹² European Commission: “Questions and Answers on the 2010 RAPEX Report.” [http://europa.eu/rapid/press-release MEMO-11-288_en.htm?locale=en](http://europa.eu/rapid/press-release_MEMO-11-288_en.htm?locale=en). (Accessed April 25, 2015).

¹³ US Food and Drug Administration: “Office of Pharmaceutical Quality.” <http://www.fda.gov/AboutFDA/CentersOffices/OfficeofMedicalProductsandTobacco/CDER/ucm418347.htm>. (Accessed April 25, 2015).

¹⁴ US Committee on Energy & Commerce: “H.R. 5654, The Vehicle Safety Improvement Act of 2014. <http://democrats.energycommerce.house.gov/index.php?q=bill/hr-5654-the-vehicle-safety-improvement-act-of-2014>. (Accessed April 25, 2015).



About Worldwide Facilities, LLC

Worldwide Facilities is a national wholesale insurance broker and managing general agent that has been in business since 1970. Our seasoned brokers and underwriters are industry leaders in providing expertise in a wide range of specialty lines, and offer extensive contacts with carriers domestically and overseas.

We offer unmatched tools, resources, and strategies to help insurance agents and brokers sell and update product liability insurance for their customers—including training materials and marketing support.

Take advantage of our expertise in placing liability risks today—contact Lori M. Hunter, CPCU, ASLI at (213) 236-4585 or lhunter@wwfi.com to schedule a conversation.

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