

Recall Responsibilities for Manufacturers Supplying Fasteners to the Automotive Industry

by:

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This article focuses on potential liabilities for fastener makers related to recalls made by motor vehicle or motor vehicle equipment manufacturers under the *Vehicle Safety Act*.

How the *Vehicle Safety Act* Applies to Fastener Makers

The *Vehicle Safety Act* applies to motor vehicle and motor vehicle equipment manufacturers. The agency that is responsible for administering the regulations under this *Act* is the **National Highway Traffic Safety Administration (NHTSA)**.

The definition of motor vehicle equipment under the *Act* includes, "any ...part...of a motor vehicle as originally manufactured...or similar part...sold for replacement." This definition is broad enough to include a fastener used in an automobile or in replacement equipment. A fastener manufacturer that makes fasteners used in automotive products is subject to all of the applicable provisions of the *Vehicle Safety Act* and a number of other statutes relating to motor vehicle safety. However, it is unlikely that NHTSA would open an investigation with a fastener manufacturer as the target.

Some safety standards and regulations specifically address fastener performance. For example, the federal bumper standard, *49 CFR 581*, specifically states, "...[e]xcept as provided in *581.5(c)(8)*, there shall be no breakage or release of fasteners or joints." Another example is Section 4.1(f) of *FMVSS 209 Seat Belt Assemblies*, which says, "...seat belt assemblies designed for installation in motor vehicles equipped with seat belt assembly anchorages that do not require anchorage nuts, plates or washers, need not have such hardware, but shall have 7/16–20 UNF-2A or 1/2-13 UNC-2A attachment bolts or equivalent metric hardware. The hardware shall be designed to prevent attachment bolts and other parts from becoming disengaged from the vehicle while in service. Reinforcing plates or washers furnished for universal floor, installations shall be of steel, free from burrs and sharp edges..."

One consequence of a fastener manufacturer being a motor vehicle equipment manufacturer under the *Act* occurs when a defect in a fastener requires a recall in vehicles manufactured by two or more manufacturers. Under these circumstances, Title 49 of the *Code of Federal Regulations (CFR)*, Part 573.3(f) requires that all the vehicle manufacturers and the equipment manufacturer notify NHTSA of the recall. To the extent that the fastener manufacturer discovers a defect relating to motor vehicle safety in its fasteners sold for replacement equipment for automobiles, the manufacturer has the duty to remedy the defect as well as the duty to file reports with NHTSA. Another consequence is that as a motor vehicle equipment manufacturer, the fastener manufacturer also is subject to the early warning and foreign recall reporting re-

quirements promulgated in *49 CFR 579* pursuant to the *Transportation Recall Enhancement, Accountability and Documentation (TREAD) Act*.

Safety Consequences of Fastener Failures

Most of the safety or noncompliance recalls of motor vehicles caused by fasteners relate to improper torque. However, fasteners that are not to specification can lead to an improper clamp load and fatigue failure of the fastener. Therefore, it is instructive to review the consequences of fastener failure in motor vehicles that have had safety recalls. Since January 2001, there have been more than 25 recalls of motor vehicles or equipment for issues related to fastener failures. Examples of safety consequences of fastener failures include:

- Bolts mounting the rear shock absorber to the swing arm could break resulting in rear suspension collapse and increasing the risk of a crash—4590 motorcycles recalled.
- Loose bolts securing rear brake and hub assembly to rear axle carrier could allow these assemblies to separate, leading to loss of vehicle control—11,184 vehicles recalled.
- Four loose nuts allowing bolts to fatigue and fail, causing separation of main support member assembly from frame-mounted hanger bracket, resulting in sudden loss of control of a heavy duty vehicles—1,442 trucks recalled.
- Incorrectly installed anchor bolts failing to meet the load requirements of *FMVSS 210 Seat Belt Assembly Anchorages*, increasing risk of injury to an occupant if the anchorage failed in a crash—327 vehicles recalled.
- Bolt securing the crankshaft pulley becoming loose causing loss of power-steering assist and increasing risk of a crash—18,630 vehicles recalled.
- Inadequate tightening of bolts allowing movement between components, resulting in the bolts and studs breaking, increasing the likelihood of a crash—1500 buses recalled.
- Valve nuts and washers failing, resulting in loss of tire air pressure and loss of control of motorcycles—6305 motorcycles recalled.
- Too-long floor-mounted track bolts, protruding through the wheel well, resulting in puncture of rear tires and loss of vehicle steering and a crash—107 buses recalled.
- One or more of three bolts attaching lower control arm to body may not have been properly manufactured and could fracture, increasing risk of a crash—101,000 cars recalled.
- Threaded fasteners attaching brake rotors to front and rear wheel assemblies could fail due to hydrogen embrittlement, reducing strength of the bolt assembly and adversely affecting braking—2039 motorcycles recalled.

The Manufacturer's Decision Process

A manufacturer has the duty to notify NHTSA when it learns of a defect and decides in good faith that the defect is related to motor vehicle safety or that the vehicle does not comply with a federal motor vehicle safety standard. Each of the major manufacturers selling vehicles in the USA has developed a process to evaluate those conditions in the field

that may indicate possible defects or noncompliances. These processes depend on getting accurate and timely information from suppliers of any components or systems at issue.

A Vehicle Manufacturer Must Remedy Any Safety Defect or Noncompliance in its Product

Under the *Vehicle Safety Act*, a motor vehicle manufacturer shall remedy any safety defect or noncompliance by repairing the vehicle, replacing the vehicle with an identical or reasonably equivalent vehicle or by refunding the purchase price less a reasonable allowance for depreciation. The manufacturer has the options as to which of these remedies it uses, although NHTSA will provide oversight to help insure that the remedy is adequate. A manufacturer of replacement equipment may repair or replace the equipment with identical or reasonably equivalent equipment.

Liability for Civil Penalties

Under the *Vehicle Safety Act*, as amended, a person that violates the *Vehicle Safety Act* by selling a defective or non-compliant vehicle is liable for civil penalties of not more than US\$5000 for each violation up to a maximum of US\$15 million for any related series of daily violations. Although NHTSA is beginning to more strictly enforce the civil penalties provision of the statute, it does have a great deal of discretion in determining whether civil penalties should be levied. Generally, if the manufacturer discovers the defect and voluntarily agrees to recall the product within a reasonable time, NHTSA does not levy civil penalties.

Fastener Manufacturer Responsibility for Costs Associated with a Recall

All motor vehicle manufacturers and most suppliers have contracts that attempt to make the supplier of the defective part that caused a recall responsible for any associated recall costs. These costs can include costs for investigation of the condition, determining and validating the appropriate remedy, notifying the customers and dealers about the recall and costs of parts and labor for performing the recall. To the extent that there are civil penalties, the motor vehicle manufacturer may also try to hold the supplier responsible for these costs, particularly if the basis of the civil penalties is a lack of timeliness that may have been under the control of the supplier.

Protecting Your Company From Product Recall Liability, by **Douglas Wagner**, also with **Warner Norcross & Judd**, in *Fastener Technology International* (August/September 2002 issue, page 91) suggested several methods to protect your company from product recall liability including:

- Common sense business practices.
- Know how your part will be used.
- Make sure you and your customer agree on the technical specifications.
- Make sure your product is traceable.
- Protecting yourself through careful contacting.
- Protecting yourself through insurance.

I will not repeat the discussion of Wagner on these excellent points, but will offer a few additional observations.

React Quickly to Limit Liability

It is important for a fastener manufacturer to react quickly and thoroughly when it learns about a discrepant condition in its products. Sometimes the component or vehicle manufacturer may find the defect, but often the fastener manufacturer discovers the condition. The fastener manufacturer may discover that certain batches of fasteners were not manufactured to specifications, e.g., the fasteners may not have been heat-treated or the wrong coating may have been applied.

The fastener manufacturer should immediately implement containment procedures, conduct a thorough investigation of the cause of the condition and determine how the deviation in specifications affects the performance of the fastener. The sooner the fastener manufacturer can notify its customers about any discrepant product that has been delivered to them, the sooner its customers can also implement containment procedures and the more likely they will be able to stop the product from getting into the hands of the ultimate customer. The speed of the notification is particularly important, because of the increased difficulty in tracing a fastener as it becomes part of a subassembly, then an assembly and finally a vehicle.

Work Closely with the Vehicle Manufacturer to Determine the Safety Implications of the Defect

In general, the fastener manufacturer will not know exactly how a defective fastener will affect the safety performance of the component or vehicle in which the fastener is used. So it is important for the fastener maker to work closely with component and vehicle manufacturers to determine how the defect affects the safety performance of the vehicle or equipment.

During the investigation of the condition, the fastener manufacturer will be responsible for determining the cause of the condition and the beginning and ending breakpoints for production potentially containing the discrepant condition. The fastener manufacturer also may assist in determining the performance of the discrepant fasteners. This may be done by testing in-house or at an independent laboratory. If the fastener maker still has some of the product discrepant material, this material may be used in the lab testing. The vehicle manufacturer will be responsible for determining how the defective fastener affects vehicle performance, but the fastener manufacturer should not be reluctant to use its expertise to help the vehicle manufacturer arrive at a conclusion and take appropriate actions that they both can support from a factual basis.

Conclusion

Reacting quickly and thoroughly to evaluate your legal position will help you to adopt the appropriate strategies to limit the risk and liability from any product discrepancies that may reach the consumers.

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About the Author...

Stephen E. Selander began his career as a Research Assistant, Industrial Development Division of the Institute of Science and Technology at the University of Michigan—Economic Research. He also taught Economics at Flint Community Junior College. Selander was an attorney for General Motors (GM) from 1973 to March 2002, and has been an attorney at Warner Norcross & Judd LLP since leaving GM.