



Warner  
Norcross  
& Judd LLP  
Attorneys at Law

# RISK MANAGEMENT

## Supplier Recall Liability for Vehicle or Motor Vehicle Equipment Recalls

By Stephen Selander



Stephen Selander

Increased outsourcing of design and engineering by automobile manufacturers, coupled with proposed new requirements to report to the National Highway Traffic Safety Administration (NHTSA) foreign recalls and deaths caused by components, increases the risk to suppliers of liability for a safety defect or noncompliance in their products. As

auto manufacturers move engineering and design responsibilities to suppliers, they are increasingly holding the suppliers responsible for the financial liability associated with defects in the manufacturing and design of the components or systems.

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

### Applicability of the Vehicle Safety Act to Motor Vehicle Equipment Manufacturers

The Vehicle Safety Act applies to motor vehicle manufacturers and motor vehicle equipment manufacturers. The agency that is responsible for administering the regulations under this Act is the National Highway Traffic Safety Administration commonly referred to as "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 replace-

ment". This definition is broad enough to include any part used in an automobile or in automobile replacement equipment. All suppliers in the automotive supply chain are subject to all of the applicable provisions of the Vehicle Safety Act and a number of other statutes relating to motor vehicle safety.

Under the Vehicle Safety Act, a motor vehicle manufacturer shall remedy any safety defect or noncompliance by repairing the vehicle; by 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.

The motor vehicle equipment manufacturer under the Safety Act, has a duty, independent from the duty of the vehicle manufacturer, to notify NHTSA of any safety defect or noncompliance in parts that they have sold. They also have a duty to remedy any defect or noncompliance. However, from a practical standpoint, it is important for the component manufacturer to work closely with the vehicle manufacturer to evaluate the potential defect.

When a defect in motor vehicle equipment requires a recall in vehicles manufactured by two or more manufacturers, 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 equipment manufacturer discovers a defect relating to motor vehicle safety in their replacement equipment

*Continued on back*

PRRST STD  
US POSTAGE  
PAID  
GRAND RAPIDS, MI  
PERMIT NO 564

ADDRESS SERVICE REQUESTED

Warner Norcross & Judd LLP  
900 Fifth Third Center  
111 Lyon Street NW  
Grand Rapids, Michigan 49503-2487

for automobiles, the equipment manufacturer has the duty to remedy the defect and to file the required reports with NHTSA.

### Liability for Civil Penalties

A person that violates the Vehicle Safety Act by selling a defective or non-compliant vehicle or item of motor vehicle equipment is liable for civil penalties of not more than \$5000 for each violation up to a maximum of \$15,000,000 for any related series of daily violations.

Although NHTSA is beginning to more strictly enforce the civil penalties provision of the statute, it has 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.

### Motor Vehicle Equipment Manufacturer Responsibility for Costs Associated with a Recall

All of the motor vehicle manufacturers 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 the costs for investigating the condition, determining and validating the appropriate remedy, notifying the customers and dealers about the recall, and the costs of parts and labor for performing the recall. To the extent that there are civil penalties, the motor vehicle manufacturer may try to hold the supplier responsible for these costs as well, particularly if the basis of the civil penalties is a lack of timeliness that may have been caused by the supplier.

### React Quickly to Limit Liability

It is important for a motor vehicle equipment manufacturer to react quickly and thoroughly when it learns about a discrepant condition in its products.

The equipment manufacturer should immediately implement containment procedures. They should conduct a thorough investigation of the cause of the condition and how the deviation from specifications affects the performance of the equipment.

The sooner the equipment manufacturer can notify its customers about any discrepant product 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 equipment, 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

Frequently, the vehicle equipment manufacturer will not know exactly how a deviation from specifications will affect the safety performance of the component or vehicle in which the part is used. For this reason, it will be important for the equipment manufacturer to work closely with its customers to determine how the defect affects the safety performance of the vehicle or equipment.

During the investigation of the condition, the motor vehicle equipment 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 equipment manufacturer also may assist in determining the performance of the discrepant equipment. The vehicle manufacturer will be responsible for determining how the deviation from specifications affects vehicle performance, but the equipment 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.

### Other Business Practices to Help Limit Liability

Common sense business practices include knowing how your part will be used; making sure you and your customer agree on the technical specification; following appropriate design and quality control processes; knowing what your competitors are doing; and making sure your product is traceable. Careful contracting and appropriate insurance coverage can also help you limit your liability. Get your lawyer involved, early in the investigative process. ■

Need More Information?

Visit our webpage at: [www.wnj.com](http://www.wnj.com)

Grand Rapids  
900 Fifth Third Center  
111 Lyon Street NW  
Grand Rapids MI 49503-2487  
616.752.2000  
Fax: 616.752.2500

Metro Detroit  
2000 Town Center  
Suite 2700  
Southfield MI 48075-1318  
248.784.5000  
Fax: 248.784.5005

Holland  
85 East Eighth Street  
Suite 310  
Holland MI 49423  
616.396.9800  
Fax: 616.396.3656

Muskegon  
400 Terrace Plaza  
P.O. Box 900  
Muskegon MI 49443-0900  
231.727.2600  
Fax: 231.727.2699

S.E. Kent County  
Suite 100  
4595 Broadmoor SE  
Kentwood MI 49512-5300  
616.752.2300