

Reversing Trends In Recalls And Liability Lawsuits

Randall Goodden, Author, *Lawsuit! Reducing the Risk of Product Liability for Manufacturers*



A very special conference will be taking place at the Sheraton Gateway Suites by O'Hare Airport in Rosemont IL July 14 and 15.

It is [The 6th Annual Midwest Product Safety & Liability Prevention Conference](#) [1].

The Conference is sponsored by the [International Product Safety & Liability Prevention Association](#) [2] along with [Randall Goodden International](#) [3].

The IPSLP is a free association consisting of manufacturing management and other professionals from 28 countries around the world. But membership isn't required to attend the Conference. It is open to everyone.

Aren't Such Conferences Primarily Intended for Lawyers?

No. These Conferences are intended for manufacturing management. For the most part they are continuing education for manufacturing management that have already attended the *Product Safety, Recall & Product Liability Prevention* seminars being taught across the country, and designed for general management, general counsel, engineering, quality, reliability and product safety personnel — although they have also been highly popular to many of the major insurance companies.

Aren't Product Liability Preventive Efforts Pretty Much Common Sense?

In the criticism of the bailed out Wall Street bankers for their continued obscene spending and executive bonus programs during the 2009 recession, President

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Obama repeatedly stated, “They just don’t get it”.

How can they carry on the same practices that contributed to their financial downfall, right after the tax payers bailed them out?

The same can be said about the countless manufacturers that are each year faced with unbelievably large product recalls, huge fines from regulatory agencies and ultimately record setting product liability and class action lawsuits – “They just don’t get it.”

Unlike Wall Street bankers, they’re not doing it intentionally, but largely out of ignorance.

It doesn’t matter whether it is a huge multi-billion dollar international corporations, or smaller \$30M companies, many of the problems are the same for both, which is continuously evident when you analyze the reasons why products are being recalled.

Leading Causes of Product Problems

The vast majority of product recalls are due to ‘Defects in Design.’

We just keep failing to recognize all the potential problems with new product designs, as well as how to really conduct design reviews and product safety analysis. That’s only part of the issue, as there are also problems with:

- The adequacy of warnings and instructions.
- Manufacturing defects.
- Marketing defects.
- Problems with contracts and agreements.
- Major issues with documents.
- Oversights and lack of control with suppliers.

The list goes on and on.

None of these problems fall under “Common Sense” — otherwise it wouldn’t keep happening. They especially wouldn’t keep growing in size as all of the issues are finally played out in the courtroom, with the number of product liability cases ultimately costing many manufacturers hundreds of millions of dollars.

Recall Trends

Product recalls for consumer products have gone up every year for the past 6 years, not only in the United States, but throughout Europe as reported by [RAPEX](#) [4].

One of the common misconceptions is that there are so many recalls because there are so many products coming from China.

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Not true. Even though the Consumer Product Safety Commission (CPSC) form lists the “country of origin” and 40 percent of all consumer products as “Made in China,” it leaves a false perception that China must be the problem.

In 2007, a major year for recalls, and the year that really put China in the spotlight especially for toy recalls (80 percent coming from China), it was found that only 30 percent of the fault with the toys was actually that of China’s (lead paint), and the rest was due to the faulty designs given to China by a couple of our leading toy companies.

As a result of this international incident, I was asked by Chinese government agencies to come to China throughout 2008 to teach *Product Safety Seminars* in five major cities from Beijing to Guangzhou. I helped Chinese manufacturers learn to identify defects in designs, whether they designed the products or the product designs were given to them by companies outside of China. The seminars have been ongoing ever since.

One of the hundreds of products recalled in 2009 was the drop-sided baby cribs (2.1 million units). It was found that the drop-side of certain designs could become disconnected from the holding brackets, allowing the baby to try to squeeze out of the opening and in the process get its head stuck between the main frame and the drop-side portion.

Some of the causes of failure included the fact that the drop-side could have been installed upside-down by the purchaser, or when the purchaser assembled the crib, they may have misassembled some of the hardware or missed pieces of the hardware in assembly; they could have installed some of the pieces of the hardware upside-down; plastic hardware could break; any of which could then lead to faulty securement and potential separation, and ultimately to a fatal accident.

Now, the entire concept of a drop-side is no longer allowed by the CPSC.

When you review the massive numbers of recalled products, you read things like, “1 million baby strollers being recalled because when the owner unfolds and opens the stroller the hinge in the center of the frame can cut-off a child’s finger.” In fact, it did so to 12 small children.

Recognizing potential pinch-points is a simple product safety hazard to identify. Where was the management team to catch and prevent that from happening? Was there any team that ever reviewed the design?

Compliance with Regulatory Requirements

Some products in specific industries, such as consumer products, automotive, food and pharmaceutical have to be designed and manufactured in compliance to that industry’s regulatory requirements, which is wrongly viewed as the only safety requirement the manufacturer needs to really focus on in design. Such regulatory requirements offer no guarantee or assurance that the product is then ‘safe’.

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The legal community looks at regulatory requirements as a 'minimum requirement', and fully expects the manufacturer to not only comply with voluntary and regulatory requirements, but go above and beyond any such requirements to ensure its products will be safe and reliable for intended uses — as well as to consider foreseeable misuse hazards.

Every design has unique elements that the regulatory agencies will never review or be aware of, or have the capability of recognizing, to determine if those elements could potentially be harmful. This is what the government agencies and legal community fully expect the manufacturer to determine.

Manufacturers need to realize that regulatory requirements pertain to all products in a general classification, such as: how high the drop-side rail has to be above the crib mattress in the highest position as well as how high above the mattress it has to be in the lowest position, the maximum distance vertical slats and corner posts can be apart from one another, the required strength of the vertical slats, the safety of any hardware the child is assessable to, acceptable surface finishes, mattress sizes, and a few other general design requirements, but they're not going to address unique design features of any specific product.

The types of mechanical hardware used, how the hardware and locking mechanisms will work by design, and countless other design features will be unique to the specific crib model, and unknown to the regulating agency.

There are numerous problems within corporations around the world, and design issues with the simplest of products — not to mention the complex electronic products, industrial products and automotive products.

'Defects in Design', or 'Defects in Manufacture' are only one part of the problems manufacturers face, but if you don't acquire the education necessary, you will continue to live in La-La Land, convinced you're doing everything possible, and that such preventive efforts are "common sense."

We can always sit and watch the statistics continue to grow over the next six years, which isn't bad at all, if you're a lawyer.

About the writer: Randall Goodden is the President of Goodden Enterprises LLC and Randall Goodden International, is the author of the three best-selling books on the topic over the past 15 years, and is recognized around the world as the leading authority on Quality, Product Safety & Product Liability Prevention.

Source URL (retrieved on 01/28/2015 - 3:12am):

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