

Product Recall examples

Contamination of supermarket “own brand” rice products

Our client imports and supplies a range of food products, specialising in “own brand” products for national supermarket chains.

They supplied a range of “own brand” rice products to a well-known supermarket chain, the manufacturing of which had been subcontracted out to a third party company based in China.

The product included a number of ingredients including certain allergens however these allergens were not listed on the packaging.

Once it had been identified that the product contained the allergens and that the packaging did not make reference to them a recall of all affected batches had to be undertaken as consumption of the product by persons with sensitivity to the allergens **would** be injurious to their health.

The Product Recall policy cover was triggered as the product would cause injury to a section of the population and there was no warning that the product contained the allergens. A claim in excess of £400,000 was presented which included the costs incurred by the policyholder of:

- Removing the product from supermarket shelves and third party warehousing
- An advertising campaign notifying the public of the defective product
- Destroying the affected product recovered
- Replacing the defective batch with correctly labelled products
- The loss of profits incurred by the policyholder.

Whilst we will look to subrogate against the manufacturer on behalf of our client the reality is that with the manufacturer being located in China where successful subrogation can take many years and will include many challenges our chances will be very limited.

Contaminated ready meals

Our client manufactures and supplies a wide range of “ready” meals.

They entered into a contract to supply a new product line of ready meals, with a long shelf life, to a well-known supermarket chain.

Our client was in the process of adapting automated production lines to accommodate the new range however, before the automated production lines were ready, the supermarket chain pressed for early delivery of a significant number of units to commence retail sale to their customers.

Our client agreed to supply the first batches to the timescales demanded of them by the supermarket chain and, because the automated process was not ready, they engaged the services of a large number of agency staff to manually fill the cartons with the product (rice in one side of the container with a sauce in the other). The manually filled containers were then placed on a production line to be vacuum sealed before onward delivery to the supermarket chain.

Once the first few batches had been delivered a number of units were returned by dissatisfied customers complaining of mildew and other contaminants growing within the product.

A visual check of a number of units within the customers warehousing facility identified further examples of contaminated products and following further investigation it was identified that the vacuum seal on a significant number of the products was defective.

The defective seal was caused due to traces of product being left smeared around the top of the carton (sealant area) in error during the manual filling process which then resulted in an imperfect seal allowing air to enter the product prior to the end of the designated life of the product causing contamination.

The only way to check which units were affected was to test each product for contamination, however once the product had been opened to be tested it could then not be reused and hence had to be destroyed.

Every batch of manually filled product, totalling in excess of 300,000 units, had to be recalled and destroyed.

The Product Recall policy cover was triggered as the product was defective and if consumed **would be** injurious to health and a claim in excess of £1,000,000 was presented which included the costs incurred by the policyholder of:

- Removing the product from supermarket shelves and third party warehousing
- An advertising campaign notifying the public of the defective product
- Destroying all the recovered units
- Replacing the defective batch with units of merchantable quality
- The loss of profits incurred by the policyholder.

The claim is an example of problems encountered by clients under commercial pressure to meet unrealistic deadlines imposed by their customers who encourage them to disregard and / or find quick workaround solutions to bypass their own proven in house quality risk management systems.

Horsemeat

Our client, an importer and supplier of meat products to the catering and food manufacturing industries, supplied a number of consignments of meat to a customer engaged in the manufacture of meat pies.

Our client entered into a contractual arrangement to source the beef from a European supplier who would supply the meat directly to our clients', food manufacturing, customer. Therefore our client would have no opportunity to undertake quality control checks themselves and were reliant on their contractual arrangements with the third party supplier to undertake the appropriate checks.

A number of months later, after a significant number of batches had been supplied to our clients' customer, who in turn had manufactured and supplied thousands of individual meat pies, it became apparent that the meat that had been supplied may contain quantities of horsemeat.

The meat pies had been in circulation for a number of months with many thousands sold and a very significant quantity still on supermarket shelves, in third party warehousing and also within our clients' customers own premises, both as a finished product awaiting sale and also as stock in the process of manufacture.

Following a comprehensive testing programme it was identified that varying percentages of horsemeat were contained in all batches tested at which point our clients' customer and in turn their customers insisted that all units be returned back up the supply chain to our client with the full cost thereof to be borne by our client.

Our client then made a claim for the full cost of the recall including the costs to remove the finished products from supermarket shelves, to transport finished product back to their own premises, to destroy contaminated units (all of the batches) together with the cost required to supply suitable replacement product to the third party customer.

Following a review of the health effects that would result from consumption of the meat pies it became apparent that there would be no adverse effects to public health and that the meat was perfectly safe to eat.

Therefore whilst our client was contractually responsible for an element of the recall costs claimed by their customers (and the further supply chain) and for the full cost of supplying replacement product there was no cover afforded by the Product Recall programme because the Policy trigger required an Insured event that has or would cause Personal Injury and the meat, whilst not the product that it claimed to be, was not actually injurious to health.

Note: An extension of cover can be purchased to include cover in circumstances where a recall has been ordered by an authorised regulatory body or other competent authority in order to avoid or limit Personal Injury however no such recall was ordered in the horsemeat "scandal" so this extension of cover, if included, would not have triggered Policy coverage.

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