

## **PRODUCT LIABILITY IN INDIA - THE WAY FORWARD**

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### **Your View**

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In our previous Newsletter for the month of November we had focused on the concept of product liability and the law governing such product liabilities. In this current Newsletter we emphasize on measures for protection from such product liabilities. The following are some of the measures that can be undertaken in order to prevent product liabilities:

### **i. Compliance of applicable provisions of the statutes:**

One of the most important ways to prevent or, at least reduce liability is to ensure compliance with the applicable provisions of the relevant applicable statutes. In our earlier article we attempted to provide the nature of compliances required under various statutes the non-adherence of which could lead to product liabilities. An effective compliance program in an organization may go a long way ensuring that the product liabilities are avoided.

### **ii. Obtaining product liability insurance:**

Another way in which potential product liability can be avoided would be by obtaining product liability insurance policies covering risks arising due to any defect in the product, any death / bodily injury caused due to the product and such other product liability risks as may be offered by the insurance companies.

Such product liability insurance usually indemnifies the insured against sums which the insured becomes legally liable to pay in respect of accidental bodily injury or illness to third parties and accidental loss of or damage to third party property, arising out of the use, misuse, consumption, or handling of insured products or goods. Insurance policy such as commercial general liability insurance covers a wide range of liability loss exposures of commercial organizations. The loss exposures come under the following broad categories:

- Premises and operation liability risks;
- Product liability risks;
- Limited Contractual liability;
- Personal and advertising injury liability;

- Medical payments;
- Supplementary payments.

### **iii. Providing legal warnings and suggestions for the use of the Product to the prospective customer:**

1. Legally Adequate Warning Labels: To warn prospective customers of any danger from the use of the Products.
2. Location of Warnings: On Product or in the Manual? - An important issue to be considered in trying to meet the duty to warn and instruct is to ensure the warning is given at appropriate place i.e. either on the product, in the manual, or both on the product and in the manual, as per the requirement of the relevant statutes.
3. The duty to warn illiterate and non-English-reading Product users: Given the significant number of languages spoken and read in India and the significant number of people who are illiterate in English or in other languages, developing a method to effectively communicate safety information to readers of product labels and instruction manuals is an important consideration. Adequate safety communications that are not effectively communicated to foreseeable users may invite claims from the users.
4. Suo motto steps be taken to create awareness among the customers by giving adequate warnings, caution notice, direction to use in handling the product, in the event the product design, usage warrants such awareness to prevent harm.

### **iv. Contractual measures:**

In the event the products are manufactured under a contract manufacturing arrangement then it is advisable to ensure that adequate indemnity is obtained from principal contractor for all product related liabilities and claims that may arise out of the said arrangement. It should be specifically mentioned that the manufacturer should not be liable for any product manufactured by it which is in accordance with the specification given by the principal contractor. It is pertinent to note that notwithstanding any such indemnity, the manufacturer of the product cannot absolve itself from any liability which the statute fixes on such manufacturer. However in the event any adverse order is passed against the manufacturer for any violation of applicable provisions of the statutes, the indemnity clause can be used to cover any loss sustained by the manufacturer from any order, claim, and liability against the manufacturer.

The contract manufacturing agreement should also provide that in the event legal proceedings are commenced against the manufacturer the same shall be defended by the manufacturer at the risk and expense of the principal contractor who shall be liable to bear any expenses that the manufacturer incurs while defending itself in such proceedings. Further the contract should specify that should the manufacturer be held liable under such proceedings for any fine or penalty, imposed specify that should the manufacturer be held liable under such proceedings for any fine or penalty imposed by any court or authority, such fine, penalty will be recovered from such principal contractor in full.

Depending upon the role of company i.e. either as a contract manufacturer or as a principal getting the products manufactured from a contract manufacturer, adequate safety measures must be built in the contract so as to provide for

effective protection against product liabilities.

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