Product recall

The retailer constantly bears the risk of a product becoming a liability, even if the fault actually lies with a supplier somewhere down the supply chain. They will incur not only the cost of the recall, but also suffer interruption to business as well as potential damage to the brand and customer goodwill. The big challenge is to mitigate losses and limit damage to the brand’s reputation.

Robust recall procedures

Developing robust recall procedures is vital to minimise the financial and operational impact on the business and to avoid any erosion of the brand. Ernst & Young can review existence of and compliance with formal product recall policies and procedures, including quantification of the impact of any process failures, root cause analysis and identification of improvement opportunities.

It is also important that recall procedures consider the specific needs of a calculation of loss and damages. We can help you to develop recall procedures which:

► Allow for sufficient, reliable and appropriate information to be gathered as part of the recall process in order to facilitate the claim for loss and damage.

► Consider the impact of key commercial decisions on the cost of the recall and the extent to which such decisions are appropriate to mitigating the loss suffered in the light of a subsequent claim.

► Minimise your exposure to the financial risks of recalling a product. These could include the issue of fraudulent claims or the possibility of granting credit to customers whose product returns do not in fact meet the recall criteria.

Early and realistic assessment of the financial implications of recalling

It is imperative to perform an early and realistic assessment of the financial impact of recalling a product. We can assist you to reach an early decision on whether to pursue, abandon or seek a quick resolution in relation to a potential claim:

► For retailers, against your supplier where you are recalling a product on the supplier’s behalf.

► For suppliers, in responding to claims made by retailers, or against your insurer under your business interruption policy.

Collation and verification of documentation required to demonstrate compliance with recall procedures and support for any potential claim for loss and damage

We can provide an independent assessment of procedures followed and the sufficiency of supporting documentation which will add credibility to your claim and minimise the potential for challenge from your supplier or insurer. For example:

► Evidence of robust count procedures being followed for recalled stock.

► Reconciliation of products returned to underlying accounting records and
Identify and quantify the losses suffered by you

It is critical to ensure that all relevant losses have been quantified and included appropriately in a potential claim against suppliers or insurers. This will ensure that the full extent of the loss is understood by stakeholders and will strengthen the case for recovering all associated costs.

We can:
► Draw on our insight and experience of dealing with product recall, business interruption and disruption of trade claims to ensure that no areas of a claim are omitted or understated.
► Suggest innovative solutions to enable you to quantify value items such as brand damage or loss of customer goodwill despite traditional opinion holding these immeasurable.
► Give voice to the alternative – enabling you to anticipate and rebuff the challenges that your claim might face, and commenting on strengths and weaknesses.
► Ensure the claim is supported by sufficient evidence and that the evidence is presented clearly and persuasively.
► Provide commercial advice to facilitate your response to queries from a supplier or insurer and ultimately help you to secure a favourable settlement.

Our experience
Supply of pharmaceutical products which breach safety and quality control standards
We were appointed by a pharmaceutical company to advise on a potential claim against its supplier’s liquidators, a manufacturer of herbal medicines and vitamins, following the recall of 219 products due to a series of safety and quality control breaches.

Our client’s key strategy for the recall had been to minimise the erosion of customer loyalty. However, the client lacked adequate documentation of the recall which would demonstrate the difference in cost between the recall itself and the additional costs incurred as a direct result of their key strategy. Despite the absence of vital documentation, we were able to use analytical procedures and statistical sampling techniques to construct a credible claim for the extent of the loss suffered.

Deficient compound supplied by a major chemical company to a producer of plastic goods
The plastic goods extruded by our client, operating in the building products sector, discoloured due to a deficient compound supplied by a major chemical company. As a consequence, our client faced significant rectification costs.

Our client sued the chemical supplier for breach of contract. The claim for past loss included the loss of customer goodwill and price concessions made, along with the cost of management time expended on resolving the issue. Our client also needed to demonstrate that rectification had taken place only where an absolute necessity. We worked alongside our client from an early stage to develop the documentation process, in order to ensure the claim was property substantiated. We also played a key role at the mediation which resulted in a substantial settlement offer for our client.

Faulty components used in the manufacture of lighting products
We were appointed by a company to advise on the past and future losses it had suffered as a result of the supply of faulty components which it had subsequently used in the manufacture of its lighting products.

A formal and widely publicised product recall was avoided in an attempt to preserve customer loyalty. However, where a large number of faulty products had been installed in one place or where there were safety implications, our client visited those sites and replaced the products. Our client relied on its customers to return faulty products themselves in all other instances.

Prior to our appointment, the client had drafted an initial calculation of the claim, considering past returns alone. We made amendments to the calculation which included a considerable increase to the potential loss claim. The issue was resolved in our client’s favour and the sum awarded was very close to the amount we had originally suggested.