



Will COVID-19 lead to a rise in product liability and recall claims?

COVID-19 is continuing to have severe consequences for manufacturing and supply chain ecosystems, disrupting supply and demand, production and distribution across the globe. At the same time, concern around the role of products as vectors in the transmission of the disease, continues to generate media interest.

In this article, Kim Alcock, Head of UK Casualty & TPA Operations, sets out three trends to look out for in 2021 in product liability.

Three trends to look out for in 2021 product liability

1. Product liability claims against manufacturers and suppliers, whose products could potentially contribute to the spread or consequences of the virus.

In most cases, the highly infectious nature of COVID-19 is likely to make it difficult for claimants to establish a chain of causation between product and illness. However, past claims for hand sanitisers and face masks, based on allegations that the products failed to prevent the contraction or spread of certain diseases, are a good example of the type of product liability claim that may emerge.

There is also likely to be ongoing speculation about whether food products or packaging can transmit the virus. The US Centers for Disease Control and Prevention (CDC) have stated that there has been no evidence that “handling food or consuming food is associated with COVID-19”. Similar findings have been cited by the World Health Organization (WHO). Yet, the Chinese Centre for Disease Control and Prevention (China CDC) has since reported that it found traces of live virus on the outer packaging of frozen fish products. Cynics have implied ‘fake news’ or a politically motivated stance. Either way, it is a clear sign that there are more twists and turns to come, as science tries to keep abreast of developments around the globe.



2. Product recall claims for COVID-19 related losses.

As the financial impact of COVID-19 bites, we anticipate that businesses, facing huge losses of earnings, may increasingly look to their product recall insurers. Product recall policies will not afford cover for COVID-19 related events where there is an absence of a product acting as a vector for the disease. However, some market policies, such as foodborne illness coverages for the hospitality and restaurant sector, do carry triggers relating to pandemic or disease outbreak, which can engage business interruption coverage. As a result, we have already seen multiple foodborne illness and food manufacturers placing insurers on notice of SARS-CoV-2/ COVID-19 related losses and we predict that this is set to continue.

3. Legal change

The US Department of Health & Human Services (DHHS) have issued a Declaration for Medical Countermeasures Against COVID-19 to provide limited immunity against claims resulting from the manufacture, distribution, administration or use of “any antiviral, any other drug, any biologic, any diagnostic, any other device, or any vaccine, used to treat, diagnose, cure, prevent, or mitigate COVID-19 or any device used in the administration of any such product, and all components and constituent materials of any such product.”

Currently, no such protection exists in the UK. Hence, those involved in production and supply of a wide range of products designed to protect against the virus may be open to claims if it can be proven that those products were ineffective.

Conclusion

With UK news dominated by the promise of vaccines to be rolled out from spring, it will be interesting to see whether UK legislators move to provide protection for the pharmaceutical companies, who have been racing to find a way out of the pandemic or whether protection of the public will be paramount.

In the meantime, with lockdown restrictions set to continue into 2021, there is undoubtedly more disruption to come for manufacturers and suppliers of goods, along with their product liability and recall insurers. Current trends are set to continue and new ones may emerge as we continue to learn about and adapt to cope with the wide sweeping health and financial implications of this disease.



Kim Alcock LLM ACII FCILA AInstLM
Head of UK Casualty & TPA Operations

☎ +44 (0)7767 100 623

✉ kim.alcock@mclarens.com