

Product Liability and Product Recall Overview: Focus on the EU, Russia, Brazil and Mexico

**Legal Issues Council
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Introduction

Global Auto Product Recall Trends

- Magnitude of recalls increasing; 2014 was a record-breaking year for automotive industry recalls
- According to NHTSA, in US alone, 550 recalls affecting over 53 millions vehicles
- Massive fines imposed for mishandling product safety and warranty information
 - US leading the way; VW may cause that to change
 - US regulators also demanding compliance changes and imposition of additional quality measures
- Consumer confidence impacted; increased attention (internet, social media (#recall), GM/Toyota crises)

Global Focus On Automotive Industry Increasing

- Regulatory focus sharpening and reaction increasing as the roll-out of massive recalls hit the news
- Regulators are being forced to examine active enforcement of relevant safety and other requirements because of delayed notification
- In-country oversight of operations now in focus because of regulatory investigations in US
 - Investigations uncovering inconsistent responses globally; consistency of approach important story to tell
 - Company's operations and quality, safety and compliance program outside of US at issue

Factors Contributing to Recall Trends

- Frequent product launches; customer demand for new models with more complexity of design
- Technological innovation push
- Research and development on components done in silos
- Product testing and integration into full vehicle
- Supply chain issues
- Poor monitoring of/reaction to safety issues
- Delayed regulatory notification

Suppliers In Focus

- Air bag recalls pushed the supplier to the regulatory forefront
- Regulators now demanding individual suppliers to run a recall, as opposed to focusing on auto manufacturers
- June 2015: NHTSA's Path Forward
 - NHTSA focusing on information collection and audits of automotive manufacturers *and their parts suppliers*
 - Both will be put on notice by NHTSA of investigations to promote OEM accountability and action
 - Failure of supplier to cooperate resulting in fines

Regulatory Compliance Critical

- Ensuring effective compliance response to these trends is critical
- Compliance is for both quality and safety
 - Product warranty: quality and consumer protection requirements
 - Product recall: product safety concerns
- Compliance does require country-specific reactions, particularly on notice
- But universally, compliance can be implemented globally, and includes quality processes, safety monitoring (including trend analysis), claims assessment, and regulatory reporting

Roundtable Topics For Today:

- What regulations apply to motor vehicle equipment?
- What are the recall requirements, including notice and ongoing reporting obligations?
- What are the enforcement trends?
- What role do auto parts suppliers play in recalls?
- What are the theories of liability brought by consumers and/or regulators for product defects?
- What are the judgment trends in such cases?
- Are class or collective actions available?
- What are some compliance recommendations for parts suppliers?

European Union

Introduction: The EU

- Currently 28 EU Member States:
 - Austria, Belgium, Bulgaria, Croatia, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, Netherlands, Poland, Portugal, Romania, Slovakia, Slovenia, Spain, Sweden, UK
- 3 additional countries in the EEA (along with the EU Member States):
 - Iceland, Liechtenstein & Norway
- Important non-EU countries which have comprehensive product regulatory and liability regimes:
 - Switzerland, Turkey and Russia

Introduction: EU Law

- Large degree of harmonisation among EU/EEA Member States for product regulation, liability and product related consumer rights:
 - **EU Directives** have to be implemented into national law in a fairly standard way; and
 - **EU Regulations** have direct effect in the Member States without needing to be implemented.
- Enforcement is carried out at Member State level
- Member States sometimes have different interpretations of EU law

Introduction: National Law

- Tort and some aspects of contract law generally not covered by EU law
- While there are many similarities, must understand national law differences
- Europe has both common law and civil law countries; approaches to liability quite different

Product Safety & Recalls

Product Safety

- General approach under EU law: Vehicles are “products”, passenger cars are “consumer products”
- For passenger cars, general product safety laws apply
 - Only safe products may be placed on the market
 - Manufacturers, importers and distributors must inform the authorities if they learn about a safety issue
 - They must suggest appropriate corrective actions, e.g. recall

Product Safety

- What is a safety issue? Defined by what constitutes safe, as opposed to unsafe:
 - “Safe product” shall mean
 - *any product which, under normal or reasonably foreseeable conditions of use including duration and, where applicable, putting into service, installation and maintenance requirements, does not present any risk or only the minimum risks compatible with the product's use, considered to be acceptable and consistent with a high level of protection for the safety and health of persons.*

Product Recalls: Passenger Cars

- EU takes a coordinated approach to motor vehicle recalls
- Notification to regulators is through RAPEX—the EU’s rapid-alert system on dangerous products
- Recalls of motor vehicles among the top categories of RAPEX reports

RAPEX Notification

Notification Reference: A12/0103/15

Risk level	Serious risk
Product user	Consumer
Notifying country	Germany
Product category	Motor vehicles
Product	Passenger car
Brand	Opel
Name	Corsa
Type/number of model	Corsa-D Type: S-D EG-Type approval number: e1*2001/116*0379*27; e1*2001/116*0379*28 e1*2007/46*0505*07; e1*2007/46*0505*08 e50*2007/46*0055*04
Batch number/Barcode	Vehicles affected: End of April 2014 to start of June 2014.
OECD Portal Category	77000000 - Automotive
Description	Passenger car.
Country of origin	Germany
Counterfeit	
Risk type	Injuries
Risk description	There is a possibility that the steering knuckles could break after long use. Breakage of a steering knuckle could, depending on where the breakage took place, lead to a loss of steering control.
Measures adopted by notifying country	Voluntary measures: Recall of the product from end users

Example of
RAPEX
notification
for Opel
Corsa
(passenger
car), 2015

Product Recalls: Commercial vehicles

- In most EU Member States: No mandatory recall obligation for commercial vehicles.
- However, in practice, regulators usually expect a corrective action along the lines of customer car action:
 - For example, the UK regulator for vehicles and their parts, the DVSA, has Codes of Practice for recalls, which expressly state they cover passenger and commercial vehicles and regulator requires notification of both types, even if, strictly speaking, there in situations where there is no legal basis for the latter.

Product Recalls: Role of Suppliers

- Company obliged under the law = (usually) the vehicle manufacturer / importer
- Authorities will expect vehicle manufacturer to take action
- Vehicle manufacturer will decide how recall is carried out
- However, manufacturer likely looking for indemnification from supplier for costs of corrective action if caused by defective part supplied

Product Recalls: Role of Suppliers

- Suppliers are oftentimes involved in analysis of root cause
- Interests often aligned:
 - Important to pinpoint root cause, in order to be able to limit the number of vehicles affected by the recall
 - Quick and effective implementation of the recall
- Use of external expertise may be required, e.g. to carry out a “risk analysis”, which is important for assessing the degree of risk (KBA only requires recall in case of “serious risk”)

Product Recalls: Role of Suppliers

- In case of aftermarket product, or product supplied with a car but which is not inbuilt, the supplier may be “manufacturer”
- Potential problem: How to identify affected customers?
- Notification efforts tied to identifying customers

Product Recalls: Penalties

- Regulatory penalties may be available under national law
- Under the following conditions, failure to recall for a product safety issue may trigger criminal liability, depending on national law:
 - Injury as a consequence of an unsafe vehicle
 - Knowledge of manufacturer about the safety issue
 - Omission to recall (immediately)
- Criminal liability may also be available for fraud and other misrepresentations

Case Study: Toyota

- November 2009 to February 2010 – three separate voluntary worldwide product recalls
- Braking and acceleration problems on various models – Avalon, Camry, Corolla, Highlander, Matrix, Prius, RAV4, Sequoia, Sienna, Tacoma, Tundra and Venza
- First recall triggered when four people were killed when accelerator pedal of Lexus ES350 became trapped under the floor mat
- Additional recalls from further investigations

What went wrong?

- US investigation found Toyota issued repair procedures to distributors for sticking accelerator pedals but failed to notify US authorities:
 - *“We now have proof that Toyota failed to live up to its legal obligations...Worse yet, they knowingly hid a dangerous defect for a month from officials, and did not take action to protect millions of drivers and their families”* – US Transport Secretary Ray LaHood
 - In Congressional hearings, company admitted it knew about accelerator problems months before information was made public; further admitted company prioritized growth and sales volumes over quality and safety

What went wrong?

– Notification issues

- Toyota's recall announcement appeared to claim floor mats were solely at fault
- NHTSA statement: "This matter is not closed until Toyota effectively addressed the defect...(Toyota's announcement) was "inaccurate and misleading" and removal of floor is "merely an interim measure, not a remedy."

What went wrong?

- Recall was piecemeal and reactionary
 - November: Toyota amended floor mat recall to identify defect related to the reconfiguration of accelerator pedal
 - January: Second recall in response to reports that pedals were sticking in cars without floor mats
 - Throughout January: Recall continually widened globally; first China and Europe, then Africa, LA and the Middle East
 - February: Recall expanded again to cover a “glitch” in the anti-lock brake software

Damage

- Losses to Toyota in excess of \$2 billion:
 - \$1.2 billion penalty under deferred prosecution agreement with the US DOJ
 - \$48 million civil penalty from NHTSA
 - But, as far as aware, no fines in the EU
- Lost Sales: estimated loss to dealership between \$1.75m to \$2 million a month in revenue
- Damaged reputation and sharp fall in share price; shares fell in value by 15% in a 5-day timeframe
- Negative effect on the resale value of used cars; potential consumer claims
- Credit rating impact

Lessons learned

- Time delay between knowledge of faults and recalls a critical error
- Failure to act decisively when a problem became apparent
- Failure to communicate with authorities even when repair procedures issued to distributors
- Failure to investigate initial defects thoroughly enough
- Rolling recalls as new faults came to light meant the bad news kept on coming
- Inconsistent approaches in affected jurisdictions

SMART – Changes at Toyota

- Recalls not due to factory error/quality control problems but rather design issue leading to consumer complaints
- Better communication of consumer issue to management required
- New global quality committee to coordinate defect analysis and future recall announcements set up
- Swift Market Analysis Response Team (“SMART”) set up in the U.S. to conduct on-site vehicle inspection
- Expanded use of event data usage, third-party quality consultation and increased driver safety initiatives

Product Liability

Product Liability Claims

- Strict liability under national implementation of the Product Liability Directive (“PL Directive”)
 - Claim by person who has suffered personal injury or damage to personal property due to a defective product
- Liability in tort or similar
 - If personal injury or damage to property caused by the act/omission of someone in the product supply chain
- Contractual liability
 - Breach of express or implied terms as to quality or passing of financial liability back up the supply chain

Strict Product Liability

- PL Directive imposes strict liability on certain entities in the supply chain of a defective product for damage caused by the product
- Component parts are considered a “product”
- Defective = does not provide the safety which a person is entitled to expect, taking all circumstances into account, including:
 - the presentation of the product
 - the use to which it could reasonably be expected that the product would be put
 - the time when the product was put into circulation

Strict Product Liability

- Primary liability is imposed on
 - The producer (effectively the actual manufacturer)
 - Any person who, by putting his name, trade mark or other distinguishing feature on the product presents himself as the producer (known as an "ownbrander"); and
 - The importer into the EU
- Where there is more than one of these entities, liability is joint and several; claimant can choose whether to sue just one or several

Strict Product Liability

- Liability is strict, which means that no proof of fault is required and very limited defenses are available:
 - Defect did not exist at the time the product was put into circulation
 - Defect is due to the compliance of the product with mandatory laws
 - The state of scientific and technical knowledge at the time the product was put into circulation was not such as to enable the defect to be discovered
 - For component parts, that the defect is attributable to the design of the product into which it has been fitted or the instructions given by the manufacturer of the end product

Strict Product Liability

- While proof of fault is not required, causation is: i.e., that the damage was caused by the defect in the product
- Not possible to exclude this type of liability by contract
- Liability may be imposed for 10 years from date product supplied

Negligence

- Non-contractual liability; generally focusses on the behavior of the defendant which may have led to the damage being caused by the product
- Not regulated at EU level; elements of such a claim a question of national law:

UK	Germany
1. Defendant owes a duty	Intentional or negligent breach of a duty of care which causes damages to the health of people or to property
2. Defendant breached the duty	
3. The breach caused the injury	
4. The damage was a foreseeable consequence of the breach	

Contractual Claims

- A question of national law; often impacted by the growing body of EU consumer protection legislation
- Most EU jurisdictions recognize certain minimum contractual warranties (in addition to any express terms)
- Minimum warranty typically applies to a product which does not comply with the terms of the purchase contract and as a result loss, damage or injury occurs
- For example, UK includes implied terms as to satisfactory quality and fitness for purpose; damages are to make consumer whole

Contractual Claims

- For suppliers, contractual liability likely to arise in context of financial impact of claims being passed back up the supply chain
- But it is generally possible across the EU to agree to limit liability between businesses

Risk Multipliers: Collective Actions in the EU?

- Collective litigation in product liability claims in the EU are relatively rare compared with the US
- But, is there a future for product liability class actions in the EU:
 - Long been some scope for collective action in this area
 - European Commission’s recommendation of 11 June 2013 “*on common principles for injunctive and compensatory collective redress mechanisms in the Member States concerning violations of rights granted under Union Law*”

The EU Collective Action Future

- The EU Commission issued 2013/396/EU, “Common principles for collective action across EU Member States”
- Issued in June 2013; non-binding recommendation; will be reviewed by 2017
- Member states are to adopt collective action procedures with common features in all areas where EU law grants rights including consumer protection / product liability claims



Common Principles

- Within 2 years: collective redress mechanisms for both injunctive and compensatory relief mechanisms
- More coherent and consistent approach to collective redress across the EU

Common Principles

- Injunctive relief to prevent infringements of EU rights and damages for any harm caused
- Procedures should be fair, equitable, timely and not prohibitively expensive
- Opt-in (opt-out only where justified by “sound administration of justice”)
- Procedural safeguards (no contingency fees; no punitive damages; limits on 3rd party funding; identification and discontinuance of manifestly unfounded cases at earliest possible stage)
- Settlement (either consensually or by ADR) should be encouraged
- Judge should be given central role in the litigation

Class Actions: A vision of the future?

- Many Member States anxious to avoid development of US-style litigation culture
- Currently no appetite for reform of product liability claims in key jurisdictions like the UK or Germany

UK Approach

- Group Litigation Orders available but really just a case management tool and not very popular
- Why? Lack of funding available for legal costs, loser pays system, no punitive damages or jury trials, opt-in only, cultural differences
- Recent reforms have been limited to competition laws: The Consumer Rights Act 2015 contains: (a) new opt-out collective action for competition law claims and (b) new collective settlement regime for both opt-in and opt-out claims
- No plans for introducing opt-out collective redress in product liability claims

Other Reactions in the EU on Collective Actions More Favorable

- France in March 2014 introduced a new consumer law which includes new collective action procedure
 - Product liability claims are eligible
 - However, no compensation for bodily injuries (therefore of limited appeal?)
- The Netherlands has a well-established collective settlement regime
- Watch for developments as 2017 nears and reassessment by the EU Commission occurs

Spotlight On Russia

- Increased product liability claims is a trend in Russia involving the automotive industry
- Number of claims increased substantially in recent years
- Most claims filed directly against manufacturer, which is possible under Russian consumer protection laws even where there is no contract between them
- If the manufacturer refuses a valid claim which is then litigation, sanctions available to a court are:
 - Penalties of 1% of the product's price for each day of delay, which can be reduced in exceptional cases
 - A fine of 50% of the amount awarded to the consumer, which cannot be reduced by the court

Latin America

Latin America Introduction

- Latin American is almost exclusively civil law;
- Strict and joint liability often found
- Great focus on consumer issues, with connections between countries:
 - Consumer Safety and Health Network
 - Inter-American Rapid Alerts System (SIAR)
 - Academic events to discuss consumer protection matters in Latin America
- Authorities in many LA countries focused on the automobile and auto parts industry

Latin America Introduction

- Because civil law, consumer protection codes generally regulate product liability and recall obligations, if they exist
- Consumer protection authorities are involved in recall procedures (differently from the U.S. where you have specific agencies NHTSA, FDA, etc.)
- Strong enforcement for the industry in certain jurisdictions: Brazil and Peru
- The “Immediately” requirement: Brazil, Colombia, Peru, and Mexico

Latin America Introduction

- Within the South American automotive industry, Argentina is the second-largest market for passenger cars after Brazil
- While expanded regulatory requirements and safety-related behaviors in some jurisdictions, including Brazil; Argentina not as advanced
- In addition, regulators may be challenged by technological advancements

Latin America Introduction

- Despite large markets and connectivity between some countries, differences in regulatory environment exists
- Recall rules absent in some countries
- Product safety compliance path forward therefore requires assessment of statutory warranty, post-sale requirements and consumer laws, in addition to any existing recall rules
- Specific recall proceedings, where they exist, established by the norms in force in Latin America (e.g. strict deadlines to implement actions)

Country-Specific Examples

- Argentina
 - Statutory warranty of 6 months for new products
 - Post sale service required; strong enforcement of these requirements
 - No specific rules on recalls
- Brazil
 - Consumer Protection Code highly enforced both for quality and safety issues (civil, administrative, and criminal liabilities)
 - Specific mandatory provisions for product warranties
 - Recall to be performed immediately

Country-Specific Examples

- Chile
 - Joint liability
 - Quality standards and testing protocols exist
 - Recall procedures exist
 - Companies ordinarily conduct “voluntary recalls” with or without coordination with the National Chilean Consumer Service (“SERNAC”)
 - If a global recall is launched, SERNAC gets the information right away from other agencies (bilateral cooperation agreements)
 - Ministry of Transportation involved in recalls of the automotive industry

Country-Specific Examples

- Colombia
 - Recall regime exists in Consumer Protection Guidelines (General Regulatory Framework issued by the Superintendence of Industry and Commerce)
 - Notice to the Consumer Protection Authority required within 3 calendar days of product defect
- Mexico
 - Strict recall requirements; immediate notification to the Federal Consumer Protection Agency about recall campaigns
 - Recall to be performed immediately
 - Consumer Authority may impose a recall campaign if the product does not comply with standardization rules

Country-Specific Examples

- Peru
 - Joint liability in the supply chain
 - Recall requirements exist; recall to be performed immediately
 - Consumer authorities very focused on the automotive industry and auto parts
- Venezuela
 - Strict and joint liability in the supply chain
 - No rules on product recalls anymore

Mexico

Product Safety

- Legal Framework
 - Federal Consumer Protection Law (the “Consumer Law”)
 - The Federal Law of Metrology and Standardization (the “Standardization Law”)
 - Federal Civil Code
 - Civil Code of Individual States

Consumer Law

- Key principles:
 - Protection of life, health and safety of consumers against risks caused by products
 - Provide clear information regarding the quantity, characteristics and risks
- Definitions
 - *Consumer*: (i) individual or legal entity that acquires, carries out or enjoys, as final end user, goods, products or services and (ii) standing for certain administrative actions to legal entities that acquire goods and services to incorporate them into process of production
 - *Supplier*: individual or legal entity that customarily or periodically offers, distributes, sells, leases or grants the use of goods, products and services

Standardization Law

- NOMs impose minimum characteristics and specifications for products that may present risks or cause damage to human health
- Duties are imposed to manufacturers and in certain cases to importers and distributors
- Two effects of non-compliance (i) penalties under the Consumer Land and the Standardization Law and (ii) liability for damages under the Federal Civil Code

Civil Code

- Multiple theories of liability:
 - Warranty
 - Negligence
 - Fault based
 - Strict liability

Recall Procedure

- Defect: product does not correspond to the quality, trademark, specifications, elements, or a NOM
- Obligation to recall:
 - As a result of a “verification visit”
 - Obligation to report
 - Obligation to warn consumers
- Recall procedure:
 - Notice of recall to Profeco listing (i) safety risk; (ii) number of units; (iii) actions and remedy; (iv) point of contact in Mexico and (iv) photographs
- Defenses to manufacturer

Remedies

- Damages
- Moral damage
- Remedies before Profeco (federal prosecutor designed to protect consumers against abuses or fraud by companies operating in Mexico); includes damages to be paid to consumers



Collective Actions

- Collective actions are available in Mexico to prosecute consumer claims
- May also be brought by government agencies like Profeco

Brazil

Consumer Protection Framework in Brazil

- Applicable legislation
 - Consumer Defense Code and federal laws
 - State and Local laws
 - Ordinances issued by the Ministry of Justice and Local Consumer Protection authorities
- Consumer Defense Code
 - Concept of Supplier (very broad) – includes the entire supply chain
 - *Information Principle*
 - Recognition of the *vulnerability* of the consumer

Consumer Protection Framework in Brazil

- Relevant topics
 - Post-sale services
 - List of abusive practices and abusive clauses
 - Protection against false and misleading advertisement
- Compliance is for both quality and safety
 - Product warranty: quality and consumer protection requirements
 - Product recall: product safety concerns

Liability Regime

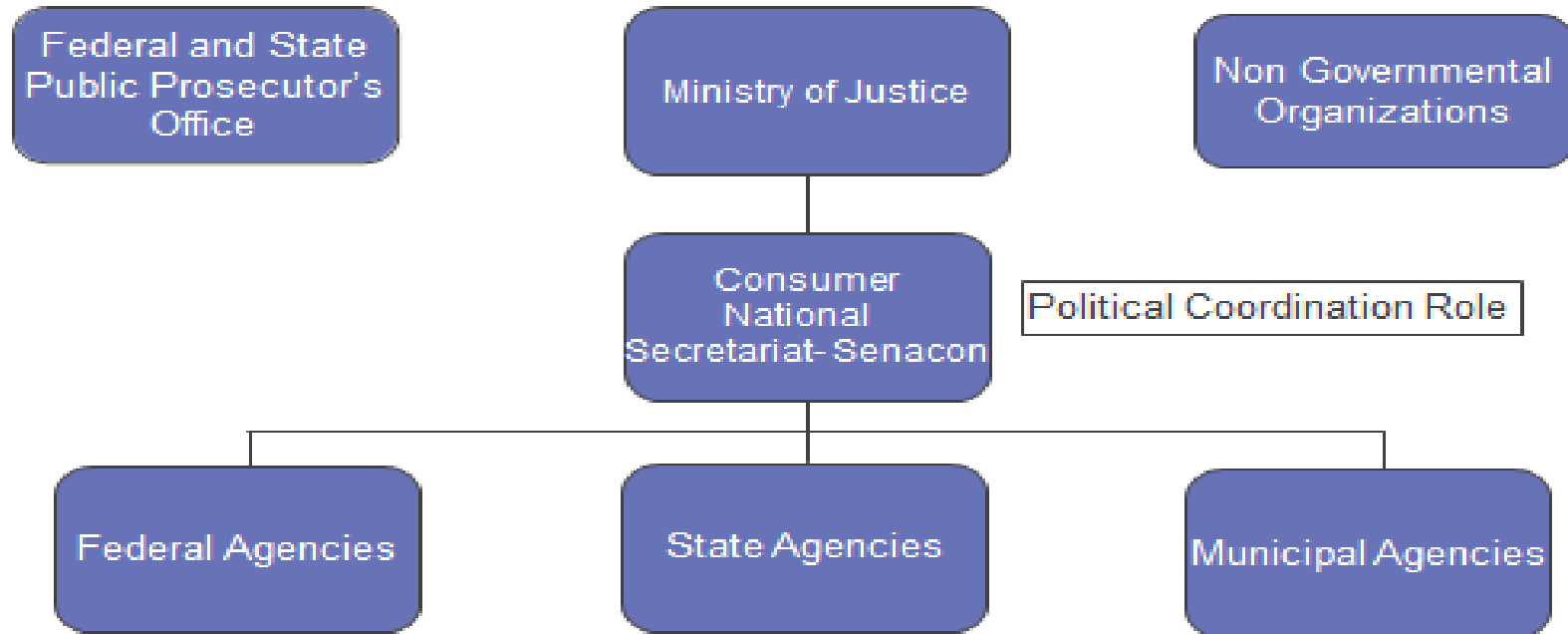
- Administrative: arises from the non compliance with the rules in force (practice of an administrative infraction foreseen in Consumer Protection Legislation);
- Civil: arises from damage caused to consumers by the product or service or due to qualitative or quantitative defects of the product or service – joint and strict liability among the suppliers, regardless the lawfulness of the conduct
- Criminal: conduct corresponds to a legal provision of the CDC or Federal Law No. 8,137 of December 27,1990 – based on the culpability



Collective Suits

- As is the case in some other Latin American jurisdictions, collective lawsuits may be available for violating consumer protection rights
- Such actions in Brazil are normally filed by Public Prosecutors

National System of Consumer Defense – NSCD



Product Liability

- The majority of lawsuits regarding product and service defects are filed by consumers individually
 - Small claims court
 - Main fields: regulated services such as energy, phone, cable TV, internet, and financial services
 - Automotive industry: lawsuits filed by consumers against the vehicle manufacturer due to product defects and violation to the Consumer Defense Code
 - No punitive damages in Brazil
 - Moral damages may apply

Product Liability Trends in Brazil

- Civil Investigations (prior to Collective lawsuits)
 - Public Prosecutors investigate whether the supplier caused damage to a group of consumers
 - Involvement of criminal authorities and technical experts to check if the product complies if the technical rules
 - Determine if an agreement can be reached:
 - Obligation to comply with the Consumer Defense Code
 - Payment of indemnification

Product Liability Trends in Brazil

- Collective lawsuits
- As is the case in some other Latin American jurisdictions, collective lawsuits may be available for violating consumer protection rights
 - Normally filed by Public Prosecutors
 - Mostly in recall discussions in the automotive industry
 - Public prosecutors tend to adopt a conservative and pro-consumer approach

Product Recall Environment in Brazil

- Magnitude of recalls increasing in Brazil
- Authorities focused on the automotive industry
- Consumer confidence impacted; increased attention (internet, social media (#recall), GM/Toyota crises)
- Since 2002:
 - 535 recall campaigns of vehicles
 - 37 of automotive parts
- Most of recalls performed by the vehicle manufacturer
 - Some recalls performed by auto parts suppliers, when they indicate which vehicles and brands were affected

Product Recall Rules

- Consumer Protection Code and Procedure from the Ministry of Justice
 - Mandatory
 - Only in cases of risks to human health and safety
 - Report immediately to Consumer Protection Authorities, Brazilian NHTSA, and consumers
 - High enforcement of specific regulations by authorities
 - Difficulty to close the campaigns mainly in the auto parts and automotive industry: difficulty to recall 100% of the products
 - Auto part manufacturer or vehicle manufacturer may be required to perform the recall campaign
- Fines may vary from 130 USD to 2 MM USD
 - Highest fine applied to the industry: 500k USD

Product Recall Rules

- Consumer Protection Code and Procedure from the Ministry of Justice
- Mandatory
- Only in cases of risks to human health and safety
- Report immediately to Consumer Protection Authorities, Brazilian NHTSA, and consumers
- Auto part manufacturer or vehicle manufacturer may be required to perform the recall campaign

Product Recall Penalties

- Active enforcement of specific regulations by authorities
- Fines are issued, and vary from USD \$130 to USD \$2m; however, highest fine applied to the industry: USD \$500k
- Difficulty to close the campaigns in the auto parts and automotive industry because of expectation to recall 100% of the products

Product Recall Trends

- Regulators expect companies to act “immediately”
 - It is important to confirm internally if the product poses risks to human health and safety or not
 - If so, immediate action is expected, even without root cause determined
- Regulators strictly follow rules on the communication procedure itself
 - Most of the penalties are applied by regulators for non-compliance with the rules on the recall procedure and/or failing to act “immediately”
- Regulators disfavor double standards; follow recalls conducted overseas

Product Quality

- INMETRO – National Institute of Metrology, Quality and Technology is responsible for technical regulations applicable to automotive products sold in Brazil:
 - Technical regulations are prepared by working groups composed by government officers and industry representatives (Brazilian Technical Norms Association - ABNT)
 - May be voluntary or compulsory – law defines products subject to compulsory certification
 - Tires and automotive parts are subject to INMETRO's compulsory certification

Product Quality

- The inspection and quality performance tests are conducted by accredited entities that certify that certain products comply with the regulations
- Other regulations are found in rules from other agencies, such as from the National Council for Traffic – CONTRAN
- Non-compliance with technical rules and standards also subject companies to civil, administrative, and criminal liabilities

Compliance Recommendations

Follow Your Compliance Programs

- Follow a formal written compliance program:
 - Document risk assessments and product testing throughout the product development stage
 - Maintain quality assurance records
 - Document any manufacturing/material changes and testing to ensure compliance with specifications
 - Ensure effective management of consumer incidents—wherever they occur—and other potential safety reports
 - Make sure decision makers are properly informed
 - Document procedures and practices followed for a product safety issue, both before and after a recall
- Continually assess and improve your program

View Product Safety Compliance Broadly

- Review current product warranties and adapt them to local jurisdictions
- Review product recall policies, including multi-jurisdiction campaigns, for compliance
- Review policies on internal monitoring of product warranty, safety and defect issues
- In-house compliance training (legal/technical teams)
- Review contractual clauses with automobile manufacturers (obligations to share information when a defect is identified, who will perform the recall, costs sharing)
- Build relationship with local regulators and consumer and protection authorities

Examine Your Own Supply Chain

- Supply chain risks are significant
- For the supplier with suppliers:
 - Ensure traceability up and down the supply chain
 - Ensure your suppliers notify you of any changes to manufacturing process or material sourcing
 - Don't just ask for it—review relevant documentation received from suppliers detailing compliance with any mandatory or OEM-imposed product safety standards and product specifications
 - Demand the right to audit your suppliers, and do it

Avoid:

- A slow reaction to a potential product safety issue
 - Delayed communication to OEMs about potential issues could expose you and them to unnecessary liability
 - Also may result in delayed notification to regulators, increasing the risk of civil and criminal penalties
- Dressing safety issues up as quality issues:
 - Poor response rate
 - Warnings ineffective/chain of causation not broken
 - Liability for personal injuries/death
 - Increased prospect of regulatory fines/penalties

Avoid:

- Piecemeal reactions or inconsistent stories
 - Multiple recalls; multiple regulatory investigations
- Insufficient root cause analysis
- Poor product traceability records:
 - Increased financial losses because recall scope enlarged
 - OEMS/consumers not in fact notified
 - Consumers unnecessarily notified: anxiety claims
- Careless communications – smoking gun for future litigation