

EFFECTIVE MANAGEMENT OF COMPLEX LITIGATION

Perspectives from In House and Outside Counsel

Iowa Defense Counsel Association
Annual Meeting and Seminar

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I. The Role of In House Counsel

A. Job Duties and Priorities

B. Litigation Management

1. Policies and Procedures

2. Insurance and TPAs

3. National Counsel

II. The Role of National Counsel

A. "Evolution" of Product Liability Defense

B. National Counsel Responsibilities

1. Coordination with Company, TPA and Insurance Company

2. Familiarity with Past Litigation, Product Lines and Personnel

3. Consistent Approach to Litigation Strategy, Discovery Issues

4. Early Input - Case Evaluation

5. Selection of Local Counsel

III. Managing Litigation Risks for Retailers and Distributors:

A. Statutory Protection

1. Limited Immunity for Retailers and Distributors
2. Statutory Indemnity and Contribution
3. "Certification" of Manufacturer
4. Common Exceptions to Statutory Protections
 - (i) Independent Tort Liability
 - (ii) Manufacturer Not Viable Defendant

B. Common Law

1. Contribution
2. Indemnity (Common Law)

C. Contract

1. Indemnity
 - (i) Distinctions in Terminology
 - (a) "Indemnify"
 - (b) "Defend"
 - (c) "Hold Harmless"

- (ii) Applicability and Scope - Potential Issues
 - (a) Trigger: Claim or Judgment?
 - (b) Attorneys Fees and Litigation Expenses?
 - (c) Expert Witnesses and Consultants?

- (iii) Exceptions
 - (a) Independent Negligence
 - (b) Status of Manufacturer
 - (c) Contractual Requirements
 - (1) Prompt Notice
 - (2) Conditions and Limitations
 - (3) Cooperation

2. Insurance - Protection for Retailers and Distributors

- (i) "Additional Insured"

- (ii) Proof of Coverage
 - (a) Certificate of Insurance
 - (b) Additional Insured Endorsement (Signed)

- (iii) Potential Conflicts - Primary/Excess Coverage

IV. Litigation Management - "Real World" Examples

A. Tender of Defense - If Available Option

1. Notice of Claim/Tender of Defense
2. If Accepted ...
 - (i) Subject to Conditions or Limitations?
 - (ii) Control of Defense?
 - (iii) "Monitoring" Pending Claims/Litigation
3. If Rejected ...
 - (i) Basis for Rejection?
 - (a) Independent Liability of Retailer or Distributor
 - (b) Subsequent Modification or Alteration of Product
 - (c) Late Notice
 - (d) Other Reasons
 - (ii) Options for Response
 - (a) Cross-Claim(s) in Primary Lawsuit?
 - (b) Separate Lawsuit - During or After Primary Lawsuit?
 - (c) Interim - Responsibility for Defense of Claim/Litigation

B. Active Litigation

1. Litigation Strategy - Defense Themes for Retailers and Distributor
2. Special Challenges of Multi-Defendant Litigation (Supply Chain)
3. Settlement Issues

V. Coordinating Discovery

- A. Balancing Consistency of Content and "Local" Style and Practice
- B. Written Discovery Responses
- C. Depositions