

## **Insurance against the costs of recall campaigns – what do manufacturers need to pay heed to?**

by Philipp Reusch and Saskia Wittbrodt

Since the [judgement by the Federal High Court of Justice \(BGH\)](#) on beds for patients requiring nursing care, it has been clear that not all recall campaigns are the consequences of statutory requirements. So product manufacturers should seek advice in an emergency as to the type and scope of a recall campaign and make sure they get cover from their insurer against the costs of recall campaigns in good time.

### Background

Whatever causes the recall of a product – caustic fluid in babies' nappies, contaminated foams in mattresses or blemishes in car bodywork – the reason why a product is withdrawn from the market or the supply chain has above all a great deal to do with the question of who is to bear the costs of the recall, for extensive recall campaigns are mostly associated with very high costs indeed. For companies, a recall is always an exceptional situation: workers have to be detailed to investigate which products are actually affected by the recall, the goods have to be pre-sorted and placed on one side, repackaged, put into interim storage and perhaps even repaired or retrofitted on the customer's premises or replaced completely. And added to that there are the costs of transporting goods delivered subsequently or redelivered goods, and those of the extra hours worked.

For these reasons, many manufacturers invest their hopes in insurance against the costs of a recall campaign, and basically they are right to do so, since this [add-on to public liability insurance](#) covers costs of the kind mentioned above when the recall is based on a legal obligation. Having said that, care should be taken here. Since the so-called Pflegebettenurteil (judgement on care patients' beds) at the latest, in which the BGH made a statement on the way recall campaigns are organised and the obligation of the manufacturer to bear the costs, it has been clear that a manufacturer – subject to any contractual obligations he may be under – is not as a rule under obligation to provide free replacements or a retrofit, at least not in respect of commercial end users. So if in B2B goods traffic a manufacturer offers a free replacement delivery or a retrofit, this is as a rule, from a legal point of view, merely a matter of customer care. It could result in the justifiable repudiation of an insurance claim by the recall costs insurer and the latter's refusal to meet those costs.


A different kind of assessment will routinely be called for if the products concerned are used by consumers and pose direct and serious dangers to third parties. For the manufacturer is responsible for accident prevention not only vis-à-vis the user, but also vis-à-vis any other third party endangered by the product (the so-called 'innocent bystander'). In these cases a recall campaign would normally have been initiated in order to meet a statutory requirement, and the costs of it would have to be met as covered by the insurance.

## Summary

Final manufacturers should take advantage of this opportunity and reduce the cost risk of a potential recall campaign in accordance with the scope of their production or operations. Having said that, given the judgement on care patients' beds, they should seek to obtain advice in an emergency as to the type and scope of a recall campaign and get cover from their insurer in good time to make sure there are no unpleasant surprises.

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