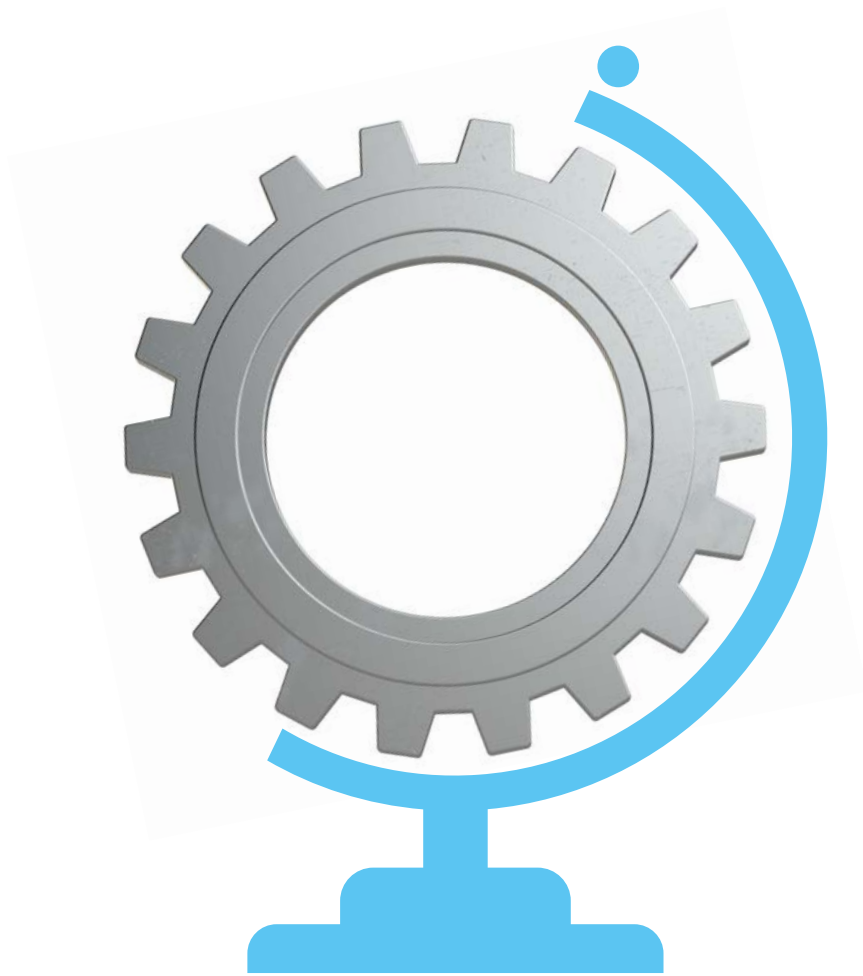


EVERSHEDS  
SUTHERLAND

**Helping to keep  
your world turning**

Our global Product Safety  
Compliance group



# Product safety management: a growing priority

Recent years have seen the management of product safety rise to become a key priority for businesses around the globe. There are a number of contributing factors:



- **regulatory crackdown:** regulatory authorities are taking product safety increasingly seriously: The number of EU product safety notifications has grown from 139 in 2003 to 2,201 in 2017. In the US the number of auto recalls has more than doubled in a decade, and China has seen annual growth in the number of recalls exceeding 50% for the past three years



- **heightened reputational risks:** the 2019 Oxford Economics/Eversheds Sutherland Risk Governance survey identified product safety issues as the greatest source of reputational risk for businesses today. No surprise when social media can destroy a respected brand in hours if it is not seen to be doing the right thing



- **technological change:** unless carefully managed, the drive to stay ahead of the technology curve, increasing pressure on design and engineering teams and reliance on a few key suppliers holding 'go-to' IP all serve to raise the risk of product safety crises



- **economies of scale:** producers increasingly adopt modular strategies where common elements are included in multiple models/brands of product or collaborative platforms are shared with others in the market – bringing significant benefits but potentially increasing the fall-out should a safety issue arise



- **connected technology:** facilitates faster and more effective interventions when product safety issues are identified but also heightens expectations and introduces novel moral dilemmas: with greater power comes greater responsibility



- **growth of class actions/group litigation:** across the world, access to redress for aggrieved consumers is getting easier, with increasingly sophisticated funding options, targeted marketing of group actions through social media and web-based litigation management systems replacing paperwork and court hearings

## Help is at hand

To respond to growing client demand for a one-stop legal solution, Eversheds Sutherland has built an international team of product liability lawyers with experience in handling recalls, product safety incidents, prosecutions and litigation arising from product defects across multiple sectors.

More importantly, we're harnessing our experience at the front line to help clients improve product safety compliance and avoid the crisis before it happens.

Our team provides a rapid response to help you handle product safety crises and litigation. Unlike our competitors, however, we don't just react: we are committed to harnessing the experience of our legal teams, drawn from years of hard fought litigation and recall management, and using it to work with your business in identifying and eliminating product safety risks before the crisis occurs: analysing and testing your resilience, recommending changes and improvements and helping to reduce the risk of a product safety incident and mitigate the reputational and financial impact should one occur.

Wherever you are in the world we are ready to help with rapid and effective guidance, working seamlessly across borders.



# Your one- stop-solution

## Recall and crisis management

Faced with the possibility of a recall, intense media, public and shareholder attention may be focused on you. It is at this point that you need a team you can trust to work with you to protect your organisation and find solutions to the problems you face.

The first 48 hours after an incident are crucial. This is when key decisions are made which have long-term reputational and financial implications. Our aim is to limit exposure, form an action plan and get the right team and strategy in place as quickly as possible, wherever you are in the world.

We have an international 24/7 'code red' crisis management response telephone number (+44 20 7919 0828) providing your business with immediate support and legal advice.

Our international team of product liability lawyers can work with you to ensure that:

- legal duties and responsibilities are fully understood and complied with everyone adheres to clear reporting lines and responsibilities
- contact with relevant authorities is handled sensitively and expeditiously
- any threats to commercial relationships are anticipated and a response planned
- the strategy covers the international dimensions of any crisis





### Recent crisis situations in which we have assisted clients include:



- advising a global paint and coatings supplier following allegations that asbestos had been found on paint coatings used on public transport in Europe



- guiding a US automotive parts manufacturer through the recall of braking systems used on commercial vehicles across Europe



- advising a major construction products manufacturer in relation to its response to tests indicating potential non-compliance of its products with fire safety standards



- assisting a major global supplier of fire detectors following a decision by a Notified Body to suspend compliance certification



- advising a US based medical device manufacturer following identification of a potential manufacturing defect in implanted medical devices



- advising a leading manufacturer of municipal vehicles with the management of corrective actions across more than 15 jurisdictions in Europe and the Middle East



- advising a global medical devices manufacturer on its response to the identification of non-conformant CE marking affecting surgical products supplied to over 20 jurisdictions



- advising a global leisure products manufacturer in respect of multiple incidents involving gas barbeques, including settlement of claims and advice on changes to user manuals



- advising a leading electronics company in a global consumer recall and regulatory notification program concerning over 800,000 domestic appliances

## Product safety compliance and resilience reviews

When did you last step back and assess the way your business manages product safety risk in the round?

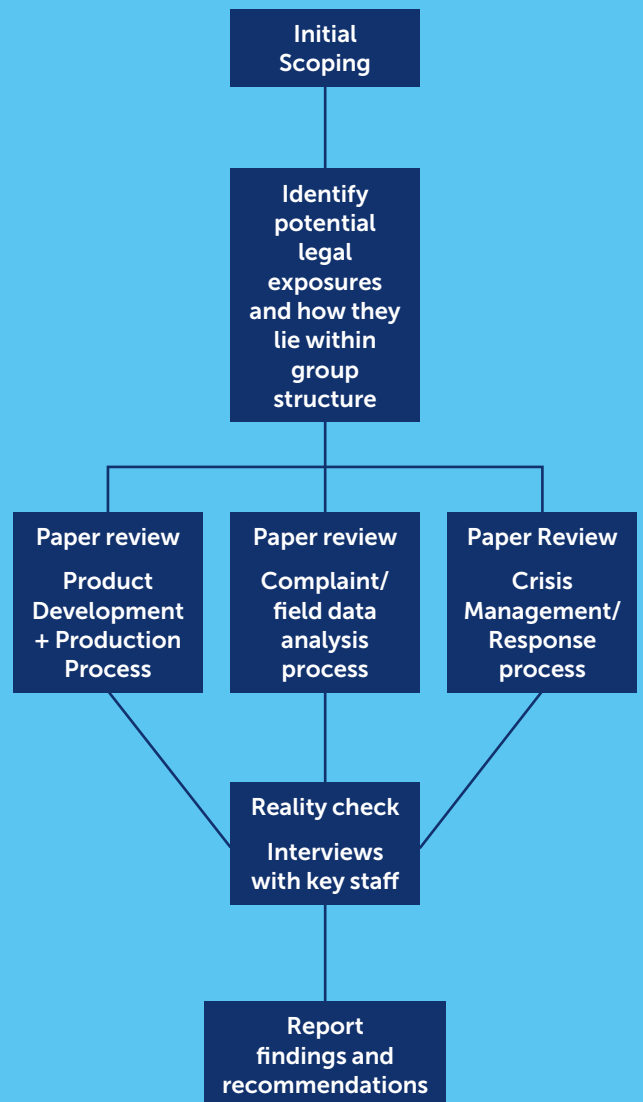
The way you manage product safety can make or break the business, wherever you sit in the product supply chain. Too many businesses wait for a product safety crisis to strike before thinking about how they will respond, or what steps they could have taken to avoid defective products being released in the first place.

Our clients increasingly see the need to assess and improve product safety resilience before disaster strikes. Our experienced team of product liability lawyers have responded to this demand by developing a product safety resilience review. This can help you identify shortcomings and improve your systems to reduce the risk of product safety incidents, and mitigate the impact when they occur.

The review typically includes some or all of the following elements:

- preparation, review and stress testing crisis management plans
- assessing compliance with applicable product regulations (from REACH, through RoHS to WEEE and beyond)
- identifying what exposures the business would face in the event of a product safety issue, and where within the group structure they would land
- deep dive reviews of product risk and recall management – looking at your systems (through desk based review) and how they are actually implemented on the ground (through interviews with key personnel), testing against the latest standards and best practice and identifying areas for improvement

We manage our investigation and reporting processes so as to ensure, where possible, that our work and findings are protected by legal privilege.





### Recent instructions include:



- major product risk review undertaken for a high profile consumer products business operating across Europe, following a major restructuring. Our review included:
  - review as to how legal responsibilities for product safety were allocated within the group after restructuring of the business
  - analysis of internal quality and product performance policies and recommendations for improvements to be made and adjustments to processes to reflect changes within the group
  - in-depth GAP analysis of the client group's product safety crises response plan against industry best practice and regulatory guidance



- in-depth review undertaken for a FTSE250 domestic products manufacturer to assess the compliance and resilience of its product safety processes and crisis response plan in the light of the Grenfell Tower incident. Our work included:
  - desk based review of protocols and policies
  - interviews with key staff
  - preparing a detailed report identifying risk areas and setting out a strategy to improve risk-resilience
  - follow up meetings with the client to monitor progress



- helping a US-based high-tech component manufacturer to review and improve its practices for managing product liability risk and responding to a crises, following a series of 'near misses' identified by the business



- assisting a FTSE 100 manufacturer developing cutting edge automotive propulsion systems to understand the product liability implications and identify steps to mitigate risk. Our analysis was shared through a series of interactive leadership seminars – an approach praised by the client for focussing minds on addressing the issues

## Handling claims

Our team of leading product liability litigators has experience across all industry sectors in Europe, the United States, the Middle East, Asia and Africa.

We are regularly engaged in cross-border, multijurisdictional disputes and cover the full range of claims which can arise from product failure, from supply chain disputes and contractual claims following business interruption, through damages claims following fatalities or personal injuries caused by product defects, to court initiated civil expertise investigations. Our highly integrated global team frequently work together, with our lawyers regularly serving as national, regional and state/local coordinating counsel and trial advocates for clients facing repetitive claims in multiple jurisdictions.

For product liability claims, we combine trial experience with technical and business knowledge to defend claims in many industries and jurisdictions, and have a history of favourably resolving claims filed against our clients. A successful defence against a product defect claim requires technical and business experience that are specific to the related industry, coupled with a trial team

that is skilled in explaining complex mechanical, statistical or other technical or scientific concepts to judges and juries. Our product liability team brings these skills to the table and understands that product claims, whether single-party or multiple-plaintiff cases, create financial, reputational, and business risks unique to each defendant.

Class and group actions are major factor in the US and a developing threat in European product liability claims. We have a proven track record in defending class actions arising from product failure and industrial accidents. We have defended more than 200 putative class actions in the last five years alone, Our success lies in mastering the mechanics of class actions and related areas, such as removal, arbitration and appeals.

Our team has played a key role in some of the most significant product liability litigation of recent years, including:



- defending a major global automotive brand in a £200m+ cross border litigation arising from a fatality, including 3 sets of legal proceedings in two jurisdictions



- defending a leading manufacturer of commercial aircraft engines facing a series of £100m+ claims arising from alleged quality issues affecting engines installed on aircraft operating around the world



- defending claims in excess of £20m, brought by leading drinks manufacturers following the detection of trace levels of benzene in carbonated drinks



- acting for several defendants facing claims as part of the group litigation arising from the use of non-clinical grade silicone by French breast implant manufacturer PIP



- defending automotive component suppliers from multimillion pound contractual claims following product recalls in Japan, the USA and Eastern Europe



- representing an international children's product manufacturer and major US retailer in a two-week federal jury trial involving product liability claims related to an alleged traumatic brain injury, which resulted in a unanimous no-liability defence verdict



- prosecuting product liability claims on behalf of an international offshore drilling company involved in the Gulf of Mexico oil spill



- defending a pharmaceutical company in a consumer class action under a US state consumer protection statute involving anti-inflammatory medication



## Responding to investigations and defending prosecutions

A company's response to incidents and investigations has a significant impact on any subsequent enforcement action. We have unparalleled experience in responding to prosecutions arising out of high profile incidents.

Our regulatory lawyers across the globe regularly defend criminal proceedings from the initial stages of investigation to prosecution, drawing on the experience of former regulators, to protect your interests and reputation.

We work with national and state environmental, consumer product and health and safety regulations that may impose liability through fines or penalties and set a standard of care in product liability cases. We represent clients facing compliance issues, investigations and prosecutions under a huge range of legislation across multiple jurisdictions and including automotive, aviation, drilling platforms and equipment, consumer electronics, toys, watercraft, hand and power tools, medical devices, construction equipment, computer chips, semiconductors, chemical products, pharmaceuticals and more.

### Recent work includes:



- representing utilities businesses at the Grenfell Tower public inquiry in the UK



- defending a US manufacturer facing substantial criminal and administrative litigation in Spain derived from the withdrawal from the market



- representing a global vehicle parts manufacturer at a UK inquest following a fatality on a French motorway



- assisting a global electronics manufacturer facing investigations by the Italian authorities



- advising on issues arising out of the transportation of nuclear waste to France and subsequent regulatory investigation



- advising various organisations on European CE marking requirements in the health sector and handling regulatory investigations

## Eversheds Sutherland - Legal Technology

We lead the way in legal technology, with multiple tools available to ensure the most time and cost efficient delivery of your legal services.

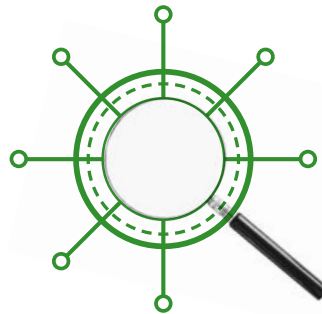
Our lawyers are supported by a dedicated team of legal project managers and legal technologists, ensuring a smooth delivery of legal services through transparent costing, budget reviews and regular reporting to the client. Ask your Eversheds Sutherland contact for more details

Our offerings include:



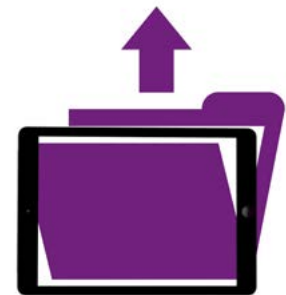
### CaseReady

Document collaboration and e-bundling tool. The new and efficient way to manage your cases.



### ES Locate

eDiscovery, our in-house e-disclosure tool.



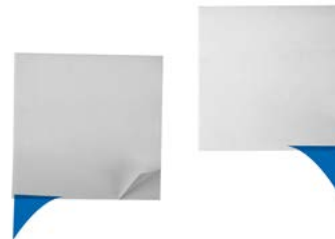
### CaseShare

Our secure file transfer platform compatible with CaseReady.



### Planning Blox

Costs, budget tracker and project management tool.



### Collaborate

Project management tool for multiple claims.



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