



A VL real life **claim example**

# Public & Products Liability

## Business Description

The Insured, a rural transport operator and property owner decided to clear some overgrown scrub on the perimeter fence around its yard.

The cleared vegetation was tossed over the fence into an adjoining paddock, also owned by the Insured but leased to a family to graze horses. Amongst the prunings was a quantity of oleander shrub which is highly poisonous when consumed. Two of the horses, both quality showjumpers, consumed the oleander foliage and became ill. Despite emergency treatment they died.

The claim was settled for \$50,000.

CEG 035-102019/000



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## Environmental Contamination

The Insured is a provincial coachline operator. It has a bunded diesel fuel tank at its depot. The tank is owned by the fuel supplier.

The tank had a simple outlet valve which had no locking or spill prevention device. Overnight, fuel was discharged through the valve which had been opened, presumably by vandals. Spilt fuel collected in the bund. Unfortunately the rain drainage valve in the bund had also been left open and 18,000 litres of fuel subsequently discharged onto the ground and into a nearby waterway. An oyster farm was located downstream but fortunately the local authority acted quickly in containing the spill and an even greater loss was averted. The clean up costs were around \$400,000.

The responsibility between the tank owner and the Insured was shared with each party contributing 50%. Together with legal costs, the Insured's share of the claim was \$300,000. The Insured's Public Liability policy covered the claim.

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## Exports to Australia – Workers Compensation

The Insured, a New Zealand furniture manufacturer, exported a line of office furniture in flat packs for a new building in Victoria, Australia.

The main contractor engaged a labour pool firm to supply workers on the contract. One of these workers injured his back whilst handling one of the Insured's furniture packs. The personal injury claim against the labour pool was dealt with by the statutory Workers Compensation insurer, Victorian Workcover Authority (VWA).

Under Victorian legislation VWA was entitled to seek recovery from the main contractor as "host employer". The Insured was joined in the action, it being alleged that a contributory factor in the accident was that the furniture packs had no external markings showing the weight of the pack with precautionary instructions on handling.

Settlement was achieved without any contribution from the Insured.

Whilst the outcome was successful the costs involved in defending and attending the mediation were around \$40,000.

CEG 037-102019/000



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## General Liability

The Insured was felling a tree on their farm when it fell on a neighbour's deer fence ripping the wire netting from a post and battens. The Insured simply lifted the netting and left it hooked on the broken post, intending to come back later to effect permanent repair (and without informing the neighbour). At that stage the neighbour's paddock had no stock in it.

The following week the neighbour put deer into the paddock. The Insured had not yet made permanent repairs. The deer found the gap in fence and several escaped into forest beyond. The deer owner's claim for the missing deer was settled under the Insured's Public Liability policy for around \$10,000.

CEG 038-102019/000



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## Goods in Care Custody or Control

The Insured, a special event organiser, hired commercial lighting equipment from a hire company. The hire company required the Insured to sign a hireage contract which stated that the Insured was liable for any loss of or damage to the hired equipment whilst in the Insured's care, custody or control.

When it was being assembled and rigged, an expensive telescopic light standard was damaged beyond repair by contractors engaged by the Insured. The hire company billed the Insured for almost \$20,000 to replace the standard.

The Insured tried to deflect the claim on to its contractor but, when the loss was eventually reported to and investigated, it became apparent that the contractor's worker was under the strict direction and control of the Insured's staff. The claim was settled under the Insured's Public Liability policy (Property in Care Custody or Control Memorandum).

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## Product Hazard

The Insured processes cardboard by applying various high specification coatings for a number of different end uses. In this case, the board was for a paint manufacturer who supplied the board to produce colour charts for retail/ consumer markets.

The finished product supplied by the Insured was below specification, compromising the adhesive quality of the product. This resulted in the final colour samples flaking off the board. The colour charts had to be withdrawn and the Insured was presented with a claim for around \$250,000 which comprised the cost of the board, further finishing costs and the customer's product recall expenses.

The Insured's sale contract had a limitation of liability to the value of the goods of \$110,000, which were defined as "packaging, wrapping, inserts, lining and protective materials". This particular product fell outside this definition.

Liability was admitted and settlement was negotiated with overall costs close to \$150,000.

CEG 040-102019/000



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## Product Recall

The Insured supplied minced fruit as an ingredient for house-branded muesli bars exported to Australia for a major supermarket.

Consumers found small shards of plastic in several bars. Extensive investigation showed the plastic was from a red pen that had fallen into the fruit mix at Insured's premises. All product from that run was recalled from over 200 outlets in Australia. The Insured's Public Liability policy (Product Recall Memorandum) paid for advertising, dumping damaged product and individual store costs to empty and re-sort shelves up to the insured percentage.

The claim costs totalled around \$120,000.

CEG 041-102019/000



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## Products Liability

The Insured supplied an oil filter that had been manufactured (in China) with an undetected fault - the opening on the bottom was slightly off centre. The filter was installed into a client's vehicle but did not seal correctly due to the fault, allowing the loss of oil from the block. A short time after fitting the filter the engine of the claimant's vehicle seized due to lack of oil.

As a result of supplying a faulty product, liability for the resultant damage was covered under its Public Liability policy.

The Public Liability policy covered the resultant damage to the vehicle but not the cost of the faulty filter which was the Insured's product.

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## Products Liability - Adequate Indemnity Limit

The Insured, a NZ plastics moulding firm won an international tender to supply two million tiny plastic components to an American electronics manufacturer. The components, which were worth only a few cents each were designed to encase miniaturised electronic componentry. When assembled, these were used in consumer products.

Due to a manufacturing fault and inadequate quality control during production the Insured's products were undersized by slightly less than 1mm and the internal components would not fit in. This disrupted and delayed production by several months meaning the American customer missed supplying product for the Christmas retail season.

A claim for over \$3m (NZ) was conceded. The Insured's elected limit of indemnity was \$2m. Fortunately the claim was settled for the policy limit of \$2m plus an additional \$100,000 costs.

CEG 043-102019/000



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## Service & Repair

The Insured operates a pleasure craft retail and service business in a remote South Island township. It was asked to service a 60HP outboard motor for a local company which ran river tours.

The Insured's servicemen re-assembled the engine but failed to replace the oil in the crank case. When it was being test-run the engine seized completely. As the engine was near new and beyond repair, the claim was settled by way of a replacement new motor under the Public Liability policy (Service and Repair Memorandum).

CEG 044-102019/000



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## Supply of Faulty Food Ingredients

The Insured, a food chemicals processor and supplier to the industry in NZ, imported a chemical ingredient for infant formula from an overseas supplier. It was then on-sold to a NZ manufacturer who incorporated the ingredient in its product and subsequently exported.

The Insured received complaints from its customer that its infant formula had developed a fishy smell. This resulted in its withdrawal and recall. The allegation was that the Insured's ingredient was the cause of the undesirable odour. Scientific analysis in NZ was unable to detect any contaminant in the Insured's product but the weight of other evidence pointed to the ingredient in question as being the cause of the fishy odour.

The value of the claim for replacement of the affected product plus recall costs was \$900,000. Technical and legal expertise were engaged to negotiate a settlement contribution of \$300,000 including costs.

CEG 045-102019/000



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## Tenants Liability

The Insured rented the upper level premises on a standard lease agreement. On the Friday before a long weekend, the Insured's employee left a cloth blocking the kitchen sink which also had a leaking tap. The sink overflowed and water damage occurred to flooring and cabinetry of the kitchen, as well as to the ceiling of the ground floor tenancy. The ground floor tenant's file server and other office contents were also damaged.

The landlord's insurance covered the damage to the building and under the Property Law Act the insurer could not recover from the tenant.

The costs to repair the chattels in the other tenancy were covered under the Insured's Public Liability (Tenant's Liability Memorandum).

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## Underground Services

The Insured was operating a digger on a building site and cut through a previously identified power cable. Power to a petrol station across the road from the site and a new motorway service complex was lost.

Substantial claims were made on the Insured by the operators of various outlets in the service complex and the petrol station itself.

The claims were successfully defended on the grounds that the Insured was not liable for such losses on the basis they were unforeseeable. Defence costs were significant.

The Public Liability policy (Underground Services Memorandum) covered the costs incurred to repair the cable.

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