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## Liability Lawyers Struggle to Pierce Chinese Curtain

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When Mark Lanier, a liability lawyer in Houston, took the case of a 6-year-old girl who choked to death on a toy, he tried suing everybody in the supply chain: the fast-food restaurant that sold the toy in a children's meal, the American importer and the toy's Chinese manufacturer.

The restaurant chain, Whataburger, and the importer settled for an undisclosed amount, but Lanier said he could not even find the proper entity in China to serve with a lawsuit.

With Chinese imports triggering a flurry of product-safety violations in recent months, American consumers have grown increasingly anxious about how and whom to sue, according to lawyers that handle such cases. As Lanier and other have found, the difficulties can be enormous.

While suing companies in foreign countries is always more difficult than pursuing a domestic lawsuit, the complexities of filing a case against a Chinese firm are compounded by the country's regulatory and legal systems and by political relations between Washington and Beijing.

"You're spitting in the wind," Lanier said of attempting to sue Chinese companies in U.S. courts. Lanier said his firm has seen a 500 percent increase in the number of inquiries over Chinese goods, but he will rarely take a case unless there is an American defendant as well.

The problems begin before a lawsuit is filed. A Chinese company can only be sued in an American court if it does business on American soil, and not merely over the Internet.

Stephen A. Litchfield, a lawyer for Schneider Electric, is trying to sue two Chinese companies and accuse them of counterfeiting its Square D circuit breakers. "These companies only have Web addresses, no registered Chinese names. They don't appear to be real companies," Litchfield said.

Sometimes, as in Lanier's case, simply finding the right entity to serve with the lawsuit is a stumbling block.

The opacity and scarcity of regulation of Chinese business practices make investigations and evidence-gathering cumbersome and frustrating. Headquarters offices, once found, are often bare-bones operations. Records may be spotty or nonexistent. Unaffected by court orders, the level of cooperation is low. Sometimes the Chinese company will not show up to a U.S. court.

"Getting records is virtually impossible. You can make requests until you're blue in the face. You'll just get some token response," said Stephen Ching, a Philadelphia lawyer with 20 years of experience in China. Ching has been involved in 25 lawsuits against Chinese companies in the last two years.

While Schneider Electric is attempting to obtain a default judgment against the Chinese, which is a judgment made in a company's absence, enforcement will be difficult. The United States and China have not signed an agreement to enforce one another's court judgments.

"We badly need it . . . but we can't expect them to enforce ours if we don't enforce theirs," said Jerome Cohen, a New York University professor of Chinese law and member of the Council on Foreign Relations. Cohen said he had never heard of a case in which an American judgment was enforced in China.

Ching estimates that a lawsuit against a Chinese company typically lasts 10 years and costs five times as much as a

normal case.

"If it's a small or medium manufacturer, it's not even worth considering suing them. It's not about the merits of the case, they could be dead liable, but it would be too difficult, too lengthy, too expensive," he said.

The roadblocks to suing a Chinese company have diverted most liability lawsuits to U.S. importers and wholesalers. Litigation lawyers say that while they have seen a spike in the number of inquiries about liability suits, most of the more than 100 pending suits filed over Chinese products target only the American or Canadian importer, the wholesaler or the retailer of the product.

Still, some American lawyers are pursuing litigation against Chinese manufacturers.

"We're prepared to do what it takes. We have to punish these Chinese companies," said Jeffrey B. Killino, a Philadelphia lawyer who's suing the Chinese manufacturer of hundreds of thousands of tires recently recalled over defects that allegedly resulted in two deaths and a brain injury. "We will push and push until we can't push anymore."

Killino says it has not been easy. "They're making us literally take the slow boat to China," he said.

William Audet, a San Francisco lawyer who is suing Canadian company Menu Foods on behalf of pet owners whose animals died from contaminated pet food, also is getting ready to sue the Chinese companies whose wheat flour made the pet food toxic.

Audet, who says he has gotten thousands of inquiries, is hoping political pressure will be enough to squeeze compensation from the companies.

While large retailers or wholesalers may have the commercial leverage to force Chinese manufacturers to negotiate, some smaller importers have begun factoring liability costs into the price of doing business in China.

Smaller importers are increasingly writing liability insurance into their contracts with Chinese manufacturers and paying third parties to test product quality, said Daniel P. Harris, a Seattle lawyer who writes contracts for American companies outsourcing to China.

Many Chinese companies will accept part of the monetary burden to keep their client, said Sebastien Breteau, who runs a company that inspects Chinese goods on behalf of international clients.

The most cost-effective way to hold a Chinese manufacturer responsible, said Cohen, may not be through the courts. "Publicity may be the best weapon for anyone who can't afford litigation," he said.

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