

Following the Twisted Trail of Chinese Imports

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A 42-year-old Missouri man purchased a go-cart from the local farm supply store for his kids. With less than four hours on the rugged-looking machine, he and a friend were found dead, the machine overturned with a fractured front suspension where a critical weld failed. The defect appears to be just another one of a myriad of continuing quality problems that have plagued the go-cart and other motorized products distributed by SunL, the Irving, Texas importer.

Finding other complaints about this distribution company is easy enough for anyone with a passing familiarity with Google. You can read the dire warnings from consumers, or horror stories from former dealers who malign the products, the warranties and the company itself or about the fist fight that nearly erupted at the company's exhibition booth at the Indianapolis scooter show in 2005, when a group of dealers showed up demanding access to repair parts. In July, the Consumer Product Safety Commission forced the importer to recall about 144 ATVs intended for 12-15-year olds, because the vehicles lacked front brakes, a manual fuel shut-off, padding to cover the sharp edges on the handlebar assembly, inappropriate tire pressure and an adequate flag pole bracket.

Holding the manufacturer accountable in a products liability case is a lot more difficult. The distributor may be located in the great state of Texas, but its products come directly from China. And, as an SRS investigation demonstrated, just identifying the actual manufacturer is a daunting task. Under the Consumer Product Safety Act, the term 'manufacturer' includes any person who imports a consumer product. Importers are directly responsible for the safety of goods they bring into the U.S. Yet, some attorneys say that it is critical to investigate the Chinese manufacturer, as well.

Jeffrey Killino of Woloshin & Killino of Philadelphia has pursued several product liability lawsuits against Chinese-made products. In one of his most high-profile cases, Killino discovered that the Chinese manufacturer had a significant financial presence in the U.S.

"I recognize that the conventional wisdom is that because you have to deal with the jurisdictional challenges, you go after the importer," Killino said. "And I'm not saying there aren't valid reasons, in some cases, to exclude the Chinese manufacturer. But you have to link the product back to where it came from. You have to explore that."

China is now the world's second largest exporter of goods. In 2007, the U.S. imported \$321.5 billion worth of Chinese goods. America has welcomed this tide of cheap Chinese products – they have buoyed the bottom line of the Wal-Marts and propped up the standard of living for their customers in an era of eroded incomes. But, the hidden costs of Chinese products are making news headlines with increasing regularity: defective tires and automotive components, tainted pet food, toothpaste, baby formula and pharmaceuticals, lead-coated toys and sofas that cause rashes. These sub-standard products have been linked to deaths and have raised public alarm.

Finding the line between a U.S. distributor and a Chinese manufacturer is neither short nor straight; it more closely resembles a web of interconnected companies obscuring the real owners. The Texas importer is a good example. It maintains offices in Texas and New Jersey as a distributor of recreational vehicles: motor scooters and motorcycles, go-carts and ATVs. SRS was able to identify the manufacturer of the go-cart involved in the fatal crash by locating the Frame Identification Number, a unique identifier which led to a company located in Yongkang, Zhejiang, China.

But this Chinese company is actually one of five holding companies which manufacture vehicles owned by a Chinese investment group. The holding company purchased a bankrupted U.S. gold-mining firm to be used as a shell corporation. The shell corporation, through a series of stock exchanges with a Hong Kong firm and another entity located in the Virgin Islands, became a subsidiary of a second holding company owned by the original Chinese investment group. That holding company listed the Texas importer as its largest U.S. distributor.

U.S. Customs records showed that the consignee for the Chinese go-carts was not the Texas distributor, but a second company, which shared the same U.S. address. This second Texas company also imported products from a third holding company owned by the Chinese investment group.

SRS's investigation identified four other manufacturers of an identical go-cart, including one model that was recalled for defective seat belt buckles that unlatch in a crash. In what appears to be a concerted effort to prevent tracking and larger recalls, manufacturer names, makes and models of these products change with regularity, as do the various shell companies that are involved in their distribution.

In a second instance, SRS found that a valve stem linked to a 2007 fatal crash led back to a Chinese manufacturer, the Topseal division of Shanghai Baolong – the same company that made valve stems for another distributor who recalled them for premature cracking.

On November 11, Robert Monk of Orlando, Fla. died when the right rear tire of his 1998 Ford Explorer failed, triggering a rollover crash. The cracked Dill TR413 valve stem at issue was actually manufactured by Topseal, a subsidiary of Shanghai Baolong Industries Co., Ltd for Dill Air Control Products, LLC – an American company that was purchased by Chinese investors who have financial interests in the Chinese manufacturer.

In September, the National Highway Traffic Safety Administration upgraded its investigation to an Engineering Analysis into cracked tire valve stems. In its initial submission to NHTSA, Dill described its corporate and decision-making structure with Topseal as one that was intertwined, yet, at arms length:

“Since its inception in March 2005, Dill has purchased tire valves branded under the DILL ACP brand name from Topseal. The location has remained the same. Dill is majority owned by Longwei Holding Company. Topseal (Shanghai) Auto-Parts Co., Ltd. is the supplier. This plant began making tire valves under the DILL ACP brand name in

2003. There is no direct equity relationship between Topseal and Dill. Some of the persons or entities who own equity in Dill also own equity in Topseal (Shanghai) Auto-Parts Co., Ltd. who is the supplier. This plant began making tire valves under the DILL ACP brand name in 2003. There is no direct equity relationship between Topseal and Dill. Some of the persons or entities who own equity in Dill also own equity in Topseal. The Board consists of two Dill managers and two other members representing equity ownership - one is an investor who has an equity stake in Dill, the other represents the holding company with an equity stake in Dill.”

In Killino’s case, the relationship between the U.S. importer and the Chinese manufacturer was less circumlocutious.

On the August 12, 2006, Rafael B. Melo, Claudeir Jose Figueiredo and Carlos Souza, were passengers in a 2000 Chevrolet Express 2500 Cargo Van, bearing a Compass Telluride steel belted radial made in China in 2004. The van was traveling south on Pennsylvania Route 476, when the tire experienced a tread / belt separation causing the van’s driver to lose control. The vehicle rolled over and the three passengers were ejected. Melo and Figueiredo died in the crash. Souza suffered a permanent brain injury. The failed tire was imported to the U.S. by Foreign Tire Sales of Union, New Jersey. It was manufactured by the Hangzhou Zhongce Rubber Company, which FTS alleged, had left a critical component out of some 450,000 tires sold under the names Westlake, Telluride, Compass and YKS. Killino sued FTS and Hangzhou, touching off a recall in August 2007 that generated a lot of press. In the course of his investigation, he discovered that Hangzhou’s \$10 million insurance policy was with a global company with assets in the U.S.

Killino says including the Chinese manufacturer in the lawsuit had other advantages:

“The acts of the Chinese are so egregious that they allow you make a punitive case at trial. It will also drive the compensatory verdict and make liability stronger,” he says. “When the jury hears how bad the conduct of the manufacturer was, they become angrier at the importer who didn’t protect consumers.”

Finally, he says, drawing the Chinese into the lawsuit can create stronger pressure for a settlement, because the Chinese are very sensitive to criticism.

“They are extremely concerned about saving face,” he says.