



Product Liability Disputes





What are product liability disputes?

Product liability claims are brought against manufacturers, distributors, suppliers, and retailers for damage caused by their products. The claims can arise under statute, contract, and/or negligence principles. The claims can be brought by purchasers, users, and/or third-parties who suffer damage from the products.

Claimants usually seek compensatory damages, as opposed to replacement of the defective products, and damages are generally calculated to place the claimant in the same position as they would have been if the damage had not occurred.

Product liability claims are often brought as group or class actions on behalf of consumers to benefit from economies of scale, improved case management, and increased bargaining power for settlement negotiations.

Is funding right for your claim?

We need to understand the details of your claim to ascertain whether it could be funded. It is also important for us to know we can rely on your support in bringing the claim to a successful resolution.

Answers to the following questions will help us to quickly assess your claim.

Merits	<ul style="list-style-type: none">• Are there good grounds for bringing the claim, and are there good grounds to bring the claim as a group or class action?• What is the evidence of the product's defects? Has any initial testing been carried out?• What is the value of the claim, and how is that substantiated?• If a group needs to be formed, what is the strategy and timetable relating to its formation? Will a litigation/steering committee be established in order to provide instructions to the legal team?• If a single representative will lead the group, pursuant to an opt-out regime requiring certification, what is your strategy for securing certification?• Do you expect competing claims?
---------------	--



Economics	<ul style="list-style-type: none">• What amount of funding do you require?• What is the likely cost of forming the group/bookbuild (if relevant), and any valuation report?• Is any payment likely to be required for security for costs?• What is the exposure to adverse costs likely to be? If there are multiple defendants, do you expect them to have separate or joint legal representation?• How long do you expect the case will take?
Recoverability	<ul style="list-style-type: none">• Who is/are the defendant(s), and have they got the means to satisfy a judgment or award made against them?• Where are their assets located, and will it be possible to enforce a judgment against them?
Experience	<ul style="list-style-type: none">• Who is in the legal team, and what is their track record in bringing cases of this kind to a successful conclusion?• Who is in the wider team (experts, economists, bookbuild agents, etc)?



What sets us apart?

Harbour is amongst the largest and most experienced funders in the world, having supported cases in 14 jurisdictions and 6 arbitral forums since 2007. Our experience of reviewing over 4,000 claims means we can quickly review the responses to the questions above and provide an indicative view on pricing, before guiding you through our due diligence process.

We are one of the world's leading and most experienced funders supporting product liability disputes. We know that significant up-front spend is required for expert testing of defective products, as well as for meeting the expenses of valuation reports, expert evidence, and security for costs applications.

Our pricing

Harbour provides a flexible and tailored solution to suit your needs. We can cover all or part of your legal fees and disbursements, including potential adverse costs and funding for security for costs.

The pricing of our funding is bespoke and is informed by our view of the specific risks involved. We consider factors such as the claim value, the budget required, the merits, the jurisdiction of your claim, and any potential difficulties with enforcement (as defendants in product liability cases can often be chains of companies located in multiple jurisdictions).

A number of pricing options are available, with non-recourse funding being the most popular, where Harbour only receives a return when proceeds are recovered. Should the claim be unsuccessful, the risk is entirely ours, and you owe Harbour nothing. Pricing is generally structured as a return of capital plus the greater of a percentage of proceeds and a multiple of our capital.

Recourse funding is also available, which allows a claimant to maximise their return and free up capital. This financing is repayable at the end of the process, regardless of the outcome of the case.

We can also acquire interests in claims and judgments, providing immediate cash payments of an agreed percentage of the claim or judgment value, potentially with more to follow upon successful recoveries if the claimant wishes to remain involved.

We seek to agree pricing which fairly rewards the risk you and we are taking.

Pricing is agreed with our investment team at an early stage in our discussions, and before the case is presented to our investment committee you will know what the pricing is and how an agreement will be structured. More information on pricing and our processes is available on our website.



Product liability case study

Harbour is funding a product liability claim brought by the owners of more than 1,200 homes and apartments against the James Hardie group of companies in New Zealand. Since the 1990s the group has sold cladding systems for new build properties.

The claimants' central case is that, even if the cladding is installed and maintained in accordance with the defendants' instructions, the products will inevitably fail due to moisture ingress. Problems are caused when moisture enters through cracks, delamination, or junctions in the cladding, and causes decay and damage to building elements such as framing and insulation. The moisture ingress is also associated with toxic black-mould which can cause health problems. The claimants have also suffered significant stress and psychological impact from owning leaky homes.

Pursuing the case has been challenging. In addition to the issues common to group claims (e.g. securing enough claimants, commissioning expert evidence to support their case, and the complexity and costs of litigation), the James Hardie companies are very experienced and robust defendants. Harbour's funding and experience has supported the legal team in rebutting a series of strike-out and security for costs applications by the defendants, as well as related appeals. Harbour is used to seeing litigation tactics which are designed to demoralise claimants, or to exhaust their funds, but our long-term commitment to cases ensures claimants can pursue their matter to the very end, in a bid to hold corporates to account.



+44 20 3829 9320

8 Waterloo Place, London, SW1Y 4BE

harbourlitigationfunding.com