



# A Risk in Working with Foreign Manufacturers

If your company is in the business of buying and reselling building products, including doors and windows or components, manufactured by an offshore entity, what happens if a lawsuit is brought relating to those products? As a “seller,” your company is a serious target. “But, we did not make it, we just resold it” is not an adequate defense.

Companies need to understand that the mere fact that a foreign manufacturer sells to U.S. distributors or dealers for resale may not be sufficient to establish jurisdiction over that foreign entity in the event of a lawsuit. That would mean that the re-seller is left with the liability. The basic question is what does a foreign manufacturer have to do with respect to its sales in order to come under the jurisdiction of a U.S. court in the event of a product claim.

### RECENT CASE

In a recent U.S. Supreme Court opinion, a British manufacturer was held not subject to jurisdiction in New Jersey state court because its overall business activity did not amount to “purposefully targeting” sale of its products to New Jersey. Of course, it sold the machine and knew where it was going, but that is not enough. (A man apparently lost four fingers in connection with operation of the machine.) The court’s analysis focused on whether the manufacturer itself took action to promote the machine’s sale in New Jersey. Selling its machinery to an independent U.S. distributor, which then sold one of the machines to a New Jersey business, was not sufficient to place the British company under the jurisdiction of the New Jersey court.

What does this mean for the domestic distributor or seller? If a foreign manufacturer is unavailable

due to lack of personal jurisdiction in court, then the party bringing suit will likely target the distributor or seller in attempt to obtain recourse. Our point is to caution window and door manufacturers, distributors and dealers to understand that the existence of a purchase and sale agreement between U.S. distributor and a foreign manufacturer may not be enough to enable that foreign manufacturer to

originate. If a foreign entity has only limited, sporadic contacts and does not undertake any marketing or advertising targeted to states where your company does business, then recognize the risk.

Your only realistic chance to take some control of this risk is at the time of purchase. It may be possible to include a provision in the terms and conditions of sale sufficient to form a

➤ Your best chance for control is before you have paid.

be brought in to a subsequent product claim. While typically the manufacturer is a plaintiff’s target in this scenario, if the primary target is unreachable, then a plaintiff will turn to bear down upon the secondary target as an alternative source of recovery.

So what can the domestic distributor or seller do to prevent a situation like that in New Jersey? Supply chain control. Know where the products your company sells and the component parts in those products

basis to establish jurisdiction over the foreign manufacturer. While you’re at it, shoot for an indemnity provision. Your best chance for control is before you have paid. ☐

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