



Policyholder has been manufacturing lightweight alloy wheels for performance cars (road & race) for 20 years;

- > An alloy wheel, manufactured by the Policyholder in 1999, shattered in April 2015 whilst the car was being raced on a closed circuit in the UK. The subsequent crash wrote off the race car & severely injured the professional driver;
 - > Period of insurance 1/1/2015 – 31/12/2015 responded to the subsequent claim, because this was the period where the loss occurred (even though the wheel was manufactured in 1999);
 - > The Claimant wasn't the Policyholders original customer. It transpires that the wheel had been bought & sold privately a number of times in the 16 years, however the Policyholder's logo was clearly present on the wheel, so the claim was made against them;
 - > Donoghue v Stevenson confirms that the Policyholder owes a duty to the consumer;
 - > Insurer commissions a forensic examination of the wheel. The possible reasons for failure could be; manufacturing defect; damage caused by a previous owner; the wheel being "kerbed" or the suspension loading being too high – however, it is not the Insurer's responsibility to determine the cause of loss. To successfully defend the Policyholder they just need to demonstrate that it wasn't due to a manufacturing defect;
 - > The report exonerates the Policyholder and the claim is successfully defended, at a total cost of £25,000 to the insurer;
 - > The risk had moved insurer on 1st Jan 2015, from a wording that excluded Failure to Perform/Efficacy to a wording that provided this cover. Even though the Policyholder was "cleared", because the initial allegation was that the wheel failed, an Insurer not providing Failure to Perform cover would be under no obligation to commission the forensic examination or defend their Policyholder – so they would be left to commission their own report, appoint their own Lawyer, pay their own costs and waste valuable time.
- A Proposer is entitled to say "we are sufficiently confident in our internal Quality Controls as to not require Product Liability cover" – however they cannot control the actions of a Claimant Lawyer who opts (erroneously) to drag them into a claim.