

Broker Selection Key to Managing Product Liability Insurance

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Insurance costs for commercial general liability, including product liability, have skyrocketed in the past few years for all sectors of the dietary supplement industry. In addition to premium cost, companies must consider two other important aspects of product liability insurance. The first is the limits of insurance required. In past years, most companies were able to satisfy customers with limits of \$1 million per occurrence/\$2 million aggregate. However, during the recent “hard market” for liability insurance, many of the large retailers raised their vendor requirements to \$5 million. In addition, these retailers are getting more diligent about gathering and tracking certificates of insurance from suppliers. One large West Coast distributor simply stops sending out its clients’ products if a current certificate of insurance, with minimum limits of liability required by the distributor, is not on file. Thus, the limits of coverage a company selects is driven by more than just one factor and must be selected carefully.

The second important consideration has to do with the coverage, in particular the ingredient exclusion that each insurance company attaches to their policy. These ingredient exclusions apply to both single-ingredient products (for example, St. John’s wort) and to any formulated product containing an excluded ingredient. These exclusions vary greatly and are constantly changing. Unfortunately, the list of excluded ingredients is getting longer, not shorter, so care must be taken to be sure that the ingredient exclusion attached to a company’s policy maximizes the coverage for the products that it sells.

So how should a company in the dietary supplement industry procure liability coverage and be confident of proper limits of insurance, coverage and a competitive premium?

Many companies take the approach of “the more brokers, the merrier” in the belief that healthy competition will keep costs down. But purchasing liability insurance for a company in the dietary supplement business is not the same as buying insurance for a family restaurant on Main Street, USA. There are literally scores of insurers clamoring for restaurant insurance business, but only a handful of underwriters for the dietary supplement business. Given this small community of insurers, a supplement company must carefully select who will represent the company in the most favorable light.

A capable and knowledgeable insurance broker is a valuable asset, and the selection process is important. But by using a specific set of selection criteria, a good choice can almost be guaranteed.

In addition, most insurance buyers are not aware that all insurers offering product liability to the dietary supplement business require the use of a wholesale insurance

broker to access them. So the broker you select (hereafter called the “retail broker”) must submit your account to a wholesale broker, who in turn will submit it to viable insurance companies. Most people are under the impression that their retail broker is talking directly with the insurance underwriters. This is not the case. Thus, the introduction of yet another party to the buying chain makes the insurance procurement process more vulnerable to something “falling between the cracks.”

Selecting the Right Broker

With two brokers (wholesale and retail) now in the picture, it is even more important that a company select a competent and knowledgeable retail broker to coordinate the marketing of product liability insurance. The retail broker is the quarterback, responsible for directing the right information to his wholesale broker and executing a clear, planned marketing strategy on his client’s behalf.

Very often, when a company follows the “more brokers the merrier” philosophy, two or more retail brokers engage two or more wholesale brokers, who all go to the same handful of insurers. Underwriters will often not spend the time and effort to quote an account when they realize multiple companies are bidding against them, which is confirmed when they receive an account from two or more wholesale brokers.

It is clear that selecting a single retail broker to represent your company to a single wholesale broker and all insurers, greatly enhances the quotation process and maximizes the options to buy the right coverage, limits of insurance and at a competitive premium. What are the qualities a company in the dietary supplement industry should look for when selecting a retail insurance broker?

Specialization in the Product Area: A broker with just one or two clients in the dietary supplement business may not be compelled or motivated to be on top of industry issues on a daily, weekly or monthly basis. In addition, brokers who have active accounts in the industry should be able and willing to share references to underscore their performance claims. It is also beneficial to request a copy of a typical underwriting package shown to wholesale brokers for companies characteristic of your own.

Understanding the Issues: Active brokers within an industry such as the nutraceutical market appreciate the importance of understanding industry issues and take steps to stay educated, including attending trade shows and industry networking events. Companies can gauge a broker’s industry familiarity by the questions the broker poses about the company’s business operations. For example, a good broker could ask questions about your company’s GMP (good manufacturing practice) standards, manufacturing certifications and association memberships.

Insurance Industry Connections: A competent retail broker should be able to readily name all of the current insurers for product liability and identify specific traits of each one (minimum premium, ingredient exclusions, minimum and maximum

deductibles, etc). Also, companies should review whether the retail broker's wholesale broker has knowledge of, and is committed to, the dietary supplement industry, and if the company can meet with the wholesale broker.

Logistical Abilities: It is critical to ensure the retail broker selected has adequate support staff to service your account—issuing certificates of insurance promptly and answering routine questions in a timely, accurate manner, for example. In addition, it is worth reviewing whether the broker can handle other insurance options for your company, such as workman's compensation or fire coverage, if need be.

If you sense that it might be time to consider a new retail broker, don't wait until the renewal quote arrives. Start seeking alternatives at least three months prior to the renewal date; a motivated, professional retail insurance broker will dispense good advice and answer questions at any time, regardless of renewal date.

Selection of an insurance broker is a highly technical and important matter. All the principals of the company should be involved in the decision. If the selection is made with these stated criteria in mind, the result will be maximized protection of company assets from insurable legal liability events.

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