

Retail Liability and Insurance

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When I talk to retailers about insurance needs, they often say, “Why should I buy liability insurance? If somebody is injured by a product that I sold, it will be the fault of either the contract manufacturer or the raw materials supplier, not me. I only put it on the shelf and sell it. I don’t have any liability for that.”

The fact of the matter is that plaintiffs’ lawyers will sue everybody in the chain of commerce with equal vigor, including the retailer. Lawyers are seeking money for their clients and will engage as many parties as possible, regardless of whether they had anything to do with the actual injury. Lawyers will sue the bottle manufacturer, the label printer, even the company that provided the silica pack in the bottle. The retailer, having sold the product to the consumer, is actually in center spotlight.

This is why liability insurance is a good investment. It covers risks that pose uninsured supplement retailers the greatest harm to their business. A major, often unappreciated feature of the policy is the payment of attorney fees and related costs of litigation. For supplements, the allegations most often involve bodily injury or death, and the cost to defend these lawsuits can be substantial.

Generally, plaintiffs’ lawyers will be somewhat intimidated at the prospect of having to battle the “big bad insurance company” with deep pockets to fund a vigorous defense. Conversely, being uninsured and having to fend for yourself will be expensive, and may make the plaintiffs’ lawyers more aggressive in their attempt to extract money directly from you to settle the claim.

Since the year 2000, the dietary supplement industry has been a cause of increasing concern for insurance companies. Liability rates have soared for everyone involved in the process—raw materials suppliers, contract manufacturers, wholesale distributors and retailers. Fortunately, premiums for liability insurance peaked about 18 months ago and are currently declining, but they still take a sizeable bite out of the bottom line.

The key to getting the best liability insurance is to select the right broker to procure proposals from the handful of insurers willing to sell it to the dietary supplement industry. An insurance broker who specializes in the dietary supplement industry is the best choice. A broker with just one or two clients in the industry probably won’t be on top of industry issues and the specifics needed to assemble an underwriting package for your company that underwriters will find informative, thereby resulting in a lower premium.

In addition to buying liability insurance, what can a dietary supplement company or retailer do to protect itself from lawsuits in general, whether or not that lawsuit is covered by insurance?

First, get a good attorney. Finding a good attorney who is familiar with the industry and, preferably, has actually defended dietary supplement industry companies in front of a jury will be worth its weight in gold. Such an attorney will come to you knowing the plaintiffs’ lawyers’ “end game” and will be able to advise you on numerous strategies to defend your company. Ideally, the lawyer should be versed in federal regulatory issues, labeling issues, etc. Retaining a competent attorney before a lawsuit is an investment that might someday prevent a major disruption and cost to your business.

In addition, get insurance evidence from suppliers. One way to shift risk is to have your suppliers give you evidence of their product liability insurance and have them add your company as an “additional insured” on their policy (the so-called vendor’s coverage). For retailers, this would most often involve requesting this insurance from either your contract manufacturer, or a wholesale distributor who is supplying you with finished products to sell. “Additional insured” status on your suppliers’ policies will provide you with coverage under their policy in the event both of your companies are sued for a covered claim and it is ultimately determined that they, not you, were the cause of the injury. It will insulate you and your insurance company from having to pay a loss, which is only right if you did nothing wrong in the first place. It will keep your loss record spotless, reducing your future insurance costs. For these reasons, you should be wary of suppliers that do not carry liability insurance—and there are many that still do not. Gathering and monitoring certificates of insurance is well worth the time. In addition, there are at least two companies that will gather and manage certificates of insurance on your behalf.

Other Business Insurance

Additional insurance you should consider includes, but isn't limited to: business personal property; automobile liability; workers' compensation; and employment practices.

Business personal property insurance covers the contents and personal property at your premises from exposures, such as fire and theft. Many dietary supplement companies mistakenly assume their products are covered by another party (e.g. at the warehouse where goods are stored). Categories of personal property include stock, contents except stock, machinery and equipment, furniture, fixtures and tenant improvements, and betterments. There's also coverage that affords coverage while your property is in transit (inland and ocean marine coverage).

Automobile insurance insures against loss through legal liability for bodily injury or property damage, caused by accident, and arising out of the ownership, maintenance or use of motor vehicles. Most states have statutory laws regarding automobile liability. Your operation may not own autos, but it is difficult to imagine a commercial operation that does not have some type of automobile liability exposure. The source of possible loss may be from any of the following: owned autos; leased vehicles; hired (rented) automobiles or equipment; non-owned (borrowed) vehicles; and certain types of mobile equipment.

Workers compensation is mandated by statutory laws. Workers comp insures against claims for work-related injuries or diseases suffered by employees that are compensable by statute and/or imposed by law as damages.

Employment Practices Liability (EPL) covers lawsuits brought by employees alleging wrongful discharge, discrimination or certain types of harassment. Any employer, regardless of size, can be subject to time-consuming and expensive litigation in these areas. Even a proactive, people-minded employer that has implemented stringent procedures and standards may face complaints or lawsuits from current or former employees. No employer is safe. Specific awards are high and financially crippling and punitive damage awards are also common. The more employees an organization has, the more punitive damages that can be awarded.

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