Product Liability Claims: Limiting Your Risk for Used Equipment Sales (Part 1)

Product liability claims can be devastating. When people are injured by equipment or the equipment causes damage to property, millions of dollars can be at stake. This is a recurring issue and all dealers pay for these claims either through direct exposure or increased insurance premiums. Although not all risk can be eliminated, there are steps that can be taken to lower the possibility of being impacted by these claims. Products liability claims are generally defined as claims against a seller for personal injury or property damage caused by equipment. The legal theories for which a selling dealer may be liable can range from strict liability – liability imposed for selling a "defective" product that is unreasonably dangerous – to negligence – the failure to take reasonable steps to protect a purchaser – to breach of warranty – the failure of a product to live up to the promises made about that equipment. Selling used equipment carries additional risk just based upon the fact that there is some wear on the equipment and the equipment is no longer in pristine condition. This article and a companion article will focus on methods to reduce the risk of a product liability claim for dealers selling used equipment. The focus of this article is on limiting risk prior to the sale. **EVALUATING TRADE-INS** The first step in limiting risk of product liability claims comes in the equipment intake process. It is important to know about the product you are acquiring be it through a trade-in or auction purchase or any other method. A customer may want to trade things that are not part of your normal business like a boat or a truck. You are less likely to be able to assess risks associated with re-selling equipment that you do not deal in daily. While everyone wants to accommodate customers and make a sale, taking in unfamiliar equipment may not be worth the risk. Some dealers limit risk by avoiding selling brands that they do not carry. A blue dealer may not want to sell used green equipment or vice versa. There are other ways to make the deal happen and still protect your dealership. The customer can sell the unfamiliar trade-in directly through local ads or craigslist. The dealer could also help sell the used equipment on consignment so dealership would not be the seller. The person responsible for determining which equipment will be accepted for re-sale as used equipment has to understand the difference between scrap metal and a product that still has a useful life. That can't happen unless the person making the decision knows the equipment. Sometimes the best deal a dealer can make is to say NO. **RESTORING EQUIPMENT** Knowing the equipment involved is also important for the second step – restoring the equipment. As part of the intake process, the equipment needs to be thoroughly inspected. Notes should be made of missing safety features such as guards or shields. There may also be signs of missing or deteriorated warning labels or stickers. Buyers of used equipment understand that they are not buying pristine machines, so a complete restoration to like-new condition is neither necessary nor practical. Still, making repairs to make sure the equipment is functioning properly is appropriate. Safety features must be restored as well. Replacing missing shields and warning stickers not only reduces the risk of liability if someone is injured, it can reduce the risk of injury in the first place. **OPERATOR'S MANUAL** Before equipment is placed on the lot for resale, a dealer should also make sure it has the Operator's Manual. The manual is likely to have information that is helpful to those who are restoring the equipment for sale. There may be diagrams showing how to remove guards or picture of warning stickers. This can help ensure that missing safety features that may not be apparent on inspection are discovered and replaced. Moreover, the Operator's Manual includes warnings, alerts and instructions. It is an integral part of the safety system for any equipment. **CONCLUSION** There is no way to completely eliminating the risk of a product sold by dealer causing an injury or property damage. There are simple tools available; however, that a dealer can use to limit the likelihood of being liable on a products liability claim before used equipment is sold. Know the product you are selling and make sure it is as safe as it was the day it first left a dealer lot. Next week we will look at ways to manage risk at the time of sale.