

Product Liability Claims: Limiting Your Risk for Used Equipment Sales (Part 2)

Product liability claims can be devastating. Products liability claims are generally defined as claims 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 to negligence to breach of warranty. 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. All dealers pay for product liability 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. This post, and a companion post from last month, focuses on methods to reduce the risk of a product liability claim for dealers selling used equipment. This week, the focus is on limiting risk at the time of sale. **HAVE A SYSTEM** Sales of used equipment have at least as much and probably more risk of a products liability claim than sales of new equipment. Therefore, the precautions taken for selling used equipment should be at least as thorough as new equipment sales. Dealers should establish procedures and guidelines for everything from inspections to repairs to delivery. Many manufacturers provide delivery checklists for equipment sales. These can be useful tools to developing your own checklist for the delivery of used equipment. Sales of used equipment cannot be treated like an estate sale. Dealers are held to a higher standard than a person selling equipment. Too often, employees do not take used equipment sales as seriously as new equipment. Besides, it is too easy to forget steps in the process. A process needs to include things like equipment set-up, checking safety equipment and verifying repairs have been completed. Protocols for providing information to customers need to be included. Don't leave anything to chance. **PROVIDE TRAINING** Every purchaser of used equipment should be taught how to operate the equipment safely. Likewise, the safety features of the equipment should be pointed out. Every warning sticker on the equipment should be read with the customer. Assuming that a purchaser will read warnings on his or her own puts a dealer at risk unnecessarily. Besides, it's the right thing to do. The operator's manual should be provided as part of every used equipment sale. At the time of delivery, customers should be told about some of the more important reminders within the manual. There will be warnings and instructions that can limit the risk of injury. Maintenance that can impact the safety of equipment should also be highlighted. **DOCUMENT, DOCUMENT, DOCUMENT** No matter how many precautions are taken, there is still the risk that someone will be injured or property gets damaged. If a claim is made, a dealer needs to have documents signed by the customer that establish the existence of safety components and everything that the purchaser was taught about safe operation. The customer should acknowledge receipt of the operator's manual and training. It may also be helpful to provide a copy of the shop work tickets that show restoration of shields or guards to document the customer's receipt of those tickets. Use accurate product descriptions; if equipment isn't working describe it as spare parts or scrap. Don't leave anything to chance. Employees come and go. Memories about specific customers fade. Any system must include preserving information. The failure to document precautions taken can be as risky as not taking the precautions at all. Sometimes, careless operators ignore warnings they are given and are injured in the process. Presented with different stories about what happened at the dealership, a court would have decide which story to believe. Documenting warnings and instructions helps place responsibility where it belongs. At the end of the day, safety procedures are only as good as the documents that show what was done. **CONCLUSION** There is no way to completely eliminate the risk of a product sold by a dealer causing an injury or property damage. There are, however, simple tools that can limit the likelihood of being liable on a products liability claim. Know the product you are selling, make sure it is as safe as it was the day it first left a dealer lot, treat the sale of used equipment as important as the sale of new equipment and provide training and

operating instructions to the purchaser. Finally, document, document, document each and every step of the way.