

A few things to think about if you sell products manufactured by others:

The VGM/Benchmark Insurance Company policy states:

“...We will have the right and duty to defend the insured against any “suit” seeking damages...We may, at our discretion, investigate any “occurrence” and settle any claim or “suit” that may result...”

We seek and often get cooperation from manufacturers in claims wherein it can be demonstrated that their product failed. Sometimes it takes awhile to convince the manufacturer to take over the defense in a case where you as the dealer have made no alteration or done anything other than sell the product. If it fails, you will be forced to defend, *until* the manufacturer steps up. Some manufacturers are more willing than others to do this. But, if there has been any alteration, or accessorizing, or the product is older, it's going to be harder to get them to provide a defense. You should know that most claims begin with allegations from the patient/customer assigning liability to the manufacturer and the dealer and everyone that ever touched the product. We must defend you whether you were involved or not.

The manufacturers of equipment you sell will defend themselves if they are sued, but they do not necessarily have a duty to defend you, the vendor/retailer/dealer, if their products fail. Thus it is important that you ask for a certificate of insurance or vendor's endorsement from the product manufacturer or distributor's sales representative.

Here are a few questions formulated to illustrate the importance of seeking the manufacturer's products insurance certificate.

1. Should I assume that the manufacture has liability coverage for possible injuries related to design/manufacture/safety flaws of the equipment that I sell and install?
No. You should make no assumption about whether the manufacturers of equipment carry products liability insurance.
2. Do I have a right to ask the product manufacturer/distributor about their products liability coverage terms and limits?
Yes. This is important. The manufacturer's rep should be able to provide you with a vendor's endorsement to their liability policy, or be able to have your company added as additional insured – vendor to their policy. If the product manufacturer refuses to provide a certificate of insurance or vendors endorsement, you should consider discontinuing sales of their product lines.
3. What products liability limits should I expect the manufacturer to carry?
At the least, a small manufacturer should carry \$1,000,000 per occurrence limits written by an insurance carrier in the United States. The certificate should show that limits are available on a worldwide basis if the manufacturer is domiciled outside the United States.

A DME dealer sold a cushion via their mail order website to a customer out of state. The dealer processed the order through the manufacturer who shipped the cushion directly to the customer. The customer used the cushion for some time and eventually developed an ulcerous sore. The customer contacted an attorney who then filed suit against the dealer and the manufacturer of the cushion. VGM Insurance and the manufacturer defended their interests separately, even though VGM Insurance requested cooperation and indemnity for defense from the manufacturer.

Eventually, the manufacturer paid a monetary award and obtained the release of the manufacturer and the dealer. VGM Insurance defended the dealer throughout the process, and did not contribute to the monetary settlement. However, the cost to defend the dealer was over \$7,000. Yet, the dealer never had possession of the cushion, nor could the dealer have had anything to do with the failure of the product.

In this case the dealer's policy had a \$10,000 deductible, so the dealer has to pay the expenses for defense. The dealer is pursuing the manufacturer for the defense costs, but having a vendor's certificate and/or an indemnity agreement with the manufacturer might have forced the manufacturer to step up and defend the dealer early on in the process, and ultimately saved the dealer much trouble and expense.