With tort reform failing to stop the steady increase in product liability claim awards, manufacturers and enterprises like yours must take defensive action to protect their financial health. CNA Risk Control consultants will work with you to develop methods and preventive measures that help lower your product liability risk exposures and design and manufacture safer products. Instituting the strategies we recommend can help reduce hazards that may result in costly legal fees and lengthy litigation.
Thorough defense planning against product liability claims

Building a strong barrier against product liability claims is realistic and necessary. At a time when product liability elimination is elusive, CNA Risk Control provides the essential elements any organization can adopt to lessen the impact of a product liability claim.

Besides reducing product liability exposures, our strategies have helped companies:
- Improve management systems throughout each step of a product's development
- Reduce warranty expenses
- Improve customer satisfaction
- Reduce product development time and costs
- Strengthen the ability to defend lawsuits
- Maintain or improve shareholder value
- Capture larger market share through greater consumer satisfaction
- Enhance competitiveness through the reduction of product development costs

A step-by-step process for product liability prevention

CNA Risk Control recommends that businesses like yours conduct planning sessions to help you act proactively before products are released to the marketplace. In addition, your company should analyze existing products for potential liabilities and ensure that plans are in place in the event a claim is filed.

The product liability prevention process begins at the organizational level.

**Company Policy and Organization**

The foundation of any product liability prevention effort is a demonstrable, continuing perception by the entire organization that management is serious about controlling losses. The first step in demonstrating this commitment is to appoint either a full-time or part-time coordinator for the program. Candidates should be selected from the quality assurance, engineering, risk management and legal departments. The coordinator should report to executive management.

Most organizations need a standing Product Safety Committee, representing several departments, to foster communication and cooperation throughout the company. Members should come from the higher levels of such departments as manufacturing, quality assurance, purchasing and engineering to name a few. Legal counsel should also serve on the Product Safety Committee.
Design, Research and Development

Businesses must institute safeguards against design defects, which comprise a high percentage of product liability claims. Tort law has required manufacturers to demonstrate very high standards when developing products. These standards include analysis to identify and eliminate the foreseeable misuse of products. These standards not only apply to the product itself but also sales literature, packaging, instructions and warnings that accompany it. Courts have found that compliance with government or industry voluntary standards constitute design minimums and offer little protection in a lawsuit.

CNA Risk Control understands the importance of incorporating the knowledge and experience of the entire company into the product design. Companies like yours often establish Design Review Committees to oversee and perform periodic evaluations of the design throughout its life cycle. These committees often consist of a mixture of higher-level management, operating personnel and technical staff from the following departments:

- Marketing
- Quality Control
- Engineering
- Legal
- Purchasing
- Safety and Risk Management
- Manufacturing
- Servicing and Customer Relations

Responsibilities of the Product Safety Committee should include:

- Developing product liability prevention and safety policies, guidelines and standards
- Maintaining a written policy manual
- Setting standards for document development, retention and protection
- Creating systems to evaluate program effectiveness and departmental compliance
- Identifying and correcting suspected product defects by reviewing claims, complaints, field reports and incidents
- Ensuring that an effective design review process is in place
- Coordinating the training of employees, managers, dealers, distributors and installers in product liability prevention
The Design Review Committee should be involved in the following product design checkpoints:

- Initial design
- Manufacturing procedures
- Product use testing
- Complaint handling
- Raw material and supplier selection
- Product servicing procedures
- Product standards
- Customer use checks and observations
- Reliability analysis
- Sales analysis
- Advertising and marketing material
- Dealer report analysis
- Warranties, warnings and instructions
- Distribution and dealer instructions
- Packaging and product package information

This multi-disciplinary approach to product design will help your business identify risk exposures early in the manufacturing process and develop strategies to prevent them in the marketplace.

**Purchasing**

We recommend that purchasing strategies be aligned with product liability prevention efforts. Defects in purchased components or raw materials may lead to quality assurance problems, inefficiencies in production and product liability concerns. In just-in-time production systems, quality responsibilities are given to the vendor, increasing the need for effective selection and monitoring.

Quality assurance, engineering and design personnel should work to develop procedures to evaluate prospective vendors and subcontractors. At a minimum, companies should require that vendors provide evidence of product liability insurance and, if possible, offer to add their customers as a named insured on the policy. Vendors should also provide demonstrations of financial responsibility for liabilities that will ensure proportionate participation by vendors in any claim settlements.

Members of the product safety committee should develop a list of components or raw materials critical to the safe performance of the product and develop policies and procedures to select, evaluate and audit suppliers of them.
Warning Labels and Instructions

Warning labels and instructions are the last and least effective alternate to controlling product hazards. A warning is only appropriate if the hazard cannot be engineered out or guarded against. Courts will hold a product as defective if it is determined these alternatives have not been fully explored and the hazard removed by a safer, alternative design. Warning labels and instructions are not an effective insulator from liability.

Manufacturers have a legal duty to furnish consumers with all necessary information about the product, including warnings of potential hazards and instructions for safe use. The information must warn the user of any hazards that are not apparent and that are known by the manufacturer.

Literature used to sell, promote, install, operate or use the product are just as subject to legal scrutiny as the product itself and should be a part of the design review process. They should be developed concurrently with the product and subject to the same scrutiny—including their effectiveness in identifying product hazards. This requires that they be readable, practical and fully tested by user groups.

Quality Assurance

CNA Risk Control recommends clarifying the relationship between quality assurance and manufacturing. As manufacturing strives to maximize output and minimize costs, quality assurance activities may fall victim to manufacturing pressures unless both departments are separate and equal.

A good quality assurance program will have written procedures for:

- Responsibilities in the design review process
- Vendor and supplier qualification and surveillance
- Control of the manufacturing processes
- Critical component identification, inspection and testing
- In-process inspection and testing protocols
- Finished product testing and sample retention
- Segregation, disposal or repair of non-conforming raw materials
- Calibration of test equipment
- Error tracking and analysis for corrective action
- Periodic audits of systems for compliance with procedures
- Defining staff and management responsibilities within the program
- Document management including record development, retention and protection
Packaging and Shipping
The packaging of any product you manufacture should undergo the same analysis as the product itself in the design review process. Packaging is integral to product safety because it is designed to:
- Protect the product from damage during transit or storage
- Contain important instructions and warnings to the user
- Protect the product from contamination, degradation or spoilage

Product packaging may create additional hazards itself. For example, large bulky packaging without handles, grips or instructions for proper material handling and storage can present hazards. By law, certain products must comply with mandated packaging to prevent access by children or other requirements of the Food and Drug Administration, Consumer Product Safety Commission, Occupational Safety and Health Administration, and the Department of Transportation. These laws should be considered as design minimums and exceeded whenever feasible.

Shippers of critical products and warehouses that store them should be evaluated for their ability to handle environmental emergencies and ability to prohibit the mixing of sensitive materials. Certificates of insurance should be obtained from all shippers and warehouses used by the company.

Your shipping methods must comply with all laws and regulations and meet in-house safety guidelines.

Marketing and Sales
It is important that sales and marketing personnel be trained in product liability theory, exposure identification and the danger of misrepresentation or exaggeration of product uses and characteristics. Sales and marketing personnel have direct contact with product buyers and users and any misrepresentation on their part, either written or verbal, can open the door to a product liability action. In addition, sales and marketing personnel may be the first to have knowledge of developing product liability claims and must have the knowledge to properly handle complaints and report them back to management for analysis.

Sales literature, instructions, presentations, catalogs and websites should be a part of the design review process to ensure that the use and capabilities of the product are clearly represented. It is essential that final, camera-ready art and photographs in such material undergo final review as well.
Field Service, Sales and Repair

Field service personnel can play a valuable role in preventing product liability claims. Due to their frequent interaction with customers and product users, they are an important communication channel and must understand their responsibilities for product liability prevention.

Formal field service policies and procedures are vital because service personnel often operate independently and unsupervised. Such policies and procedures should cover:

- Policies and procedures regarding customer notification and the observation of possible claim precursors
- Documentation of customer personnel training and delivery of training programs, manuals, test results and qualifications
- Guidelines to follow when service personnel hear of a product related incident
- Guidelines for communicating manufacturing or design problems detected through warranty claims or product failures back to appropriate departments
- Documentation of installation of replacement parts for possible later recalls
- Notification of customers when non-standard parts, substandard maintenance or unauthorized modification of the product is noted
- Participation in the design review process
**Product Recalls**

Product recalls can be successfully conducted in an orderly, cost-effective manner. The key to minimizing the impact of a product recall to an organization is pre-planning.

Key elements of a successful plan are:

- Written procedures outlining the plan’s purpose, objectives and responsibilities of individuals involved
- Effective product traceability programs to locate recalled products and remove them from the stream of commerce quickly
- Effective record retention policies to assure that vital records are quickly available
- Procedures to communicate the recall through the media, registrations, and direct, person-to-person contact methods

Accurate records developed by sales and marketing teams are essential to effective product recalls. Both departments should periodically be audited by quality assurance to ensure adherence to company policies. Records should be maintained for the useful life of the products plus any additional time required by local statutes.

**Complaints, Incidents and Claims**

Quick, proper responses to customer complaints and incident reports can forestall the development of product claims. Many large claims start with a simple complaint and develop over time if not properly handled.

All complaints, incidents and claims should be routed to specially trained personnel. Such individuals should never admit fault, but gather the necessary information while assuring the customer that the problem will be looked into in a timely fashion. Documentation of the complaint, action taken to resolve it, and its final closure should be maintained and routed to top management. Simple and concise complaint records should be maintained and made available to anyone receiving complaints.

Such records should provide the following details:

- Customer contact information
- Description of the incident
- Information on the product involved
- Routing to appropriate individuals for resolution or further investigation
- Final resolution of the complaint

Complaint records should be analyzed and used to identify developing trends that may serve as a trigger mechanism for further corrective measures.
Legal and Contractual
A lawyer who remains current with product liability issues can be an invaluable asset to a company’s product liability effort. Manufacturers and enterprises can benefit from frequent, informal discussions with legal counsel. Legal counsel should update Product Safety Committee members on developing trends, aid in clarifying policies, help in reviewing labels and instructions and present training in legal concepts to the group.

Legal counsel’s participation in contract development is absolutely essential. All contracts, warranties and disclaimers, purchase orders, warnings, labels, instructions and manuals, and advertising should be reviewed by counsel well versed in product liability law.

For more detailed information please see our attached CD-ROM.
Minimizing exposure to product liability risks

Developing strategies to prevent product liability claims is an investment in your company's continued financial health. CNA Risk Control helps manufacturers and enterprises like yours develop strategies to lower their product liability risk exposures. As a result of this partnership, our policyholders have decreased the possibility of costly litigation and the damaging media attention resulting from it.

Let us help you develop a product liability plan today

To learn more about how CNA Risk Control can help you defend your company against product liability claims, call us toll-free at (866) 262-0540.

Or, visit the CNA Risk Control website at www.cna.com/riskcontrol