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Mitigating Premises Liability Risks for Retail Lumber Insureds

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With the busy spring season kicking into high gear, retail lumber and hardware stores are likely to see an uptick in business and foot traffic. This boost in business and people on site can translate directly to increased premises liability risk exposure. More customers walking around the yard and on the floor means more opportunities for trips and falls, forklift accidents and materials falling from shelves just to name a few hazards.

Producers who want to protect their clients and their own books of business should review coverages now and position themselves to their insureds as a valuable source for risk mitigation strategies.

The Rising Cost of Premises Liability Claims

While a slip on a wet floor may seem like it would lead to a fairly straightforward claim, that isn't always so for premises liability claims for retail lumber and hardware businesses. A single incident can quickly open the door to multiple layers of legal exposure with each adding cost, complexity and reputational risk.

In most of these cases, negligence is the most common legal argument. "You should have known" is often the legal strategy that plaintiff attorneys aggressively pursue. And when a hazard, such as a cracked parking lot surface, an unbolted rack or a forklift operating without a spotter, has gone unaddressed by an insured, it can be difficult to mount a defense.

Situations become even more complex when the insured has a history of OSHA regulatory and compliance violations. Something as simple as a forklift operator not wearing a seatbelt can result in a fine, and a pattern of violations tells the court the defendant does not prioritize safety.

Contractor and third-party liability also add another layer of complexity. If a vendor, delivery driver or subcontractor is said to have contributed even in part to an injury, the business's general liability policy may be required to respond first.

However, the most concerning issue may be today's litigation environment surrounding commercial premises.

Personal injury attorneys make it their business to know the limits of commercial insureds, and they understand nuclear verdicts exceeding the actual damages are not uncommon. When a retail business is named in a lawsuit, the plaintiffs will take every measure to bring in more dollars.

Losses Are Primarily Driven by Preventable Oversights

Often, there is a common thread behind on-premises liability claim: It's that the retailer knew about the hazard and did nothing. An unbolted rack, an unlocked restricted staircase or an unaddressed parking lot pothole are oversights that too often insureds may let sit until an incident forces them to act.

The stakes are even higher in retail lumber and hardware environments. Materials are heavy, storage shelves are high, and operating forklifts often share space with customers. Improperly trained forklift operators remain one of the biggest liability exposures in the industry, and the consequences can be severe when there's no record of OSHA-compliant training. For places with

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outdoor yard operations, environmental factors such as rain, ice and extreme heat can compound risk exposure.

Much of this risk exposure can be addressed. Risky conditions or scenarios can often be anticipated, planned for and addressed before a claim is put into play.

How Producers Can Proactively Support Clients

When producers understand their clients' operations, they are better positioned to identify gaps before they become claims. In the lumber and hardware space, that means understanding not just what the business sells but how it operates. For example, there is a notable difference between a sawmill that processes timber and a hardware store that occasionally cuts lumber with a table saw.

The producer can help ensure there is full policy alignment from a coverage standpoint. A client's general liability, commercial auto and umbrella policies need to work together across carriers. When an umbrella policy doesn't follow form to the underlying GL, it can create gaps that will likely surface at the worst possible time.

Producers should also review for potential third-party risks and verify insurance coverage. Vendors, contractors and delivery drivers who are regularly on a client's property should carry adequate insurance and be listed as a certificate holder, ideally named in an identification agreement. Producers should also understand the nuances specific to this

class, such as distinguishing between premise liability and products operations, the state's handling of punitive damages and the limitations that can arise in contractor-related snow and ice removal claims.

Key Risk Mitigation Strategies and Documentation

Producers can add immediate value by walking clients through a practical risk mitigation framework. There are several areas to consider for retail lumber and hardware businesses heading into a busy season:

- **Formal inspection and documentation programs:** This can include hourly walkthroughs of the floor and yard, with written logs of what was found, what was fixed and when. Each employee should have a clearly defined role in the inspection process, so nothing is missed.
- **Rapid hazard response:** Train employees to immediately report and fix issues as they are discovered, as recurring hazards that go unaddressed are the foundation of negligence claims.
- **Traffic control and restricted access:** Keep pedestrians away from vehicle traffic and forklift areas with barriers, cones or chains.
- **Non-slip surfaces and proper lighting:** Entrance mats should run the full width of entry doors and be replaced before they curl. Lighting in yards and warehouse spaces should also be evaluated regularly.

- **OSHA-compliant forklift training:** Make OSHA certification training programs and refresher training mandatory for all operators. Require a spotter at any time a forklift operates near a customer-accessible area or crosses a public road.

Documentation is also critical. Having a consistent record of inspections, hazard corrections and employee training demonstrates that a business takes safety seriously and creates a paper trail as a key defense asset in the event of an incident. Producers should encourage their clients not to treat documentation as an administrative hassle but as an insurance policy in its own right. Logging the repair of a hazard today may be the most important document in a claim filed next month.

While the busy seasons bring new opportunities, it also comes with added risks. Producers who understand their client's operations, walk the property, review coverage layout and educate on risk mitigation will build lasting relationships and protect and even grow their book of business in the process. ■



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