Taking the quality program to a new dimension: Product liability prevention

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A major new field of focus for the quality profession is product liability prevention with benefits that rival any area of total quality improvement, taking the overall quality program and effort to entirely new levels.

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Introduction

Most manufacturing companies in today’s competitive industries have fairly good quality programs and efforts in place. The best continuously strive to get better, while the others just try to maintain what they have. Some take advantage of new concepts and practices and improve their overall effort and level of quality, and others periodically get taken in by passing fads and hype programmes which lead to confusion, little to no gain and, in the worst case, turn employees away from the quality improvement effort altogether. To maintain a high standing in industry and gain the competitive edge, manufacturers must make every effort to continuously improve and search for new areas of opportunity. The leaders are those that become pioneers into new frontiers in quality.

What most quality professionals and practitioners don’t realize is that substantial improvements are to be obtained when manufacturers begin to focus in on the aspects of product liability prevention and other legal areas. They do not see the connection between the field of product liability law and quality; or, they do not feel that they have the background or knowledge they anticipate is required to get involved in the product liability field; or, they do not feel that their company has much of a problem in this area, so they do not have any sense of concern. The fact of the matter is that they and their company could benefit greatly by learning the key aspects of product liability prevention, along with addressing the many areas that the programme deals with, and teaching these elements to the rest of the employees. As someone who has been in quality for more than 20 years, and has developed comprehensive quality programs for large international manufacturing corporations, teaching the management teams the aspects of total quality management (TQM) and the fundamentals of needed control programs, the author has never seen the interest and concern generated by the engineering and management teams as when the subjects were presented at inhouse seminars on product liability.

The end results are impressive and very noticeable, because the entire management team begins to speak a new language, understands and thoroughly buys into the new concerns on which they must focus and, as a result, brings about substantial improvements to the safety, quality and reliability of the products it creates from that point on, as well as making dramatic improvements to numerous other areas involved. The area of product liability prevention is a revolutionary new dimension in quality (Goodden, 1995).

In addition to the necessity for such focus for US manufacturers because of our litigious society, management teams around the world also are beginning to focus in on this new area of concern, and reaping the benefits of what is taught. Although US manufacturers have always been the hardest hit by product liability lawsuits, changes in the laws in many countries are beginning to bring about the same devastating concerns and results to manufacturers, and the quality and manufacturing management teams are trying to learn what to do in order to help protect their

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The following are some of the areas product liability prevention focuses on.

Understanding US lawsuits and how manufacturers are found to be negligent in their actions

In order to begin to address this area of concern effectively, manufacturers need to have a better understanding of the legal process, and what the legal community expects of them: what constitutes a defective product, defective design, or negligent actions; what can be conceived as a breach in warranty, misrepresentation and fraud. They need to know the theories of liability or difference between what is classified as negligence and strict liability. Manufacturers need to know why standards and state of the art principles and practices are so important in the design consideration. In many cases it is almost like trying to be a law abiding citizen, only you cannot hope to be in compliance with the local laws if you have never made any effort to find out what they are. The same is true here. The manufacturer needs to understand what is expected from a concerned and responsible company, and then ensure such practices and safeguards are in place.

Selection and qualification of suppliers and subcontractors

Commonly it is said that a product can be only as good as the materials and efforts that went into making it. The same is somewhat true in product liability. Your level of protection from others can be only as good as the guidelines you follow in the selection and qualification of your suppliers and subcontractors. Many major companies get dragged into lawsuits because of the carelessness and ignorance of others. Also keep in mind that attorneys will go after the company with the deepest pockets, which is likely to be the main provider, as opposed to smaller suppliers and subcontractors.

Think about these scenarios. Would you drive a rental car if you were not sure you had any insurance coverage? Would you put your life savings in a bank where your money was not insured? The surprising fact is how often purchasing departments will seek out a supplier, purely based on price, without ever even thinking about whether they have liability insurance. In fact, they are subjecting your company to high risk without anyone even knowing it.

The product liability prevention focus needs to qualify a supplier from a quality and liability perspective; thus a company needs to ensure that its supplier or subcontractor is adequately insured, and has the company named in their policy as an ‘also insured’.

Many small operations and startup manufacturers, along with independent individual designers and engineers, operate without product liability insurance coverage. Most of them wrongly think they cannot afford it. They are inexpensive suppliers, and that makes them attractive to estimators and purchasing management, but they can lead you into a world of trouble and be left facing the lawsuits as they go out of business when a catastrophe strikes. This is another area where these new efforts can take your quality program and protective efforts to new heights.

Purchasing and contractual agreements

Another area the manufacturer needs to focus on as it tries to protect itself against product liability lawsuits, is the form of the contractual agreements with suppliers and customers, and what the fine print states. What many companies do not realize is that although it may have been a supplier’s component or product that malfunctioned and led to an incident, or the actions of another party that led to the failure of your product, the main company will still be dragged into the lawsuit unless it addresses many of the key areas of a contractual agreement. Many members of management never even look or read their own fine print. They may not even know who wrote it.

Managers may receive contractual agreements, or supplier agreements from customers, as part of getting a new order, and look at these as just standard requirements for getting the order, without much concern over what the contracts actually state, and who is going to be held liable for so many things that can go wrong. Most companies do not find this out until after they are faced with a disaster, and then it is too late. By understanding what the manufacturer needs to focus on, and the types of language required in its documents, managers can substantially help protect their company against potential major problems.

Design reviews and new product introduction

When products fail the ultimate reliability test, consumer use and abuse, and end up being
recalled, or a manufacturer gets involved in a product liability lawsuit, it is not just the product that ends up being scrutinized but the manufacturer’s internal programs and efforts to ensure that the product would be safe and reliable. The most effective and economical place to catch and address potential reliability and liability concerns, is in the initial design review of the product.

Warnings and instructions

In a study conducted by a major US insurance company in March of 1993 of 27 random cases with settlements of over $100,000, they found the largest cause of manufacturer’s negligence centered around ‘inadequate or non-existent warnings’. Many times our best efforts go into designing the product, and our least effort into developing the operating instructions and creating the necessary warnings. Manufacturers and their quality, design and engineering teams need to know how to design effective warning labels (i.e. the ANSI Z535.4 standards). They need to focus in on whether the warnings and instructions being supplied are visually effective, easy to follow and understand, and adequate for the hazard.

Understanding document control and dangerous documents

Finally, everyone needs to understand the significance of good record keeping. The records a manufacturer generates regarding all aspects of sales, customer service, new product development, testing and evaluation, manufacturing and quality control, can serve as their best defence, or the nails in their coffin.

Members of management not only need to understand the importance of good records retention, but also they need to learn how to, and how not to, write all types of document. In essence, they need to learn what a ‘dangerous document’ is, so as effectively to prevent their creation. A dangerous document is a document that demonstrates that the organization had prior knowledge of a potential product hazard, and failed to react in a responsible manner. For example, an internal memo that states that a company has found that the product they have been producing right along has the potential for overheating and catching fire, so they make a running change to the product, but do nothing for all those products they have already produced.

Conclusion

These examples are just a sampling of how a manufacturer and its quality head can take the entire quality program and effort to a new dimension. Manufacturers are continuously hit by major product liability lawsuits, having significant impacts on their profitability, the costs of their products, and their future existence. It is now becoming a worldwide issue, and the management teams need to learn new fields and gain new perspectives in order to stay afloat. The legal community is learning quickly about quality, and quality needs to learn legal. This is one of the most revolutionary new areas for quality in decades.

References