

BUSINESS BUILDER

Liability, Litigation and the Pet Industry

BY THOMAS HILL

According to the Court Statistics Project, a joint project of the National Center for State Courts and the Conference of State Court Administrators that publishes caseload data from the courts of the 50 states,

the District of Columbia and Puerto Rico, the average cost of a lawsuit can reach six figures. Whether it's settled or goes to trial, legal costs begin with the summons and complaint and continue to accrue with pre- and post-trial costs and, of course,

settlement costs.

Slip-and-fall lawsuits cost \$54,000 on average, while employment claims can cost \$88,000 on average. Some contract disputes average \$91,000, and instances of professional malpractice can break the six-figure mark at \$122,000 for the average claim. And these numbers only represent legal fees—not any damages of settlement costs associated with litigation.

Failing to take reasonable steps to reduce exposure to liability in your pet business is akin to the old saying, "Closing the stable door after the horse is out." While there's no way to reduce all liabilities all of the time, there are some prudent actions you can take to reduce the chances your business will face a lawsuit.

PET BUSINESS LEGAL OBLIGATIONS AND DAMAGES

"Pet business owners and pet owners generally have a duty of reasonable due care to ensure animals in their possession do not cause harm to third parties," said Matthew Reischer, Esq., CEO of New York-based LegalAdvice.com. "The standard is of a general negligence/reckless nature in that a person will be held liable for the conscious failure to perceive a risk or the conscious disregard of a known risk."

With the exception of California, Reischer said it is extremely rare for states to permit legal claims for emotional distress when a companion animal is hurt or killed.

"Pets are generally viewed as chattel property as far as the law is concerned," he said. "Damages to an animal, even if death results, usually are limited to compensatory relief associated with the value of the animal."

ARE YOUR BASES COVERED?

Pet retailers should be sure to secure tailored but comprehensive insurance coverage, said Emily Schlansky-Muscattello, president of Maitland, Fla.-based Emily & Dolly Solutions.

"Work with an insurance broker familiar with the pet industry," she said. "When you are getting insurance quotes, consider the daily activities of your business and potential scenarios that might arise. For example, you might have a doggie day care facility that offers pickup and deliv-



ery of pets in your company van. Make sure you are covered in the event of a traffic accident."

Protecting your company's name—something many pet retailers might not think to do—is vital. If your business's name isn't trademarked, anyone can start using it exclusively just by registering it with the United States Patent and Trademark Office (USPTO), said Shahrina Ankhikrol, Esq., owner of New York-based Ankhikrol Law.

"I highly recommend that any new business owner, or if a business owner hasn't already done it, trademark their business name and logo," said Ankhikrol. "Oftentimes what happens is, [business owners] don't do it, they don't think anyone is going to steal their name or logo or slogan, and someone does. Then you have to start from scratch." (See Protect Your Brand Identity From Cybersquatting on page 56 to learn one retailer's story.)

Protect yourself from liability. Ankhikrol said maintaining video surveillance throughout your store is simple practicality because it can provide an honest account of personal injury or of an accident involving a human or pet customer.

"It's less [of a] 'he said, she said' if you have a concrete video showing exactly what happened," he said.

In a professional grooming environment, thorough training and diligent supervision can go a long way toward avoiding an accident, said Lisa Jordan, owner of Nature's Pet Day Spa in Gainesville and Summerville, Fla. It takes time to correctly judge each animal's personality, she added.

"It takes months, not weeks or days, to get a professional groomer up to full competency," Jordan said. "It takes around four months for me to train my staff to

the point they can do their jobs well, safely and correctly."

In an environment where staff encounters and handles myriad pets every day, all day, insurance means peace of mind for all parties involved.

"We see it as being in our best interest and our clients' best interest to be fully covered with liability insurance, and being bonded and fully licensed to the highest degree possible," said Russell Hartstein, CEO and founder of Miami-based Fun Paw Care dog training.

Hartstein screens his clients' animals for an aggressive past and has a system in place to minimize everyone's risk.

"We have behavior assessment intake forms, basic overall dog training and pet profile forms, and this gives me the background," he said. "If there's any bite history whatsoever, they fill out a more extensive behavioral intake form, and we require their dog to wear a Baskerville muzzle."

Retailers, groomers and other pet business owners should secure material safety data sheets (MSDS) for new and existing products to evaluate safety precautions—in particular for flea killers and grooming products, said Vicki Lynne Morgan, president of Califon, N.J.-based Animal Brands.

"Some MSDS reports might say that users must wear gloves to handle a product," Morgan said. "Once you get those reports based on your shampoo, your conditioner, whatever you might use, instruct your workers accordingly to do your due diligence and to follow their instructions." ■

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