Liability insurance: How much is enough?

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Colorado-based Jensen Farms, which was the source of the *Listeria*-tainted cantaloupes that sickened and killed scores of people last year, recently filed for bankruptcy protection as there is no way its liability insurance coverage will cover the claims arising from the case.

Bill Marler of Marler Clark, a well-known Seattle-based attorney who specializes in foodborne illness cases, said that if all 146 people sickened or killed file claims, the damages would be in the neighborhood of $150 million. Though it baffles him as to why, in these types of cases, typically less than half of the victims do file claims.

In this case about 50 claims have been filed so far, representing about two-thirds of the deaths and only about 25 percent of the illnesses. Virtually everyone who fell ill was hospitalized, he said, so basically every one of the 146 people have legitimate expenses caused by the eating of those cantaloupes.

Still, he estimates that the total damages for the 55 or so claims that will be filed would be about $75 million — only half of the potential damages but still much more than the $2.5 million liability insurance coverage that Jensen owns.

Mr. Marler said that as part of the bankruptcy proceedings, Jensen Farms will put that $2.5 million in a trust fund that will be administered by a special master and distributed to the claimants in some equitable way.

In this case, Greg Nelson, director of commercial lines for Western Growers Insurance Services, based in Irvine, CA, said it was virtually impossible for the Colorado firm to have enough liability insurance to cover the damages.

“In the first place, it would be very difficult to find an insurance company to write that large of a policy for a company of that size,” he said. “And secondly, it would be very expensive.”

Mr. Nelson said that general business liability insurance, which covers product liability, costs about $1,000 to $2,000 per year for each $1 million in coverage. So even if Jensen Farms could have found a policy for $100 million, it would have cost them between $100,000 and $200,000 per year.

The Western Growers executive said that for most companies of that size, it would not be a prudent business decision. “How much a company buys is strictly a business decision,” he said.

While he said that there is no rule of thumb, most produce firms have policies in the $1 million to $2 million range, though it is not uncommon for some of the mid-size or larger companies to have $5 million to $10 million in liability coverage.

And Mr. Nelson said that the largest companies in the industry might have $25 million to $50 million policies, especially if they sell to the larger retailers, which demand that type of coverage from some of their customers.

He said that the average company should start with the value of their firm when determining how much coverage to buy. A firm with about $10 million in assets might have a $10 million general business liability policy. More coverage than that might be difficult to justify as a business decision when what is being protected against is a very rare occurrence.

After all, a catastrophic event like the *Listeria* outbreak tied to cantaloupes is almost a one-in-a-million occurrence.

“I’d rather see them spend the money on prevention so that they don’t have a problem,” he said.

However, Mr. Nelson added that companies with a recognizable brand to protect could certainly have a larger policy, which would be a prudent business decision.

Mr. Marler said that in his experience, it is rare that a foodborne illness outbreak results in a bankruptcy. “Most firms do have enough liability insurance,” he said.

That is largely because most of these types of contamination issues result in sickness, not death, and the number of claims is also very limited.

In the last big industry problem — the *E. coli* outbreak of 2006 — Mr. Marler said that most of the produce firms involved in that case did have sufficient insurance to cover the claims. He recalled that the major firms involved had $25 million policies.

Even in the biggest foodborne illness case of all (prior to Jensen), the Jack in the Box case, which launched Mr. Marler’s career, there was enough money in the insurance policy to cover the claims.

Mr. Marler said several months before those tainted hamburgers caused problems, a new member of the Jack in the Box board convinced the firm to up its liability insurance from $25 million to $100 million. That proved to be a very prudent business decision.

Mr. Nelson said that it is important for companies to understand that liability insurance is separate from product recall insurance, which typically does not offer liability coverage.

While product recall insurance is available, he said that very few firms have it because of what it does not cover.

“It typically only covers product recalled because it was contaminated or it was likely contaminated and the owner reasonably believed it would cause illness,” he said.

For example, Mr. Nelson said that in the Jensen Farms case only that firm’s product recall insurance would have kicked in because that was the only cantaloupe found to be contaminated. Like virtually all recalls, it was of a voluntary nature so other cantaloupes recalled during the height of the scare that were not contaminated would not result in a successful claim.

“Frankly that’s why we don’t write any product recall policies,” said Mr. Nelson. “They do not cover what our members want covered.”

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