

Tort liability



Tort liability is an area of business compliance which managers need to pay close attention. A company can expose itself to tortuous claims in a variety of areas; however, the UoP business simulation provides a specific scenario with Alumina, Inc. wherein, individuals can see how specific areas of tort litigation can be minimized.

An old adage states, ??? The best defense is a good offense.??? But, what does that mean In the scope of business, and specifically, minimizing liability, the statement best describes proactive measures employed by companies to reduce liability. Liability, even with the best of plans, cannot be eliminated; at best, companies hope to reduce opportunities for tortuous claims, and minimize exposure to manageable claims.

Alumina, Inc. is a manufacturing company which exposes itself, by the very nature of its business, to strict adherence with environmental laws.

Environmental protection is a broad, expanding, and encompassing area of tort liability which has significant impact on the way in which Alumina functions. Environmental protection is regulated by the federal government under the auspices of the Environmental Protection Agency (??? EPA???) (epa.

gov, 2010). In that regard, the administration oversees the regulation of environmental standards, including enforcement. EPA standards are readily available and accessible. To meet the goal of reducing liability, the first step which should be taken is to make these standards familiar to all employees, especially those in management roles. Ignorance is not a valid defense; and,

as such, Alumina is responsible for keeping all employees apprised of regulations and standards at all times.

Under the theory of Respondeat Superior, companies are responsible for the actions of their agents/employees. In that regard, all employees should be informed of their duties and responsibilities. Continued training and evaluation of employees is the first step in minimizing liability. For example, if the concentration of a specific chemical waste-product exceeds EPA standards, specific policies and procedures should be in effect to tackle that problem, and all employees should be made aware of those procedures. Awareness of situations and reactions to those situations can have a profound effect on how a company handles an arising situation.

Preparedness and forethought on the part of management does not ensure that accidents and incidents will not occur; however, a prescriptive approach minimizes backlash and indecisiveness on the part of a company. Another aspect of Alumina's business practice which falls under the EPA's authority is related to the Federal Water Pollution Control Act (Clean Water Act). The primary conundrum facing Alumina's management is dealing with a claim that Alumina has been polluting water sources.

The biggest threat to Alumina's success comes from public opinion. The regulations enacted and enforced by the EPA are intended to protect the public at large. As such, adherence, or the lack thereof, to those standards can impact a business' public image. In recent news, the handling of the oil spill in the Gulf of Mexico by British Petroleum has had disastrous effects on BP's image. BP's initial reluctance and multiple failures in tackling the oil spill have significantly damaged the conglomerate's image among

locals and residents. As a result, they have needed to commit resources to simply improving their image. Jeff Brady writes, ??? As part of its campaign, BP announced \$25 million dollar grants to each of the four affected states.??? (SCPR.

com, 2010) Alumina, in order to avoid a damaging situation such as that facing BP, must conform to EPA regulations and maintain a positive public image. Through public outreach programs, Alumina can position itself as a leader in environmental protection by working with the community. Although there are costs attached with programs, they are significantly less than those resulting from violations of public policy. Environmental protection regulations can have a significant impact on the way in which business functions.

A two-pronged approach by management can significantly reduce the chances of a business facing environmental sanctions and a public debacle. In order for Alumina to minimize liability, it is necessary for management to take steps to ensure that all employees are aware and continually trained of EPA regulations, have an avenue to address any questions or concerns, and work together with management to maintain a positive public image. To that effect, management must continually strive to make resources available to its employees, as well as ensuring policies remain in effect which ensure a proactive and pre-emptive approach to minimizing tort liability in the area of environmental protection.

Alumina is a manufacturer of products, and as such, theories of strict liability apply. Strict liability presents a conundrum to Alumina, as it creates an

opportunity for litigation despite many preventative measures which the company can take. Strict liability is defined as ??? liability without fault??? (Cheeseman, Ch. 6). How does strict liability apply to Alumina In order for Alumina to minimize the tort of strict liability, management must enact a corporate culture which emphasizes the duty which the company owes to the public at large. As Cheeseman writes, ??? Unlike negligence, strict liability does not require the injured person to prove that the defendant breached a duty of care??? (Cheeseman, Ch. 6). When the employees and agents of Alumina conduct their daily affairs with the public in mind, they will minimize the likelihood of endangering the public.

Alumina must conduct their activities with this approach, as it inherently imposes a standard of public responsibility to which all of Alumina??™s members must meet. Alumina also faces exposure as a manufacturer of parts used in the production of other products. Strict liability exposes Alumina to claims, even if Alumina??™s product was not defective. In order to minimize Alumina??™s exposure, management must work congruously with other partners, like distributors, wholesalers, etc. Alumina must be proactive in maintaining internal standards and must work with all members in the chain of distribution to minimize claims of product liability. Alumina, Inc. faces a variety of challenges in maintaining a positive public image while reducing exposure to tort litigation. First, Alumina??™s management must ensure compliance with federal and state environmental regulation.

In order to achieve this goal, employees and agents must be indoctrinated with a culture of public responsibility. Alumina is liable for the actions of its employees, and, as such, must provide measures for employees to

understand regulations and standards, create measurable and descriptive standards to meet regulatory compliance, provide avenues to address questions and concerns, and work with employees to minimize exposure related to environmental standards. Strict liability also exposes Alumina to a variety of resulting claims.

To minimize claims under this tort theory, Alumina's management should work with entities within the chain of distribution, create internal standards, and remain constantly aware of their public image. Although tort liability can never be eliminated, proactive managerial actions can minimize a company's chances of having to defend a tortuous claim.