

Management Liability Insurance for Medical Device Companies



The Risk is Real

Many in the medical device industry don't really understand what management liability (ML) risk is and the potential financial damage that even a single lawsuit can cause.

Management liability lawsuits range from employment issues, such as harassment, discrimination and wrongful termination, to business practices issues, such as misappropriation, financial mismanagement and negligence.

Legal action can be brought by:

- ▶ Customers
- ▶ Employees
- ▶ Lenders
- ▶ Vendors and suppliers
- ▶ Competitors
- ▶ Shareholders

Many companies may consider going without ML coverage to save money. Others mistakenly assume they are covered under their general liability policies, which most often have a standard exclusion for these exposures. Going without ML insurance can be a costly decision.

The Solution is Here

The risk is real and significant. So is the protection that can be obtained with Monitor's Management Liability Medical Device Program, which provides Directors and Officers Liability (D&O) and Employment Practices Liability (EPL) Insurance.

Program Eligibility

Monitor's coverage is available for a wide variety of medical device-related companies with up to 500 employees and \$25 million in assets, including but not limited to electromedical and electrotherapeutic apparatus; orthopedic and prosthetic appliances and supplies; medical and surgical instruments and apparatus.*

*This list is not all-inclusive. Other medical device classes may be eligible for this program.



A Berkley Company

www.monitorliability.com (800) 446-2100

Enhanced Coverage Available

Directors and Officers Liability

- ▶ Co-defendant liability coverage available
- ▶ Optional costs of defense in addition to limit of liability
- ▶ Waiver of deductible (if ruling of no liability is obtained)
- ▶ Non-rescindable policy options
- ▶ \$25,000 costs of defense for intellectual property rights and/or copyright infringement claims against the insured entity
- ▶ Insured person coverage for intellectual property claims included

Employment Practices Liability

- ▶ Third party liability coverage for claims brought by customers for discrimination (including costs of defense for Americans with Disabilities Act (ADA) and public accommodation claims) and/or sexual harassment
- ▶ Sublimit for defamation, libel and invasion of privacy against a third party resulting from the use of social media; expanded definition of wrongful act to include workplace bullying
- ▶ Sublimit for costs of defense for claims alleging violation(s) of the Fair Labor Standards Act
- ▶ Modified settlement clause (80%/20% coinsurance) and a 10% reduction in the deductible upon consent to settle
- ▶ Sublimit for costs of defense for criminal investigations brought by any government agency for alleged hiring or harboring of illegal aliens

Contact Us

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Claims Examples

Gender Discrimination

A former marketing director of a surgical instruments manufacturer filed a complaint alleging gender discrimination. Her responsibility was to bring a new product to market, which subsequently failed during clinical trials. Later, the employee was terminated because of her lack of experience running clinical trials and for legitimate budgetary reasons. She filed a complaint alleging discrimination based on gender, refusal to promote, a violation of the Equal Pay Act and discrimination in violation of public policy. After a two-week trial, the jury returned a verdict in favor of the company. Total defense costs were over \$310,000.

Emotional Distress

A former employee of a Monitor-insured MRI machine manufacturer alleged that after one of the insured's partners learned that he was working for a competitor, the partner threatened him with civil and criminal action, bodily injury and conspired to have him incarcerated for aggravated stalking. His complaint alleged malicious criminal prosecution, intentional infliction of emotional distress, false imprisonment and tortious interference with an existing contract. Monitor defended the matter on behalf of the insured and its partner and paid \$166,000 in defense costs. The matter ultimately settled after a private mediation, and Monitor paid the \$150,000 settlement amount.

Negligent Misrepresentation

A group of investors sued a manufacturer of endoscopic cameras and its board of directors for negligent misrepresentation. The investors alleged that the board of directors gave overly optimistic statements regarding the contract negotiations of a potential client. The contract would have significantly boosted revenues and would have provided investors with a 15% return on investment. When the new contract did not materialize, company stock fell by 50%. Defense costs exceeded \$200,000 and severely taxed an already troubled company.

About Monitor Liability Managers, LLC

For nearly two decades, Monitor has provided comprehensive executive and professional liability insurance at competitive prices. Our consistency of leadership, outstanding customer service and industry expertise enable us to provide insurance products unsurpassed in the marketplace.

Monitor is a member company of the W. R. Berkley Corporation with full underwriting and claims settlement authority for its insurance products.

A+ Rated Insurance Carriers

Admiral Insurance Company (Nonadmitted)
Berkley Insurance Company (Admitted)
Carolina Casualty Insurance Company (Admitted)

- ▶ A.M. Best Company rated: A+ (Superior)

Risk Management Services

Monitor provides a suite of risk management services to its insureds at no cost. These services are offered by Gordon & Rees, LLP and give our insureds access to:

- ▶ Unlimited calls to a toll-free, confidential human resources helpline that provides expert advice about employment-related workplace concerns
 - (877) 503-4595
- ▶ A risk management Web site, MyHRHelp, that provides resources covering all areas of workplace law and includes templates of employment applications, policies, procedures and an employee handbook
 - www.myhrhelpweb.com
- ▶ A subscription to the newsletter, *Employment Law Updates*, that highlights important workplace law news and trends

Claims Expertise

With more than 100 years of combined experience, Monitor's claim professionals and attorneys respond to and manage claims effectively. Our experts handle a wide range of claims that occur with the most sophisticated risks in the market.