



Liabilities and Accuracy

By Jim Chliboyko

Paul Brett had a good day in Brandon, Man., the day before our interview. He had been at a CAAR forum on issues of liability and how they related to ag retailers.

“It generated a lot of questions,” said the Winnipeg-based lawyer, who estimates the attendance at over 50. “I was the only non-pure ag guy. We had a little bit of fun with it.”

Brett is a lawyer for the Winnipeg firm of Thompson Dorfman Sweatman LLP, and one of his particular areas of study revolves around the subject of liability for manufacturers, distributors and retailers of herbicides and pesticides. It’s a subject he believes most people in the ag sector need to be aware of.

“What we are talking about is negligence and negligent misstatement, as opposed to breach of contract and sale of goods act warranties,” said Brett. “Negligent misstatement is characterized where one party has access to the body of knowledge that the other doesn’t.”

Brett knows of where he speaks. He was called to the (Manitoba) bar in 1976 (he has been called to the bar in Saskatchewan and Ontario in 1985 and 1993, respectively). And while Brett doesn’t believe that we’re in the midst of a particularly litigious society or age, he believes that retailers need to be aware of their language and their claims when chatting, however casually, with producers.

“The ones that reach the courtroom are the ones where the facts are in dispute,” he said. “Lots don’t reach the courtroom; there’s no liability but there is a good-will resolution.”

One of the cases Brett focussed on during his Brandon appearance was that of one particular dealer who used vivid, inaccurate language while discussing the properties of a particular herbicide: a producer was looking to control Canada thistles and sow thistles in his wheat field, and his dealer advised the producer that Buctril M was what he was looking for, that it would “smoke” the thistles. While the term “smoke” is maybe a little on the colloquial side, it was also more enthusiastic

than the Buctril M label, the claims of which were slightly more sober. The label merely stated that Buctril M would “check” the top growth of thistles, rather than “smoking” them.

“It’s the one case where the dealer was completely at fault,” said Brett. “The guy couldn’t have been more incorrect about ‘smoking’ the thistles. Under no circumstances could it be said that [Buctril M] would smoke the thistles.”

This case highlights the need for caution when communicating the properties of any one product, said Brett.

“One of the things is that there’s that inevitable tension between wanting to make the sale and being properly guarded in your commentary. There’s a tension between wanting to sell and not wanting to chase the producer out of the showroom.”

But Brett advised not to be cautious to the point of not trusting anyone.

“Underlying all of this, of course, is that there’s a partnership between the producer, the dealer and the manufacturer,” said Brett. “It really is a tripartite relationship. You certainly don’t start out antagonistic and you hope it doesn’t become antagonistic.”

But rather, he suggested retailers and their staff need to be aware and prepared and knowledgeable about their products.

“Be careful in the manner in which you express yourself,” cautioned Brett. “When the producer is in the showroom, if you give a bit of a flip answer, you aren’t sure how he’s taking it.”

And if asked a question that may be tricky to answer, a good retailer or employee can always defer to the manufacturer. It may add a step to the process, but the answer may just be a phone call away.

“The safe position may be I don’t know,” concluded Brett. ♦