

Concept of Liability and Details of Product Liability Cover

Anabil Bhattacharya*

Liability Insurance is a very vast and important subject. Prima facie, it is felt that since it is a legal liability, it is the easiest form of insurance to tackle. But this relation with the law itself has brought into picture the various complexities involved in Liability Insurance. Liability Insurance in India is gaining a lot of importance due to globalization and the increasing legal awareness of the people. In the Indian market, earlier, we were familiar with Workmen's Compensation Liability, Public Liability (Industrial and Non-Industrial) Professional Indemnity and Product Liability. The recent developments have brought others, like Directors' and Officers' Liability Insurance, Commercial General Liability, Errors and Omissions, Clinical Trials - with the latest entrant being 'Building Promoter's Liability Policy' - all these becoming very common and popular forms of insurance covers being availed worldwide. Detailed discussions are made to study the various facets of Product Liability Insurance Covers available in current era of non-life market.

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Introduction

Liability insurance is not of recent origin in India. It started on a low key with the Motor and WC insurance and graduated to other forms of liability insurance, including Public and Product Liability Policies. But it was the Bhopal tragedy in 1984 and the historic judgement delivered by the Supreme Court against Shriram Food and Fertilizers Ltd. that triggered changes in the liability scenario. The Public Liability Insurance Act, 1991, is a milestone in this direction. Though liability policies have been in the Indian market for long, the market remains virtually untapped, presently constituting only 3 per cent of the GDPI in India as compared to 50 per cent in the USA and between 25 to 40 per cent in Europe. The main reasons for the low penetration can be attributed to the customer's lack of awareness of the impact of liability suits and low level of knowledge and skill of insurers in handling liability insurance. Nevertheless the demand for liability insurance in India is on the rise, the main reasons being:

** Retired Chief Manager, National Insurance Company Limited
Email : anabil.bhatt1@gmail.com*

1. The increasing number of accidents resulting in bodily injury or damage to property.
2. The growing consciousness amongst the public of their rights to legal recourse.
3. The introduction of legislation identifying new areas of legal liability.
4. The induction of foreign capital; companies raising capital through ADR/GDR thus increasing the liability exposures.
5. The importers of certain products making it mandatory for the exporters to take cover under Product Liability Insurance.
6. The increasing number of professionals involved in negligence suits.
7. The IT companies being required to satisfy mandates of liability insurance from their customers abroad.

Overview of Legal Liability

Though all individuals and organizations (both commercial and non-commercial) face liability exposures for their activities, commercial organizations are exposed more to liability losses than others. A liability loss is an amount that a person is required to pay as a result of a legal claim against him for his wrongful acts, causing injury or damage to others. Wrongful acts causing legal liability or claim may arise from any of the following cases:

1. Torts or Common Law
2. Statutes
3. Contracts

1. Legal Liability Exposure on Torts or Common Law

A tort is a wrongful act or omission-causing harm to others (negligence) or invading other's protected rights (nuisance). If someone's acts of negligence or nuisance cause harm to others, the law provides for remedy to the victim through an action for damages or compensation. This is the legal liability exposure, and, each and every one in society does have such legal liability exposure and the degree of exposures varies with the nature and volume of social or economic activity of the individual. An individual or organization can transfer such liability exposure (only civil) to an insurance company through an appropriate liability policy. The legal liability exposures may be grouped under the following major categories:

Public Liability

1. Public liability insurance as per PLI Act, 1991
2. Public Liability (Industrial Risk) Insurance
3. Public Liability (Non-Industrial Risk) Insurance
4. Product Liability Insurance

5. Motor or Automobile Liability
6. Marine or Watercraft Liability
7. Workmen's Compensation and Employers' Liability
8. Employers Liability Insurance
9. Couriers Legal Liability Insurance
10. Commercial General Liability Policy
11. Carriers Legal Liability Insurance
12. Cyber Liability Policy
13. Commercial General Liability
14. Clinical Trials Liability Insurance
15. Professional Liability Policies like: Professional Indemnity/Errors and Omission Insurance/Directors' and Officers' Liability/Medical Establishments/Doctors and Medical Practitioners/Chartered Accountants/Financial Accountants/Management Consultants/Lawyers/Advocates/Solicitors/counsels/ Consulting Engineers/ Architects/ Interior Decorators
16. Others covered under various Special Contingency Policies

In all the above liability exposures, torts are fundamental origins of legal liability. Torts are many, but these are commonly classified into: (i) Negligence, (ii) Intentional Torts, and (iii) Strict Liabilities.

i) Negligence or Unintentional Torts

Negligence is a tort or a civil wrong determined under common law. Negligence is an unintentional tort involving the failure of a person to exercise the degree of care that a reasonable person would have exercised under similar circumstances to avoid doing harm to others. As decided by *Blyth v Birmingham Waterworks Co. (1856)*, "negligence is an omission to do something, which a reasonable person, guided by those considerations, which ordinarily regulate the conduct of human affairs, would do, or doing something, which a prudent and reasonable person would not do." "Each has a duty to his fellows so as to regulate his actions, the condition of his property and the activities, as not to cause injury or damage to others." *Donoghue v. Stevenson (1932)*.

In order to succeed in an action against negligence, the plaintiff, i.e. the victim must prove the following three aspects:

- a) The defendant owed a duty of care to the victim (the plaintiff),
- b) There has been a breach of duty, and
- c) He has sustained an injury or damage as a result of the breach.

Negligence is the most common base for legal liability insurable under liability policies. The onus of proof for negligence generally rests on the plaintiff. As mentioned earlier, the existence of legal duty of care may arise from common law, statutes or contract. Here, our discussion is confined to negligence under common law only. The third part of the action for negligence is damages, which are again of two types: (a) Compensatory Damages and (b) Punitive Damages. Again, the compensatory damages are divided into two categories: (i) Special damages and (ii) General damages.

ii) Intentional Torts

In contrast to negligence, there could be other torts, which may be intentional. Some of the intentional torts are exemplified below:

1. Tort against Property: Nuisance, Trespass,
2. Tort against Person: Libel, slander, defamation, battery, assault, false arrest, etc.
3. Invasion of Right of Privacy
4. Misuse of Legal Processes

Nuisance: It is also a tort implying a wrong done by one person to another by unlawfully disturbing him in the enjoyment of his property or in some cases in the exercise of the common right. Nuisance is one area of law where the liability can arise even though one has taken all reasonable care.

Liability can arise under common law, statute and contract. The insurance company offers various policies broadly mentioned below to cover different exposures:

- Statutory Liability of manufacturers, godown owners, transporters, can be covered under PLI Act Policy, Statutory Liability under WC Act and liability under common law of employers towards employees can be covered under WC Policy.
- Statutory Liability of carriers arising under Carriers' Act can be covered under Carriers' Legal Liability Policy
- Liability arising under common law can be covered under Public Liability (Industrial Risks), Public Liability (Non-Industrial Risk), Commercial General Liability Policy
- Liability arising under common law arising out of products can be covered under Product Liability Policy
- Liability of professionals, insurance brokers, arising under contract/common law can be covered under Professional Liability Policies/Errors and Omission Policy
- Liability of IT professionals arising under contract/common law can be covered by Errors and Omission Policy
- Liability of Directors and Officers can be covered under Directors' and Officers' Liability Insurance

The claims experience on liability insurance /insurers have been favourable. For insurers in India the market seems making it lucrative to develop the portfolio. Liability insurance till date has by and large been bought by customers rather than being marketed by insurers. As the Indian economy grows, it unfurls a plethora of opportunities for insurers to build a broad base clientele and it is for us to capitalize on the opportunity to expand the liability portfolio.

The section devoted to Liability Insurance incorporates profiles of 36 Liability Policies. Other Policies having one of the sections on liability, e.g. Householders' Insurance, Shopkeepers' Package, Lift Insurance, though not profiled in this section, have been included in other sections.

Liability insurance contracts are different compared to other policies in many respects especially in terms of the sum insured, cover, exclusions, rating and claims. The definitions of terms peculiar to liability contract, including limits of indemnity, policy period, period of insurance, retroactive date, product, bodily injury, defence costs have been incorporated to provide conceptual clarity on the products' coverage. Rating of proposals within the ambit of the erstwhile market agreement will be as per the agreement, and, for risks, beyond the scope of the agreement, the rates have been indicated. Where the rates have not been provided, the proposals should be referred to the corporate underwriters. Proposals in respect of directors and officers, errors and omissions, commercial general liability, professional indemnity policy for brokers, extended warranty insurance, etc., are to be referred to the corporate/head office (for PSUs) for approval of terms and rates.

Acts Governing the Liability Insurance Issues in India

The legislations, in respect of liability insurance in India are mentioned as under:

1. The Foods Adulteration Act, 1954
2. The Food Safety and Standards Act, 2006
3. The Drug and Cosmetics Act, 1940
4. The Indian Penal Code, 1860
5. The Standards of Weights and Measures Act, 1956
6. The Agricultural Produce (Grading and Marking) Act, 1937 for marking and grading of commodities like vegetables, butter, etc.
7. The Indian Standards Institution (Certification Marks) Act, 1952, to formulate a number of standards for different products by ISI
8. The Bureau of Indian Standards Act, 1986
9. The Consumer Protection Act, 1986
10. The Sales of Goods Act, 1930
11. The Monopolies and Restrictive Trade Practices Act, 1969

12. Workmen's Compensation Act, 1923
13. Fatal Accident Act, 1855
14. Public Liability Act, 1991
15. Environment (Prevention) Act, 1986
16. Motor Vehicles Act, 1939
17. Various Cyber Laws as implemented now and hereafter

Practice of Liability Insurance

Liability insurance is designed to offer specific protection against third-party claims, i.e. the payment is not made to the insured, but rather to someone suffering a loss who is not a party to the insurance contract. In general, damage caused intentionally as well as contractual liability are not covered under liability insurance policies.

In many countries, liability insurance is a compulsory form of insurance for those at risk of being sued by third parties for negligence. The most usual classes of mandatory policy cover the drivers of vehicles; those who offer professional services to the public, those who manufacture harmful products; and those contractors who offer employment. The reason for such laws is that these specified classes of insured are deliberately engaging themselves in activities that may put others at risk of injury or loss. Public policy therefore requires that such individuals should carry insurance so that if their activities do cause loss or damage to another, money will be available to pay compensation. In India Public Liability Act and Motor Third-Party Liability Insurance are compulsory and for the other types of liabilities one may or may not take insurance cover and they may be self-insured.

Need for Product Liability Insurance

However, just as there is a multiplicity of products in today's consumerist society, so also are there instances of dissatisfied customers, inconvenienced or injured or suffering injuries or damages due to defective products. For example, although there are few examples of phones from reputable manufacturers causing injury, it certainly remains a risk. The instance of Nokia mobile phone batteries exploding whilst being charged is fairly recent. Over the last few years, manufacturers, like Sanyo, Nokia, Samsung, and Sony Ericsson, had to recall phones, sometimes tens of millions of phones at a time, because of concerns over defects.

Legal Background

Product Liability Insurance is not a compulsory class of insurance in all countries, but legislation, such as in the UK Consumer Protection Act, 1987, and the European Legislation Directives on Product Liability, requires those manufacturing goods to take some form of product liability insurance, usually as part of a combined liability policy.

In India, liability for a defective product can arise under the provisions of the Consumer

Protection Act, 1986. The Consumer Disputes Redressal Forum, if satisfied that the goods complained against suffer from any of the defects specified in the complaint, can issue an order directing the opposite party to pay such amount as may be awarded by it as compensation to the consumer due to negligence of the opposite party. The Forum can also provide for adequate costs to parties. The provisions of this Act are in addition to the provisions of any other law. Therefore, the complainant has the option to seek redress in a civil court.

The scale of potential products liability is illustrated by the numerous cases filed, some of which are mentioned later. However, the full list covers pharmaceuticals and medical devices, asbestos, tobacco, recreational equipments, mechanical and electrical products, chemicals and pesticides, agricultural products and equipments, food contamination and all other product classes.

Product Liability Policy

This type of insurance protects the business from any claims against the business for losses or injury or death to the consumers or buyers. It protects business which mainly manufactures public-related goods like medicines and drugs, cold-drinks, packet foods, etc.

The standard Product Liability Policy covers all sums (inclusive of defence costs) which the insured becomes legally liable to pay as damages as a consequence of the following:

- a) Accidental death/bodily injury to an any third party
- b) Accidental damage to property belonging to a third party
- c) Accidental damage or injury arising out of pollution arising out of any defect in the product manufactured by the insured and specifically mentioned in the policy after such product has left the insured's premises. Exports can be covered under the policy covering domestic sales.

Thus the policy covers the damages awarded by a court of law, as well as the Insured's costs and expenses relating to the claim.

This policy also offers the benefit of retroactive period on continuous renewal of the policy whereby claims reported in subsequent renewals but pertaining to an earlier period, after first inception of the policy, also become payable.

Scope of Cover

The fault in the product may be a manufacturing defect or due to faulty packaging or instructions on how to use of the product. The policy is on claims-made basis, i.e. the claims must arise and be made in writing to the insurance company during the policy period.

The premiums vary according to the limits purchased, the turnover relative to the product, the type of product being covered and the previous risk experience. In view of the current legal environment, covers in respect of North America will carry an increased premium.

The policy also incorporates a deductible clause in the form of a compulsory excess, as a specified

percentage of the AOA limit. This is a little higher in the case of policies covering exports to the USA and Canada.

The policy does not cover any liability for product recall, product guarantee or pure financial loss, such as loss of goodwill or loss of market. The policy also does not pay for the cost incurred for repairing or reconditioning or modifying the defective part of the product. It also does not cover liability arising out of contractual agreement liability. Liability in respect of any product intended for incorporation into any aircraft is also excluded. Liability arising out of deliberate, willful or intentional non-compliance of statutory provisions is also not covered. Liabilities arising out of products which have left the custody or control of the insured prior to the Retroactive Date are not covered. Liability for damage to property belonging to the insured or held in trust or in custody or control of the insured or a person in the service of the insured are also not covered. The policy does not cover fines, penalties, punitive or exemplary damages. War and nuclear perils are also excluded.

Add on Covers

The policy can be extended to cover liability arising out of judgements or settlements made in countries which operate under the laws of the USA or Canada (which is an exclusion under the policy) by opting for the North American Jurisdiction Clause.

The policy can also be extended to cover Limited Vendor's Liability for named or unnamed vendors. Limited Vendor's Liability refers to the liability arising out of the sale and distribution of specified insured products by vendors in the regular course of their business, with original warranties and instructions of use of the product as specified by the manufacturers.

The policy can also be extended to include the legal liability of technical collaborators with respect to the technical collaboration agreement between the insured and the collaborator, subject to the proviso that no claim shall be payable under the policy unless the cause of the action arises in India and the liability is established in an Indian court except for claims in respect of exports covered under the policy.

The policy can also be endorsed to cover Third-Party Manufacturers. Products not manufactured by the insured but by sub-contractors and/or loan or licensed manufacturers on their own brand name can be covered under the policy at a minimum additional premium.

Eligibility to Take the Policy

The policy can be taken by the manufacturer of any product, be it the final product or a part thereof.

Selection of the Sum Insured

Here the sum insured is referred to as the Limit of Indemnity. This limit is fixed per accident and per policy period which is called Any One Accident (AOA) limit and Any One Year (AOY) limit

respectively. The ratio of AOA limit to AOY limit can be selected from the following:

- (a) 1:1 (b) 1:2 (c) 1:3 (d) 1:4

The AOA limit which is the maximum amount payable for each accident should be fixed taking into account the nature of the product covered and the maximum number of people who could be affected and the maximum property damage that could occur, in the worst possible accident, after the sale of the product.

Procedure for Claims

In case of any event likely to give rise to a liability claim as described earlier, the insurers should be informed immediately. In case any legal notice or summons is received, it should be sent to the insurers. The insurers have the option of arranging the defence of the case.

The event giving rise to a claim should have occurred during the period of insurance or the retroactive period and the claim should be first made in writing against the insured during the policy period. The maximum amount payable including the defence cost will be the AOA limit selected. The AOY limit will be reduced by the amount of the claim or the indemnity paid for any one accident. Any number of such claims made during the policy period will be covered subject to the total indemnity not exceeding the AOY limit.

Claims Series Clause

A Claims Series Event is deemed to be one claim and the date of loss shall be the date when the first claim of the Claims Series Event is made in writing against the insured. For example, a defect in a particular batch of medicines may result in injuries to a large number of people simultaneously or one after another. All such claims are to be clubbed together for the purpose of applying the AOA limit. There is however no coverage for claims arising from one specific cause which are made later than 3 years after the first claim of the series.

Product Liability Claims

Every year there are numerous people who are injured by products that are dangerous or defective. Sometimes manufacturers fail to safely design a product and this leads to its malfunctioning and injures the person using it. Examples of this could include a poorly designed automobile tyre, a power drill that can short-circuit and electrocute the user, or a drug which causes severe side-effects. At times the manufacturer may design the product safely but fail to manufacture it properly so that the buyer using it suffers injury. Examples of this could include improperly assembled exercise equipments, automobiles or children's bikes.

Even if a product is properly designed and manufactured, a producer can still be liable if adequate warnings or instructions regarding the use of the product are not provided. For example, if the blade on a power saw has to be tightened in a particular fashion to prevent it from coming off, or a

medicine has to be taken on an empty stomach to reduce higher risk of heart attack or stroke, the manufacturer must provide proper warnings/instructions on the use of the product.

Failure of the manufacturer to properly design or manufacture or to give proper warnings/instructions can all be evidence of negligence. If a person is injured because of negligence, a product liability claim may be brought.

Product Liability Claim-Related Case Studies

a) A Sydney Family wins KFC food poisoning case

A family in Sydney has won a case against the fast food giant KFC after salmonella poisoning left their daughter paralysed. The family of Monika Samaan says the then seven-year old became ill after eating a chicken Twister from a KFC store in Western Sydney in 2005. Monika, who was in a coma for six months, is effectively now a quadriplegic and is severely brain damaged.

During the month-long trial in 2010, Monika's father told the court that he and his wife, along with Monika's brother, also fell sick after sharing her chicken Twister. KFC has fought the claim since the claim was filed, but the NSW Supreme Court declared the suit in favour of Monika's family. The family has sought a \$10 million in compensation. KFC said it was deeply disappointed and surprised by the court's decision and intended to appeal against the ruling.

b) Liebeck vs. McDonald's Restaurants

Liebeck vs. McDonald's Restaurants is also known as the McDonald's Coffee Case and the Hot Coffee Lawsuit. This was a 1994 product liability lawsuit that became the flashpoint in the debate over tort reform after a jury awarded US\$ 2.86 million to Stella Liebeck who suffered third-degree burns in her pelvic region when she spilled her hot coffee purchased from a fast food restaurant McDonald's.

The jury's decision included US\$ 1,60,000 to cover medical expenses and compensatory damages and US\$ 2.7 million in punitive damages. The trial judge reduced the final verdict to US\$ 6,40,000 and the parties settled for a confidential amount before the appeal was decided. There was a divergence of opinion on the lawsuit and whilst some said that it was an example of frivolous litigation others said that it was a meaningful and worthy lawsuit.

c) Distributors of Thalidomide Settle Class Action

A woman in Melbourne has won a multi-million-dollar legal fight against the company responsible for distributing the controversial thalidomide drug in Australia. Lynette Rowe, 50, took legal action against the German drug company Grunenthal along with the Distillers Company and UK firm Diageo which were responsible for marketing thalidomide in Australia. Thalidomide was given to the pregnant women during the 1950s and 60s as a treatment for morning sickness, but the drug was yanked from the market in 1961 after it was

linked to birth defects. The drug led to deformities in thousands of babies world-wide. Ms Rowe was born with no arms or legs after her mother took thalidomide to treat the morning sickness and anxiety during her pregnancy.

Only the companies responsible for distributing the drug in Australia and New Zealand have settled the class action. The company has also agreed to negotiate compensation for the other 100 people who were also affected by the drug and are also part of the class action. Many more sufferers came forward to make claims against the company.

Product Recall, Guarantee and Contamination or Tampering

The coverages for these types of incidents are usually issued as extensions of the Product Liability Insurance.

Product Recall

Subsequent to the discovery of any defect in a product supplied to consumers, manufacturers have the duty to take precautions (including a recall of the product, if necessary) against injury or damage caused by it. Hence, the manufacturers may decide to recall a defective product before it causes such injury or damage to third parties and to the brand reputation. Some examples of cases in recent years include tyres, mineral water and chocolate.

The cover: Product Recall Liability Insurance indemnifies the insured in respect of the Recall Expenditure incurred by the producers for the recall of the products (or any part thereof) as a result of a decision taken by the insured during the period of insurance, and, also notified to the insurers during the period of insurance that it is necessary to recall such products as their use or consumption may potentially cause the insured to incur a legal liability for this policy.

Product Recall Expenses

Product Recall expenses are covered under the policy. These are the reasonable and necessary costs incurred during the 12-month period commencing on the first day such costs are incurred by reason of recall, recovery, disposal or withdrawal. They are limited to:

- a) Communication to notify others of a recall, removal, recovery or disposal of a product, including but not limited to radio and television announcements and printed advertisements.
- b) The cost of re-shipping the product/s from any purchaser, distributor or user to the place of the insured.
- c) The actual cost of disposal of the products, but only to the extent that specific methods of disposal other than those usually employed for trash discarding or disposal, are required to avoid bodily injury or property damage as a result of such disposal.
- d) The additional expense for renting additional warehouse facility or storage space.

- e) The cost of hiring additional persons, other than the regular employees, to assist in the process of communication, shipping and other ancillary responsibilities arising out of a recall, removal, recovery or disposal of a product.

Extensions

Product recall expenses can be extended to include the following, at the discretion of the insurer:

- a) The total amount of refunds given to purchasers, not to exceed the cost of goods sold.
- b) The cost for repairing the product, including the cost to return the product to the purchaser, and the cost to repair the unsold finished stock.
- c) If the product is replaced, the cost to produce or acquire a similar product replacement, including the cost to return the product to the purchaser but not to exceed the cost of goods sold.
- d) If the product cannot be repaired, reconditioned, decontaminated or otherwise treated so as to render it marketable, the cost of unsold finished stock.

This insurance applies only when physical possession of the product has been released by the insured to others.

Major Exclusions

- a) A decrease in product sales realized subsequent to the announcement of a recall and due to loss of customers' faith or approval, as well as the costs incurred to attempt an increase in product sales or to regain customer approval.
- b) Expenses incurred because the product is similar to, or has the same trade or brand name but is of a different batch other than the product which has been recalled.
- c) Natural deterioration, decomposition or transformation of chemical structure, except as result of error or omission in the manufacture of products.
- d) Failure of the product to accomplish its intended purpose.
- e) Breach of warranties of fitness, quality, efficacy or efficiency.
- f) An intentional act or omission that was known or should have been known so as to lead to a recall.
- g) Sale of the product that had been banned or declared unsafe by any governmental authority.

Some Case Studies of Product Recall

a) Smoked Salmon Blamed for Salmonella Outbreak in the Netherlands

(Taken from a news item of October 2012)

Smoked salmon tainted with salmonella bacteria caused sickness in hundreds of people in the Netherlands, sparking major recalls there and in the US, according to Dutch authorities.

The Netherlands' National Institute for Public Health and the Environment said the salmon has been traced to the Dutch company Foppen, which sells fish to many major Dutch supermarkets and to stores around the world, including the United States. Those infected by the salmonella bacteria can suffer symptoms including fever, vomiting and diarrhea.

Costco Wholesale Corp. had sold the salmon in the US. Costco got a call from Foppen regarding the recall late Monday afternoon, said Craig Wilson, Vice President of food safety at Costco. He said Costco immediately pulled the items from shelves and blocked its sale in stores, meaning the products won't scan at registers. Customers who purchased the item will be called by the company on Tuesday to notify them of the recall, Wilson said. The calls will be followed up with a letter.

b) Blue Star wall-ovens Recalled

Prizer Painter Stove Works of Reading, PA, recalled about 940 Blue Star residential gas wall ovens. Some of the wall ovens had been improperly installed and/or have damaged flexible gas appliance connectors, posing a fire hazard. This recall involves all colours of three models of Blue Star gas-powered stainless steel wall ovens manufactured prior to November 23, 2012. The firm has received one report of a fire, resulting in property damage to the cabinet that held the oven. No injuries were reported.

The ovens, manufactured in the USA were sold at appliances stores and authorized kitchen equipment dealers nationwide between January 2008 through November 2012 for a price tag of \$2,250 and \$3,900.

Product Guarantee

It is the costs of removal, recovery, repair, alteration, treatment or replacement of any product (or part thereof) which fails to perform the function for which it was manufactured, designed, sold, supplied, installed, repaired, dispatched or delivered by or on behalf of the insured. It may include the costs of rectifying the product and the legal liabilities arising from third-party financial loss as well as the costs and expenses suffered by either party within the claim period.

Product Contamination or Tampering

This coverage is concerned with products that are prone to tampering or contamination. This is particularly true of mass market environments, such as supermarkets. It is the first party product recall coverage for the specific risks of accidental contamination. The standard cover can include adverse publicity, consequential losses, third-party recall costs and crisis management. It also covers the costs incurred and loss of income when products are removed from sale due to contamination or malicious product tampering, making the product unfit or dangerous for use. The cover is on claims-made basis and it is effective only if the claim is made during the actual year of insurance.

Some Case Studies on Product Contamination and Tampering:

a) Tylenol

The most infamous case of product tampering is the tylenol crisis of 1982, in which seven people in the Chicago area died after taking what they thought was extra-strength Tylenol but was in fact potassium cyanide. The case is still unsolved. In addition to the death toll, what makes this case remarkable is that it led to tough anti-tampering laws, as well as a massive shift in method of consumer goods packaging. Rarely will you find a packaged food product or drug today that does not have tamper-resistant seals.

b) Oranges (1978)

The four children of the Bergs family in the Netherlands were given Jaffa oranges for dessert but were alarmed by the fruit's strange taste. When the family took a closer look, they saw silver globules in the oranges, and the parents rushed the kids to the hospital to have their stomachs pumped. A Palestinian militant group that calls itself the Arab Revolutionary Army claimed responsibility, telling the Dutch government that it had injected the citrus fruit from Israel with mercury in order to induce panic and disrupt Israel's economy. The tampering likely took place at a European distribution centre; the tainted citrus fruit showed up in Germany, Spain, Belgium, England and Morocco.

c) Bottled Water (2003)

About 30 Italians were hospitalized after drinking bottled water contaminated with acetone, bleach or ammonia; small quantities of the poisonous liquids had been injected under the plastic caps. No one claimed responsibility for the acts, but police suspect the tampering could have been the work of anti-capitalist activists or eco-terrorists. Although the perpetrator was dubbed the "aquabomber," incidents sprang up in more than 20 different cities, leading police to believe that numerous copycats were involved.

Commercial General Liability (CGL)

Many of the public and product liability risks are often covered together under the general liability policy. In a nutshell, commercial general liability insurance, or CGL, is a cover that will protect a business in the event of being sued by a third party. Typical examples include: a customer is injured at the place of business, or, an employee damages property at a client's site. Without a commercial general liability insurance policy, a company would be vulnerable to lawsuits that could have a devastating impact on the business.

There are four main types of coverages included in the standard Commercial General Liability (CGL) policy: (a) Bodily Injury and Property Damage Liability, (b) Personal Injury Liability, (c) Medical Payments, and (d) Tenants' Legal Liability (for those that rent or lease their workspace.)

a) Bodily Injury and Property Damage Liability

If the company, its product, the work, its employees, or anything else associated with the company causes physical injury to someone, like a client, or damages their property or belongings, the company could be held legally responsible and the company would be required to pay for the damage. It is in cases like these that the insurance will pay for the compensatory damages.

- **What is not included?**

Some of the most common exclusions not covered under this section include: punitive damages, intentional injuries or damage (to a person or their property); injuries or damage from the use of the commercial automobile; injuries to employees or damage to their property.

b) Personal Injury Liability

In a CGL policy it means damage to a person's character, reputation and position in the community as a result of libel (in print) or slander (verbal defamation.)

- **What is not included?**

Typical situations not covered include statements known to be untrue when said, as well as damage caused by offences that are illegal or go against ordinances or by-laws.

c) Medical Payments

The purpose here is to provide coverage that pays someone's minor medical expenses due to an accident that happens at the company's premises or as a result of the company's operations. In fact, it is often used as a way to avoid a costly lawsuit.

- **What is not included?**

This coverage typically excludes everyone who is also "excluded" from coverage under the Bodily Injury and Property Damage, as well as casual workers and tenants who injure themselves in their own unit.

d) Tenants' Legal Liability (for those who rent or lease their workspace)

If the owner is held legally responsible for causing a fire, explosion, smoke, or any other damage caused by fire protection (like sprinklers going off) then this coverage will pay the compensatory damages. This applies only to damages of the rented premises – not the property (i. e. product, inventory, etc.) that may be personally owned.

- **What is not included?**

Intentional damage to property is not covered.

General Exclusions

1. Injury or property damage resulting from pollution caused by the company's operations, activities, employees or products.

2. Injury or property damage resulting from the use of nuclear material
3. Injury or property damage resulting from war
4. Professional liability (often referred to as Error and Omissions Insurance)
5. The misuse, destruction or distribution of data
6. Acts of terrorism
7. Injury or property damage resulting from fungi
8. Injury or property damage resulting from asbestos

While Summing up

Product liability insurance with its extensions are a necessary risk management tool for manufacturers, retailers, wholesalers and those involved in selling or supplying products to the market. It is pertinent to note that whilst it is not only the highly hazardous products that require coverage, as significant claims have arisen from relatively harmless goods such as toys, aerated water and nightwear. With the increasing awareness of consumer rights in India, and the current legal provisions in force, it is expected that this segment of business will grow and develop here as it has grown in the Western countries.

The latest inclusion in the product liability section is the ‘Building Promoter’s Liability Policy’. This policy covers **legal liability** of building **contractors/promoters** to pay compensation to the third party for causing death or bodily injuries sustained arising out of accident caused due to **defect of land and construction** of buildings. Defence cost, fees and expenses shall be paid by the company subject to the limit of indemnity under the policy. Customers of these policies are building contractors and promoters.

This Insurance also covers the requirement of insurance as per Section XIII of State Government’s Act implemented from 1993 onwards (mandatory in West Bengal, vide this Act).

Conditions: In the event of any occurrence which may give rise to a claim for indemnity under the policy, the insured shall give notice thereof to the company in writing. No admission, offer, promise or payment shall be made or given by or on behalf of the insured without the written consent of the company.

1. The company shall not be liable to contribute more than its rateable proportion of any loss, if there is any other existing insurance covering.
2. The company may cancel this policy by giving 30 days’ notice in writing of such cancellation to the insured’s last known address and in such an event the company will return a pro rata proportion of the premium (subject to a minimum retention of 25 per cent of the annual premium) corresponding to the unexpired period of insurance.

3. In the event of liability arising under this policy, the limit of indemnity for any one year under the policy shall get reduced to the extent of quantum of liability to be paid. Under no circumstances it shall be permissible to reinstate the aggregate limit of indemnity to the original level even on payment of extra premium.

Basis of Underwriting

The policy excludes claims arising out of an act of negligent action, error or omission on the part of the architect involved in the project. Any legal liability of the architect is not covered under Building Promoter's Liability Policy. Hence the proposer (Promoter) should ensure that all the architects take a Professional Indemnity Policy to cover legal liability arising out of the negligent act.

Determination of Sum Insured/Values to be Insured

The limit of indemnity for the policy period has to be selected by the insured which should be the minimum of 90 per cent of the estimated project cost.

Rating/Pricing for Building Promoter's Liability Policy

The rate to be charged is in between 1.4 to 1.5 per cent on the 90 per cent of the estimated project cost.

Excess/Deductible

Insured shall bear for every claim a compulsory excess of .50 to 1 per cent of the limit of indemnity shown in the schedule, subject to a minimum of Rs. 10,000.

Minimum Suggested Rate for Professional Indemnity Policy for Architect

7.5 percent on 'Any One Year' limit + Re 1 per cent of annual fees.

Suggested Excess for Professional Indemnity Policy

- a. 0.5 per cent of Any One Year limit (AOY) subject to minimum of Rs. 5000 and a maximum of Rs. 1 lac.
- b. No claim shall be payable under the policy unless the cause of action arises in West-Bengal, and, the liability to pay the claim is established against the insured in an Indian court. If the company shall disclaim liability to the insured for any claim hereunder and such claim shall not be made within 12 calendar months from the date of such disclaimer has been made the subject matter of a suit in a court of law, then the claim shall for all purposes be deemed to have been abandoned and shall not thereafter be recoverable hereunder. As soon as the building is constructed, the promoter shall insure the building and land with any general insurance company and obtain an insurance policy covering the liability of any loss or death that may be caused due to defect of land and construction of the building and submit a copy of such policy to the concerned authorized officer.

Exclusions:

1. All personal injuries such as libel, slander, false arrest, wrongful eviction, wrongful detention and mental injury or shock.
2. Infringements of patents and copyrights arising from the granting of licenses by the insured as a party to the construction project.
3. Any dishonest, fraudulent, criminal or malicious act by insured/his employees.
4. Liabilities assumed by the insured by agreement and which would not have been attached in the absence of such an agreement.
5. Loss of any document/data sustained on account of time spent in investigating the cause of damage.
6. Financial and consequential losses of the promoter.
7. Injury/death to any person under the contract of employment with the insured and their contractors when such injury arises out of the execution of such contract.
8. The ownership, maintenance, use, occupation, leasing or custody of property, mobile and/or immobile by/or on behalf of the insured.
9. Deliberate, willful or intentional non-compliance of any statutory provision.
10. Fines, penalties, punitive or exemplary, damages resulting from the multiplication of compensatory damages.
11. Fire and explosion, earthquake, earth-tremor, volcanic eruption, flood, storm, tempest, typhoon, hurricane, tornado, cyclone and atmospheric disturbance.
12. Any loss and/or damage to property which has its origin in a neglect, error or omission prior to the retroactive date mentioned in the schedule.
13. Non-compliance with technical standards laid down by law and commonly observed in the insured's line of business.
14. Ownership and/or conduct of any other business or activities wholly or partly owned, except the business described in the schedule.
15. Arising from exceeding higher estimates and costs, from not adhering to deadlines in completing the construction of the project and from defective accounts.
16. Inadequate quantities/quality of arranging or handling the supply of material.
17. Activities of the insured as joint venture or as partner unless such joint venture is described in the schedule, the liability of the company being limited to the extent of participation in the business so named.
18. Liabilities arising out of pollution and/or contamination of whatsoever nature.

19. Claims for damage caused by motor vehicles, sea vessels or aircraft.
20. Claims arising out of negligent act, error or omission on the part of the architect involved in the project.

Documents Required for Claim Settlement

1. Original Policy,
2. Claim Form – filled in ,
3. FIR/Police Report,
4. Death Certificate,
5. Post Mortem Report (in case of death),
6. Disablement Certificate (in case of disability),
7. Legal opinion,
8. Investigation report.

Acknowledgements

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- “Claim Development Analysis for Motor Third Party Claim”, Insurance Information Bureau, 2011. <http://www.bimabazaar.com/statistics>. Accessed
- Public Liability Insurance Act, 1991, Indian Legislation, <http://www.rishabhdara.com/sc/view.php?case=23737>
- Different contemporary discussions and information as collected and collated from various text materials available on-line and in hard copies (Reference)

