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# PRODUCT DRIVEN LIABILITY INSURANCE

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Make sure your clients are covered if something goes wrong

# What is Product Liability?

However well-designed a product may be, mishaps do happen.

- A Product Liability Policy will cover any claims for Third Party personal injury or **property** damage caused by a product. It is designed to help protect a business by ensuring that if a mishap occurs, they will not have to pay legal or civil court costs.
- It is different to product warranties or guarantees, as these cover faults of the products themselves. Product Liability insurance covers the Third Party damage or injury resulting from that fault.
- It is an essential financial safeguard covering the costs arising from claims for medical expenses or compensation as well as legal costs – so the implications of no cover can be significant.



# Who would need Product Liability?

We will consider Product Liability insurance for most trades

- **Any business that designs, manufactures or supplies a physical product should have a Product Liability policy.**
- A business can be held liable for faulty products **even if they did not manufacture them**. The business may be liable for compensation if:
  - the business's name is on the product
  - the business repairs, refurbishes or changes a product
  - they imported the product from outside the European Union
  - they cannot identify the product's manufacturer, or the manufacturer has gone out of business
- If the business **does not manufacture the product** but distributes it, their Product Liability Insurer will attempt to successfully defend the Policyholder by demonstrating that:•
  - 'the products were faulty when they were supplied to them;
  - they gave customers adequate safety instructions and warnings about misuse;
  - they included terms for the return of faulty goods to the manufacturer;
  - their supply contact with the manufacturer covers product safety, quality control and returns and
  - they have good quality control and record-keeping systems.'

This usually requires the input of an external specialist Lawyer and, depending upon the complexities of the claim, the costs **borne by the Insurer** in defending a Product Liability claim can easily exceed £50,000. Naturally in the absence of insurance cover, the defendant will be un-protected and in order to safeguard their corporate reputation, they will have to find their own specialist Lawyer and fund their own legal costs.

\*Source: Association of British Insurers

# Who would need Specialist Product Liability?

The kinds of businesses most likely to require a specialist solution include:

- **Precision engineers who have invested in the latest CNC and CAM/CAD technology**
  - the engineering capability of these companies allows them to win contract engineering work from customers outside of their primary sector. For instance, existing suppliers to Motorsport are being actively supported by their trade association to win new customers in the wider **Automotive** market as well as **Aviation, Defence, Life science, Oil & Gas North American and Marine sectors**.
- **University “spin-off” companies**
  - many university spin-offs are offering innovative and technical products to market, which require specialist insurance understanding and solutions.
- **Companies supplying engineering solutions to the Oil & Gas sector**
  - such companies routinely encounter hold harmless, waiver of subrogation and additional insured requests, often requiring a quick turnaround as they compete to win new tenders.
- **Companies supplying to the Military or Defence sectors**
  - a lack of “failure to perform” cover can leave companies supplying these sectors seriously exposed.



# What will it cover?

We will cover elements that most insurers won't

- The Product Liability policy will:
  - pay legal costs in investigating and defending an allegation of injury or damage made against the product, regardless of whether there is any foundation to the claim;
  - pay legal costs incurred by the claimant in bringing a successful action and,
  - reimburse the Policyholder for compensation awarded to the claimant for their injury, damage and consequential losses.
- We will also cover:
  - **Products of a Safety Critical nature**, including the Automotive sector, with no cover limitations
  - losses arising from a **failure of the product to perform** its intended function (Efficacy);
  - products knowingly **exported to North America (up to 100% US turnover)** or claims lodged by a third party in a North American court;
  - products knowingly incorporated into the **structure or controls of an Aircraft or Aerial device**; or
  - products knowingly incorporated into the **structure or controls of a waterborne craft**

Product liability can be taken out with your public liability insurance or as a standalone full product liability policy.

# Case study 1

- Policyholder has been manufacturing lightweight alloy wheels for performance cars (road & race) for 20 years;
- An alloy wheel, manufactured by the Policyholder in 1999, shattered in April 2015 whilst the car was being raced on a closed circuit in the UK. The subsequent crash wrote off the race car & severely injured the professional driver;
- Period of insurance 1/1/2015 – 31/12/2015 responded to the subsequent claim, because this was the period where the loss occurred (even though the wheel was manufactured in 1999);
- The Claimant wasn't the Policyholders original customer. It transpires that the wheel had been bought & sold privately a number of times in the 16 years, however the Policyholder's logo was clearly present on the wheel, so the claim was made against them;
- Donoghue v Stevenson confirms that the Policyholder owes a duty to the consumer;
- Insurer commissions a forensic examination of the wheel. The possible reasons for failure could be; manufacturing defect; damage caused by a previous owner; the wheel being "kerbed" or the suspension loading being too high – however it is not the Insurer's responsibility to determine the cause of loss. To successfully defend the Policyholder they just need to demonstrate that it wasn't due to a manufacturing defect;
- The report exonerates the Policyholder and the claim is successfully defended, at a total cost of £25,000 to the insurer;
- The risk had moved insurer on 1st Jan 2015, from a wording that excluded Failure to Perform/Efficacy to a wording that provided this cover. Even though the Policyholder was "cleared", because the initial allegation was that the wheel failed, an Insurer not providing Failure to Perform cover would be under no obligation to commission the forensic examination or defend their Policyholder – so they would be left to commission their own report, appoint their own Lawyer, pay their own costs and waste valuable time.

A Proposer is entitled to say "we are sufficiently confident in our internal Quality Controls as to not require Product Liability cover" – however they cannot control the actions of a Claimant Lawyer who opts (erroneously) to drag them into a claim.

## Case study 2

- R&D company, developing production line products for the food industry, paying £4,000 + IPT for a standard Engineering Package policy;
- They are invited to tender for a contract to supply an industrial process machine to the factory owned by a large US-based Coffee Shop chain;
- Initial contract worth \$5m, with products going to 2 of the Customer's factories in the USA. The contract also requires the Proposer to;
  - Name the US Customer as an Additional Insured; and
  - Amend the policy cancellation condition, so that the US Customer is notified in the event of cover being cancelled
  - Supply a copy of the quotation, to the US Customer, as part of the Tender document
- Proposer left the insurance requirement to "the last minute" only to find that the North American exports %age prevented their existing insurer from quoting;
- Our specialist product liability market delivered a quotation, within the short timescale, which met the requirements of the tender;
- Proposer went on to win the contract, incepting cover at a premium of £45,000 + IPT



# Contact us

To discuss your clients' needs or to add Product Liability insurance to an existing policy, please contact:

[Mike Patston](#)  
Divisional Director  
07720 739 896  
[mike.patston@t-u-l.co.uk](mailto:mike.patston@t-u-l.co.uk)

[David Pargetor](#)  
Assistant Underwriter  
01923 298 432  
[david.Pargetor@t-u-l.co.uk](mailto:david.Pargetor@t-u-l.co.uk)



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