



LIABILITY INSURABLE RISKS AND POLICIES



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The following list presents many insurable risks and options that we can arrange for you. Some of these types of insurance might already form part of your insurance policies, however you may wish to consider additional policies or your risk profile may change and warrant consideration of different policies. For either situation, please contact us if you have any questions or if we can help you to review any of these options.

PROFESSIONAL INDEMNITY

This insurance covers the business for its legal liability for acts errors or omissions in advise in the conduct of its professional services.

If the legal liability is a covered event, the insurance also covers the defence costs of what can be a time-consuming, expensive and damaging lawsuit.

A separate sum insured should be declared for the Defence costs (Steigrad decision).

The insurance also covers the legal liability of the principals, employees and consultants of the business for errors while conducting the same professional services.

Covers:

- The business's legal liability for acts, errors or omissions in the conduct of its professional services defined in the policy schedule.
- The legal costs and expenses of investigating and defending covered claims against you
- Defamation (libel and slander) claims.
- The loss of or damage to documents owned by someone else that are in your safekeeping.
- Unintentional infringements of patents, copyrights, designs or trademarks.
- Breaches of the Fair Trading Act 1986.

Claim Examples:

INCORRECT ADVICE

An employee of Company A seeks advice from an employee of Company B on the appropriate lubricating fluid to use in Company A's mechanical press. Company A relies on Company B's advice, but the lubricating fluid recommended is the wrong type and the press suffers mechanical damage. Company B is held liable to Company A for the cost of repair, which Company B claims against its Professional Indemnity policy.

LOSS OF DOCUMENTS

An architect agrees by contract to release the sole copyright/ownership of his drawings of a multi-storey office block to a builder. In the meantime, the drawings are to stay in his possession until the building is completed. Unfortunately a fire at the architect's office means most of the drawings are lost, which leads to lengthy delays in construction. The builder argues he's suffered a direct financial loss from the destruction of his documents. He sues the architect, who claims under the loss of documents extension of his Professional Indemnity policy.

Note: This cover may be subject to a number of exclusions set out in the policy.

BROADFORM LIABILITY

This insurance covers a business for its legal liability arising from its activities or products causing damage or injury to others. In addition to meeting court judgments or out of court settlements, it also covers legal costs and expenses of investigating and defending covered claims.

Covers:

- Public and products liability
- (Products liability covers legal liability for resultant damage only)
- Bailee's liability
- Forest and Rural Fires Act
- Goods on hook
- Innkeeper's/Landlord's/Tenant's liability
- Keys cover
- Motor and watercraft repair and storage
- North American business travel
- Product withdrawal costs (New Zealand)
- Underground services
- Vibration and removal of support
- Warrant of Fitness

Claims Examples:

A whiteware company begins installing a new component, made by a local manufacturer, in their washing machines. After 2-3 months of functioning properly, the seals begin to break down, causing significant damage to 400 machines. The whiteware company sues the local manufacturer to cover the cost of repairing all the damaged washing machines, replacing the damaged component and all associated expenses. Because the local manufacturer is protected by a Broadform Liability Policy, they are able to claim back these repair expenses for the resulting damage from the faulty seals as well as the legal costs incurred in the process.

An electrician rewires a light fitting in the ceiling of a 1950's house. Later that week the property burns down. The insurer of the house sues the electrician and holds him liable for the damage. On investigation, the insured electrician is found to have been negligent as his faulty installation caused the fire. The electrician is therefore held liable for the clean-up and re-establishment of the property.

The electrician's Broadform Liability insurance covers him for all his legal defence costs, the cost of the investigation, and the damages he is ordered to pay the homeowner.

STATUTORY LIABILITY

This insurance covers a business for fines, pecuniary penalties and reparation sentences imposed by a court or a tribunal arising from committing an accidental offence under most Acts of Parliament, including:

- Health and Safety in Employment Act 1992 (excluding fines, as required by law)
- Resource Management Act 1991
- Fair Trading Act 1986
- Consumer Guarantees Act 1993
- Hazardous Substances and New Organisms Act 1996
- Building Act 2004
- Commerce Act 1986 (for individual insured persons only).

It also covers a business for its legal liability to pay damages for a breach of the Privacy Act 1993 or the Human Rights Act 1993. Statutory Liability also covers legal costs and expenses of investigating and defending covered claims. A separate sum insured should be declared for the Defence costs (Steigrad decision ~ Bridgecorp).

Claims Example:

FAIR TRADING ACT

A retailer is alleged to have inaccurately labelled some toys they imported. They're charged under the Fair Trading Act and taken to court. Because the breach is accidental and not deliberate, the retailer's Statutory Liability policy covers them for all their legal advice and legal defence costs. If the charge had resulted in a fine being imposed, the retailer would also have been covered for this cost.

EMPLOYERS LIABILITY

This insurance covers a business for its legal liability for bodily injury to its employees not covered by ACC under the Accident Compensation Act 2001.

Employers Liability also covers the legal costs and expenses of investigating and defending covered claims.

A separate sum insured should be declared for the Defence costs (Steigrad decision).

Injuries that fall outside ACC, and could therefore expose an employer to liability, include:

- Food poisoning
- Stress
- Fatigue
- Mental anguish
- Nervous shock or fright
- Injury arising from gradual processes

Claims Example:

STRESS

A tavern is held up at gunpoint twice in two months. Due to the high-stress nature of the robberies, one of the employees develops Post Traumatic Stress Disorder. As a result, he is unable to work in a public setting for the following three years. The employee holds the employer liable for his lost earnings because the security measures at the tavern were substandard. The Employers Liability Policy provides indemnity to the employer for the cost of legally defending themselves in court. It also covers them for the cost of any investigation required for the defence.

FIDELITY

More than half of New Zealand's businesses experience some form of loss caused by employee dishonesty, which can have a critical impact on cash flow, profitability and reputation.

The employees responsible for such losses are often long standing and well trusted.

Fidelity cover indemnifies the employer for money or goods stolen by employees and the claims preparation costs, which can include accountants, other professional consultants and even reasonable costs incurred by the insured's own employees in quantifying a theft.

Claims Examples:

A valuable and reliable employee of six years developed a gambling addiction and started to steal money from the till each day. The theft was discovered while the employee was on holiday because the takings increased. Further investigation by police revealed that the theft had been occurring for a period of three years. The former employee was prosecuted and successfully convicted of theft. The stolen money that he gambled away could not be recovered. This policy refunded the amount of money the Court determined had been stolen.

A long-term employee resigns. A month after she left the firm, a sum of money is discovered as missing from the company's accounts. The loss is identified by the company's auditor; a forensic accountant traces it to a series of withdrawals made by the employee over the last two years. It was not possible to gain a conviction against the employee in the New Zealand courts because by the time the loss was discovered she had left the country and is believed to be somewhere in South East Asia. The employer is able to claim for the amount of loss determined by their accountant.

DIRECTORS AND OFFICERS LIABILITY

This insurance covers the directors and officers of a company for their legal liability arising from wrongful acts committed by them in their capacity as directors or officers. If this legal liability is covered under the company's constitution, it reimburses the company for this cost.

If the legal liability is a covered event, the insurance also covers the defence costs of what can be a time-consuming, expensive and damaging lawsuit.

A separate sum insured should be declared for the Defence costs (Steigrad decision).

Covers:

- Competitors alleging misleading and deceptive conduct by a director or officer.
- Shareholders alleging mismanagement of the company and/or its finances by a director or officer.
- Employees alleging practices by a director or officer such as discrimination, harassment, breaches of employment contract, defamation and wrongful disciplinary action.
- Regulators alleging breaches of legislative requirements by a director or officer.

Claims Examples:

PERSONAL LEGAL DEFENCE

A kitchen design and manufacturing company is forced out of business as the result of a major client defaulting on payment of a large debt. Financially stretched, and with promise of repayment being 'just around the corner', the directors try unsuccessfully to trade their way out of financial distress. Each director is personally sued for the money that the company owes on the basis that they continued to trade while the company was insolvent. A Directors and Officers Liability policy covers each director for the legal cost of defending themselves as well as the cost of any settlement with creditors (or finding of liability imposed by the Court). Without this insurance, the directors risked losing their homes and personal assets.

SHAREHOLDER ACTION

The court grants leave for an action to be brought by a shareholder against the directors. The company is a highly profitable private company with 77.5 per cent of shares held by the founder and his son. The father's nephew holds the balance of the shares. The nephew claims \$650,000, arguing that excessive salaries have been paid to the father and son, leaving only a modest dividend for the shareholders. Issues of conflict also arise because the father and son also own the company that leases the premises from which they operate.

EMPLOYMENT PRACTICES LIABILITY

This insurance covers a business for its legal liability for a wide range of employment-related claims made against it by its employees, as follows:

- Unjustifiable dismissal
- Discrimination or harassment
- Wrongful demotion/failure to promote
- Workplace stress
- Wrongful refusal to employ
- Defamation
- Misrepresentation or misleading advertising
- Denial of natural justice

In respect of the dismissal or disciplining of an employee, the advice of an approved employment lawyer should be sought and followed.

This insurance also covers the legal costs and expenses of investigating and defending covered claims. A separate sum insured should be declared for the Defence costs (Steigrad decision).

Claims Examples:

A part-time hair stylist is confronted over security footage that shows her rummaging through other people's personal belongings and removing money from the salon's cash drawer. After being asked to return her keys until the matter is dealt with, she fails to return to work. The stylist's lawyer writes a letter to the salon claiming that the money was 'borrowed' from the business, and argues that proper process was not followed in dealing with the matter. They claim a large sum from the salon on the basis of constructive dismissal. The salon's Employment Practices Liability policy pays for the legal costs of defending the allegations made by the stylist and covers any settlement required to dispose of the claim (or an adverse finding of liability imposed by the Court).

UNJUSTIFIED DISADVANTAGE

An insured discovers that an employee is emailing company information to her personal email address to assist her in setting up her own competing business. When a disciplinary meeting is scheduled, the employee raises a personal grievance alleging unjustified disadvantage in relation to the behaviour of her general manager, specifically regarding inappropriate comments about her weight. Communication continues between the insured and the employee's lawyer and as a result the employee resigns and is paid four weeks pay in lieu of notice. The Employment Relations Authority orders compensation of \$6725 to be paid to the employee for hurt and humiliation suffered. This amount, along with defence costs, is covered by the insured's Employment Practices Liability policy.

LIABILITY CONSEQUENTIAL LOSS

This insurance covers a business' financial loss resulting from interruption or interference to its business as a result of a covered claim under the Broadform, Statutory or Employers Liability policies.

Interruption or interference to the business could be:

- Reduction in the income that would normally have been earned
- Additional expenses reasonably incurred to avoid or minimise a reduction in income or to resume or maintain normal business activities
- Equitable allowance for any financial loss suffered because stocks have been used to maintain income during the interruption or interference
- Net loss of collectable amounts owed plus the reasonable costs incurred in establishing, tracing and recovering those debts
- Reduction in value of undamaged stock due to the inability to process or sell that stock normally.

Claims Examples:

SUSPENSION OF LIQUOR LICENCE

A local bar is prosecuted and convicted of selling liquor to underage patrons and has its liquor licence suspended. Defence costs are covered by the Statutory Liability cover, which provides the trigger for a claim under the Liability Consequential Loss cover for the financial loss suffered from the loss of sales as a result of the liquor licence suspension.

WORKPLACE DEFENCE COSTS

This insurance covers legal defence costs for directors, executives, managers and employees in the case of a criminal prosecution while carrying out the duties of their employment.

Provided a plea of not guilty is going to be entered and this is reasonable, it provides cover for:

- Prosecution for any alleged criminal offence under any statute (other than a traffic offence)
- Prosecution for any alleged traffic offence that may result in disqualification from driving.*

* Traffic offences relating to drugs, alcohol, speeding, dangerous driving, road user charges, logbooks and overloading are all excluded.

Claims Example:

ALLEGED ASSAULT

A punter at a high-end nightclub is refused service, as the bar staff believe he's intoxicated. After being refused service, he starts to abuse the staff and fellow patrons. As a result, one of the nightclub's security staff is asked to escort the intoxicated man from the bar. A struggle ensues in which the intoxicated man becomes more aggressive, only ending when he's been removed from the premises. In the following days the security staff member is served with court proceedings alleging assault. As the security staff member has not assaulted the intoxicated man and intends to plead not guilty, his legal defence costs are covered.

Note: This cover is subject to a number of exclusions set out in the policy.

INTERNET LIABILITY

This insurance covers a business for its legal liability arising from the use of the internet or email that result in any of the following:

- Unauthorised use of names
- Passing off
- Unauthorised use of advertising
- Infringement or unauthorised use of intellectual property rights
- Breach of confidence or infringement of any right to privacy
- Misuse of information
- Defamation
- Any act that belittles the product or work of others
- Transmission of any computer virus

Defence costs necessarily and reasonably incurred are also covered.

Claims Examples:

TRANSMISSION OF VIRUS

An employee forwards a personal email from their work computer to a number of friends at various companies. The email has an undetected virus that causes one of the companies to shut down their email server for a day, resulting in significant financial loss. The Internet Liability policy provides cover for the \$15,000 in damages claimed.

Note: This cover is subject to a number of exclusions set out in the policy.

If you would like to discuss your insurance options please email or call us to set up an appointment on **03 548 2211** or **kenn@paradisebrokers.co.nz**.

This service is free to you.