



The
Insurance
Institute

Commercial General Insurance

CIP-04 KEY POINTS



CHAPTER 6

LIABILITY INSURANCE

Liability policies indemnify (protect) the policyholder when a claim is made against them by a third party.

Operative clauses

Each type of liability policy has an operative clause with some common elements in their wording:

- Legal liability
- Legal costs and expenses
- Definition of the business
- Geographical/territorial and jurisdiction limits
- Limits of indemnity.

Policy triggers and basis of cover

Different stages of a liability event may trigger a claim under the policy:

- The initial act: usually negligence.
- The actual injury, loss, or damage resulting from the act.
- The manifestation of the injury, loss, or damage.
- The aggrieved or injured party's awareness of the injury, loss or damage.
- Notification of the claim to the policyholder.
- Notification of the claim to the insurer.

Liability policies are generally underwritten on:

- 'Occurrence' basis
- 'Claims made' basis.

The packaging of covers



Combined employers liability, public liability and products liability policies are very common.

EMPLOYERS LIABILITY INSURANCE

Legislation, including the **Factories Act 1955** and the **Safety, Health and Welfare at Work Act 2005**, places important responsibilities on employers for employee safety.

There is no standardised market wording for employers liability policies, but the following is a typical operative clause:

The company will indemnify the insured against legal liability for damages (including claimant's costs and expenses) in respect of bodily injury to or death, disease, or illness sustained by any person under a contract of service or apprenticeship with the insured, while employed in or temporarily outside Ireland, and caused during the period of insurance, arising out of and in the course of their employment by the insured in connection with the business.

Other important points related to the policy wording are:

- Indemnity to other persons
- Limits of indemnity
- Safety Health and Welfare at Work Act 2005
- Trade endorsements
- Contractual liability
- Employees' property (not covered by an employers liability policy – covered by a public liability policy.)

Definition of an employee

The policy definition of an employee is 'any person while working for the insured in connection with the business who is under a contract of service or apprenticeship with the insured.'

Also included in the definition of employee are:

- labour masters, labour only sub-contractors and persons employed or supplied by them
- self-employed persons
- persons hired or borrowed by the insured
- persons engaged in any training, educational or work experience programme.

Cover considerations

When rating a risk, insurers categorise employees according to the nature of their work:

- clerical staff
- manual/working directors
- manual work away from the premises
- drivers
- all other employees.

For straightforward risks, it may only be necessary to distinguish between 'clerical' and 'all other staff'.

For risks with a more diverse range of job types, more categories may be required, where higher hazard activities will attract different rates.

It is also important to establish whether any employees are working outside of Ireland and, if so, how temporary or otherwise their employment is.

The premium will normally be adjustable, with different rates for each wage category to reflect the risks that the different types of work present.

Insurers will automatically extend cover to include an indemnity to principal at no extra charge, which extends the protection provided by the policy to the person or firm that sub-contracted work to the insured.

Questions to ask the client

- What are the salaries/wages for each category of employee?
- Number of employees?
- Is there an up-to-date safety statement?
- Are there any safety, health and welfare matters?
- How frequently is training provided?
- Is personal protective equipment supplied/used?
- Are there any changes planned for the business?
- Is there any work away from the premises?
- Is there any height or depth work carried out?
- Details of the past 5 years' claims experience?

Employment practices liability insurance

Standard employers liability cover is restricted to claims that involve bodily injury or disease.

Employment practices liability, however, protects the client against employment-related litigation, e.g. sexual harassment, discrimination or wrongful dismissal. Bodily injury is excluded as it is covered under an employers liability policy.

An employment practices liability policy covers compensation awards and defence costs. It does not cover fines levied under legislation.

PUBLIC LIABILITY INSURANCE

The following extract illustrates a typical operative clause:

The insurer will indemnify the insured against **legal liability to pay compensation** and claimant's costs and expenses in respect of **accidental**

- a. death, bodily injury, illness or disease
- b. loss or damage to material property occurring within the geographical limits during the period of insurance in connection with the business.

Some policies also cover liability to pay compensation for financial loss caused by nuisance, trespass, obstruction or interference with rights of way, light, air or water, wrongful arrest, and false imprisonment, where the wrong is committed 'accidentally'.

Public liability insurance covers employees' property and personal effects.

Other important points related to the policy wording are:

- Policy excess
- Policy exclusions:
 - height and depth limits
 - mechanically propelled vehicle exclusions
 - hovercraft/watercraft
 - liquidated damages/fines/penalties
 - advice or design provided for a fee
 - pollution (unless sudden and identifiable).

The nature of the exposure

Rating by insurers is usually based on turnover but can include 'flat rates' and a separate rate is usually applied to the 'away wages' figure.

Policy cover considerations and exclusions

Limits of indemnity vary but are typically between €1.3 million and €6.5 million in respect of any one claim.

Three 'standard' exclusions include:

- Tool of trade risk
- Lifts, escalators and steam boilers
- Advice, treatment or professional risks.

Policy extensions to consider

Some elements of cover that are provided as standard under some insurers' policies may require an extension under others:

- Indemnity to principal
- Contractual liability
- Cross liabilities
- Safety Health and Welfare at Work Act 2005
- Motor contingent liability.

Questions to ask the client

- Premises risk
 - Is public access controlled?
 - What are the standards of housekeeping?
 - Do the client's activities produce any toxic or dangerous by-products or waste products?
 - Any pollution risk, such as the bulk storage of hazardous substances?
 - What are the waste removal arrangements?
 - What is the proximity to water courses, housing or farming?
 - What is the key exposure measure?
- Work away from premises
 - Does activity involve working at height/depth?
 - Does activity involve the application of heat?
 - Does activity involve dangerous substances?
 - Are any of the locations hazardous?
 - Any work outside the Republic of Ireland?

PRODUCTS LIABILITY INSURANCE



Products liability insurance is normally arranged as part of a combined policy or alongside a public liability policy.

A typical operative clause is as follows:

The company will indemnify the insured against all sums which the insured shall become legally liable to pay as damages in respect of accidental

- a. death, bodily injury, illness or disease to any person
b. loss of or damage to material property

occurring anywhere in the world during the period of insurance and caused by the goods sold, supplied, delivered, installed, erected, repaired, altered, treated, or tested by the insured in Ireland, Great Britain, Northern Ireland, the Channel Islands or the Isle of Man in connection with the business after they have left the custody or control of the insured.

Other important points related to the policy wording are:

- Limits of indemnity
- Legal costs and expenses
- Policy exclusions:
 - Replacement/guarantee of a product
 - Product recall
 - Exports to the USA/Canada
 - Liability assumed by agreement
 - Liability arising from advice given.

The nature of the exposure

The main exposure faced by the policyholder is due to their obligations under the **Liability for Defective Products Act 1991** and the **Sale of Goods and Supply of Services Act 1980**.

When setting premiums, insurers apply different rates to the turnover generated by different categories of product.

Rates will vary according to the extent of any exports to North America.

Products liability cover can also extend to cover any advice given when associated with the supply of a product.

Policy cover considerations

The likely limits of indemnity available are €1.3 million to €6.5 million, however, this limit will also act as an aggregate figure for any one period of insurance.

Extensions available include:

- Contractual liability
- Product recall (specialist market)
- Cross liabilities
- Efficacy risk.

Questions to ask the client

- Is the client an importer/wholesaler, retailer, or manufacturer of the product?
- Where are the goods sourced and is there a right of recourse against the suppliers?
- Does the client adapt/alter the goods?
- Does the client have a successful trading record?
- What advice/instruction/information is given?
- What is the exact nature of the product, what is its purpose and what are the likely effects of it failing to perform its intended function?
- What are the associated hazards?
- What quality control systems are in place?
- What is the expected sales turnover split between the territories it will be sold into?
- What are the conditions of sale?
- Are the products used in the aircraft or nuclear industry?
- Is any advice given for a separate fee?

DIRECTORS AND OFFICERS LIABILITY INSURANCE

Many of the liabilities placed upon individual directors arise from the **Companies Act 2014**.

This body of legislation imposes personal responsibilities on directors and officers, who can be made personally liable for wrongful acts committed during their tenure.

'Wrongful act' is broadly defined, typically including any 'breach of duty, breach of trust, neglect, error, misstatement, misleading statement, omission, libel, slander, breach of warranty of authority or wrongful trading'.

'Losses' include sums that directors are personally liable to pay as damages, and legal costs incurred in the defence or settlement of claims.

Cover excludes fraud or dishonesty on the part of directors, fines, penalties and punitive damages.

A directors and officers (D&O) policy is written on a 'claims-made' basis and is usually in two parts that indemnify:

- the directors as individuals in a personal capacity
- the company.

A 'nil' excess normally applies to claims taken against directors personally.

Insurers generally rate a D&O liability risk on reviewing:

- the limit requested
- an audited set of financial accounts
- the completed proposal form.

Questions to ask the client

- The company, its history and business description
- Finance and ownership
- Territory
- The directors.

PROFESSIONAL INDEMNITY INSURANCE

This type of policy covers liability incurred in connection with the conduct of professional business by the policyholder or their predecessors.

Professional indemnity cover will also be required if there is any type of 'treatment risk' or 'dispensing risk' and can also extend to provide medical malpractice cover (though this is quite specialist).

Cover is not restricted to injury or damage (and these may be excluded in certain policy wordings) and will extend to include breach of contract. It will not, however, include criminal liability.

The limit of indemnity can apply to the total of all claims in the period (aggregate basis) as well as applying on an 'any one claim' basis.

The cover is on a 'claims made' basis.

For rating purposes, insurers often look to the previous year's revenue rather than the current or projected year, or they may use an average of all three years.

Exclusions

- Asbestos risks
- Liquidated damages
- Dishonesty and/or fraud by a director/partner

- Performance (of a financial product)
- Employers, public and products liability risks
- Directors' and officers' claims, employment disputes, pension and benefit schemes
- Ownership use or occupancy of property.

Questions to ask the client

There tends to be a tailor-made proposal form for each specific profession. There are, however, certain elements common to all submissions:

- date of establishment of the business
- principals' experience in the business
- number of employees and their qualifications
- full and precise description of the business
- details of all locations of the business
- alterations in business activity
- largest contracts undertaken
- detailed information about sub-contractors
- previous bankruptcy, insolvency or winding up
- previous insurance details
- past claims and insurance declinatures
- awareness of potential claims situations.

It is very important that the client/adviser formally declares any circumstances under any previous insurance that they might (or should) reasonably expect to produce a claim.

Renewal procedure

A renewal declaration form will require notification of any incidents of which the client is aware that could give rise to a claim in the future, and any other alterations the insurer should be aware of.

COMMERCIAL LEGAL EXPENSES INSURANCE



Commercial legal expenses cover is now often included as standard within 'package' and 'combined' policies.

Commercial legal expenses insurance provides indemnity for costs arising out of the need to seek legal advice or to pursue or defend a civil action. Cover is restricted to certain types of claim as listed in the policy schedule and the amount of cover provided is limited to an amount per claim.

Cover does not include legal action costs for which indemnity is recoverable elsewhere, e.g. employers liability or public liability policies.

Cover generally includes legal costs incurred in different business contexts:

- safety, health and welfare at work legislation
- data protection legislation
- discrimination legislation
- the recovery of uninsured losses from at-fault third parties.

The last of these is catered for under a specialist motor legal expenses cover, where it relates to a motor accident.

The main policy provisos are that the insurer will only fund:

- a legal action where there is a reasonable prospect of success for the policyholder
- legal costs incurred with the insurer's prior consent.

Policies also include cover for legal costs in defending or pursuing a claim, expenses for jury attendance and sometimes a percentage of a financial compensation award.

Many of the conditions are concerned with the insurer's wish to control the process so that their position is not prejudiced.