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# Product Liability Insurance

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# Disclaimer

The information provided should not be relied on as legal advice or a definitive statement of the law in any jurisdiction. For such advice, an applicant, insured, listener or reader should consult their own legal counsel.

# Product Liability Insurance

## **WHAT IS PRODUCT LIABILITY INSURANCE?**

Product Liability Insurance indemnifies the Insured against all sums which the Insured becomes legally liable to pay in respect of accidental bodily injury or illness to third party property, arising out of use, misuse, consumption, or handling of insured products or goods.

## **WHAT IS COVERED?**

- Compensation as a result of damage to property or bodily injury;
- Consequential losses flowing from that injury loss or damage;
- Costs of hospital treatment etc;
- Defense costs and expenses.

# Product Liability Insurance

- Protect insured in case a product they produce or provide causes harm to a user or a user's property.
- A "product" is anything that is tangibly used, touched, or consumed.
- Insurance is recommended for every business that manufactures a product, but is especially important for companies that produce food, clothing, toys or anything else that could conceivably cause harm to someone.



**China Tainted Milk**

# When is a product defective?

- **Manufacturing defect**
- **Design defect**
- **Warning defect**

# Manufacturing Defect

A manufacturing defect exists when a product does not conform to the manufacturer's intended design or intended end result.

# Design Defect

When the design of the product fails to meet consumer expectations as to safety or when the risk of danger inherent in the challenged design outweighs the benefits of the design.

# Design Defect

A claim of design defect is usually more serious than one of manufacturing defect because it challenges the specifications for the entire product line.



# Warning Defect

Occurs when a manufacturer has not adequately warned of a particular risk that was known or knowable in light of the prevailing scientific knowledge available at the time of manufacture and distribution of the product.

# What is not Covered?

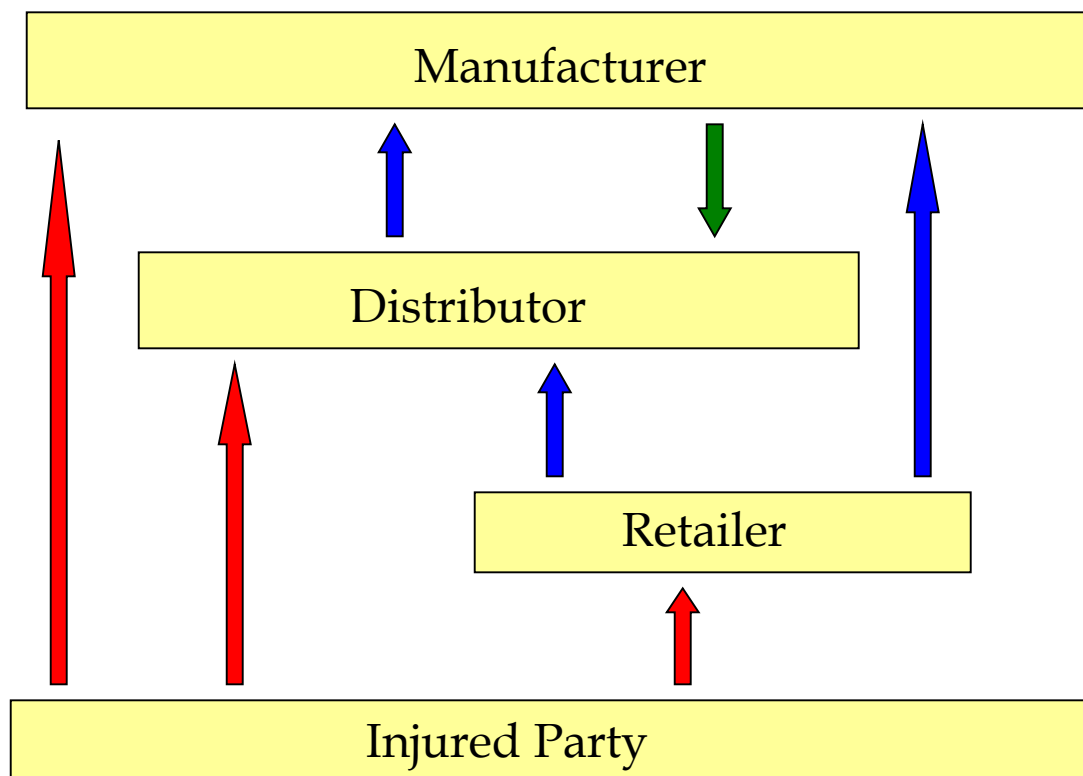
- Employers' Liability
- Contractual Liability
- Damage to the Products themselves or for their repair or replacement;
- Product Efficacy / Failure to Perform;
- Product Recall / Guarantee;
- Infringement of patent, copyright, trademark;
- Fines, Penalties and Punitive Damages


# Product Liability – Who are buyers

- Manufacturers
- Traders/Distributors
- Exporters
- Importers



# Chain of Distribution Liabilities



-  Liability
-  Common Law Indemnity
-  Contractual Indemnity

# Product Seller Shall Also be Liable if:

Product seller has exercised significant control over the product's

- Design
- Manufacture
- Packaging
- Labeling

with respect to the alleged defect or warning which caused the injury, **or**

# Product Seller Shall Also be Liable if:

- Product seller knew or should have known of the defect or had facts available from which it should have known of the alleged defect, **or**
- Product seller created the defect in the product which caused the injury.

## **Claims-made Basis: -**

- ✓ The policy in force at the time of a claim against the Insured is made will pay for the losses, regardless of when they actually occurred.
- ✓ Claims-series Clause
- ✓ Retroactive Date

## **Occurrence Form Basis: -**

- ✓ The policy which was in force at the time that the bodily injury or property damage occurred will respond to the loss;
- ✓ Even though the policy may have expired, a claim can still be made against it



# Claims-Made Policies

## **Advantages: -**

- Limits may be more adequate based on today's/current exposure

## **Disadvantages: -**

- Cut off date for claims is determined by the retroactive date – if incident occurred before retroactive date

# Occurrence Policies

## **Advantages: -**

- Years after the policy has lapsed, incidents that happened while they are in force could still be taken care of;
- Insured need not worry about cancelling an “occurrence” policy and moving to a different insurer

## **Disadvantages: -**

- Insurance companies who wrote policies in previous years may not be around;
- Limits are likely to be inadequate if a claim is made some years later

# Product Liability – Nature of Claim

- Food poisoning
- Misuse of products where manufacturer failed to warn
- BD/PD due to defective product
- Contamination



# GROWTH DRIVERS

Product	Business Drivers
CGL	<ul style="list-style-type: none"><li>• Contractual requirement</li><li>• Better risk management practices</li></ul>
Product Liability	<ul style="list-style-type: none"><li>• Trade activities</li><li>• Regulatory developments</li><li>• Consumer activities</li><li>• Better risk management practices</li></ul>
Product Recall / CPI	<ul style="list-style-type: none"><li>• Regulatory developments</li><li>• Consumer activities</li><li>• Better risk management practices</li></ul>

# Product Liability - Info Requirement

The following are common requirements;

- Product Liability Proposal Form
- Turnover break-up such as;
  - Domestic and Export
  - Destination of export with respective turnover, specially to USA/Australia
- Quality certificates
- Product test certificates



# Thanks

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