

ACE RISK MANAGEMENT - HELPING YOU IDENTIFY RISKS BEFORE THEY BECOME AN ISSUE

This service is the only one of its kind offered by insurers in New Zealand.

ACE Risk Management services consider the following key elements in product safety and employ proven practical techniques that can reduce the risk of having to defend a costly law suit:

- Information on the design and manufacturing process of your products
- The standards or codes which apply to your products
- Agreements relating to product liability (hold harmless, warranties or contracts)
- Company and country of origin of key component suppliers
- Your loss/quality control programmes
- Details of any product safety evaluation, or testing in place.
- Products record system (such as identification, traceability)
- Product manuals, instructions, labels and warnings, marketing material
- Complaints handling system.

PROTECT YOUR BRAND IN THE USA

If you export directly to the USA, or your products end up there as a component of another company's exports, you risk potential liability claims against you. ACE's extensive US experience means that we understand the types of risks you may face and can help you protect against those which are of real concern to you.

DOES YOUR INSURER HAVE THE EXPERIENCE TO PROTECT YOU IN THE US MARKET?

ACE is a market leader for US export liability. We have considerable experience of the US environment and of assisting companies that either export directly to, or whose products end up in, the USA. We understand that this market is not a level playing field for products coming in from other countries. We take a pragmatic and commonsense approach to helping insure companies who are exporting products into what is considered a very litigious market.

DOES YOUR INSURER HAVE THE EXPERIENCE AND RESOURCES TO HANDLE A US CLAIM, SHOULD ONE OCCUR?

ACE has an established claims and legal network to manage claims. We have a strong understanding of the US legal environment. Unlike other insurers who simply offer Product Liability Insurance Policies which do not cover US legal settlements, our understanding of the US system helps us minimise non-commercial compromises; evade otherwise avoidable price increases; and avoid bad publicity and dangerous precedents which may increase the likelihood of claims.

If you export to the US, obtain the correct insurance so that you don't risk losing your business.

LACK OF PROPER LABELLING US\$27 MILLION SETTLEMENT

A two year old child suffered a cardiac arrest and brain damage from a TV timer powered by mains electricity. The parents brought a strict liability action because the timer carried no warning that it was 'live'.

The Japanese manufacturers contested the jurisdiction of New York court but after ten years, and just prior to trial, they settled out of court for US\$27 million. They were covered by Product Liability Insurance.

WORLDWIDE, YET LOCAL

ACE operates an extensive network of over 200 offices in almost 50 countries, with specialised claims representation throughout most of these countries.

Your policy is prepared, serviced and administered by people who speak your language. If a claim should arise, you won't be dealing with international telephone calls and faxes, but with locally-based experts who know both you and your business.

In short, we provide our clients with an unrivalled worldwide network while offering support at a local level. With the strength of ACE behind you, you can concentrate on getting on with your business, knowing that ACE are minimising your risks.

ACE can offer you worldwide cover against loss through product liability, and advise you on how to minimise your risks in the first instance.

Not only is Exporters' Product Liability cover essential – with ACE it will help you become even more successful in your export drive, because of the worldwide market knowledge we make available to you.

IMPORTANT NOTE: This brochure is intended to provide only a general description of the insurance policy and service discussed and is not intended to describe these in detail. We recommend that a potential purchaser thoroughly examine our policy offered and consult with an appropriate expert to be certain of the precise nature of its details.

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ace insurance



EXPORTING AROUND THE WORLD?

EXPORTERS PRODUCT LIABILITY INSURANCE

www.aceinsurance.co.nz

CROMBIE & LOCKWOOD
New Zealand's Insurance Brokers

EXPORTING HAS SOME DANGEROUS PITFALLS

Manufacturing a product and finding overseas sales outlets or distributors is only the beginning of the global export story. No matter where you sell your goods – the USA, Europe, Australia or Asia – the laws of those countries hold you responsible for any loss, damage or injury caused by any of your products. In short, your legal liability travels with every product you sell.

Today, in world markets everywhere, consumers are becoming more aware of their rights and are quicker to exercise those rights by filing product liability suits against exporters, manufacturers processors and even mere suppliers of product. For example, in addition to the strict Product Liability Laws found in many countries including USA, Australia and Japan, there are substantial changes within the EU which have increased the liability of exporters.

Just one claim could put a severe financial strain on your business – and could even lead to the collapse of your company. In fact, merely the cost of defending an “unsubstantiated” claim against you can cost several million dollars.

THE INFLAMMABLE SHIRT

US\$1.3 MILLION SETTLEMENT

A Hong Kong shirt manufacturer sold his products to a store in Wisconsin, USA. A child was severely burned while wearing one of the shirts. The parents sued both the store and the manufacturer.

The manufacturer argued that a Wisconsin court had no jurisdiction over him, but the court ruled that a foreign manufacturer was subject to Wisconsin's liability laws if he knew, or should have known, that his product might be used in Wisconsin.

The total cost of the settlement was US\$1.3million.



YOUR THREE AREAS OF LIABILITY

A manufacturer, retailer or distributor can be held liable for a faulty product in one of three ways:

NEGLIGENCE

This liability arises where there is a failure on your part to exercise reasonable care in the manufacture of a product. The injured party may seek to prove that you knew, or should have known, that a hazard existed and took either no action, or insufficient action to minimise or eliminate the risk. Liability in negligence can arise from the provision of inadequate or misleading instructions or from failing to explore the consequences of wear and tear over the potential “life” of a product.

BREACH OF WARRANTY

When a product is sold, there is an implied warranty that the product is fit and suitable for the purpose for which it was manufactured. If the product does not meet this standard, the manufacturer may be liable for the breach of this warranty.

STRICT LIABILITY

This is a concept of automatic responsibility whereby, for instance, a manufacturer or distributor will be liable for damages without a claimant having to first prove negligence. This means that a claimant may only have to show that:

- What happened was a result of the condition of the product
- The product's condition was unreasonably hazardous
- The condition existed when the product left the manufacturer's control.

This is the most usual type of claim and it is particularly difficult to contest, because you must prove that your product was not the cause of the loss or injury, or was not unusually hazardous. More often than not the injury is caused by using the product thereby creating the problem “guilty until proven innocent”.

HOW YOUR BUSINESS CAN BE AFFECTED

Wherever in the world you do business or wherever your products are used, a claim results in the likelihood of financial loss through:

- Personal injury caused by your product; and/or
- Damage to property caused by your product.

Consequential losses may also arise including:

- Lost income
- Lost productivity
- Loss of market
- Punitive damages
- Negative publicity.

Financial liability is based on the normal scale of awards made in the country where the loss, damage or injury occurred: In many countries nowadays, this liability can be substantial.

Win or lose, the cost of simply defending yourself against a product liability claim can cost in excess of \$1 million. If you do not actively defend yourself in court, your company may face the risk of not only suffering damaging publicity, but of also being legally denied access to a country's markets. There is also the distinct risk of confiscation of company property.

CAN A FOREIGN JUDGMENT BE ENFORCED AGAINST YOU IN NEW ZEALAND?

The simple answer is **yes**. The Reciprocal Enforcement of Judgments Act 1934 allows foreign judgments (from the countries recognised by the Act) to be enforced in a NZ court of law. For those countries outside of the Act there are other mechanisms that allow foreign judgements against New Zealand exporters to be enforced in New Zealand.



THE GOOD NEWS IS: A TAILOR-MADE EXPORTERS' PRODUCT LIABILITY POLICY FROM ACE

With ACE's Exporters' Product Liability Policy, you are protected against actions brought to court by a member of the public, or by a retailer or distributor seeking recompense for loss, injury or damage caused by your products.

The policy is designed around your particular exporting needs, and it helps you protect your markets by transferring your risk to ACE at a known cost for which you can budget.

You may be covered worldwide against:

- Legal expenses
- Investigative work necessary to verify the cause of the injury
- Suits brought against you or your company before any court in the world including the USA and Canada
- Suits brought against you under a North American court of law
- Defined product recall expenses (optional cover)
- Additional cover is available for your vendors.

THE POSITIVE ADVANTAGE OF EXPORTERS' PRODUCT LIABILITY INSURANCE

Product Liability Insurance is an essential passport to a growing number of overseas markets. Some major international buyers will only do business with you if you have it. Increasingly, because of stringent local product safety laws, importers demand that exporters are fully able to stand behind their products.

So not only does such cover protect you – it opens doors to trade that would otherwise remain closed. Why take the risk of losing orders, or of a substantial financial claim against you, when the cost of protection is so reasonable?