International Product Liability for Small Businesses

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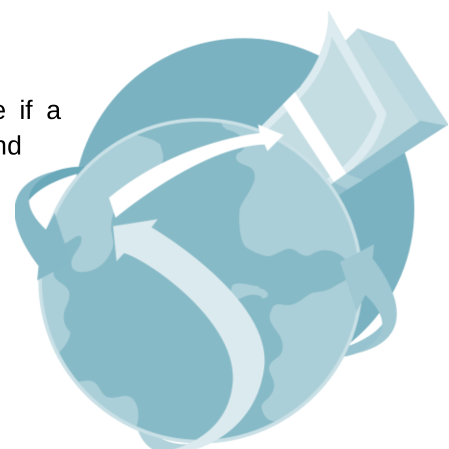
Knowing when and how to protect a small business against international claims

Small business product liability insurance is a form of coverage that typically falls under general liability insurance. The general liability coverage is something no company can do without, but small business product liability insurance is additionally necessary for companies engaged in manufacturing, wholesale production, distribution or the retail of products. Companies are liable for a product's safety and product liability insurance protects against financial loss as a result of a defective product that causes injury or bodily harm. Product liability insurance helps minimize risk. If someone is injured, any medical costs, court fees, attorney fees, compensatory damages, economic damages, and punitive damages are covered to the extent of the insurance policy. Without proper coverage against product liability issues, a small business could easily be put out of business due to the associated financial risks.

When a small business owner opens his or her doors to the public, the potential rsik for a product liability claim also opens up. There is no federal product liability law in the US. Typically, product liability claims are based on state laws, and brought to court under the theories of negligence, strict liability, or breach of warranty. If a company decides to begin exporting its product or enter an overseas market, additional international product liability insurance is needed to protect the company abroad.

General Product Liability Insurance

What companies should purchase it?



All sellers and buyers in the distribution chain can be held responsible if a product defect causes harm. Potentially liable parties domestically and internationally include:

- The product designer
- The product manufacturer
- A manufacturer of component parts
- The wholesaler
- The vendor
- The distributor
- The exporter
- The retailer that sold the product

Who are the parties covered by product liability insurance?

If a claim is made against the safety of a product or if there is a claim of harm caused in the usage of a product, small business product liability insurance covers those claims.

Whether a business manufactures a good or simply sells it, it could be held liable for an injury.

Should the product malfunction or have another kind of defect the coverage extends to:

- The buyer
- The user
- Bystanders

In addition, the claim that a company failed to add proper instructions or warning labels can lead to a lawsuit for injury or loss.

What are the risks it covers?

Small businesses have much to lose in the case of a legal claim or lawsuit against them.

Defective or dangerous products are the cause of thousands of injuries every year in the U.S. "Product liability law," the legal rules concerning who is responsible for defective or dangerous products, is different from ordinary injury law, and this set of rules sometimes makes it **easier** for an injured person to recover damages.

- **Design Defects:** A design defect is some flaw in the intentional design of a product that makes it unreasonably dangerous. Thus, a design defect exists in a product from its inception.
- **Manufacturing Defects:** A product has a manufacturing defect when the product does not conform to the designer's or manufacturers own specifications. Manufacturing defect cases are often the easiest to prove, because the manufacturer's own design or marketing standards can be used to show that the product was defective.
- **Marketing Defects:** These include improper labeling of products, insufficient instructions, or the failure to warn consumers of a product's hidden dangers. A negligent or intentional misrepresentation regarding a product may also give rise to a product liability claim.
- **Unavoidably Unsafe Products:** Some products simply cannot be made safer without losing their usefulness. An electric knife that is too dull to injure anyone would also be useless for its intended purpose. For such products, users and consumers are the best equipped to minimize risk, but manufacturers and suppliers of unavoidably unsafe products must give proper warnings of the dangers and risks of their products so that consumers can make informed decisions regarding how and whether to use them.

What to purchase/affordability?

It is important for small businesses to consider the products for sale when purchasing a product liability insurance policy. Varying amounts of coverage can be selected based on the amount of risk of physical injury inherent in the products. For example, a company that sells hats has much less risk than a company that sells carpentry tools.

Policies vary as much as the need for those policies. The rates for different amounts of coverage for small businesses and their product lines are varied. Insurance brokers can provide in-depth information about the exact type and amount of insurance required. Coverage costs also differ from broker to broker, so exploring all options is advisable.

International Product Liability Insurance

Why do small business exporters need international product liability insurance?

Any small business manufacturer involved in exporting, in addition to suppliers, distributors and export companies, can be exposed to the risk of product liability claims. In addition to possible design, manufacturing and marketing defects, products that are exported may even be at greater risk for liability issues related to storage, transportation and handling due to the long distances they travel. These risks transcend international boundaries and a business can be liable if they occur domestically or internationally.

The exposure to a claims suit has the potential to bankrupt a company. For a company that has already invested time and resources into a product and wants to sell it overseas, it is suggested to take this next step to protect the company and its assets. If a product liability suit is filed against a company in a foreign country, the company would be responsible for paying the lawyers' fees, court costs and whatever the rendered judgment indicates. If the company has product liability insurance coverage, the insurance company would hire an attorney and pay all associated costs. Without insurance, this cost could be devastating to a small business.

If a company does not have coverage in foreign markets, judgments against it in those countries could mean that any assets it has there, such as inventories or deposits could be seized. Between industrialized countries there is a "full faith and credit" agreement worldwide, which allows judgments to cross international borders. The plaintiff's attorney therefore can also go after all of the assets of the company and owners domestically, including receivables payments.

Even innocuous products that are believed to do no harm could still contain risky materials – i.e. the glue in a hat band could cause harm – and experts therefore suggest getting some degree of coverage for all products.

How should a company start the process of acquiring foreign product liability coverage?

The first step to acquiring international insurance is to schedule a meeting with a broker to discuss options.

Typically, most US insurance coverage extends to Canada as well. If a company is looking to export to a foreign market beyond the US and Canada, it would need to consider adding a new international policy.

For international coverage, it is important to go through an established insurance company and to have the policy reviewed by a legal advisor to ensure there are no loopholes present in the contract. Industry sources also stress the importance of clearly indicating to the broker what the coverage should entail and to make sure this correspondence is in writing. In the instance that a claim is made, it will be important to prove what was guaranteed by the broker.

Can foreign coverage be added to an existing policy?

This would be a separate policy. Existing product liability coverage will only be valid in the US and Canada. Any foreign activities require a separate policy.

How is the price of global product liability coverage determined?

The cost of international coverage is based on factors including:

- The product(s) being covered and their potential liability hazards
- Countries where the product will be sold and the tort laws in those countries
- If the product is sold directly or through a distributor
- The supply/distribution chain of the product
- The estimated annual sales of the product
- If any there are employees and assets overseas that need coverage

The insurance broker can also determine if there are any compulsory requirements for a given country. These requirements vary by country and some countries require local admitted coverage if a company establishes an on-the-ground presence in a foreign market, for instance. This includes, but is not limited to office space, a warehouse, or a registered business address.

What are the benefits of global coverage vs. coverage for a specific country?

Depending on the number of countries a company is looking to export to, industry experts recommend different types of coverage.

If a company is looking to enter a few foreign markets, a comprehensive foreign package can be a cost effective option. This type of package can cover a company in every country in which there are no current U.S. trade sanctions. It can include everything from product liability, company property, sales samples, trademarks, and auto insurance in excess of what is required to workers compensation, employee liability, accidental death coverage, kidnap, ransom, and extortion. If there are any unique policies required for a certain country, these can be added to a comprehensive foreign package policy.

If a company is looking to export to one particular market, i.e. Mexico, it is possible to purchase country specific coverage. This can be purchased through a local insurance company in the foreign market or from a U.S. insurance broker.

Local in-country brokers are familiar with the risks and policies in a given country and can be a less expensive option for coverage. However, there are a number of risks associated with buying local coverage instead of a full international package. The coverage may not cover everything a U.S. policy would, and the coverage will only apply to that certain country.

What is the risk that a foreign country won't recognize insurance coverage even if a global policy was purchased in the U.S.?

In this instance it would become a contract dispute between the insurer and the company. The courts would not get involved in a contract dispute, unless it is found the insurance will not cover the claim.

It is recommended to purchase insurance through a reputable brokerage firm that has previously insured companies internationally to avoid this scenario.

Who is responsible for a claim if a product ends up in a different country than was intended for its distribution?

If a company has a comprehensive, global foreign policy package, it will be covered in all international markets.

If a company only has coverage in one market, they should have an indemnity and hold harmless agreement in place with their sales partners and distributors in that market. This language needs to be strong to hold up in court, but most US courts will recognize that a company is not liable for a third jurisdiction if the movement was out of their control. Legal experts advise that in this instance, a finding of liability depends on whether it was reasonably foreseeable that the product would cross international borders.

For example, in the case of tire components, it is reasonably foreseeable that the products would move across international boundaries. On the other hand, a component that gets installed in a large machine located in a plant in a permanent location would not be reasonably expected to wind up in another country and there is accordingly less need for a comprehensive policy.

What are hold harmless agreements?

A hold harmless agreement is an indemnity agreement that states that one company will hold another company harmless in case of a claim. Hold harmless agreements are another way to reduce exposure with overseas partners. Hold harmless agreements will need to be recognized in the country that a company is expanding into in order to protect it there. Review of these agreements by a legal advisor is recommended in order to ensure this.

Hold harmless agreements can protect a company from any external lawsuit filed against a local partner in a given country. Unfortunately, hold harmless agreements do not always hold up in court and they are only “as good as” the other company in the agreement. If the other company goes bankrupt or disappears, then the agreement is void. Also, if the other company doesn’t abide by the agreement, the US company can still be held accountable.

What is the typical cost for a comprehensive foreign policy insurance package?

Packages usually start around $2,500 annually.

Are there coverage limits? What are they? What is suggested?

Coverage limits vary by the policy that is purchased, but the basic foreign package has these standard limits for one policy period:

- Property- $25,000 - 50,000 per occurrence (this includes computers, projectors and product damage; the maximum is $1,000,000 per one event and $2,000,000 aggregate)
- Accidental death – $100,000 with $1,500,000 aggregate
- Kidnapping – $250,000
- Auto damage – $1 million
- Workers compensation – $1 Million

What is needed specifically for small business food exporters to go global?

It is important that the exporter/distributor maintains their own type of insurance, including product liability insurance and maintains certain minimum limits; $1 million is common for a base minimum. The Illinois business should also ask to be added as an additional insured party on the foreign supplier package, wherever necessary in the supply chain. Even if a company's food products comply with stringent food regulations in the foreign market, there's still a risk of liability issues.

International product liability is needed by the time the company is ready to ship the product abroad.

What do industry experts suggest for small business exporters on this topic?

According to a leading global insurance broker, it is suggested for companies to reach out to their broker early on in the process of looking to export. Brokers are great resources for additional information on exporting and they have a global network and many reference tools available at their disposal. A broker can also look at any of the other contracts in place between suppliers, distributors, governments, and can guarantee that there is compliance in terms of insurance coverage in the documents.

Small businesses should take note that some insurers may offer global coverage but only for lawsuits filed in U.S. courts. That may not be adequate if a company is subject to suits filed in foreign countries. Look for broad coverage that will insure against suits filed in foreign courts as well as U.S. courts.

Legal experts recommend insuring through a highly rated insurance company, who is familiar with overseas claims. They also recommend that your policy is checked over for all technicalities, loopholes and for the company to thoroughly read and understand all the international policy implications.

It is also advisable to thoroughly research the financials of the foreign company that a US exporter is planning to engage with in business. If the foreign party does not abide by any contract terms or goes bankrupt, the US exporter can still be held financially responsible for any lawsuits and claims; therefore it is important to fully understand the other company and its insurance policies.

This brief was compiled partly based on information from the US Small Business Administration.

For additional information on other types of insurance small businesses may need, consult the U.S. Small Business Administration's website at http://www.sba.gov/content/types-business-insurance

Sources:

US Small Business Administration - http://www.sba.gov/

Expert interviews:

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Principal
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