

Broadform Liability (Public and Products Liability Insurance)



Frequently
Asked
Questions

Who needs Broadform Liability Insurance?

You should consider taking out a Broadform Liability policy if:

- Members of the public or customers visit your premises.
 - You visit or work on other (third party) premises.
 - You undertake activities in public places.
 - You manufacture, supply, distribute, wholesale, import, export or retail products.
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What is Broadform Liability?

The term Broadform Liability originated in the US. It simply refers to a business insurance policy which covers both Public Liability and Product Liability.

The larger mainstream Insurers in South Africa enhanced their wordings, due to the implementation of the Consumer Protection Act in 2008.

- The most obvious change was the name change from Public/General Liability to Broadform Liability
 - Products Liability and Defective Workmanship extensions merged
 - The Accidental trigger in the operative clause was removed (review the policy wording, as Broadform should cover accidental and non-accidental claims)
 - Policy extended to include negligent advice and design in connection with the product
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Why should Brokers approach the specialist market if commercial Insurers are offering “Broadform Liability” cover on their multi-peril policies?

It is prudent to identify new exposures as and when the Insured’s business develops. Scaling up is a really exciting phase, but the relevant insurance policy should be enhanced to cater for new exposures.

Let’s say the Insured is a Manufacturer of a product. The Insured may export goods to North America. They would require USA/Canada cover for third party legal liability, emanating from North America. The need for additional cover such as Products Recall and Products Inefficacy cover should be discussed with the Insured.

Specialist covers are only available from the specialist market.

What sets Leppard apart from the rest of the specialist market?

Our wording is in plain language (this is in accordance with Treating Customers Fairly principles).

Care, Custody and Control cover is automatically included in respect of the Insured’s Workmanship activities (covered under the Products/Defective Workmanship section).

Knowledgeable and skilled claims specialists who look for ways to pay claims.

The Insured’s deductible at claims stage is only applied to damages and does not apply to Costs and Expenses. In other words, costs and expenses are not subject to the deductible.

What are the maximum limits that can be provided by Leppard on a Broadform Liability policy?

R500 000 000 subject to some Extensions being sub-limited.

What limit should the Insured purchase?

Many clients and industry bodies with regulatory requirements, will require a minimum level of cover to undertake a contract, so it's worth checking this before arranging cover.

It is complex to recommend limits as the Insured knows their business best. Various factors such as the size and nature of the Insured's business should be considered. We recommend that the Insured attains as much cover as they can afford. An internal Risk manager could be appointed to assist in identifying and mitigating the maximum exposures.

What are the territorial limits under the Leppard Broadform Liability Policy?

Worldwide, excluding USA/Canada. Cover can be purchased for USA/Canada exposures.

What is the difference between an Excess of Loss and Umbrella policy?

An Excess of Loss policy only covers losses that are insured by the Primary policy. The terms and conditions of the Excess Layer policy therefore mirrors that of the underlying policy and is commonly referred to as Follow Form cover. The concept of this policy is to purely provide additional limits in excess of the Primary policy.

An Umbrella policy not only tops up the primary limit, but widens the underlying cover with a DIC (Difference in Conditions) element. This is commonly referred to as drop-down coverage as the Umbrella policy may step down and act as the Primary policy.

Does Leppard offer Events Liability cover?

We can assist with once off and annual events liability cover. We do not write events cancellation, weather related risks and Prize Indemnity cover.

What Standard extensions are available under a Broadform Liability Policy?

The following automatic covers apply:

- Public Liability
- Products/Defective Workmanship (on request and if an exposure is identified)
- Employers Liability
- Wrongful Arrest
- Defamation and Statutory Defence Costs

Cover is automatically included for contingent security services. An extension document can be arranged upon request.

The following are optional extensions available at an additional premium:

- Product Inefficacy
- Product Recall
- USA and Canada
- Contractors Liability
- Excess Motor Third Party Liability (minimum attachment point of R2 500,000)
- Motor Passenger Liability
- Errors and Omissions
- Pure Economic Loss
- Carrier Services
- Warehouse Services
- Lateral Support
- Care, Custody and Control
- Incidental Medical Malpractice
- Claims Preparation Costs
- Simrac Levy
- Pollution Clean Up Costs

We may consider extensions not mentioned specifically, but this would be subject to receipt and favourable review of the cover required.

What is the difference between the Securities extension under Broadform Liability vs the Leppard stand-alone Security Services Liability cover?

Our stand-alone Security offering covers PSIRA registered Security companies. The security services extension under our Broadform liability policy is contingent cover for companies who contract out security services to a third party.

A typical example of this is a retail store who contract out security services to an external security company. The security guard at the door is not employed by the retailer, but rather provides guarding services for the retailer on behalf of his Employer. The retailer may be held legally liable for the actions of the security guard, whether he is an employee or not.

What is the difference between the Professional Indemnity extension under Broadform Liability vs the Leppard stand-alone Professional Indemnity cover?

The Errors and Omissions extension covers financial loss unrelated to damage or injury. We will only insure companies where billable advice is not the Insured's core business. There is therefore no cover for professionals such as accountants and engineers. Our PI team would look at these exposures on a stand-alone basis.

Does the Leppard policy cover Civil liability?

Civil liability refers to legal liability, which is not criminal liability. It is a term generally used in the UK market.

In essence, the liability covers are the same, whether referred to as legal or civil liability.

My client is purely a supplier and does not manufacture any products. Is a supplier considered a lower risk vs a manufacturer?

In terms of the Consumer Protection Act, strict liability has been imposed on all parties in the supply chain i.e., Manufacturers, Distributors, Suppliers, Retailers etc.

In other words, all parties are required to purchase Products Liability cover as either party could be sued for third party injuries as a result of a defective product.

Liability rates are therefore not discounted for parties not involved in the manufacturing process.

A medical representative gives advice on the placement of medical devices and attends surgeries to advise the surgeon accordingly. Would this be covered under a Leppard policy?

This would not be covered in our standard Liability policy, although we have been approached to cover these risks in the past.

The Product definition can be amended to include advice given during the course of any medical procedure, provided the manufacturers' original specifications are adhered to.

Does Leppard write Products Recall cover on a stand-alone basis? If not, please elaborate on the cover included as an extension to a Broadform Liability policy?

We do not offer full Recall cover, which includes first and third party cover, for contamination and malicious tampering for example.

Our offering only extends to Recall costs such:

- Media communication
 - Transportation in connection with the return of the product
 - Product destruction only if costs are lower than transportation costs
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Why is a Recall plan a prerequisite?

The Recall plan will highlight factors such as batch control and traceability, production amounts, recall procedures, recalled product records, recall efficacy, recall team, if and when a mock product recall is performed etc.

How often Mock recalls are conducted are critical to the viability of the Insured's Recall plan. Are enhancements/modifications made to the Recall plan if/when inefficiencies are identified?

We do not offer Recall cover, unless a documented Recall plan is in place.

Does the Leppard Broadform Liability policy cover Sub-contractors?

Sub-contractors are automatically covered for work done for and on behalf of the Insured only. The Insured should however mitigate their exposure as any claim against the policy may impact future premiums. Where possible, the Insured should therefore advise their sub-contractors to purchase their own liability cover by requesting that all sub-contractors are adequately insured elsewhere.

Is the Insured covered for Employee injury insurance (Compensation for work related injuries and diseases – COID)?

Occupational injuries are covered under COID. This will be the Insured's first port of call to claim compensation.

Legally, Employees are precluded from suing their Employer. The Employers Liability section on the Liability policy specifically excludes employee claims, which are covered in terms of any worker's compensation legislation.

Please give some examples of where an Employers Liability extension might respond.

Employers Liability cover merely acts as a safety net as the COIDA Act has eliminated the common law right of any employee to sue his/her employer for injury or diseases that arise in the workplace. This cover available applies to the following scenarios:

- Non accidental injury not covered in terms of COIDA (Compensation for Occupational Injuries and Diseases Act)
 - Funds are depleted (Not that farfetched owing to the current state of our economy)
 - A South African employee employed outside the RSA for a continued period of 12 months or longer (Not covered under COIDA)
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The same principle applies to Passenger Liability cover. The Road Accident Fund should be the first port of call should third party liability arise from an accident occurring on a South African road.

Can an Employee sue their Employer if the Employee's child is injured on their Employer's premises? Would this be a public liability claim?

Yes, all visitors excluding permanent staff are deemed third parties.

The Insured has never purchased Broadform Liability cover, but has traded for several years. Can the Insured purchase retroactive cover at a cost?

Retroactive cover can be purchased up to a maximum of 2 years; however, please bear in mind that we are not covering past known claims, but rather unknown incidents emanating prior to the inception of our policy.

My client has been insured for several years, but the current Insurer has given notice at renewal due to a change in risk appetite. Will the Insured lose their previous retroactive date when placing the risk with Leppard?

We will match the previous retroactive date subject to proof of previous, uninterrupted cover. In other words, the Insured will be covered for any new claims notified on or before the retroactive date stated on the policy.

What does "Claims Made" mean?

Claims first made against the Insured, during the Period of Insurance, arising out of an insured event occurring on or after the Retroactive Date of cover. Once the policy is cancelled or lapsed, there will be no cover in place to respond to any claims, irrespective of when they occurred.

What is run-off cover?

Run-off cover is cover specially designed to protect your business once it stops trading. It provides cover for liabilities that may attach to the Insured after the company stops trading, but for losses that occurred prior to the date operations ceased.

Can run-off cover be purchased if the business closes down?

Yes, it can be considered on request.

What are the minimum requirements to obtain a quote?

A completed Leppard Proposal Form submitted via an insurance broker is required to obtain a quote.

We do accept competitors' proposal forms provided all underwriting information is provided. The dominant rating factors are as follows:

- Actual revenue achieved for the expiring period
 - Full liability loss history
 - Business description
 - Limit of Indemnity required
 - Sections and extensions required
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How long does it take to get a quote?

Allow 48 hours to get a quote on small to medium straightforward risks. This timeline is slightly extended on larger complex risks.

How much is the insurance going to cost?

Premiums for insurance policies can vary widely and depend on inclusions and exclusions, the nature of business and the risk factors apportioned to the industry.

Each risk is rated and priced in accordance with its own risk profile. There are many factors that influence the Premium as indicated above. The risk is looked at holistically and all factors are considered to determine the cost.

How can the Insured pay the premium?

Annual, Financed (e.g. Fulcrum) or Monthly

Why does Leppard calculate premiums on actual revenue as opposed to estimated revenue?

Liability cover is long tail and therefore premiums are based on the Insured's actual revenue achieved as we are mainly covering past events.

What does "Long Tail" mean in the specialist market?

Liability claims can have a "long tail" meaning in ordinary circumstances a claim only prescribes three years after the event giving rise to liability occurs, and in the case of minors, twelve months after reaching majority. That means an Insurer who has written liability cover on an occurrence basis could be faced with having to indemnify an Insured for up to nineteen years after an event giving rise to liability, given that minors are now considered to have attained majority at age eighteen in South Africa (previously twenty-one years of age).

Once a quotation is accepted, how long does it take to get a policy document?

The Insured will receive the policy documents within a maximum period of 7 working days.

The Insured has opted to finance the monthly premium via Fulcrum. When will Leppard release policy documents on Fulcrum financed policies?

Policy documents or confirmation of cover letters will be finalised once we have received a signed Fulcrum contract.

Will Leppard consider holding covered on renewal policies if renewal discussions are delayed for reasons beyond the Broker's control?

We will hold covered for a maximum period of 14 days following the renewal date. A hold covered endorsement will specify the conditions of the hold covered agreement.

What constitutes a Liability claim and/or when should a potential matter be notified?

The notification provision in our Broadform Liability policy requires that a claim be submitted in writing as soon as the Insured receives any form of notification from a third party or when they become aware of an incident likely to give rise to a claim. Do not wait until you have conducted an enquiry.

The following definitions apply:

"Receives a claim" - where the Insured receives a formal claim from a third party advising the Insured of a loss (injury / damage). The Insured may receive a formal letter intimating the claim, a letter of demand or a Summons.

"Becomes aware of a possible claim" - a fact / situation which objectively evaluated creates a reasonable and appreciable possibility that it will result in a claim.

What is a Deductible?

The amount borne by the Insured as the first part of each and every claim.



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