

What does a liability policy cover?

"indemnify the insured in respect of all sums which the Insured shall become legally liability for arising out of accidental injury or damage"

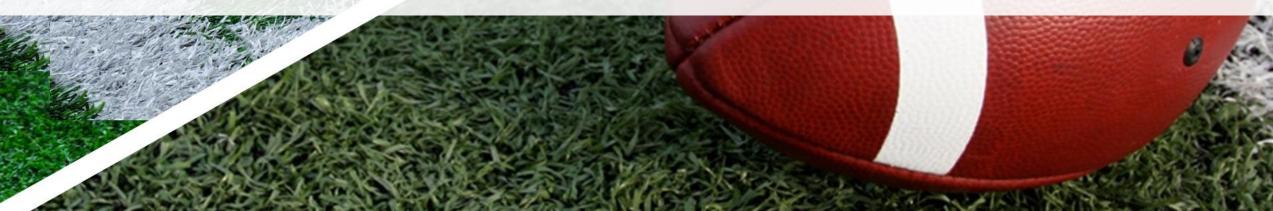
Essentially we are talking about tortious liability – liability arising out of a civil wrong – not an intentional / criminal act.





US LIABILITY VS. UK LIABILITY





PROPERTY EVENTS ARE CONTROLLED BY THE RULES OF PHYSICS:

Hazard + construction + values Policy coverage = size of claim

CASUALTY EVENTS ARE CONTROLLED BY THE RULES OF LIFE:

Macro economy + social standards + legal system Policy coverage = size of claim

Understanding what drives risk is key to understanding the adequacy of coverage and the potential size of losses for operations.



Attorney in Google Maps Lawsuit: It was dark; She thought **Google was leading** her to Sidewalk

1. TRUE or 2. FALSE



1. TRUE or 2. FALSE

Nutella health claims sparks class-action lawsuit





Woman sues FedEx over fall, claims package was negligently placed

1. TRUE or 2. FALSE



U.S. Liability Issues and Cover

US Market can be a starkly different liability world for UK companies



- Juries for civil cases

- Costs - No requirements for loser pays

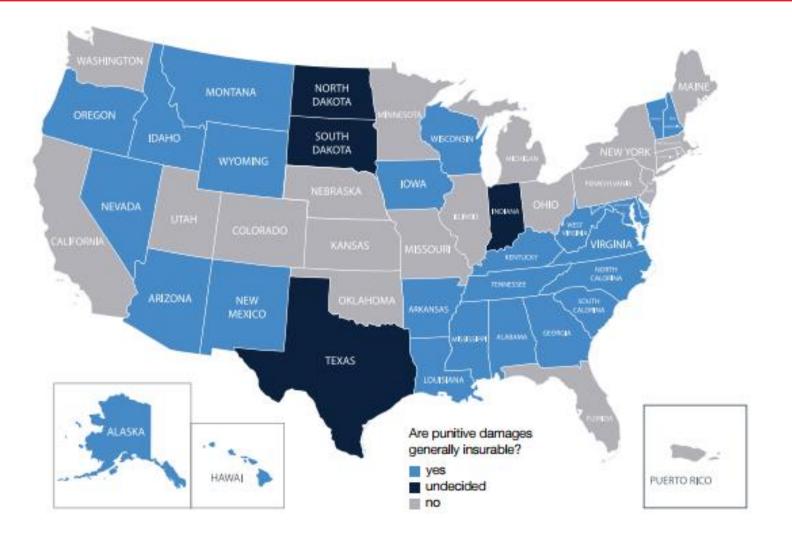
- Prevalence of Class actions

- Punitive damages





Are punitive damages insurable?





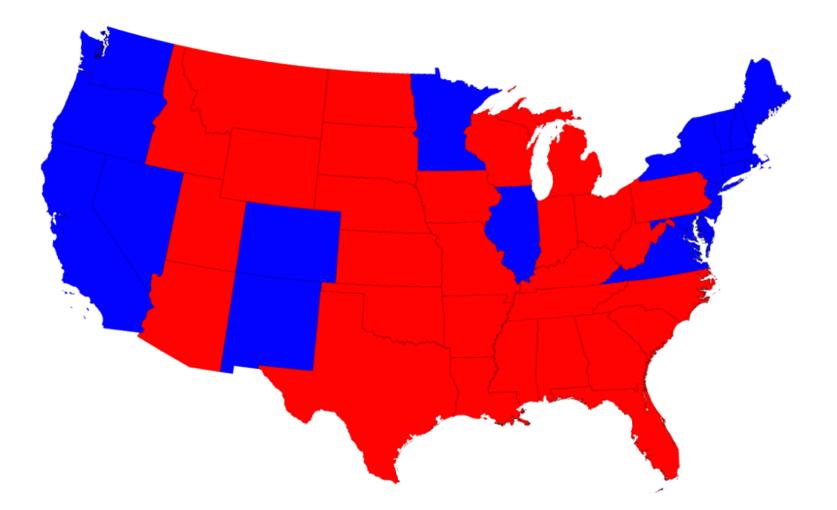
As long as I am allowed to redistribute wealth from out-of-state companies to injured in-state plaintiffs, I shall continue to do so. Not only is my sleep enhanced when I give someone's else money away, but so is my job security, because the in-state plaintiffs, their families, and their friends will reelect me...



1988 -- Richard Neely, retired West Virginia supreme court judge,

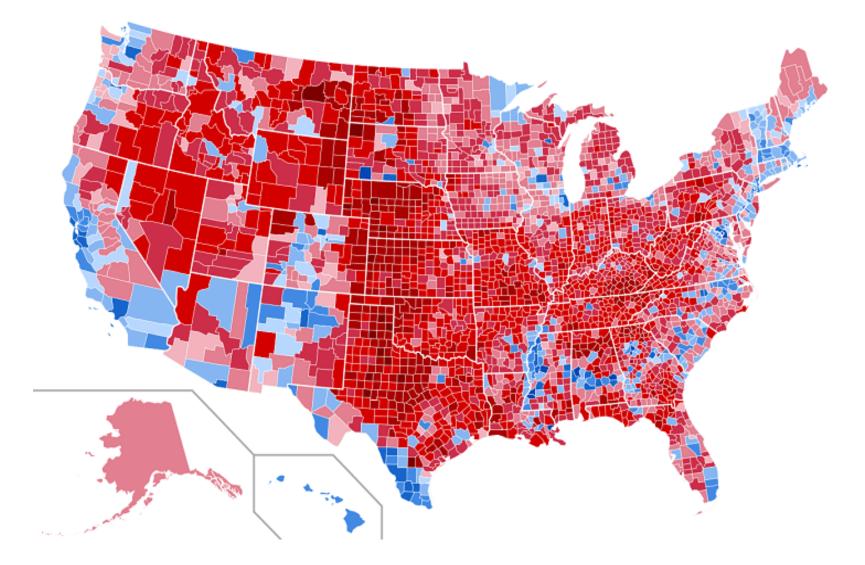


2016 Election Results by State





2016 Election Results by County







DONALD TRUMP- MACRO ECONOMIC POLICY

"Enjoy Mexico — it's a wonderful place, beautiful weather. I hope you like 120 degrees," Trump said.

"Every unit you make that you sell into the United States you're gonna pay a 35 percent tax."







DIFFERING COVER AVAILABLE: UK Motor vs. US Auto Liability

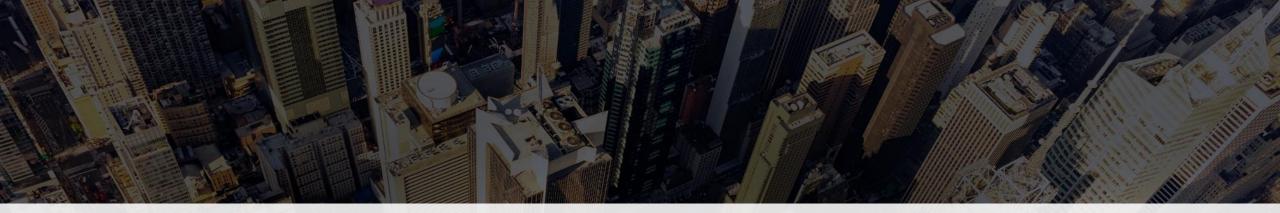




DIFFERING COVER AVAILABLE: Employers' liability vs. Workers' compensation





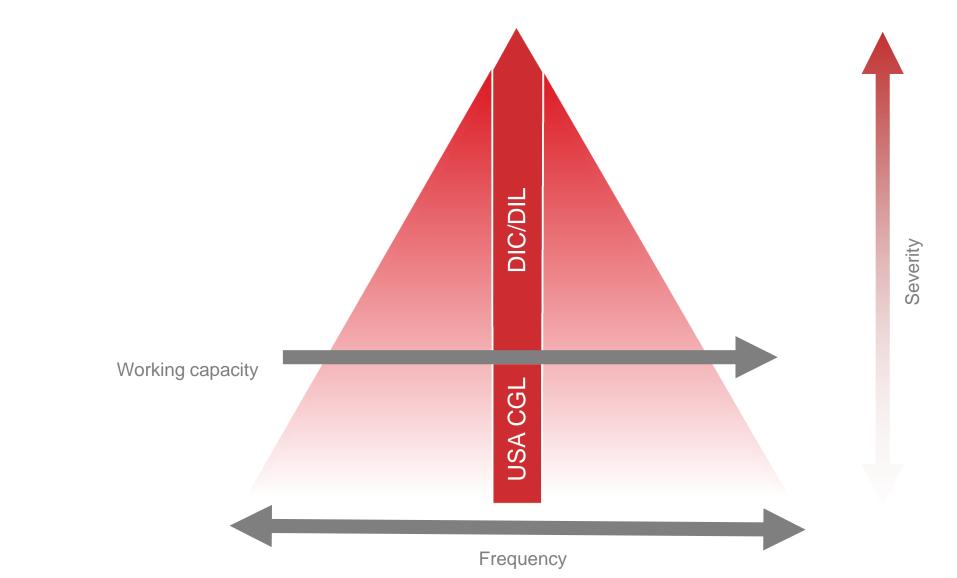


DIFFERING COVER AVAILABLE: Umbrella Policies





FREQUENCY vs SEVERITY





CASE STUDY

NATURE OF CLAIM

- Defendant manufacturers electric plug extension leads / electricity surge protector.
- A fire starts in a Manhattan cathedral gift shop and spreads causing widespread damage to the building and antiques housed within.

DESCRIPTION OF ACCIDENT / PERTINENT FACTS

- The Fire Marshall determines the surge protector, which was found 25ft from the start of the fire was at fault.
- The plaintiff is seeking multi million dollar settlement for damage to the building and loss of revenue from visitors and gift shop sales.
- The defendant is notified via a newspaper report that the lawsuit has been filed.



CASE STUDY: Upon receipt of the claim what is your next action?

<u>ONE</u>

Notify your insurer and ask them to settle the claim at best terms, an allegation from the fire marshall will be difficult to overturn at trial.

<u>TWO</u>

Notify your legal counsel and insurer to defend loss. The products of known to be of high quality so the claim is without merit.

<u>THREE</u>

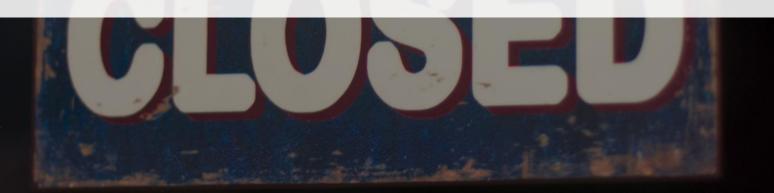
Notify insurer and legal counsel and furthermore start an internal investigation. Monitor social media for any posts regarding the fire and attempt to recreate the circumstances of the loss in lab condition.





DIFFERING COVER AVAILABLE: Financial loss vs. Loss of use







CASE STUDY

NATURE OF CLAIM

 A factory owner enters into a contract with a specialty moving company to re-position certain machinery on the factory floor. The machinery is to be moved during a quiet period for the factory, with no manufacturing taking place and only the moving company's staff present on the factory floor. While moving a piece of machinery, one of the moving company employees loses his footing and the resulting imbalance causes the machinery to tumble onto him. The employee suffers severe injuries to one of his legs.

DESCRIPTION OF ACCIDENT / PERTINENT FACTS

• The employee cannot sue his employer (the moving company) per applicable Workers Compensation law, but the employee does bring suit against the Factory Owner alleging negligent maintenance of the factory floor and seeking damages in excess of \$1 million for pain and suffering and other losses as a result of his injuries.



CASE STUDY: Upon receipt of the claim what is your next action?

When the Complaint is served on the Factory Owner, what are the key steps to take:

<u>ONE</u>

Appoint counsel to defend the Factory Owner, investigate the facts of the accident and injuries, and use that information to form the proper defense strategy

<u>**OWT**</u>

Examine the contract between the Factory Owner and the Moving Company to determine if there is any indemnity obligation running between the parties

THREE

Determine if the contract between the Factory Owner and the Moving Company includes any Additional Insured obligations running in favour of the Factory Owner

FOUR

All of the above



Do you have US exposures?

Do you:

- 1. Sell products online and ship worldwide?
- 2. Export products to a US wholesaler?
- 3. Have a Social Media presence?
- 4. Send staff to US for business?





EVOLVING EXPOSURES IN A DIGITAL AGE







CASE STUDY

NATURE OF CLAIM

- You operate a chain of sandwich shops that has recently expanded to the USA.
- One of the new store managers in the USA previously worked at a Joe's sandwich shop and believes our product to be superior. Using his personal twitter account, tweets - "our sandwiches have twice as much filling as Joe's sandwich shop"
- The Tweet was sent voluntarily and on their personal twitter account

DESCRIPTION OF ACCIDENT / PERTINENT FACTS

- Plaintiff is an operator of a rival business following the publication of the Tweet the plaintiff starts legal proceedings for product disparagement.
- The plaintiff is suing for USD1m in damages made up of amounts for loss of revenue and devaluation of their brand



CASE STUDY: Upon receipt of the claim what is your next action?

<u>ONE</u>

We need to support our employee - although on their personal account, the tweet is within the scope of their employment

<u>TWO</u>

This matter doesn't concern us – this was their personal twitter account

THREE

We need to defend the claim as a corporate entity and not redirect to the employee – although this tweet is outside of the scope of their employment we don't have a defence as no guidance has been issued to staff regarding Social Media.



Top Tips for Success from a Risk managers perspective

- 1. Get to know your state and business operations in the US this will help understand the opportunities and risks
- 2. Build relationships with your local broker / insurer / underwriter
- 3. Have regular touch points with HR to discuss any developments in growth, areas of concern and risks such as UK employees seconded in the US, US legal landscape etc
- Understand your Health and safety policy in the US is your H&S policy group wide, or are there variances by territory
- 5. Understand your supply chain in the US
- 6. Selection of Legal counsel
- 7. Consumer protection laws vary by state
- 8. Law applicable to customer and supplier contracts
- 9. Insurance buying strategy
 - admitted / surplus lines / non-admitted / level of retention / breadth of cover Punitives / cyber etc
- 10. Social Media Policy



In conclusion

- 1. Remember: 50 states 51 insurance jurisdictions
- 2. Be aware of local insurance and tax rules
- 3. Be mindful of the litigious environment
- 4. Do not assume that a UK policy can just be extended to cover the US
- 5. Make sure that your limits are high enough
- 6. Remember your duties to customers
- 7. Be aware of the differences in the types of cover
- 8. Bear natural catastrophe exposures in mind
- 9. Choose the right partners



Whitepaper: An insurance buyer's guide to the U.S. for U.K. companies











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