# India's Liability Insurance Landscape: Challenges, Prospects, and Initiatives


"We don't need Liability Insurance, our systems are perfect to a fault!"

Let us begin with some statistics.

Liability insurance Gross Direct Premium Income (GDPI) for the year 2023- 2024 in India is ₹ 3338 Cr. which constitutes about 1.2% of the total GDPI of ₹ 289673 Cr.

Some other statistics in respect of liability insurance, as available in the General Insurance (GI) Council year book for the year 2023-24, are as under:

| | |
|---|---|
| GDPI | ₹ 3338 Cr |
| Percentage share of total GDPI | 1.2% |
| Net earned premium income | ₹ 2098 Cr |
| Net retention ratio | 48.2% |
| Net commission ratio | 11.2% |
| No. of policies issued | 2902519 |
| | |
| Gross incurred claims ratio | 35.6% |
| Net incurred claims ratio | 41.2% |
| No. of claims reported | 104643 |
| No. of claims paid | 91434 |
| Amount of claims paid | ₹ 1069 Cr. |
| | |
| Share or premium from urban areas | 94.4% |
| Share or premium from rural areas | 5.6% |

(Source: GI Council Indian Non-Life Insurance Industry Year Book 2023-2024)

Global liability insurance market size was stated to be USD 275.24 billion in 2023. At ₹ 3338 Cr GDPI, liability insurance premium is low in absolute terms and also as a percentage of total premium. In USA this percentage is over 15% for the year 2021.

Detailed analysis is neither the focus of this article nor possible in the absence of granular data. What comes out clearly is that liability insurance forms a small part of the total premium and insurers are currently experiencing favourable results.

## Liability Insurance: Challenges and Slow Growth

1. **Tort deficit**: Any act of omission or commission which causes loss or damage to the legally protected interest of an individual is a tort, the remedy for which is an action for damages. In India, the law of tort is not codified and is still in the process of development. India suffers from tort law deficit. While many of the areas of law relating to crimes, contracts, property, trusts, etc, have been codified, there is yet no code for torts in India. Most of the development in tort law is the contribution of the Indian Judges and lawyers mostly drawn from the British precedents & judgements.

   It is disappointing to note that though recommendations for an enactment on tort law were made as early as in 1886 by Sir F Pollock, who prepared a bill known as the 'Indian Civil Wrongs Bill' at the instance of the Government of India, it was never taken up for legislation. Further, Hon'ble Supreme Court of India recently in Union of India & Others VS K. Pushpavanam & Others stated as under.

   *"As far as the law of torts and liability thereunder of the State is concerned, the law regarding the liability of the State and individuals has been gradually evolved by Courts. Some aspects of it find place in statutes already in force. It is a debatable issue whether the law of torts and especially liabilities under the law of torts should be codified by a legislation. A writ court cannot direct the Government to consider introducing a particular bill before the House of Legislature within a time frame."*

   *"No Constitutional Court can issue a writ of mandamus to a legislature to enact a law on a particular subject in a particular manner. The Court may, at the highest, record its opinion or recommendation on the necessity of either amending the exiting law or coming out with a new law."*

   Codification of torts facilitates development of liability insurance. It appears to be a long shot at the moment.

2. **Dependence on institutionalized system of *ex gratia* compensation**: One often notices that whenever there is a negligence resulting in personal injury or property damage like collapse of a bridge or building or any accident anywhere, there is an outcry for exgratia payment which is mostly conceded by the governments. Generally, these amounts are paid- "without acknowledging any obligation or entitlement." While ex gratia payments do not preclude or limit legal proceedings, they may impact the compensation function of a tort litigation thereby diminishing the significance of liability insurance.

3. **No contingency fee system**: In this system, lawyer's payment is made contingent upon the favourable outcome of the case. It could be a fixed amount or a defined percentage. Contingency fee arrangement has been one of the distinguishing features of litigation in the USA. This has significantly contributed to jurisprudence relating to compensation/ liability insurance. It transformed from an illegal practice to an essential element of the American legal system affording ability to the needy access to the courts. In the Indian context, contingency fee system is not permitted. It is invalid under Advocates Act of India, 1961. While there are pros and cons for the contingency fee system, the absence of this system acts as a deterrent on litigation, particularly tort litigation, as most of the claimants do not have the means to afford the high costs of litigation coupled with the delays and unpredictability in dispensation of justice. Since legal literacy is low, if contingency fee system were to be introduced, it should come with enhanced scrutiny and robust safeguards to avoid its misuse and exploitation of the gullible.

4. **Emphasis on retribution and not on restitution:** The emphasis in legal system is more on retribution with criminal punishment rather than restitution with civil settlements. It is a good augury that in the recent past some enactments have started providing for consensus-based settlements. One can see signs of this even if though they are faint.

   *Interest republicae ut sit finis litium*, meaning it is in the interest of the State that there should be an end to litigation. Provisions for 'compromise' and 'compounding of offences' are mentioned in The Bharatiya Nagrik Suraksha Sanhita, 2023 and explicitly in some legislations like The Companies Act, 2013.

   The consent mechanism may be defined as "a proceeding in which the regulator and the alleged violator, may at any stage of the proceeding negotiate a settlement in lieu of administrative/civil proceeding, in the process saving cost, time and efforts for the parties involved. The mechanism may not require admission or denial of findings.

5. **Cultural distaste for suing**: In the DNA of most of the Indians, cultural distaste is embedded for suing seeking compensation, primarily due to the belief in divine ordainment. As they say - God has willed it. While we do see a plethora of cases in Indian courts on various matters, the number seeking monetary compensation is less in comparison.

6. **Ignorance about liability insurance protection**: Most of the citizenry is not aware of many legal rights including the right to get compensated by the wrongdoer. Unfortunately, it is a malaise affecting Indian system in various spheres and not only relating to torts. Even highly educated sections which are otherwise well informed suffer from liability insurance low literacy. Sometimes the policy holders may not be aware of the existence of liability insurance cover. In other cases, victims may not be aware of possibility of getting compensation. Recently, a judge of Orissa high court called for framing a robust advertisement policy for oil marketing companies with regard to safety norms in handling LPG cylinders and creating awareness about insurance coverage in case of LPG cylinder blasts. It is critical to communicate and educate people in regional languages also to reduce insurance ignorance.

There is another worry that data shared in the process of claim settlement may be breached. That also sometimes acts as a deterrent notwithstanding the existence of non-disclosure agreements.

7. **Data desert:** There is no structured data available for launching or pricing a new product in terms of the events, triggers, costs, and losses, while in terms of exposures and opportunities one can still find out from primary or secondary sources. This poses a big challenge to insurers to introduce a new product and price it properly. Unfortunately, as of now, no mechanism appears to be in place amongst insurers to share the data. Insurers would do well to establish a mechanism for this purpose.

8. **Long gestation**: It takes a long time to sell the idea generically and then position the brand to a prospective customer. Unless it is statute or contract mandated, timelines are never clear increasing the unpredictability element in this process for business fruition. Insurers and insurance intermediaries who work under pressure and focus on completion of targets would be reluctant to work on ideas/ opportunities where they cannot, with some degree of certainty, forecast business finalization dates. This is a dampener on the supply side.

9. **Time-consuming litigation**: Prolonged litigation in courts is also one of the real deterrents for pursuing legal action for damages.

   The frustrating course of litigation in the country can be seen from data as given in the article *"The gruelling course of litigation in India"*

   1. *Total Pending Cases: As of 2024, there are over 58.59 lakh cases pending in high courts alone, with a staggering total of more than 51 million (5.1 crore) cases across all court levels, including district and Supreme Court.*

   2. *Long-standing Cases: Nearly 62,000 cases have been pending for over 30 years, with some dating back to 1952. In high courts, about 23% of cases have been pending for over ten years.*

   A silver lining has emerged in the form of the consumer protection law, which seems to be easing the pain perceptibly in insurance related litigation.

   Insurance buyers expect some certainty with regard to their claims, in terms of time frame and outcome, from the contract of insurance. When the response of the insurance policy is contingent upon the court judgments, it proves to be a dampener on the demand side. Out of court settlements can bring some relief. Private sector insurers are relatively more open to this idea. Public Sector (PS) insurers worry about the Damocles sword or swords hanging on their heads in the form of The Comptroller and Auditor General of India (CAG) audit and Vigilance cases.

10. **Claims provision challenges**: There could be delays in notifications and then some claims can be long tail claims. All this leads to plenty of provisioning problems. Added to this are the legal outcomes on which Insureds do not have much control which may result in wrong reserving inviting issues from the regulators and shareholders. It gets more complex when cross border jurisdictions are involved. This is an issue for liability insurance underwriting anywhere in the world. Sometimes, claim provisioning itself could lead to potential problems and

courts may direct insurers to share information about loss reserves as it happened in *"Fay Avenue Properties, LLC v. Travelers Property and Casualty Co. of America."*

Further, the fact that the Net Incurred Claim Ratio sometimes exceeds the Gross Incurred Claims Ratio highlights provisioning complexities.

To address this problem, it is essential to develop the right skill set for the industry and the responsibility majorly lies with the insurance carrier community with required understanding from the regulator.

## Liability Insurance: Evolving Landscape and Future Prospects

*"A ship in a harbour is safe but that is not what ships are built for" - John A. Shedd, an American author and businessman.*

Every business has challenges. Successful are those who see opportunities in them. Notwithstanding the daunting challenges along the way, liability insurance market has potential for growth in future due to the reasons stated below:

1. **Legal environment**: It is undergoing significant changes in the country and globally moving in the direction of holding the wrong doer responsible for his actions and liable to face consequences. Emphasis on corporate governance as reflected in many changes brought about in the Companies Act, 2013 has made D&O a known insurance policy in the corporate board rooms. Various liability insurance covers are insisted upon in business contracts – whether it is for outsourcing or supply of goods etc.

   As regards addressing the issue of litigation delays, The Commercial Courts Act, 2015 is an important step taken by the Government to expedite the justice delivery system and make the time lines for resolution more predictable. The Act recognises that commercial disputes require different way of handling, as its effective resolution is an important factor for the growth of investment and the overall economic and social development of a country. Changes contemplated in the consumer protection laws are making goods and services providers more accountable which will increase demand for product liability and professional indemnity policies. Similarly, the Information Technology legislations are likely to enhance traction for cyber insurance. Organisations are beginning to worry more about liability issues these days because of the changing legal, economic, political, and social landscape. Class action is now more possible than earlier under various legislations. Where insurance as a service is the subject matter, consumer protection act also is proving helpful.

2. **Increasing legal expenses**: Corporate legal expenses are ballooning and this is too well known. It becomes more worrisome when cross border disputes are involved. Without appropriate and adequate insurance protection, it becomes difficult to bear these expenses which would otherwise prove a huge burden on the insured's profit &loss (P&L) account.

   Legal expenses for the Nifty 500 companies increased by 17% to Rs 52,568 crore ($6.26 billion) for the financial year ending March 2024. While all these expenses do not necessarily relate to insurance related litigation, it indicates the magnitude

of the problem. If companies do not have appropriate liability insurance covers, it is likely to paint their balance sheets red.

3. **Mandatory requirements**: Liability insurance is also obtained to ensure compliance with statutes and regulatory provisions. As an example, D&O policy for independent directors is mandated for the top 1000 listed companies as per SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015. It is a common practice in sectors like IT industry that the outsourcers insist on liability insurance policies like professional indemnity and commercial general liability policies to be put in place before commencement of the projects.
4. **Globalisation of trade**: Whether it relates to providing capital or purchase of services or goods, foreign investors/ buyers are keen to protect their interests by way of indemnities and insurance covers. Culturally also, it has a rub off effect.
5. **Third party litigation funding**: In India, funding of litigation by advocates is not explicitly prohibited. But various provisions of "Standards of Professional Conduct and Etiquette to be observed by Advocates" made by the Bar Council of India specify that advocates cannot fund litigation on behalf of their customers in India. As regards funding of litigation by third parties, Hon'ble Supreme Court in the Bar Council Of India vs A.K. Balaji case observed that "There appears to be no restriction on third parties (non-lawyers) funding the litigation and getting repaid after the outcome of the litigation". The advent of "Third party funding" in India is likely to provide an infrastructural platform for classes to come together and receive funding to pursue legitimate actions of enforcement of rights. Contrary to what happened in some jurisdictions, class actions may follow, instead of preceding, development of third-party funding. It is no surprise if third-party funding contributes significantly to evolution of a sophisticated class action regime.

## Liability Insurance: Overcoming Challenges for Market Expansion

What should insurance providers do to market liability insurance and expand the market? A few ideas and initiatives including some of those currently operational are discussed here.

1. **Skill upgradation**: For any product/ service to be sold it is necessary for the provider to have adequate knowledge about it. Insurance, liability insurance more particularly being a dynamic and complex subject, it is vital to stay updated regularly on the various aspects impacting liability insurance with a comprehensive 360-degree perspective. it is necessary to familiarise oneself with the underlying legislative framework and relevant caselaw. For example, in case of D&O insurance one needs to be in the know of changes in Companies Act etc. and in case of cyber insurance in areas like Information Technology Act,2000, Digital Personal Data Protection (DPDP) Act, 2023, GDPR etc. Clarity about the product on the part of provider helps avoid mis selling. It is not just about knowledge of the salient features of the product but how it responds in various situations is also critical. It is equally important to regularly update technological knowledge and associated skills. Training expenses in this direction should be se seen as

investment rather than costs, besides giving the trained resources opportunity to apply their skills.

2. **Strategic positioning:** While insurance literacy itself is low, knowledge about liability insurance, including the range of policies available and their complexities, is even more limited. The challenge therefore is to sell the idea generically – explain the policy features in terms of benefits and relief it can bring to the customer. It helps to collaborate with the relevant industry bodies and professionals. For example, while working on D&O insurance it would be a good idea to interact with bodies like Institute of Directors (IOD), Indian Institute of Corporate Affairs (IICA) and Confederation of Indian Industry (CII) etc. Similarly for Technology Errors & Omission Liability insurance (Tech E&O), it is useful to engage with bodies like National Association of Software and Service Companies (NASSCOM). For policies like pharma product liability and clinical trials liability insurance, it may prove beneficial to interact with bodies representing Life Sciences Industry.

   Once this hurdle is overcome to sell the idea generically, brand positioning can follow. How a particular policy from a particular provider makes a difference or proves better in its purchase process and predictable claim outcomes matters most. Insurers should ensure that all support systems are in place to handle various requirements in the product life cycle. As an example, cyber insurance providers must have backend arrangements to carry on forensics and also emergency response protocols. Further, insurers seen only as fronting companies may not be considered favourably as they may not have control over claims settlement. Comfort with policy wording, capacity to underwrite and control over claims settlement are the major parameters in this evaluation.

3. **Alignment between Underwriters and Claims professionals:** The efficacy of a policy is tested when a claim is reported. What is promised at the time of selling as embedded in its wording needs to be perceived the same way by the claim professionals. It is imperative that underwriters and claim professionals are on the same page particularly on the policy language interpretation. Involving the claim professionals in the process of drafting the policy wording and testing it with some simulations would be a good idea. It is also useful to involve them in interactions with stakeholders regularly so that they get the necessary feedback on the strengths, weaknesses and vulnerabilities in the policy wording and interpretation. In the not-so-distant past, one reinsurer was able to garner a good market share in Tech E&O space because they involved underwriting and claims professionals for consistency and clarity in their messaging.

4. **Product formulation and pricing**: This hardly needs any emphasis. Product should be felicitous and the pricing appropriate considering customer affordability, corporate philosophy, and competition. It should be fit for purpose rather than exotic. It should ensure compliance with all regulatory provisions.

   Insurance Regulatory and Development Authority of India (IRDAI) has introduced sand box framework with the objective to “facilitate innovation in the insurance sector while ensuring orderly development of the insurance sector and protection of interests of the policyholders.” Insurers can leverage this flexibility.

Industry experience, Artificial Intelligence and continuos feedback from all stakeholders should guide formulation of the products. Complacency with traditional products is a luxury any insurer can ill afford. Speed to market is vital in designing new products like embedded insurance products and parametric products where necessary.

Long term commitment of insurers is vital for orderly growth. Even if they take time to enter a particular segment, insurers should deliberate adequately considering all factors to launch their products with an intent to play for a long haul. Exiting the market after a relatively short time on the grounds of unfavourable claims experience sends a wrong signal to customers and insurance brokers, as it happened in certain segments like Medical Malpractice and Cyber insurance in some Asia Pacific markets. Take time but stay put. Further, process should not be a pain in policy purchase process. All these initiatives would also need robust technology platforms and scalable and secure technology infrastructure.

5. **Clear and transparent policy wording**: The purpose of communication is served well when the message as conceptualised is understood the same way by the target audience. Effective communication is achieved when the intended message is conveyed and understood by the recipient in the same way it was intended. In this regard, policy wording is paramount. What the policy covers and what the policy excludes needs to be clearly stated.

   Insurance is a contract between the Insurer and the Insured. It is subject to compliance with the requisites of a contract as defined under Indian Contract Act 1872. A contract of insurance needs to also comply with other essentials like Insurable interest, Utmost Good Faith (Uberrima Fides), Indemnity, Subrogation and Proximate cause etc. IRDAI General Insurance Product Regulations stipulate that “Insurers shall ensure that the product designed is clear and transparent that is of value to the policyholder or prospect” and “the Product and every insurance coverage offered shall constitute / result in a direct transfer of risk of a clearly defined scope, from the *risk-owner* to the Insurer”

   We sell more because we tell more – That can light the way. What needs to be told (more) should be relevant and clear lest it muddies the understanding leading to differences, disputes, and trust deficit. Insurance contracts are governed by the Contra proferentem doctrine where ambiguities are always interpreted against the contract draftsman and in favour of the customer.

6. **Continuous engagement with Stakeholders**: Continuous engagement is crucial to build brand equity and brand recall and also to understand and address concerns of the customers. Unlike a group health insurance policy where regular servicing is necessary, in a liability insurance policy the need to be in contact with the customer is minimal except in a few situations like when there is a significant change in the customer profile, claim or at the time of renewal. This engagement could be in the form of knowledge sharing session with them on latest developments. For example, when a technology E&O policy is issued for a company with multinational contracts, there can be policy briefing sessions to the legal team, project team across various verticals and jurisdictions- all on one platform. Similarly, a briefing session on D&O policy may be useful for legal counsel, company secretary and other identified senior executives. Further,

sharing updates helps maintain strong relationships. Customers may be keen to know the kind of policies others in their industry are buying or the claims they are encountering. A scientifically done peer group comparison helps. These exercises lead to strengthening insurers position. There is a risk otherwise, “Out of sight – out of mind.”

7. **Professional and prompt claims response:** Insurance company needs to be at its best to provide prompt, responsible and responsive services when a claim is reported. While the claim handling provisions are mentioned in the policy document, it is advisable to talk about them in the knowledge sharing sessions. Unfortunately, this is an area often overlooked because of shortage of skills sets and availability of limited expertise. A promptly and fully paid claim becomes the best ambassador for the brand positioning. Claims procedure should be well defined including Do’s and Don’ts at various stages.

   Effective claims management is the cornerstone of any insurance contract. Executed effectively, it serves as a useful tool for building a favourable reputation and brand value for the company. On the contrary inept handling of claims not only risks customer dissatisfaction but also leads to avoidable disputes and litigation, consuming valuable time and resources and also tarnishing the company's image. It is heartening to note that some insurers/ insurance brokers are sharing case studies on how some claims were settled overcoming challenges besides indicating why some claims were not considered. All these would be good examples to learn the lessons from.

8. **Building Knowledge Repository**: It costs much not to learn from experience. It wastes resources to rediscover the wheel every time. This applies to underwriting and claims handling also. How a major policy is underwritten and how a claim is settled - if this is shared to all concerned (on a need-to-know basis) reduces the processing strain and the fear of unknown. It is absolutely necessary to develop a robust functional system to document knowledge, processes, and best practices for long-term organizational benefit in the areas of underwriting and claims. This helps future generations also to understand evolving situations with the benefit of precedents. Knowledge Repository may also ensure that the departure of a key employee does not result in evacuation of institutional knowledge.

9. **Regular sharing of insights**: It is as important to share insights internally as it is externally. Encouraging teams to share concerns, solutions and success stories not only enhances knowledge but also helps in bonding. How a deal is won, what were the technical and nontechnical issues in that process and how a claim is settled – if these are known – it helps build institutional pride and consistency in approach besides facing day to day challenges. Furthermore, formal sessions, lunch and learn sessions also can be planned.

10. **Cross selling & Upselling**: It is easier to sell to an existing customer than to a new one. Some studies estimate that acquiring a new customer is 5 times more expensive than selling to an existing one.

    Cross selling refers to selling a product or service in addition to what the customer already bought like selling a D&O insurance to the one who bought an E&O

insurance. Upselling refers to selling an improved version of a product the customer has originally bought. With reference to liability insurance, it could be in terms of higher limits or more add-ons.

The aforementioned are some of the ideas to expand the reach of liability insurance. Given the complex times we live in and turbulence businesses are facing, liability insurance is an imperative.

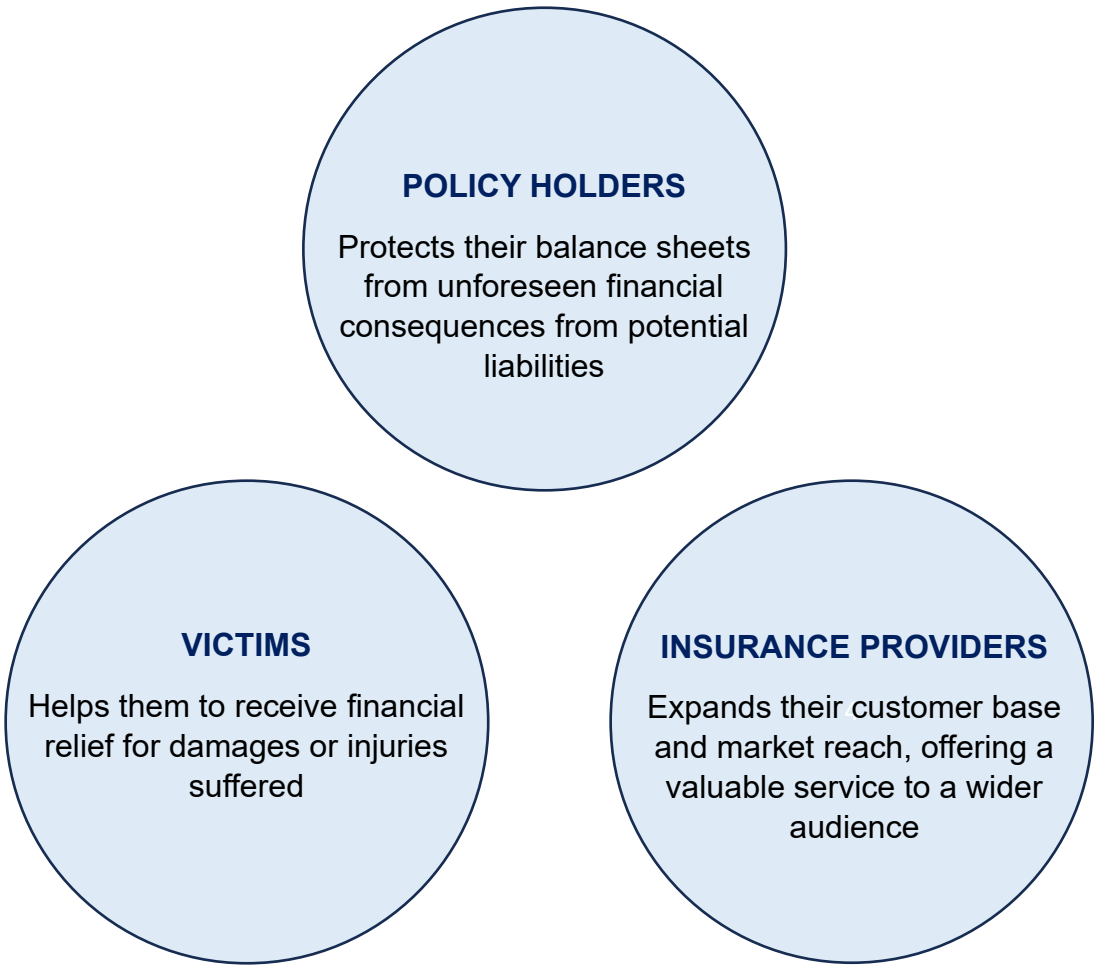
The remarks made by Hon'ble Supreme Court of India are noteworthy and deserves a recollection here

*"Awards of compensation are not law's doles. In a discourse of rights, they constitute entitlements under law. Our conversations about law must shift from a paternalistic subordination of the individual to an assertion of enforceable rights as intrinsic to human dignity"*

(Hon'ble Supreme Court of India - Jagdish v Mohan& Others- Civil appeal no. 2217 of 2018)

It is crucial that all stakeholders recognise the importance and value of liability insurance as illustrated below.

## Liability Insurance – How does it help?

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