

Technology Liability Insurance



Protecting Technology Companies

Lumley can help your company if the
unthinkable happens

Technology companies are increasingly challenged to meet their customers' needs on time, and within budget and performance standards. Complex technology products and projects have volatile financial and liability risks that could put you out of business if mismanaged.

Over the past five years, claims for technology products and project disputes and their associated litigation has soared.

Why?

1. More and more customers are willing to sue even established business partners for performance failure
2. Dramatic increases in average size and length of contract raises the plaintiff's chance that a performance failure will be "worth the fight"
3. With companies putting more reliance on technology it increases the likelihood that software solutions will also be core business solutions. As a result, much more is at stake if the software fails or doesn't perform as promised.

Technology companies need coverage that has evolved with their industry and the new exposures that follow. Our technology insurance offers that protection from the devastations of a liability lawsuit.



Some risks that your business could face

Computer software or system performance problems are a real risk area for the technology industry. The associated litigation costs, together with damages and the cost of your management and employee downtime, can have a huge impact on your organisation's reputation and on its bottom line. Potentially expensive litigation can be triggered by:

- > Unrealistic expectations on the user's part
- > Not delivering to specifications
- > Failing to meet the needs of a particular user
- > Project delay or failure

Other risk factors include:

- > Computer system performance problems
- > Faulty installation of software leading to downtime problems
- > Inadequate scope definition leading to differences in the expectations of both customers and suppliers
- > Claims against software designers due to faulty products
- > Defects in the system's requirements definition
- > Hardware issues – in either the CPU, memory or various peripheral devices
- > Crashes due to viruses or data overload
- > Incorrect application software for the specific programming required by the customer to perform a particular job
- > Operator error
- > Downtime caused by the need to retrieve lost data
- > Negligence in product design
- > Breach of contract
- > System design faults

The exposure

Technology companies operate in an environment where the only constant is change. Change is exciting, but it is accompanied by risks that need to be carefully managed. Issues that technology companies must constantly consider include:

- > New markets and jurisdictional challenges
- > New mediums of distribution
- > Intense competition
- > Exploiting intellectual capital
- > New products that reduce traditional lead times

Constant and rapid technological change is increasing the liability exposures of technology companies. This is particularly true for technology companies that use the internet to advertise and distribute their products and services. These companies face intellectual property and defamation exposures on a global scale. And all technology companies – from those developing mass-marketed software through to website developers and internet service providers – will be affected.

These challenging dynamics have an impact on both the legal and operational dynamics of the industry. These changes mean that technology companies must consider transferring some of the risk to a dedicated insurance organisation, one that will continue to develop its knowledge of the industry.

In our view your organisation can't afford to be without partnership support from Lumley. There's no doubt about it, technology companies get sued. Today's spiralling legal costs and increasing damages can threaten both your business and your personal assets. The cost of defending allegations can be prohibitive and the need for a structured liability programme is critical.

Technology Liability Policy

Lumley offers technology companies a single Technology Liability product for insurance and risk management with cover for the following key areas of exposure:

Economic loss

The Errors & Omissions section of the policy has been designed to protect your organisation in the event of economic loss. This loss could be the result of an act, error or omission by your company in the provision of its technology products and services. This means your organisation is covered for human errors and the potential consequences of oversights.

The Errors & Omissions section of the policy provides cover, which is designed to protect you from costs associated with claims alleging unintentional breaches of intellectual property rights. The policy also provides protection for other exposures such as:

- > Transmission of Virus
- > Cover for the actions of subcontractors employed by you
- > Defamation
- > Defence Costs for Breach of Contract
- > Loss of Information

Bodily injury and property damage

The Broadform Liability section of the policy has been designed to provide liability cover for bodily injury and property damage claims, particularly those arising from the provision of technology products and services.

Claims Examples

The following claims examples highlight the critical need for technology companies to purchase a seamless liability programme with one insurer. These give you information to bear in mind when evaluating your risk exposure requirements:

1. Failure to Deliver to Specification

A retailer contracted with an IT company to customise and install an e-commerce software system to accept orders, process payments and provide receipts. Despite working in a test environment, once going live the system did not operate as promised. Orders placed utilising the system were lost, payments were not received and goods were not provided to the customers. It took the retailer 48 hours to realise there was a problem and shut the system down. The retailer sued the IT company for damages of approximately \$1.5 million dollars for breach of contract, lost business and damage to its reputation.

2. Loss of Data

A company contracted a software developer to design and implement a solution to automate their business activities. A customised solution was developed and installed. All of the company's records were transferred to the system. A week after going live the system crashed and it was revealed the developer had not properly installed a back up for the data transferred to the system. As a result, the company's client information, billing records and other account details were lost. The company sued for damages in excess of \$500,000 for breach of contract, negligence and consequential loss together with the cost of installing a replacement system.

3. Failure to Deliver to Specification

An IT services company was engaged by an automobile insurer to provide an imaging system that could access online claims. An expected response time of two to four seconds was promised however response times averaged anywhere between 20 and 40 seconds. Initially damages of \$9,000,000 were sought. Significant defence costs were incurred and the court awarded \$4,000,000 in damages.

4. Property Damage

An IT hardware supplier was sued by a customer's property insurer as a result of fire damage to the customer's premises. Faulty communications equipment provided by the supplier was found to be the cause of the fire. A defect in the manufacturing process caused the equipment to short circuit internally leading to extreme heat and combustion. The resulting fire damage cost \$250,000.


5. Software fails to maintain employee hours

A company provides timekeeping hardware and software to its customer. The software doesn't function correctly; it fails to maintain employee hours and to correctly apply the hourly and overtime rate of pay. The failure results in over/underpaying employees and the need to replace the timekeeping clocks. The customer sues the provider of the hardware and software for damages of approximately \$500,000.

6. Property Damage

A quarterly tower clean took place in a management company's data centre. All the cooling towers were taken off line, causing the condenser pump to halt, which in turn caused a compressor shutdown in the a/c units throughout the centre. Systems were shutdown causing a service outage. Environmental monitoring systems indicated an 'over-temperature' alarm, which was not being closely monitored by operations staff. Three computers were "cooked" and because of this the vendor can no longer warrant them. Total damage – all computers replaced with brand new equipment – \$4,000,000.

For more information
please contact us at
lumleyliability@lumley.co.nz



*Coverage is subject to the terms and conditions of the policies as issued. Whether or not or to what extent a particular loss is covered depends on the facts and circumstances of the loss and the terms, conditions and endorsements of the policy as issued. Claims examples are based on actual cases, composites of actual cases or hypothetical situations.

This brochure is descriptive and for information purposes only. It does not take into account your own particular circumstances and is not financial advice provided by an adviser under the Financial Advisers Act 2008. We recommend you seek advice from an adviser to discuss your specific circumstances.