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Introduction

This booklet provides insurance brokers and their clients with general information about liability insurance together with details of the comprehensive features and benefits of Rosser Underwriting Limited’s SurePac Liability insurance policy.

Since 1996 Rosser Underwriting has been providing Association Liability insurance cover for many hundreds of organisations in the social service and community sectors throughout New Zealand.

We also have offered a range of other liability covers in conjunction with our rapidly growing property insurance portfolio placed either within New Zealand or overseas in our capacity as a Coverholder at Lloyd’s of London.

Now available from Rosser is SurePac Liability - our uniquely designed insurance solution to cover the liability exposures of SMEs and Not for Profit organisations under one policy, backed by Chubb Insurance New Zealand Limited.
Why is it Required?

In simple terms liability insurance protects a business or organisation from lawsuits it may face if they, their employees or their products cause third-party damage or fail to comply with legislative requirements.

No matter their size or structure, all organisations in New Zealand are bound by increasingly tougher legislation, with ever more onerous obligations imposed on management and Governors. The result is substantially increased financial risk for businesses and not-for-profit organisations.

Non-compliance with complex rules and legislative requirements can leave otherwise innocent parties exposed to fines and penalties, together with accompanying legal and associated defence costs. In addition, organisations face the risks of fraud and cyber attack.

What Cover is Provided?

ROSSER SurePac Liability provides Small to Medium Enterprises and Not for Profit groups with protection for a broad range of liability exposures and offers market-leading cover similar to that enjoyed by larger corporate organisations.

SurePac Liability offers up to the minute cover against the cost of defending and settling a broad range of allegations. Claims may be made against an organisation by regulators, employees, clients, shareholders, beneficiaries, members and others. Losses from fraud and cyber attacks can also be covered.

Rosser’s comprehensive policy provides the deep-pocket to meet these unbudgeted costs and allow the continuation of operations. Details of the policy options, features, benefits and claims examples are included in this booklet.
04. Who is it For?

ROSSER SurePac Liability cover is available for:

- Small to Medium Companies
- Sole Traders
- Partnerships
- Private Trusts
Entities with:

An annual income of less than $50m, fewer than 100 staff (not including volunteer or unpaid staff) and assets less than $100m.
What Covers are Available?

ROSSER SurePac Liability provides a full suite of liability insurance covers and the unique structure of our policy puts cover selection where it belongs – in the hands of brokers and insureds.

Rosser’s unique “Pick ‘n Mix” policy structure makes it easy to tailor a cost-effective policy meeting the specific needs of each organisation. Simply choose as many or as few of the available cover options as you require – there are NO unwanted mandatory inclusions.

SurePac Liability Cover Options:

- General Liability
- Employers Liability
- Statutory Liability
- Employment Practices Liability
- Management and Entity Liability
- Crime
- Professional Liability for Not for Profits
- Professional Indemnity
- Cyber Liability
ROSSER SurePac Liability was designed specifically to provide a wide range of liability covers for a wide range of entities and to make selection as easy as possible for brokers and their clients. Our policy contains these important features and benefits:

- The policy wording is designed to suit ALL Entity types - there is no need to seek a policy related to a specific type of organisation.
- The policy contains fully integrated and coherent wording with unified definitions and conditions. No contradictions in terminology between different liability covers simplify understanding and eliminate confusion.
- Access to free legal advice on policy-related matters for all coverage sections.
- Cost of Government-initiated investigations (including tax investigations) is insured under the Entity Liability section.
- Individual limits are applicable per selected cover.
- Professional Liability cover is available for Not for Profit organisations for liability arising from breach of duty, infringement, defamation and fraudulent or dishonest conduct.
- Professional Indemnity can be included for fee-based advice or service entities.
- Claims for Insolvency can be met following the provision of satisfactory audited accounts.
- Internet Liability is included automatically within the Professional Indemnity and Entity Liability coverage sections.
• Cyber cover is available to provide quality protection from liabilities associated with data protection laws, the management of personal data and the consequences of losing corporate information. Crime cover taken in conjunction with Cyber can provide protection for direct financial losses as a result of third party crime.

• Coverage for Criminal Prosecution Defence costs.

• Reserved Costs and Expenses limit $500,000 applies across all coverage sections.

• Defence and settlement costs for Punitive and Exemplary Damage claims resulting from sexual molestation insured under the Entity Liability section.

• Broad Insured Person definition – all insured persons i.e. Governors (Directors, committee members etc.), employees, volunteers and supervised contractors, as well as the Entity itself, are protected.

• General, Employers & Statutory Liability covers are available

• Crime and Employment Practices Liability covers are available.

• Outside Executives cover is included.

• Publicity and Crisis Loss cover to prevent or mitigate damage to an insured’s reputation.

• Accidental Death Benefit covering the death caused by injury of an Executive of the Insured.

• Expert Claims Handling by experienced staff
There are a number of factors to take into consideration when selecting appropriate cover for a business or organisation:

- First, check the New Zealand laws and regulatory requirements applicable to the type of Entity you wish to insure. Are there any legal or contractual requirements for cover such as Public Liability or Professional Indemnity insurance?

- All enterprises are unique and each comes with its own list of distinctive risks - and any organisation can be on the receiving end of a claim should a mistake or omission occur. Note the particular risks the Entity faces and identify the potential cost and financial impact should an event occur in any of those areas.

- Work through the range of cover options provided in the SurePac Liability policy and determine which policy sections are relevant and should be considered for your Entity.

- Identify the levels of cover appropriate for the risk profile of the organisation. You don’t want to be paying for too much or for inappropriate cover – but just one major lawsuit could wipe out an enterprise, so you don’t want to be underinsured either.

- Check the policy wording carefully, so you understand fully what is covered and what is excluded, to avoid disappointment or disputes at claim time.
Policy Coverage Summary

A summary of coverage provided in the various sections of our SurePac Liability policy is provided below for illustrative purposes only. In the event of any conflict between the descriptions of coverage in this document and the policy of insurance, the provisions contained in the policy of insurance will govern.

8.1 Access to Free Legal Advice

A valuable benefit provided by Sure Pac Liability in all policy sections is FREE access to expert legal advice via a confidential helpline on matters related to the policy.

8.2 Reserved Costs and Expenses

In the event a claim arises that exceeds the policy limit, invoking a charge over the policy in favour of the claimant, defence costs are advanced via the separate Reserved Costs and Expenses section of the policy ensuring that an insured does not have to fund their own defence.

8.3 General Liability

Our policy provides broad liability protection to the insured for third party property damage or loss of use of property as a result of property damage, and/or personal injury.

Products Liability covers personal injury or property damage arising from the insured’s products while in the possession of others.

Typical Claim Scenarios:

Property Damage

A home furnishing company is installing new curtains in a client’s home, when the ladder they are using topples and breaks an expensive vase. The homeowner looks to the installer to replace the vase.

Products Liability

A sporting goods distributor is found to be at fault when a jungle gym they sold breaks and injures a customer’s child.
8.4 Statutory Liability

Our policy provides coverage for unintentional breaches of Government Acts, excluding:


(ii) any violation of any law or regulation with respect to vehicular, air or marine traffic;

(iii) any violation of any law or regulation with respect to tax, rate, duty, levy, charge, fee or any other revenue charge or impost; or

(iv) any violation of any law or regulation with respect to any anti-trust, business competition, unfair trade practices or tortious interference in another’s business or contractual relationships.

Defence Costs, compensatory damages, and penalties awarded in a judgement or by negotiated settlement are also included.

Typical Claim Scenarios:

Sale of Liquor Act
A tavern operator was found to be selling liquor on Good Friday in contravention of the Liquor Act. The insured was convicted and fined.

Fair Trading Act
A business ran a prize scheme, which had a draw date. Unfortunately the prizes were not in place by the draw date, resulting in the draw not taking place as scheduled. The Commerce Commission prosecuted the insured for violating the Fair Trading Act.

Resource Management Act
An insured business had a fuel facility in its yard, and, due to a break in, the valve in the tank was turned on, and the fuel ran into a nearby stream. A massive clean up operation was undertaken and the council brought an action against the insured under the RMA.

Health & Safety At Work Act
A building contractor failed to show an employee all the hazards on a work site, and the employee fell through an unsecured skylight and injured his wrist when he fell. The employer was prosecuted under HSWA and reparation and defence costs paid under his policy.
8.5 Employers Liability

Our policy provides protection in the event of a claim by an employee for compensation for a work related injury which is not covered by ACC.

8.6 Management and Entity Liability

Governors, Executives, Employees and the insured Entity are protected against claims alleging a wrongful act, error or omission in the governance of the business.

Typically this type of claim is both complex and costly. To meet these costs the policy provides for advancement of defence costs thus protecting the Entity’s cash flow.

In many cases an insured Entity has in its rules, constitution or trust deed, a clause indemnifying its Executive members against costs they may personally incur as a result of an action against them alleging a wrongful act, error or omission in connection with their duties on behalf of the insured Entity. If the insured Entity has indemnified the Executive as a result of such a claim the policy may step in to reimburse the insured Entity.

Also covered is Crisis Loss, which protects against an unforeseen event that is likely to cause a significant impact on the revenue of an insured Entity. It pays the cost of hiring a Public Relations Consultant to minimise the impact of the event on the organisation. An experienced Consultant, engaged at this time, can greatly assist the resolution of a crisis with a minimum of adverse publicity and disruption to the Entity.

Typical Claim Scenario:

Post-Traumatic Stress

A production studio had a contract with a Government department to produce videos for training purposes, much of which involved filming and editing disturbing material.

The employee eventually developed a severe stress condition - a civil claim was made against the insured, and the court found that the stress was caused by the nature of his work and that the insured had failed to take adequate precautions to mitigate his stressful duties. Costs were awarded to the claimant, and legal costs settled.
Typical Claim Scenarios:

Fair Trading Act

Executives of an Industry Organisation were called to attend a formal enquiry in fair trading. They were found not to be at fault but incurred legal fees for their representations with the consent of their insurer.

Family Trust Fund

An accountant acted as a trustee on a client account. The accountant did not invest capital as requested, and when the beneficiaries came to use the trust funds, the capital had been eroded by a considerable amount due to the prevailing financial market conditions. The trustees had failed in their duty, and a claim was met for the value of the reduced value of the funds, along with defence costs.

Non-Executive Directors

The principal shareholder and director of a small retail company died and the shareholding was left to his widow. However, the company became insolvent due to mismanagement, and a substantial supplier brought an action against the widow, as the sole director, for the amount they were owed. The court found in favour of the claimant as it was no defence that the widow did not know about the company’s affairs.
8.7 Employment Practices Liability

Our policy responds to alleged employment disputes and personal grievances arising from wrongful acts in connection with the employment or termination of an employee.

These increasingly common claims come in many forms and include:

- allegations of harassment
- discrimination
- personal grievance due to constructive or unjustified termination

Typical Claim Scenarios:

Wrongful Dismissal

A former employee alleged wrongful dismissal against an Entity and lodged an action with the Employment Relations Authority (ERA). This was defended in court in conjunction with the insurer. The ERA found in favour of the former employee, awarding damages and costs against the organisation. With the addition of the $38,000 in legal costs required to defend the claim, the total costs covered by the policy amounted to close to $80,000.

Discrimination

An action was taken against an Entity by two former employees alleging a breach in the organisation’s advertising of employment positions. In conjunction with the insurer a $36,000 settlement was negotiated to achieve timely and final resolution of the matter. Legal costs incurred in reaching this resolution amounted to an additional $3,400.
8.8 Crime Cover

Crime cover assists in protecting or restoring your financial position should your business or organisation suffer a financial loss as a result of dishonest or fraudulent acts committed against you.

Unlike traditional Fidelity Guarantee cover, our Crime policy extends to include financial and property loss resulting from theft and fraudulent acts committed by third parties as well as employees. Loss is also extended to include not just money, but also physical property. A criminal prosecution is not necessary for a claim to be lodged.

Typical Claim Scenarios:

Fraud

A part time employee of an insured was found to have made fraudulent electronic transfers and written fraudulent cheques in her own favour while working for the insured and for another organisation. The employee admitted theft of $320,000 over a 24 month period in order to fund a gambling addiction. The combined loss was calculated at over $400,000. The insured’s policy responded to this loss and a claim was paid.

Theft of Fuel

An insured commercial cleaning company held contracts which covered a wide geographical area. One of its employees who did the out of town work was supplied with a company vehicle and a fuel card. The employee ran up large amounts of fuel on the fuel card, and it was later found that he had been on-selling to friends and family. The thief was duly arrested and convicted of theft as a servant. The policy responded by reimbursement of the cost of the fuel to the insured.
8.9 Cyber Cover

Our Cyber section provides quality protection from liabilities associated with data protection laws, the management of personal data and the consequences of losing corporate information.

Today, many organisations are dependent on their data. They all face significant potential losses should their systems be hacked and that data enters the public domain. Unfortunately, such data breaches are becoming increasingly common.

High profile media stories regularly report on the impact that the loss of personal or corporate data has on individuals, companies and other organisations, their customers and employees. Cyber cover should be included as a key component in the insurance portfolios of data-dependent SME and NFP clients as they are all vulnerable to losses in this area of their operations.

Typical Claim Scenarios:

Privacy Liability

Hackers gained access to an insureds account information, which included names, email addresses, and financial information of their customers and suppliers. Privacy Liability and Privacy Forensic Costs were claimed – defence costs, settlement costs to individuals and forensic investigation costs were incurred. This scenario highlights the importance of storing sensitive information correctly, and having up to date firewalls, intrusion detection software and encryption of databases.

Human Error

An HR recruiter accidentally attached the wrong file when sending an email to four job applicants. The file included data consisting of former employee names and addresses. Under the Privacy Liability section, costs were claimed, including defence costs and settlement costs to former employees. As innocent as it seems, human error can be very costly.
8.10 Professional Liability for Not for Profit Organisations

Professional Liability cover will respond in the event an insured Not for Profit organisation faces legal action for a failure in providing advice or in discharging a professional responsibility to a client or customer.

Those who perform professional services are held to a higher legal standard of behaviour, and our Policy covers Executives, Trustees, and Employees for actual or alleged Breaches of Duty, acts, errors or omissions, misstatement, misleading or deceptive conduct, infringement, libel or slander committed unintentionally, breach of confidentiality, or omission in the performance or failure to perform professional services.

Under insuring section Professional Liability for Not for Profits, professional services means:

the following professional services provided by the Entity:

(i) advocacy and promotion of the Entity’s objectives and area of focus or interest, including publication or information in any media type;
(ii) registration, training and accreditation of members;
(iii) publication of professional or technical standards;
(iv) acting as an insurance intermediary for the purpose of distributing personal lines, general and / or life insurance to members;
(v) events for members and others that promote the Entity’s area of focus or interest; or
(vi) fund raising activities.

Typical Claim Scenarios:

Defamation
A professional body produced a brochure for its members and some unintentional libellous comments resulted in a major defamation claim by a third party. Settlement was reached out of court to avoid a lengthy trial.

Improper Advice
A professional association was investigated by the Commerce Commission for giving life insurance advice to its members, which could have been construed as advocating price-fixing, a restrictive trade practice under the Commerce Act.

The association made a claim for representation costs in respect of the official enquiry, and was directed to modify its advice to its members.
8.11 Professional Indemnity

This policy is designed to respond in the event an insured faces legal action for a failure in providing advice or in discharging a professional responsibility to a client or customer.

In service based organisations, reputation means everything. It can take years to build a strong professional standing, but an accusation of negligence, professional misconduct, or a breach of duty of care can destroy it in weeks, or even days. Those who perform professional services are held to a higher legal standard of behaviour than the general population.

Each day, professionals need to make decisions and some of these may be questioned – in some cases even years after the event. Professional Indemnity cover allows everyone in the organisation to do their jobs, confident in the knowledge that they will be supported in the event of an error or omission.

The policy covers Executives, Trustees and Employees for:

- actual or alleged breaches of duty;
- acts, errors or omissions
- misstatement
- misleading or deceptive conduct
- infringement
- libel or slander committed unintentionally
- breach of confidentiality
- omission in the performance or failure to perform professional services

Typical Claim Scenarios:

Breach of Copyright and/or Design Registration

An Insured is an importer and distributor of stationery products and supplies. At the request of one of its customers, the insured arranged for the manufacture and supply of filing racks similar to another product supplied to the customer by another manufacturer.

The insured failed to make reasonable efforts to determine if any Patent, Copyright or Design Registration existed on the specific rack design in question. The other manufacturer issued
... proceedings against the insured for significant damages arising from infringement of Copyright and/or Design and an agreed out of court settlement was negotiated.

**Inappropriate Advice**

An insured is an industry association, and one of its member firms was involved in a personal grievance arising from the redundancy of an employee.

The firm lodged a claim against the association alleging that an association employee had provided information and guidance to the redundant employee contrary to the interests of the member firm. The allegations were substantiated and the claim was settled by the Professional Indemnity policy.
Medical Malpractice (MedSure) – NOT Included in SurePac Liability Cover.

Medical Malpractice cover is NOT automatically included in our SurePac Liability policy but, for insured's with medical malpractice exposure, Rosser MedSure is available as an alternative to Professional Indemnity (see 8.11).

Organisations likely to require this protection include aged care facilities, community and privately owned health services and others providing registered health professional services.

The Rosser MedSure policy, backed by Chubb, is designed especially to provide medical malpractice cover and includes indemnity for legal costs and expenses incurred by attendance at an official enquiry. It also covers an insured's loss arising from any claim for a breach of duty by a consultant, contractor, or agent.

Regular Professional Indemnity extensions including those for Defamation, Loss of Documents and Punitive and Exemplary Damages are included. Employee nurses not otherwise insured are included under this policy.
Disclaimer

The information contained in this publication is for general guidance only on matters related to liability insurance and to the Rosser SurePac Liability policy. In the event of any conflict between the descriptions of coverage in this document and the policy of insurance, the provisions in the policy of insurance will govern.

The summaries of coverage and claim scenarios contained in this publication are for illustrative purposes only. Coverage is subject to terms and conditions and to certain restrictions, limitations and exclusions contained in the policy of insurance and neither Rosser Underwriting Limited (Rosser) nor Chubb Insurance New Zealand Limited (Chubb) give any guarantee or undertaking that any particular risk is or will be covered under its policy of insurance.

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Rosser SurePac Liability cover is backed by Chubb Insurance New Zealand Limited. Chubb Insurance New Zealand Limited has an AA- (Very Strong) insurer financial strength rating given by Standard & Poor’s (Australia) Pty Limited.

Chubb is the world’s largest publicly traded property and casualty insurance company and the largest commercial insurer in the U.S.

With operations in 54 countries and territories, Chubb is a major personal lines writer, as well as a leading middle market, small commercial and large industrial commercial insurer, providing a wide range of traditional and specialty coverages.
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