

Punitive Damages Insurance

Protecting your company against million dollar damages

We've all seen the headlines about immense punitive damages. Entire legal thrillers have been written around a protagonist bringing down a corporation that had to pay out millions, or even billions, in punitive damages. It might be the stuff of fiction and nightmares, but punitive damages – particularly in the US can be enormous and damaging to a corporation. For example, Novartis was ordered to pay \$250 million in a gender bias lawsuit and Shell had to pay \$50 million for undisclosed material information. Lawsuits can be very expensive – not just because of legal fees and lawyers, but also because of awards for compensation. And if punitive damages are awarded in addition, the costs can skyrocket.

In this increasingly litigious world every business – large or small – needs insurance to protect them from the large costs associated with lawsuits. While it is nice to think that it will never happen to you, there is a real danger that something might go wrong. If it did, and you and your company were taken to court over gross negligence – particularly in the USA – could your company survive the financial pressures created by punitive damages? And what of the reputational and emotional costs?

The reason punitive damages are often so high is, unlike compensation given in civil suits, they are intended to punish the defendant as well as to deter others from similar conduct. Punitive damages aren't awarded in every case and some US states have strict rules and limitations on when punitive damages will be allowed. In Canada punitive damages tend to be lower, but there are still million dollar payouts which have been upheld in the Supreme Court.

Choosing insurance to cover punitive damages is not always simple. From a risk management perspective there are some key areas to consider. The first, as already outlined, is that punitive damages vary from one jurisdiction to another. Also, lawsuits can originate in any jurisdiction. And probably more importantly, most insurance policies do not address the issue of punitive damages directly. Equally, if your policy doesn't specifically exclude punitive damages, it doesn't actually mean you are covered. And if a casualty policy refers to compensatory damages, punitive would not be covered unless by endorsement.

Unfortunately many courts now disallow indemnity payments from an insurance policy for punitive damages. Since the intent of the damages is to punish a defendant, letting an insurance company cover the costs of the damages allows the company to escape punishment for negligence.

At Axis Insurance Group we understand the complexities of international insurance and have many years of providing comprehensive coverage for companies with operations in foreign jurisdictions including the USA. As the representative for UNiBA Partners in Western Canada, we are able to create international insurance programs across the world – at extremely competitive rates. Being part of the UNiBA Partners network allows our clients to benefit from strong and independent businesses that have local knowledge, as well as being committed to collaboration, partnership and top class customer service.



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As with every insurance policy there are different options, policy wordings, enhancements or amendments available. Your Axis Insurance manager will be able to help create a tailor-made policy to suit your exact requirements.

To help mitigate the risks from punitive damages Axis Insurance Group can:

- Conduct a full insurance audit (link to audit paper) for your company to identify whether punitive damages are covered
- Review the different policies available for punitive damages and analyse all the various policy amendments
- Examine all your insurance and policy wordings in fine detail. We will review items such as drop-down provisions and follow form wordings
- Discuss options for risk transfer, where appropriate
- Negotiate punitive damages insurance coverage with a range of insurers to give you peace of mind that you're completely covered



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To find out more about protecting your company from losses due to the award of punitive damages, or to discuss your existing insurance policies, please give one of Axis Insurance's professional and experienced team members a call at 604.731.5328 or email: info@axisinsurance.ca. We would also be pleased to outline the benefits of Punitive Damages Insurance with your management team or board members.