

Liability, risk and the law of damages

*Dr Alexander Ressos, TEP
Attorney-at-Law (Switzerland), Solicitor (Hong Kong),
Solicitor (England & Wales)*

The growth of industry created new risks for third parties: workers injured in factories, residents harmed by pollution, consumers harmed by defective products, passengers injured in railway accidents. The law of damages, which had been developed for individual wrongs, had to adapt to the risks of industrial activity. The Swiss Code of Obligations of 1881 contained a general rule of liability for fault, under which a person who unlawfully causes damage to another, intentionally or negligently, must compensate it. Special laws introduced liability without fault for particularly dangerous activities: the railways, under a federal law of 1875, the factories, under the factory liability laws of the 1880s, and later motor vehicles, nuclear installations and other hazardous activities.¹

Liability insurance developed in parallel with liability law. A company that faced liability for damage caused by its activities needed insurance to cover the risk. Insurers offered policies that covered the liability of the insured towards third parties. Liability insurance, which the Basel insurers developed for the industrial clients of the city, became one of the principal branches of non-life insurance.

The chemical industry faced liability for damage caused by its emissions, its products and its accidents. The arsenic case of the 1860s, which Chapter II described, was an early example of liability for pollution. In the twentieth century, the Swiss Environmental Protection Act introduced strict liability for the operators of installations that pose particular dangers to the environment. The Federal Product Liability Act of 1993, based on the European directive, introduced strict liability for defective products.² The pharmaceutical companies of Basel face product liability claims for adverse effects of their medicines, in Switzerland and above all in the United States, where mass tort litigation has led to large settlements.

The relationship between liability law and insurance is reciprocal. Liability law determines the risks that companies face, while insurance determines

the extent to which they can transfer these risks. When liability expands, insurers raise premiums or exclude certain risks. Companies must then retain more risk themselves. When insurance becomes unavailable for certain risks, as happened with environmental risks after the large losses of the 1980s, the legislator may have to intervene. The Basel insurers and the chemical industry have been partners and adversaries in this relationship for more than a century.

1 Notes

1. Art. 41 CO (SR 220) on fault-based liability; Federal Act on the Liability of Railway Companies of 1 July 1875; factory liability laws of 1881 and 1887; later strict liability regimes (Road Traffic Act, Nuclear Energy Liability Act). To be verified. ↩
2. Art. 59a of the Environmental Protection Act (EPA, SR 814.01) on strict liability for installations posing particular dangers to the environment (in force since 1997); Federal Product Liability Act of 18 June 1993 (PLA, SR 221.112.944), in force since 1 January 1994. To be verified. ↩

For general information only. This article does not constitute legal or tax advice, does not replace advice on an individual case and creates no lawyer-client relationship. It reflects the legal position as of September 2026.

Online version: helveticaregister.com/basel-liability-risk-and-the-law-of-damages