

Manufacturers' Errors & Omissions: A Possible Gap in Your Insurance

Guest Editorial

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Many manufacturers incorrectly assume that their risk is entirely covered through their Commercial General Liability Insurance policy. When considering manufacturers' exposure to risk, the first thought that likely comes to mind is the potential for bodily injury or property damage as a result of manufacturers' operations or, most commonly, their products. Bodily injury and property damage are included in the Commercial General

Liability policy, and these losses are evidenced by highly publicized court proceedings and sizeable awards, in many cases. But what if a product doesn't cause either bodily injury or property damage? What if a product causes *financial loss* to a customer? Most manufacturers are at risk for this type of loss, but the Commercial General Liability policy does not cover this exposure.

For example, if your product simply doesn't do what it was designed or manufactured for, and your customer suffers a financial loss due to the failure of your product to perform as advertised or intended, your Commercial General Liability

policy will not respond. In this scenario, your product didn't cause any bodily injury or property damage, so the coverage under the policy simply doesn't apply.

Other than the bodily injury/property damage limitation, most general liability policies have an exclusion for "impaired property". This means that if your product is a component in another company's product, and the finished product does not function properly because of your faulty component, there is no coverage for any consequential financial loss to the other company. If your component can merely



be replaced, repaired or removed — and the change fixes the problem — then the exclusion applies and there would be no coverage for the financial loss under your Commercial General Liability policy. However, if the problem cannot be fixed with the replacement, repair or removal of your component, the exclusion would not apply. This is because, at that point, your product has essentially caused *property damage* to the other components, rendering them unusable, and so the Commercial General Liability Insurance will likely respond.

Manufacturers' Errors & Omissions Insurance can be an effective way to transfer this product liability risk. Many years ago, this coverage wasn't readily available, and consumers had to find specialty insurers to provide the forms desired for the appropriate coverage. Today, there are many carriers that can offer this coverage, and it's frequently written in concert with the existing Commercial General Liability coverage through the same insurer. Premiums for Manufacturers' Errors & Omissions Insurance are based on the professional experience of the insured, financial stability, the type of product being made and the annual revenue of the insured.

Claim Scenarios

■ You design and then install aerial lifts on your customers' chassis. One of your customers discovers that the aerial lift you installed on their equipment either doesn't have the adequate platform capacity or reach specifications for their intended use. As such, the lift must be altered or replaced to handle the job. Unfortunately,

while the equipment was being repaired, the job went to another party and they are now holding you responsible for their lost revenue. This loss would not be covered under your Commercial General Liability policy, as there was no resulting *bodily injury or property damage*. However, a Manufacturers' Errors & Omissions policy would likely pay the claim because it's a *financial loss* to your customer due to your design error.

■ Your customer upfits chassis for the making of ambulances. One of the major manufacturers will allow you access codes to the vehicle control functions (as your customer needs this service from you), but the manufacturer won't enter into this licensing agreement with you unless you carry Manufacturers' Errors & Omissions Insurance. This is common because the manufacturer doesn't want to be held liable for a financial loss to the end-user due to your error.

In the event of a financial loss, manufacturers' customers will likely look to the manufacturer to indemnify them. Manufacturers' Errors & Omissions Insurance can provide a practical and affordable solution to this common gap in insurance coverage.

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