

Manufacturers' Errors & Omissions: A possible gap in your insurance



Guest editorial
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Many manufacturers incorrectly assume their risk is entirely contemplated through the Commercial General Liability insurance policy. When considering manufacturers' risk exposure, the first thing that comes to mind is potential for bodily injury or property damage as a result of their operation, or most commonly, their product. 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 such exposure.

For example, if your product doesn't do what it was designed or manufactured to accomplish,

and a customer suffers financial loss due to the product's failure 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 coverage under the Commercial General Liability policy doesn't apply.

Other than the previously mentioned bodily injury/property damage limitation, most general liability policies have an exclusion for impaired property. This means 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 — so Commercial General Liability will likely respond.

Manufacturers' Errors & Omissions insurance is an effective way to transfer this product liability risk. Years ago, this coverage wasn't readily available, and the consumer needed to seek out specialty insurers to obtain the forms desired for appropriate coverage. Today, many carriers can offer this coverage, and it's

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frequently written in concert with the existing Commercial General Liability through the same insurer. Premiums for Manufacturers' Errors & Omissions insurance are based on the professional experience of the insured, financial stability, type of product being made and annual revenue of the insured.

Potential claim scenarios

- You design and install aerial lifts on chassis. One of your customers discovers the aerial lift you installed on their equipment either doesn't have adequate platform capacity or reach specifications for intended use. As such, they need to have the lift altered or replaced to handle the job. Unfortunately, while their equipment was being repaired, the job went to another party and they hold you responsible for 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 the customer due to your design error.
- Your customer upfits chassis for the manufacture of

ambulances. One of the major manufacturers will provide you with access codes to the vehicle control functions (as your customer needs this service from you), but won't enter into the licensing agreement 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 coverage gap.

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