AmWINS Group, Inc.

MANUFACTURERS E&O: COVERAGE BEYOND A STANDARD POLICY

Imagine you are a widget manufacturer reviewing your insurance program for potential liabilities. You or your product causing bodily injury or property damage to a third party is an obvious exposure that is commonly covered by your standard General Liability (GL) and Product Recall policies. However, the General Liability and Recall policies are missing something important. What if there are financial damages to a third party caused by neither bodily injury nor property damage?

MANUFACTURING MATTERS

U.S. manufacturing is growing: according to the Bureau of Economic Analysis, the manufacturing industry contributed to just over 12% of the U.S. economy in 2015. In terms of gross output, that amounted to around $6.2B of the country's overall GDP. This figure is expected to increase with the new administration's emphasis on spurring domestic production and anticipated incentives for businesses to keep operations stateside. A few notable companies have already considered growing their domestic manufacturing, including Ford, Carrier, and Apple. When large manufacturers increase their output, there are a host of supporting smaller component manufacturers that will also see their business grow. While new growth in production and sales is a positive development for businesses, it may also open the door to an elevated and often misunderstood risk; risk that can be transferred through the use of insurance. Structuring a comprehensive insurance program for a manufacturer includes General Liability, Product Recall, and other, often overlooked coverage, like Manufacturer's E&O.

Brief breakdown of apparent coverage considerations:

- GL (CG 00 01): The standard ISO GL form includes product liability, which responds to damages an insured is legally obligated to pay a third party due to their product causing bodily injury or property damage (BI/PD).
- Product Recall (CG 00 66): Product recall responds to the costs of withdrawing a product from the market due to actual, alleged or potential BI/PD.

Bottom line: With no bodily injury or property damage trigger, there is no coverage under the GL or product liability form for a third party financial loss related to the manufacture or design of a product.

WHY MANUFACTURERS NEED E&O

Manufacturer's E&O responds to the financial damages an insured is legally obligated to pay a third party (often a client or an end user) due to negligence in the design or manufacturing of their own product – regardless of a property damage or bodily injury trigger.

While a few carriers will tailor their traditional E&O forms for manufacturers, we've seen an increasing trend of dedicated Manufacturer's E&O forms within the marketplace. Key elements of Manufacturer's E&O may include coverage for the following activities: design, development, manufacturing, selling/reselling, installation, consulting, plan specification, labeling, packing, and instructions for use and maintenance of products.

Some insurers may extend coverage to encompass additional coverage items outside the professional liability exposure. Such insuring agreements may include product recall, replacement costs, pollution liability, regulatory liability, and even cyber liability. Generally, these additions come at an additional premium, but there is added value in a form that can comprehensively address the various liabilities faced by manufacturers.

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CONTACT

To learn more about how AmWINS can help you place coverage for your clients, reach out to your local AmWINS broker.

LEGAL DISCLAIMER

ABOUT THE AUTHORS

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ON YOUR TEAM.

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A manufacturing or design error may also lead to a claim alleging breach of contract by the manufacturer. Many policies have a breach of contract exclusion. Policies often do not include allegations of breach of contract within the definition of claim, which is a material risk that needs to be addressed in a properly structured policy.

LIMITATIONS OF A TRADITIONAL E&O POLICY VS. DEDICATED MANUFACTURING FORM

As discussed, there are a variety of liability exposures that manufacturers face, many of which aren't addressed by a traditional E&O policy. While the form can be modified to suit the manufacturing exposures, there are some points where the offerings may differ, such as:

1. **Limit restrictions**: Carriers who are not as familiar with the unique exposures that manufacturers face generally mitigate their potential liability with lower limit caps and hefty minimum premiums. A dedicated Manufacturer's E&O form offers underwriting expertise, which allows underwriters to offer higher limits and more competitive pricing on a primary basis.

2. **Contract Exclusion**: Manufacturer's E&O forms should provide a carve-back to the contract exclusion under the professional services coverage section for otherwise covered claims.

3. **Products Exclusion**: Manufacturer's E&O forms typically include a product liability carve-back arising out of the Insured's professional services as a manufacturer.

4. **Appetite restrictions**: Traditional E&O policies are often limited to claims arising out of the design exposures of manufacturers. Not only is this a potential coverage limitation, but it further limits the insurance marketplace for those manufacturers with no design activities.

CLAIM EXAMPLES

The following are a few fictional scenarios to help illustrate various E&O exposures for a manufacturer:

a. Lumbering Jack, a wood beam manufacturer, is called upon by a ski resort developer to supply 500 beams made of white oak and walnut lumber. However, due to an error, Lumbering Jack erroneously manufactured 500 beams made of white ash and red oak. As a result, Lumbering Jack is required to initiate a new order with a new lumber manufacturer, resulting in a higher cost due in part to the higher quality of oak and walnut. Subsequently, the developer's project is delayed due to a later delivery date for white oak and walnut beams, as originally ordered. The economic loss is derived from the higher cost to fill the order as well as the delay in project start-up, incurring loss of rent.

b. Walson's Widgets designs specialized components for timepieces. A client, Corky's Clocks, discovers their watches are not working properly due to a flaw in Walson's watch widget. Corky's Clocks is required to recall their watches and replace the faulty component for any remaining loyal customers and, in turn, sues Walson's Widgets for loss in profit and the additional replacement costs arising from a design or manufacturing defect.

c. Sugar Mama provides automated sugar dispensers for a candy manufacturer. During installation, the dispensers are incorrectly calibrated to tablespoons instead of teaspoons, and the candy manufacturer eventually discovers their candy contains too much sugar. As a result, the customer suffers a reduced profit margin (due to added sugar in recipe), additional expenses to recalibrate the dispensers to teaspoons, and lost revenue due to business interruption. The candy manufacturer sues Sugar Mama for financial damages arising out of improper installation and calibration.

WHY AMWINS

Given the dynamic yet relatively limited marketplace for Manufacturer's E&O, insurance agents and brokers need to be aware of emerging coverage enhancements, as well as new players in the market. AmWINS has that needed expertise and market access. AmWINS has both a Professional Liability and Manufacturing/Distribution industry practice, with brokers able to assist with this line of coverage. In addition to the expertise and market access, AmWINS offers an exclusive Manufacturer's E&O product from Lloyds of London. Please contact us to help round out your manufacturing clients' insurance programs with this essential coverage.

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