

PRODUCT MANUFACTURERS AND SUPPLIERS PROFESSIONAL LIABILITY

BROKERS NOTES

Introduction

- Professional Liability Insurance cover for Product Manufacturers or Suppliers has, to date, either been expensive or difficult to obtain.

The traditional Professional Liability markets have not responded to the demand from companies who either may be liable for the design of a product or the advice provided in connection with its supply.

- Companies therefore rely on Products Liability insurance or a Products Guarantee policy, where generally only the following cover is provided:

Products Liability: Cover is triggered only by third party bodily injury or property damage caused by the product. A 'Financial Loss' extension may be granted although this is usually with a sub-limit and excludes claims arising from advice when fees are earned.

Products Guarantee: Cover is usually for replacement costs of the defective product following unconditional acceptance by the customer and may exclude third party consequential financial loss. There are many industry sectors where cover is not available.

Neither policy is tailored:

- specifically for the advice or design exposure,
- to cover Third Party Financial Loss arising out of professional advice given in connection with products manufactured or supplied,
- to cover Third Party Financial loss, Bodily Injury or Property Damage arising out of professional advice provided for a fee,
- to cover products that have not been delivered to the customer.

Potential Buyers of this Policy

- Buyers who recognise the potential liabilities and shortfalls in their current insurance cover.
- The policy is suited to:
 - Companies who manufacture and/or supply products for or to their customers where the company may have a liability to their customers for the design, formulation or specification of the product. Companies that may have a liability arising out of advice, design or consultancy services provided in connection with the supply or possible supply of their product.
 - The range of products that can be insured includes telecommunications and computer hardware / software, “white goods”, heavy production and process equipment, and specialist construction products.
 - There are no minimum turnover requirements.
 - Territorial scope includes Canada, United Kingdom, Continental Europe, Asia Pacific, Australia, and South Africa. Underwriters will generally not cover USA-domiciled companies but will consider cover for exports to the USA where the volume and exposures of such exports are “incidental”.

Policy Cover

Please see the attached wording for full details. In summary the more important points are:-

- The policy is on a ‘Claims Made’ basis.
- The coverage is for “All that the Insured shall become legally liable for arising out of any negligent act, error or omission by the Insured in or about their ‘Professional Business’”. This legal liability would encompass the Third Party’s Recall and Rectification costs and any consequential financial loss suffered by the Third Party.
- Professional Business defined as:
 - Design, formulation or specification of a ‘Product’.
 - Advice, design or consultancy services provided a) in connection with the supply or possible supply of a ‘Product’ or b) in the general course of the Insured’s business.
- The policy coverage in respect of Products responds after they have been delivered to and unconditionally accepted by the Insured’s customer, and as provided by the ‘Batch Clause’ (see below).
- The ‘Batch Clause’ extends the policy to cover the rectification costs of undelivered products which are identical to those that have already been supplied and accepted by an Insured’s customer. In essence 1st party cover .
- Important exclusions to note:
 - Bodily Injury (unless arising out of professional advice provided for a fee).
 - Property Damage (other than to product itself or arising out of professional advice provided for a fee).Both these areas are considered to be the primary purpose of Products Liability policies.
- 1st Party Recall costs (although this coverage is negotiable on a risk by risk basis).
- Electronic Date Recognition (Y2K).
- By definition this policy does not cover faulty manufacture or faulty materials used in any product.

COVERAGE SUMMARY

PRODUCTS LIABILITY		PRODUCT MANUFACTURERS AND SUPPLIERS POLICY		PRODUCT GUARANTEE & RECALL	
Third Party Bodily Injury	Third Party Property Damage	Third Party Financial Loss arising from professional advice whether for a fee or not	Batch Clause Rectification costs to undelivered products that are identical to defective products already supplied	Insureds costs in removing product from the marketplace*	
(Including BI arising from negligent advice not provided for a fee).	(Including PD arising from negligent advice not provided for a fee).	Third Party Bodily Injury arising from negligent advice provided for a fee	Rectification costs arising out of faulty Design	Rectification costs arising out of faulty Workmanship	Rectification costs arising out of faulty Materials
		Third Party Property Damage arising from negligent advice provided for a fee	Third Party Financial Loss arising out of faulty Design	Third Party Financial Loss arising out of faulty Work-manship	Third Party Financial Loss arising out of faulty Materials

*Available under P.M.S. policy by negotiation

Claims Examples

- Poor design of motor component. Claims by Third Party automotive manufacturer for the associated costs in redesign, rectification (including Third Party recall costs) and financial loss. Quantum \$40m.
- Poor design of electronics in mobile telephone. Claim against manufacturer by end-users. Resultant cost for redesign and replacement of large number of mobile phone \$20m.
- Poor design of generator in Process Plant. Claims by Plant owner for redesign, rectification and for financial loss. Quantum \$60m.



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