Unpacking products inefficacy insurance

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Products inefficacy insurance is an aspect of liability insurance which is sometimes overlooked or misunderstood. This may be because it is closely aligned, but different, from products liability insurance.

Source: unSplash

Products inefficacy insurance is designed to cater for a very defined risk that operates alongside and in tandem with conventional products liability insurance cover.

Products inefficacy insurance is provided by way of an extension to a liability policy. The extension would usually need to be specifically arranged and could be subject to its own limit of indemnity and deductible.

To understand the purpose of products inefficacy insurance, one first needs to understand the purpose of conventional products liability insurance and the extent to which products liability insurance will respond to claims arising out of defective goods that have been sold or supplied.

Products liability and products inefficacy insurance defined:
* Products liability insurance involves claims arising out of personal injury or damage to property.
* Products inefficacy insurance is an extension to products-liability insurance, covering failure of a product to fulfil its intended function where there is no personal injury or damage to property.

Products liability insurance

The products-liability section of the policy is intended to provide cover for claims arising out of injury to persons or damage to property in connection with the nature or condition of a product that has been sold or supplied by the insured. The following exclusions, while not a complete list of the standard exclusions, are worth mentioning as they indicate what products liability insurance is not intended to cover. In this regard, products liability insurance excludes cover, among other things, in relation to:
* The costs of the repair or replacement of a defective product that has been sold,
* The costs of any recall of defective products, or
* The failure of any product to fulfil its intended function or to perform as specified, warranted or guaranteed unless such failure shall result in injury or damage.

The qualification, as highlighted above, pertaining to the exclusion relating to the failure of any product to fulfil its intended function or to perform as specified, warranted or guaranteed “unless such failure shall result in injury or damage” is important as this qualification preserves the primary intention of products liability insurance which is to provide cover for personal injury or damage to property arising from a product that has been sold or supplied.

An example of where a product supplied fails to fulfil its intended function but where the liability arising should still be covered under the products liability section would be in the case of a safety harness which fails and results in a worker or a climber being injured. Because the failure of the safety harness resulted in personal injury, the products liability insurance section of the policy should respond to any claim arising from the injury.

Products inefficacy insurance

A products-inefficacy extension is designed to extend the standard products liability insurance cover to cater for claims arising out of the failure of a product to fulfil its intended function in situations where there is no consequent personal injury or damage. This is, however, not open-ended cover.

The wording of the extension will typically make it clear that the cover is for claims against the insured where the claimant alleges that it has suffered a financial loss by reason of tangible property (other than the insured’s product) being rendered of less value or rendered incapable of full commercial benefit due to the failure of the insured’s product to perform as specified, warranted or guaranteed.

Products inefficacy cover is particularly useful in situations where the insured supplies products that are used in the manufacture of other products. Products such as fertilizers, insecticides, animal feed, pharmaceutical products and paints are all examples of end-user products where the insured may have supplied an ingredient that, if it fails to work properly, could cause the end-product not to fulfil its intended function.

For example, the insured may have provided substandard ingredients to a manufacturer of fertilizer which results in a lower than predicted crop yield. The financial loss claimed would be in relation to the difference between the expected yield and the actual yield. Products inefficacy claims could also arise if the insured supplies a mechanical or electrical component for incorporation into a piece of equipment where the defective part, while not causing injury or damage, results in the equipment being rendered incapable of full commercial benefit.

To summarise therefore, a products inefficacy extension is designed to extend the standard products liability. It is important to understand how products liability insurance and products inefficacy insurance works in tandem with each other to cater for the liability risks faced by a business enterprise. Time spent with a professional broker assessing potential risks is thus essential to explore and choose appropriate solutions for insured businesses.

ABOUT THE AUTHOR

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