

# MIND THE GAP

## Products Liability coverage considerations for growing or diversifying companies

Following efforts to rebalance the economy, many UK companies supplying precision engineered and innovative products to the global Automotive, Aviation and Lifescience sectors are experiencing increases in orders, both from within these industries and from other sectors.

As their businesses grow and diversify into new areas, some are exposing themselves to gaps in their Product Liability programme – gaps that we at Touchstone Underwriting would like to work with you to close.

A Products Liability policy will meet:

- legal costs in investigating and defending an allegation of injury or damage made against the product, regardless of whether there is any foundation to the claim;
- legal costs incurred by the claimant in bringing a successful action; and
- reimburse the Policyholder for compensation awarded to the claimant for their injury, damage and consequential losses

### How gaps in cover can emerge

Most businesses have confidence in the quality of their product and many will assume that a loss 'won't happen to them', while others are unaware that the width of Product Liability coverage can vary between insurers, so may cut corners with their insurance protection to save money.

However if the product being alleged to have caused the loss is excluded or the territory where the claim is made is not covered then there will be a gap in cover and the policyholder can be left to foot the bill in defending their reputation.

Such costs can often be substantial, particularly when:

- the claim is made in North America; or
- the company sits within a complex supply chain and the loss could have been caused by one of many different factors (most of which are out of their hands). If this is the case, it may be necessary for the policyholder to appoint specialist forensic investigators to pinpoint the Proximate Cause as part of their defence

Although cover can vary, a standard general insurer's UK Product Liability policy could typically exclude;

- products of a Safety Critical nature, including the Automotive sector with no cover limitations;
- losses arising from a failure of the product to perform its intended function (Efficacy);
- products knowingly exported to North America (up to 100% US turnover) or claims lodged by a third party in a North American court;
- products knowingly incorporated into the structure or controls of an Aircraft or Aerial device; or
- products knowingly incorporated into the structure or controls of a waterborne craft

Also many insurers can struggle to cater for businesses;

- with a high proportion of North American turnover; or
- who enter into contracts requiring insurance cover for hold harmless or waiver of subrogation clauses, vendors' extensions or the inclusion of additional insureds.



## Businesses that can benefit from a specialist solution

While we will consider Products Liability insurance for most trades, the kinds of businesses most likely to require a specialist solution include:

### Precision engineers who have invested in the latest CNC and CAM/CAD technology

the engineering capability of these companies allows them to win contract engineering work from customers outside of their primary sector. For instance, existing suppliers to Motorsport are being actively supported by their trade association to win new customers in the wider Automotive market as well as Aviation, Defence, Lifescience, Oil & Gas North American and Marine sectors

### University “spin-off” companies

Many university spin-offs are offering innovative and technical products to market, which require specialist insurance understanding and solutions.

### Companies supplying engineering solutions to the Oil & Gas sector

Such companies routinely encounter hold harmless, waiver of subrogation and additional insured requests, often requiring a quick turnaround as they compete to win new tenders.

### Companies supplying to the Military or Defence sectors

A lack of “failure to perform” cover can leave companies supplying these sectors seriously exposed.

## Key points to check with commercial clients

If you are visiting businesses such as these, here are some points to check with them about their existing insurance:

- **Products of a Safety Critical nature**  
Check that the existing policy does not contain an Efficacy exclusion - exclusion of injury or damage arising from the failure of the product to perform its intended function.
- **Products being exported to customers in North America**  
Ensure that cover for injury or damage caused by products exported to North America is not specifically excluded.

Confirm that the jurisdiction stated in the Product Liability section of their policy includes USA or Canada. (*‘Jurisdiction’ means the court systems where, if a claimant lodges a claim, the policy will respond. If the Product Liability section of the current policy has an EU Jurisdiction, then no cover applies for claims lodged outside the EU - and the policy won’t meet the increased legal costs associated with defending claims in North America.*)



- **Products that are knowingly supplied to the Aviation or Marine industries**  
Check if these products are excluded;

If cover is included, consider whether the incumbent insurer has the capability to defend claims to the extent necessary to protect the reputation of the policyholder

## Touchstone Underwriting, as standard, can offer you;

- exclusive quotations;
- tailor-made policy wordings, bespoke drafted to mirror the exposure of the Policyholder; and
- the capacity to write a Commercial Combined package around the Product Liability exposure.

To discuss your clients’ needs or to add Product Liability Insurance to an existing policy please call 01923 298 440 or email [new@t-u-l.co.uk](mailto:new@t-u-l.co.uk).

