

WHAT PRODUCT RECALL INSURANCE AND RISK MITIGATION PLAN IS RIGHT FOR YOUR CLIENTS?

CONTACT

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Product recalls are one of the most damaging events a business may encounter, and the consequences can be overwhelming. Each year, the number of product contamination and recall incidents continue to rise, especially in the food and beverage, consumer product and automotive sectors. According to the [Food and Drug Administration](#) (FDA), the number of recalled units increased by 319% in the food and beverage space in 2019, consumer products had 261 consumer product recalls between Q4 2018 and Q3 2019, and the automotive industry has had an average of 180 to 220 recalls per quarter since 2014.

Several factors have contributed to the increase of recalls in recent years.

- Improved testing and traceability technology, including [Whole Genome Sequencing](#), enable the public to more accurately and quickly determine the cause and source of foodborne outbreaks.
- Advocacy organizations are more vocal than ever. In their mission to protect consumers, they can easily turn a small incident into a wide-spread campaign.
- The [regulatory environment](#) is constantly evolving, which complicates an already complex crisis.

Additionally, the ongoing pandemic has put consumers on high alert. Scientific research has found that foodborne transmission of COVID-19 is not likely. However, it may be possible for RNA from dead viruses including COVID-19 to be found in food. This RNA is not harmful or a mode of transmission. The presence of RNA would not likely trigger a Product Contamination policy, but carriers are concerned that insureds may file claims because of detection of RNA.

Companies are often adept at managing and transferring various business risks, but lag when it comes to addressing large-scale product recalls. In order to successfully navigate recalls, businesses must be prepared to effectively manage an event through proper risk management strategies and insurance coverage.

RISK MANAGEMENT AND MITIGATION: A BUSINESS' SAFETY NET

The first step in managing the risk of product recalls is pre-incident planning. No amount of insurance can replace lost consumer confidence due to poor planning and/or execution of a recall crisis strategy. If the public perceives that your products are unsafe or that you are more concerned with your bottom line than their safety, your business will suffer. Every company should have the following in place.

1. **Communication plan to disseminate appropriate information.** Once an incident (or suspected incident) becomes known to the media, a company can expect difficult questions from a range of interested parties. First and foremost, their customers will need to have a clear understanding of the potential danger and measures the company is taking to minimize or eliminate the danger. Likewise, government agencies, suppliers, distributors and other external parties will have questions on how this affects them. Internal company employees including marketing, public relations, quality control and general counsel will also seek information and direction.

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- 2. Retrieval and notification plan to recover contaminated product.** Every company should have a well-documented and practiced product recall retrieval plan to quickly and efficiently identify, locate and recover any suspected contaminated product. The plan needs to include customer, vendor, distributor and retailer notification procedures, as well as appropriate notification messages to be sent through the media. The phrase “bad news travels fast” has never been truer than in today’s viral news and social media culture. Managing the message and providing accurate and timely information will greatly enhance the retrieval process.
- 3. Crisis management plan to coordinate roles and responsibilities during the recall.** A crisis management plan goes beyond the recall retrieval plan and coordinates all activities associated with the event. This plan defines the crisis management team and their respective roles in responding to certain aspects of the crisis. Team members may include the chief executive officer, general counsel, risk manager and representatives from security, marketing, public relations, quality control, human resources, distribution and manufacturing. In many instances, the crisis team is supplemented by outside members such as agency partners and consultants. All members need to be reachable and ready to act at a moment’s notice.

ARE RECALLS COVERED UNDER GENERAL AND PRODUCTS LIABILITY POLICIES?

Mistakenly, many companies believe they are protected for product recalls/contamination events under their general or products liability policy. While these policies cover liability from bodily injury and property damage, they do not provide coverage for product recalls. In fact, standard ISO forms specifically exclude “damages claimed for any loss, cost or expense incurred by you or others for the loss of use, withdrawal, recall, inspection, repair, replacement, adjustment, removal or disposal of your product, your work or impaired property.”

Although some liability carriers may provide an extension for product withdrawals, these are almost always subject to a minimal sublimit and are limited to first-party recall expenses only. These extensions do not cover both first-party loss of income, profits or extra expense and those incurred by the insured’s customers. Standalone product contamination and product recall policies are not only broader in scope, but they provide substantially greater coverage than a withdrawal endorsement on a liability policy.

PRODUCT RECALL VS. PRODUCT CONTAMINATION POLICIES – WHICH IS RIGHT FOR YOUR CLIENT?

Product contamination insurance, also referred to as accidental contamination and malicious tampering insurance, is generally aimed at food and beverage manufacturers, distributors and retailers. These policies tend to offer broad first-party coverage including loss of income. Typically, these policies are triggered either by an actual or suspected accidental contamination or malicious tampering. Accidental contamination generally requires the belief that bodily injury or property damage would occur if the product was used.

Product recall insurance policies differ from product contamination insurance policies in two primary ways.

- 1. When the policy is triggered.** While both types of policies require the potential for bodily injury or property damage to be evident, product recall policies are triggered by the withdrawal of the product from the market and contamination policies by the contamination of the product itself. Therefore, products still in an insured’s possession (warehoused for instance) may not be covered under a product recall policy, as the product has not been “recalled,” but would be covered under a contamination policy. It’s worth noting that some product recall policies have begun to be amended to include product still in the insured’s possession.
- 2. Availability of impaired property trigger.** The impaired property trigger is available in conjunction with product recall policies but is not offered with product contamination policies at this time. The impaired property trigger expands normal coverage to include incidents in which tangible property beyond the insured’s product(s) becomes useless or less useful because it incorporates the insured’s deficient, defective or inadequate product.

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For example, the product broadens the coverage trigger to include protection for an auto part component failing to perform its function. A similar trigger designed especially for auto parts called product guarantee is available in the London market.

It is very important to fully understand the exposures faced by an insured when deciding whether a recall or contamination policy provides the proper protection.

EMERGING COVERAGE: GOVERNMENT ADVISORY COVERAGE

After four major E. coli outbreaks over the past two years involving romaine lettuce, the leafy greens industry is reeling. Each of these outbreaks resulted in the CDC and FDA issuing advisories, instructing the public not to distribute or consume romaine lettuce. The reason being that the source of the outbreak was unable to be identified and deficiencies in traceability prevented the public from differentiating between safe and contaminated lettuce.

These advisories created a unique challenge for product contamination policies, because such policies are only triggered by an actual contamination of the insured's product. Romaine lettuce producers across the country were forced to withdraw and dispose of their romaine, even though there was no evidence that their product was contaminated. As a result, they were not indemnified by their product contamination policies.

In an effort to address this issue, the product recall insurance community has been working to develop a policy trigger for government advisories. The policy would be triggered by the existence of a government advisory, instructing the public not to consume or distribute any product that is similar to the insured's product(s). As of June 2020, only one market is willing to offer this coverage on a limited basis, and a handful of additional markets are working towards an offering.

CONCLUSION

The product recall and contamination insurance marketplace is very specialized and should be approached in a well-thought-out manner. Given the limited number of insurers willing to participate in this market, it is important that all options are thoroughly reviewed and properly approached. Ensuring that proper risk management and mitigation procedures are in place and that both first- and third-party exposures are properly addressed is the key to building a well-rounded policy that will ensure optimal indemnification should a loss occur.

ABOUT THE AUTHORS

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The product recall specialists at AmWINS are dedicated to helping our retail partners provide insurance and risk management solutions for manufacturers and distributors of nearly any conceivable product. As a leader in the product recall wholesale brokerage space, we have helped thousands of insureds, including numerous Fortune 500 companies, understand and manage their product recall and product contamination risks. Learn more at amwins.com/product-recall.

