The Financial-Loss Claim: The Manufacturer's Blind Spot

Most manufacturers think about liability in terms of the events that are easiest to visualize: bodily injury, property damage, and product recalls. Those exposures are important, but they are not the whole story.

Today, many disputes arise from something far less visible: financial loss suffered by a customer after a product, service, or related activity fails to perform as expected.

The result may be:

- Lost production
- Missed delivery deadlines
- Rework expenses
- Expedited shipping costs
- Liquidated damages
- Chargebacks

In many cases, no one is injured and nothing is physically damaged. Yet the financial consequences can be significant.

That is the blind spot.

Manufacturers Errors & Omissions (E&O) insurance was developed to address these types of third-party financial-loss exposures. However, insurance is only part of the solution. Strong documentation, disciplined change management, clear contractual expectations, and effective quality controls all play an important role in preventing and defending these claims.

About Berkley Service Professionals (Manufacturers E&O)

Berkley Service Professionals offers claims-made-and-reported professional liability solutions for U.S.-domiciled manufacturers up to $250M in revenue, with limits up to $3M, worldwide coverage, and third-party financial loss protection. Coverage contemplates design/specifications, labeling/instructions, installation, training, support, service, maintenance, distribution, and embedded software/firmware associated with your products.

> "Your blind spot is the gap between physical harm and economic harm. E&O addresses the latter."

The Gap, Clearly Defined

Consider a few examples: A machining drift produces out-of-tolerance parts that delay a customer's production schedule. A firmware update creates intermittent system failures. An installation setting prevents new equipment from operating properly. Instructions omit a critical calibration step, resulting in scrap or rework.

In each case, the customer may experience substantial financial harm without any bodily injury or property damage.

Traditional Commercial General Liability (CGL) and product liability policies are designed primarily to respond to bodily injury and property damage claims. Financial-loss allegations arising from product performance, services, specifications, instructions, training, or support often fall outside that framework.

Why Financial-Loss Exposure Is Growing

Embedded Software and Firmware

Even when manufacturers produce physical products, software and firmware increasingly drive performance. As products become more connected and update-dependent, the potential for performance-related disruptions grows.

Installation, Training, and Support Services

Many manufacturers provide installation, commissioning, training, maintenance, and technical support. These services are often critical to customer success. When something goes wrong, the resulting losses frequently take the form of production delays, downtime, or contractual damages.

Longer Supply Chains and More Demanding Contracts

Modern supply chains are interconnected. A relatively small issue can ripple through multiple suppliers, facilities, and customers. At the same time, contracts increasingly shift financial responsibility downstream and upstream, magnifying the impact of mistakes.

Common Financial-Loss Patterns We See

While every claim is unique, several recurring themes appear frequently in financial-loss disputes.

Specification and Tolerance Errors

A tooling issue, process change, programming adjustment, or inspection failure results in products that do not meet customer specifications. The customer experiences production delays, rejects parts, or incurs rework costs.

Risk management practices:

- Formal change-management procedures
- Verification of engineering and programming changes
- Clear revision control
- First-article inspections and process validation after significant changes

Firmware Lifecycle Missteps

A field update introduces unintended performance issues and affected products cannot be quickly identified, isolated, or restored.

Risk management practices:

- Formal version control
- Regression testing before deployment
- Documented rollback procedures
- Configuration tracking by serial number
- Structured customer communications

Commissioning and Service Documentation Gaps

Equipment is installed or serviced, but key settings, adjustments, or customer approvals are not adequately documented. When a dispute arises later, there is little objective evidence regarding what occurred.

Risk management practices:

- Standardized commissioning checklists
- Documented "as-left" conditions
- Photographic records where appropriate
- Customer sign-offs at key milestones
- Retention of records within a retrievable system

Five Practical Steps You Can Implement

Financial-loss exposures cannot be eliminated entirely. However, the following practices can help. reduce both the likelihood and severity of disputes.

1. Define Acceptance Criteria Clearly

For products, software, installations, and services, establish objective acceptance criteria and document customer sign-offs. Ambiguity often fuels disagreements later

2. Strengthen Engineering-to-Operations Handoffs

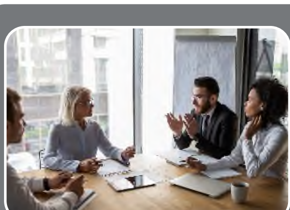
Implement a controlled release process for drawings, specifications, bills of material, inspection requirements, and manufacturing instructions. Consistent communication helps prevent downstream errors.

3. Improve Service and Field Documentation

Create consistent processes for documenting installation activities, service work, commissioning results, and customer communications. Strong records often become your best defense.

4. Apply Disciplined Oversight to Firmware Changes

Treat firmware updates with the same rigor applied to physical product changes. Testing, validation, rollback planning, and communication should all be part of the release process.



5. Escalate Problems Early

Train employees to recognize potential warning signs, including refund demands, customer allegations, requests for reimbursement, or complaints involving significant financial consequences. Early escalation allows issues to be addressed before they become larger disputes.

How Contracts Shape Financial-Loss Exposure

Contracts often shape how financial-loss disputes are framed and resolved.

Align Performance Commitments with Reality

Performance statements, marketing claims, proposals, and contractual commitments should be consistent with what engineering, operations, and quality teams can actually support.

Understand Consequential-Loss and Liquidated-Damages Provisions

Organizations should understand where contracts transfer financial risk and whether those obligations align with their operational capabilities and risk tolerance.

Clarify Specification Ownership and Change Management

Clearly define who owns specifications, how changes are approved, and which documents govern when conflicts arise. Reducing ambiguity can prevent costly disputes later.

Where Manufacturers E&O Fits

Manufacturers E&O helps address third-party financial-loss allegations arising from product performance issues and professional services associated with manufactured products.

Coverage may extend to activities such as design, specifications, labeling, instructions, installation, training, support, maintenance, servicing, and embedded software or firmware associated with products. The focus is on responding to financial-loss allegations and providing defense for covered claims.

Conclusion

Financial-loss disputes are becoming increasingly common as products become more sophisticated, services become more integrated, and contractual expectations continue to evolve.

The strongest approach combines operational discipline with appropriate insurance protection. Clear documentation, effective change management, validated performance commitments, strong service records, and thoughtful contract practices can all help reduce exposure and improve defensibility.

Manufacturers E&O plays an important role in addressing the financial-loss gap that traditional bodily injury and property damage coverages were never intended to fill. Understanding that exposure—and implementing practical controls to manage it—can help manufacturers strengthen operations, improve defensibility, and navigate today's increasingly complex risk environment with greater confidence

About Berkley Service Professionals

Berkley Service Professionals is a leading provider of customized miscellaneous professional liability insurance for a broad range of professionals. Our experienced underwriters understand the unique exposures facing service businesses and excel at developing tailored E&O insurance solutions for complex and challenging risks. Deep industry expertise and broad underwriting authority enable us to respond quickly, think creatively, and address each client's specific needs.

Brokers value our collaborative approach, specialized professional liability expertise, and commitment to exceptional service. Policyholders benefit from customized, comprehensive E&O coverage, responsive in-house claims professionals who manage claims fairly and efficiently, and the peace of mind that comes with working with a financially sound insurance provider dedicated to protecting their business, reputation, and long-term success.

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