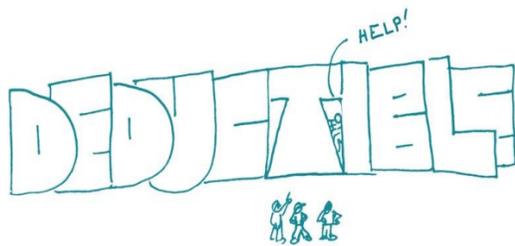




Product Liability Insurance Understanding the Fine Print

Companies targeted by product liability suits often assume that they will need to pay only a single insurance deductible even if their product injured thousands of consumers. This assumption, however, is fatally flawed. Indeed, if a company has the wrong policy language, it might see its insurance coverage devoured by deductibles because each consumer's claim arising out of the same product lot is deemed a separate "occurrence" for insurance purposes.



This intersection between policy deductibles and the number of claims or occurrences results in a significant impact on insurance coverage, and on how, whether and when insurance money will be available from the insurer. Most policies have a deductible, which can be written on a "per claim" or "per occurrence" basis. A "per claim" deductible means that the deductible applies separately to each individual that brings a claim against the company, and is usually very disadvantageous for the insured. For

example, assume that a product injures 10,000 people, and that each person's injury claim amounts to \$30,000. If the policy at issue has a per occurrence deductible of \$50,000, each claim would fall within the deductible, and the insured would have no coverage. As a result, the insureds should seek a "per occurrence" deductible, assuming that all similar claims arising out of a single product will be deemed one occurrence. However it is possible that the court may not treat multiple claims as a single occurrence. Hence a per occurrence deductible essentially becomes the same as a per claim deductible.

One way to avoid this predicament is to have an aggregate on the deductible, sometimes called "**annual aggregate deductible**," to designate the maximum amount an insured can pay as deductibles over a specified period of time, typically one year. Aggregate deductibles protect an insured from a high frequency of losses. For example, using the prior example, assume that the policy has an aggregate deductible of \$300,000, the insured would then have coverage after paying the first six claims. Most insurance policies do not have aggregate deductibles.



Another way one can deal with this issue is through a "batch clause" or "aggregation clause."

Generally speaking, a batch clause is an insurance condition that provides an aggregation of loss. An aggregation clause is a more sophisticated batch clause designed to clarify that a single deductible applies to all claims arising out of a single product defect. In the context of product liability, a batch clause essentially means that all claims arising out of defective products produced in a single manufacturing lot will be treated as a single claim, and that only one deductible will be applied regardless of the number of claims resulting from that lot. For example, suppose that a manufacturer makes a batch of 10,000 defective bottles of jam that injures 500 children. If a batch clause applied, there would be only one limit of liability available to pay claims, but only a single deductible would apply.



The typical "batch clause," however, may not provide sufficient protection, because the policy deductible applies to each "batch," and this can easily lead to litigation over what constitutes a "batch." For example, an insurer is likely to argue that each day's production is a separate "batch" to which a separate deductible applies. Batch clauses are designed to group losses arising from related incidents into a single claim covered by one policy period and one policy limit, for which the insured pays one deductible. But batch clause language varies from one policy to the next. One policy might limit a batch to products that "can be distinguished by the specific date of production or by a batch number, lot number or control number." Another might more broadly define a batch as claims arising from "two or more

person, that are attributable directly, indirectly or allegedly to the same event, defect, hazard, condition, cause, decision or advice in the design, formulation, manufacturing, distribution, sale, use, testing, handling, repair, replacement, maintenance or disposal of your product."

Maximizing coverage under batch clauses depends on the facts particular to each circumstance particularly the number and type of claims at issue and the language in each applicable insuring agreement. It is therefore critical to read the proverbial "small print" of a batch clause in a product liability policy to know what language is incorporated. This will significantly impact the coverage available, may dictate how an insured provides notice of a claim, and could determine how to maximize coverage. Therefore insurance professionals should carefully craft a policy's batch clause.

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