



If a defect in your product is discovered today – and injuries happen after your policy expires – are you protected?

How will a life science company’s insurance policy respond when a critical event - such as a Class I Recall or newly required Dear Doctor letter - results in multiple bodily injury claims taking place months or even several years after the event? Does the policy cover claims for bodily injury taking place after the policy expires? If not, will a renewal policy cover such claims? **Standard products liability policies typically do not fully address these issues.** For this reason life science companies may need their insurance coverage to include **“batching” provisions preserving coverage for future claims** related to a critical event known today. Such batching provisions, when properly crafted, assure the life science company that it will have coverage for bodily injury connected to a critical event when such injury occurs after the policy expires.

But are all batch wordings created equal?

Question to Ask	Why It’s Important	How LS Prime® Batch Coverage is Different
Does the policyholder have the right to declare a batch?	Without clear language allowing an insured to declare a batch, the ultimate decision as to whether a claim is batched is left to the insurer. Are you comfortable leaving the decision to batch to the sole discretion of your insurer?	With LS Prime® you are in control. LS Prime® Batch Coverage allows the First Named Insured, not the insurer, to elect batch claims coverage connected to a critical fact.
Does your policy use vague, loosely defined terms that leave gaps in your primary coverage?	Many insurers will tell you that their “deemed known”, “related claims” or other language protects you the same way batch coverage does. But is that truly the case? Vague language in a primary policy – even if it is broad – creates uncertainty as to which policy year – if any – covers claims made after the current policy expires.	Berkley Life Sciences’ Batch Claims Coverage specifies that any critical fact, such as a Class I Product Recall, or a defect in a product that would lead to a severe adverse event with continued use, can be batched. LS Prime® policyholders have unambiguous guidelines around what circumstances can be batched.
Does the absence of clear batching language in your primary policy impede your ability to obtain and maintain excess coverage?	Life science companies typically purchase multiple layers of excess coverage to protect themselves from catastrophic events leading to multi-district litigation. If the primary policy does not have clear batching language, it will be difficult to build a tower of excess coverage. Even if an excess carrier agrees to provide the coverage, they often refuse to follow the primary policy’s ambiguous language. Ultimately, this will lead to coverage disputes and gaps in coverage when you need your excess insurance the most.	Berkley Life Sciences’ clear approach to batch makes it easier to build a strong tower of excess coverage year after year. When excess insurers understand at the outset how claims are handled and which policy year will respond, they will be more willing to provide additional limits on a follow form basis. In addition a clear foundation of primary coverage will avoid costly coverage disputes involving the entire excess tower over multiple policy years.

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This material highlights features of our primary liability policy as of January, 2013 and is subject to change without notice.

Material is descriptive only; actual coverage is subject to the language of each individual policy issued.

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Does the policy contain a continuous relationship requirement?	Some policies include a requirement to maintain an uninterrupted coverage relationship with a carrier in order to ensure coverage for claims that the insured wishes to batch. If the policyholder changes its primary insurer, they lose coverage. Replacement of a follow form excess policy would have the same result. Policyholders should not be “held hostage” by a continuous relationship requirement.	LS Prime [®] has no “continuous relationship” provision. Once the insured declares a batch, batch claims coverage is activated for bodily injury that takes place during the next 5 years. And a batch supplemental extended reporting period is available for an additional five years. Policyholders are free to change carriers without losing coverage.
Does the policy address injuries that occur both during the policy period and after the policy expires?	Standard claims made policies do not cover injury taking place after a policy expires, even if an event, such as the discovery of a serious product defect or a Class I Recall, happens during the policy period. Extended reporting periods do not solve this problem, as they only cover injuries taking place prior to policy expiration.	Berkley Life Sciences’ Batch Claims Coverage explicitly covers injuries that take place up to five years after the policy expires.
Does the policy include Batch Coverage or just a Batch Deductible?	A Batch Deductible only amends the way a deductible applies. It does not afford coverage or address how claims related to a batch event will be addressed in the future, including after the current policy expires.	Unlike policies with only a batch deductible LS Prime [®] offers Batch Claims Coverage, which can address injuries associated with a critical fact for five years after the policy expires.
Does a policy contain “known circumstance”, “prior acts” or “expected or intended” exclusions that prevent the batching of claims?	Policies that contain “known circumstance” or other similar exclusions create uncertainty for policyholders at renewal time. This often leads policyholders and their representatives to “laundry list” the insurer with adverse events or other circumstances that might give rise to a claim – no matter how remote the possibility – in an attempt – often unsuccessful - to preserve coverage. Simply reporting adverse events does not preserve coverage in subsequent policy periods if any of these exclusions apply.	LS Prime [®] does not contain “known circumstance”, “related claims”, “prior acts” or “expected or intended” exclusions. This allows Berkley Life Sciences’ Batch Coverage to work as designed, preserving coverage beyond the policy period for claims connected to critical facts.

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