

## COMMERCIAL GENERAL LIABILITY POLICY EXCLUSIONS, ENDORSEMENTS AND CONDITIONS

To complete any analysis of the coverage that exists under a company's commercial general liability ("CGL") insurance policy, it is important to look at the exclusions, endorsements and conditions.

We will look at exclusions first. First, it is important to understand that the insuring agreement in the CGL policy is very broad. The many exclusions that likewise exist take away coverage. Here is an example of the broad insuring agreement and how the exclusions take away coverage.

### CASE BREAK

A business selling alcoholic beverages is sued for negligence as the establishment sold alcohol to a person under the legal drinking age and she was involved in an automobile accident seriously injuring others. The injured persons sued the business. Under the CGL insuring agreement, all the elements are easily met—thus it would appear the Insurer is obligated to pay all sums and damages the Insured is legally obligated to pay because of "bodily injury" caused by an "occurrence". One big problem—the liquor liability exclusion which states that the CGL insurance does not apply to bodily injury or property damage caused by among other things, the furnishing of alcoholic beverages to a person under the legal drinking age.

The list of exclusions within the standard CGL policy covers four pages. Many of the exclusions are unimportant to most businesses such as the liquor liability exclusion we discussed above. Those that are usually important include the following exclusions: Expected or Intended Injury; Contractual Liability; Workers Compensation Laws; Employer's Liability; Pollution; Damage to Property; Damage to Your Product; and Damage to Your Works.

A detailed review of each of these exclusions goes beyond the scope of this *Business Insights* issue. Here is an example of one such exclusion, the Expected or Intended Injury exclusion.

### CASE BREAK:

Mr. Perfecto, the owner of Perfecto Company, swings a baseball bat at a jobsite mailbox. While there is no insurance coverage under a Perfecto Company insurance policy for the mailbox because Mr. Perfecto intended to damage the mailbox, if Mr. Perfecto had accidentally struck a passerby while swinging at the mailbox, Perfecto Company would have insurance coverage for Mr. Perfecto striking the passerby. The damage to the passerby was the consequence of Mr. Perfecto's intentional conduct—in other words he did not intend to strike the passerby.

If Mr. Perfecto had intended to strike the passerby in the head with the bat, as we saw above, there is no coverage for this incident as well. If Mr. Perfecto had missed the head of the passerby with the bat and instead struck the passerby's leg, there is also no coverage as Mr. Perfecto intended the passerby harm and had simply missed his part on the body to which he intended to do damage.

Here are examples of the Damage to Your Product exclusion for trusses sold by the wall, truss and component manufacturer.

### CASE EXAMPLE

A manufacturer deliver an order of roof trusses During erection, as a bundle of roof trusses is lifted to the top plate, due to a manufacturing defect in some or all of the trusses, they come apart and cause damage to erected walls and damage other job site equipment. All the property that is damaged is covered as this falls within the definition of property damage in the CGL policy. There is no coverage however for damage to or replacement of the roof trusses due to the Damage to Your Product exclusion.

Another example is that a homeowner sues the floor truss manufacturer for sagging floors. To restore the floors,

furniture is moved out of the house, sheetrock and some flooring is removed, and the trusses are beefed up restoring the floors. All the property that is damaged and the repair costs are covered as falling within the definition of property damage, but there is no coverage for the money spent to actually repair the floor trusses themselves.

The Damage to Your Work exclusion excludes property damage to the insured's work. This usually is an exclusion that would apply to a trade contractor such as a framer where the contractor's work is essentially his scope of work under the contract—e.g. erecting the frame of the structure being built. This exclusion could of course apply to a wall, truss and component manufacturer engaged in installed sales. Let's look at an example:

#### CASE EXAMPLE

In addition to supplying manufactured components, the manufacturer also erects such components for a total contract price of \$50,000. The building suffers extensive damage as a result of poor framing. To the extent a Claim is asserted, the CGL policy should pay for all the damage to the building. What won't be covered is the cost to repair or restore the framing due to the Damage to Your Work exclusion. To the extent the lawsuit seeks only damages to repair or restore the framing, the exclusion would bar any coverage whatsoever of the manufacturer.

Unlike an exclusion which takes away coverage otherwise granted to the insured under the insuring agreement, an endorsement essentially changes or supplements an insurance policy's general terms. An endorsement may serve a number of functions including broadening the scope of coverage or restricting or limiting the scope of coverage. .

The conditions section of the CGL policy is perhaps the most straightforward and easy to understand. Here you will find duties in the event of a loss and other general policy terms. Keep in mind that a failure to comply with the conditions could jeopardize coverage.

There are three very important conditions within a CGL policy that must be satisfied for coverage to be provided under the CGL policy. Let's now look at some of the conditions.

One condition is the obligation for the Insured to provide timely notice of any claim to the insurer. Timely notice is important so as to not prejudice the insurance company's ability to investigate and adequately defend the claim.

A second very important condition is the obligation of the insured to fully pay the premium—which should not strike anyone as a surprise.

The third condition is the obligation of the insured to cooperate with the insurer in the defense of the case. This condition is certainly logical as the insurance company would have a real difficult time in defending a claim without the cooperation of the insured

A fourth condition is the right of the insurance carrier to access the books and accounts of the insured. This should be expected as the insurer may need to access certain records to adjust a claim or to conduct a premium audit.

A fifth condition that we will discuss relates to the fact that if the insured has rights to recover all or part of any payment made by the insurance carrier under the insuring agreement, those rights are transferred to the insurer. The insured must do nothing after the loss that would impair this right. At the request of the insurance company the insured will bring suit in its name or transfer those rights to the insurance company and help them enforce them. With respect to this last condition, let's look at a case example.

#### CASE EXAMPLE

A truss manufacturer contracting out the delivery of its roof trusses to a local trucking company. Despite being required to provide appropriate insurance coverage, the trucking company failed to do so resulting in liability on the part of the truss manufacturer's automobile insurance carrier. After settling the claim asserted by the persons injured from the negligence of the truck driver in question, he truss manufacturer's insurance carrier in this example would own the legal rights of the truss manufacturer to file a lawsuit against the trucking company for failing to maintain the appropriate automobile liability insurance. The lawsuit would either be prosecuted in the name of the truss manufacturer at the expense of the insurance company or the claims would be assigned directly to the insurance carrier and prosecuted directly by them.