HOW TO DETERMINE WHETHER YOUR COMMERCIAL GENERAL LIABILITY ("CGL") INSURANCE CARRIER IS OBLIGATED TO COVER A CLAIM MADE AGAINST YOUR COMPANY

Every company has a person in charge of its insurance. If your company is a larger operation, you may have a risk manager heading this effort. If your company is smaller, this task may fall upon any number of people, such as an owner, chief financial officer, comptroller or office manager. Regardless of the title given to the person who handles insurance at your company, he or she should have some familiarity with the following basics of CGL coverage: what liabilities are protected against, the parameters of the different coverages and the most common exclusions to coverage. With this general knowledge, your internal insurance resource should be able to evaluate, for most claims, whether your CGL policy provides coverage.

Whenever your company receives a claim or notice of a claim or situation that you think may be covered by any of your insurance policies, you should be sure to transmit the claim or provide notice of the potential claim to your insurance adviser, broker and carrier as soon as you learn of the claim or potential claim.

The following information is based on a standard CGL policy.

**What liabilities are protected against?**

Having a general knowledge of the liabilities covered in a CGL policy, and reviewing a claim to see whether the claim alleges a covered liability are the first steps to determining whether a claim is covered. A CGL policy provides coverage for bodily injury and property damage liability and personal and advertising injury liability. Note that “bodily injury,” “property damage” and
“personal and advertising injury” are defined terms under the policy. It is important to read these definitions because they explain the liabilities against which you are insured. As you might expect, the CGL policy defines “bodily injury” to include sickness, disease and death. However, it might surprise you to learn that the CGL policy defines “property damage” to include not only physical injury to property but also loss of use of property not physically injured. “Personal and advertising injury” includes injury arising out of a wide variety of activities ranging from false arrest, libel and slander to the wrongful use of another’s advertising idea.

**If a claim alleges a covered liability, what are the coverage parameters?**

After you determine a claim relates to a covered liability, you need to look at the coverage parameters. For bodily injury and property damage liability and personal and advertising injury liability, an injury or damage must take place in the “coverage territory” during the policy period for there to be coverage. The CGL policy’s definition of “coverage territory” includes the U.S. and Canada. Typically, CGL policies have a one-year policy period; however, a policy period can be any length of time. The most crucial parameter for coverage is the cause of the claim. For bodily injury or property damage to be covered, it must be caused by an “occurrence.”

The CGL policy defines “occurrence” to mean an accident, including continuous exposure to the same harmful condition. Accordingly, if a claim is for bodily injury or property damage alleged to be resulting from intentional action, there is no coverage. Whether a particular claim results from an accident and is, therefore, caused by an “occurrence” is a hotly contested issue and the
subject of many lawsuits and court opinions. As for claims attributed to defective work, a majority of jurisdictions follow the rule of law that these claims are caused by an “occurrence,” particularly if there is some resulting property damage. There are however, several states that follow the minority rule of law that defective work does not constitute an “occurrence.” But even in these states, there are usually court decisions stating that if a claim includes property damage to property other than your work product, there is coverage for the property damage. For a personal and advertising injury to be covered, it must be caused by an “offense” arising out of your business. Unlike “occurrence,” the CGL policy does not define “offense,” and the main parameter of coverage for personal and advertising injury is that the claim must result from your business operations. This means if you slander a business competitor when trying to convince an owner to hire you, there may be coverage. But if you slander your ex-spouse during that conversation with the owner, there most likely is not coverage.

Many legal battles have been fought over whether damage was caused by an “occurrence” and the rules differ from state to state. Insurance companies typically construe “occasion” in a manner to deny coverage, but they are not always correct to do so. Consulting your broker, agent and/or an attorney may be necessary to ensure you are not being wrongfully denied coverage.

What “covered liabilities” are excluded?

Lastly, you need to be familiar with the exclusions contained within the CGL policy. An
“exclusion” is where the insurance company has retained the right to deny a claim that otherwise falls within the covered liability and the parameters of coverage. To the extent the claim falls within an exclusion, the claim is not covered. It is the “you think you have coverage but you really don’t” aspect of the CGL policy. Different exclusions exist for each liability covered, and the exclusions are aimed at eliminating particular types of claims from the separate coverages.

For example, the CGL policy excludes from its bodily injury and property damage liability coverage all bodily injury and property damage arising out of your use of an automobile. The CGL policy excludes the use of an automobile for a number of reasons, including the fact that separate insurance policies exist to cover this risk. An example of an exclusion from personal and advertising injury liability coverage is the exclusion of any personal and advertising injury arising out of your publication of written material that you know to be false. Essentially, your insurance carrier is not going to cover your intentional dissemination of false information.

Because bodily injury and property damage liability coverage is the coverage most often at issue, it is important to have an understanding of the following standard exclusions that are commonly called into play by typical claims faced by roofing contractors. Your policy may include one or more of these exclusions or may include similar but different exclusions:

- Contractual Liability – The CGL policy does not cover you for bodily injury or property damage liability you contractually agreed to assume unless you would be liable for the bodily injury or property damage even if the contract did not exist or the bodily injury or property damage liability contractually assumed is for payment to a person other than with whom you
have contracted.

- Damage to the Particular Part of Real Property On Which You are Working – The CGL policy will not cover you for property damage to apart of a building on which you are working. How broadly this exclusion applies to negate coverage is a matter of state law and hinges upon how the court looks at the different building components and the particular facts of the claim. As it applies to roofing contractors, this exclusion is often cited by insurance carriers as grounds to deny coverage for damage to any of the work performed by the roofing contractor.

- Damage to Your Work – The CGL policy does not cover property damage to your completed work if property damage is caused by your work. This means if a claim is for the repair or replacement of a roof system you installed and the damage to the roof was caused by improper installation, there most likely is no coverage. The “your work” exclusion is probably the most common exclusion cited by insurance carriers to deny coverage to roofing contractors.

Conclusion

Although there is no assurance that a claim is covered until your insurance carrier accepts the claim without reservation or a court orders the claim be covered at the conclusion of a lawsuit, it is important to understand the general coverages provided by your CGL policy. As discussed, determining whether a claim is covered under your CGL policy is a multistep process of comparing the claim to the CGL policy’s language. In undertaking this endeavor, it is important
to consider all of a policy’s definitions and terms. As you work through your evaluation, you should seek the input of your insurance agent/broker, attorney or other outside adviser who may have more experience evaluating claims. Ultimately, the determination of whether a claim is covered could mean hundreds of thousands of dollars to your company, and accordingly, the process of seeking coverage should be given appropriate attention and scrutiny.

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