

**OVERVIEW OF WORKER'S
COMPENSATION AND
COMMERCIAL GENERAL
LIABILITY COVERAGES**

Tom Pontikas

WORKER'S COMPENSATION COVERAGE

- Worker's Compensation Coverage
- Coverage for Employer's Liability

WORKER'S COMPENSATION COVERAGE

- Worker's Compensation Coverage
 - Is intended to cover all aspects of employees accidents which occur during the course and scope of their employment
 - No aggregate limit of insurance

WORKER'S COMPENSATION COVERAGE

- Employer's Liability Coverage
 - Is intended to protect employer when he is sued for negligence which results in an injury to an employee i.e., third-party lawsuit after employee sues another entity
 - Coverage has aggregate limit

WORKER'S COMPENSATION COVERAGE

- Employer's Liability Coverage
 - Covers employer for damages which you are liable to a "third-party" by reason of a claim or suit against you by that third-party to recover damages claimed against such third-party as a result of an injury to your employee

COMMERCIAL GENERAL LIABILITY COVERAGE (CGL)

- Coverage for a majority of all other claims not arising out of employer/employee relationship

COMMERCIAL GENERAL LIABILITY COVERAGE (CGL)

- Under most comprehensive general liability policies, the insurance does not apply to bodily injury or property damage arising out of the insured's own work or product. This issue is most often addressed by various exclusions.

COMMERCIAL GENERAL LIABILITY COVERAGE (CGL)

- The insuring agreement of the comprehensive general liability policy generally states that:
 - We will pay those sums that the insured becomes legally obligated to pay as damages because of bodily injury, property damage, personal injury, or advertising injury Caused by an occurrence. . . during the policy period.

COMMERCIAL GENERAL LIABILITY COVERAGE (CGL)

- The occurrence must arise out of the conduct of the insured's business, excluding certain activities like publishing, broadcasting, or telecasting done by or for the insured.

COMMERCIAL GENERAL LIABILITY COVERAGE (CGL)

- Commercial liability policies are not intended to pay the costs associated with the repair or replacement of the insured's own defective work product. *Elco Industries v. Liberty Mut. Ins. Co.*, 90 Ill.App.3d 1106, 1109-10 (1980); *Qualls v. Country Mut. Ins. Co.*, 123 Ill.App.3d 831, 834 (1984).

COMMERCIAL GENERAL LIABILITY COVERAGE (CGL)

- The standard “business risk” exclusions to the commercial liability policy reinforce the principles that faulty workmanship and the cost of repair and replacement do not constitute property damage under the coverage. The intent of the commercial and general liability policies is to protect the insured from liability for injury to people or property, and not to pay the costs associated with the repair or replacement of the insured’s own defective work and products.

WHAT IS COVERED

WHAT IS NOT COVERED

ERROR AND OMISSIONS COVERAGE UNDER CGL POLICIES

- Roofer
- Architects

ERROR AND OMISSIONS COVERAGE UNDER CGL POLICIES

- Typically, there are four basic categories of coverage in a CGL policy. These include: bodily injury; property damage; personal injury protection; and advertising injury.

ERROR AND OMISSIONS COVERAGE UNDER CGL POLICIES

- Often a commercial general liability policy is combined in what is known as a “BOP” or business owner’s package. In this type of package, you will typically see additional coverage for property insurance not covered under the CGL policy.

ERROR AND OMISSIONS COVERAGE UNDER CGL POLICIES

- CGL policies typically contain an exclusion for professional liability, also known as errors and omissions. In performing professional services, your business may be subjected to liability for negligence acts, errors and omissions. Professional liability coverage is required.

ERROR AND OMISSIONS UNDER CGL POLICIES

- This type of coverage is limited and added by an endorsement on a CGL policy, it typically does not exist in that form, and must be separately insured. If you or your employees make professional judgments or make recommendations in the course of your business, such as design recommendations, you will need it.

ERROR AND OMISSIONS COVERAGE UNDER CGL POLICIES

- The CGL policy is not intended to be a guarantee of the quality of a businesses' products, services, or work. It will typically cover your business for damage caused by your defective work, but not damage to your defective work. Let me give you an example. Let's assume you are a roofing contractor.

ERROR AND OMISSIONS COVERAGE UNDER CGL POLICIES

- You purchase a CGL policy, and during the policy term you install a roof on a school library which shortly thereafter leaks. The roof needs to be removed and replaced and there is significant damage to the books, furnishing, and carpeting in the school library, as well as the drywall, wallpaper and other wall coverings.

ERROR AND OMISSIONS COVERAGE UNDER CGL POLICIES

- Typically, your CGL policy will cover you for the damage to the books, carpeting, tables and chairs, and wall coverings, but not for re-doing the work and installing the roof that was done negligently in the first place.

ERROR AND OMISSIONS COVERAGE UNDER CGL POLICIES

- Further, if you gave design advice or input and are sued for a defective design or system, you would typically not have coverage under your GL policy.

ROOFERS ISSUES

ARCHITECTS ISSUES

EXCLUSIONS TO COVERAGE

RESPONSE OF INSURANCE COMPANY

- Accept with reservation of rights (ROR)
- Accept without reservation
- Rejection

**ACCEPTANCE WITH A
RESERVATION OF RIGHT**

DON'T PANIC

CAN BE A GOOD THING

**ALLOWS YOU TO DEVELOP
EVIDENCE TO BRING
CLAIM/LAWSUIT BACK
INTO COVERAGE**

**RIGHT TO CHOICE
COUNSEL
AND
CONTROL DEFENSE**

BEST PRACTICES I.C.E.

- Insurance
- Contracts
- Exposure

BEST PRACTICES

- What do your policies provide for?
- Worker's compensation/EL
- CGL
- What are the limits?
- Are they sufficient?

CONTRACTS

- Re-examine the contracts you sign
- Re-examine the contracts you require others to sign
- Tender of defense
- Do you really know what you are doing and why?
- Best practices to protect yourself

LIMIT EXPOSURE

- Are you protected the best you can be?
- What can you do to protect your company?
 - Yearly review of contracts
 - Yearly review of insurance
 - Rates
 - Coverages
- Focus on how you can “push” coverage off to others contractually

QUESTIONS AND COMMENTS