



Am I Covered?

by Patricia A. Ayars

Unfortunately, many contractors don't check their liability insurance coverage until there is an injury or property damage on the job. When the contractors do contact their insurer, they are often surprised to find they're not covered. In this era of high jury awards for personal injuries, this could mean the end of a good contracting business. So, it's important to understand the basics of your liability coverage. Let's start by looking at the standard coverage available, using three basic questions as a framework:

- Who caused the injury?
- How did the injury or damage happen?
- Who or what was injured or damaged?

Standard Coverage

The standard liability policy states that it will: "pay on behalf of the insured all sums which the insured shall become legally obligated to pay because of bodily injury or physical damage to which this insurance applies, caused by an occurrence." What does this actually mean? By using our three questions, we can make sense of this insurance language.

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Who Caused the Injury?

The policy states that it will pay those sums that "the insured shall become legally obligated to pay." The key terms here are "the insured" and "legally obligated to pay." The term "insured" is defined in the policy. The "insured" includes you, the contractor buying the policy, who is known as the "named insured." If the contractor is an individual, the term "named insured" covers the contractor and perhaps a spouse. If the policy is bought by a contracting partnership, the policy will cover the partnership itself and perhaps the directors or officers of the corporation. The term "insured" also includes employees who are performing certain acts for you, for example, operating your equipment.

The policy states it will pay for those sums that the insured is "legally obligated to pay." Under agency law, an employer is generally liable for the acts of an employee who is acting within the scope of his employment. Consequently, you may be legally obligated to pay for those injuries and damages caused by your employees while the employees are working on the job. The policy would cover these injuries or damages. However, an employer is usually not obligated to

pay for the acts of an independent contractor. Consequently, the liability policy would not generally cover injury or damage caused by an independent contractor working on your job.

If you want to have the actions of additional parties covered under your policy, you need to have these parties named as insureds on the policy. This type of coverage is available and is called "extended coverage."

How Did the Injury Or Damage Happen?

The policy states that it will cover "an occurrence." Simply put, an "occurrence" is an accident. An accident is anything that happens or is the result of that which is unanticipated. In other words, an accident is an unintended, sudden and unexpected event.

All liability policies exclude coverage of "intentional damages or injury." "Intentional damage or injury" is carefully defined by law. An intentional damage or injury does not mean that one intended to perform the action that caused the injury or damage. It means that one not only intended to perform an act but that the action was also intended to cause injury or damage or substantially certain to cause injury or damage. Thus, if your employee intentionally drops a board on someone's head or drops a board from a second story window knowing that it is pretty certain that the board will strike someone below, the action is "intentional" and the results will not be covered by the policy. In contrast, if the employee stacks boards on the second story, anticipating that the stack is stable, and a board slips from the pile and strikes a passerby, the injury would probably be covered.

The policy will also state that it excludes certain types of events. These items are found in the "exclusions" section of the policy. There are four common exclusions that are of particular interest to the contractor:

Collapse hazard. The policy generally excludes the "collapse hazard." This exclusion means that there is no coverage for structural property damage or the collapse or structural injury to a building or structure if (1) the damage is caused by you or your employees and (2) the damage is caused by the grading of land, excavating, burrowing, filling, backfilling, tunneling, pile driving, coffer dam work, or caisson work or the moving, shoring, underpinning, raising or demolition of any building or structure, or the removal or rebuilding of an structural support. Incidental coverage is available for the "collapse hazard."

Underground property damage hazard. Policies also generally exclude the "underground property damage hazard." The policy thus does not cover property damage to wires, conduits, pipes, mains, sewers, tanks, tunnels, or any similar structure that

is located beneath the surface of the ground or water if (1) it is caused by you or your employees and (2) is caused by and occurs during the use of mechanical equipment for the purpose of grading land, paving, excavating, drilling, burrowing, filling, backfilling, or pile driving. Coverage for this type of damage is available through incidental coverage.

Completed operations hazard.

Policies also generally exclude the "completed operations hazard." Under this exclusion, there is no coverage for bodily injury or property damage that occurs on the construction site after construction has been completed or abandoned. Construction is deemed completed when one of the following events occur:

- 1) When all operations to be performed under your contract have been completed
- 2) When all operations that you are to perform on the site have been completed
- 3) When the portion of the site on which the injury or damage occurs has been turned over to the owner or user and that portion of the site is being used for its intended purpose

Even if further service, maintenance or warranty work is required on the site, the project will still be deemed to be completed for coverage purposes.

Violation of law. Policies also usually do not cover those injuries or damages arising from violations of statutes or ordinances, such as OSHA or state safety codes.

Who or What Was Injured or Damaged?

Most liability policies do not cover injuries to your employees if the injuries are covered by workers compensation. Thus, if your employee falls or is injured by another employee, the liability coverage usually does not extend to those injuries.

In addition, your own property is usually not covered by the liability policy. Property or equipment that you are renting, using, borrowing or is in your care, custody, or control is also excluded. Many things can be under your care, custody or control. For example, if you have exclusive access to a building and damage occurs to that building, you may not be covered by liability insurance. Items that are not in your control, like tools of employees that you cannot borrow except with express permission, will be covered. It is important that you have adequate property or equipment insurance to cover the excluded items.

The liability policy usually does not cover damage or injury occurring during the use, loading or unloading, operation, ownership, and maintenance of your on-road vehicles, like automobiles or trucks. Your vehicles include those that you own, operate, or rent. The exclusion is so broad that injuries to an independent contractor occurring during the loading or unloading of your vehicles may not be covered. The on-road vehicle exclusion does not apply to vehicles parked on the site if the vehicles are owned by your employees or third parties, and the vehicles are not being used in the course of construction.

Conclusion

The wording and coverages of liability policies vary. Using this guide can help you understand your

coverage, but you should read your policy carefully. And if you are uncertain as to what is covered under your liability policy, discuss the policy with your insurance agent. ■

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