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Contractual Liability Insurance and Your Vendors

Introduction

Contractual liability insurance coverage is insurance which covers the liability assumed by an insured (one party) in a contract with another party to pay for damages to a third party.

***Consider this claim scenario:** an electrician signs a contract with a building owner to perform maintenance work in the building lobby and that contract includes a hold harmless clause. An unrelated third party is injured while walking in the lobby due to the electrician's negligence and the injured third party sues the building owner.*

If the electrician maintained a standard ISO Commercial General Liability (CGL) Coverage Form with no endorsements or exclusion which modified the definition of "insured contract"; then the building owner could assert its right to be held harmless by the electrician based on the building owner's contract with the electrician, which should trigger the electrician's CGL insurer to pay to defend and indemnify the building owner.

So you may be wondering: how do I make sure that my vendors CGL policy includes this coverage. We will look briefly at the contractual liability coverage found in the standard CGL coverage form and suggest a few ways to help you with the verification process.

ISO Commercial General Liability Form

At first glance, it appears that the standard ISO CGL Coverage Form CG 00 01 12 07 edition excludes **Contractual Liability**, but there are two key carve backs which grant coverage. If we read **SECTION I COVERAGES 2. Exclusion:**

b. Contractual Liability

"Bodily injury" or "property damage" for which the insured is obligated to pay damages by reason of the assumption of liability in a contract or agreement. This exclusion does not apply to liability for damages:

- (1) That the insured would have in the absence of the contract or agreement; or*
- (2) Assumed in a contract or agreement that is an "insured contract", provided*

We can see that number (2) above, grants coverage assumed in an "insured contract". If we then go to **SECTION V DEFINITIONS**, you will see that there are six categories of contracts that qualify as an "insured contract":

9. "Insured contract" means:

- a. A contract for a lease of premises. However ...*
- b. A sidetrack agreement;*
- c. Any easement or license agreement, except ...;*
- d. An obligation, as required by ordinance, to indemnify a municipality, except ...;*

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e. An elevator maintenance agreement;

f. That part of any other contract or agreement pertaining to your business (including an indemnification of a municipality in connection with work performed for a municipality) under which you assume the tort liability of another party to pay for "bodily injury" or "property damage" to a third person or organization. Tort liability means a liability that would be imposed by law in the absence of any contract or agreement.

The first five are reasonably straight forward. It is the sixth item "f." that broadens the coverage to encompass a wide array of common business contracts and business circumstances. What we find often is that this language is not left intact. Insurers will amend the standard CGL coverage form to either limit the coverage grant under "f." or even remove "f." completely from the definition; thereby gutting this key provision.

How do you determine if your vendors contractual liability coverage under their CGL policy has been reduced or gutted compared to an unmodified ISO CG 00 01 coverage form?

We suggest that you start first by overtly including in your vendor contract insurance requirements that the vendors CGL coverage shall be written on an "occurrence" basis using ISO CG 00 01 and that contractual liability coverage shall not have any additional restrictions or modifications to the definitions of "insured contract" as provided by ISO CG 00 01.

To uphold and confirm this insurance requirement, you will need to make sure that your vendors ACORD certificates include "contractual liability" in the GENERAL LIABILITY box and that an affirmative statement is made in the DESCRIPTION OF OPERATIONS section of the COI such as:

"The Contractual Liability coverage reflected on this certificate includes all "insured contracts" as provided by ISO CG 00 01 and that there are no further restrictions or modifications to the definition of "insured contracts" endorsed onto the policy".

A more time consuming method is to request a copy of their CGL policy and review the actual coverage grant in the base policy form and make sure that there are no scheduled endorsements that modify the contractual liability coverage.

Summary

Making sure that your vendors CGL policy includes unmodified contractual liability coverage will help supplement your additional insured status under their CGL policy and make sure that when it comes time to tender a claim, the vendor's CGL policy is properly structured so as to respond to defend and indemnify you for their negligence to fullest extent available.

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