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PROTECTING YOUR INSURANCE PROTECTION E-UPDATE

THE EMPTY POLICY - KNOW WHAT YOU ACTUALLY BOUGHT

By Henry L. Goldberg, Esq. & W. Richard Kroeger, Esq.

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Not all policies of insurance are created equal. In fact, some policies of insurance offer almost no coverage. Be certain to purchase a policy that is worth more than the paper upon which it was written. If you search only for the lowest price, you may be unpleasantly surprised by what is not covered when you make a claim. This article will discuss what you should review in order to avoid purchasing an "empty policy."

Every policy of insurance begins with what is known as "the grant of coverage." This is found at the very beginning of the policy, and sets forth the general outlines of what is covered under the policy. It says that the insurer will pay "those sums that the insured becomes obligated to pay as damages because of 'bodily injury' or 'property damage'" to which the policy applies. It also explains that the insurer has the right and duty to defend any covered suit.

Although this may initially sound like a very broad grant of coverage, in fact, the scope of the coverage can be significantly narrowed by "exclusions" which are located in the second section of the policy. A general idea of what is excluded is found in the names of those exclusions, such as: "Expected or Intended", "Contractual Liability", "Workers' Compensation and Similar Laws", "Employer's Liability", etc.

Sometimes exclusions can be found as endorsements which are attached at the back of the policy. You should read these in their entirety. A schedule (or list) of these endorsements should also be attached near the front of your insurance policy. The schedule of endorsements provides a convenient reference point where you can quickly see which endorsements actually amend the policy.

Make certain that you fully understand each and every exclusion and endorsement to your policy of insurance. This is critical. Your insurer will deny coverage for any claim or suit which falls within any one of the policy's exclusions.

For example, the "Expected or Intended" injury exclusion has been interpreted by the courts to bar coverage whenever the insured knew, or reasonably should have known, that an injury was likely to occur. It is not necessary to anticipate exactly how the injury would occur, or the exact nature of that injury. Thus, for example, if your employee drives a business vehicle home from work and stops for a drink on the way, then is involved in an accident, your insurer will likely deny coverage under this exclusion by arguing that the employee knew, or reasonably should have known, that an injury was likely to occur if he drove after drinking.

Sometimes policies are completely unsuitable for your line of business. Some actual examples of situations where an "empty" policy has been reviewed by us include:

a. A steel erector who's policy contained an exclusion for steel erecting; and

b. An environmental contractor who's policy excluded coverage for injuries arising from exposure to asbestos, silica and lead.

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However, not every empty policy will be as easy to spot as the above, absurd examples. Therefore, you must make certain that you understand exactly what coverage is, in fact, provided by your policy.

Additionally, most CGL policies exclude coverage for what is known as the "Products-Completed Operations Hazard." This is an extremely broad exclusion that basically eliminates coverage for any bodily injury or property damage arising out of your work after it has been completed. Consequently, if you complete your portion of the project and leave the job site, and someone is later injured as a result of your work, there is no coverage for that injury!

Accordingly, we strongly recommend that everyone review their business commercial general liability policy and make certain that it contains an endorsement which provides coverage for completed operations. This is especially critical here in the State of New York which does not have any Statute of Repose. The Statute of Repose is distinguishable from a Statute of Limitations. The actual limitations run from an event which creates rights such as an accident. In New York State the Statute of Limitations for negligence is three years from the date of injury. However, Statue of Repose is an absolute time, regardless of any events, that one can sue.

Without a Statute of Repose, you may be sued at any time following the completion of a project if your work allegedly causes injury as long as you sue within the three year Statute of Limitations from the date of injury. There is no outside time limit pursuant to a Statute of Repose. The claimant's right to sue is not automatically cut off simply because a certain number of years have passed between the project completion and the date of injury. In fact, for certain conditions which caused blatant injuries for many years until they appear, decades can pass under New York Law and the three year Statute of Limitations does not start to run until actual injury.

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In conclusion, we urge you to read your insurance policy carefully and make certain that you understand exactly what your policy does, and does not, cover. Discuss this with your broker; ask questions. Look at the coverage exclusions and make certain that the policy provides coverage for "Completed Operations." Don't be the unfortunate individual who overpays, at the very lowest price, for an "empty policy."