

CGL Contractual Coverage Is Broad, but Watch for Limiting Endorsement

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The standard Commercial General Liability Coverage Form (CGL) includes broad coverage for contractual liability, but a simple endorsement, which sometimes goes unnoticed, can severely restrict this coverage and create errors and omissions (E&O) liability for the producer.

Almost every business has an exposure to contractual liability. Contractual liability, or liability assumed by contract, results from being a party to a contract that contains a hold-harmless agreement. In a hold-harmless agreement, one party (the indemnitor) assumes the liability of another party (the indemnitee) for certain described losses.

For example, in a construction contract, a subcontractor may agree to assume the general contractor's liability for bodily injury (BI) or property damage (PD) arising out of the subcontractor's work.

Broad coverage for contractual liability is a feature of the standard CGL. Oddly enough, this essential coverage is not provided in a prominent insuring agreement. Rather, the coverage resides in an exception to the CGL's Contractual Liability exclusion.

The Contractual Liability exclusion eliminates coverage for BI or PD for which the insured has assumed liability in a contract or an agreement. However, the exclusion states that it *does not apply* to liability assumed under an "insured contract."

The CGL contains a long and detailed definition of "insured contract." The significance of this definition is that the CGL covers the insured's liability for BI or PD assumed under any contract that meets the definition. The definition lists five specific types of contracts:

- a. A contract for a lease of premises
- b. A sidetrack agreement
- c. Any easement or license agreement, except in connection with construction or demolition operations within 50 feet of a railroad
- d. An obligation, as required by ordinance, to indemnify a municipality, except in connection with work for a municipality
- e. An elevator maintenance agreement

In addition, paragraph f. of the CGL "insured contract" definition adds "that part of any other contract or agreement pertaining to your business . . . under which you assume the tort liability of another party to pay for 'bodily injury' or 'property damage' to a third person or organization."

Because of three exclusions that apply to paragraph f., the only types of contracts or agreements that are *not* covered by paragraph f. are those (1) that indemnify a railroad for injury or damage arising out of construction or demolition operations within 50 feet of railroad property;

(2) that indemnify an architect, an engineer, or a surveyor for injury or damage arising out of a wide range of professional activities; and (3) under which the insured (if an architect, engineer, or surveyor) assumes liability for an injury or damage arising out of the insured's rendering or failing to render professional services.

Apart from these three exclusions, paragraph f. provides open-ended coverage, often referred to as "blanket" contractual liability coverage. Examples of contracts covered by paragraph f. are construction contracts, maintenance contracts, purchase agreements, supply contracts, and aircraft or watercraft charters.

Underwriters who do not wish to provide such broad coverage can modify a CGL policy with the Contractual Liability Limitation endorsement—CG 21 39. This endorsement redefines "insured contract" to include only paragraphs a. through e., thus omitting the blanket coverage of paragraph f.

For example, this endorsement eliminates a contractor's coverage for hold-harmless agreements contained in construction contracts. If, when the contractor's CGL coverage is renewed or placed with a new insurer, the contractor's insurance agent or broker fails to detect this change, notify the insured, and take appropriate action to restore coverage, the contractor's resulting lack of coverage could lead to an E&O liability claim against the producer.

Two alternative steps the producer might take to solve the problem are (1) to negotiate with the insurer to remove the limitation endorsement or (2) to cancel the CGL policy and place the CGL coverage with an insurer that will not add the exclusion.

Keeping the existing CGL policy and obtaining a separate contractual liability policy is often impractical because few insurers will want to write only the contractual liability exposure without the rest of the account, particularly when another underwriter has chosen to delete the blanket contractual liability coverage.

Although the CGL's contractual liability coverage (if not modified by endorsement) is very broad with regard to liability for BI or PD assumed by contract, Coverage B of the CGL (Personal and Advertising Injury Liability) excludes liability for "personal and advertising injury" assumed by contract, with no exceptions. This can be a problem because some hold-harmless agreements transfer liability for "personal injury."

This is one reason why no insured or producer should ever assume that the CGL's contractual liability coverage will cover every assumption of liability by contract. Producers should advise their customers to review all contracts they enter into to ascertain whether they contain hold-harmless agreements and, if so, to ascertain whether such agreements are covered.

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