



Legal Brief

by Timothy J. Woolford, Esquire

Understanding Your CGL Insurance Policy to Reduce Risk

Understanding Commercial General Liability Insurance Coverage is Critical

A critical component to any contractor's safety program is a thorough understanding of the scope of its commercial general liability ("CGL") insurance coverage. Many contractors and subcontractors incorrectly assume they are covered for anything that goes wrong on a project. In many cases, however, this assumption is incorrect as there are many things that can go wrong on a project which are not covered by CGL insurance. Without appropriate coverage, a company risks paying for such claims, or at least a substantial part of the claim, out of its own pocket.

Generally speaking, commercial general liability is coverage that protects your business in the event it is sued. If, in the course of its operations, your company causes bodily injury to another person or damages their property, your company could be sued. In theory, your CGL policy is intended to provide insurance coverage for such an incident. Covering an incident means the insurer will provide you with (or pay for) a lawyer to defend the lawsuit and pay any damages that you are required to pay.

Not every incident involving physical injury or property damage triggers coverage, however. The CGL policy only provides

coverage if it results from an "occurrence." An occurrence is usually defined in the CGL policy as "an accident, including continuous or repeated exposure to substantially the same general harmful conditions." Unfortunately, determining what constitutes an occurrence has been the subject of intense legal debate between contractors and insurance companies. Insurance companies have argued for a very narrow

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interpretation of the term, with coverage afforded only if the cause of the damage is a truly unforeseeable, surprise event.

One example of this narrow interpretation pertains to insurance coverage for performance issues. When a product fails and results in damages, or when work is dam-

aged by a worker or by a piece of equipment, a lawsuit often ensues. Insurance companies have been vigilant in refusing coverage on the ground that defective work does not constitute an occurrence. In a recent case, an insurance company persuaded the Pennsylvania Supreme Court to construe the meaning of "occurrence" very narrowly. The issue in that case was whether damage to a coke oven battery was covered under a CGL policy. The court determined that the damage stemmed from the fact that the battery did not meet the specifications; thus, the damage was caused by defective work, not an unexpected accident, and there was no coverage. Accordingly, if the injury or damage is alleged to have been caused by faulty workmanship or deficient performance, it is not likely to be covered by insurance – at least not in Pennsylvania.

In the past, I have written about the broad indemnification contract provisions that are now commonplace in the industry. Many prime contracts and subcontracts require you to indemnify your customer even where the damage was caused by your customer's negligence - and even if you are without fault. My clients often

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ask whether their general liability policy will provide coverage in the event they are called upon to indemnify their customer for its negligence.


The question is a difficult one because there is no simple answer; the coverage determination depends upon the specific policy language in question and the facts and circumstances of the particular situation.

Some policies exclude coverage for liability assumed by the insured under any contract or agreement. If this is the case, then you will not be covered and you will need to purchase additional coverage for indemnity

ty obligations that you assume by contract. Contractual coverage containing an affirmative grant of coverage for contractual liability may be written as a separate policy or added to the standard CGL policy in the form of an endorsement.

It is important to note that even where the policy provides coverage for contractual indemnity liability, the damage will still not be covered if another exclusion applies. Thus, your customer may have the right to demand that you indemnify it for a loss even though that loss is not covered by your CGL policy. There can be a gap between your contractual obligations to your customer and the scope of coverage under your policy. This potential coverage gap presents a dangerous situation which

parties and their attorneys often ignore. It is very important to carefully review the indemnification provisions in any contract you sign so you are able to identify any gaps.

Fundamental to every contractor and subcontractor's safety program is an understanding of the precise scope of coverage afforded by its CGL policy. In the current economy in which many firms are willing to take on more risk than ever, understanding your CGL coverage is more critical than ever. Take the time to review your policy and the coverage it provides - or more importantly, does not provide. Without proper analysis and review by qualified individuals, a contractor could easily find itself with limited or even no coverage when it needs it most. 

Regional News ...

ACE Mentor to host fundraiser

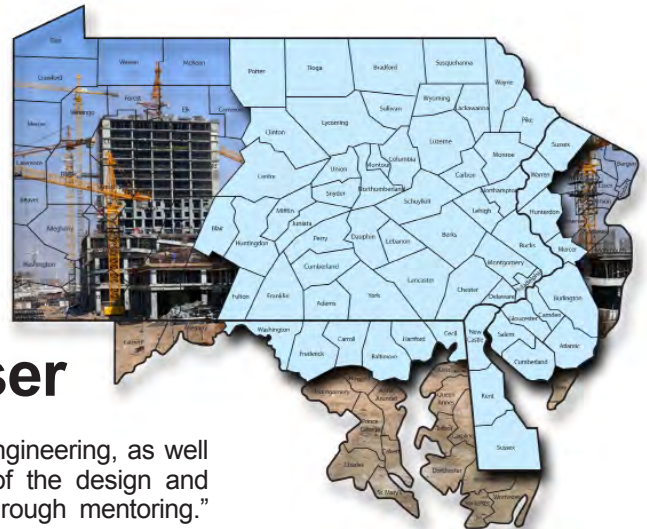
The ACE Mentor program of Central PA is hosting a Fundraiser Breakfast on Tuesday, May 17 from 7:30 a.m. to 9:00 a.m. The event will be held C. Ted Lick Wildwood Conference Center at Harrisburg Area Community College. Individual tickets are \$25.00, but various levels of sponsorship are available.

The ACE Mentor program's mission is to "enlighten and motivate high school students to career opportunities in Architec-

ture, Construction and Engineering, as well as other related areas of the design and construction industries through mentoring."

The Central PA ACE program started in York County in 2004 and now offers quality programs in four counties (Dauphin, York, Cumberland and Lancaster).

For more information head visit www.ace-mentor.org.



H.B. McClure Company to acquire CW Fritz customer base

H.B. McClure Company, Central Pennsylvania's leading commercial and residential mechanical contractor, announces the absorption of CW Fritz Company's customer base.

CW Fritz, a mechanical contractor formerly based in Lemoyne, PA, closed for business on April 25, 2011. Company leadership requested that H.B. McClure assume service contract customers under special arrangement. No other agreement for liabilities or assets exists.

H.B. McClure will now fulfill all existing CW Fritz Service and Main-

tenance Agreements.

"H.B. McClure is known for delivering quality, trust and value to its clients," said Robert F. Whalen, President of H.B. McClure. "That's why CW Fritz's leadership team turned to the H.B. McClure family. We will provide the best level of service to the former Fritz's customers and make the transition as smooth as possible."

For more information about H.B. McClure, visit www.hbmccclure.com.