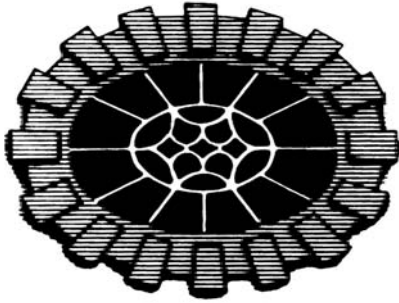


Insurance 101



*“He that scatters thorns,
let him not go
barefoot”*

-Benjamin Franklin

Presented by

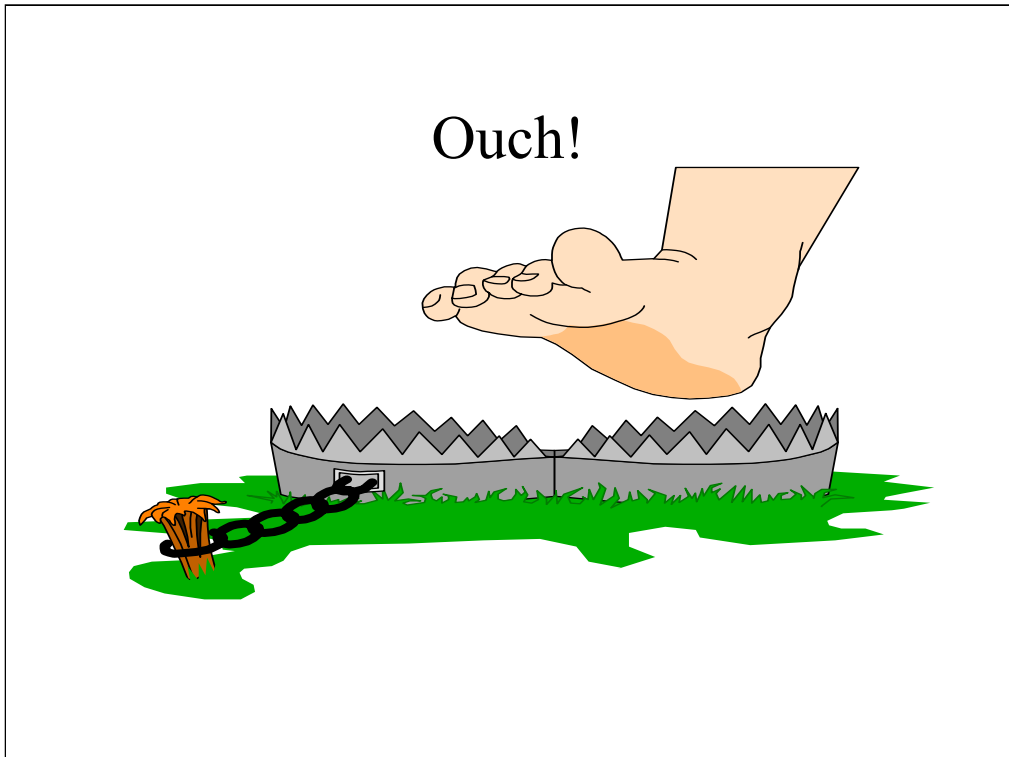
The McLaughlin Company

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Insurance policies are like shoes.

Just as you need different shoes for different conditions, you need a variety of insurance policies.

The goal of The McLaughlin Company is to make sure your policies protect you from those thorny liability problems you may encounter.

Is the Liability Loss Covered?

- Was policy in effect for responsible party?
- Does the allegation “trigger” coverage?
- Is the entity that is being asked to pay an “insured” under the policy?
- Is the loss excluded for this insured?

GOOD NEWS.....LOSS COVERED!

Is a Policy **in Effect** for the
Responsible Party?

When is Liability Coverage “Triggered”?

Occurrence

- **Business Auto Policy**
- **Employers Liability**
- **Commercial General Liability***
- **Publishers Liability***

Claims Made

- **Directors & Officers**
- **Union Liability**
- **Fiduciary Liability**
- **Employment Related Practices**
- **Errors & Omissions**

*Some policies - such as Commercial General Liability and Publishers Liability - may be written on either an OCCURRENCE or a CLAIMS MADE basis.

Commercial General Liability (Occurrence Form)

The insurance applies to Bodily Injury and Property Damage only if the bodily injury or property damage **occurs** during the policy period.

Until the introduction of the 1986 Insurance Services Office (ISO) commercial general liability (CGL) coverage forms, standard general liability insurance had traditionally been written exclusively on an occurrence basis. That is, coverage under a particular general liability policy applied if injury or damage occurred **during the policy period**. Even if the injury or damage was not discovered until much later, or the injured party was delayed for some other reason in making a claim, it was the date of the injury, not the date of the claim, that determined or triggered coverage under a particular policy.

Commercial General Liability (Claims Made Form)

The insurance applies to Bodily Injury and Property Damage only if a claim for damages is first made against any insured during the policy period.

The occurrence-trigger approach to liability insurance was historically found to work well for most liability exposures. For those that were not well-served by the occurrence trigger (e.g., certain types of professional liability, such as medical malpractice and directors and officers liability, where the results of an insured's negligent act might not come to light for some time), a different approach was developed. **Claims-made** liability policies provide coverage that is triggered not by the occurrence of injury or damage, but by the claim that is subsequently brought against the insured as a result of that injury or damage.

During the 1970s and early 1980s, it became apparent that a number of general liability loss exposures were developing characteristics similar to the exposures of professional liability, i.e., bodily injury or property damage that occurs during one year but produces a claim or series of claims in subsequent years.

One example of such an exposure is asbestos which causes injurious exposure which may occur over a period of several years among workers in a variety of industries.

When is a claim “made”

- “Claim” is a demand for money or services
- “Claim” is a written demand for money and services
- “Claim” is a notice given to the insurer of an incident that could give rise to a claim.
- “Claim” is not defined

The definition of “claim” varies from policy to policy. Sometime “claim” is not defined at all.

Under the “Claims Made” Commercial General Liability Policy, A claim is considered made when it is received and recorded by the insured or the insurer, or when the insurer makes a settlement, whichever happens first.

Does the Allegation Trigger Coverage?

Coverage is determined by the allegation being made and the individual or entity making the allegation. As you will see in the following examples, sometimes more than one policy will be triggered. Remember, however, that each policy is subject to its own set of exclusions.

Allegation: Bodily Injury and/or Property Damage arising out of Premises, Operations and/or Completed Operations

Source:

- The public
- Other entities (lessors, tenants, agents, contractors, subcontractors)

Insurance:

- Commercial General Liability

Allegation: Bodily Injury and/or Property Damage arising out of Premises, Operations and/or Completed Operations

Source:

- Employees
- Families of employees

Insurance:

- Against Employer:
Employers Liability
- Against fellow-employee:
Commercial General Liability

Allegation: Libel, Slander Defamation of Character

Source:

- The public
- Other entities
- Employees
- Former Employees

Insurance:

- Commercial General Liability *
- Publishers Liability
- Union Liability

CAUTION: Some Commercial General Liability Policies are being endorsed to remove this coverage. Ulico Casualty Company has eliminated this coverage from their Commercial General Liability Policy, but it is available under their Union Liability Policy.

Allegation: Infringement of copyright, trademark or slogan

Source:

- Other entities

Insurance:

- Commercial General Liability*
- Publishers Liability
- Union Liability

CAUTION: Some General Liability Policies are being endorsed to remove this coverage.

Allegation: Assumption of Liability under a contract

Source:

- Lessors
- Lessees
- Owners
- Agents
- Contractors

Insurance:

- Commercial General Liability
- Business Auto Policy

Allegation: Bodily Injury or Property Damage arising out of the furnishing of alcoholic beverages

Source:

- The public
- The government

Insurance:

- Commercial General Liability*

*Caution: Special Endorsements are needed if you are “in the business”, if a charge is made, or if a license or permit is obtained.

The liquor liability exclusion precludes coverage for bodily injury or property damage for which any insured may be held liable relating to the furnishing of alcoholic beverages. The exclusion applies only if the named insured is in the business of manufacturing, distributing, selling, serving, or furnishing alcoholic beverages. Therefore, the Commercial General Liability policy provides what has traditionally been called "host liquor liability coverage" by exception to this exclusion.

Allegation: Bodily Injury and/or Property Damage arising out of the ownership, maintenance, use or entrustment of automobiles

Source:

- The public

Insurance:

- Business Auto Policy

Allegation: Contingent Bodily Injury and Property Damage

Source:

- Other entities

Insurance:

- Commercial General Liability
- Publishers Liability

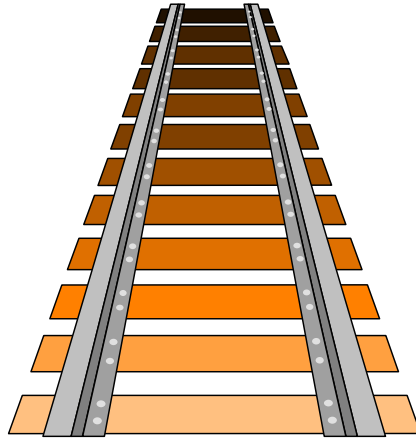
A “contingent liability” is one that is created by an unseen effect of another occurrence. For example, if a person were to suffer a stroke (bodily injury) as a result of a libelous remark, the insured would have a contingent bodily injury claim.

Even though this allegation triggers both the Commercial General Liability and Publishers Liability, there could be a gap in coverage.

Bridging the Gap

You have a problem if

- ⇒ your Commercial General Liability policy contains a professional acts exclusion
- ⇒ your Publishers Liability policy contains a bodily injury/property damage liability exclusion



Consider this scenario:

A magazine published by the union includes an article on how to perform a do-it-yourself tune-up on automobiles. A member claims he followed the instruction to the letter. However, during the course of the procedure, the engine backfires and injures him. Under this claim scenario, both the Commercial General Liability and the Publishers Liability policies of the union could attempt to deny coverage for the claim.

SOLUTIONS

- ☑ If possible, remove the professional acts exclusion from the Commercial General Liability Policy. (This may not be possible).
- ☑ Add the “broad form publishing exposures errors and omissions endorsement” to the Publishers Liability Policy. This would have the effect of covering not only financial loss arising from publishing errors and omissions, but also those producing bodily injury and property damage.

Allegation: Violation of employment contract, harassment, discrimination, failure to hire, failure to promote, wrongful termination

Source:

- Employees
- Former Employees

Insurance:

- Employment Related Practices Liability
- Union Liability

Coverage for employment-related claims is frequently sought, but rarely found under commercial general liability policy forms. Given the severity and frequency of employment practices claims in recent years, the majority of Commercial General Liability policies are being written with an employment related practices exclusion.

Allegation: Breach of Duty of Fair Representation

Source:

- Members

Insurance:

- Union Liability

Persons engaged in union activities generate a number of specialized professional liability exposures which are not covered by commercial general liability (CGL) policy forms. These exposures arise mainly from the Landrum-Griffin and Taft-Hartley Acts, which permit union members to sue union leaders for alleged official misconduct.

Allegation: Improper management, improper expenditures, imprudent investments

Source:

- The Government
- Members

Insurance:

- Directors and Officers Liability
- Union Liability

Allegation: Dishonest, criminal or fraudulent acts

Source:

- The Government
- Members

Insurance:

- Individual Labor
Leader Endorsement
(Defense costs only)

The Landrum-Griffin Act stipulates that union officials who are sued may not use union funds or union counsel for defense.

Allegation: Personal profit, remuneration or advantage to which the defendant is not entitled

Source:

- Members
- The Government

Insurance:

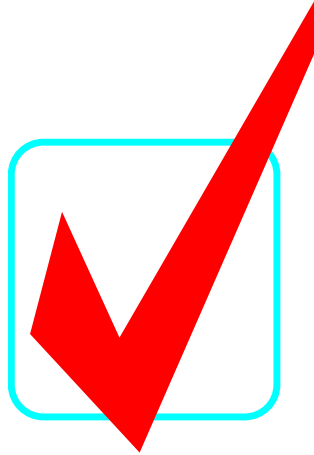
- Individual Labor Leader Endorsement (defense costs only)

There is also the exposure which the labor union itself has should it be obligated to reimburse union officials for their own legal counsel if it is ultimately proven that the officials were innocent of the charges made.

Examples of Union Liability Claims

- Breach of Duty of Fair Representation
- Discrimination or wrongful discharge
- Interference with an employee's job
- Budget overruns
- Improper documentation of funds received from U.S. government for various projects and programs
- Negligence in collective bargaining negotiations
- Libel, slander, defamation of character
- Failure to hold or attend meetings
- Improper hiring hall practices
- Election misconduct
- Unfair Labor Practices

Individual Labor Leader Endorsement



Defense coverage is available by endorsement for individual labor leaders in the event that a claim is alleged against them involving one of the policies three “dishonesty” exclusions*

⇒ Dishonesty of an insured

⇒ Personal profit, remuneration or advantage to which the insured is not legally entitled. Judgments where the individual would make restitution.

⇒ Conflict of interest arising from (1) failure of an Insured to account properly and fully for any personal profit or (2) direct or indirect ownership or control of assets or interest or (3) any dealings with the Union as an adverse party or on behalf of an adverse party.

The Individual Labor Leader Endorsement provides a separate limit for the **defense** of such claims. The premium for such coverage must be individually paid from personal funds of the insured labor leaders because it is against public policy for a union to expend funds to cover the defense of potentially dishonest acts

Allegation: Breach of Fiduciary Duty to a Benefit Plan

Source:

- Plan Participants
- The Government

Insurance:

- Fiduciary Liability

The Employment Retirement Income Security Act (ERISA) was passed in 1974 to assure that employees participating in pension and benefit plans would receive the benefits promised by such programs. This law created numerous fiduciary liability exposures and, in response, the fiduciary liability policy was created.

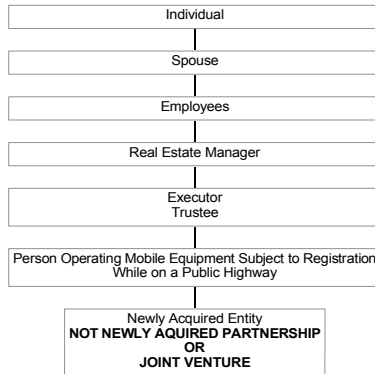
Is the entity being asked to pay an
“insured” under the policy?

Commercial General Liability

- Named Insured
- Officers
- Directors
- Stockholders
- Employees
- Real Estate Managers
- Newly Acquired **Corporations.....not Partnerships or Joint Ventures**

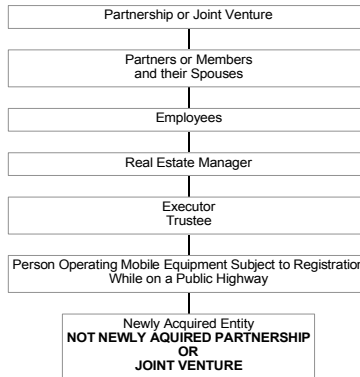
Commercial General Liability

If the named insured is an
Individual



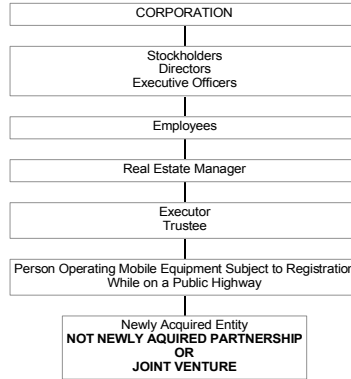
Commercial General Liability (continued)

If the named insured is a
PARTNERSHIP or JOINT VENTURE



Commercial General Liability (concluded)

If the named insured is a
CORPORATION



Business Auto Policy

- Named Insured
- Others using covered autos with permission
except:

Owner of Auto

Employees Using own auto

Used in auto business

Non-Profit Association Liability

- Entity named in the declarations
- Current, Past and Future Directors and Officers, Trustees, Employees, Volunteers or Members of any duly constituted committees of the entity

Union Liability

- The Named Labor Organization
- Any person who has been, now is or shall become a duly elected or appointed director, trustee or officer
- Employees of the Union
- Board Members
- Committee Members
- Shop Stewards
- Business Agents

Publishers Liability

- Named Insured
- Any person who is a partner, officer, director, stockholder or employee of the Named Insured, but only while acting in a professional capacity

Fiduciary Liability

- The specific plan designated in the policy
- The plan sponsor
- Any individual serving as a trustee, director, officer or employee of the plan
- Any other person or organization specified in the policy.

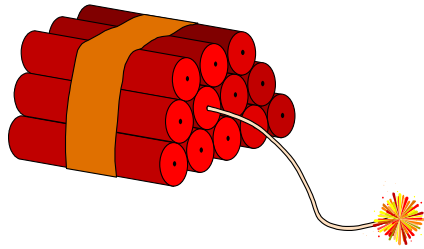
Joint Ventures

Joint Ventures present
special problems



JOINT VENTURE A pooling of financial resources and skills of several entities in order to undertake activities that are beyond their individual and separate abilities.

THE PROBLEM



There is no coverage for a **JOINT VENTURE** unless it is specifically named on the policy

Often Labor Organizations will join forces for special projects:

- ⇒organizing campaigns
- ⇒publications
- ⇒training
- ⇒lobbying efforts

A claim made against the **joint venture** would not be covered under the policies covering the individual members of the joint venture.

Is the loss excluded for this insured?

There are four primary reasons for exclusions:

⇒ Coverage can be better provided by another type of policy. The Commercial General Liability policy excludes “Bodily injury” to an employee of the insured arising out of and in the course of employment because this coverage is found under workers compensation insurance.

⇒ Coverage can be provided, but the insurer must be notified and allowed to charge an additional premium for the exposure (e.g., watercraft liability).

⇒ Coverage cannot be provided because of the catastrophic nature of the exposure or the exposure is an uninsurable cost of doing business (e.g., “war” or failure to perform a contract)

⇒ Coverage would be against public policy. It would be against public policy to protect an individual from the consequences of their own deliberate dishonest acts.

Contractual Liability Exclusion

It is important to make sure your insurance coverage matches the exposures you are assuming under your contracts!

Contractual Liability Exclusion This insurance does not apply to:

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) Assumed in a contract or agreement that is an "**insured contract**", provided the "bodily injury" or "property damage" occurs subsequent to the execution of the contract or agreement; or
- (2) That the insured would have in the absence of the contract or agreement.

“Insured Contracts”

- (1) A contract for a lease of premises, but not fire damage liability to property you lease or rent or temporarily occupy with the permission of the owner.
- (2) A sidetrack agreement.
- (3) Any easement or license agreement, except in connection with construction or demolition operations on or within 50 feet of a railroad.
- (4) An obligation, as required by ordinance, to indemnify a municipality, except in connection with work for a municipality.
- (5) An elevator maintenance agreement.
- (6) That part of any other contract or agreement pertaining to your business under which you assume **tort liability** of another party to pay for “bodily injury” or “property damage” to a third person or organization.

“Tort Liability”

“Tort Liability” means liability that would be imposed by law in the absence of any contact or agreement.

Employment Related Practices Exclusion

Employment Related Practices Exclusion Excludes bodily injury or personal injury arising out of:

- (1) refusal to employ;
- (2) termination of employment;
- (3) coercion, demotion, evaluation, reassignment, discipline, defamation, harassment, humiliation, or similar employment-related practices, policies, acts, or omissions; or
- (4) consequences thereof.

Liquor Liability Exclusion

Liquor Liability For any insured in the business of manufacturing, distributing, selling, serving or furnishing alcoholic beverages, "bodily injury" or "property damage" is excluded if it results from the following:

- (1) causing or contributing to the intoxication of any person;
- (2) furnishing alcoholic beverages to a person under the legal drinking age; or furnishing alcoholic beverages to a person under the influence of alcohol;
- (3) any statute, ordinance or regulation that relates to the sale, gift, distribution or use of alcoholic beverages.

This exclusion does not apply to host liquor situations for insureds that are not in the business of selling, manufacturing, distributing, servicing or furnishing alcohol. Business lunches, parties and social functions sponsored by the insured are covered for host liquor liability **unless there is a statute, ordinance or regulation relating to the particular event.**

Have you ever...

- hosted a fund raiser or casino night?
- sponsored a Labor Day Picnic where beer was sold?
- held an event where you were required to obtain a permit or license to serve alcohol?



If you sponsor or host any events where liquor is served and a charge is made or pouring license is required your General Liability Policy should be modified by adding either

CG 21 50 -- Amendment of Liquor Liability Exclusion

This exclusion is basically designed for nonprofit social organizations. Extends the liquor liability exclusion to apply to businesses which **regularly** serve alcoholic beverages, whether or not a profit is derived.

CG 21 51 -- Amendment of Liquor Liability Exclusion -- Exception for Scheduled Activities

Modifies the liquor liability exclusion in the same way as CG 21 50 endorsement except it **provides coverage for specific activities** (such as a company picnic or year-end party) which can be scheduled through this endorsement.

Expected or Intended Injury

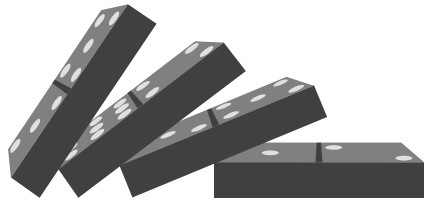
Expected or Intended Injury Except for any "bodily injury" that may result from **reasonable force** used by any insured to protect or defend any person or property, any "bodily injury" or "property damage" that the insured expects or intends to cause, is not covered by this insurance.

What is “Reasonable Force”?

The definition of “reasonable force” will vary from state to state. A court in New York is likely to interpret this differently from a court in Oklahoma where a “Make my Day” law was recently enacted.



What is “Expected or Intended”?



The expected and intended wording is being challenged and clarified in court cases across the country

The challenges issued are to clarify that even though the act was intentional, if the resultant damage or injury is greater than was expected or intended, will the liability policy respond?

This is of particular relevance to labor organizations. Consider the question of picket line violence. Labor organizations are frequently sued as a result of violence accompanying strikes. Insurance companies may use the “expected or intended” wording to deny coverage.