



Current Articles 1999 –December

Y2K -Coming Events ???

In a few weeks the new millennium will be here. By now you have no doubt notified your clients for both personal and commercial risks of the possible problems that may occur as a result of the year 2000. Insurers have attached notices to renewals and have introduced various exclusionary clauses. As there has never been such a precedent before, we must "wait and see" what claims may occur.

In the United States there have been numerous class actions commenced, mainly against software manufacturers, where software programs will not handle the year 2000.

But there is a new issue that has been raised by Xerox and GTE in the US. They are attempting to recover certain costs that have been spent to prevent losses to property and most particularly to third party property which, if occurs, would develop into a third party action against the named companies. This is being attempted under the provision of a **"Sue and Labour Clause"**.

The Sue and Labour clause dates back to marine insurance and was intended to allow insureds to be reimbursed for reasonable expenditures made to prevent or mitigate losses that would be covered by the policy. There is no standard clause and many are in manuscripted policies. From a marine manual it defines the clause to pay for "charges incurred by an insured in averting or diminishing a loss. They are recoverable **in addition to the full sum insured.**" A Homeowner policy, under Additional Conditions, has a slightly different wording but when was the last time that you saw it used in settling a personal loss?

The Xerox/GTE situation is trying to apply the clause to pay to recover Y2K remediation costs. The cases involve over \$500 million U.S. plus costs. One of the arguments against using the clause is that these remediation expenses have been incurred since 1993 and therefore a timely notice has not been provided to the insurers if coverage was appropriate. Coverage may not be appropriate where the costs have been incurred for years without notice being given to the insurer.

Another argument to defend the use of the clause is in the actual manuscripted wordings. Some refer to a loss being "imminent" which ordinarily means "ready to take place". These losses would include expenditures which were made days, months or even years prior to the date of the actual loss and therefore it would be unlikely that the Sue and Labour provisions would apply.

Apart from the possible claims as a direct result of a court interpretation of the clause, insurers are very concerned that the clause will apply **in excess of the policy limits**. A recent actuarial survey in the USA indicated between \$15 billion to \$35 billion in Y2K-related legal costs and that does not include additional potential litigation from Sue and Labour attempted litigation cases.

In the early part of next year, we can expect much publicity on this and other Y2K issues. In the mean time have a Merry Christmas and a Happy New Year - but watch out for those Millennium Bugs!!!

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