



Current Articles 2000 – April

An Additional Commercial Liability Endorsement

As a follow-up to my article of last month and further to a few phone inquiries may I clarify several situations and remedies by way of another endorsement to the Commercial General Liability policy.

In order for a claim to be paid under a CGL there must be loss or damage as a result of Bodily Injury or Property Damage. Needless to say, that is a basic concept as to coverage under a liability policy. The CGL has an exclusion applicable to "Property Damage to your product arising out of it or any part of it". This will exclude claims under the basic policy wording for damages as a result of a recall of a part or work performed in relation to such part and where there is no bodily injury or property damage. For example, if an insured innocently installs a part and later, and perhaps as a result of a failure of such a part for someone else, finds it necessary to recall all such similar parts or products, the cost of such recall will not be covered by the basic policy. Similarly if the insured produces or manufactures a product that must be recalled, the resulting expenses will not be covered. A few years ago there was the famous case involving Johnson and Johnson and the Tylenol recall. Consider the situation of a manufacturer of components for the aircraft industry. A part failure requires that all aircraft with similar components be grounded until the defective part is repaired or replaced. Imagine the loss of revenue to the airline for the down time of all aircraft that are affected.

Coverage for product recall is available by a Product Recall Extension being added to the Commercial General Liability Policy. Of course for hazardous types of risks, such as pharmaceutical manufacturers, automotive, aircraft related industries, electrical component manufacturers, coverage may not be available as an extension. In this case a separate Product Recall Coverage must be obtained and with appropriate premiums and high deductibles.

The Product Recall Extension deletes the exclusion mentioned above and agrees to pay the insured for the cost or expense which the insured incurs for the withdrawal, recall, inspection, repair, replacement, adjustment or disposal of:

1: *the insured's product*

2: *the Named Insured's work*

3: *impaired property*

arising from a known or suspected defect, deficiency, inadequacy or dangerous condition in said product, work or property.

This endorsement is extremely important to food packagers and processors. If a batch of a food product is deemed contaminated, all products under the batch label must be recalled and if such recall is from goods already sold and delivered to customers, the customer will expect a credit or have the product replaced. All of this would be to the expense of the supplier.

This is an overview of the purpose of the Product Recall extension. There are other exclusions which may exclude claims for loss of use of any property arising from a withdrawal. This very

clearly illustrates that as applicable to my aircraft example, such a manufacturer would not be adequately covered by this extension but would require a Product Recall or Sistership Liability Policy as it is referred to with aviation insurers to cover the down time (loss of use).

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