



Current Articles 2003 – February

New Exclusions - continued ...

Last month I commented on the new exclusion being introduced for Fungi and Fungi Derivatives. I received several inquiries as to why the new exclusion when the existing Personal Lines policies already excluded loss or damage caused by "mould". The change is for a clarification as the courts had narrowly applied the previous mould exclusion to just that - damage by mould. The new Fungi and Fungi Derivatives exclusion amends the previous "mould" exclusion and by the definitions, the new exclusion will apply to not only loss or damage by mould but to losses caused by ancillary causes related to mould such as mildew, spores produced and reproduced and the resultant toxic or allergenic bi-products.

Since my last article, several insurers have introduced their Fungi and Fungi Derivatives exclusion to Commercial General Liability policies. Some insurers exclude coverage for bodily injury, property damage, personal injury and Medical Payments directly or indirectly caused by the defined mould. This means that the coverage may remain for products and completed operations. Although the insurers' form may not exclude mould losses from the completed operations coverage it is obvious that insurers will carefully underwrite and require much more information about how a client deals with the prevention of mould before accepting a risk. In other words it is quite possible that the underwriting of risks that may create mould losses will be more difficult to place. This may apply to building material dealers, general contractors, renovation and remedial contractors, plumbers, roofers and any type of risk that may cause a water loss or fail to remedy a water situation.

Other insurers may apply a sub-limit to products and completed operations for mould-related losses of as low as \$250,000 regardless of the basic CGL limit. Insurers may not permit an increase in this mould sub-limit. No doubt there will be specialty markets to assist risks that are limited or are excluded from mould-related claims, just the same way coverage could be arranged for pollution and other environmental risks.

Fungi exclusions will also apply to Wrap-up Liability policies, Commercial Umbrella Policies and Excess Liability Forms, Machinery Breakdown Coverage (Boiler and Machinery), Builders Risks, Condominium Corporation Forms and many Property and Inland Marine forms.

The next exclusion which appears initially to be quite common is an absolute exclusion on liability policies for Asbestos. This is an Absolute Exclusion and is quite inclusive and lengthy and refers to any exposure to asbestos or manifestation of any disease relating to the exposure to asbestos at any time. Rather than reprint this lengthy exclusion, I would recommend that you review its contents and advise your clients accordingly.

The last new exclusion is the Drug Cultivation, Manufacture, and Distribution Exclusion and is being applied by some insurers to Property policies (commercial and in some cases to personal forms), Business Interruption, Crime, Personal Liability and several Inland Marine policies. This will exclude coverage for loss or damage caused directly or indirectly by:

a) a criminal or willful act or omission of the insured or at the direction of the Insured, or by Infidelity of any person to whom the Insured property is entrusted.

b) Any activity relating to the illegal cultivation, manufacture or distribution of any drug, including but not limited to, cannabis, whether or not the Insured has knowledge of such activity.

This is extremely important to owners of rented properties who may find a tenant growing "the weed" in the building and after applying excessive water and moisture, completely destroys the structure. The landlord may have no knowledge of such an operation until after the tenant vacates the property and the owner is left with an uninsured mess. Care should be used to alert clients who may be renting properties of the potential effect of this endorsement.

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