

Transfer of Risk-Understanding Insurance Terminology and the Contract of Coverage

Presented by:
Daniel P. O'Brien, JD

Copyright © 2010 Compensation Analysis, Inc.
Not to be reproduced in any manner without prior consent

UNDERSTANDING INSURANCE TERMINOLOGY

AUTOMOBILE INSURANCE

Coverage on the risks associated with driving or owning an automobile.

- Covers the vehicle not a driver;
- It can include:
 - **Collision**- Reimburses you for damage to YOUR automobile sustained in a collision with another car or with any other object, movable or fixed
 - **Liability**-This coverage will pay for BODILY INJURY and/or PROPERTY DAMAGE to the OTHER party for which you become legally responsible of an automobile accident.

UNDERSTANDING INSURANCE TERMINOLOGY

AUTOMOBILE INSURANCE (cont'd)

It can include:

- **Comprehensive**-Provides coverage for any direct and accidental loss of, or damage to, YOUR covered automobile and its normal equipment, to include but not limited to fire, theft or malicious mischief
- **Medical**- Will pay reasonable expenses incurred for necessary medical and /or funeral services because of bodily injury caused by accident and sustained by YOU OR ANY OTHER PERSON WHILE OCCUPYING A COVERED AUTOMOBILE.

UNDERSTANDING INSURANCE TERMINOLOGY

AUTOMOBILE INSURANCE (cont'd)

It can include:

➤ **Uninsured/Underinsured Motorists- 2 Types**

1. UNINSURED MOTORIST BODILY INJURY
Will pay you and your passengers for BODILY INJURY cause by a negligent uninsured motorist, a hit-and-run driver, or by a driver whose insurer is insolvent.
2. UNINSURED MOTORIST PROPERTY DAMAGE
Will pay for damages to your automobile, set up to a limit, when caused by a negligent uninsured motorist.

UNDERSTANDING INSURANCE TERMINOLOGY

AUTOMOBILE INSURANCE (cont'd)

One more issue:

➤ **Non-Owned & Hired Auto**

Non-Owned & Hired auto liability covers bodily injury and property damage caused by a vehicle you hire (including rented or borrowed vehicles) or caused by non-owned vehicles (vehicles owned by others, including vehicles owned by your employees).

It usually does not pay for physical damage to the vehicle itself; that's covered by the owner's insurance. Although this option is sometimes available.

UNDERSTANDING INSURANCE TERMINOLOGY

AUTOMOBILE INSURANCE (cont'd)

One more issue:

➤ **Non-Owned & Hired Auto**

Examples:

- You send an employee to pick up lunch.
- While on a business trip, you rent a car.
- To impress a visiting dignitary, you send a limo to have him picked up.
- An employee runs to pick up office supplies.

UNDERSTANDING INSURANCE TERMINOLOGY

Comprehensive General Liability Insurance (CGL)

The commercial general liability policy provides comprehensive general liability coverage for commercial risks covering all liability exposures for all locations and causes of loss **except those specifically excluded or limited** either within the coverage form or by endorsement. Protection may be provided on either an "occurrence" type of policy or on a "claims-made" basis.

UNDERSTANDING INSURANCE TERMINOLOGY

Comprehensive General Liability Insurance (CGL)

What is most important in your CGL is to determine what is excluded.

Exclusions:

- Environmental
- Employee related suits
- Acts "expected or intended"
- Professional Liability
- Etc.

UNDERSTANDING INSURANCE TERMINOLOGY

Property Insurance

Indemnifies an insured whose property is stolen, damaged, or destroyed by a covered peril. Coverage for direct or indirect property loss, which can be analyzed under the following headings:

- *Peril*-a particular peril may be included or excluded. (Fire, Flood, Earthquake, etc)
- *Property*-a policy may cover only specified or *scheduled* property. Remember Limits:
 - Blanket vs. Schedule value
 - Margin Clause
 - Contents
- *Property in the Open*

UNDERSTANDING INSURANCE TERMINOLOGY

BOILER AND MACHINERY INSURANCE

Covers losses resulting from the malfunction of boilers and machinery. This coverage is usually excluded from property insurance creating the need for this separate product.

UNDERSTANDING INSURANCE TERMINOLOGY

Inland Marine-Contractor's Equipment-Floater

Insurance, including Floater policies, which covers property that can be transported from one place to another.

Examples:

- Non-licensed vehicles
- Contractor's equipment
- Lawn Maintenance Equipment
- Radio Equipment
- Plows and Salt Spreaders

UNDERSTANDING INSURANCE TERMINOLOGY

Professional Liability Coverage's

Police Professional-Legal liability for claims of monetary damages that arise from negligence or alleged negligence arising out of the performance of the Participant's law enforcement duties or out of the ownership, maintenance or use of the premises designated in the Declarations (Jail) and all necessary and incidental operations.

Who is normally covered:

1. The City
2. Police officers while acting on behalf of the City
3. Volunteers while acting on behalf of the City

UNDERSTANDING INSURANCE TERMINOLOGY

Professional Liability Coverage's (cont'd)

Fire Fighters Professional-Legal liability for claims of monetary damages that arise from negligence or alleged negligence arising out of the performance of the Participant's fire fighting duties.

Who is normally covered:

1. The City
2. Firefighters while acting on behalf of the City
3. Volunteers while acting on behalf of the City???

UNDERSTANDING INSURANCE TERMINOLOGY

Professional Liability Coverage's (cont'd)

Public Official Liability-insure against wrongful conduct that arises out of the insured's' administration of duties on behalf of the entity they serve. This coverage was originally designed to cover claims for municipal planning and zoning, errors, omissions, neglect or breach of duty, violation of civil rights, wrongful termination or sexual harassment claims brought against elected and appointed officials.

Today policy exclusions abound in Public Official's coverage. Most public officials policies written in the current market cover:

UNDERSTANDING INSURANCE TERMINOLOGY

Electronic Data Processing

Coverage on data processing equipment, data processing media (such as magnetic tapes, disks), and extra expense involved in returning to usual business conditions. Coverage can be obtained on a specified perils basis or on an All Risk/All Peril basis.

The data processing equipment is usually written as all risk/all peril on a specifically scheduled basis. The data processing media is usually written on an all risk/all peril basis

UNDERSTANDING INSURANCE TERMINOLOGY

Crime Coverage's

1. Public employees' dishonesty bonds- for employee theft involving money, securities, or property that does not include money and securities.
2. Broad Form Money & Securities-theft other than employee

UNDERSTANDING INSURANCE TERMINOLOGY

Umbrella Liability

Excess liability coverage above the limits of a basic business liability insurance policies.

Issues:

- How much is enough?
- Does the contract "follow form"

COVERAGE ISSUES

In today's marketplace, there are many agents and brokers selling a dearth of insurance products to public entities. They all claim to be the same, but are they? There are three fundamental coverage triggers available in the marketplace of insurance for public entities:

1. Occurrence Coverage;
2. Claims Made Coverage;
3. Claims Paid Coverage.

Each of these has its own vague set of rules.

COVERAGE ISSUES

Occurrence Coverage covers you for an occurrence that takes place while the policy is/was in force. It doesn't matter when it was reported. Coverage is still available, but certain actions may be barred, based on the Statute of Limitations. These apply whether coverage is available or not. This can apply to all coverage.

COVERAGE ISSUES

Claims Made Coverage applies if the claim occurs during the policy period and is reported between the policy periods or during the extended reporting periods offered in the policy.

COVERAGE ISSUES

Claims Made Coverage offers prior acts coverage that could date back to incorporation or to the last uninterrupted claims made policy. If you change claims made carriers and the new carrier offers you full prior act coverage, the new carrier steps into the shoes of all of the prior claims made carriers with the exception of claims that are known or should have been known. Note that the new carrier must specifically offer full prior acts coverage, if it does not you can have a significant coverage gap.

COVERAGE ISSUES

Claims Made Coverage is typically written for professional exposures such as Public Officials Liability, Police and Firefighters Professional Liability, Employment Practices Liability and other supporting lines of coverage such as Employment Benefit Liability.

COVERAGE ISSUES

Claims Paid Coverage applies as long as a claim occurs during the policy period and is settled while the policy is still in force. Most liability claims that are pending or incurred but not reported, are the responsibility of the policy holder in the event the entity exists from the pool.

COVERAGE ISSUES

Substantial gaps in coverage can arise when changing from one form of coverage to another. For example, if you move from a Claims Made Policy to an Occurrence Policy, you will likely lose your Prior Acts Coverage, subject to extended reporting periods or prior acts coverage offered by the occurrence carrier.

COVERAGE ISSUES

Don't be fooled by an argument that the Statute of Limitations will protect you if you purchase occurrence coverage to replace a claims made policy. You should look at the option of purchasing tail coverage for your claims made policy.

Remember it is not at all uncommon for courts to find coverage dating back 10 – 20 years for professional liability claims.

Be sure you know what you are getting into.

COVERAGE ISSUES

CLAIMS MADE TO OCCURENCE EXAMPLE: A City had potential liability for improper oversight (Errors & Omissions) when a developer used inferior slag to construct a cul de sac. Over time the expansion and contraction of the slag caused pressure to be exerted against the foundations of homes on the cul de sac, resulting in significant structural damage. Suit was filed against the developer who was out of business and against the City. The Court found that the Statute of Limitations did not begin to run until the homeowners knew of the damage. Because the City had prior acts coverage, their insurance carrier provided a defense and indemnification.

COVERAGE ISSUES

There is nothing wrong with occurrence policies. They used to be the gold standard and if from your first day in business, you have occurrence coverage you are protected to the extent of the policy coverage.

COVERAGE ISSUES

But be careful if from the date of incorporation until now, perhaps 5 or 10 years, you have had Claims Made Coverage and would like to switch to Occurrence or Claims Paid Coverage.

You risk losing your prior acts coverage and exposing your entity to potential uninsured losses. You have to know what you are paying for.

Cheaper is not necessarily better.

COVERAGE ISSUES

Claims Paid Coverage offers little of the benefits of the first two, but that doesn't make it a deal breaker. If you are an informed consumer, and have analyzed the Claims Paid Agreement and are content to be insured in that environment indefinitely, then this may work for you.

COVERAGE ISSUES

Remember that insurance is nothing more than risk transfer. Transferring risk usually involves selecting the best price, service and coverage.

Claims Paid Coverage tends to put a public entity in the position of having far fewer choices when it comes to any of the above

COVERAGE ISSUES

It will be extremely difficult to exit a claims paid format and by doing so, you may expose the your public entity to uninsured losses. Tail coverage is not a practical option, as it will not cover claims that are known or in progress.

COVERAGE ISSUES

Occurrence Coverage covers you for an occurrence that takes place while the policy is/was in force. It doesn't matter when it was reported.

Coverage is still available, but certain actions may be barred, based on the Statute of Limitations. These apply whether coverage is available or not. This can apply to all coverage.
