

## Beyond General Liability Insurance: Other Liability Exposures You Should Be Aware Of!

By: Jeff Cavnac, CPCU, RPLU, ARM, President of Cavnac & Associates.

*The following material is provided for informational purposes only. Before taking any action that could have legal or other important consequences, speak with qualified legal and insurance professionals who can provide guidance that considers your own unique circumstances, including applicable employment laws.*

**Every contractor of any size** likely carries Commercial General Liability Insurance. Not only is it prudent to carry, nearly all contracts a contractor will sign require it. Auto Liability and Employers Liability (part of a Workers Compensation policy) are also mandatory in most agreements. There are however a number of other liability exposures that exist for a construction company and should be evaluated and considered. As mentioned above General Liability, Auto Liability and Employers Liability are common requirements in a construction agreement. Insurance doesn't cover everything and these three policies are specific in the coverage they provide. An insurance policy is a contract. In exchange for premium paid, the insurer agrees to assume certain risks. These risks are spelled out in the policy. While very few insured's ever read their policy, they are actually pretty straight forward and basically include the following provisions:

- I. Insuring Agreement- this identifies what the policy covers
- II. Exclusions- this lists specific circumstances that are not covered.



III. Definitions- defines certain terms in the policy.

IV. Terms and Conditions- this lists additional responsibilities of each party (the insured and the insurer)

The purpose of this article is not to go in to great detail on liability coverages. The purpose is to identify those liability exposures commonly faced by a contractor.

**Commercial General Liability** covers a contractor for its legal liability arising out of its operations that result in either Bodily Injury (BI) or Property Damage (PD). It is imperative that the Insuring Agreement is written broad enough to encompass what the contractor actually does. Equally important is pointing out that unless there is Bodily Injury or Tangible Property Damage there is no coverage.

While an insured is not required to have an intimate knowledge of all the policy terms it should be understood, what is covered, what isn't and what their responsibilities are.

**Auto Liability** is pretty straight forward. If you are driving a covered auto and damage someone else's property or injure someone your Auto Liability policy will respond. This policy commonly extends to both rented and non-owned autos as well.

**Employers Liability**- Part One of the standard Workers Compensation policy covers the employer's statutory liabilities under workers compensation laws. Part Two of the policy covers liability arising out of employees' work-related injuries that do not fall under the workers compensation statute. This is included when you buy a Comp policy and claims are rare.

## Other Liability Exposures

**Contractors Professional Liability (CPrL)**- Professional Liability covers a contractor for its legal liability arising out of Professional Services. Unlike General Liability, there are no common Professional Liability policy forms. Every policy is different. The definition of Professional Services is critical. Ideally it is written broadly so it includes:

- Design Errors- Some Contractors have Design Professionals on staff in addition many construction trades involve incidental design (mechanical, electrical etc.)
- Vicarious Liability- If a Contractor hires an architect or engineer, they are responsible to the upstream party for the errors or omissions of the downstream consultant. Ideally the downstream party will have Professional Liability as well, regardless the Contractor is ultimately responsible to their client.

- Construction Errors or Omissions- mistakes can be made in the construction process don't cause either Bodily Injury or Property damage, but can result in significant financial losses. Unlike General Liability which requires BI or PD, a Professional Liability policy also extends to pure financial loss.

While Contractors Professional Liability may not be a contractual requirement, every contractor should evaluate and consider this coverage.

**Contractors Pollution Liability (CPL)**- Most General Liability policies have broad pollution exclusions. A CPL policy is designed to plug that hole. CPL provides third-party coverage for bodily injury, property damage, defense, cleanup, and related defense costs as a result of pollution conditions (sudden/accidental or gradual) arising from contracting operations performed by or on behalf of the contractor. A CPL policy can be written on its own but is more commonly packaged with Professional Liability. Nearly every contractor has a pollution exposure of some type.

**Directors & Officers Liability-(D&O)**- D&O covers the Directors and Officers of a company for mistakes made in their role as a D or O. Looked at another way, it is a management liability policy that provides coverage for managerial decisions that cause other people financial loss. Similar to Professional Liability it doesn't require BI or PD, as a matter of fact, BI and PD is commonly excluded. A D&O serves as a catchall for business related law suits that are not covered by a General Liability or Professional Liability policy. This coverage as a role is under purchased.

**Employment Practices Liability (EPL)**- EPL covers a contractor for its legal liability arising out of wrongful termination, harassment, discrimination and other employee related grievances. Coverage can also extend to third parties. Being an employer is complicated which is why this coverage is commonly purchased.



**Fiduciary Liability-** This exposure arises from the obligations set forth in the Employee Retirement Income Security Act (ERISA) of 1974. It protects individuals working for the insured that are responsible for creating and managing employee benefit programs. This is a low frequency type of exposure but is commonly purchased by companies that offer 401K and other employee savings programs.

**Employee Benefits Liability-** Often an add-on to a General Liability policy, this inexpensive policy covers a company for its legal liability arising out of the “administration” of an employee benefit program.

**Cyber Liability-** Cyber Liability was almost non-existent 10 years ago...this is now the fastest evolving exposure faced by a contractor. Cyber Liability (which is commonly combined with first party Cyber exposures) protects an insured from legal liability arising out of data breaches and other violations of their data base. There are no standard Cyber policies, all are unique and coverage can vary dramatically. Every contractor, regardless of size, should fill out a Cyber application and obtain a quote. Even if the coverage isn't purchased, completion of the app will act as a self-audit on a company's internal policies and procedures and will enable the company to better manage this exposure.

**Aircraft Liability-** Most contractors who own an airplane know they need a separate aircraft policy, but what some contractors don't realize is that Drones require their own insurance as well. General Liability policies specifically exclude anything related to Aircraft and Drone falls in that category. Fortunately Drone Liability policies are widely available and relatively inexpensive. Side note: Most equipment policies specifically exclude “airborne” exposures. If you have an expensive camera mounted to your drone, you should make sure it is appropriately insured.

**Watercraft Liability-** Similar to Aircraft, liability arising out of the use of a watercraft is a common exclusion under a General Liability policy. Although there are some exceptions for smaller craft, if you have a significant exposure this should be reviewed to make sure your coverage is appropriate.

**FINAL COMMENTS:** All of these additional liability exposures should be considered and evaluated. This is where the value of a risk management oriented insurance broker comes in to play. The first step in the Risk Management Process is Risk Analysis. It is always better to understand the exposure and what the cost would be to insure it than simply to ignore it. Regardless of whether you insure it or not, you should manage the risk.