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Top 10 List of Scariest Insurance Policy Terms

SDV attorneys spend a lot of time reviewing insurance policies for our construction industry clients. From analyzing policies that are meant to provide additional insured coverage to our general contractor clients, to parsing through OCIP and CCIP placements sent to us by our broker colleagues, we've seen it all. Sometimes coverage can be a scary thing, so in honor of Halloween, here is our "Top 10 list of Scariest Insurance Policy Terms" we've seen over the past year.

- 1. Complete bodily injury exclusions.** Especially in markets where subcontractor insurance costs are high and profit margins are low, subcontractor policies contain bodily injury exclusions for employees at an alarming rate. Exclusions this broad can mean no coverage when an injured employee brings a claim against an additional insured, thereby exposing the additional insured's corporate program to a loss which otherwise should be transferred downstream.
- 2. Privity of contract in additional insured endorsements.** It's pretty much settled in several major jurisdictions – if the endorsement says, "when you and such person or organization agree," additional insured coverage is limited to only the entity in a direct contract with the named insured. We continue to see this language pop up in schedules on otherwise good additional insured endorsements all the time.
- 3. Height exclusions.** Manuscript endorsements barring coverage for work at heights are fairly common in major cities and can be problematic for any contractor working on a building's exterior, such a scaffold subcontractor or a roofing subcontractor. Even worse are exclusions for work performed on buildings of a certain height. Regardless of whether the contractor is working on the inside or the outside of the building, such overly broad exclusions can spell no coverage.
- 4. Builder's risk exclusions on CGL policies.** The common logic is that claims for ongoing operations property damage should be handled by builder's risk policies. Although this is true, having a builder's risk exclusion on your CGL policy can pose a host of unintended consequences. Since builder's risk policies provide first-party coverage, they will not fund the insured's defense in the event of a claim – and if there is a builder's risk exclusion, the insured will be paying their own attorney to fend off that construction defect suit.
- 5. Sloppy naming of insureds.** We recently came across a policy insuring "ABC Contracting, et al." We were told that this included another company, XYZ Contractor, as a named insured because of the "et al." Personally, I don't trust that little "et al." phrase to provide coverage if XYZ suffers a major loss.
- 6. Scope of work exclusions.** We often see policies with exclusions for the precise scope of work a contractor is intending to perform on a project – for example, a roofing subcontractor with a total roofing exclusion. These sorts of exclusions often appear on policies for contractors who are jacks-of-all-trades, and who are looking for a way to keep their insurance costs low. Or, perhaps they didn't tell their broker what they do!
- 7. Scope of work exclusions in disguise.** Scope of work exclusions are so problematic and, unfortunately, so prevalent, they make this list twice. We have seen many policies with scope exclusions masquerading as something innocuous, like a "classification limitation." If a drywall subcontractor's coverage is limited to the classification listed in the declarations, and the declarations only list "masonry," they have no coverage for their drywall work.

The Right Choice for Policyholders

- 8. Missing endorsements.** Many insurance industry professionals (even sophisticated brokers and risk managers) misunderstand the scope of follow form coverage on excess policies. With this misunderstanding can come major coverage gaps. If excess policies are not endorsed to provide primary/non-contributory coverage for additional insureds, then the excess policy will not respond before the additional insured's own primary coverage 99% of the time.
- 9. Over-broad wrap up exclusions.** Most subcontractors have wrap exclusions on their policies that are perfectly acceptable. The problem is when the wrap exclusion applies to "projects in which you are involved," because even if the subcontractor is excluded from the wrap their own policy may not respond to a loss. Another common problem we've seen is endorsements that bar coverage whenever the project is insured by project-specific insurance. If the owner or general contractor have a project-specific policy in place that doesn't extend to the subcontractors, the subcontractors are expected to bring their own coverage – but not with this endorsement!
- 10. Fraudulent endorsements.** This one isn't strictly an insurance policy provision, but it makes the list because of just how scary it truly is! We've seen an unfortunate number of endorsements submitted to us which have obviously been doctored. The absolute scariest we've encountered was an additional insured endorsement with a schedule that read "the action over exclusion has been removed from the policy." Last I checked, this is not an effective way to remove endorsements from a policy. Yikes!

SDV has a wealth of experience in reviewing insurance policies for problematic terms. Please reach out to us with your own scary stories – we would love to hear them!