

This previously published E-Blast has been revised to further describe and clarify occurrence-based coverage. Please let us know if you have any questions.

Save Those Old Insurance Policies

Part 4 of our 5 part series on Insurance Issues Concerning Contractors

Many people find it surprising that old Commercial General Liability (“CGL”) insurance policies that sit in file cabinets can be brought to life again to cover business liabilities their companies face today. In fact, some of these old policies - even if purchased many decades ago - have helped some businesses to pay the huge costs associated with environmental cleanups, products liability claims, construction claims, asbestos liabilities and other liabilities that occurred over time while the policy was in force. It takes some work to make a valid claim on an old policy, but many companies have agreed that the payoff is well worth the effort.

The CGL policy, particularly if it is an older policy, is often an “occurrence-based” policy, which means that the policy will provide coverage if property damage or bodily injury occurs during the term of the policy. Coverage is provided even if the damage or injury is discovered, and the claim is made, long after the policy term has expired. The CGL policy provides coverage for any liability claim made by third parties against the insured unless coverage is specifically excluded by the terms of the policy. In fact, older CGL policies often contain fewer exclusionary provisions and, therefore, may provide broader coverage than more recent policies.

The occurrence-based CGL policy can be contrasted with the “claims-made” policy, which provides coverage only if a claim is made against the policyholder and the policyholder provides notice to its insurance carrier during the term of the policy. Occurrence-based policies can cover claims arising out of events taking place many years earlier because coverage is based on the timing of the “occurrence” instead of the timing of the claim. For example, many businesses currently are pursuing insurance coverage for products liability claims arising out of events that took place years ago. In these cases, the “occurrence,” which generally focused on the occurrence of bodily injury during the policy period, may have begun as long ago as when the product entered the stream of commerce exposing claimants to the defective product. Therefore, the CGL policies in effect at the time of the initial exposure may provide coverage for liabilities incurred, even though the resulting bodily injury or property damage was not discovered until many years later. Indeed, depending on the controlling law, multiple years of policies beginning with the date of first exposure may be called upon to respond.

As the occurrence-based CGL policy can provide the policyholder with coverage for unforeseeable claims arising out of events that took place many years ago, it is imperative that the policies be retained. Under Massachusetts and Connecticut law, and the laws of most states, it is the policyholder’s responsibility to prove the existence and contents of an insurance policy in the event of a dispute over coverage. If the policyholder is unable to prove the existence and terms of the policy, coverage may be forfeited. Many insurance companies and insurance brokers do not retain copies of CGL policies for extended periods of time. Therefore, any business’s document retention policy should include retention of CGL policies. Indeed, it is prudent to retain these insurance policies as permanent corporate records.

Should you have any questions with regard to the above, please contact your attorney or an attorney in our [Construction Law Group](#).

If you have any questions about the issues addressed here, or any other matters involving Construction Law issues, please feel free to contact:

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This E-Blast is merely an overview intended to advise you of the key aspects of this new legislation. A review of the specific statutory requirements is required to ensure compliance. If you have any questions or would like assistance securing a lien under the revised law, please contact your attorney or a member of the [Construction Law Group](#).