

Two Tips to Help You Take Full Advantage of Your Liability Insurance

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Rights under a construction liability insurance policy can be complex. Here are two important facets of insurance law and some tips to ensure that you receive the maximum benefit of your coverage.

1. If you are covered for at least one of the damage claims in a lawsuit, your insurance policy entitles you to defense costs for the entire lawsuit, including non-covered claims.

It is very common for a lawsuit against a contractor to include claims that are covered by the contractor's insurance policy and other claims that are not. For instance, a lawsuit might include one claim related to poor installation of roofing and a second claim related to water damage to carpet inside the home due to a leak in the roof that was installed.

In this hypothetical lawsuit, the claim related to replacing the roofing would not be covered by most insurance policies, because it relates to work product. However, the property damage claim related to the carpet would be covered by most insurance policies. If a particular claim is "covered" under an insurance policy, the insurance carrier must pay to the plaintiff/claimant any damages that are proven.

The important thing for you to understand is that so long as at least one claim within a lawsuit against you is covered, you are entitled under your insurance policy to the appointment of a defense attorney who will defend you on the entire lawsuit including the non-covered claims, with the carrier paying all attorneys' fees. Should the homeowner succeed at trial, the damages awarded will be separated according to the type of damages awarded (work product or property damage). After trial, the insurance carrier would be obligated to pay to the plaintiff only the judgment amount related to the carpet. You would be responsible for paying the judgment amount related to replacing the roofing.

Any contractor who has paid an attorney to assist with a lawsuit is aware of the significant monetary expense associated with defending a lawsuit.

Also worth mention is that an insurance carrier is often inclined to offer a settlement of both covered and non-covered claims to a plaintiff for the purpose of avoiding its obligation to pay the attorneys' fees necessary to defend an insured contractor on the entire lawsuit through the duration of a lawsuit. When this happens, it is tantamount to the contractor's having coverage for the work product claims even when these claims are not covered by the policy.

For these reasons, you should, at the time you are served with a lawsuit, ask the plaintiff's attorney to identify all types of damages that are being claimed. Ironically, in certain circumstances a contractor who is sued will hope that the extend of damages claimed is relatively broad, because that would increase the likelihood that at least one type of damages claimed would be covered.

2. An insurance carrier's obligation to pay defense costs arises at the time the contractor notifies the insurance carrier of a lawsuit.

An insurance carrier has no obligation until it receives notice of the lawsuit against the contractor. Therefore, it is imperative that you send written notice of any lawsuit to all known representatives of the insurance-carrier as soon as you learn that you have been sued. These persons/offices include your insurance broker, any address listed on your insurance policy, and any other person or address with which your insurance policy might be associated.

Once an attorney begins to assist you with the lawsuit, any attorneys' fees you incur after the date you send notice of the lawsuit to your insurance carrier must, by law, be reimbursed to you by your insurance carrier. The unfortunate reality, however, is that insurance carriers are sometimes inclined to dispute their obligation to reimburse these expenses. The carrier may claim that the expenses were unnecessary and/or excessive and thus refuse to pay.

This potential pitfall illustrates the importance of quickly sending notice of the lawsuit to your insurance carrier. If you notify the carrier early enough, litigation expenses may not be required prior to the time your insurance carrier appoints an attorney to represent you. It will typically take one to three weeks before your insurance carrier will appoint an attorney (assuming that the carrier agrees that at least one of the damage claims is covered by your policy.)

To help ensure that your insurance carrier reimburses you for any attorneys' fees you are forced to incur, you might consider providing additional information regarding the status of the lawsuit at the time you notify the insurance carrier. For instance, you might advise the insurance carrier of any upcoming dates on which certain actions must be taken. If you advise the carrier of any of these dates, you

will have a stronger argument that you are entitled to be reimbursed for attorneys;’ fees incurred should the insurance carrier fail to appoint an attorney in time to take the required steps on your behalf.

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Mr. Barnier is an attorney practicing general business litigation with an emphasis on construction law and a particular emphasis on litigation involving breach of contract claims, mechanic’s liens, stop notices and payment bond claims. He frequently presents seminars to the construction industry by which he explains the complex laws affecting the industry, and how companies can avoid litigation or, as a last resort, be best prepared for litigation. His articles on construction law topics have been published in numerous trade journals and magazines. In addition to construction law, Mr. Barnier represents businesses of all sizes on both litigation and non-litigation matters. Mr. Barnier received a J.D. from the

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