

## THE IMPORTANCE OF INSURANCE COVERAGE (PART 2 OF 2)

In last month's article I began a brief description of the importance of commercial general liability insurance. (If you missed the article, please visit SFBA NARI's website and click on the link "In the News/Newsletter" under "For the Trade.") As always, please note that my discussion is summary in nature; a heads up. Always be proactive about your legal rights.

**Recap.** The topics discussed in the last article were: what commercial general liability insurance is; consequential damages, the trigger for coverage; what general liability insurance covers and does not cover; when to use your policy; and what if one does not have coverage.

### **The Importance of Proper and Effective Tender.**

"Tender" means conveying a claim to the insurer. It should be in writing and include the relevant information – your policy number, claimants name, job address, etc.

Keep it brief. If additional information is needed, your insurance carrier will request it. And be sure it's done sooner than later. The typical policy requires the contractor to **promptly** notify the insurance carrier about **potential** claims as well as actual claims. Although I have never seen it happen, I imagine any insurer could possibly deny coverage for lack of prompt tender.

Who writes the tender letter? My clients usually have me do it – they like the

notion that the insurance carrier knows from the beginning that they have their own counsel monitoring the situation.

### **Obligations of the Insurer.**

Once the tender of the claim has been accepted, your insurer has two basic obligations to you, the insured: to defend the claim, and to pay damages. To defend means exactly what it sounds like – providing legal counsel to you. This is the broader duty of the two and perhaps the more important. Most claims settle and legal fees are often the greatest cost. If the insurer provides counsel, it is a huge savings to you.

### **Counsel.**

Some contractors consider it a possible downside that you have to use the attorney that the insurance company chooses (bless them; they want to use their attorney). And since the insurance company is footing the legal bill, in spite of claims to the contrary the insurer is in charge of the case. The good news is that in my experience these “panel” attorneys almost without exception are pretty good.

### **Resolution.**

The insurer is obliged to pay only damages covered by the policy and up to the limit of the policy. If you are insured for \$1,000,000 and the judgment is for \$1,500,000, the insurer pays \$1,000,000 and you would pay \$500,000. So be aware; be sure your coverage is adequate to the kind of jobs you are doing. “Adequate” coverage is a relative term – you must discuss this with your broker.

The insurer can choose to settle the suit at any time – even though you feel you are in the right, and whether you agree or not. And again, it is rare but they can then cancel your policy because they had to pay a claim. So be cordial, and cooperate.

**Summary.**

This is a brief overview of a critical aspect of your business. While it is certainly dry and arcane stuff, it behooves you to be familiar with it.

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