

# **7 Deadly Sins To Avoid When Buying General Liability Insurance**

This report was put together at the request of clients. We have been talking about the 7 Deadly Sins for years. Ten years ago, this report would not have been necessary, but times have changed. Ten years ago you could bid on a job, complete the job and move on to the next job. Lawsuits happened just to the next guy. Insurance policies were simple and life was wonderful...General Liability insurance has changed drastically in the last few years and now there are traps...not intentional traps, but changes in the industry that you have to keep abreast of, which brings us to the 7 Deadly Sins...

## **Sin #1**

### **Choosing The Wrong Agent or Broker**

As strange as this may seem, your biggest problem might be your current insurance agent or broker. Not that he is not trying to do a good job, but he does not handle the Construction Industry on a day-to-day basis, he is out of touch with a marketplace that is changing day to day. Keeping up with the Construction Industry is a full time job.

If your broker is not Independent he may not have the tools available to do a good job. Non-Independent agents must represent one company only. He may not represent the best company for your business.

## **Sin #2**

### **Occurrence vs. Claims Made**

### **Violating This Sin Can Wipe out Your Life's Savings**

Construction claims made policies became popular in the mid 1980's and have been around ever since. The promise of these policies were lower rates, but at what long-term damage? In some instances there is no cost savings. Claims made policies for a contractor are the worst possible policy you can buy. Let me explain: Claims made policies allow you to make a claim on you policy only during the policy year as the

project is built. Contractors have claims down the road not in the same year as the project is built.

If you want to leave that company and go to another company you will have to purchase additional insurance to cover you for the next 10 years...that right 10 years! Why?

Because the law allows customers to file a lawsuit for construction problems up to 10 years after the project was completed.

An Example:

You build a new room addition, everything goes well and you and your customer are very happy with the final outcome...4 years later your customer calls you and says that the roof is leaking and water comes into the house and ruined his new \$25,000 grand piano. He expects you to repair the roof, the drywall, wallpaper, carpets and, of course, replace the grand piano...

A claims-made will not allow you to file a claim 4 years later unless you stayed with the same company the whole time. If you intend to shop other companies after the claims made policy expires you must make a decision, since you cannot make a claim against a claims made policy after the policy expires unless you buy extended liability coverage called a "tail." The tail coverage extends the period of time you can report a claim.

If you decide not to buy the "tail" you will not be able to report a claim against the claims made policy. And to make matters worse, some companies do not offer the 10-year extension.

When your policy comes up for renewal with a claims-made policy you must decide.

- Do I leave the company and pay the additional insurance for coverage for the next 10-year period or go without?
- Do I stay with the same company? Their prices on the new year may stay the same or go up sharply.
- Do I switch to another company who has a better rates and coverage?

This limits the marketplace for you, and makes it harder to accept a better bid from

another carrier. Claims made policies may work in other lines of insurance, but for contractors they are a disaster. Take time after reading this report to look for your policy and see if your current policy is either an occurrence form or claims made...

### **Sin #3**

#### **Insurance Company Rating**

**Insurance Companies are given a grade, just think about the grades you received in high school or college. A,B,C,D,F.**

**Insurance Companies are given a financial report card by the A.M. Best Company.**

An Insurance company with less than an "A" rating can be a potential problem for two reasons. 1. There is a risk of the company going out of business and 2. If you work for the state, county or city, they will usually not accept any company less than an "A" rating. Also, if you hire on as a subcontractor most general contractors will not accept any rating less than an "A". With some state government offices and general contractors not accepting your liability insurance, you will be limited to the type of jobs you can accept. If you do not know your Company Rating feel free to call my office at any time, we will be glad to look it up for you.

### **Sin #4**

#### **Exclusions**

First off lets get one thing clear...All policies have exclusions. You hear terms like all risk, special form, comprehensive, full coverage. Those phrases do not mean there are no exclusions. In a contractors general liability policy all the exclusions are listed on the (DEC) front page of the policy or on the second page of the policy. The problem is that they are usually listed by form number, not by name. In order to make sure you understand the policy. Then read it carefully and see if that is a problem for the kind of work that you do. If you see a form number on the front of the policy but you cannot find that form in the policy, your policy is NOT COMPLETE! Someone forgot to add that form to the policy when the policy was put together. People make mistakes!

The exclusions are critical. When you get a proposal for insurance the first thing you should look for are the exclusions. For instance, if you

are a concrete contractor and you do house pads, if you have exclusion for foundation work in your policy you have a problem. The worse thing is you will not find your problem until you have a claim and it is denied, by then it is too late.

Here is a list of exclusions I have found in many policies, this list is by no means "all inclusive". Look over this list and see what exclusions would apply to your operation.

### **DESIGNATED WORK**

Claims arising from any classification of class code listed on the declaration page of this policy. For example: You are a roofing contractor and you get a quote that is 50% less than all other quotes. The policy comes in and your company is classified as a landscape contractor. Any claims will be denied because you were not classed correctly.

### **INDEPENDENT CONTRACTORS**

Claims arising out of: the acts or omissions of independent while working on behalf of an insured, or the negligent hiring or contracting, investigation, supervision training, retention of any independent contractor for whom any insured is or ever was legally responsible and whose acts or omissions would be excluded. If you use subs, this exclusion is a killer.

### **ASBESTOS**

Not covered for exposures to asbestos, asbestos fiber, or any material containing asbestos or asbestos products, including without limitation, the cost of asbestos removal or damage in the cause of effecting such removal.

### **PROFESSIONAL LIABILITY**

Claims arising out of rendering of or failure to render any professional services by you or any engineer, architect or surveyor who is either employed by you to perform work on your behalf in such a capacity. Professional services include: the preparing, approving, or failing to prepare or approve. Maps, shop drawings, opinions, reports, surveys, field reports, change order or drawings: and Supervisory, inspection, architectural or engineering activities, For example, if you make a structural change without the architects approval, there is no coverage

## **CONTRACTORS WARRANTY**

This means that if you hire sub contractors, you must get a certificate of insurance from them. If you do not, the amount of the contract with the sub will be added to the payroll or gross receipts and you will be charged, In other words you will pay for the subs general liability. Some companies use a stricter version of this. They require the sub to have the same limits of insurance as you do.

### **X.C.U.**

Explosion, collapse, and underground.

If one of these exclusions, or other exclusions in your policy are a problem for you, one of three things happened.

1. You did not tell your broker that you do this kind of work.
2. You did tell your broker and he was not listening
3. Your broker does not have enough knowledge about construction insurance.

In any case call your broker and explain the problem and get it solved before a claim occurs, if your broker can't help you, find another broker.

### **Sin #5**

#### **Acceptance**

**We touched upon this a little when speaking of company ratings, but there are many reasons why governments, general contractors and more and more, smart homeowners who will not accept just any certificate of insurance.**

Certificates of insurance are not being accepted for the following:

- Additional Insured Endorsement (CG-2010) when is an additional insured endorsement not an Additional Insured Endorsement? There are many kinds of Endorsements with different language. The CG-2010 has become the Additional Insured Endorsement of choice. Many general contractors will not accept any other certificate. You must be very careful here, most companies now charge for these certificates anywhere from \$100-\$1000 each. If

the costs of these certificates are not in you bid you're losing money.

- Primary Endorsements-along with the above Additional Insured Endorsement, many people are asking for primary endorsements, 99% of all insurance companies have an additional charge for these as well, mostly for \$250-\$1,000 each.

- Waiver of Subrogation – Another endorsement that has become popular. This is seen more in Workers Comp but does not come up in General Liability. There is an additional charge for this endorsement.

## **SIN #6**

### **Subcontractors**

#### **This one is a potential killer**

I have seen dozens of companies go out of business on this subject alone within the past 10 years. It's usually your best friend or someone you were just trying to help out. When you hire a subcontractor to do work for you, he must carry General Liability Insurance and he must have the same limits of liability as you do. For example, if you have a General Liability insurance policy with a \$1,000,000 limit the subcontractor that you hired must also have the same.

What happens if your sub does not carry general liability? The problem arises when your general liability company comes and audits your books at the end of the year. If you do not have a Certificate of Insurance for the sub your general liability company will add it to your payroll and you end up paying the general liability for the sub contractor who did not buy it.

I can hear you now...It's not fair...fair or not, it's in the insurance contract. Let's look at the insurance company's side on this subject. If there is a problem on the job, whom is the customer going to sue? He is going to sue the subcontractor and General Contractor. The insurance company has no recourse against the subcontractor and must defend the entire lawsuit, while the subcontractor walks away. Now, I do not expect you to have sympathy for an insurance company, but, now you know how it works. Now you know why I call it the KILLER that poses as a best friend. You feel sorry for them-And you pay the price.

## **SIN #7**

### **ADMITTED VS. NON ADMITTED COMPANIES**

Admitted Companies are companies that are licensed in your State and contributed to the Property & Casualty Security Fund (The Fund). The fund is a pool of money set aside by the State. Most states have programs where those who buy General Liability Insurance are charged a percentage of his or her insurance premiums to go into a pool. This pool of money is set aside to handle claims by people in the State who's Insurance Company cannot pay their claims. If there are other companies to pick up the claim, The Fund will not share the claim.

Non-Admitted companies do not contribute to the Fund pool. If a Non-Admitted company goes out of business you have no recourse...Non Admitted companies are not necessarily a bad deal. They fill a gap in your state and provide competition for the Contractor business. However, if you use a Non Admitted company with a bad rating you might be asking for trouble.

The State Insurance Commissioner of your state has determined that certain types of insurance are not available from admitted insurers and has placed these types of insurance.