

Legal Brief



Do I Have Coverage For That? Maybe Not ...

A Commercial General Liability ("CGL") policy is the centerpiece of any commercial insurance package. It is designed to protect a business from lawsuits for personal injury or property damage.

But how broad is the coverage? Will it protect you in common situations? Here's a quiz. Each of these scenarios is taken from a lawsuit filed here in Pennsylvania. Do you think the defendant business had coverage for the claimed losses?

Scenario 1

A general contractor built a house on a parcel near New Castle. The homeowners moved in and within two years they discovered the house was sinking because it was built on unstable ground. Doors and windows came ajar, and the floors buckled. The homeowners sued the builder for the money necessary to rebuild the house elsewhere. The builder sought coverage from his CGL carrier.

Scenario 2

A heating contractor in suburban Philadelphia had a contract to provide maintenance for a school district's boilers. The district sued the contractor, alleging that certain boilers were damaged and had to be replaced because the contractor had failed to carefully inspect and maintain them, as required by the maintenance contract. The contractor asked his CGL carrier to provide coverage.

Scenario 3

A large Allegheny County homebuilder constructed dozens of houses using roofing materials that included a type of plywood that had been treated with a fire retardant. Unfortunately, the chemical caused the plywood to degrade, significantly reducing the structural integrity of the roofs.

The builder put new roofs on all the damaged houses. The builder sought coverage from its CGL carrier for the cost of replacing all parts of the roofs except for the defective plywood.

What do you think? Are these the types of losses you expect your CGL policy to cover? I hope not because in each of these cases the CGL carrier denied coverage, and Pennsylvania's courts agreed with the denial.

In Scenario 1, coverage was denied because the builder's CGL policy did not protect him from having to repair damage to his **own** product or work. He was the general contractor, so his "product" was the entire house. A CGL policy is designed to protect a business from accidental injury to **another person or another's product**. For example, if the instability caused the chimney to collapse and falling bricks damaged a vehicle parked in the driveway, the CGL carrier would owe coverage for the car owner's claim.

There was no coverage in Scenario 2 because the claims were based on breach of the maintenance contract. The school district claimed the boilers had to be replaced because of inadequate maintenance. **Breach of contract claims — claims that you did not perform as you agreed to — are not usually covered by a CGL policy**. On the other hand, had the contractor's poor maintenance caused a boiler to explode, the CGL policy would have provided coverage for damage to the building, but not for replacement of the boiler.

Finally, the builder in Scenario 3 had no coverage because the entire roofing system was his **own product**. Thus, there was no coverage for **any** of the roofing re-work. Again, the

builder would have had coverage for damage to property that was not part of his original work, such as water damage to the homeowner's furniture caused by the defective roof.

According to the Superior Court of Pennsylvania: "General liability insurance policies are intended to provide coverage where the insured's product or work causes personal injury or damage to the person or property of another ... **they are not the equivalent of a performance bond.**" While CGL policies provide broad coverage, there are limitations. So, to paraphrase Sergeant Esterhaus (from *Hill Street Blues* for all of you born after 1980): Be careful out there! Review your policies with your insurance professional to be sure your primary business activities are covered.

For more information about CGL policies for your business, please contact Craig Murphey at MacDonald, Illig, Jones & Britton LLP at 814/870-7655 or cmurphey@mijb.com.

Craig Murphey, chair of MacDonald Illig's Insurance Practice Group, has been a civil litigator for over 20 years. He concentrates his practice in the areas of insurance coverage, trials and appeals. He frequently represents both policyholders and insurance carriers in insurance disputes, and in the litigation of insured claims. He currently serves as president of the Pennsylvania Defense Institute.

