

Rework the Rip & Tear Pitch

Renowned character actor Rip Torn is said to have commented once that “anything new is always considered the devil’s tool.” He may have been on to something. The Rip & Tear endorsement seems to have enjoyed an uneasy welcome since it came onto the scene nearly a decade ago.

However, far from being the devil’s tool, this coverage, typically available by endorsement onto CGL policies, should be routinely offered by brokers who handle construction coverages.

But what in the world is Rip & Tear coverage?

The answer is best understood in context. Most brokers should be aware that because CGL policies generally contain “business risk” exclusions, they won’t provide coverage in the situation where a contractor’s work product turns out to be faulty or substandard. Adding subcontractors to the equation adds another layer of complexity. Is a general contractor covered if his work product is damaged by the shoddy workmanship of his subcontractor? While the majority view among state courts appears to be “yes,” there is a minority view among other states that says “no” on the premise that a CGL policy is not a performance bond.

Coverage may be provided for damage done to surrounding construction/property—e.g., when defective wiring causes fire damage to nearby drywall. But if correcting the shoddy work simply requires that the contractor tear out undamaged drywall along the way, cutting through and then repairing that drywall likely is not covered.

That’s where the Rip & Tear endorsement comes into play: by paying for the removal of unsafe work. Its first cousin, the Rework endorsement, goes a step further by covering the cost of replacement. These endorsements are most commonly used in concrete and masonry jobs.

There’s one familiar drawback to these coverages, something along the lines of “I checked, and it costs money, so my customer will never go for it.” That is, of course, one valid consideration (which your customer might avoid, at your suggestion, by requiring his subcontractors to purchase the coverage). A separate, more sensible consideration is “Will my customer ever need it?” If the answer to the latter question might be “yes,” you should offer the coverage anyway and get a rejection in writing.

There are two reasons to document the process: first, E&O claim handlers have seen countless instances where a particular policy or endorsement, however rare or arcane, would have provided coverage for pennies (premium) on the dollar (loss payment). Without exception, the customer, blessed with the wisdom of 20/20 hindsight, is absolutely certain that “had my broker simply suggested this coverage there’s no question at all that I would have purchased it.” Your firm response that your client was too cheap to pay for it rarely if ever carries the day, no matter how true.

A second, related reason to make the pitch: suppose the issue in your case is not a Rip & Tear/Rework debacle, but does involve the E&O plaintiff’s common claim that “I always accepted everything my broker recommended!” Everything? Imagine the scene at trial where your defense counsel cross-examines the plaintiff on that very issue, raising one coverage after another, one limit increase after another, that you wisely recommended only to have your customer summarily reject. The effect on your opponent’s case can be devastating, as “I purchased every coverage she recommended!” is quickly reduced to “as long as it didn’t cost me a dime.”

Like many areas of insurance practice, the construction field is a fraught with perils for “the dabbler.” Whenever the urge to place coverage in unfamiliar territory is irresistible (i.e., it pays too well), always turn to a colleague who offers the knowledge you lack to be sure all bases are covered. **IA**

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Do Your Homework

Before you pitch Rip & Tear coverage, there are several considerations to investigate and share with your customer. First, don’t assume that either endorsement is generic, employing the same terms/language from one carrier to the next. You need to pay attention to the language.

Second, as with many specialized coverages, be on the lookout for special sublimits and per occurrence deductibles. Highlight those limitations for your customer.

Finally, be sure your client understands that this is not universal “make my customer happy” coverage. Broadly speaking, these endorsements are intended to address construction that is unsafe or fails to meet specified standards; they will not address cosmetic defects.

—M.D.