

Hidden Dangers

Which commercial clients need pollution coverage?

By Jim Redeker

We all know which clients need pollution coverage, right? They have smoke stacks puffing away all day. It's the oil refineries and gas stations, the truckers who haul hazardous loads and the manufacturing plants. It's the coal-powered electric plant and the pulp mill.



It's true these businesses need pollution coverage. But other, less conspicuous commercial clients need it, too. Swiss Re Corporate Solutions has fielded several errors & omissions claims against agencies where a client's commercial general liability carrier denied a claim based on the pollution exclusion.

One client installed spray foam insulation in a building while other people were present. Spray foam emits fumes during installation, which can allegedly cause long-term medical conditions.

Or consider a new medical condition called "popcorn lung," associated with workers who are exposed to the powdered butter flavoring used in microwave popcorn. Injured workers at these packaging plants have received multimillion-dollar awards.

While Swiss Re's insureds have yet to see a health-related herbicide claim, one claim involved a landscape company spraying the lawn of an apartment complex with herbicide instead of fertilizer, accidentally killing the lawn. The liability carrier denied the claim under the pollution exclusion on the landscape company's policy, and the landscape company made a claim against their insurance agent.

As the population grows and urban sprawl picks up steam, more people are likely to complain about the business practices of their neighbors. In one case, a gun range was sued for noise pollution due to all of the shooting. In another, a rock quarry, which cut stone for commercial and residential use, faced a suit from angry neighbors complaining about the odor emitted during the process.

The pollution exclusion can even come into play during something as seemingly innocent as a barbeque picnic held for employees. In one instance, while cleaning up after the meal, employees hosed down the barbeque grill. The contents of the grill ended up in a stream, and the business was sued for contamination.

In all these scenarios, the insurance agent faced an E&O claim when the business in question had no pollution coverage.

Bottom line: Offer pollution coverage to every commercial client and document the conversation. It'll go a long way in defending your agency in a subsequent suit—and it will also qualify your agency for Westport's deductible elimination in the event that your agency faces a claim for not placing pollution coverage.

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