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TECHNICAL ADVISORY

TA 214

September 26, 2002

SUBJECT: CGL "Cross Liability"

(The following article is from the Research Library of the "Virtual University" of the Independent Insurance Agents & Brokers of America – IIABA.)

(For a complete listing of all of the excellent articles on the "Virtual University," go to: <http://vu.iiiaa.net> .)

BACKGROUND: Recently, our "Ask an Expert" service received a rash of "cross liability" questions. The term "cross liability" deals with whether or not one insured can sue another under a liability policy. Requests to provide this coverage under a CGL policy usually arise from ignorance on the part of people who have led someone to believe they know something about insurance.

Question: "I had a certificate request that wanted the policy language to include a severability of interest provision and to remove the cross liability exclusion. I have not seen this before. What are your thoughts?"

Question: "I need information about an endorsement under [CGL](#) called a Cross Liability Endorsement. Where can I find information about this endorsement? Thanks!"

Question: "We have been questioned by a local attorney concerning the Comprehensive General Liability Policy on a Condominium Association that has 'All Owners of Record' as additional named insureds on the policy. He states that each unit owner is a member of the public and has the same rights as any member of the public to collect under the [CGL](#) Policy if they are hurt on the premises of the Condominium Association. We state since the unit owners are "Named Insureds" on the Policy that they cannot collect damages incurred on the premises owned by the Association and all the members. We feel this is a suit against oneself. Another question we would appreciate your advise on is can this coverage be covered by using a 'Cross-Liability' Endorsement on the CGL Policy?"

Answer #1: With regard to the first two questions, the current ISO form includes severability language and there is no cross-liability exclusion. The following faculty response is indicative of what most had to say:

MAIN POINTS:

Faculty Response:

The "Cross-Liability" related language was put into the [CG 00 01](#) in 1986. It is found in the form Conditions:

7. Separation Of Insureds

Except with respect to the Limits of Insurance, and any rights or duties specifically assigned in this Coverage Part to the first Named Insured, this insurance applies:

- a. As if each Named Insured were the only Named Insured; and*
- b. Separately to each insured against whom claim is made or "suit" is brought.*

Why folks still ask for a "cross liability" endorsement to remove a nonexistent exclusion (unless they want to LIMIT such suits) is a mystery to me. In fact, some states (e.g., Wisconsin) may have a statutory provision prohibiting the use of cross-suit exclusions in most basic liability policies. (Most likely, you're dealing with attorneys or consultants who either aren't "up" on things, or they don't even know what they're asking for...they're just looking at an out-dated "cheat sheet" that says they should ask for this.)

To the contrary, a typical cross liability endorsement will insert an exclusion preventing such suits. See Inter-Company Products Suits endorsement [CG 21 41](#). This allows the removal of inter-insured sales from the premium base, in return for an exclusion that states that an insured cannot sue another insured. So, you can see that it's more common to add, via endorsement, an EXCLUSION for cross-liability suits rather than add an endorsement to prevent such suits.

Again, my best guess is that whomever drafted the "RFP" wording for the certificate either doesn't know what her or she is doing, isn't current on policy coverages, or just wants to make sure that cross-liability suits are not excluded. Of course, all of this assumes that we're dealing with the ISO CGL form. In any case, I'd let the company underwriter handle this.

Answer #2: With regard to the last question, here are some faculty responses:

Faculty Response:

I agree that an exclusion exists in Med Pay for injuries to an insured. I question the phrase "additional named insureds." My research indicates that you are an insured (you) or an additional insured. Which is it? The answer to the property damage portion of the question matters.

As for property damage, please note that [CGL](#) Exclusion J.1 applies to YOU (named insured), and J.4 to THE insured. As for J.4, tell me the insured who has CCC, and the exclusion applies to that singular insured, not all insureds.

Please see Separation of Insureds condition #7. It states that each insured, except with respect to limits, is to be treated as the only insured. Therefore, an insured can sue another insured.

A typical cross liability endorsement will insert an exclusion preventing the above. See Inter-Company Products Suits, [CG 21 41](#). This allows the removal of inter-insured sales from the premium base, in return for an exclusion that states that an insured can not sue another insured.

Faculty Response:

See Separation of Insureds condition. One insured can sue another insured and the claim is covered by the [CGL](#). You don't need a cross-liability endorsement. This condition is it.

Faculty Response:

The Separation of Insured's provision clearly allows such suits. Why folks still ask for a "cross liability" coverage endorsement continues to be one of those unfathomable insurance mysteries. Such suits (U/O against the Association) are fairly common, and if there was a provision prohibiting them, I'd look for it in the bylaws of the condominium association, not the insurance policy.

Faculty Response:

This is similar to a church, civic organization or country club policy where the members are insureds. The fact that a person belongs to an organization doesn't preclude liability arising from injury or damage. There have been many suits against churches brought by members for injuries arising out of premises or operations. Same with civic organizations, country clubs...and condominium associations.

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NECESSARY ACTION: Circulate this Technical Advisory to all appropriate Commercial Lines staff.

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