

## Commercial General Liability Insurance Part II

by Charles H. Cox

The ISO Commercial General Liability policy, like all other insurance policies, requires careful analysis. As shown in the last article on CGL coverage, not all exclusions are found in the exclusions section of the policy. On the other hand, one of the CGL policy's exclusions, by an exception thereto, actually grants one of the policy's most important coverages, Contractual Liability.

Contractual Liability, assumption of the liability of another in a contract or agreement, is excluded, subject to two very important exceptions. The exclusion does not apply to liability for damages that the insured would have in the absence of the contract or agreement nor does it apply to liability assumed under an "Insured Contract." It is the defined policy term, "Insured Contract," that defines the CGL policy's scope of Contractual Liability coverage.

The definition of "Insured contract" is fairly clear. Easily lost in the analysis of this coverage, however, is the fact that only liability for bodily injury or property damage assumed under a contract is covered. Personal Injury assumed under a contract is not included in the definition of "Insured contract" and, in fact, is specifically excluded under Coverage B, Personal Injury and Advertising Injury Liability. This can pose a problem since drafters of contracts often use the terms "personal injury" and "bodily injury" interchangeably. Care must be taken to avoid the use of "personal injury" when listing the types of damages or injuries for which indemnification is being sought in contracts.

Now that we've taken a look at some of the basic aspects of the CGL policy, we'll turn our attention to some of the more important issues to watch for when evaluating CGL coverage for ice arenas. One of the most restrictive exclusionary endorsements that can be imposed on an ice arena owner/operator is the "Athletic or Sports Participants Exclusion." The endorsement amends the policy so that it does not apply to bodily injury to any person while practicing for or participating in any sports or athletic contest or exhibition that you sponsor. Clearly, such an exclusion will severely restrict the coverage afforded and should be avoided. It is also important to be sure that the CGL coverage maintained by outside organizations using your ice arena not be subject to this exclusion.

Ice arenas offering ice skating lessons, hockey schools or any other activity where children are being taught or supervised by adults face the potential for claims or suits alleging abuse or molestation. Not surprisingly, insurance companies looking to avoid these claims, frequently attach Abuse or Molestation exclusions to CGL policies. Often, these exclusions not only apply to bodily injury arising out of actual or threatened abuse or molestation by anyone or any person while in the care, custody or control of any insured, but they also preclude coverage for claims involving the negligent employment, investigation, supervision, reporting to the proper authorities, or failure to so report, or retention of a person who perpetrated such an act for whom any insured is or ever was legally responsible. These types of exclusions can have a far-reaching impact, but cannot always be avoided. In some cases, separate coverage can and should be purchased.

Other coverage restrictions to be concerned about include exclusions for specified activities or specified locations. As mentioned in the last article on CGL coverage, one of the CGL policy's broadest features is that it covers all operations and locations. Yet some insurers will eliminate one or both of these features by restricting coverage to a specific location(s) or specific activities. For example, when a county- or town-owned ice arena is insured separately from the other operations of the county or town, the ice arena insurer will want to avoid picking up coverage for other county or

town locations and will often restrict coverage to the ice arena location. Care must be taken, however, to be sure that operations incidental to the ice arena that take place away from the arena's location are still insured.

Exclusions for certain activities are even more troubling and may actually necessitate the purchase of a separate CGL policy. In such cases, obtaining coverage from one insurer willing to cover all operations is strongly recommended.

Although injury waivers are commonly used by ice arenas and are understandably desired by insurance companies insuring ice arenas, the coverage granted by the CGL policy should not be conditioned upon the arena owner/operator obtaining a waiver or release from participants/arena users.

Although the unendorsed CGL policy is fairly broad, endorsed exclusions and limitations often take away important coverages. All endorsed exclusions or limitations should be reviewed carefully since not all insurers will require the same endorsements. When looking at more than one proposal for CGL coverage, understand that the least expensive one may very well provide the least amount of coverage.

*\* Charles H. Cox is President of Aldrich & Cox, an independent risk management and employee benefit consulting company in Buffalo, NY.*