Liability Insurance Policy

The simple choice of a liability insurance carrier can spell the difference between profits and loss, especially for petroleum equipment manufacturers, service companies and tank owners. Petroleum equipment and insurance expert Brian Donovan examines the fine print in the first of a four-part series on insurance in the petroleum industry.

Understanding Your
This is the first of a four-article series pertaining to liability-insurance issues. This article addresses how to read and understand your general-liability insurance policy.
Most petroleum equipment manufacturers and service companies spend between $15,000 and $200,000 annually for general-liability insurance. What are you buying? Do you perform the same cost/benefit analysis on your liability insurance that you perform on other important components of your business costs such as labor, material and equipment? Do you evaluate the content of your current liability policy form with the policies of other carriers with the same degree of thoroughness that you would apply to other key suppliers of products and services to your business?

For many petroleum equipment companies, the answer to this last question is “probably not.” The reason that your insurance policy gets less scrutiny is because insurance, in general, is viewed as a necessary evil; it is difficult to understand because it is outside your daily business training and experience. You purchase liability coverage because of perceived risks that could severely imperil your business, but do you really understand what you have purchased?

You can probably list, without a moment’s hesitation, which dispensers, pumps, tanks, computer systems and in-tank monitors are superior and why. This is because your daily activities and your business livelihood depend on that knowledge.

Insurance, on the other hand, and liability insurance in particular, tends to be a bit esoteric. Unfortunately, unless you have had a number of claims and losses, you probably haven’t gained a level of expertise as to coverage conditions and claim response. Unless you have had a number of losses, you will not have developed a point of reference to be able to differentiate between various insurers and policy content.

The intent of this article is to provide you with some basic knowledge regarding your commercial general-liability policy to assist you in evaluating what coverage you have in contrast with your business risk exposure.

You probably purchase a number of insurance products, including workers compensation, business auto for your company vehicles, property insurance to protect your business property, health coverage for your employees and commercial general liability (CGL) coverage for risks related to your products and services. This article is only specifically addressing CGL coverage; however, the approach suggested in reviewing your CGL policy can probably be applied to your other insurance policies as well.

Defining commercial general-liability coverage

Commercial general-liability insurance provides coverage for the liability exposures of a business, unless specifically excluded, that result in either bodily injury or property damage. This includes coverage for your products (a dispenser), your completed operations (tank installation), premises (visitor trip and fall) and operations (advertising liability) and your independent contractors.

To obtain an understanding of coverage afforded under your policy, review your policy by focusing on five main sections. Declarations Page, Insuring Agreement, Coverage Conditions and Exclusions and Endorsements.

Arguably, the most important sections in terms of really understanding the coverage are Exclusions and Endorsements. This opinion is based upon extensive review of hundreds of petroleum equipment failure incidents and claims presented to STICO and other carriers during the past 10 years.

Most CGL policies are written on a universal policy form developed by the Insurance Services Office (ISO). Every few years, the ISO CGL form undergoes some revisions. To determine your policy version, look in the lower left-hand corner of each page in the policy. The number CG 00 01 96, for example, tells you that you have the 1996 version of an “occurrence” policy form.

Declarations Page

The Declarations Page identifies the parties to the insurance contract (the insured, the insurer and the insurance agent) and provides the limit of liability, the policy number, the policy period and the policy premium.

Insuring Agreement

The Insuring Agreement states the nature of the insurer’s promises typically as follows:

We will pay those sums that the insured becomes legally obligated to pay as damages because of “bodily injury” or “property damage” to which this insurance applies. We will have the right and duty to defend the insured against any “suit” seeking those damages. However, we will have no duty to defend the insured against any “suit” seeking damages for “bodily injury” or “property damage” to which this insurance does not apply.

Note the words in quotation marks in the above excerpt. This means that the definition for these terms can be found in the Definitions section(s) of the policy. At a minimum, make sure that you familiarize yourself with the specific definitions of such key terms as Bodily Injury, Occurrence, Personal Injury, Property Damage,Your Product and Your Work. If pollution is a covered event under the terms of your CGL policy, add the definition of pollution to the above review.

Conditions

The Conditions section of the policy contains several conditions relating to the coverage that the insurer is providing. Both the insurer and the insured must comply with the conditions in order to have coverage of a particular loss. A key element of this section is your requirement to notify the insurer in the event of a claim or incident that could lead to a claim. This section also states that your other insurance may be considered in the event of a loss, that a year-end premium audit may be conducted and that the insurer has certain obligations if it decides not to renew your policy.

Exclusions

The Exclusions section includes the specific limitations on your coverage and, therefore, comprises the most important section of the policy. Do not ignore it, as this section states the exposures that the insurer does not cover. There are a number of reasons for the exclusions in your policy:

• Some losses, resulting from war or nuclear attack, for example, cannot be reasonably insured.

• Intentional acts by the insured are within the control of the insured and can be prevented.

• Some losses are covered under other types of insurance.

• Most insureds do not need some coverages (aircraft liability, for example).

• Limitations in coverage breadth make the CGL insurance more affordable.

For many companies involved in the petroleum equipment industry, the largest exposure is likely to be a pollution event. Pollution is typically excluded in the standard CGL policy form. Exclusion f. states that a pollution event is not covered if it occurs on your premises, or if you are in the business of waste treatment, disposal or processing, or if the release occurs at any premises where you are working if you brought the pollutant on site (gasoline in your service vehicle), or if you are in the environmental clean-up business. This standard pollution exclusion also states that coverage is not provided for any loss based upon a “request, demand or order that any insured or others test for, monitor, clean, remove, contain, treat, detoxify or neutralize, or in any way respond to, or assess the effects, of pollutants.

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This exclusion seems to clearly rule out pollution coverage for an event such as a piping leak caused by your workmanship, for example. However, some carriers may write an endorsement that modifies this exclusion, which may appear to provide some pollution coverage. Before leaving the discussion on exclusions and going on to endorsements, lets look at four additional exclusions in the standard CGL policy:

• Damage to your product (Exclusion k.)
• Damage to your work (Exclusion l.)
• Damage to impaired property (Exclusion m.)
• Recall of products, work or of impaired property (Exclusion n.)

It is important to understand that your CGL insurance policy does not extend to product or service warranties, including the cost to repair or replace the defective product.

Furthermore, Exclusion m. excludes coverage if your product or work is defective but does not result in any property damage. For example, a service company installs a component in a dispenser that renders the dispenser inoperable for a period of time. No “property damage” has occurred, but gasoline sales are lost.

Finally, the CGL policy makes no provision for the product recall expenses that a manufacturer may incur as a result of recalling a product that can potentially cause bodily injury or property damage.

These are four important exclusions that will be addressed in detail next month, along with a review of some available special policies that can provide coverage for those exposures.

Endorsements
An Endorsement is a stand-alone document page attached to a policy. It amends an insurance policy by adding or removing coverage or, in some manner, modifies the coverage presented in the underlying policy. Common policy modifications include:

• Blanket waiver of subrogation that allows the insurer to recover claims costs from other parties in your name.

• Additional insureds endorsement that allows you to name an additional insured to your policy when requested to by your customer.

• Prior acts endorsement that extends the coverage period backward to an earlier date.

• Asbestos exclusion endorsement that eliminates any coverage related to asbestos claims.

• The deductible endorsement that addresses the amount that the insured will pay on each covered loss.

These are just some of the common endorsements. Some states have unique insurance laws that require the insurer to add a state-specific endorsement to the policy. The concerns over Y2K problems have led a number of insurers to exclude coverage for events related to Y2K exposures.

Pollution coverage is sometimes provided in the form of an endorsement that modifies the pollution-related exclusion in the policy. Many insurers will draft tougher pollution exclusion language (Absolute

Pollution Exclusion) in response to recent court decisions that interpreted the pollution exclusion as insufficient.

Pollution coverage

Some pollution exclusions carry the language that a pollution event would be covered if the release is "sudden and accidental." A sudden and accidental event might include a tank or pipe rupture that is quickly discovered. But how about a slow leak that goes undiscovered for a period of months or years? Approximately 30 state courts have issued rulings on the meaning of "sudden and accidental." Approximately half have sided with the insurance company's position that the language is clear and unambiguous. In an equal number of decisions the state courts have stated that the language is not clear and, therefore, a slow leak would be covered under the policy even though the pollution exclusion was part of the policy.

Many insurance companies have gone to the Absolute Pollution Exclusion in the CGL policy, and they write a stand-alone, separate pollution policy that spells out in detail what pollution events are covered.

Occurrence vs. claims-made form

In the mid-1980s, insurance companies developed the "claims-made" policy form in response to concerns that old policies would be triggered to cover new claims. This signaled a departure from the "occurrence" basis coverage that would cover claims for events that occur during the policy period, regardless of when the claim is submitted to the insurer. For example, the discovery in 1985 that a leak from a tank had been occurring over four prior years, could trigger coverage from each of the CGL policies in effect during that span of time. The "claims-made" policy form requires that the claim be made (submitted) during the policy period.

Most CGL policies with the Absolute Pollution Exclusion have remained "occurrence based." However, claims-made policies cover exposures, such as pollution, that may take a number of years to be discovered and resolved.

Over the past 10 to 15 years, the changes in pollution coverage language, coupled with use of claims-made policy forms, may have created policy coverage gaps. A thorough review of your policies is strongly recommended. Furthermore, each time you renew your policy, make sure that no coverage gaps have been created.

Broker assistance

Your insurance broker can be helpful in looking for coverage gaps. However, blind reliance upon your broker may get you into trouble. A few years back, a broker assured a petroleum equipment company that the confusing pollution exclusion language provided adequate pollution coverage. Not too long after renewal, the contractor had a pollution-related incident and turned the claim in to his insurance carrier (a very large, nationally known company). Within two weeks, the insured received a notice that the claim was denied because of the pollution exclusion. Both the equipment contractor and the broker learned an expensive lesson.

Although this claim denial was not caused by the claims-made coverage gap, the broker had also not managed the claims-made policy form properly and had caused some serious coverage gaps to develop.

An insurance broker can be a great asset as long as they have knowledge of the policy form, your company's needs, your industry, your risks and insurance industry trends. Choose your broker wisely.

Changing insurance market

Just like your industry, the insurance industry goes through business cycles. During a soft market, many insurance carriers are aggressively seeking new business. As a result, premium rates decline, coverages are broadened and their risk-exposure evaluations are diminished. During a hard insurance market, carriers raise rates, pull out of unprofitable market segments, narrow coverage and become much more selective in their evaluations of the risks that they are willing to write.

The insurance market has been in the "soft" market cycle for the past 10 years. However, there are clear indications that rates are beginning to firm. For example, some carriers are leaving the petroleum equipment market segment or are refusing to write insurance unless the total annual premium is $25,000 or $50,000. Some carriers are adding more restrictive endorsements to the CGL policy form.

As your existing policy approaches expiration, take an active role in the renewal process. Obtain premium quotes from other carriers. Obtain specimen policy forms from each carrier along with the coverage proposal. Inquire whether the policy language will change upon renewal with new exclusions, endorsements or other changes. Make a commitment to only obtain coverage from companies who have a history of writing coverage for the petroleum equipment industry and your size company. Most importantly, find out how the carrier has handled claims in your particular industry by talking to other petroleum equipment companies regarding their experiences.

Because the insurance market is hardening, evaluate each insurance proposal beyond just premium cost. Review the policy as outlined here and make your decision based on other factors in addition to price. What are my significant risk exposures and how does the policy address them? Do I have any coverage gaps? Is the carrier committed to my industry? How will claims be handled?

Although you may have been claims free over the past five years, a claim can be presented tomorrow. It is the fear of having a claim that compels you to purchase insurance. It is important to keep in mind that insurance is no more than a risk-financing mechanism. Over time, you will pay for your claims. The insurance company just helps you manage the financing of your risks. So if you are going to pay for your claims anyway, make sure that the policy form is in line with your risk exposure.

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