

## BUILDING OWNER AND LIQUOR LIABILITY COVERAGE

March 24, 2014

### Q:

If an insured restaurant serves liquor, the standard ISO General Liability policy CG 00 01 excludes liquor liability coverage since the named insured (“you”) is in the business of manufacturing, distributing, selling, serving or furnishing alcoholic beverages.

If the building owner is added to the CG 00 01 as an additional insured using CG 20 11 or CG 20 26, would the owner have liquor liability coverage since they are NOT in the business of manufacturing, distributing, selling, serving or furnishing alcoholic beverages?

Since the exclusion only applies to the named insured, I would like to know if the building owner as additional insured is granted coverage that the named insured would not have in this GL policy.

### A:

Previous editions of the liquor liability exclusion did exclude coverage for owners or lessors of premises used by others for purposes of liquor businesses. Now, in the current edition of the CGL form, owners or lessors of premises are covered. The exclusion definitely applies only if the named insured is in the business of manufacturing, distributing, selling, serving, or furnishing alcoholic beverages. The building owner does not fit this description.

The bottom line is that owners or lessors of premises are now covered when they are not engaged in the liquor business. The building owner or lessor has coverage for its premises exposures and if the owner or lessor has no part in the manufacturing or selling or serving or furnishing of liquor, there is no reason for the liquor liability exclusion to come into play for the owner or lessor.

## CIVIL AUTHORITY AND BUSINESS INCOME COVERAGE

March 10, 2014

### Q:

We recently had a snow emergency due to blizzard conditions for forty-eight hours where people were advised to stay off the roads except for emergencies or employers who required their employees to be at work. If you had no business being on the roads, you could be ticketed. The snow emergency was declared by the local sheriff for the entire county.

My insured is a fraternal lodge, which suffered a drop in income from its bar operation because members could not come in because of the declared snow emergency.

Our client is asking for coverage under the business income form. Intuitively, I told him no coverage. There was no physical damage by wind or any other covered loss to the insured property.

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However under A.5.a. - Additional coverages/Civil Authority, I read that there may be coverage after seventy-two hours if there is damage to the insured property.

Does a snow emergency, declared by the local sheriff, where people are asked to stay off the roads, constitute an order by civil authority?

If there had been wind damage to the insured property during the blizzard conditions and if the snow emergency constituted an order by civil authority, would coverage be triggered for the insured?

**A:**

For civil authority coverage to apply, there must be loss or damage to property other than at the described premises. Access to the area immediately surrounding the damaged property must be prohibited by civil authority as a result of the damage, and the insured's described premises must be within a mile of the damaged property (this is on the ISO CP 00 30 10 12). The action of civil authority must be taken in response to dangerous physical conditions resulting from the damage.

Since there was no damage, just dangerous conditions, the coverage would not apply. If there was actual damage to or on the roads that caused the sheriff to shut down the roads leading to the insured's business, then the civil authority coverage could kick in (after the seventy-two hour waiting period).

## HEATING SERVICE OVERFILLS OIL TANK

February 3, 2014

**Q:**

I have a homeowners claim that is insured with ISO form HO 03 04 91.

The cause of loss is an oil spill resulting from overfill by home heating oil delivery. The oil truck was unloading oil and overfilled the tank. There was about a five-gallon spill from the top of the tank located in the finished basement. The asbestos floor tile will need to be removed, along with other interior finishes. There was oil leaking through the slab and now under it so that there is oil in the soil under the basement. The carrier denied the claim based on the pollutant exclusion 2, e. (5), "unless caused by a peril insured against in Coverage C named peril." I feel that there is a case to be made for a vehicle loss.

**A:**

You are correct, the loss was caused by a vehicle and should be covered. The vehicle peril in the homeowners form is one of the broadest perils in the industry—it has no restrictions or exclusions attached to it. The oil could not have been there had it not been for the vehicle, so the vehicle is the cause of loss.

## WEIGHT OF SNOW DAMAGES POOL LINER

April 3, 2014

**Q:**

Weight of heavy snow caused an in-ground pool cover to pull from its anchors and fall into the pool, causing damage to the liner and loss of water within. The full extent of damage and repair is not known until weather permits an in-depth inspection.

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The insurer denied coverage under the HO3 form, Section 1, Perils Insured Against - Coverage B--Other Structures, 2. Caused by: b. freezing, thawing, pressure or weight of water or ice to a 1) fence, pavement, patio or swimming pool.

The insurer further cites Section 1, Exclusion 1: "We do not insure for loss caused directly or indirectly by any of the following. Such loss is excluded regardless of any other cause or event contributing concurrently or in any sequence to the loss. 3. Water below the surface of the ground including water which exerts pressure on or seeps or leaks through a building, sidewalk, driveway, foundation, swimming pool or other structure."

Our contention is that the weight of snow—not water or ice—caused the cover to fall into the pool and damage the liner. The damage to the liner from this weight of snow caused water to leak out of the pool, requiring liner and water replacement. Potential additional damage may result from lack of weight of the water on the pool walls to offset hydrostatic pressure from ground water.

Is the insurer correct in denying this claim?

**A:**

While ice is by definition frozen water, the fact that the policy lists them separately as excluded items indicates that each state of water must be considered individually. Snow by definition is soft, white pieces of frozen water that fall to the ground from the sky in cold weather; precipitation in the form of small white ice crystals formed directly from the water vapor of the air at a temperature of less than 32°F (0°C). This is different from both water and ice. As such, the exclusion speaks specifically to ice and water, so only those are excluded, and not the weight of the snow.

As far as the carrier's use of the exclusion for water below the surface of the ground, the snow was not water nor was it below the surface of the ground; that exclusion does not apply. The loss should be covered.

## **POLLUTION EXCLUSION APPLICABILITY**

February 17, 2014

**Q:**

My insured has a CG 00 01 12 01 policy. The insured was hired to install new circuits for a customer. An employee was pulling cable and accidentally set off the fire suppression system in the customer's office. As a result, ansul was released from the suppression system. The damage includes the cost to refill the suppression system (with ansul) and cost to clean-up ansul. Does the pollution exclusion in the CGL form apply?

**A:**

The pollution exclusion is not applicable in this instance. The premises is not one owned or occupied by the insured and the insured did not bring the fire suppressant on to the premises for its work. As for the cleanup costs, the pollution exclusion states that the exclusion does not apply to liability for damages because of property damage that the insured would have in the absence of any request or order to clean up. In other words, if the insured has coverage for the property damage it caused, the cleanup part of the pollution exclusion is not applicable.

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