

## YOUR CGL AND PROPERTY INSURANCE MAY NOT COVER ALL THE PROPERTY YOU THINK IT SHOULD

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Business today often is conducted on the move. Meetings are conducted in coffee shops, spreadsheets are finalized on tablet computers from parked cars, emails come to us on smart phones while we stand in line, and deals are closed over the Internet. But the insurance policies secured to manage the risks of business operations are not always so mobile.

Typical CGL policies state that they cover damage to property “to which this insurance applies.” CGL policies commonly exclude from coverage property owned or rented by the insured, property rented by the insured, and property under construction. Similarly, property insurance such as builder’s risk and commercial property narrowly are tailored to cover only specific types or areas of property. The extent of coverage often is determined by the description listed on the policy schedule, not how the insured uses its property.

For instance, a policy that insures a “warehouse at 123 Main Street” likely would not cover a storage building located behind the warehouse unless coverage includes “appurtenant structures” or the like. Even if the insured used the building for overflow storage, coverage would not extend to the storage building under many policies. In contrast, a policy that excludes the “warehouse at 123 Main Street” likely would be construed to exclude coverage for the warehouse, as well as any offices within it and the parking lot. Policies with specifically listed premises also exclude coverage for losses at temporary offices, off-site storage areas, and business operations conducted “on the fly.” Many CGL policies also exclude “land” from coverage – an exclusion which can gain importance in the face of environmental contamination claims.

Damage connected with new construction, renovations or repair work is excluded from coverage under many common CGL and property policies. Through a specific exclusion or because the covered property is listed and described in a way that excludes renovated areas, many policies exclude newly-acquired or constructed property from coverage. On the flip side, builder’s risk policies will cover in-progress construction, but often exclude the existing building being renovated. In these instances, if the new construction work catches on fire, any damage to the existing structure would not be covered.

Always, the policy definition of insured property is the last word. As the Supreme Court of New York underscored just last week in *Seneca Ins. Co., Inc. v. Cimran Co., Inc.*, 2013 WL 1405231 (N.Y. 2013), it is “an ancient principle of insurance law” that “coverage cannot be imposed

based on liability for which insurance was not purchased or provided.” In *Seneca*, the insured sought coverage of a lawsuit for personal injuries sustained at property owned by the insured. The victim, a construction worker, was injured in a fall from a new fourth floor during work to add three new stories onto the insured’s one-story building. Several years earlier, the insured had obtained a CGL policy which included the office. At the time the policy was issued, the office was only one-story.

To determine the extent of the insured premises, the Court reviewed the application for insurance on which the policy was issued. The application described the building to be insured as a “one-story building occupied by a billiard hall and a health spa.” Because the policy was issued in reliance on the representations made in the application, the Court concluded that the purchased coverage was limited to the one-story building. As a result, the fourth floor from which the worker fell was not part of the insured premises. Because the fourth floor was not insured, the insurance company had no obligation to defend the personal injury claim or indemnify the insured. The Court readily entered summary judgment in favor of the insurance company.

The *Seneca* case reminds us that insureds often learn the hard way that property is not covered only after a claim is submitted. Insureds can fall into the trap of assuming that their insurance coverage is as broad as their property interests or expands and contracts with their use of property. Insureds need to review their business property periodically and compare those holdings with the scheduled property lists and coverage limitations of their various insurance policies. Only through routine checks and reviews can an insured confirm that ever evolving business practices and property uses are matched and covered by their policies.



*Chandra Lantz is a trial lawyer and member of Hirschler Fleischer’s Insurance Recovery Team and Construction & Suretyship Practice Group. She handles a variety of commercial business disputes, including insurance recovery and policyholder claims litigation. Chandra also dedicates a substantial portion of her practice to construction industry and real estate development advisory services and dispute resolution.*

**This update is not legal advice and reflects only some information which may be of interest to the Virginia construction industry. Additional information on any of the new laws may be obtained by contacting [Chandra Lantz](mailto:clantz@hf-law.com) at [clantz@hf-law.com](mailto:clantz@hf-law.com) or [804.771.9586](tel:804.771.9586).**