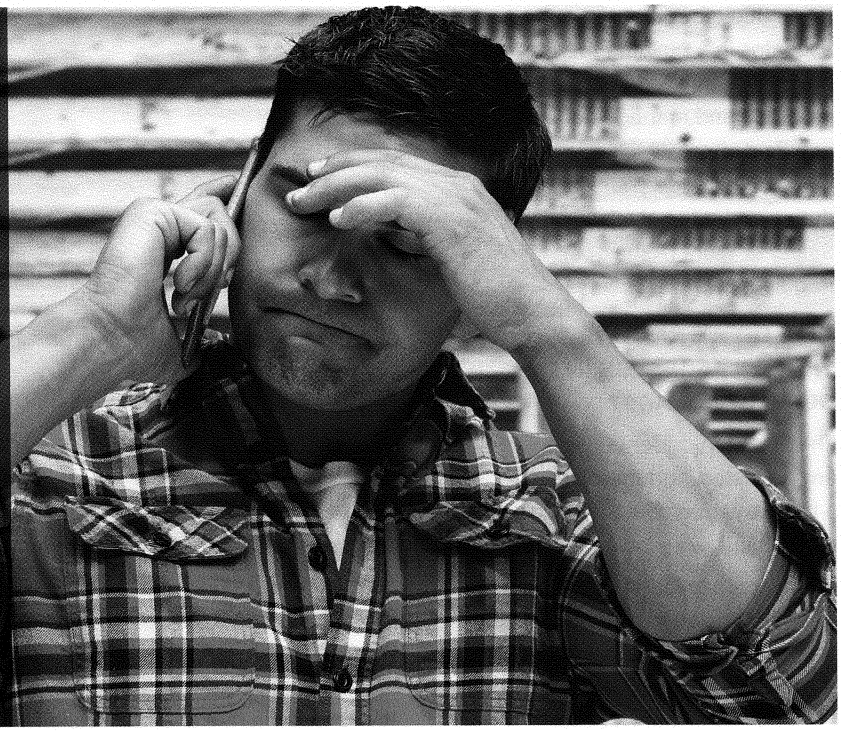
What your public liability insurance doesn't cover – the exclusions

BY BEN RICKARD



PUBLIC LIABILITY INSURANCE IS ONE OF THE MOST IMPORTANT POLICIES THAT A TRADE PROFESSIONAL NEEDS TO HAVE. IT IS PRIMARILY INTENDED TO PROTECT YOU FROM THE COST OF ACCIDENTALLY DAMAGING SOMEONE ELSE'S PROPERTY.

THE NUMBER OF WAYS YOU COULD CAUSE OR BE RESPONSIBLE FOR DAMAGE TO SOMEONE ELSE'S PROPERTY IS VAST AND IT WOULD BE IMPOSSIBLE TO LIST THEM ALL IN A POLICY. THAT'S WHY THE POLICY WORDING HAS AN "INSURING CLAUSE", DESCRIBING THE BROAD AREA OF LIABILITY IT COVERS, AND THEN SPECIFICALLY EXCLUDES SOME AREAS THAT INSURERS DON'T WANT TO COVER.

POLICY EXCLUSIONS

In plain language, here are some of the common exclusions in public liability insurance policies.

ASBESTOS

Asbestos-related legal action is amongst the longest and most expensive in history. Exposure to asbestos is the single biggest cause of death from work-related disease in New Zealand, killing about 170 people in 2010. Inhaled asbestos fibres cause a serious cancer called mesothelioma. As a result, most insurers are unwilling to take on the cost of this risk and have excluded any loss related to asbestos. However, there are some specialist insurers who will offer specific pollution liability insurance that does cover asbestos-related incidents.

VEHICLES, BOATS AND AIRCRAFT

Claims for damage from owning, working on or using vehicles, watercraft (although smaller ones may still be covered) and aircraft (including products incorporated into aircraft) are not covered. So, damage caused by your car, van, ute and trailer is excluded, as these should be covered by the liability cover within the vehicle's insurance policy.

POLLUTION

The cost of pollution, including air, water and ground pollution and its cleanup are excluded from most policies. Some will still cover a specific event if it is sudden and unintended.

EMPLOYEE INJURY

Injury to an employee that arises out of their work for you is excluded. The ACC scheme is intended to cover this. For injury not covered by ACC, employers liability insurance is available.

BUILDING DEFECTS, MOULD, ROT, GRADUAL DETERIORATION AND WATER PENETRATION

As a result of the leaky homes crisis, most policies now exclude cover from the effects of water penetrating a building envelope. As the multi-billion dollar cost of the crisis became clear, insurers decided that the cost of future leaky building claims was too high for them to bear and amended their policies to exclude it. However, damage caused by leaks from internal pipes, membranes and water systems are still generally covered by public liability insurance. Separate cover that protects builders from claims of financial loss related to events like leaky homes is available.

ERRORS IN PROFESSIONAL ADVICE

You are generally not covered for damage that results from bad advice, or where you haven't given advice that you should have (if you've

charged for giving the advice, i.e., it's a professional service). If you gave the advice for free, then you may still be covered.

YOUR PRODUCTS AND THE PROPERTY YOU'RE WORKING ON

Public liability insurance is intended to cover the cost of damage to other people's property. This means products that you own, supply, install, construct or are working on are excluded under many policies. This becomes tricky for builders because of the way insurers define what "your products" are. Along with the obvious, "your product" may also include any property that you have been, or are working on. Some insurers have, in the past, declined claims because the house being worked on has been interpreted as "your product", and therefore not covered because of this exclusion. However, some policies make it clear that buildings, or separate components of a property, will still be covered.

The definition of "your products" is one of the most important aspects of your policy and we strongly recommend that you make sure your policy has a "trade friendly" definition.

DEFECTIVE/FAULTY WORKMANSHIP

Some polices won't cover your liability for defective workmanship. Others exclude cover for faulty workmanship if it results in water penetration of the building envelope. Damage that occurs as a consequence of faulty workmanship may still be covered however. This is what's known as "resultant damage".

Some policies do cover your liability for damage caused by faulty workmanship (whether automatically or as an optional extra), so you should make sure your policy includes this.

The issue of faulty workmanship is one of the trickiest areas of liability for trade professionals. We recommend you ensure that your policy includes cover for damage caused by faulty workmanship.

DEFECTIVE DESIGN AND MATERIALS

Costs arising from a defective design or specification or defective materials are excluded from public liability cover. You should be wary of doing any design, unless you have separate professional indemnity insurance that specifically covers this. Your liability for defective materials is a very contentious area, with insurance cover not generally available, so understanding the warranties the products you use come with is critical. Resultant damage may be covered however.

DISCLAIMER:

This article outlines some of the common exclusions contained within most public/general liability policies available from major insurers in New Zealand. It's important that you check what your own policy does and doesn't cover. The specific wording from different insurers will vary and you should seek the advice of an insurance professional if necessary. Insurers will interpret and apply their own policy wording depending on the specific circumstances of each individual claim. This article is not comprehensive and should not be relied upon as legal advice.

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