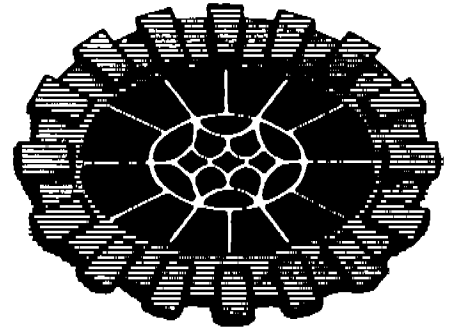


SOLUTIONS



Creative Risk Management
The McLaughlin Company

Union Liability Insurance

Persons engaged in union activities generate a number of specialized professional liability exposures that are not covered by commercial general liability (CGL) policy forms. These exposures arise mainly from the Landrum Griffin and the Taft-Hartley Acts, which permit union members to sue union leaders for alleged official misconduct.

The Landrum-Griffin Act stipulates that union officials who are sued may not use union funds or union counsel for defense. There is also the exposure which the labor union itself has should it be obligated to reimburse union officials for their own legal counsel if it is ultimately proven that the officials were innocent of the charges made.

WHO IS AN INSURED?

"Insured" means the Union named in the Declarations and any person who has been, now is, or shall become a duly elected or appointed director or trustee, a duly elected or appointed officer, an employee of the Union, board members, committee members, shop stewards, business agents whether or not they are salaried, and any other person acting on behalf of the Union or at the direction of an officer or the board of directors of the Union.

COVERED ACTS

The policies consist of two key coverage parts: labor union liability, and personal injury/publishers liability. The first coverage addresses the standard errors and omissions exposure, such as errors, misstatements, misleading statements, and breaches of duty of fair representation. The second part applies to the typical personal injury perils plus coverage for plagiarism, misappropriation of ideas, copyright/trademark infringement, and unauthorized use of title.

DEFENSE COVERAGE

One unique aspect of the union liability policy is the fact that it permits the insured union to select defense counsel in the event of a claim. The insurer does, however, reserve the right to veto the insured's selection. Nevertheless, this is a valuable coverage extension that is rarely found in other types of professional liability coverage.

The Union Liability Policy was developed to cover a broad spectrum of organizations and persons

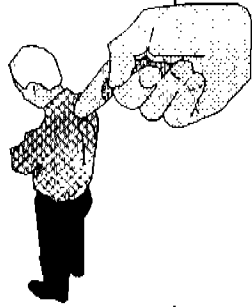
- The named labor union
- Directors, officers, and trustees
- Employees
- Board members
- Committee members
- Shop stewards
- Business agents
- Any other persons acting on behalf of the union or at the direction of an officer or board of directors

In This Issue

Unions face hazards and perils that are often overlooked by both the labor organization and their insurance agent. In this issue we will examine these exposures and some of the insurance and risk management solutions.

INDIVIDUAL LABOR LEADER ENDORSEMENTS

Defense coverage is available by endorsement for individual labor leaders in the event that a claim is alleged against them involving one of the three "dishonesty" exclusions under the policy (dishonest activities, improper personal profit, conflict of interest). The extension provides a separate limit for the defense of such claims. However, the payment of defense from this limit reduces the policy's overall aggregate limit. The premium for such coverage must be individually paid from the personal funds of the insured labor leaders because it is against public policy for a union to expend funds to cover the defense of potentially dishonest acts.



EXCLUSIONS

There are several important exclusions in union liability policies that should be carefully examined.

ERISA

...based upon an actual or alleged violation of the responsibilities, obligations or duties imposed upon fiduciaries by the Employee Retirement Income Security of 1974 and amendments thereto or similar provisions of Federal, State or local statutory or common law.

INSURED VERSUS INSURED

...brought by one union organization against an affiliated or subsidiary union organization that it has chartered; or brought by an Insured or Individual Named Insured against any other Insured or Individual Named Insured.

BODILY INJURY/PROPERTY DAMAGE

...based upon or attributed to bodily injury, sickness, disease, emotional distress, mental anguish or death of any person, or for damage to or destruction of tangible personal property including loss of use thereof.

STRIKES AND BOYCOTTS

...as a result of actual or alleged boycotts, picketing, strikes, lockouts, demonstrations, sickouts, slowdowns, refusals to cross picket lines, work stoppages or any other similar activity or job action; brought by employers, other unions and injured third parties, except when brought by a bargaining unit member of the named Insured for a Wrongful Act.

POLITICAL ACTION COMMITTEES

...based upon or attributable to the operations of any political action committee

There are three reasons for exclusions:

1. Coverage can be better provided by another type of policy. The Union Liability Policy excludes Bodily Injury/Property Damage because this is covered under the Commercial General Liability Policy. It excludes ERISA because the exposures created by this act are covered by the Trustees and Fiduciary Liability Policy.
2. Coverage cannot be provided because of the catastrophic nature of the exposure or the exposure is an uninsurable cost of doing business. For example - a failure to perform a contract
3. Coverage would be against public policy. It would be against public policy to protect individuals from the consequences of their own deliberate dishonest acts. ☒

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Examples of Union Liability Claims

- Breach of Duty of Fair Representation
- Discrimination or wrongful discharge
- Interference with an employee's job
- Budget overruns
- Improper documentation of funds received from U.S. government for various projects and programs
- Negligence in collective bargaining negotiations
- Libel, slander, defamation of character
- Failure to hold or attend meetings
- Improper hiring hall practices
- Election misconduct
- Unfair Labor Practices

Special Problems

Be aware of the gaps in your insurance program. Make sure you are keeping your insurance agent advised of what you are doing so that he or she can take the necessary steps to match your exposures and your coverages. The following are just a few of the potential pitfalls.

Joint Ventures

A Joint Venture is a pooling of resources of several entities in order to undertake activities that are beyond their individual and separate abilities.

Often labor organizations will join forces for special projects:

- ☑ organizing campaigns
- ☑ publications
- ☑ training
- ☑ lobbying efforts

There is no coverage for a joint venture unless it is specifically named on the policy.

Expected or Intended Injury

Except for any bodily injury that may result from *reasonable force* used by an insured to protect or defend person or property, any bodily injury or property damage that an insured *intends to cause* is not covered by liability insurance.

The definition of *reasonable force* will vary from state to state. A court in New York is likely to interpret this differently from a court in Oklahoma where a

"Make my Day" law was recently enacted.

What is expected or intended? The expected and intended wording is being challenged and clarified in courts across the country. The challenge is to clarify that even though the act was intentional, if the resultant damage or injury is greater than was expected or intended, will the liability policy respond?

This is of particular relevance to labor organizations. Consider the question of picket line activity. labor organizations are frequently sued as a result of violence accompanying strikes. Insurance companies may use the "expected or intended" wording to deny coverage.

Contingent Liabilities

A "contingent" liability is one that is created by an unseen effect of another occurrence. For example, if a person were to suffer a stroke (bodily injury) as a result of a libelous remark, the insured would have a contingent bodily injury claim.

Consider this scenario:

A magazine published by the union includes an article on how to perform a do-it-yourself tune-up on an automobile. A member claims he followed the instructions to the letter.

However, during the course of the procedure, the engine backfires and injures him. Under this claim scenario, both the Commercial General Liability and the Publishers Liability policies of the union could be triggered – but you have a problem if your Commercial General Liability contains a professional liability

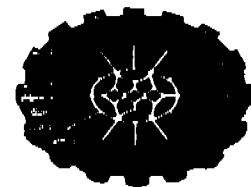
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acts exclusion and you Publisher's Liability contains a bodily injury/property damage liability exclusion.

How do you bridge the gap? If possible, remove the professional acts exclusion from the Commercial General Liability Policy. This may not be possible. As an alternative, add the "Broad Form Publishing Exposures Errors and Omissions Endorsement" to the Publishers Liability Policy. This would have the effect of covering not only financial loss resulting from publishing errors and omissions, but also those producing bodily injury and property damage. ☑

SOLUTIONS is a service of The McLaughlin Company and Creative Risk Management, Inc. offering you timely and creative solutions to all your INSURANCE and RISK MANAGEMENT needs.

THE McLAUGHLIN COMPANY CREATIVE RISK MANAGEMENT, INC.



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Liquor Liability

Most people believe the Liquor Liability Exclusion which is contained in the Commercial General Liability Policy only pertains to insureds that are in the business of selling, manufacturing, distributing, servicing or furnishing alcohol. While business lunches, parties and social functions sponsored by the insured are covered for host liquor liability, there is no host liquor liability coverage if there is a statute, ordinance or regulation pertaining to a particular event.

Have you ever..... hosted a fund raiser or casino night?sponsored a Labor Day Picnic where beer was sold?held an event where you were required to obtain a permit or license to serve alcohol?

If you sponsor or host any events where liquor is served and a charge is made or a pouring license is required, your Commercial General Liability Policy should be modified by adding either "Amendment of Liquor Liability Exclusion" or "Amendment of Liquor Liability Exclusion – Exception for Scheduled Activities". ■

Watch Out for Exclusions

Read your policy! Many insurance companies are attaching exclusions to their policies that limit coverage for labor unions. Be aware of the following exclusions that may be attached to your policies:



Exclusion - Designated Professional Services

Description of Professional Services:

Labor Union

With respect to any professional services shown in this Schedule, this insurance does not apply to "bodily injury", "property damage", "personal injury" or "advertising injury" due to the rendering or failure to render any professional services.

CG 21 16 11 85 Copyright, Insurance Services Office, Inc. 1984



Labor Union Amendatory Endorsement

In consideration of the premium paid, and notwithstanding anything contained in this policy to the contrary, it is agreed that ~~this policy shall not apply to any liability for bodily injury~~ or property damage arising out of:

1. a collective bargaining agreement, labor agreement, labor contract or any similar contractual agreement between the insured and any employer whose employees it represents
2. any lockout, strike, picket line, or similar operations incidental to a labor dispute or to labor negotiations.

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Exclusion

It is hereby understood and agreed upon that there is no duty to defend or indemnify for Bodily Injury, Property Damage, Personal Injury and Advertising Injury arising out of or resulting from, actual or alleged boycotts, picketing, strikes, lockouts, demonstrations, sickouts, slowdowns, refusals to cross picket lines, work stoppages or any similar activity or job actions; brought by employers, other unions and injured third parties.

Workers Compensation

Insuring the workers compensation exposures of a union can often be quite confusing. Especially when you consider the fact that even though all 50 states and the District of Columbia have workers compensation laws no two states' workers compensation laws are identical. In fact, the specific provisions of workers compensation laws vary considerably from state to state. This article will attempt to give you some general background information regarding laws, covered employees, and benefits.

Are Workers Compensation Laws Compulsory?

The vast majority of state workers compensation laws are compulsory, meaning that an employer must accept the law and pay workers compensation benefits, as specified by the state, to an injured employee who is covered under the law. Three states (New Jersey, South Carolina, and Texas) currently have elective workers compensation laws, meaning that an employer has the choice of either accepting or rejecting the workers compensation law. However, if an employer in one of these states decides to reject the law and an injured employee brings a negligence suit against the employer, the employer will be denied the use of the three common-law defenses of assumption of risk, contributory negligence, and negligence of a fellow employee. In practice, because of the threat of facing a

large liability suit without these three defenses, few employers in these states reject the workers compensation law.

Who Must Purchase Workers Coverage?

Most jurisdictions require employers to obtain insurance or prove financial ability to carry their own risk. Currently the statutes in 13 states (Alabama, Arkansas, Florida, Georgia, Michigan, Mississippi, Missouri, New Mexico, North Carolina, Rhode Island, South Carolina, Tennessee, and Virginia) exempt an employer from the workers compensation law if it has less than a specified number of employees (usually three, but sometimes two, four, or five). However, in Rhode Island this numerical limitation does not apply to certain hazardous operations, and in North Carolina it does not apply to types of employment which involve an exposure to radiation.



Covered Employees

No state workers compensation law covers all types of employees. In three states (Illinois, North Dakota, and Wyoming), workers compensation statutes apply only to certain "hazardous" types of employment enumerated in the state law. In other states, the workers compensation law applies to all types of employment except those

excluded under the law. Classes of employees often excluded include domestic workers, agricultural workers, casual workers, and volunteers.

Volunteers

In most cases, an employer with employees who do not come under the workers compensation law of a particular state many voluntarily bring these employees under the law, generally through the purchase of workers compensation insurance to cover such employees. To secure this coverage a specific endorsement must be added to your workers compensation policy. In the majority of states, an injured worker covered under voluntary compensation insurance still maintains the right to file a common-law suit against the employer in lieu of compensation benefits. When injured, the worker is offered compensation benefits in exchange for a written release absolving the employer of any further liability with regard to the injury. If an injured worker files a suit against the employer, it is construed as an irrevocable rejection of compensation benefits. In a few states, there are specific provisions in the workers compensation statutes which stipulate that if an employer provides voluntary workers compensation coverage, the employee loses his common-law rights against the employer unless the employee elects, prior to an injury, not to be covered by the voluntary compensation. In other words, if an employee does not refuse coverage under the workers compensation law prior to an accident, compensation benefits will be the sole source of

recovery in the event of an on-the-job injury.

Covering An Officer

An executive officer (generally defined as the president, vice president, secretary, or treasurer) is covered under workers compensation laws in most states. However, many states allow an executive officer to elect not to be covered. The insurance costs for insuring officers is based on state specific minimum and maximum payroll amounts. This rule is quite bothersome, especially for small locals who pay their officers "lost time wages" that fall well below the state specific officer minimum. Be aware that some states will consider an adjustment to the officer minimum payroll requirement. Such requests must be made in writing to the applicable state workers compensation bureau. Contact our office to find out if your state will allow consideration of an adjustment to this rule.

Benefits

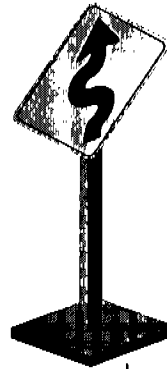
The categories of workers compensation benefits payable to an injured worker or the worker's dependents are medical, disability, rehabilitation, and death. The dollar amounts of these benefits, as well as other related rules, vary considerably from state to state. A brief overview of the various state workers compensation laws can be found in *Workers Compensation Notes*, available from the AFL-CIO Department of Occupational Safety and Health (202) 637-5075. ■

Business Auto Insurance

Whether a union owns an automobile or not it needs some type of automobile insurance protection. Most people realize the necessity and importance of insurance protection when vehicles are owned. Among other coverages, automobile insurance provides protection for physical damage to the automobile as well as protecting the "insured" from liability that arises from the use of such automobiles. But many of you are probably unaware of the liability exposure that the Union has every time a nonowned or hired automobile is used on union business.

Every union, at the very minimum, should have a non-owned and hired car liability policy in force to protect itself from liability arising from the business use of a nonowned or hired automobile.

In many cases there will be some primary insurance that will provide underlying protection; however, this cannot and should not be relied upon. Every union, at the very minimum, should have a non-owned and hired car liability policy in force to protect itself from liability arising from the business use of a nonowned or hired automobile.



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Who Is An Insured?

NAMED INSURED - The named insured has liability coverage for any auto that is covered under the liability portion of the business auto coverage form. The extent of covered autos is shown on the declarations page. The broadest coverage applies to the named insured's exposures arising out of any auto and is designated by a symbol "1".

PERMISSIVE USERS - Anyone else is covered while using with your permission a covered "auto" you own, rent, hire or borrow **except:**

- The owner or anyone else from whom you hire or borrow a covered "auto". *Absent an agreement to the contrary, the owner of the hired or borrowed auto is expected to purchase insurance or otherwise be responsible for his or her own liability in connection with the auto.*

Your employee if the covered "auto" is owned by that employee or a member of his or her household. It is not the intent of the business auto policy to protect the employee's interest with respect to liability arising out of the employee's own auto. Therefore, if an employee is involved in an accident while driving his own auto in the business of his employer, the employer's business auto policy will cover any liability charged to the employer. The employee is expected to have a personal auto policy to cover his or her personal liability. An employee who uses his or

her own auto in connection with your business is not an insured with respect to that auto unless this provision is modified by endorsement. Your employee if the covered "auto" is owned by that employee or a member of his or her household. It is not the intent of the business auto policy to protect the employee's interest with respect to liability arising out of the employee's own auto. Therefore, if an employee is involved in an accident while driving his own auto in the business of his employer, the employer's business auto policy will cover any liability charged to the employer. The employee is expected to have a personal auto policy to cover his or her personal liability. An employee who uses his or her own auto in connection with your business is not an insured with respect to that auto unless this provision is modified by endorsement. This is done with the **Employees As Insured Endorsement**. When this endorsement is used, employees become insureds while they are using their own autos in the named insured's business or personal affairs. There is a premium charge for the endorsement and coverage would be excess responding over the employee's personal auto coverage, if the policy limits are exhausted.

- Someone using a covered "auto" while he or she is working in a business of selling, servicing, repairing, parking or storing "autos" unless that business is yours.



- Anyone other than your employees, partners, a lessee or borrower or any of their employees, while moving property to or from a covered "auto".
- A partner of your's for a covered "auto" owned by him or her or a member of his or her household.

Following are some other important automobile coverages and endorsements.

With the **Individual Named Insured Endorsement**, members of the named insured's household become insureds for autos that are not owned by them or furnished for their regular use.

With the optional **Drive Other Car Coverage Endorsement** - the individuals named in the endorsement (and their spouses) become insureds while using autos they do not own. This endorsement is particularly important if you have an employee who is furnished a company car and that employee does not have a personal non-owner policy.

Coverage For Physical Damage To Rented Automobiles is designated by the use of a symbol "8" in the physical damage (comprehensive and collision) section of your automobile declarations page. This coverage will not be automatically provided. Symbol "8" designates coverage for leased, hired, rented, or borrowed autos only. Autos that are owned by employees, partners, or members of their households are specifically not included in this designation of covered autos.

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With the optional **Rental Reimbursement Endorsement** - coverage is provided for rental reimbursement expenses incurred for the rental of an auto to replace a damaged covered auto. The reimbursement is payable to the insured in addition to any physical damage (comprehensive & collision) coverage available on the autos. Coverage begins 24 hours after the loss.

Hired Autos Specified As Covered Autos You Own

Endorsement is used when an automobile is rented or leased for an extended period of time. The endorsement provides primary coverage as if the auto were owned by the named insured. The endorsement also amends the "who is an insured" provision to include the owner of the described vehicle or anyone else from whom it is rented or leased.



The above article is based on the industry standard auto policy; the Insurance Services Office (ISO) Business Auto Coverage Form (CA 0001). When in doubt regarding specific provisions of your policy, give us a call for an explanation or clarification.