

Manager/Supervisor Risk Management

#91– 9/20/12

A twice weekly e-mail training for YCPARMIA members

TOPIC: CONDITIONS

The last important section of the coverage agreement that we will discuss is the Conditions section. Rather than dealing with the issues of defense and/or indemnification, the Conditions lay out the duties and rights of the parties of the contract (YCPARMIA and its members). There are two of the ten numbered paragraphs that warrant attention.

Paragraph 1 sets out the duties of the insured under the agreement. The member has the duty to:

- Provide written notice to YCPARMIA “in the event of an occurrence...” along with sufficient information for us to start an investigation. Note the duty is tied to an “occurrence,” not a claim or suit. If the member recognizes that an accident occurred that created an exposure they are supposed to notify YCPARMIA;
- Provide immediate notice of every claim, demand, notice or summons;
- Cooperate in the defense, settlement of suits or pursuit of contribution or indemnity under any contract, and noting that the any settlement made by the member will be at their own cost; and
- Acknowledge that any payments made or expenses incurred prior to reporting the claim to YCPARMIA will not be reimbursed.

In summary this condition requires notice to YCPARMIA to trigger coverage, confirms the member’s duty to cooperate in the defense as a condition of continued coverage, and that any unilateral acts involving the claim made by the member will be at their own expense.

Paragraph 4 deals with the issue of “Other Coverage.” It is common for more than one policy to cover a potential loss. The classic example is a dangerous condition claim where the occurrence is covered under the YCPARMIA Memorandum of Coverage, and under the independent contractor’s coverage that names the member as an additional insured. If more than one policy covers the incident, which pays?

The Conditions state that any other source of coverage for the member would be primary, with the YCPARMIA coverage sitting in excess of that coverage. The paragraph goes on to specifically state that this is true whenever the member is named as an additional insured. In the example above, the contractor’s policy would have to pay first, and their limits would have to be exhausted before YCPARMIA’s coverage would have to pay anything. Of course the contractor’s policy would probably have the same condition, so that is why, under contract risk transfer practices, we require the additional insured certificate to specifically state that their insurance is “primary.”

Next topic: Excess Coverage