

Third-party Action-over Exclusions



Could an exclusion in your commercial general liability (CGL) policy leave your business liable for damages due to an employee's injury, even though the employee already received workers' compensation benefits? It may seem like the answer should be a simple "No," given that workers' compensation generally limits the remedies an employee can obtain from an employer for a work-related injury. Yet, whenever an employer assumes general liability through a contract with a third-party, the answer could be a very costly "Yes."

This is because workers' compensation does not bar injured employees from suing third parties, and it is possible for those lawsuits to circle back from a third party to the employer. These lawsuits are often referred to as "third-party action-over" claims. If an employer's CGL excludes all coverage for claims involving its employees' work-related injuries, the employer could end up facing a third-party action-over claim without insurance.

It's a complicated risk, but understanding the nature of the potential liability and the limits and exclusions of your insurance policies is essential to protecting yourself from this exposure.

Third-party Action-over Claims Explained

In short, a third-party action-over claim occurs when an employee's lawsuit against a third party rebounds back onto the employer because of that employer's prior contractual arrangement with the third party. That may

sound complicated, but an example can help illustrate the parties involved and the nature of the liability:

1. A property owner hires a contractor, which has its own employees, to assist in the construction of an office building.
2. As a provision of the construction contract, the contractor agrees to indemnify the property owner against liabilities that may arise from the contractor's performance of the work.
3. An employee of the contractor is injured at the construction job site.
4. The employee files for, and collects, workers' compensation from the contractor.
5. In addition, the employee files a lawsuit against the property owner that alleges negligence for not maintaining a safe work site.
6. Because the contractor agreed to indemnify the property owner in the construction contract, the property owner shifts its liability for negligence onto the contractor.

It's important to note that the third party doesn't have to be a property owner. Any other third party could trigger the action-over claim, as long as the employer (the contractor in the above example) has a contractual agreement with the third party that indemnifies the third party from liability.

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The Limits of Workers' Compensation

At a glance, it may seem like there has been a mistake. After all, workers' compensation exists to limit an employer's liability for employees' work-related injuries. If an employee in the above example is receiving workers' compensation benefits, it doesn't seem possible for the employer (contractor) to be sued for any additional liability.

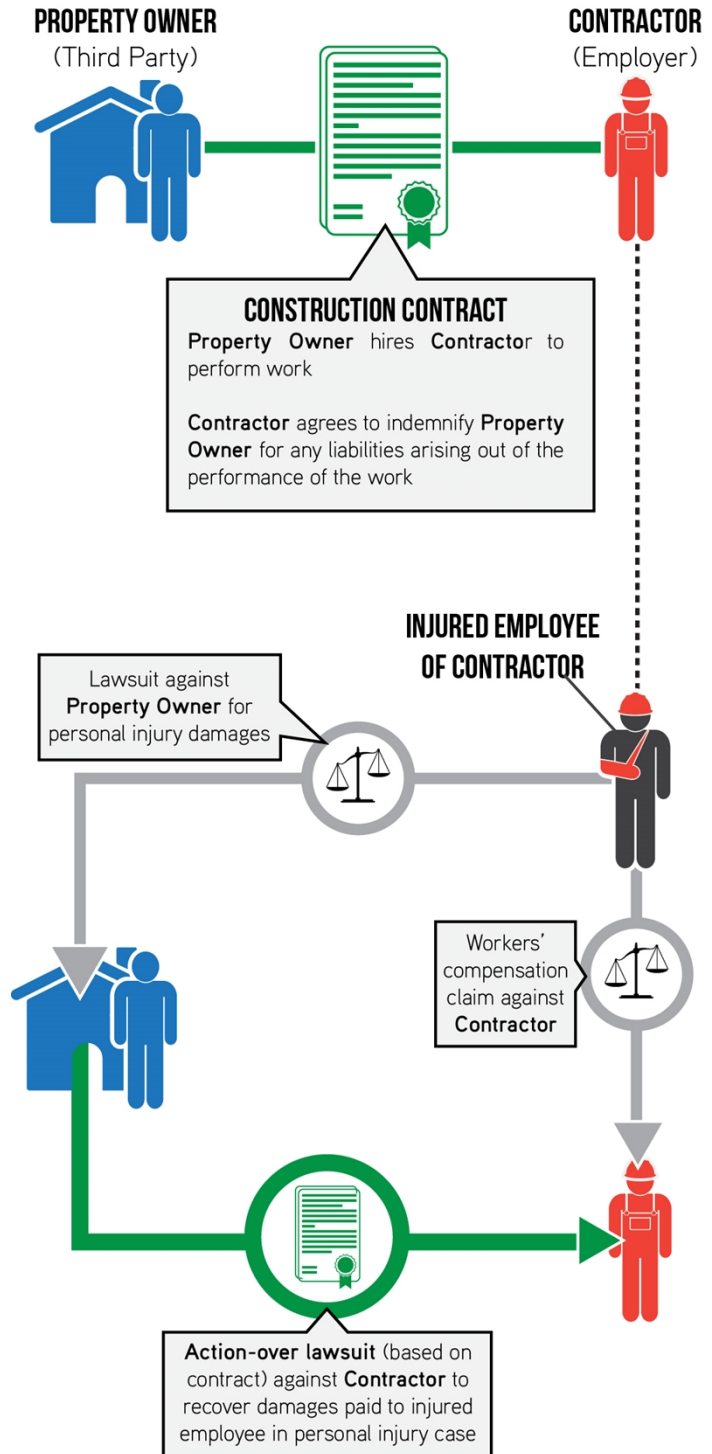
However, in this scenario, the employee sues the third party, not the employer. It's only because of a contractual arrangement between the third party and the employer that the liability shifts back onto the employer.

It may also seem like employer's liability (EL) insurance should cover this, since it's specifically designed to cover claims that traditional workers' compensation doesn't. However, the standard EL policy specifically excludes third-party action-over claims. Therefore, CGL insurance is often the only coverage an employer can look to involving third-party action-over claims.

Third-party Action-over Claims and Your CGL Policy

The standard CGL policy explicitly excludes coverage for any claims involving work-related injuries to employees of the policyholder, but a crucial exception to this exclusion brings third-party action-over claims back under the CGL coverage.

Namely, the exception allows coverage for employee-related liability that the policyholder assumes for a third party under a contract. In other words, if the policyholder has entered into a contractual arrangement that brings with it an attendant liability—as it does in a third-party action-over claim—the employee-damages exclusion to the CGL doesn't apply.



Third-party Action-over Exclusions

In recent years, however, some insurance carriers have attempted to reduce their losses by amending or altering the standard CGL policy. Different carriers have adopted different tactics, but the effect has been the same—to remove the policyholder's protection from liability in third-party action-over claims.

One provision to watch out for is the absolute employer's liability exclusion. As its name implies, this excludes the policyholder's coverage relating to employee injuries, regardless of the circumstances—including third-party action-over claims.

It's essential for businesses to make sure their CGL policies don't contain these exclusions or remove protection in other ways. After all, these exclusions could mean that a business with workers' compensation, employer's liability and commercial liability insurance could still be held directly liable—even for someone else's negligence.

Protecting Your Business

Third-party action-over claims may seem like a convoluted risk, but in the event of another party's negligence, that risk can become very costly. And for better or worse, there's little else a business can do other than to make sure it has appropriate coverage.

Insurance policies can be complicated documents, often filled with exclusions, exceptions and exclusions of the exceptions. That's why it's essential to work with a trusted advisor when assessing your business's exposures and determining the right coverage to match your business's specific needs.

Contact The Heritage Group today at 518-782-0001 to learn more about your CGL insurance options and to make sure you're covered.