

### Other Insurance

By Dan Mullen

From time to time, we receive notices of claims brought by persons who have suffered injury as a result of tripping over or falling onto iron bars planted by surveyors or falling into holes dug by survey crews looking for monuments.

The professional liability insurance policy for members of the AOLS provides coverage for bodily injury unless it results from assault or battery (on say an annoying client) or the nuclear energy hazard. If a payment is made under your professional liability policy to settle a bodily injury claim the insured member's deductible, which is currently set at \$5,000.00, and the Association's larger deductible would apply.

***“Whenever you face a claim for bodily injury, we recommend that you notify your professional liability insurer and your general liability insurer.”***

There is other insurance which might respond to bodily injury claims. Bodily injury liability caused by an "occurrence" is one of the specific coverages provided under a general liability (CGL) policy and, in many circumstances, such as when someone slips and falls at your premises, that policy, rather than the AOLS policy, would apply.

To our knowledge, there is no deductible applicable when a bodily injury claim is settled under a CGL policy or, if there is one, it is relatively small, possibly

\$50.00 or \$100.00. Obviously, it would be to your financial advantage to have the claim covered by this policy.

Typical CGL policies contain an exclusion that states that the policy does not apply to any liability arising out of the rendering of or the failure to render professional services. In our view, however, that does not necessarily mean that a CGL policy will not respond when injury results from contact with an iron bar, for example.

Absent a specific definition of "professional services" in the CGL policy, we would suggest that such a loss is an occurrence that triggers coverage under the policy, particularly when the surveyor is away from the site or the work was completed some time ago. In these circumstances, an argument can be made that there is not necessarily a causal connection between the service provided and the occurrence - we have in mind situations where a bar has been tampered with or lifts above grade.

We investigated an incident involving a child injuring a knee when falling on a SIB planted in a lawn and another where a child running through a culvert struck his head on the point of an IB that had pierced the top of the culvert. In a more recent case, a woman tripped over a SIB - that years earlier had been placed flush to the surface in an asphalt driveway to mark a curve - and fell heavily against a car severely fracturing both wrists.

The woman retained a lawyer who brought a lawsuit against the surveyor alleging that he was negligent in planting the SIB, which he describes as an "of-

fending nuisance." On our recommendation, the member reported the claim to his CGL insurer. That insurer has taken the position that there is a duplication of coverage, that both its and the professional liability policies provide coverage. Accordingly, both insurers have agreed to pro-rate investigation and defence expenses and any settlement costs on the basis of the combined coverage.

***“If the CGL carrier agrees that its policy applies, either fully or on a duplicate basis, your exposure with respect to the deductible and a potential increase in premiums will be reduced or eliminated.”***

Whenever you face a claim for bodily injury, we recommend that you notify your professional liability insurer and your general liability insurer. (It also would be advisable to give similar notice of property damage claims because in some circumstances coverage under a CGL policy could be available.) If the CGL carrier agrees that its policy applies, either fully or on a duplicate basis, your exposure with respect to the deductible and a potential increase in premiums will be reduced or eliminated.



Dan Mullen is an adjuster with F.C. Maltman & Co. Ltd.

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