

OVERVIEW OF RAILROAD PROTECTIVE LIABILITY

BACKGROUND

- The Railroad Protective Liability Policy meets several important insurance needs with respect to work conducted on or near railroad tracks or railroad property.
- **In the definition of Insured Contract contained in the Commercial General Liability (CGL) Policy, railroad sidetrack agreements are covered contracts; however, specifically excluded is any part of any contract or agreement that indemnifies a railroad for losses that result from construction or demolition within 50 feet of any railroad property, or that affects any railroad bridge, trestle, track, roadbed, tunnel, underpass or crossing.**
- What this means is that the CGL does not cover construction or demolition any other operations within 50 feet of any railroad property, railroad bridge, trestle, track, roadbed, tunnel, underpass or crossing.
- This may leave property owners, contractors and railroads with a significant coverage gap should there be proximity to a railroad exposure.
- **Vicarious liability** is when one party is held responsible for the actions or conduct of another party based solely on the relationship of the two parties. To apply this to a Railroad Protective Liability Policy, it is when the named insured is ultimately held liable for the acts of a hired contractor, sub-contractor or independent contractor, who is working for, on behalf of **or within the right-of-way** of the insured.
- **The Railroad Protective Liability Policy (RPL) is the only standard ISO method of providing coverage for contracting and demolition activities on or near railroad properties that are otherwise excluded in the CGL.**
- It is also very important to note that the RPL policy is limited in its coverage.
- The RPL policy is not a comprehensive CGL policy and does not cover all of the insured's activities or operations and should in no way be considered a replacement to a CGL program.
- The RPL does not provide products/completed operations coverage so the contractor and any subcontractors need to have the CGL policy to have this coverage, along with the exclusion deleted for work within 50' of the railroad property (as referenced above).
- In the case of the Railroad Protective Liability Policy, the named insured is the railroad and not the contractor or sub-contractor.

ELIGIBILITY

- Only those insured's that either are railroad operations or that have property on or near (defined as 50 feet) railroad property and that also have construction or demolition or other operations planned, need consider this coverage. Any insured that has these exposures should use the Railroad Protective Liability Program.

WHAT IS COVERED

- The Railroad Protective Liability Policy has two coverage parts in the insuring agreements.
 - Coverage A provides coverage for the bodily injury or property damage from the operations of a sub-contractor or independent contractor, performed for or on behalf of the insured, as they specifically relate to the job location and work defined in the Declarations. Basically, the Railroad Protective Liability Policy affords coverage for the vicarious liability from the operations of an independent or sub-contractor.

- Coverage B--Physical Damage to Property provides coverage to pay for direct and accidental loss of or damage to rolling stock and their contents, mechanical construction equipment or motive power equipment, railroad tracks, roadbeds, catenaries, signals, bridges or buildings without regard to legal liability, (a type of no-fault coverage),
 - As long as the physical damage to property is a result of the acts or omissions at the job location or in connection with the work, described in the Declarations.
 - The property must be owned by, leased or entrusted to the named insured under a lease or trust agreement.

COVERAGE LIMITATIONS

- This coverage is limited. It pertains only to the job location that must be defined in the Declarations and in connection with the work which also must be defined in the Declarations.
- Coverage ends when on the policy expiration or when the work is complete or the terms of the contract are fulfilled, whichever is the earlier date.

WHAT IS NOT COVERED

- This is not comprehensive general liability coverage. It does not cover all the operations and exposures of an insured, only the vicarious liability between the insured and the contractor.
- It is limited to a very specific, designated job location and in connection with described work, in addition to the specified period of time. Therefore, it is limited in its scope of coverage.
- The Railroad Protective Liability Policy contains eight exclusions. These are:
 - Expected or Intended Injury;
 - Contractual Liability;
 - Completed Work;
 - Acts or Omissions of Insured (railroad);
 - Workers Compensation and Similar Laws;
 - Pollution
 - Nuclear; and
 - War

POLICY MAKE-UP

An important item to consider is the policy make-up.

- The Railroad Protective Liability Policy is an occurrence policy. No claims-made policy program is available.
- Deductibles do not apply to this Program.
- Any other state specific mandatory endorsements for the Railroad Protective Liability Policy will apply.
- The optional endorsement, CG 28 31--Pollution Exclusion Amendment, is available to give back limited pollution coverage for fuels or lubricants for equipment in a railroad operation when requested.
- The RPL coverage part cannot be added in conjunction with or connection with any other coverage part. It must be a stand alone (monoline) policy, because of the structure of the naming of the railroad and the specified coverage for vicarious liability.

RPL MARKET

- In some cases contractor's CGL carrier may provide coverage, but always as a separate policy in the name of the railroad.
- There is a limited market of insurance companies that provide RPL coverage. Pricing and coverage can vary widely depending on details of the job and information submitted.
- Virtually all RPL policies are written on non-admitted paper; however there are a few admitted carriers.