

# INSURANCE BULLETIN

BULLETIN #6

## Completed Operations Coverage for Spa and Swimming Pool Companies

CNA and NESPA are proud to provide you with this information. We trust that you will find it useful in understanding the insurance and risk management issues associated with your business.

Although coverage for completed operations, or completed work, is essential in a spa and swimming pool company's insurance program, it is one of the most frequently misunderstood components.

Completed operations liability insurance provides coverage for an insured spa and swimming pool company against third-party claims for bodily injury and property damage caused by the firm's completed operation or work and included within the "products/completed operations hazard."

Completed operations coverage is usually provided as part of the spa and swimming pool company's general liability policy, along with premises/ongoing operations coverage and limited contractual liability coverage. Completed operations coverage must be specifically excluded by endorsement if coverage is not wanted or needed.

It is important to note that completed operations coverage is not coverage for losses which occur *while the job is in progress*. This is referred to as "ongoing operations" losses. For example, if a pedestrian is injured on a job site, the injury is covered under the premises/ongoing operations liability portion of the general liability policy.

A spa and swimming pool company's completed operations coverage takes effect when the spa and swimming pool company's work or the project has been completed. There can sometimes be disagreements as to the actual time of work completion. Essentially, time of completion is defined as follows:

- When all of the spa and swimming pool company's work called for in the contract has been completed
- When all of the spa and swimming pool company's work to be done at the job site location has been completed, if the named insured's contract calls for work at more than one location
- When that part of the spa and swimming pool company's work done at the job site has been put to its intended use by any person or organization, other than another contractor or subcontractor working on the same project

### Coverage Trigger

More often than not, spa and swimming pool companies are written on what is known as an "occurrence" policy with an occurrence-based coverage trigger. This type of policy responds to third-party bodily injury or property damage losses that *occur during the policy term, regardless of whether the policy is still in effect at the time the claim is made*. Therefore, if a spa and swimming pool company goes out of business, and cancels or non-renews the general liability policy, and is later sued for an injury that *occurred after* the policy was cancelled, there would be no coverage. It is also important to note that completed operations liability coverage is not intended to cover the cost the spa and swimming pool company incurs in repairing or replacing defective materials and workmanship. Rather, completed operations liability coverage is intended to cover the cost of any bodily injury or property damage that *results from* a spa and swimming pool company's defective materials and workmanship.

## How Insurance Carriers Evaluate a Spa and Swimming Pool Company's Completed Operations Exposure

Taking into account all of the factors discussed in this article, an insurance company will analyze the spa and swimming pool company to determine the potential for completed operations losses. Consideration will be given to the types of claims and losses that could arise from a spa and swimming pool company's past work, as well as the potential frequency and magnitude of these claims.

Most insurance companies use the following criteria to determine the extent of potential liability arising out of the spa and swimming pool company's completed operations:

- **Description of Operations and Projects** — Insurance carriers will determine what operations the spa and swimming pool company has performed in the past, what types of projects they have completed in the past, those in which they are currently involved, and any anticipated changes in the spa and swimming pool company's operations or projects for the coming year. The carrier will examine what exposures may have been assumed through mergers and/or acquisitions of other firms. The carrier will also determine to what extent the spa and swimming pool company self-performs work versus subcontracting to other firms.
- **Completed Operations Claim History** — When underwriting spa and swimming pool companies, insurance carriers will require up-to-date "loss runs" from the prior carrier(s) to determine whether there are any closed or open losses associated with the spa and swimming pool company's completed operations or past projects. The underwriter may also ask about any follow-up or corrective actions that the spa and swimming pool company has taken due to complaints of defective components or workmanship on past projects. For "call-back" or warranty work of any significance, the spa and swimming pool company should assess the potential consequences of the defect or problem and keep accurate records of what was done to fix the defect.
- **Volume of Work** — The carrier will look at the total business volume, as well as comparative information for the previous three years. This gives the carrier a good indication of how the firm's business is trending financially, which helps the insurer ascertain whether or not the spa and swimming pool company will be able to fund safety and quality control efforts. The carrier will also consider the spa and swimming pool company's total current backlog of work to be done as an indicator of financial soundness in the future.
- **Personnel** — Insurance carriers understand that the quality of the firm's personnel is key in determining whether the firm is a good or bad risk. Carriers try to determine the quality of the firms *Management and Technical Staff* and whether or not these persons have the operational expertise and academic qualifications for the types of work and projects the firm engages in. Carriers also consider the quality of *Tradesmen and Labor* and whether or not an adequate number of properly trained and experienced persons are available to perform the labor functions required in the firms' operations. The underwriter may also ask about the rate of employee turnover, the company's wage structure compared to their local peers, and whether or not the firm has an effective drug-screening program in place.
- **Quality Control** — Insurance carriers consider the following criteria regarding a spa and swimming pool company's quality control program when underwriting the completed operations coverage:
  - *Project Specifications* — Are they immediately available when needed? Are change orders approved in writing by the appropriate authority (engineer, architect or project manager)?
  - *Codes and Standards* — Does the spa and swimming pool company comply with all the required and applicable codes and standards on their projects?
  - *Inspection and Testing* — Are the spa and swimming pool company's inspection and testing procedures adequate to ensure compliance with the project specifications and regulatory codes and standards? Are all phases of inspection and testing fully documented, including deficiencies found and remedial actions taken?
  - *Subcontractors, Vendors, Suppliers and Manufacturers* — How does the spa and swimming pool company ascertain that these parties are reliable, financially sound, have proven track records, and comply with all specifications and applicable codes and standards? (**See Insurance Bulletin #3 - "Selecting Safer Subcontractors".**)

- **Recordkeeping** — Carriers try to determine whether an orderly and complete recordkeeping system is maintained on a daily basis. Records should be sufficiently accurate in case a claim defense needs to be prepared from these records. Typical records may include specifications, blueprints, design criteria, quality control data, contracts between the spa and swimming pool company and other parties (such as GCs, subs, owners, public entities, vendors, suppliers), lot or serial numbers of components used, system test records, complaint files, documentation of any remedial actions taken, hold-harmless agreements, and all other information that is necessary to reinforce the position that the spa and swimming pool company was operating in a responsible manner. In addition, records should be used to assist in detecting field or service problems associated with a spa and swimming pool company's work. For service-type companies, all work performed, all deficiencies noted and any suggested improvements that are declined by the customer should be documented. Each should be "signed off" by a responsible representative of the spa and swimming pool company.

Through the SPLASH program, CNA can provide a business insurance program that offers comprehensive risk control (safety) services, expert claim handling and property/liability insurance coverages designed specifically for spa and swimming pool professionals. So when your business is insured with the CNA/SPLASH program, you'll have peace of mind knowing it's a program backed by a carrier with more than 60 years experience in the construction industry. Give us an opportunity to earn your business – ask your insurance agent to obtain a quote from CNA and discover how you can benefit from this partnership.

For more information, contact your local independent agent or visit [www.cna.com](http://www.cna.com).

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