



Insurance Scope of Coverage

- *Does my insurance policy cover me?*
- *Are my employees covered in the event of an accident?*
- *Will my company survive following a accidental work related injury or damage?*
- *In the event that my insurance does not properly cover my company or employees, what can happen?*

Many telecommunication companies feel they have purchased the required insurance types and limits that will enable their company to perform work in this industry and, offer protection against damages from most accidents. Often an insurance agent or broker may make it seem that you are properly covered. This is what most, if not all, contractors have come to believe. Unfortunately, this is not always the case.

What we have discovered is often tower industry contractors have their general liability insurance coverage placed with an insurance carrier that is non-admitted.

Non-admitted insurance carriers issue policies that vary in the scope of coverage. Only through careful

CONTINUED ON NEXT PAGE

Author: **Mark T. Lauderbaugh** (Director of Risk Management, CPCU). The members of the PAN Advisory Group who are involved in the writing and researching of each PAN topic include: **John Erichsen** (Principal EET PE, Chairman TIA Committee TR 14), **Scott Kisting** (EVP – Proactive Telecommunications Solutions), **Richard Cullum** (Program Manager – Crown Castle), **Jeremy Buckles** (Safety and Compliance Officer – International, SBA Communications Corporation), **Craig Snyder** (President, Sioux Falls Tower & Communications), and **Stephanie Brewer** (Compliance Coordinator – MUTI-Sabre Industries Telecom Services).

review of the policy forms can one determine the scope of coverage. Non-admitted insurance carriers issue policies that are not filed in various states; meaning the forms and rates are not approved by the various state insurance department. The policies issued by insurance carriers in the standard insurance marketplace are on policy forms that are somewhat cookie cutter in nature. They differ very little from one insurer to another. You pretty much know what you are going to get when you purchase coverage from these insurers. Standard policies are admitted in the various states. The standard marketplace, however, will not always agree to write policies for contractors in tower related construction business. Often, they want at least three (3) years of a contractor's operational experience before they will consider underwriting the account as well as a good loss ratio (few claims).



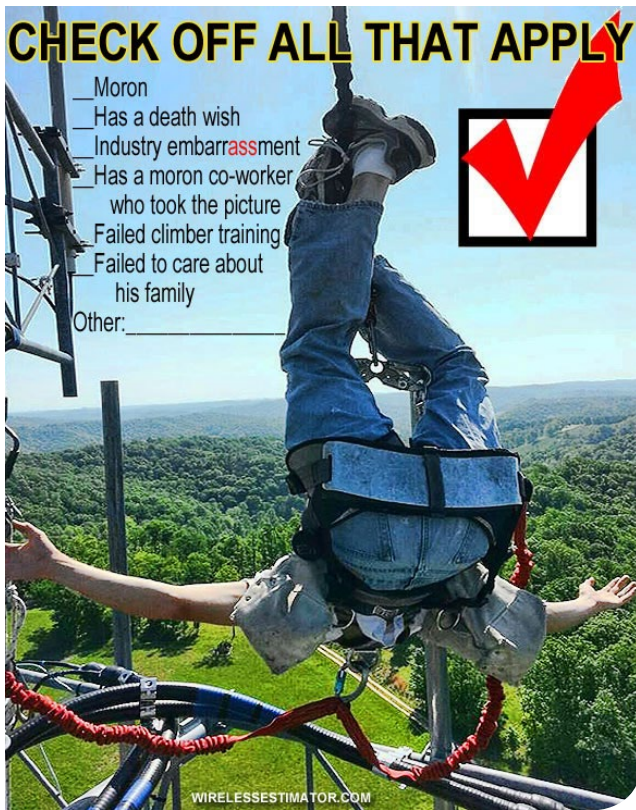
You may ask yourself, should I be concerned if my insurance carrier is considered non-admitted? The short answer is yes. Since these policy forms are highly customized, they may contain policy exclusions that you would not typically find in the standard insurance marketplace. An example of an exclusion of this nature is an endorsement, that my team and I have discov-



ered, entitled "EXCLUSION – BODILY INJURY TO CONTRACTORS' OR SUBCONTRACTORS' EMPLOYEES". This form excludes coverage to you for bodily injury claims of an employee of yours or any subcontractor arising out of and in the course of employment. There are several variations of this form. The form type and wording depends on which insurance carrier issues the policy. Why should this concern you? If my employee becomes injured, I'm covered by Workers' Compensation coverage, aren't I? The employee in most states is barred from suing his employer under the Workers' Compensation statute of that state. This is generally true, however, the exclusion also applies to any obligation that you may have to share damages or repay someone else who must pay damages because of the injury. You will find that most of your contracts with owners and/or general contractors require that you hold harmless and indemnify them for any damages that may arise from your work, including those involving bodily injury to your employee or an employee of a subcontractor. This exclusion would bar coverage for that obligation. The general liability policies issued, in the standard market place, have an exception for liabilities assumed in an "insured contract". An indemnification obligation found in a construction contract meets the definition of "insured contract". Thus, coverage, from the standard marketplace would apply for that indemnification obligation.

Let's now address the most obvious exposure created by this exclusion, injury to a subcontractor's employee. Most work related liability lawsuits filed for bodily injury on behalf of a subcontractor's employee inevitably name the general contractor as a defendant. The usual allegation is that the general contractor failed to provide a safe place for the subcontractor's employee to work. Without coverage for these types of claims, you expose your company's assets and, if you are a sole proprietor, maybe your own. Would your company

CONTINUED ON NEXT PAGE



withstand the costs of a long drawn out court battle? Would you survive if the jury ruled in favor of the plaintiff and against the owner? Injuries suffered in this business can be catastrophic. Large jury awards, for those injuries, may be anticipated. This coverage exclusion is only one example of potentially harmful exclusions that my team and I have discovered. Additionally, we have discovered that contractors and often their insurance agents are unaware of the non-admitted exclusions in their policies. The following are a few more examples of what you could encounter:

- Height related policy exclusion (only provide coverage up to a height limitation, usually three stories or 36 feet);
- Specific state exclusions (excludes coverage in certain states);
- Independent Contractors Limitations of coverage (requires a written contract with all independent contractors and verifying that those contractors have valid commercial general liability insurance coverage with minimum limits specified by the endorsement. The endorsement will either exclude coverage for you if you are non-compliant or, will cause a recalculation of your premium to include the highest applicable primary payroll or cost class rates of the "total cost" of all work that you sub-contract); and
- Cross Liability exclusion (This excludes coverage for any injury or damage arising out of any claim or suit brought by any insured against another insured. This would preclude coverage to the contractor for damage that it causes to the tower it is working on if the tower owner is an additional insured under the contractor's policy).

Our advice is to review your policy with your insurance agent or broker so that you both are aware of any limitations. Your insurance agent or broker may then be able to negotiate the removal of all or any of the referenced endorsements. We have found that agents that place a significant amount of business with a particular insurance carrier are more likely to be able to get those coverage limitations removed. The time to discover these potential policy limitations is before you have a claim, not after! ■