Why does my church or ministry need Products-Completed Operations Liability Coverage?

This is a question I am asked most often when reviewing liability insurance with our non-profit religious organizations and church clients.

The definitions of "products-completed operations," "your product," and "your work" provide a mechanism whereby the Commercial General Liability (CGL) policy can treat so-called products-completed operations coverage somewhat separately from the other coverages it provides (i.e., premises-operations coverage, contractual liability coverage, and independent contractors coverage). By relying on these definitions, the CGL policy treats coverage of these exposures uniquely in the following ways:

- It establishes a separate aggregate limit for such losses.
- It makes it possible to completely exclude this coverage with the Exclusion—Products—Completed Operations Hazard endorsement (CG 21 04). (However, we rarely exclude this coverage in policies we obtain for our clients.)

Your products are those items the named insured manufactures, sells, handles, distributes, or disposes of. Most churches do not manufacture products, but they can "sell" products if they operate a thrift store, hold a garage sale or bizarre or offer items for sale in fundraising programs.

It has been held that even a brief excursion into the stream of commerce can cause one to be classified as a manufacturer, seller, handler, or distributor of goods or products regardless of how foreign this occasional venture may be to normal activities. In Smith v. Maryland Cas. Co., 246 Md. 485, 229 A.2d 120 (1967), the court held that a slingshot sold at a church bazaar was a product sold by the church. The slingshot broke during use, causing physical injuries for which the plaintiff sought compensation. The church had not purchased products-completed operations liability insurance, and coverage was not allowed due to the products hazard exclusion provision. Decisions such as these accentuate the need for careful evaluation of loss exposures.

Wording of the products definition includes coverage for goods or products disposed of. For example, liability arising from a defective product that the insured had discarded would be considered a products liability loss rather than a premises-operations loss. Suppose a church is given a used microwave. The
microwave did not function properly so the church disposed of it in the trash. Someone pulls the microwave from the trash, takes it home and it malfunctions, causing a fire that destroys the home.

If the microwave oven was sold at a church bizarre and it caused the fire, the inclusion of warranties and representations in the definition is also a key element in defective products claims. Almost all commercial transactions are accompanied by expressed or implied warranties or representations. The Uniform Commercial Code, Section 2-314, provides that in all commercial sales there is an implied warranty that the goods are "merchantable." One of the requirements of merchantability is that the goods "are fit for the ordinary purposes for which such goods are used." Accordingly, the Code provides that if the seller has reason to know any particular purpose for which goods were required, and the buyer is relying on the seller's judgment in selecting or furnishing such goods, there is an implied warranty that the goods are fit for the intended purpose. Therefore, it could be argued that virtually all liability in defective component cases arises out of the failure of the insured's product to meet a warranty or representation.

Products that the church “handles” or “distributes” are the source of most product liability claims against a church. The product is usually food served at a dinner or banquet sponsored by the church or food distributed in a community food pantry program. If this food results in a claim for injury or death resulting from food poisoning, coverage would fall under the “Product-Completed Operations” if the food is taken home or eaten away from the church facilities. If the injury occurs on or in the church facilities, the premises liability coverage would respond.

Since it is impossible for HUB International to monitor the operations of every church ministry to determine who has an exposure for product liability and who does not, we automatically include Products and Completed Operations Coverage in all policies we arrange for all clients in our House of Worship division because we want to protect your ministry from product claims that could have a severe financial impact on your ministry. If you have any questions, please call me at your convenience.

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