

SPECIAL REPORT

CARBON MONOXIDE POISONING IN A MANUFACTURING PLANT IS NOT COVERED UNDER THE COMMERCIAL GENERAL LIABILITY POLICY

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Injury to employees in a plant as a result of excessively high carbon monoxide levels caused by defective forklifts as well as inadequate ventilation is a frequent occurrence.

Most employers think that injury to the employee is covered by workers' compensation coverage, and this is true. However, the employee still has a right to file a tort action against the building owner if it is separate from the employer, as in the case of buildings leased by the employer from another party.

In this case, the landlord if sued can either defend the action itself if there is no environmental liability coverage in place, or if there is coverage in place, the insurance company can provide a defense. In either of these instances, however, the landlord or its insurance carrier can subrogate against the tenant or require that the tenant indemnify them for this type of claim by way of the indemnification provision in the typical lease agreement indicating that the tenant will indemnify the landlord for any claims arising out of its operations.

If the tenant-employer was presented with such a suit by the landlord, it would be likely denied by the commercial general liability carrier that is typically in place for business owners because the policy excludes all pollution claims with the exception of smoke from a hostile fire, fumes from heating systems, and with some carriers events related to equipment used to humidify the building. Fumes from hi-los would not be covered unless an environmental policy was in place.

Insureds frequently tune out any discussion regarding environmental insurance because they perceive that they do not have an environmental exposure; however, this could not be further from the truth.

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