

# CHAPTER 6: COMMERCIAL GENERAL LIABILITY



## Let's Begin...

### Introduction



**Liability** is legal responsibility for damage to another party's person or property. If an accident occurs on the insured's premises for which the insured's business is found liable, the insured can expect to owe money damages to the person whose person or property was harmed. Because accidents or injuries are difficult to predict and damage awards can be enormous, liability insurance is perhaps the most important coverage for any business. A multi-million dollar judgment can disrupt—if not bankrupt—many businesses. These judgments are entirely possible in today's lawsuit-happy environment.



**General liability insurance** protects an insured person or company from a wide variety of exposures. This insurance usually covers legal obligation arising out of injuries or damage suffered by members of the public, customers, tenants and others. Coverage is established by insuring agreements, which tend to be quite broad.

Because general liability insuring agreements are so broad, the exclusions are particularly important in shaping the coverage.



There are two major sublines: One is a broad **premises/operations** subline and the other subline is for **products and completed operations**.

The CGL program is very flexible. Endorsements may be used to eliminate coverage for products and completed operations, advertising injury, personal and advertising injury, medical payments, or fire legal liability. Other endorsements may be used to exclude various coverages for liability arising out of scheduled locations only, while preserving the coverage elsewhere. An endorsement may also be used to reduce the broad contractual liability coverage to a more limited coverage for incidental contracts.

Separate forms are available for companies that have very limited and specific exposures. There is a form that provides only the products and completed operations insurance. Another form provides owners and contractors protective coverage, and it is used when an owner or contractor requires a contractor or subcontractor to provide coverage for a specific job, which can only be done by issuing the coverage as a separate policy.

# **The Commercial General Liability Policy**

General liability coverage includes a common policy declarations and a common policy conditions. In addition, it must have a general liability coverage part, which consists of:

- the CGL declarations page,
- a general liability coverage form,
- the broad form nuclear energy liability exclusion endorsement, and
- any other endorsements that may apply.

## **Declarations Page**



In the declarations page, the insurance company “declares” the facts of the policy: The name of the person or organization who is insured is shown. The policy number here identifies the policy indisputably—like your social security number identifies you; the date when the coverage begins and when it ends; the name of the insurance company and the producer—the organization that sells the policy; the charge, or premium, for the period the policy covers, and the amounts—or limits—the policy will pay.

The declarations page may also show a retroactive date, before which no coverage applies.

A retroactive date is a mechanism that defines when coverage begins. It is most useful for creating a clean division between occurrence and claims-made coverage, but it has other applications. A retroactive date is not required. “None” may be entered on the declarations. If a retroactive date is to apply, it must be shown on the CGL declarations.

When claims-made coverage is written without a retroactive date, duplicate coverage may exist. All claims made during the policy term may be covered even if they are also covered by earlier occurrence forms. However, the claims-made coverage would apply as excess over any earlier occurrence policies that cover the same loss.

Usually, when an occurrence policy is renewed by a claims-made policy, the retroactive date will be the effective date of the claims-made policy. This eliminates overlapping coverage. For example, a risk that transfers from occurrence coverage to claims-made coverage on January 1, 2003 is likely to carry a retroactive date of January 1, 2003. Any claim resulting from an occurrence prior to January 1, 2003 would fall back on an earlier occurrence policy, and the claims-made form would only cover claims resulting from occurrences on or after January 1, 2003.

In the absence of a major change in the risk or a shift to a different insurance company, the same retroactive date should be continued on claims-made renewals to avoid gaps in coverage. If the above policy is renewed on January 1, 2004 while retaining the January 1, 2003 retroactive date, a claim made on April 1, 2004 for an injury that occurred during 2003 would be covered by the 2004 policy. If the retroactive date had been advanced to January 1, 2004, a claim reported during 2004 for an occurrence in 2003 would not be covered by the 2004 policy (because the occurrence happened before the retroactive date), or by the 2003 policy (because the claim was not reported before the end of that policy period), or any earlier occurrence forms (because the loss happened after those policies expired).

Before the retroactive date can be advanced, the insurance company must obtain from the first named insured written consent and acknowledgment that the insured has been informed of the right to buy the extended reporting period.

Claims-made CGL forms have an additional section providing for “extended reporting periods,” also referred to as “ERPs.” The insuring agreement limits coverage to claims first made “during the policy period.” When claims-made forms are continuously renewed by other claims-made forms, the agreement does not present any problems—whenever a claim is made, it will be charged against current coverage. But coverage gaps would result if the coverage were to be renewed on an “occurrence” form, or if a retroactive date were moved forward at renewal, or if the insurance were permanently discontinued (a possibility when an insured business fails). In such cases, future claims from past operations could not be charged against any future “occurrence” policy, nor would any “claims-made” coverage exist at the time the claim is made.

Claims-made coverage has been designed so that transitions between “occurrence” and “claims-made” coverage can be managed without gaps or duplications of coverage. Proper use of a retroactive date and ERPs will prevent situations where a loss is covered by two different policies or is not covered at all.

## Policy Preamble

In the policy preamble, the definition of “you” has been expanded to include “any other person or organization qualifying as a Named Insured under the policy.” This gives “Named Insured” status to newly acquired organizations.



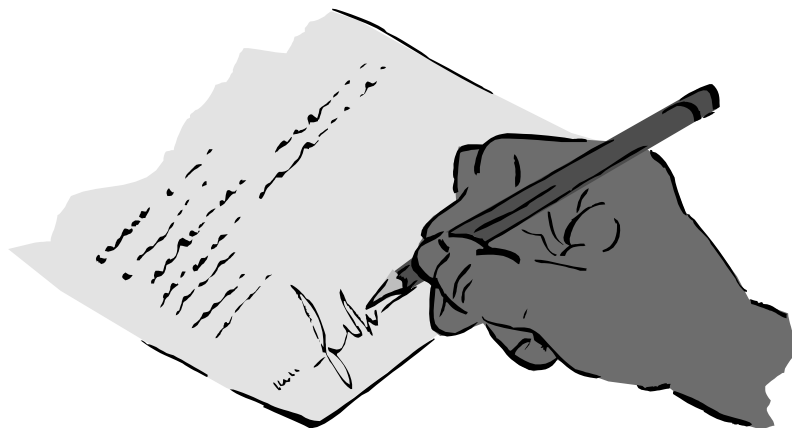
### *Preamble Synopsis*

Various provisions in this policy restrict coverage. Read the entire policy carefully to determine rights, duties and what is and is not covered.

Throughout this policy **the words “you” and “your” refer to the Named Insured** shown in the Declarations, and any other person or organization qualifying as a Named Insured under this policy. **The words “we,” “us” and “our” refer to the Company providing this insurance.**

The word **“insured” means any person or organization qualifying as such under Who Is An Insured** (Section II).

Other words and phrases that appear in quotation marks have special meaning. Refer to Definitions (Section VI).



# The Coverage Forms

Commercial general liability (CGL) insurance protects a business from a variety of business liability exposures arising out of its premises, operations, products and completed operations. The major coverages apply to bodily injury, property damage, personal injury, and advertising injury claims. The ISO Policy Forms program was updated in 2001.

The CGL coverage forms are organized into sections. The **occurrence form** has five sections and the **claims-made form** (CG 00 02 10 01) that we will review in this chapter, has six, the only difference being an additional section for extended reporting periods on the claims-made form. The coverage forms are organized in the following way:

- Coverages—Section I
- Who is an insured—Section II
- Limits of insurance—Section III
- CGL conditions—Section IV
- Definitions—Section V on “occurrence” form; Section VI on “claims-made”
- Extended reporting periods—Section V on “claims-made” only

**NOTE:** For the purpose of this course, the “Sections” the coverage forms will be presented in an order more conducive to the class; not necessarily in the actual policy’s chronological order (Section I-VI):

## Policy Definitions- Section V & VI

Definitions clarify the meaning of a word or group of words. As you may have noticed from earlier cases, settlement of claims may hinge on nuances in these policy definitions. In addition to telling us specifically what something is, definitions also frequently tell us what something is not. In this sense, a definition serves to limit a meaning as well as to define it.

Definitions that appear in insurance policies are important because each policy is a legal contract, and definitions are part of the contract language. Terms that have specific definitions appear in quotation marks throughout the CGL coverage forms. It is important to keep this in mind when examining insuring agreements, exclusions and conditions, because the definitions may broaden coverage in some areas and limit coverage in others.

The definitions that appear in the CGL coverage forms are exactly the same on the “occurrence” and “claims-made” forms. However, they appear as Section V of the occurrence form and as Section VI of the claims-made form because of the additional section for extended reporting periods.

## *Occurrence*

An accident is an occurrence, but "occurrence" also means continuous or repeated exposure to the same harmful conditions. Example: Repeated vibrations from operation of the insured's bulldozer cause cracks in the walls of a nearby building, eventually leading to collapse of part of the building. This property damage qualifies as an occurrence, and all such damage would result from one occurrence even if the vibrations contributing to the loss took place over a period of days or weeks.

While the two CGL coverage forms are known as the "claims-made" and "occurrence" forms, both forms cover occurrences. The insuring agreements of both forms say that injury or damage must be caused by an occurrence that takes place in the coverage territory. The difference between the two forms is that the "trigger" of coverage may determine which policy period will apply to a particular claim.



### *Synopsis*

**"Occurrence"** means an accident, including continuous or repeated exposure to substantially the same general harmful conditions.



## *Products and Completed Operations*

Products and completed operations are defined here, and although they are related for coverage purposes, they need to be treated separately. A product is sold by a manufacturer, wholesaler or retailer, or some other entity in the merchandising chain. Coverage for products liability does not begin until the insured has physically relinquished possession of the item to another, and once this occurs, there is coverage for products liability. This coverage can travel back through the distribution chain all the way to the manufacturer so that a customer may make a claim against everybody involved in distribution of the product.

For example, a customer in a furniture store sits on a chair to see if it is comfortable, and the chair collapses injuring the customer. The customer's claims for injuries would fall under the store's premises liability and not products liability, since the chair had not been sold and possession of it relinquished to the customer. If a suit involved both the store and the manufacturer, coverage for the manufacturer would fall under its products liability since possession of the chair had been relinquished to the store.

Completed operations coverage involves work being done or a service being performed, such as a repair or maintenance. While the work is being performed, coverage is provided by the premises/operations part of the liability policy. When the work is completed, coverage applies under completed operations. It is necessary to define when work is completed in order to determine which coverage will respond to a claim, and this definition sets forth the criteria for determining when work is completed.

The definition also includes circumstances which would not be included as part of the products/completed operations hazard.

## *Synopsis*

### **"Products-completed operations hazard"**

a. includes all "bodily injury" and "property damage" occurring away from premises you own or rent and arising out of "your product" or "your work" except:

- (1) Products that are still in your physical possession; or
- (2) Work that has not yet been completed or abandoned. However, "Your work" will be deemed completed at the earliest of the following times.
  - (a) When all of the work called for in your contract has been completed.
  - (b) When all of the work to be done at the site has been completed if your contract calls for work at more than one site.
  - (c) When that part of the work done at a job site had been put to its intended use by any person or organization other than another contractor or subcontractor working on the same project.

Work that may need service, maintenance correction, repair or replacement, but which is otherwise complete, will be treated as completed.

b. This hazard does not include "bodily injury" or "property damage" arising out of:

- (1) The transportation of property, unless the injury or damage arises out of a condition in or on a vehicle not owned or operated by you, and that condition was created by the "loading or unloading" of that vehicle by any insured;
- (2) The existence of tools, uninstalled equipment or abandoned or unused materials;
- (3) Products or operations for which the classification listed in the Declarations or in a Policy Schedule, states that products-completed operations are subject to the General Aggregate Limit.



### ***Premises and Operation***

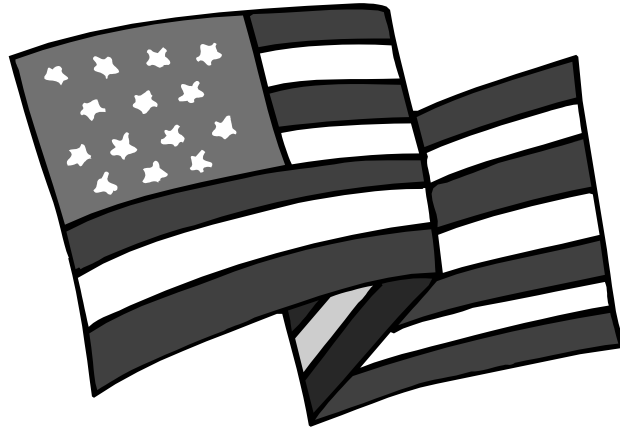
Premises and operations coverage applies to liability exposures arising from the business location (premises) and the business activity (operations)



### ***Territory Covered***

The land territories covered by the policy include the air space and international waters between them but do not include travel to or from other countries which are not covered territories. Injury caused by goods or products that are sold or made in the covered territories are covered in other parts of the world. Personal and advertising injury through the Internet is covered, but the suit for the injury must be brought in a covered territory. Note that coverage only applies for products and not for completed operations. Incidental activities of an employee traveling on the business of an employer are covered worldwide if the employee's home is in the covered territory.

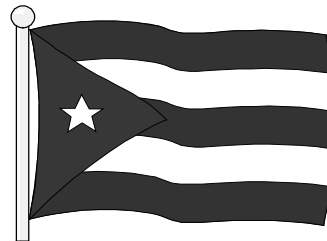
Example: While traveling on business, the insured goes to a shopping mall and accidentally bumps someone down a flight of stairs. Any damages resulting from the accident would be covered.



### *Synopsis*

**"Coverage territory"** means:

- a. The United States of America (including its territories and possessions), Puerto Rico and Canada;
- b. International waters or airspace, provided the injury or damage does not occur in the course of travel or transportation to or from any place not included in a. above; or
- c. All parts of the world if:
  - (1) The injury or damage arises out of goods or products made or sold by you in the territory described in a. above; or
  - (2) The activities of a person whose home is in the territory described in a. above, but is away for a short time on your business; or
  - (3) "Personal and advertising injury" offenses that take place through the Internet or similar electronic means of communication provided the insured's responsibility to pay damages is determined in a "suit" on the merits, in the territory described in a. above or in a settlement we agree to.



## ***Insured Contract***

This is an important definition because it defines what is and is not an “insured contract.”

Although Coverage A has a contractual liability exclusion, it makes an exception for liability that would have existed anyway in the absence of an agreement, and an exception for “insured contracts.” Since the definition includes many of the most common types of contracts under which liability is assumed, the CGL forms actually do provide a rather broad degree of contractual liability coverage.

Common types of contracts which are covered include a lease of premises, a sidetrack agreement (manufacturers and suppliers of goods or materials frequently take responsibility for use of a railroad sidetrack which connects their premises with a rail line), and an elevator maintenance agreement.

Certain easement and license agreements are covered, but an exception is made for construction or demolition operations within 50 feet of a railroad. This is potentially a very hazardous exposure, because of complicated ownership issues (the federal government owns many rail lines) and the potential for causing a disastrous derailment.



### ***Synopsis***

**“Insured contract”** means:

- a. A contract of lease of premises. However, that portion of the contract for a lease of premises that indemnifies any person or organization for damage by fire to premises while rented to you or temporarily occupied by you with permission of the owner is not an “insured contract”;
- b. A sidetrack agreement;
- c. Any easement or license agreement, except in connection with construction or demolition operation on or within 50 feet of a railroad;
- d. An obligation, as required by ordinance, to indemnify a municipality, except in connection with work for a municipality;
- e. An elevator maintenance agreement;



### ***Auto***

This definition is important because CGL coverage forms exclude almost all losses arising out of automobile exposures (an exception is made for parking non-owned autos on the insured’s premises). Notice that “auto” does not include “mobile equipment”—these terms are mutually exclusive, because losses arising out of the operation or use of mobile equipment are covered.

### ***Synopsis***

**“Auto”** means a land motor vehicle, trailer or semitrailer designed for travel on public roads, including any attached machinery or equipment. But “auto” does not include “mobile equipment.”



## **Mobile Equipment**

**As mentioned earlier, the definitions of "auto" and "mobile equipment" are mutually exclusive.** "Autos" are intended to be covered by automobile insurance, while "mobile equipment" is covered by general liability insurance.

Parts a. through f. describe the many types of mobile equipment which are covered. Generally, these are land vehicles, designed for use principally off public roads, such as bulldozers, forklifts, and construction equipment. Vehicles designed to provide mobility to permanently mounted cranes, shovels, loaders, differs, drills, graders, rollers, compressors, pumps, generators, cherry pickers, and other types of equipment are included in this definition. In some cases, these vehicles may not be self-propelled. The last part of this definition (paragraph f.) says that mobile equipment also includes other vehicles not described, which are maintained primarily for purposes "other than" the transportation of persons or cargo (basically this means vehicles other than typical cars and trucks).

Certain self-propelled vehicles with permanently attached equipment are treated as "autos" and not mobile equipment. Snow plows, road maintenance and street cleaning vehicles are "autos" because they operate and perform their special functions on public roads, and the exposure is covered by auto insurance. Self-propelled vehicles with permanently mounted cherry pickers, compressors, pumps, generators, spraying, welding, and other equipment are also treated as "autos" with respect to their automobile liability exposure while being driven on public roads.

### **Synopsis**

**"Mobile equipment"** means any of the following types of land vehicles, including any attached machinery or equipment:

- a. Bulldozers, farm machinery, forklifts and other vehicles designed for use principally off public roads;
- b. Vehicles maintained for use solely on or next to premises the insured owns or rents;
- c. Vehicles that travel on crawler treads;
- d. Vehicles, whether self-propelled or not, maintained primarily to provide mobility to permanently mounted:
  - (1) Power Cranes, shovels, loaders, diggers or drills; or
  - (2) Road construction or resurfacing equipment such as graders, scrapers or rollers;
- e. Vehicles not described in a., b., c. or d. above that are not self-propelled and are maintained primarily to provide mobility to permanently attached equipment of the following types:
  - (1) Air compressors, pumps and generators, including spraying, welding, building cleaning, geophysical exploration, lighting and well servicing equipment; or
  - (2) Cherry pickers and similar devices used to raise or lower workers,
- f. Vehicles not described in a., b., c. or d. above maintained primarily for purposes other than the transportation of persons or cargo.

Liability arising out of the actual use of this specialized equipment is covered by general liability insurance and is not covered by automobile insurance. The CGL exclusion for the use of autos does not apply to liability arising out of the use of the mobile equipment defined in paragraphs f.(2) and f.(3), so this is covered.

The business auto form covers the automobile liability exposure of this equipment, but specifically excludes liability arising out of the actual operation of the equipment. The point to remember: If the mobile equipment is being driven on a public road, it is covered under business auto insurance.

***Important to note...***

Self-propelled vehicles with the following types of permanently attached equipment are not "mobile equipment" but will be considered "autos"

- (1) Equipment designed primarily for:
  - (a) Snow removal;
  - (b) Road maintenance, but not construction or resurfacing;
  - (c) Street cleaning;
- (2) Cherry pickers and similar devices mounted on automobile or truck chassis and used to raise or lower workers; and
- (3) Air compressors, pumps and generators, including spraying, welding, building cleaning, geophysical exploration, lighting and well servicing equipment.



***Employees/Leased Employees/Temporary Employees***

An **employee** is a person who is hired on a regular basis to provide services in exchange for compensation and *does not* provide these services as a part of an independent business

A **leased employee** is an arrangement made where a leasing company assigns its employees to a client, who in turn has control and gives direction to the leased employees. The leasing company is the employer of record for payroll, payroll taxes and workers' compensation.

A **temporary employee** is an employee that is appointed for a particular position for a specific time period. Many seasonal employers have temporary employees. Also, some employers use temporary employees to attempt to avoid the costs and responsibilities of workers' compensation and fringe benefits.



***Aggregate Limit***

An Aggregate limit is the maximum the insurer would pay for all claims during a policy period on behalf of the insured. In a CGL Policy there are two major aggregate limits: 1) General Aggregate Limit, 2) Products Completed Operations Aggregate Limit. These limits will be discussed in the "limits of liability" section later in the chapter.

## Occurrence vs. Claims-Made

Originally general liability covered **accidents**—sudden, unexpected events that happened at a specific time and location. Under the current general liability forms, the concept of accident has been expanded to include **occurrences** - continuous or repeated exposure to conditions that result in bodily injury or property damage that was neither expected nor intended (by the insured).

Older occurrence policies covered events that happened between the effective date and the expiration date of the policy. Regardless of when a claim was made, the policy in effect at the time of exposure to the injurious condition was the one that would respond to the claim, whether or not the same carrier was providing the coverage.

Several insurance companies issued occurrence policies for asbestos manufacturers in the 1940s and 1950s. Forty years later, these insurers are still paying millions of dollars in claims and legal defense costs for policies under which they collected only a few thousand dollars in premiums.

Because the delay between the occurrence and filing of a claim resulted in difficulty in developing premiums adequate to anticipate claims that had been **incurred but not reported (IBNRs)**, insurance companies developed so-called "**claims-made**" coverage for risks with a long delay—sometimes called long tailed exposures.



Basically, the occurrence form pays for (or covers) injury or damage that *happens* during the policy period, while the claims-made form responds to claims *filed* during the policy period.

The claims-made coverage provided a precise claim trigger that made it possible for insurance companies to determine when coverage began and which policy should respond. Under the occurrence form, the policy or coverage in effect at the time the incident happens, responds. Under the claims-made form, coverage in effect at the time the claim is reported responds.

Claims which trickle in after the end of a policy period create an exposure known as a claims **tail**. Tail coverage is automatically built into the insuring agreements of occurrence forms. This is not the case with claims-made forms, and the forms would be unacceptable if they left policyholders exposed to serious insurance gaps which could not be covered. Extended reporting periods were created to solve the problems of coverage terminations and transitions back to occurrence coverage.

**Mini-tail:** An extended reporting period with a very short (i.e., 60 days) duration. The Insurance Services Office, Inc. (ISO), commercial general liability policy's mini-tail is part of the basic extended reporting period. It runs concurrently with the midi-tail and covers claims associated with occurrences previously unknown to the insured.

**Midi-tail:** A term used for an extended reporting period longer than 60 days but not unlimited. The standard Insurance Services Office, Inc. (ISO), claims-made commercial general liability (CGL) policy midi-tail is for 5 years. The CGL's midi-tail applies only for known and reported circumstances in most cases.

## Extended Reporting Periods Under Claims-Made Policies



Under the claims-made form, the “trigger” for coverage is when a claim is made to the insurance company. For some losses, a considerable gap may exist between the time when injury or damage occurs and when the claim is first made. In some cases, there may even be a gap between when an injury occurs and when it is discovered or first becomes known to the insured. This potential gap is known as a “claims tail”—it may take a period of years for all losses arising out of a given exposure to be realized.

Example: A slip and fall that occurs on the insured’s property may cause a back injury that takes some time to manifest itself. In this case, it is not until the back injury is reported that a determination of coverage will be made. ERPs allow the insured to obtain coverage long after the policy period has ended—and that’s useful in situations like these.

If claims-made coverage is continuously renewed without advancing the retroactive date, future claims will be covered regardless of when the injury or damage actually occurred. But if the continuity of claims-made coverage is disturbed by cancellation, nonrenewal, or replacement by a policy with a later retroactive date, a gap in coverage is created. This gap may be filled by an ERP, which provides “tail coverage.”

Under an ERP, the insurance company agrees to provide one or more extended reporting periods if claims-made coverage is (1) canceled, (2) not renewed, (3) replaced by coverage that has a later retroactive date, or (4) replaced by coverage that is not written on a claims-made basis. Extended reporting periods do not extend the policy period. An ERP simply extends the period for reporting claims—the injury or damage must still have occurred, or the offense causing injury must still have been committed, before the end of the policy period. An important feature of extended reporting periods is that once in effect, an ERP may not be canceled.

### Basic ERP



A basic ERP is provided automatically without charge in any of the situations mentioned previously which might create a gap in coverage. It has two parts: a period of 60 days after the end of the policy period is provided for reporting any claims (whether or not the “occurrence” or “offense” was previously reported); and a period of five years after the end of the policy period is provided for reporting any claims for which the “occurrence” or “offense” has been reported to the insurance company no later than 60 days after the end of the policy period. This means that the insured has a long time to file a formal claim—as long as the insured has notified the insurance company within 60 days that something has happened.

The basic extended reporting period does not apply to any claims which are covered by any subsequent insurance purchased by the insured, or which would have been covered except for the exhaustion of policy limits.

The basic ERP is treated as an extension of the original policy, and does not change or reinstate any limits of insurance—if any part of the aggregate limits has been used up, coverage is limited to the unused portion of those limits.

## Supplemental ERP



The basic ERP does not provide complete protection for an insured. If an occurrence which could lead to a claim first becomes known to the insured more than 60 days after the end of the policy period, it could not be reported to the insurance company within the required time period, and there would be no coverage under the basic ERP. If an occurrence is known to the insured and is reported to the insurance company during the policy period or within 60 days after expiration, but the claim is first made more than five years after the expiration date, there would be no coverage under the basic ERP.

A supplemental ERP of unlimited duration is available for an additional charge. When purchased, the supplemental extended reporting period picks up where the basic ERP leaves off—it would cover claims arising out of an occurrence first reported more than 60 days after expiration, and it would cover claims-made more than five years after expiration. In some ways, this converts the policy into an occurrence policy. It gives the insured an unlimited time to report—and the insurance company will make the insured pay more for that privilege.

The supplemental ERP must be requested by the insured in writing within 60 days after expiration. The additional premium for this coverage cannot exceed 200 percent of the last annual premium charged for the claims-made CGL coverage. Supplemental ERP coverage is put into effect by attaching an endorsement to the policy, and it will be excess over any other coverage in effect after the supplemental extended reporting period starts.

Under the supplemental ERP, the two aggregate limits are reinstated in full, and the sublimits (for each occurrence, personal or advertising injury claims, and fire damage) continue to apply as they did during the policy period.



# Coverages- Section I

Section I of both forms describes all of the following coverages:



- **Coverage A**—Bodily injury (BI) and property damage (PD) liability
- **Coverage B**—Personal and advertising injury liability
- **Coverage C**—Medical payments
- Supplementary payments—Coverages A and B

Each of the coverages has an **insuring agreement** and a **list of exclusions**.

## Coverage A- Bodily Injury and Property Damage

### Insuring Agreement

The insuring agreement defines the duties of the insurance company under the policy. The insurance company must defend the insured in any suit seeking damages and pay any judgment arising out of the suit for bodily injury or property damage. It may also investigate any occurrence and settle a resulting claim or suit if it wishes to do so.

The damages it will pay will not exceed the limits of liability shown in the policy and the insurance company's obligation to defend the insured ends when the limits of liability are used up in payment of claims under Coverage A (bodily injury and property damage), Coverage B (personal injury and advertising liability), or Coverage C (medical payments). The only payments it is responsible for above the policy limits of liability are those described in supplementary payments.



### Synopsis

<p><b>COVERAGE A. BODILY INJURY AND PROPERTY DAMAGE LIABILITY</b></p> <p>1. Insuring Agreement.</p> <p>a. We will pay those sums that the insured becomes legally obligated to pay as damages because of "bodily injury" or "property damage" to which this insurance applies. We will have the right and duty to defend any "suit" seeking those damages. We may at our discretion investigate any "occurrence" and settle any claim or "suit" that may result. But:</p> <p>(1) The amount we will pay for damages is limited as described in Limits of Insurance (Section III); and</p> <p>(2) Our right and duty to defend end when we have used up the applicable limit of insurance in the payment of judgments or settlements under Coverages A or B or medical expenses under Coverage C.</p> <p>No other obligation or liability to pay sums or perform acts or services is covered unless explicitly provided for under Supplementary Payments—Coverages A and B.</p>
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## **Bodily Injury**

The definition of “bodily injury” includes sickness or disease and death resulting from the bodily injury. Under the occurrence form, if death results at a later date as a result of a bodily injury, the policy covering the death would be the one in effect at the time of the injury. If coverage applies under the claims-made form, the policy in force at the time the claim is made to the insurance company provides coverage.

### *Synopsis*

**“Bodily injury”** means bodily injury, sickness or disease sustained by a person, including death resulting from any of these at any time.

## **Property Damage**

The definition of property damage makes it clear that coverage is for damage to tangible property and includes loss of use of the damaged property. Furthermore, it also covers loss of use of tangible property that is not damaged. It is specifically stated here that electronic data is considered tangible property.

For example, a painting contractor is painting a gift shop in a multiple occupancy mini-mall and due to careless handling of materials causes an explosion and fire which not only damages the gift shop, but damages the plumbing and electrical systems for the entire building. The property damage and loss of use (i.e., loss of business) to the gift shop would be covered. The remaining businesses in the mini-mall were not damaged but were not able to operate until the plumbing and electrical systems were repaired. Their loss of business would also be covered as property damage. All loss of use is deemed to have occurred at the time of the original property damage.

### *Synopsis*

**“Property damage”** means:  
Physical Injury to tangible property, including all resulting loss of use of that property. All such loss of use shall be deemed to occur at the time of the physical injury that caused it; or

- a. Loss of use of tangible property that is not physically injured. All such loss of use shall be deemed to occur at the time of the “occurrence” that caused it. For the purposes of this insurance, electronic data is not tangible property.
- b. As used in this definition, electronic data means information, facts or programs stored as or on, created or used on, or transmitted to or from, computer software, including systems and applications software, hard or floppy disks, CD-ROMS, tapes, drives, cells, data processing devices or other media which are used with electronically controlled equipment.

## **Coverage Agreement and Notice of Claim**

On the claims-made form, a claim is deemed to be first made when notice of the claim is received by the insured or by the insurance company, whichever comes first. All claims for damages because of "bodily injury" to the same person, including damages claimed by any person or organization for care, loss of services, or death resulting at any time from the "bodily injury" will be deemed to have been made at the time the first of these claims is made against any insured person.

Under the claims-made policy form coverage is provided only if the bodily injury or property damage takes place in the coverage territory and does not occur before the retroactive date or after the end of the policy period. In addition to the injury or damage occurring within these dates, a claim must be first made during the policy period or during any extended reporting period. A claim is deemed to be "first made" when notice of the claim is received by the insured or the insurance company or when it is settled by the insurance company, whichever comes first.

The only difference between Coverage A as provided by the claims-made form and the occurrence form is the coverage "trigger." The occurrence form covers injury or damage that occurs during the policy period regardless of when the claim is made.

## **Coverage A Exclusions**

Coverage A exclusions on the claims-made form and occurrence form are identical. There are no differences.

If the insured intentionally injures another person or damage property of others, there is no coverage under the policy. The word "intentionally" means an act which is expected or intended to cause injury to a person or damage to property. However, this exclusion does not apply if the injury or damage is the result of using reasonable force to protect persons or property.

Exclusions shape coverage and serve a number of purposes. Some exclusions eliminate coverage for things which are not considered insurable—such as intentional acts on the insured's part. Exclusions are also used to eliminate coverage which is properly the subject of other types of insurance—CGL coverage does not apply to losses which should be covered by property insurance, automobile insurance, and workers compensation. Finally, exclusions are often used to remove coverage which is available, but which is not given automatically because it is not universally needed or it needs to be underwritten and rated separately—such as liquor liability and pollution liability coverages.

Some of the more common Coverage A Exclusions are:

- Assumption of Risk
- Intentional Injury or Damage
- Pollution Liability
- Injury to an Employee

# Coverage B- Personal and Advertising Injury Liability

## Insuring Agreement

The insuring agreement for Coverage B reads the same as for Coverage A, with the single exception that the words "personal and advertising injury" replace the words "bodily injury" and "property damage."

A separate sublimit applies to Coverage B, and it is also subject to the general aggregate limit. The insurance company's duty to defend the insured ceases when either of these limits is used up by payment of claims under Coverage A, B, or C. Personal injury is not the same as bodily injury, and includes such things as false arrest, libel, slander, and invasion of privacy.

## Synopsis

<p><b>COVERAGE B. PERSONAL AND ADVERTISING INJURY LIABILITY</b></p> <p>1. Insuring Agreement.</p> <p>a. We will pay those sums that the insured becomes legally obligated to pay as damages because of "personal injury" or "advertising injury" to which this coverage part applies. We will have the right and duty to defend any seeking those damages. We may at our discretion investigate any "occurrence" or offense and settle any claim or "suit" that may result. But:</p> <p>(1) The amount we will pay for damages is limited as described in Limits of Insurance (Section III); and</p> <p>(2) Our right and duty to defend when we have used up the applicable limit of insurance in the payment of judgments or settlements under Coverage A or B or medical expenses under Coverage C.</p> <p>No other obligation or liability to pay sums or perform acts or services is covered unless explicitly provided for under Supplementary Payments—Coverages A and B.</p>
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## Personal Injury

The definition of "personal injury" starts out by saying that it does not include bodily injury, so Coverage B is separated from Coverage A. It specifically states the forms of personal injury that are covered, and the offenses listed within the definition of "personal injury" have specific legal meanings, so the coverage would be interpreted from these legal meanings. There are other kinds of offenses which could result in personal injury, but if the injury doesn't arise out of one of the listed items, the intent of the policy is not to provide coverage.



## Synopsis

**"Personal and advertising injury"** means injury, other than "bodily injury," arising out of one or more of the following offenses:

- a. False arrest, detention or imprisonment;
- b. Malicious prosecution;
- c. The wrongful eviction from, wrongful entry into, or invasion of the right of private occupancy of a room, dwelling or premises that a person occupies by or on behalf of its owner, landlord or lessor.
- d. Oral or written publication of material that slanders or libels a person or organization or disparages a person's or organization's goods, products or services;
- e. Oral or written publication of material that violates a person's right of privacy.
- f. The use of another's advertising idea in your "advertisement", or
- g. Infringing upon another's copyright, trade dress or slogan in your "advertisement".

## Coverage Agreement and Notice of Claim

All claims for damages because of "personal and advertising injury" to the same person or organization as a result of an offense will be deemed to have been made at the time the first of those claims is made against any insured parties.

Personal injury and advertising injury are mutually exclusive exposures. "Personal injury" applies to an offense arising out of the insured's business activities other than advertising, publishing or broadcasting. "Advertising injury" applies to an offense arising out of advertising the insured's goods, products or services. This coverage is designed to cover the incidental advertising liability exposure of an insured business that advertises its own goods and services, and it does not apply to an insured business that is in the advertising, publishing or broadcasting business (as you will see when we examine the exclusions).

The only difference between Coverage B as provided by the claims-made form and the occurrence form is the coverage trigger. Occurrence coverage applies to an offense committed during the policy period (regardless of when the claim is made). In contrast, claims-made coverage applies only if the offense was not committed before the retroactive date (if any) or after the end of the policy period, and only if the claim is made during the policy period or any extended reporting period provided by the insurance company.

## Coverage B Exclusions

Coverage B exclusions on the claims-made and occurrence forms are identical with the exception of a single reference to the "retroactive date" in one of the exclusions. This is necessary because of the difference in the coverage triggers under the two forms.

Some of the more common Coverage B Exclusions are:

- Intentional Acts
- Personal or Advertising Injury Due to a Criminal Act Committed by Insured
- Oral or Written Publication of Material Known to be False
- Acts Committed by Someone in Advertising, Broadcasting, or Publishing Business



## Coverage C- Medical Payments



### Insuring Agreement



Medical payments coverage provides payment for reasonable medical expenses without regard to legal responsibility for the injury. It is intended to mitigate possible bodily injury claims by providing voluntary coverage for medical expenses of an injured person without any question of liability. The injury must occur on the insured's premises or adjoining ways, or as a result of the insured's operations even if they occur away from the premises. The accident causing the injury must take place during the policy period and within the coverage territory; therefore, coverage is on an "occurrence" basis on both the "claims-made" and the "occurrence" forms.

### Synopsis

#### **COVERAGE C- MEDICAL PAYMENTS**

##### 1. Insuring Agreement.

a. We will pay medical expenses as described below for "bodily injury" caused by an accident:

- (1) On premises you own or rent;
- (2) On ways next to premises you own or rent; or
- (3) Because of your operations;

provided that:

- (1) The accident takes place in the "coverage territory" and during the policy period;
- (2) The expenses are incurred and reported to us within one year of the date of the accident; and
- (3) The injured person submits to examination, at our expense, by physicians of our choice as often as we reasonably require.

b. We will make these payments regardless of fault. These payments will not exceed the applicable limit of insurance. We will pay reasonable expenses for:

- (1) First aid at the time of an accident;
- (2) Necessary medical, surgical, x-ray and dental services, including prosthetic devices; and
- (3) Necessary ambulance, hospital, professional nursing and funeral services.

## Coverage C Exclusions

Medical payments coverage does not apply to injury to any insured party, any person hired to work for an insured business, any person (such as a tenant) who is injured on that part of the insurance company's premises that such person normally occupies, any person for whom benefits for the same injury are payable or required under any workers compensation or disability benefits law, or any person injured while taking part in athletics.

Injuries which would be included under the products-completed operations hazard limit (which appears in detail below), and any injuries resulting from war or an act of war, are excluded. Under item g., all of the exclusions that apply to bodily injury under Coverage A also apply to medical payments coverage.

### *Synopsis*

#### **Exclusions.**

We will not pay expenses for bodily injury:

- a. To any insured.
- b. To a person hired to do work for or on behalf of any insured or a tenant of any insured.
- c. To a person injured on that part of premises you own or rent that the person normally occupies.
- d. To a person, whether or not an employee of any insured, if benefits for the "bodily injury" are payable or must be provided under a workers compensation or disability benefits law or a similar law.
- e. To a person injured while taking part in athletics.
- f. Included within the "products-completed operations hazards."
- g. Excluded under Coverage A.
- h. Due to war, whether or not declared, or any act or condition incident to war. War includes civil war, insurrection rebellion or revolution.



## Supplementary Payments

Supplementary payments cover certain expenses and costs in addition to payments made under Coverages A and B and do not reduce the limits of liability. Coverage is included for expenses incurred by the insurance company such as costs of investigating a claim, costs of bail bonds related to traffic laws (while the policy doesn't cover autos directly, mobile equipment might be involved in an accident involving traffic laws), and bonds to release attachment. While the premiums for these bonds will be paid, the insurance company does not have to furnish them.

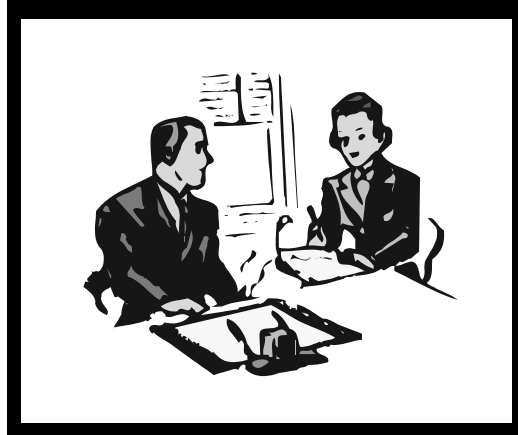
Reasonable expenses of an insured person, including loss of earnings up to \$250 per day, will be reimbursed but only if the expense or time off work is at the request of the insurance company. Costs of a suit which are charged to the insured, such as court costs, depositions, transcripts, and legal fees, will be paid. Prejudgment interest on the amount of a judgment the insurance company is required to pay, as well as interest accruing after a judgment, will be paid; however, the insurance company will not pay interest on a judgment which accrues after it makes an offer to settle for the policy limits and the offer is rejected.

### *Synopsis*

#### **SUPPLEMENTARY PAYMENTS—COVERAGES A AND B**

1. We will pay, with respect to any claim or "suit" we defend:
    - a. All expenses we incur.
    - b. Up to \$250 for cost of bail bonds required because of accidents or traffic law violations arising out of the use of any vehicle to which the Bodily Injury Liability Coverage applies. We do not have to furnish these bonds.
    - c. The cost of bonds to release attachments, but only for bond amounts within the applicable limit of insurance. We do not have to furnish these bonds.
    - d. All reasonable expenses incurred by the insured at our request to assist us in the investigation or defense of the claim or "suit," including actual loss of earnings up to \$250 a day because of time off from work.
    - e. All costs taxed against the insured in the "suit."
    - f. Prejudgment interest awarded against the insured on that part of the judgment we pay. If we make an offer to pay the applicable limit of insurance, we will not pay any prejudgment interest based on that period of time after the offer.
    - g. All interest on the full amount of any judgment that accrues after entry of the judgment and before we have paid, offered to pay, or deposited in court the part of the judgment that is within the applicable limit of insurance.
- These payments will not reduce the limits of insurance.

## Who and What Is Insured- Section II



### Who Is An Insured

This section defines specifically the persons or organizations who are named insureds under the policy in addition to the named insured shown on the declarations. The extension to unnamed insureds depends upon the type of business organization or entity shown in the declarations. If the named insured is an individual, the spouse is also an insured. A partnership or joint venture includes the partners and their spouses as insureds, while a corporation includes officers and directors as insureds with respect to their duties performed for the corporation, and stockholders with respect to their liability that arises as a result of being stockholders. Limited liability companies (LLCs ) and their members and managers are covered but only in the conduct of the business. A trust may also be an insured. Coverage for individuals, partners, and joint ventures is limited to their liability arising out of the conduct of the insured business.

### *Synopsis*

#### **SECTION II—WHO IS AN INSURED**

1. If you are designated in the Declarations as:
  - a. An individual, you and your spouse are insureds, but only with respect to the conduct of a business of which you are the sole owner.
  - b. A partnership or joint venture, you are an insured. Your members, your partners, and their spouses are also insureds, but only with respect to the conduct of your business.
  - c. A limited liability company, you are an insured. Your members are also insureds, but only with respect to the conduct of your business. Your managers are insureds, but only with respect to their duties as your managers.
  - d. An organization other than a partnership or joint venture, you are an insured. Your “executive officers” and directors are insureds, but only with respect to their duties as your officers or directors. Your stockholders are also insureds, but only with respect to their liability as stockholders.
  - e. A trust, you are an insured. Your trustees are also insureds, but only with respect to their duties as trustees.

## Limits of Insurance- Section III

These limits apply for a policy year so, if a policy is written for more than one year, the limits are renewed each year. If a policy was issued for a term of 30 months, a new set of limits would apply to the final six months of the policy term. However, if a policy was issued for one year and extended by endorsement for an additional three months, either during the policy term or at expiration, then the extension period would be considered part of the original policy period and be subject to the original set of limits.



There are seven different sets of limits of liability. The primary limits are the general aggregate limit and the products/completed operations aggregate limit. The remaining four limits are sublimits which are subject to either of the primary aggregate limits. These limits are not affected or increased by the number of insureds, the number of claims or suits made, or the number of persons making the claims or bringing the suits.

The general aggregate limit is a critical number. All coverages and sublimits are subject to this overall limit with the single exception of the products/completed operations aggregate limit. This is the total amount that will be paid in the policy year except for products/completed operations coverage.

The products/completed operations aggregate limit is the other major aggregate. It is a separate aggregate and not limited by the general aggregate, but it does have an effect on several of the sublimits.

The sublimit applying to "personal injury" and "advertising liability" is the most that will be paid for all damages claimed by any one person or organization. It is also subject to the general aggregate limit.

The occurrence limit controls the amount that will be paid for bodily injury, property damage, and medical payments arising from a single occurrence. It is also subject to either the general aggregate limit or the products/completed operations aggregate limit depending on which coverage applies to the claim.

The medical expense limit is the most that will be paid to one person for medical expenses arising out of a bodily injury. It is also subject to the occurrence limit and the general aggregate limit.



"You've got two options. We can treat you right now, or you can wait until five more people come in with broken arms and get our group discount."



## Seven Limits That Could Appear on the Declaration Page

**1. The Limits of Insurance shown in the Declarations and the rules below fix the most we will pay regardless of the number of:**

- a. Insureds;
- b. Claims-made or "suits" brought; or
- c. Persons or organizations making claims or bringing "suits"

**2. The General Aggregate Limit is the most we will pay for the sum of:**

- a. Medical expenses under Coverage C;
- b. Damages under Coverage A, except damages because of "bodily injury" or "property damage" included in the "products-completed" operations hazard;" and
- c. Damages under Coverage B.

**3. The Products-Completed Operations Aggregate Limit is the most we will pay under Coverage A for damages because of "bodily injury" and "property damage" included in the "products completed operations hazard."**

**4. Subject to 2. above, the Personal and Advertising Injury Limit is the most we will pay under Coverage B for the sum of all damages because of all the "personal injury" and all "advertising injury" sustained by any one person or organization.**

**5. Subject to 2. or 3. above, whichever applies, the Each Occurrence Limit is the most we will pay for the sum of:**

- a. Damages under Coverage A; and
- b. Medical expenses under Coverage C because of all "bodily injury" and "property damage" arising out of any one "occurrence."

**6. Subject to 5. above, the Damage To Premises Rented To You Limit is the most we will pay under Coverage A for damages because of "property damage" to premises, while rented to you, or in the case of damage by fire, while rented to you or temporarily occupied by you with permission of the owner.**

**7. Subject to 5. above. The Medical Expense Limit is the most we will pay under Coverage C for all medical expenses because of "bodily injury," sustained by any one person.**

The limits of this Coverage Part apply separately to each consecutive annual period and to any remaining period of less than 12 months, starting with the beginning of the policy period shown in the Declarations, unless the policy period is extended after issuance for an additional period of less than 12 months. In that case, the additional period will be deemed part of the last preceding period for purposes of determining the Limits of Insurance.

## **Policy Conditions- Section IV**

### **Bankruptcy**

The Bankruptcy condition states clearly that the insured's insolvency or bankruptcy or that of the insured's estate does not relieve the insurance company of its obligation under the policy to pay damages for which the insured is found liable, to defend any suit against the insured for such damages, or to investigate any offense or occurrence that might result in a claim.

### **Insured's Duties**

The insured has certain obligations to the insurance company with respect to claims and occurrences or offenses which "may result in a claim." Under both the claims-made and occurrence coverage forms, when the insured has knowledge of an occurrence or offense, a complete documentation should be made of what happened, the names and addresses of any injured persons and witnesses, and a description of the nature of any injury or damage.

When any other person or organization included under the "Named Insured" designation of the policy reports a claim to the insured, it is the insured's duty to record and report the pertinent details—including the date the insured was notified—and advise the insurance company immediately. It is then the insured's duty, as soon as is practicable, to provide the company written notice of the claim.

The statement, "Notice of an occurrence is not notice of a claim," appears only on the claims-made form because the distinction is important—claims-made coverage applies to claims which are actually made during the policy period, and not necessarily to injury or damage that occurs during the policy period. If the insureds terminate coverage, he or she must file a claim quickly to avoid missing the end of the policy period or other relevant deadlines.

Most of the wording in condition 2.b. is the same on the claims-made and occurrence forms, except that in three places where the claims-made form refers to a "claim" the occurrence form refers to a "claim or suit." The insured is required to record immediately the specifics of any claim, notify the insurance company as soon as practicable, and then follow up with written notice of the claim.

Under both CGL coverage forms, the insured must send copies of all legal papers received, authorize the insurance company to obtain information, cooperate in the investigation and defense of the claim, and assist the insurance company in enforcing any right of recovery from another person or organization who may be liable for damages. The insured is not permitted to make payments voluntarily, assume obligations, or incur expenses (except for first aid at the time of an accident) without the consent of the insurance company.

## Legal Action Against the Company

These paragraphs limit the ability of anyone—including the insured—to sue the insurance company for any reason related to settlement of a lawsuit.

An important note: This section states that someone who believes he has been wronged by the insured can't name the insured's insurance company in any lawsuit he files. This means the insurance company avoids being a party to the suit—at least initially. (The insurance company can be sued if it doesn't pay a settlement of judgment against a policyholder.)

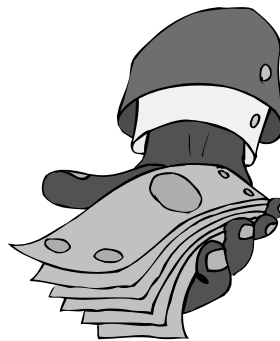
## More Than One Insurance Policy Applicable

This condition specifies how Coverages A and B apply when other valid insurance is available for the same loss. Paragraph a. states that the coverage will be primary in all cases except when the provisions of the following paragraph specify that it will apply as excess. When coverage is primary, it is usually not affected by other insurance. But if other insurance is also primary, the insurance companies will share the loss.

Claims-made coverage will be excess over any prior "occurrence" coverage if the claims-made coverage has no retroactive date or if the occurrence coverage continues beyond the retroactive date (this shaded provision is found only in the claims-made form). Under both the claims-made and occurrence forms, coverage also applies as excess over (1) any fire insurance for a premises the insured has rented; any fire and extended coverage, builders risk, or installation risk coverage for the insured's work; and (3) any other insurance covering losses arising out of aircraft, autos or watercraft to the extent that these losses are not excluded under Coverage A.

Example: A business auto policy may serve as primary coverage in the event that the insured hasn't adequately maintained the brakes of a covered auto. CGL would serve as excess beyond the business auto policy's limits.

When CGL coverage applies as excess, the insurance company will only pay the amount of a loss that exceeds the sum of all other insurance payments and all deductibles and self-insured amounts under that other insurance. If any other insurance and the CGL coverage both apply as excess, the insurance companies will share the remaining portion of the loss after all primary insurance has been exhausted.



## Premium Audits

The insurance company has the right to examine and audit the insured's records to the extent that they relate to the policy. (This right is also extended to rate service organizations.) These records can be in a variety of forms, from ledgers to computer data. The audits, made in regular business hours, can occur during the policy period and for some period after its expiration.

The final audit billing should never be a "surprise", yet audits often develop unexpected additional premiums.

## **Representations**

This statement is to affirm that the insurance company has issued the policy in reliance on the information given by the insured and that the information is accurate and complete to the best of the insured's knowledge. The effect of this condition is questionable as it would usually require a material misrepresentation by the insured to void coverage.

## **Separation of Insureds**

Except with respect to the limits of insurance, and rights and duties specifically assigned to the "first named insured," CGL coverage applies as if each named insured were the only named insured, and applies separately to each insured against whom a claim is made or a suit is brought.

This means that the insurance company will defend each insured, cover supplementary payments related to a claim against each insured, and extend any other rights under the coverage to each insured. However, this provision does not increase any limits of insurance shown in the declarations.

## **Subrogation**

This is the subrogation clause which transfers the insured's rights against a third party to the insurance company. If the insurance company pays a claim under the policy on the insured's behalf, there may be a third party who can be held responsible. When a claim payment is made by the insurance company, it "inherits" any rights the insured may have against the responsible third party. The insured agrees to assist the insurance company in recovering, from the third party, any amounts paid on the insured's behalf by the insurance company.

Recoveries, if any, will be distributed in the reverse order from the method in which the claim was assessed. In other words, the deductible—if there was one—would be reimbursed after the insurance company has recovered its settlement.

## **Notice of Cancellation**

The common policy conditions provide for 30 days notice of cancellation (10 days for nonpayment of premium) for all coverage parts of the policy. This condition broadens the obligation of the insurance company to give 30 days notice of nonrenewal. Note that this additional requirement applies only to the CGL coverage part. Certified mail is sufficient proof that notice of cancellation was received.

## **Insured's Right to Claim Information**

This condition is found only on the claims-made form. If a claims-made policy is canceled or nonrenewed, either by the insured or by the insurance company, it is important that any claims or potential claims information be made available in order to replace the coverage with another carrier. A new carrier will want this information to evaluate accurately the risks the insured presents.

If the cancellation or nonrenewal is by the company, the information must be provided to the insured at least 30 days in advance of the termination date. If the nonrenewal or cancellation is by the insured, a request in writing must be made by the insured within 60 days of the termination date, and the company must respond within 45 days after the written request is received by it.

## Exclusions



### **Worker's Compensation Exclusion**

The CGL Policy will not cover an injury to an employee, as this would be covered by a worker's compensation policy.

### **Professional Liability Exclusion**

Professional liability applies to individuals who may be at risk for giving incorrect advice (errors) or fail to inform of important information (omissions) in their professional duties. Professional liability is not covered by a CGL Policy as it is sold as a separate policy.



### **Care, Custody, or Control Exclusion**

This exclusion eliminates or restricts coverage for damage to property that is owned by, used by, loaned to, rented to, or is or has been in your (the insured's) care, custody or control. It also restricts coverage for damage with respect to property manufactured, worked on, or constructed by the insured.

An Inland Marine or Bailee Policy may be purchased to cover these exposures.



### **Liquor Liability Exclusion**

The liquor liability exclusion applies only to an insured business that is in the business of manufacturing, distributing, selling, serving or furnishing alcoholic beverages, such as a brewery, liquor store, bar or restaurant where drinks are served. For these companies, a separate liquor liability coverage form is available and a premium will be charged for the coverage because of the greater exposure.

However, the policy does cover the incidental liquor liability exposure of a company that is not in the business of making, supplying, serving or selling drinks. An insured building owner who leases a premises to someone engaged in the business of selling drinks would be covered if sued as the owner of the premises. An insured business which provided financial services and consists only of clerical offices would be covered for its liquor liability exposure if it provided beer at a company picnic or served drinks at a holiday party.

## **Pollution Exclusion**

This Exclusion eliminates coverage for virtually all types of pollution exposures.

With respect to a premises, site or location owned or occupied by, rented to, or used by an insured business, or on which work is performed for that company by contractors or subcontractors, any injury or damage resulting from the heat, smoke or fumes of a hostile fire is not excluded as pollution damage. A "hostile fire" is one which is out of control or breaks out of the area to which it was intended to be confined.

Example: If the insured burns some old paper trash and the fire spreads beyond the fire-break, any resulting environmental damage will not be covered.

The pollution exclusion is a very broad one that applies to bodily injury or property damage arising out of the discharge, migration, release or escape of pollutants. It applies to any premises, site or location owned or occupied by, rented to, or used by an insured business, or which at any time was used for the handling, storage, disposal, processing or treatment of waste. This exclusion also applies to activities by others for whom the insured may be responsible, and to work performed by contractors or subcontractors on behalf of an insured business.



## **Auto, Watercraft, Aircraft Exclusion**

Coverage is excluded for "autos" (as defined in the policy), watercraft, and aircraft that you own, use, maintain or entrust to others. The exclusion also states that the word "use" not only means the operation of the auto, watercraft, or aircraft but includes the loading or unloading of any of them.

## **Product Recall Exclusion**

A general liability exclusion applicable to damages claimed for the withdrawal, inspection, repair, replacement, or loss of use of the named insured's product or work completed by or for the named insured or of any property of which such products or work form a part. Also known as Sistership Liability.

## **Expected and Intended Exclusion**

A general and auto liability (also hospital errors and omissions) policy exclusion for injury or damage that is expected or intended from the standpoint of the insured. An exception to the exclusion may provide coverage for liability from the use of reasonable force in the defense of persons or property (by someone such as a security guard).

## **Endorsements**

As mentioned at the beginning of this chapter, CGL forms are very flexible in the sense that endorsements may be used to remove a number of major coverages (such as products and completed operations, personal injury and advertising injury, medical payments and fire legal liability), and endorsements and other coverage forms may be used to add some important coverages (such as liquor liability and pollution liability). Yet a significant number of additional endorsements are available to tailor the coverage in more subtle ways—by imposing deductibles, adding coverage for additional interests, excluding specific exposures, and amending coverages and limits of insurance. Adding endorsements will result in higher premiums, while adding exclusions will result in lower premiums.

Endorsements may be added to general liability coverage for a variety of reasons. Amendatory endorsements are required whenever provisions of printed policies have been changed by more recent filings, and whenever policy provisions are inconsistent with state laws or regulations. An insured may voluntarily request endorsements that add or reduce coverage in order to meet the actual insurance needs of the business. In some cases, insurance underwriters require certain endorsements as a condition of accepting the risk.

### **Nuclear Energy Liability Exclusion Endorsement**

This endorsement must be part of every general liability coverage part. It excludes coverage for bodily injury, property damage, and medical payments resulting from the hazardous properties of nuclear material related to the operations of any nuclear facility. Anyone who owns, operates, supplies or services a nuclear facility, or who handles, transports, or disposes of nuclear waste material may apply for special coverages written by nuclear risk insurance companies.

Nuclear energy liability policies are written by the Nuclear Energy Liability Insurance Association, the Mutual Atomic Energy Liability Underwriters, and the Nuclear Insurance Association of Canada. The broad form exclusion attached to every CGL form states that there is no coverage for any insured who is also an insured under a policy issued by one of the nuclear risk insurance companies. It also excludes nuclear liability coverage with respect to any person who is required to maintain financial protection under the Atomic Energy Act of 1954, or who is entitled to indemnity from the United States of America or any of its agencies under an agreement involving nuclear materials.

### **Employment Practices Liability Insurance (EPLI)**

A form of liability insurance covering wrongful acts arising from the employment process. The most frequent types of claims alleged under such policies include: wrongful termination, discrimination, and sexual harassment. The forms are written on a claims-made basis and generally exclude coverage for large-scale, companywide layoffs. In addition to being written as a stand-alone coverage, EPLI is frequently available as an endorsement to directors and officers liability policies.

## **Additional Insureds or Vendors**

Various endorsements may be used to attach coverage for other entities or interests who may be held liable for acting on behalf or, in the name of, or for having some business relationship with the named insured.

Example: Coverage may be added for club members for their liability for activities of the named insured, or their activities performed on behalf of the club.

Endorsements may be used to add as additional insureds concessionaires who are trading under the insured's name, for the managers or lessors of premises which are leased to the insured, and for vendors with respect to injury or damages which arise out of the insured's products which are shown in the schedule and are sold or distributed by such vendors.

Numerous other endorsements may be used to add coverage for individual condominium unit owners of an insured condominium, any party who owns or controls premises leased or occupied by the insured, volunteer workers who act at the insured's direction, co-owners of leased premises, lessors of leased equipment which the insured leases or uses, or specifically designated persons or organizations with respect to their liability which may arise out of the insured's premises or operations.

A variety of endorsements exist to cover situations under which additional interests might have a liability exposure arising out of or somehow related to the activities of the named insured.

## **Pollution Liability Coverage**

Commercial general liability forms exclude virtually all pollution originating from the insured's premises or operations, and from the handling, treatment or disposal of waste materials. Clean-up costs are also excluded. The only pollution exposure covered by CGL forms falls within products-completed operations—liability for emissions is covered only away from the insured's premises and work sites, and only when resulting from use by others of the insured's finished work or products.

Not all insurance companies are willing to write pollution coverage. In the tight pollution insurance marketplace, the premiums are likely to be high and the risk will be carefully underwritten, because of the special nature of the exposure. To the extent that pollution risks are written, an insured has the following options for purchasing coverage under the commercial lines program:

- pollution liability extension endorsement,
- limited pollution liability extension endorsement,
- total pollution exclusion endorsement,
- pollution liability coverage form, and
- limited pollution liability coverage form.

## Liquor Liability Coverage



CGL forms provide “host liquor liability” coverage, which applies only to the incidental exposures of those who are not engaged in the business of manufacturing, distributing, selling, serving or furnishing alcoholic beverages. The CGL liquor liability exclusion applies to insureds who are engaged in such businesses, but liquor liability coverage may be purchased for these exposures. A liquor liability coverage part may be attached to a commercial package policy that also includes a CGL coverage part. Two variations of the liquor liability coverage are available—there is an occurrence form and a claims-made form. Except for the sections that specifically focus on the liquor liability exposure, the two forms are very similar to their CGL counterparts.

The insuring agreement of both versions of the liquor liability coverage form state that the insurance applies to damages for “injury” if the liability “is imposed on the insured by reason of selling, serving or furnishing any alcoholic beverage.” Injury is later defined as including bodily injury, property damage, and damages for care, loss of services, or loss of support. The injury must occur in the coverage territory, and the insurance company has a duty to defend suits.

The only difference between the insuring agreements is that the “occurrence form” applies to injury that occurs during the policy period, and the “claims-made” form applies to claims first made against the insured during the policy period provided that the injury does not occur before the retroactive date or after the policy period.

Both versions of coverage have the same exclusions. Some of the exclusions, such as expected or intentional injury, obligations falling under workers compensation, and bodily injury to employees, are also found on the CGL forms. The liquor liability forms have some unique exclusions, but have fewer exclusions than the CGL because the coverage has a more narrow focus.

The insurance does not apply to injury arising out of selling, serving or furnishing any alcoholic beverage while any required license is suspended, nor does it apply after any such license is expired, cancelled or revoked.

An exclusion applies to injury arising out of the insured’s product, but the exclusion does not apply to liability resulting from causing or contributing to a person’s intoxication, or furnishing alcohol to someone under the legal age or already under the influence of alcohol, or under laws regulating the distribution or use of alcoholic beverages. This exclusion clarifies that the coverage is not products liability insurance. Injury resulting from a bad batch of an alcoholic beverage that poisoned someone is excluded, but injuries resulting from the use, distribution and known intoxicating effects of the product are not excluded.