



JAMES K. RUBLE SEMINAR

Ruble Graduate Seminar

IA&B of PA MD DE
August 3-4, 2021

James K. Ruble Seminar

Ruble Graduate Seminar

August 03-04, 2021 • Webinar

Tuesday, August 3, 2021

7:45 AM - 8:00 AM

8:00 AM - 12:00 PM

Section 1

Join Webinar

The Additional Insured

Craig Stanovich

12:00 PM - 1:15 PM

1:15 PM - 5:15 PM

Section 2

Lunch

Employment-Related Practices Insurance

Craig Stanovich

Wednesday, August 4, 2021

7:45 AM - 8:00 AM

8:00 AM - 12:00 PM

Section 3

Join Webinar

Commercial Property Checklist

Allen Messer

8:00 AM - 12:00 PM

Section 4

Ethics for Insurance and Risk Management Professionals

Bettye Hutchison

12:00 PM - 1:15 PM

1:15 PM - 5:15 PM

Section 5

Lunch

Business Auto Policy Endorsements Why and Why Not

Bettye Hutchison

1:15 PM - 5:15 PM

Section 6

Commercial General Liability Coverage Excitement & Opportunity Awaits

Allen Messer

Faculty

Craig Stanovich CIC, CRM, CPCU, AU
Austin & Stanovich Risk Managers, LLC

Educational Consultant

Daniel Lawyer, CIC, CSRM, CPCU
Warrenton, VA

Allen Messer CIC, CPCU

Insurance Concepts & Services, LLC

Bettye Hutchison CIC, CRM, CPCU, ARM, CPIA, AAI, TRIP

Central Insurance Services, Inc.

JAMES K. RUBLE SEMINAR
Ruble Graduate Seminar
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A Letter from William J. Hold, President/CEO

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Let's take the first step.

William J. Hold, M.B.A., CRM, CISR
President/CEO



James K. Ruble Seminar

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Section 1

The Additional Insured

THE ADDITIONAL INSURED – A CLOSER LOOK



PREPARED AND PRESENTED BY:

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I. Named Insured – First Class Status

- A. Policy issued to named insured – it's their policy
- B. Named insured is the infamous "You" – listed as Item One on Declarations or Information Page

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.

- C. Common Policy Conditions - Rights of *First* Named Insured:

- 1. Cancel policy

Cancellation

1. The first Named Insured shown in the Declarations may cancel this policy by mailing or delivering to us advance written notice of cancellation.

- 2. Change policy

Changes

The first Named Insured shown in the Declarations is authorized to make changes in the terms of this policy with our consent.

- 3. Receive notice of cancellation

We may cancel this policy by mailing or delivering to the first Named Insured written notice of cancellation

- D. Common Policy Conditions - Obligations of *First* Named Insured:

- 1. Payment of premium
- 2. Payee for return premium

E. Premiums

The first Named Insured shown in the Declarations:

- 1. Is responsible for the payment of all premiums; and
- 2. Will be the payee for any return premiums we pay.

- E. Some conditions apply only to a named insured or “You” such as conditions in CGL to:

1. Occurrence, claim or loss reporting requirements

You must see to it that we are notified as soon as practicable of an "occurrence" or an offense which may result in a claim.

2. Maintenance of records for audits

We may examine and audit your books and records as they relate to this policy at any time during the policy period and up to three years afterward.

The first Named Insured must keep records of the information we need for premium computation, and send us copies at such times as we may request.

3. Accurate and complete representations upon which insurer has relied

6. Representations

By accepting this policy, you agree:

- a. The statements in the Declarations are accurate and complete;
- b. Those statements are based upon representations you made to us; and
- c. We have issued this policy in reliance upon your representations.

- F. Named insured's *form of organization* on CGL determines who else is an insured:

- 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, joint venture or limited liability company, 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.

- G. Named insured is covered by this policy, subject to other policy terms, *for everything they do*.

H. Separation of insureds – named insured versus named insured

Separation Of Insureds

Except with respect to the Limits of Insurance, and any rights or duties specifically assigned in this Coverage Part to the first Named Insured, this insurance applies:

- a. As if each Named Insured were the only Named Insured; and
- b. Separately to each insured against whom claim is made or "suit" is brought.

1. Inter-company sales – charge may be made by insurer
2. Inter-company Products Suits CG 21 41 11/85

EXCLUSION – INTERCOMPANY PRODUCTS SUITS

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

PRODUCTS/COMPLETED OPERATIONS LIABILITY COVERAGE PART

This insurance does not apply to any claim for damages by any Named Insured against another Named Insured because of "bodily injury" or "property damage" arising out of "your products" and included within the "products-completed operations hazard."

CG 21 41 11 85

II. An Insured or Additional Insured – Second Class Status

- A. Coverage is restricted – must be a connection or close tie to named insured – coverage is not independent of named insured
- B. Automatic insured – no endorsement necessary – part of the policy
 - 1. Executive officers (as defined)

"Executive officer" means a person holding any of the officer positions created by your charter, constitution, by-laws or any other similar governing document.

- 2. Employees – leased but not temporary workers

"Employee" includes a "leased worker". "Employee" does not include a "temporary worker".

- 3. Volunteer workers

"Volunteer worker" means a person who is not your "employee", and who donates his or her work and acts at the direction of and within the scope of duties determined by you, and is not paid a fee, salary or other compensation by you or anyone else for their work performed for you.

- 4. Real estate managers – non-employees or volunteers

Any person (other than your "employee" or "volunteer worker"), or any organization while acting as your real estate manager.

- C. Automatic named insured status – newly acquired or formed organization by an named insured EXCEPT partnerships, joint ventures or limited liability companies

Any organization you newly acquire or form, other than a partnership, joint venture or limited liability company, and over which you maintain ownership or majority interest, will qualify as a Named Insured if there is no other similar insurance available to that organization.

- D. MUST list partnerships, joint ventures or limited liability companies

No person or organization is an insured with respect to the conduct of any current or past partnership, joint venture or limited liability company that is not shown as a Named Insured in the Declarations.

- E. Additional insured – added by endorsement (usually changes “Who is an Insured”) because named insured either wants to or is required to add person or organization

1. Named insured may want to add:

- a. Unit owners of a condominium association for their individual liability for common areas

CG 20 04 Additional Insured – Condominium Unit Owners

WHO IS AN INSURED (Section II) is amended to include as an insured each individual unit owner of the insured condominium, but only with respect to liability arising out of the ownership, maintenance or repair of that portion of the premises which is not reserved for that unit owner's exclusive use or occupancy.

- b. Members of a club or civic organization – for activities performed for club

CG 20 02 Additional Insured – Club Members

WHO IS AN INSURED (Section II) is amended to include as an insured any of your members, but only with respect to their liability for your activities or activities they perform on your behalf.

- c. Church trustee or board of governors for activities on behalf of church

CG 20 22 Additional Insured – Church Members or Officers

Section II – Who Is An Insured is amended to include the following as insureds:

1. Any of your church members, but only with respect to their liability for your activities or activities they perform on your behalf.

2. Any:

- a. Trustee, official or member of the board of governors of the church; or
b. Members of the clergy but only with respect to their duties as such.

- d. Elected or appointed officials of a municipal corporation

Section II – Who Is An Insured is amended to include as an insured any elective or appointive officer or a member of any board or commission or agency of yours while acting within the scope of their duties as such.

2. Named insured may be required to add:
 - a. Owners of real estate on the policy of a tenant
 - b. Project owners on policy of general contractor
 - c. General contractor on policy of subcontractor
 - d. Lessor of leased equipment on policy of lessee
 - e. Vendors on the policy of manufacturers or distributors
- F. Implications for named insured to add unrelated additional insured
 1. Sharing of limits for same occurrence
 2. Interests of named insured and additional insured may not be aligned – a big fight – see Primary and Noncontributory issues
 3. Coverage granted to additional insured never intended by named insured (BP Oil Spill)
 4. Broad meaning read into “arising out of” by courts
 5. Little or no limitations on actual additional insured wording

It is agreed that this policy cover all Additional Insured interests where required by written contract. This, however, does not imply that the Company waives its rights of subrogation.

6. Loss of immunity – political subdivision may have immunity/tort limitation granted by statute, but not to the extent insurance is available. Adding political subdivision to CGL of another may serve to waive statutory protection
- G. Benefits to additional insured
 1. Keep claims out of your insurance by using someone else’s insurance
 2. May increase total limits available for a claim – both named insured’s and additional insured’s policy limits available
 3. Provides direct defense coverage of additional insured
 4. Provide direct rights on policy of others – an insured has “privity” of contract
 5. When an insurer owes a duty to the additional insured, most courts prevent an insurer from subrogating to recover from additional insured

- H. Some drawbacks of being added to someone else's policy as an additional insured
1. Loss of control of defense – particularly important if you have a large SIR or Deductible and have no say in how your claims are handled
 2. Coverage for “automatic insureds” may not be provided to you as an additional insured – coverage applies only to the person or organization listed – not directors, officers, employees and volunteer workers
 3. Should not completely rely on the insurance of others

III. Hold Harmless/Indemnity Agreement versus Additional Insured status

Hold Harmless Agreement *A contract in which one party agrees to indemnify the other. See Indemnity. [Black's Law Dictionary - Eighth Edition]*

Indemnity Clause *A contractual provision in which one party agrees to answer for any specified or unspecified liability or harm that the other party might incur. Also termed hold harmless clause. [Black's Law Dictionary - Eighth Edition]*

To the fullest extent permitted by law, the Subcontractor shall indemnify and hold harmless the Contractor, its agents and employees from and against all claims, damages, losses and expenses, including claims for injuries or death rising out of or resulting from performance of the Work, provided that such claim, damage, loss or expense is attributable to bodily injury, death, sickness, or disease, or to injury to or destruction of tangible property (other than the Work itself) caused in whole or part by the negligence of the Subcontractor, its agents, servants, or employees or subcontractors.

- A. Additional Insured is a party to an insurance contract – breadth of coverage provided to additional insured is determined by insurance policy wording [additional insured endorsement].
- B. “Insured contract” definition does not provide an indemnitee with additional insured status under indemnitor’s CGL
- C. Hold harmless and indemnity agreement is a *separate and distinct* promise by a *non-insurance company* to indemnify (and in some cases defend) another person or organization.
- D. Hold harmless and indemnity agreements *are not insurance and should not be confused with insurance*.
- E. Breadth of a hold harmless and indemnity agreement is determined by the actual indemnity wording in contract and not affected by the insurance (contractual liability insurance) available to fund the promise.
- F. Hold harmless and indemnity agreement may not be enforceable because
 - 1. Anti-indemnification statute; or
 - 2. Against public policy and not enforced by court

G. Sample anti-indemnification statutes:

Ohio Revised Code – In construction contract, cannot indemnify others if they have initiated or proximately caused injury or damage. Any fault of promisee will not require indemnity of promisor

§ 2305.31. Indemnity agreements in construction contracts.

A covenant, promise, agreement, or understanding in, or in connection with or collateral to, a contract or agreement relative to the **design, planning, construction, alteration, repair, or maintenance of a building, structure... purporting to indemnify the promisee... against liability for damages arising out of bodily injury to persons or damage to property initiated or proximately caused by or resulting from the negligence of the promisee ...is against public policy and is void.** Nothing in this section shall prohibit any person from purchasing insurance from an insurance company authorized to do business in the state of Ohio for his own protection or from purchasing a construction bond.

Texas – June 17, 2011

House Bill 2093 revises Texas' anti-indemnity law. Agreements in construction contracts executed after **January 1, 2012** are void and unenforceable to the extent that the agreement requires an indemnitor to indemnify an indemnitee for a claim caused by the *negligence or fault* of the indemnitee or any party under the control of the indemnitee. The bill contains an exception permitting an indemnitor to indemnify an indemnitee against a claim for "the bodily injury or death of an employee of the indemnitor, its agent, or its subcontractor of any tier."

The bill also prohibits provisions in construction contracts which require the purchase of additional insured coverage to the extent that it provides coverage that is void under the bill. In addition, this bill requires consolidated insurance programs that provide general liability coverage to have completed operations coverage for a minimum of three (3) years.

Massachusetts General Laws – In construction contract, cannot indemnify others unless *the indemnitor* has caused, at least in part, the injury or damage. Indemnatee can still have partial liability and indemnitor may have to pay 100% indemnification.

Chapter 149: Section 29C. Indemnification as part of contract

Section 29C. Any provision for or in connection with a contract for **construction, reconstruction.... which requires a subcontractor to indemnify any party for injury to persons or damage to property not caused by the subcontractor or its employees, agents or subcontractors, shall be void.**

Oregon Revised Statutes – Allows indemnification only for fault of indemnitor, its employees or subcontractors. (See Oregon ISO Additional Insured Endorsement)

30.140 Certain indemnification provisions in construction agreement void.

(1) Except to the extent provided under subsection (2) of this section, **any provision in a construction agreement that requires a person...or insurer to indemnify another against liability for damage arising out of death or bodily injury to persons or damage to property caused in whole or in part by the negligence of the indemnitee is void.**

Oklahoma as of November 1, 2006: Now prohibits indemnity for negligence of the indemnitee and additional insured requirements in construction contracts:

15 Okl. St. § 221: “Any provision in a construction agreement that requires an entity or that entity’s surety or insurer to indemnify, insure, defend or hold harmless another entity against liability for damage arising out of death or bodily injury to persons, or damage to property, which arises out of the negligence or fault of the indemnitee, its agents, representatives, subcontractors, or suppliers, is void and unenforceable as against public policy.”

H. Against public policy and not enforced by court

Iowa – Case Law – must be clear, unambiguous wording to enforce indemnity agreement for negligence of indemnitee.

Indemnification contracts will not be construed to permit an indemnitee to recover for its own negligence unless the intention of the parties is **clearly and unambiguously expressed**. *Id.* Broad and general language will not suffice to shift the burden of liability when the damages are caused by the indemnitee's sole negligence. McNally & Nimergood, 648 N.W.2d at 571.

I. Additional insured may be protected even when indemnity is not enforceable - major advantage to additional insured

J. Important Exceptions (this can be BIG DEAL!!):

Oregon – ORS 30.140 has been interpreted to prohibit not only indemnity for negligence of others but to also prohibit any insurance requirement that affords additional insured coverage for additional insured's negligence (partial or sole).

Walsh Construction Co. v. Mutual of Enumclaw (Supreme Court of the State of Oregon – 2004)

“In sum, the text of ORS 30.140, and its historic evolution, strongly suggests that the statute prohibits not only 'direct' indemnity arrangements between parties to construction agreements but also 'additional insurance' arrangements by which one party is obligated to procure insurance for losses arising in whole or in part from the other's fault.”

New Mexico – Statute prohibits indemnification of others for their negligence and also prohibits the requirement that person be an additional insured for any liability not allowed by the statute. There is an exception (and thus insurance is enforceable) for “project specific (OCIP or CCIP) policies,” OCP or Builder's Risk policies. (**Montana has a similar statute MCA S 28-2-2111**)

IV. The Compliance Problem

A. Extent of coverage required to be provided to additional insured

1. Silent – simply as add additional insured

SECTION 8 INSURANCE: The Subcontractor shall, before commencing work, and until final payment and at all times thereafter when Subcontractor may be erecting, removing or replacing defective work, maintain workers' compensation insurance, commercial general liability, comprehensive automobile liability insurance and umbrella liability insurance, and any other types of coverage required by the Contract in amounts specified in the General Contract (and as shown on the attached sample certificate), but not less than the following:

With the exception of the Workers' Compensation Insurance, any insurance policy obtained by the Subcontractor to fulfill the insurance requirements of the Contract shall name the Contractor as an additional insured

2. Obligation to notify additional insured with wording if less broad than ISO?

A copy of the policy endorsement(s) and any other documents required to verify such insurance are to be submitted with appropriate certificate(s)

3. Specific requirement that is unavailable – Such as CG 20 10 (11/85 edition)

4. Specific but not provided – obligation to disclose lack of compliance?

Additional insured coverage provided to the Owner and Construction Manager, its officers and employees, shall be for both on-going operations via ISO Form CG2010 or its equivalent and products and completed operations via ISO Forms CG 2037 or its equivalent. Coverage shall be provided on primary basis with no contribution by the Owner's or Construction Manager's liability insurance.

5. Additional insured's remedy for lack of compliance

- a. Action against named insured for breach of contract
- b. Action against insurer for breach of contract
- c. Action against agent or broker

B. Primary and Non-Contributory – See also CG 20 01 “Primary and Noncontributory”

1. ISO April, 2013 Edition

a. Primary Insurance

This insurance is primary except when **b.** below applies. If this insurance is primary, our obligations are not affected unless any of the other insurance is also primary. **Then, we will share with all that other insurance by the method described in c. below.**

b. Excess Insurance

(1) This insurance is excess over:

- (b) Any other primary insurance available to you covering liability for damages arising out of the premises or operations, **or the products and completed operations**, for which you have been added as an additional insured by attachment of an endorsement.

2. ISO and 2004 CGL & Later Editions (until 2013)

a. Primary Insurance

This insurance is primary except when **b.** below applies. If this insurance is primary, our obligations are not affected unless any of the other insurance is also primary. **Then, we will share with all that other insurance by the method described in c. below.**

b. Excess Insurance

This insurance is excess over:

- (2) Any other primary insurance available to you covering liability for damages arising out of the premises or operations, **or the products and completed operations**, for which you have been added as an additional insured by attachment of an endorsement.

3. ISO and 2001 & 1998 CGL – no products-completed operations

b. Excess Insurance

This insurance is excess over:

- (2) Any other primary insurance available to you covering liability for damages arising out of the premises or operations for which you have been added as an additional insured by attachment of an endorsement

4. Amendment of Other Insurance Condition – CG 00 55 03 97 Edition

b. Excess Insurance

This insurance is excess over:

- (1) Any of the other insurance, whether primary, excess, contingent or on any other basis:
- (2) Any other primary insurance available to you covering liability for damages arising out of the premises or operations for which you have been added as an additional insured by attachment of an endorsement.

5. Insurer's own wording – need to review carefully

6. Umbrella policies – typical wording

If other valid and collectible insurance applies to damages that are also covered by this policy, this policy will apply as excess of the **Other Insurance**. However, this provision will not apply if the **Other Insurance** is specifically written to be excess of this policy.

V. ISO's Big Changes – The Day the Earth Stood Still

- A. ISO concludes that many courts have interpreted “arising out of” too broadly, and announces change to most additional insured endorsements. Some examples:

Admiral Insurance Co. v. Trident NGL, Inc., 988 S.W.2d 451, 454 (Tex. App. 1999)

“The majority view of these cases is that for liability to “arise out of operations” of a named insured it is not necessary for the named insured’s acts to have “caused” the accident; rather, it is sufficient that the named insured’s employee was injured while present at the scene in connection with performing the named insured’s business, **even if the cause of the injury was the negligence of the additional insured.**” [Emphasis supplied]

- B. ISO revisions intended to limit coverage for an additional insured to the additional insured’s vicarious liability or shared negligence.

“Additional insured will only have coverage for bodily injury or property damage or personal or advertising injury that is *caused in whole or in part by the acts or omissions of either the named insured or those acting on behalf of the named insured.*”

A major effect of that wording will be to prevent any alleged coverage for the additional insured’s *sole negligence.*” ISO Circular LI-GL 2004-147 (March 12, 2004)

- C. Changes effective July 1, 2004 (CG 20 10 – Additional Insured – Owners, Lessees or Contractors – Scheduled Person or Organization (Changes noted with cross outs and double underline).

Section II . Who Is An Insured is amended to include as an additional insured the person(s) or organization(s) shown in the Schedule, but only with respect to liability ~~arising out of your ongoing operations performed for that insured for~~ “bodily injury”, “property damage” or “personal and advertising injury” caused, in whole or in part, by:

1. Your acts or omissions; or

2. The acts or omissions of those acting on your behalf;

in the performance of your ongoing operations for the additional insured(s) at the location(s) designated above.

D. Act or omission compared to negligence- a less stringent standard

In Maryland Casualty Company v. Regis Insurance Company and Ran Holding Corporation ((1997) No. 96–CV–1790), the U.S. District Court for the Eastern District of Pennsylvania ruled on the difference between "act or omission" and "negligence":

The Court finds that the use of the words "act or omission" in the Additional Insured Endorsement **does not require negligence** on the part of the named insured. The plain and ordinary meaning of "act or omission" requires only that the named insured do or fail to do something. Negligence would require the named insured to do [or fail to do] something "which a reasonable [person] guided by those ordinary considerations would ordinarily regulate human affairs, would do [or not do]."

- E. *Named insured* acts or failure to act must have caused, at least in part, the bodily injury or property damage
- F. Negligence of named insured is *not required* to trigger coverage for additional insured
- G. Additional insured covered for its liability *provided* that injury or damage is caused in part by named insured.
- H. Will acts or omissions by the named insured preclude coverage for the sole negligence of the additional insured?

1. **Based on a True Story**

The part that really happened

In a large building project for Pitney Bowes, the general contractor Sordoni Skansa (Sordoni) engaged the subcontractor Berlin Steel (Berlin) to perform iron and steel erection. Norman Pelletier, an employee of Berlin, was installing metal decking between two steel columns, when he was called away by his fellow workers so they could install a two-ton cross beam between the columns. One of seat connections of the cross beam was only "tack welded," a weak provisional weld intended only to hold the piece in place pending a full, load-bearing weld.

After seating the crossbeam, Mr. Pelletier returned to work beneath the crossbeams. Within minutes after he returned, the seat broke and the cross beam fell, striking Mr. Pelletier and causing him severe injuries.

Mr. Pelletier brought suit against Sordoni on the theories of negligence and breach of contract. The trial court found that Sordoni had a legal duty to inspect the welds to confirm they met contract and building code specifications. Sordoni did not perform such inspections as they had contractually delegated all responsibility for the iron and steel work, including the inspection of welds, to Berlin. The trial court found the failure to inspect amounted to 100% negligence on the part of Sordoni and awarded Mr. Pelletier \$32 million in damages and interest.

2. The made up stuff (pure speculation):

Berlin added Sordoni as an additional insured on their CGL using CG 20 10 (07 04 or later) ISO form. Would Sordoni be protected *as an additional insured on Berlin's* policy for the following?

- 1) Defense of the suit by Pelletier?
- 2) Damages awarded (up to the policy limit) to Pelletier?

Consider that the court adjudicated Sordoni to be 100% negligent – the injury to Pelletier was the sole fault of Sordoni. Yet, was the bodily injury to Pelletier “caused in whole or in part by acts or omissions” of Berlin, the named insured? It was Berlin’s employees who improperly seated the steel beam and did not properly inspect the weld.

- I. Amendment of Insured Contract Definition CG 24 26 (07 04) – no “end run” allowed – CGL reduced to “intermediate form” contractual liability coverage.

f. That part of any other contract or agreement pertaining to your business (including an indemnification of a municipality in connection in with work performed for a municipality) under which you assume the tort liability of another party to pay for "bodily injury" or "property damage" to a third person or organization, **provided the "bodily injury" or "property damage" is caused, in whole or in part, by you or by those acting on your behalf.** Tort liability means a liability that would be imposed by law in the absence of any contract or agreement.

VI. In 2013, ISO changed most additional insured endorsements by inserting *three limitations*:

- A. Add language, in response to the growing amount of states enacting “anti-indemnification laws”, to provide that the insurance afforded to an additional insured only applies to the extent permitted by law; ISO Circular 2012

However:

1. The insurance afforded to such additional insured only applies to the extent permitted by law; and

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- B. Provide that if coverage provided to the additional insured is required by contract or agreement, the insurance afforded to the additional insured will not be broader than that which the named insured is required by the contract or agreement to provide for the additional insured; and ISO Circular 2012

2. If coverage provided to the additional insured is required by a contract or agreement, the insurance afforded to such additional insured will not be broader than that which you are required by the contract or agreement to provide for such additional insured.

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- C. Provide that if coverage provided to the additional insured is required by contract or agreement, the most the insurer will pay on behalf of the additional insured is the amount of insurance required by the contract or agreement or the amount of insurance available under the applicable Limits of Insurance shown in the Declarations, whichever is less. The provision also provides that the endorsement will not increase the applicable Limits of Insurance shown in the Declarations.
ISO Circular 2012

If coverage provided to the additional insured is required by a contract or agreement, the most we will pay on behalf of the additional insured is the amount of insurance:

1. Required by the contract or agreement; or
2. Available under the applicable Limits of Insurance shown in the Declarations;
whichever is less.

This endorsement shall not increase the applicable Limits of Insurance shown in the Declarations.

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- D. **2013 Contractual Coverage Issue** – Coverage via “Insured Contract” also be restricted to the extent assumption of liability is permitted by law.

CG 24 26 04 13 Amendment of Insured Contract

- f. That part of any other contract or agreement pertaining to your business (including an indemnification of a municipality in connection in with work performed for a municipality) under which you assume the tort liability of another party to pay for "bodily injury" or "property damage" to a third person or organization, provided the "bodily injury" or "property damage" is caused, in whole or in part, by you or by those acting on your behalf. **However, such part of a contract or agreement shall only be considered an “insured contract” to the extent your assumption of tort liability is permitted by law.** Tort liability means a liability that would be imposed by law in the absence of any contract or agreement.

VII. ISO Basics – The Most Common Additional Insured Endorsements

A. Additional Insured -Managers or Lessors of Premises – CG 20 11 04 13

1. **Purpose:** To provide additional insured status to owner of premises (or to leaseholder/real estate manager) who is leasing premises to the tenant/named insured.
2. **Coverage:** Scheduled additional insured is covered for liability *arising out of* the ownership, maintenance or use of that part of the premises leased to the named insured and listed in the schedule.

CG 20 11 01 96

WHO IS AN INSURED (Section II) is amended to include as an insured the person or organization shown in the Schedule but only with respect to liability arising out of the ownership, maintenance or use of that part of the premises leased to you and shown in the Schedule and subject to the following additional exclusions

Whose ownership, maintenance or use of the premises is covered– additional insured or named insured? Named insured is a tenant and does not own the premises.

SFH, Inc. v. Millard Refrigeration Services, Inc. 339 F.3d 738 (8th Circuit 2003)

Though conceding Millard as lessor was an additional insured, Travelers argues that the loss was not covered because Millard's liability did not arise out of ownership, maintenance, or use of the leased premises.

Construing the "arising out of" language broadly, we conclude that Millard's [lessor] liability arose **out of its maintenance of the leased premises**. The fire started within the portion of the warehouse leased by Signature [tenant] and injured Signature's property located in the leased premises. Signature's loss was caused, or significantly increased, by the conduct of the Millard employee who shut off the water to the building's sprinkler system.

NOTE: Coverage may respond to sole negligence of additional insured due to "arising out of" language.

3. **Exclusions:** No coverage if an occurrence takes place after named insured is no longer a tenant; No coverage if additional insured engages in structural alterations, new construction or demolitions (either directly or through subcontractors)

POLICY NUMBER:

COMMERCIAL GENERAL LIABILITY
CG 20 11 04 13

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

ADDITIONAL INSURED – MANAGERS OR LESSORS OF PREMISES

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

SCHEDULE

Designation Of Premises (Part Leased To You):
Name Of Person(s) Or Organization(s) (Additional Insured):
Additional Premium: \$
Information required to complete this Schedule, if not shown above, will be shown in the Declarations.

A. Section II – Who Is An Insured is amended to include as an additional insured the person(s) or organization(s) shown in the Schedule, but only with respect to liability arising out of the ownership, maintenance or use of that part of the premises leased to you and shown in the Schedule and subject to the following additional exclusions:

This insurance does not apply to:

1. Any "occurrence" which takes place after you cease to be a tenant in that premises.
2. Structural alterations, new construction or demolition operations performed by or on behalf of the person(s) or organization(s) shown in the Schedule.

However:

1. The insurance afforded to such additional insured only applies to the extent permitted by law; and

2. If coverage provided to the additional insured is required by a contract or agreement, the insurance afforded to such additional insured will not be broader than that which you are required by the contract or agreement to provide for such additional insured.

B. With respect to the insurance afforded to these additional insureds, the following is added to Section III – Limits Of Insurance:

If coverage provided to the additional insured is required by a contract or agreement, the most we will pay on behalf of the additional insured is the amount of insurance:

1. Required by the contract or agreement; or
 2. Available under the applicable Limits of Insurance shown in the Declarations;
- whichever is less.

This endorsement shall not increase the applicable Limits of Insurance shown in the Declarations.

B. Additional Insured—Owners, Lessees or Contractors CG 20 10 04 13

1. **Purpose:** To provide additional insured status to owner (or lessee) of project on the policy of the general contractor. This form is also used to provide additional insured status to general contractor on the policy of its subcontractors.
2. **Coverage:** Scheduled additional insured is covered for liability *caused in whole or in part by* named insured's acts or omissions (or named insured *subcontractor's* acts or omissions) in the performance of named insureds "ongoing operations" for the additional insured.

Construction or contracting operations performed by the *named insured* for the *additional insured* must be conducted at the location (or jobsite) listed in the schedule.

Section II . Who Is An Insured is amended to include as an additional insured the person(s) or organization(s) shown in the Schedule, but only with respect to liability for "bodily injury", "property damage" or "personal and advertising injury" caused, in whole or in part, by:

1. Your acts or omissions; or
2. The acts or omissions of those acting on your behalf;

in the performance of your ongoing operations for the additional insured(s) at the location(s) designated above

3. **Exclusions:** Additional insured is NOT covered for any liability arising from completed operations – after the work is done. Intent is to provide coverage for the additional insured only if injury or damages takes place while work is being done by the named insured.

Separate endorsement CG 20 37 (04 13) to provide protection of additional insured for completed operations.

POLICY NUMBER:

COMMERCIAL GENERAL LIABILITY
CG 20 10 04 13

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

ADDITIONAL INSURED – OWNERS, LESSEES OR CONTRACTORS – SCHEDULED PERSON OR ORGANIZATION

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART
SCHEDULE

Name Of Additional Insured Person(s) Or Organization(s)	Location(s) Of Covered Operations
Information required to complete this Schedule, if not shown above, will be shown in the Declarations.	

A. Section II – Who Is An Insured is amended to include as an additional insured the person(s) or organization(s) shown in the Schedule, but only with respect to liability for "bodily injury", "property damage" or "personal and advertising injury" caused, in whole or in part, by:

1. Your acts or omissions; or
2. The acts or omissions of those acting on your behalf;

in the performance of your ongoing operations for the additional insured(s) at the location(s) designated above.

However:

1. The insurance afforded to such additional insured only applies to the extent permitted by law; and
2. If coverage provided to the additional insured is required by a contract or agreement, the insurance afforded to such additional insured will not be broader than that which you are required by the contract or agreement to provide for such additional insured.

B. With respect to the insurance afforded to these additional insureds, the following additional exclusions apply:

This insurance does not apply to "bodily injury" or "property damage" occurring after:

1. All work, including materials, parts or equipment furnished in connection with such work, on the project (other than service, maintenance or repairs) to be performed by or on behalf of the additional insured(s) at the location of the covered operations has been completed; or
2. That portion of "your work" out of which the injury or damage arises has been put to its intended use by any person or organization other than another contractor or subcontractor engaged in performing operations for a principal as a part of the same project.

- C. With respect to the insurance afforded to these additional insureds, the following is added to **Section III – Limits Of Insurance:**

If coverage provided to the additional insured is required by a contract or agreement, the most we will pay on behalf of the additional insured is the amount of insurance:

1. Required by the contract or agreement; or

2. Available under the applicable Limits of Insurance shown in the Declarations;
whichever is less.

This endorsement shall not increase the applicable Limits of Insurance shown in the Declarations.

**C. Additional Insured – Owners, Lessees and Contractors – Completed Operations
CG 20 37 04 13**

1. **Purpose:** To provide additional insured status to owner (or lessee) of project on the policy of the general contractor. This form is also used to provide additional insured status to general contractor on the policy of its subcontractors.
2. **Coverage:** Scheduled additional insured is covered for liability *caused in whole or in part by* named insured's "work" performed for the additional insured. Bodily injury or property damage also **MUST** be included in "products-completed operations hazard."

Work performed by the *named insured* for the *additional insured* must be at the location (or jobsite) listed in the schedule.

3. **Exclusions:** None

POLICY NUMBER:

COMMERCIAL GENERAL LIABILITY
CG 20 37 04 13

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

ADDITIONAL INSURED – OWNERS, LESSEES OR CONTRACTORS – COMPLETED OPERATIONS

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART
PRODUCTS/COMPLETED OPERATIONS LIABILITY COVERAGE PART

SCHEDULE

Name Of Additional Insured Person(s) Or Organization(s)	Location And Description Of Completed Operations

Information required to complete this Schedule, if not shown above, will be shown in the Declarations.

A. Section II – Who Is An Insured is amended to include as an additional insured the person(s) or organization(s) shown in the Schedule, but only with respect to liability for "bodily injury" or "property damage" caused, in whole or in part, by "your work" at the location designated and described in the Schedule of this endorsement performed for that additional insured and included in the "products-completed operations hazard".

However:

1. The insurance afforded to such additional insured only applies to the extent permitted by law; and
2. If coverage provided to the additional insured is required by a contract or agreement, the insurance afforded to such additional insured will not be broader than that which you are required by the contract or agreement to provide for such additional insured.

B. With respect to the insurance afforded to these additional insureds, the following is added to **Section III – Limits Of Insurance:**

If coverage provided to the additional insured is required by a contract or agreement, the most we will pay on behalf of the additional insured is the amount of insurance:

1. Required by the contract or agreement; or
2. Available under the applicable Limits of Insurance shown in the Declarations;

whichever is less.

This endorsement shall not increase the applicable Limits of Insurance shown in the Declarations.

D. Additional Insured—Owners, Lessees or Contractors – Automatic Status When Required in a Construction Agreement with You CG 20 33 04 13

- 1. Purpose:** To provide additional insured status to owner (or lessee) of project on the policy of the general contractor. This form is also used to provide additional insured status to general contractor on the policy of its subcontractors.
- 2. Coverage:** Blanket or automatic additional insured is covered for liability *caused in whole or in part by* named insured's acts or omissions (or named insured *subcontractor's* acts or omissions) in the performance of named insureds "ongoing operations" for the additional insured.
- 3. Important:** To qualify as additional insured, named insured must have *written* contract or agreement that requires named insured to add additional insured to named insured's policy.

Construction or contracting operations performed by the *named insured* for the *additional insured* must be conducted at the location (or jobsite) listed in the schedule.

Section II . Who Is An Insured is amended to include as an additional insured any person or organization for whom you are performing operations **when you and such person or organization have agreed in writing in a contract or agreement that such person or organization be added as an additional insured on your policy.** Such person or organization is an additional insured only with respect to liability for "bodily injury", "property damage" or "personal and advertising injury" caused, in whole or in part, by:

1. Your acts or omissions; or
2. The acts or omissions of those acting on your behalf;

in the performance of your ongoing operations for the additional insured. A person's or organization's status as an additional insured under this endorsement ends when your operations for that additional insured are completed.

In Westfield Ins. Co. v. FCL Builders, Inc., 407 Ill. App. 3d 730 (Ill. App. Ct. 1st Dist. 2011), the Court found that a blanket additional insured applies only if there is a direct written agreement between parties. "Flow down" provisions would not trigger additional insured coverage:

Notably, the provision does not refer to any person or organization. By repeatedly using the terms "such" instead of "any," the provision necessarily requires that, in order to qualify as an additional insured, an entity must enter into a direct written agreement with JAK [the sub-subcontractor] listing them as additional insured.

See CG 20 38 04 13 to address "flow down"

4. Exclusions:

- a. Additional insured is NOT covered for any liability arising from completed operations – after the work is done. Intent is to provide coverage for the additional insured only if injury or damages takes place while work is being done by the named insured.
- b. Separate endorsement CG 20 37 (04 13) to provide protection of additional insured for completed operations.
- c. Additional insured is also NOT covered for any liability arising out of the rendering or failing to render professional architectural, engineering or surveying services.
- d. May not be coverage for “flow down”- See CG 20 38 04 13

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

ADDITIONAL INSURED – OWNERS, LESSEES OR CONTRACTORS – AUTOMATIC STATUS WHEN REQUIRED IN CONSTRUCTION AGREEMENT WITH YOU

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

A. Section II – Who Is An Insured is amended to include as an additional insured any person or organization for whom you are performing operations when you and such person or organization have agreed in writing in a contract or agreement that such person or organization be added as an additional insured on your policy. Such person or organization is an additional insured only with respect to liability for "bodily injury", "property damage" or "personal and advertising injury" caused, in whole or in part, by:

1. Your acts or omissions; or
2. The acts or omissions of those acting on your behalf;

in the performance of your ongoing operations for the additional insured.

However, the insurance afforded to such additional insured:

1. Only applies to the extent permitted by law; and
2. Will not be broader than that which you are required by the contract or agreement to provide for such additional insured.

A person's or organization's status as an additional insured under this endorsement ends when your operations for that additional insured are completed.

B. With respect to the insurance afforded to these additional insureds, the following additional exclusions apply:

This insurance does not apply to:

1. "Bodily injury", "property damage" or "personal and advertising injury" arising out of the rendering of, or the failure to render, any professional architectural, engineering or surveying services, including:

- a. The preparing, approving, or failing to prepare or approve, maps, shop drawings, opinions, reports, surveys, field orders, change orders or drawings and specifications; or
- b. Supervisory, inspection, architectural or engineering activities.

This exclusion applies even if the claims against any insured allege negligence or other wrongdoing in the supervision, hiring, employment, training or monitoring of others by that insured, if the "occurrence" which caused the "bodily injury" or "property damage", or the offense which caused the "personal and advertising injury", involved the rendering of or the failure to render any professional architectural, engineering or surveying services.

- e. Additional Insured – Owners, Lessees or Contractors – Automatic Status for Other Parties When Required in Written Construction Agreement CG 20 38 04 13

Important: To qualify as additional insured, named insured must have *written* contract or agreement that requires named insured to add additional insured to the named insured's policy.

A. Section II – Who Is An Insured is amended to include as an additional insured:

1. Any person or organization for whom you are performing operations when you and such person or organization have agreed in writing in a contract or agreement that such person or organization be added as an additional insured on your policy; and
2. Any other person or organization you are required to add as an additional insured under the contract or agreement described in Paragraph 1. above.

1. Paragraph 2 provides “flow down” provision.

2. Same limitations and exclusions apply to CG 20 38 as to CG 20 33

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

ADDITIONAL INSURED – OWNERS, LESSEES OR CONTRACTORS – AUTOMATIC STATUS FOR OTHER PARTIES WHEN REQUIRED IN WRITTEN CONSTRUCTION AGREEMENT

This endorsement modifies insurance provided under the following:
COMMERCIAL GENERAL LIABILITY COVERAGE PART

A. Section II – Who Is An Insured is amended to include as an additional insured:

1. Any person or organization for whom you are performing operations when you and such person or organization have agreed in writing in a contract or agreement that such person or organization be added as an additional insured on your policy; and
2. Any other person or organization you are required to add as an additional insured under the contract or agreement described in Paragraph 1. above.

Such person(s) or organization(s) is an additional insured only with respect to liability for "bodily injury", "property damage" or "personal and advertising injury" caused, in whole or in part, by:

- a. Your acts or omissions; or
- b. The acts or omissions of those acting on your behalf;

in the performance of your ongoing operations for the additional insured.

However, the insurance afforded to such additional insured described above:

- a. Only applies to the extent permitted by law; and
- b. Will not be broader than that which you are required by the contract or agreement to provide for such additional insured.

A person's or organization's status as an additional insured under this endorsement ends when your operations for the person or organization described in Paragraph 1. above are completed.

B. With respect to the insurance afforded to these additional insureds, the following additional exclusions apply:

This insurance does not apply to:

1. "Bodily injury", "property damage" or "personal and advertising injury" arising out of the rendering of, or the failure to render, any professional architectural, engineering or surveying services, including:
 - a. The preparing, approving, or failing to prepare or approve, maps, shop drawings, opinions, reports, surveys, field orders, change orders or drawings and specifications; or
 - b. Supervisory, inspection, architectural or engineering activities.

This exclusion applies even if the claims against any insured allege negligence or other wrongdoing in the supervision, hiring, employment, training or monitoring of others by that insured, if the "occurrence" which caused the "bodily injury" or "property damage", or the offense which caused the "personal and advertising injury", involved the rendering of, or the failure to render, any professional architectural, engineering or surveying services.

2. "Bodily injury" or "property damage" occurring after:

- a. All work, including materials, parts or equipment furnished in connection with such work, on the project (other than service, maintenance or repairs) to be performed by or on behalf of the additional insured(s) at the location of the covered operations has been completed; or

E. Additional Insured—Lessor of Leased Equipment CG 20 28 04 13

1. **Purpose:** To provide additional insured status to owner /lessor of equipment that is leasing the equipment to the named insured
2. **Coverage:** Scheduled additional insured lessor is covered for liability *caused in whole or in part by* the named insured's (the lessee) maintenance, operation, or use of the leased equipment.
3. **Exclusions:** There is no exclusion, but coverage for the additional insured /lessor does not apply to an occurrence that takes place after the equipment lease expires.

POLICY NUMBER:

COMMERCIAL GENERAL LIABILITY
CG 20 28 04 13

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

ADDITIONAL INSURED – LESSOR OF LEASED EQUIPMENT

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

SCHEDULE

Name Of Additional Insured Person(s) Or Organization(s):

Information required to complete this Schedule, if not shown above, will be shown in the Declarations.

A. Section II – Who Is An Insured is amended to include as an additional insured the person(s) or organization(s) shown in the Schedule, but only with respect to liability for "bodily injury", "property damage" or "personal and advertising injury" caused, in whole or in part, by your maintenance, operation or use of equipment leased to you by such person(s) or organization(s).

However:

1. The insurance afforded to such additional insured only applies to the extent permitted by law; and
2. If coverage provided to the additional insured is required by a contract or agreement, the insurance afforded to such additional insured will not be broader than that which you are required by the contract or agreement to provide for such additional insured.

B. With respect to the insurance afforded to these additional insureds, this insurance does not apply to any "occurrence" which takes place after the equipment lease expires.

C. With respect to the insurance afforded to these additional insureds, the following is added to **Section III – Limits Of Insurance:**

If coverage provided to the additional insured is required by a contract or agreement, the most we will pay on behalf of the additional insured is the amount of insurance:

1. Required by the contract or agreement; or
 2. Available under the applicable Limits of Insurance shown in the Declarations;
- whichever is less.

This endorsement shall not increase the applicable Limits of Insurance shown in the Declarations.

1. ADDITIONAL INSURED—LESSOR OF LEASED EQUIPMENT—
AUTOMATIC STATUS WHEN REQUIRED IN LEASE AGREEMENT WITH
YOU - CG 20 34 (04 13) is also available.

A. Who Is An Insured (Section II) is amended to include as an additional insured any person or organization from whom you lease equipment when you and such person or organization have agreed in writing in a contract or agreement that such person or organization be added as an additional insured on your policy. Such person or organization is an insured only with respect to liability for "bodily injury", "property damage" or "personal and advertising injury" caused, in whole or in part, by your maintenance, operation or use of equipment leased to you by such person or organization.

B. Additional Insured – Vendors CG 20 15 04 13

1. **Purpose:** To provide additional insured status to a vendor on a manufacturer's or distributor's liability policy with respect to the scheduled vendor's distribution or sale of the named insured's products. The products being sold must also be listed on the endorsement for the vendor to receive the benefit of coverage.
2. **Coverage:** The vendor is covered on the manufacturer or distributors policy for the liability the vendor may have that arises out of the sale of the named insured's products, but with numerous restrictions – see Exclusions.

Section II . Who Is An Insured is amended to include as an additional insured any person(s) or organization(s) (referred to throughout this endorsement as vendor) shown in the Schedule, but only with respect to "bodily injury" or "property damage" arising out of "your products" shown in the Schedule which are distributed or sold in the regular course of the vendor's business

- a. Often cited as the general intent of the vendors endorsement is the following from American White Cross Laboratories v. Continental Ins. Co. 495 A.2d 152 (N.J. App. Div. 1985):

This insurance is clearly designed to cover the vendor when he is only a conduit of the product in the stream of commerce but not when he is the instrumentality causing bodily injury or property damage to another.

- b. A more liberal interpretation of the vendor's endorsement may be found in more recent cases. In Makrigiannis v. Nintendo of America, Inc. (Massachusetts Supreme Judicial Court SJC-09214) (2004), the court stated:

The endorsement does not limit coverage to claims of product defects. Nor does it exclude coverage when injury results from a vendor's negligence. Had Sumitomo intended to exclude coverage whenever a claim arose solely out of a vendor's negligence, it could have expressly stated such in an exclusion.

3. **Exclusions:** The vendor is covered because they are in the stream of commerce, but the vendor does have some coverage, albeit limited, for their own acts or omissions, including sole negligence. The following exclusions apply and the vendor is not covered for:
 - a. The vendor's agreement to indemnify or hold harmless others unless they would be liable anyway;
 - b. An express warranty made by the vendor that was not authorized by the named insured;

- c. Any intentional physical or chemical change in the product by the vendor [some courts have interpreted physical change to mean material alteration of the product];
- d. Repackaging, except when unpacked to inspect, demonstrate, test or substitute parts as instructed by the named insured and then repackaged in the original container;
- e. Any failure on the part of the vendor to inspect, adjust, test or service if they have agreed to do so or if such action is the usual course of their business in selling the named insured's product [here, as above, the vendor may have coverage for its sole negligence];
- f. The vendor's demonstration, installation, servicing or repair of the named insured products, *unless performed at the vendor's premises in connection with the sale of the product* [here, as above, the vendor may have coverage for its sole negligence];
- g. Any of the named insured's products that have be labeled or relabeled or used as a container, part or ingredient after distribution or sale by the named insured [some courts have interpreted this exclusion to apply only if an injury was caused by of the labeling or re-labeling]
- h. Any liability arising out of the sole negligence of the vendor for its own acts or omissions, but the exclusion does not apply to any liability that may be imposed in the vendor in paragraphs d, e, or f.

Coverage also does not apply to the vendor if the named insured has purchased or acquired products or any ingredient, part or container entering into or accompanying or containing such products.

In other words, if the vendor sells parts to the manufacturer and the manufacturer incorporates those parts into the product, the vendor is not an insured under this endorsement for selling the products that incorporate the vendor's parts.

POLICY NUMBER:

COMMERCIAL GENERAL LIABILITY
CG 20 15 04 13

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

ADDITIONAL INSURED – VENDORS

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART
PRODUCTS/COMPLETED OPERATIONS LIABILITY COVERAGE PART

SCHEDULE

Name Of Additional Insured Person(s) Or Organization(s) (Vendor)	Your Products
Information required to complete this Schedule, if not shown above, will be shown in the Declarations.	

A. Section II – Who Is An Insured is amended to include as an additional insured any person(s) or organization(s) (referred to throughout this endorsement as vendor) shown in the Schedule, but only with respect to "bodily injury" or "property damage" arising out of "your products" shown in the Schedule which are distributed or sold in the regular course of the vendor's business.

However:

1. The insurance afforded to such vendor only applies to the extent permitted by law; and
2. If coverage provided to the vendor is required by a contract or agreement, the insurance afforded to such vendor will not be broader than that which you are required by the contract or agreement to provide for such vendor.

B. With respect to the insurance afforded to these vendors, the following additional exclusions apply:

1. The insurance afforded the vendor does not apply to:
 - a. "Bodily injury" or "property damage" for which the vendor is obligated to pay damages by reason of the assumption of liability in a contract or agreement. This exclusion does not apply to liability for damages that the vendor would have in the absence of the contract or agreement;
 - b. Any express warranty unauthorized by you;
 - c. Any physical or chemical change in the product made intentionally by the vendor;
 - d. Repackaging, except when unpacked solely for the purpose of inspection, demonstration, testing, or the substitution of parts under instructions from the manufacturer, and then repackaged in the original container;

- e. Any failure to make such inspections, adjustments, tests or servicing as the vendor has agreed to make or normally undertakes to make in the usual course of business, in connection with the distribution or sale of the products;
- f. Demonstration, installation, servicing or repair operations, except such operations performed at the vendor's premises in connection with the sale of the product;
- g. Products which, after distribution or sale by you, have been labeled or relabeled or used as a container, part or ingredient of any other thing or substance by or for the vendor; or
- h. "Bodily injury" or "property damage" arising out of the sole negligence of the vendor for its own acts or omissions or those of its employees or anyone else acting on its behalf. However, this exclusion does not apply to:
 - (1) The exceptions contained in Sub-paragraphs d. or f.; or

(2) Such inspections, adjustments, tests or servicing as the vendor has agreed to make or normally undertakes to make in the usual course of business, in connection with the distribution or sale of the products.

- 2. This insurance does not apply to any insured person or organization, from whom you have acquired such products, or any ingredient, part or container, entering into, accompanying or containing such products.

C. With respect to the insurance afforded to these vendors, the following is added to **Section III – Limits Of Insurance**:

If coverage provided to the vendor is required by a contract or agreement, the most we will pay on behalf of the vendor is the amount of insurance:

- 1. Required by the contract or agreement; or
- 2. Available under the applicable Limits of Insurance shown in the Declarations;

whichever is less.

This endorsement shall not increase the applicable Limits of Insurance shown in the Declarations.

VIII. Analyzing Additional Insured Endorsements – What to Check

A. Connection to the Named insured - What relationship must the additional insured have to the named insured to obtain coverage? Who is at fault not yet a consideration!!

1. Managers or Lessors of Premises – CG 20 11 04 13

...arising out of the ownership, maintenance or use of that part of the premises leased to you [named insured] and shown in the Schedule

2. Owners, Lessees or Contractors - CG 20 10 04 13

...in the performance of your [named insured's] ongoing operations for the additional insured(s) at the location(s) designated above.

3. Owners, Lessees and Contractors – Additional Insured – Completed Operations - CG 20 37 04 13

..."your work" [named insured's work] at the location designated and described in the schedule of this endorsement performed for that additional insured

4. Vendors - CG 20 15 04 13

...arising out of "your products" [named insured's products] shown in the Schedule which are distributed or sold in the regular course of the vendor's business,

5. Lessor of Leased Equipment CG 20 28 04 13

... your [named insured's] maintenance, operation or use of equipment leased to you [named insured] by such person(s) or organization(s) [additional insured].

B. Scope of Coverage - Comparative Liability

1. Older forms “arising out of” provided coverage for *sole negligence* of additional insured

- **Owners, Lessees or Contractors - CG 20 10 11 85**

...only with respect to liability arising out of "your work" for that insured by or for you

2. The 2004 & 2013 forms require that acts or omission of *named insured* cause, in whole or part, injury or damage

- **Owners, Lessees or Contractors - CG 20 10 07 04 (and 04 13)**

...but only with respect to liability for "bodily injury", "property damage" or "personal and advertising injury" caused, in whole or in part, by:

1. Your acts or omissions; or
2. The acts or omissions of those acting on your behalf;

3. Insurer's own (non-ISO) forms provide varied “comparative liability” coverage to additional insured

- a. **St. Paul Travelers – Blanket Additional Insured (Contractors) CG D2 46 10 02**

WHO IS AN INSURED – is amended to include ...as an additional insured. The person or organization **does not qualify as an additional insured with respect to independent acts or omissions of such persons or organizations.**

St. Paul Fire & Marine Ins. Co. v. Hanover Ins. Co., 187 F. Supp. 2d 584 (E.D.N.C. 2000)

Travelers contends that, because the policy specifically excludes coverage for liability arising from independent acts or omissions of the additional insured, the language of the "Who is an Insured" paragraph effectively limits coverage to coverage for vicarious liability, i.e., liability imposed upon the general contractor as a result of the subcontractor's acts and not as a result of the general contractor's own acts or failure to act. Travelers goes on to argue that there are no claims for vicarious liability asserted in the complaint and that, in any event, vicarious liability of general contractors is not recognized in North Carolina.

**b. St. Paul Travelers – Blanket Additional Insured (Contractors)
CG D2 46 08 05**

WHO IS AN INSURED – is amended to include ...as an additional insured on this Coverage Part, but:

If, and only to the extent that, the injury or damage is caused by the **acts or omissions of your [named insured] or your subcontractor**... person or organization does not qualify as an additional insured with respect **to independent acts or omissions of such persons or organizations.**

**c. Zurich – Additional Insured – Automatic – Owners, Lessees or
Contractors – Broad Form U-GL-1175A CW (09/03)**

WHO IS AN INSURED – is amended to include as an additional insured any person or organization ...
The insurance provided to additional insureds applies to “bodily injury,” “property damage,” or “personal and advertising injury” covered by Section 1...**but only if:**

The bodily injury or property damage results from **your [named insured’s] negligence;**

The insurance provided to the additional insured person or organization **does not apply to:**

Bodily injury, or property damage or personal and advertising injury that results **solely from negligence of the additional insured;**

**d. CNA Contractors Scheduled and Blanket Additional Insured
Endorsement with Products-Completed Operations Coverage G-140331-
A (Ed. 01/01)**

WHO IS AN INSURED – is amended to include as an additional insured any person or organization ...
The insurance provided to the additional insured is limited as follows:

The person or organization is an additional insured **solely for liability due to your [named insured’s] negligence**... No coverage applies to liability resulting from the **sole negligence of the additional insured.**

4. The above proprietary additional insured endorsements seem to provide only so-called “vicarious liability” coverage for the additional insured.

Vicarious Liability – Liability that a supervisory party bears for the actionable conduct of a subordinate or associate (such as an employee) because *of the relationship between two parties*. [Black’s Law Dictionary – Seventh Edition]

Restatement of the Law (Second) of Torts - “Except as stated in sections 410–429, the employer of an independent contractor is not liable for physical harm caused to another by an act or omission of the contractor or his servants.”

5. Additional Insured Coverage for Vicarious Liability ONLY

Marathon Ashland Oil Pipe Line LLC v. Md. Cas. Co, 243 F.3d 1232 (10th Cir. 2001) (applying Wyoming law) on additional insured endorsements that purport to provide coverage only for the vicarious liability of the additional insured for the acts of the named insured:

Where the additional insured is held no more than vicariously liable for the acts of the named insured, the additional insured would have an action for indemnity against the primary wrongdoer. Thus, an endorsement that provides coverage only for the additional insured’s vicarious liability may be illusory and provide no coverage at all. In this light, it is obvious that additional insureds expect more from an endorsement clause than mere protection from vicarious liability.

6. Other Approaches to comparative liability – Insurer’s own (non-ISO) forms

- a. **Ohio Casualty General Liability Master Pak – Blanket Additional Insured (Owners, Lessees or Contractors) CG 83 30 12 03**

WHO IS AN INSURED – is amended to include as an additional insured any person or organization ... The insurance provided the additional insured is limited as follows:

The person or organization is only an additional insured with respect to liability:

Caused **in whole or in part by your [named insured’s] ongoing operations** performed for that insured; The insurance provided to the additional insured does not apply to the liability resulting from the **sole negligence of the additional insured**.

b. Hartford Specialty – Additional Insured by Contract, Agreement or Permit – Option II – Form GN 34 81 13 (ED. 04/04)

WHO IS AN INSURED SECTION (II), item 5. is deleted and replaced by the following:

The entity named in the schedule above...but only to the extent that such person or organization is liable for your acts or omissions with respect to:

Your ongoing operations performed for that additional insured; or

Your work included within the products-completed operations hazard, but only to the extent required by such written contract, written agreement or permit;

The acts or omissions of the additional insured in connection with the general supervision of such operations; and

At the location(s) designated above or facilities owned or used by you.

C. Order of Coverage- Primary and Noncontributory

1. ISO 2004 & 2013 CGL approach– additional insured is primary and policy on which additional insured is a named insured is excess

4. Other Insurance

If other valid and collectible insurance is available to the insured for a loss we cover under Coverages A or B of this Coverage Part, our obligations are limited as follows:

a. Primary Insurance

This insurance is primary **except when b. below applies**. If this insurance is primary, our obligations **are not affected unless any of the other insurance is also primary. Then, we will share with all that other insurance by the method described in c. below.**

b. Excess Insurance

This insurance is excess over:

- (2) Any other primary insurance **available to you** covering liability for damages arising out of the premises or operations, or the products and completed operations, **for which you have been added as an additional insured by attachment of an endorsement.**
(Removed in 2013)

2. ISO Introduces Optional Endorsement – Primary and Noncontributory – Other Insurance Condition **CG 20 01 04 13**

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

PRIMARY AND NONCONTRIBUTORY – OTHER INSURANCE CONDITION

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART
PRODUCTS/COMPLETED OPERATIONS LIABILITY COVERAGE PART

The following is added to the **Other Insurance** Condition and supersedes any provision to the contrary:

Primary And Noncontributory Insurance

This insurance is primary to and will not seek contribution from any other insurance available to an additional insured under your policy provided that:

- (1) The additional insured is a Named Insured under such other insurance; and

- (2) You have agreed in writing in a contract or agreement that this insurance would be primary and would not seek contribution from any other insurance available to the additional insured.

3. Insurer's own (non- ISO) forms vary widely in Order of Coverage

a. **St. Paul Travelers – Blanket Additional Insured (Contractors) CG D2 46 10 02**

(1.) Coverage for additional insured coverage is excess of any other insurance unless agreement is to make additional insured primary;

(2.) If additional insured is to be primary, insurer will “share with that other insurance”

Any coverage provided by this endorsement to an additional insured shall be excess over any other valid and collectible insurance available to the additional insured whether primary, excess, contingent or on any other basis **unless** a written contract or written agreement in effect during this policy period and signed and executed by you prior to the loss for which coverage is sought **specifically requires that this insurance apply on a primary or non-contributory basis**. When this insurance is primary and there is other insurance available to the additional insured from **any other source, we will share with that other insurance** by the method described in this policy.

As a **condition of coverage**, each additional insured must:

Tender the defense and indemnity of any claim or suit to **any other insurer** which also insures against loss we cover under this endorsement. This includes, but is not limited to, **any insurer** which has issued a policy of insurance in which the additional insured qualifies as an insured.

**b. St. Paul Travelers – Blanket Additional Insured (Contractors) CG D2 46
08 05**

- (1.) Coverage for additional insured coverage is excess of any other insurance unless agreement is to make additional insured primary and non-contributory;
- (2.) If additional insured is to be primary and non-contributory, insurer will consider coverage for additional insured to be primary and will not seek to share with a policy on which the additional insured is a *named insured*.
- (3.) If additional insured is also an *additional* insured on another policy (such as another contractor or subcontractor's policy), the insurer will provide only *excess* coverage to the additional insured.

This insurance provided to the additional insured by this endorsement is excess over any valid and collectible "other insurance," whether primary, excess, contingent or on any other basis, that is available to the additional insured for a loss we cover under this endorsement. However, if the "written contract requiring insurance" **specifically requires that this insurance be on a primary and non-contributory basis, this insurance is primary to "other insurance"** available to the additional insured **which covers that person or organization as a named insured** for such loss, and we will not share with that "other insurance." But the insurance provided to the additional insured by this endorsement still is excess over any valid and collectible "other insurance," whether primary, excess, contingent or on any other basis, that is available to the additional insured when that person or organization is an additional insured under such "other insurance."

As a condition of coverage provided to the additional insured by this endorsement:

The additional insured must tender the defense and indemnity of any claim or suit to any provider of "other insurance" which would cover the additional insured for a loss we cover under this endorsement. However, this condition does not affect whether the insurance provided to the additional insurance by this endorsement is primary to "other insurance" available to that person or organization as a named insured as described in paragraph 3. above.

c. Zurich – Additional Insured – Automatic – Owners, Lessees or Contractors – Broad Form U-GL-1175A CW (09/03)

- (1.) Insurer will consider coverage for additional insured to be primary and will not seek to share with any other insurance *unless*
- (2.) The additional insured is also an *additional* insured on another policy (such as another contractor or subcontractor's policy); in this case the insurer *will share* with the other insurance

The insurance provided by this endorsement is primary insurance and will not seek contribution from any other insurance available to any additional insured person or organization unless the other insurance is provided by a contractor other than you for the same operations and job location. Then we will share with that other insurance by the method described in paragraph 4 of Section IV – Commercial General Liability Conditions.

d. CNA Contractors Scheduled and Blanket Additional Insured Endorsement with Products-Completed Operations Coverage G-140331-A (Ed. 01/01)

- (1.) Coverage for additional insured is excess unless written agreement to provide additional insured primary or primary and non-contributory
- (2.) If there is an agreement to have additional insured to be primary or primary and non-contributory, coverage to additional insured is primary
- (3.) Will the insurer seek to share with any other insurance available to the additional insured also written on a primary basis?

An additional insured under this endorsement will as soon as practicable:

(2) Tender the defense and indemnity of any claim or suit to **any other insurer** which also has insurance for a loss we cover under this Coverage Part

Excess Insurance

This insurance is **excess** over any **other insurance** naming the additional insured as **an insured** whether primary, excess, contingent or on any other basis **unless** a written agreement specifically requires that this insurance be either **primary or primary and non-contributory**.

e. Ohio Casualty General Liability Master Pak – Blanket Additional Insured (Owners, Lessees or Contractors) CG 83 30 12 03

- (1.) Coverage for additional insured excess over any other insurance, unless named insured has agreed in writing to provide the additional insured primary and non-contributory coverage – then the coverage for the additional insured is primary and non-contributory
- (2.) Coverage for the additional insured is excess if other policy also provides coverage as additional insured

If the additional insured has an Other Insurance provision **making its policy excess** and a named insured has agreed in a written contract or written agreement to provide the additional insured coverage on a primary and noncontributory basis, **this policy will be primary and we will not seek contribution from the additional insured's policy for damages we cover.**

Except as provided above, any coverage provided hereunder shall be excess over any other valid and collectible insurance **available to the additional insured** whether primary, excess, contingent or on any other basis. In the event an additional insured **has other coverage available for an "occurrence" by virtue of being an additional insured on other policies, this insurance is excess over those other policies.**

f. Hartford Specialty – Additional Insured by Contract, Agreement or Permit – Option II – Form GN 34 81 13 (ED. 04/04)

- (1.) If written agreement is that coverage for additional insured is primary, the insurer will consider coverage for the additional insured primary but will seek to share with any other insurance
- (2.) If written agreement is that coverage for additional insured is primary and non-contributory, the insurer will consider coverage for the additional insured primary and will not seek to share with additional insured's own insurance (additional insured is named insured)
- (3.) Coverage for additional insured is excess if no agreement to make primary or primary and non-contributory or if there is an agreement to be primary or primary and non-contributory but the other insurance is also additional insured status

The Other Insurance Condition is replaced as follows:

(a) Primary Insurance When Required by Contract

This policy is primary if you have agreed in a written contract, written agreement or permit that **specifically requires this insurance be primary**. If other insurance is also primary, **we will share with all that other insurance** by the method described in d. below.

(b) Primary And Non-Contributory to Other Insurance Required by Contract

If you have agreed in a written contract, written agreement or permit that this insurance is **primary and non-contributory with the additional insured's own insurance**, we will not seek contribution from that other insurance issued directly to the additional insured.

(c) Excess Insurance

This policy is excess over any of the other insurance whether primary, excess or contingent or any other basis:

D. Additional Exclusions

1. ISO Additional insured endorsements have their own exclusions – i.e. CG 20 10 04 13 excludes products-completed operations

B. With respect to the insurance afforded to these additional insureds, the following additional exclusions apply:

This insurance does not apply to "bodily injury" or "property damage" occurring after:

1. All work, including materials, parts or equipment furnished in connection with such work, on the project (other than service, maintenance or repairs) to be performed by or on behalf of the additional insured(s) at the location of the covered operations has been completed; or
2. That portion of "your work" out of which the injury or damage arises has been put to its intended use by any person or organization other than another contractor or subcontractor engaged in performing operations for a principal as a part of the same project.

2. Insurers may add their own exclusions additional insured endorsements – understand what is being excluded

**a. CNA Contractors Scheduled and Blanket Additional Insured
Endorsement with Products-Completed Operations Coverage G-140331-A (Ed. 01/01)**

- (1.) Restriction of "Insured contract" *excludes* coverage for any hold harmless or indemnity for *products or completed operations*.
- (2.) Exclusion does not apply if there is a written agreement to provide coverage to the additional insured products and completed operations coverage

3. The coverage provided to the additional insured by this endorsement **and paragraph f. of the definition of "insured contract"** under DEFINITIONS (Section V) do not apply to "bodily injury" or "property damage" arising out of the "products-completed operations hazard" **unless required by written contract or written agreement.**

b. First Financial - Additional Insured – Owners, Lessees or Contractors – BG-G-370 0101

- (1.) Excludes injury to any employee of *any insured*
- (2.) Common additional insured claim – employee of subcontractor (named insured) brings claim against general contractor (additional insured) for workplace injury
- (3.) Additional insured general contractor often looks to subcontractor's policy via their additional insured status for coverage – completely excluded here!

This insurance does not apply to bodily injury to:

An employee of any insured or person hired to do work for or on behalf of any insured or a tenant of any insured that arises out of and in the course of:

- (1) Employment by any insured; or
- (2) Performing duties related to the conduct of any insured's business

These provisions and exclusions apply in addition to those contained in the Coverage Form.

E. Additional Limitations

1. Insurers may also add their own limitations to additional insured endorsements – understand their limitations

- a. **St. Paul Travelers – Blanket Additional Insured (Contractors) CG D2 46 10 02**

- (1.) Agreement to add as additional insured must be in writing – check that it is before issuing certificate of insurance
 - (2.) Agreement must be “in effect” during policy period. What if construction document require coverage for three years after final payment (job is complete) – is this contract “in effect” during the three years after the final payment?

WHO IS AN INSURED – Section II is amended to include any person or organization you are required by a **written contract or written agreement in effect** during the policy period and signed and executed by you prior to the loss for which coverage is sought.

- b. **Hartford Specialty – Additional Insured by Contract, Agreement or Permit – Option II – Form GN 34 81 13 (ED. 04/04)**

- (1.) What is considered a written contract or agreement “in force?”

This provision [additional insured] applies only:

- (2) While such written contract, written agreement or permit is **in force** or until the end of the policy period, which is earlier.

c. Zurich – Additional Insured – Automatic – Owners, Lessees or Contractors – Broad Form U-GL-1175A CW (09/03)

(1.) Some limitations to additional insured coverage beneficial – usually found in “automatic” or “blanket” additional insured endorsements

(2.) Coverage is no greater than agreed upon; Limits lesser of agreed limits or policy limits

However, regardless of the provisions of Paragraphs A and B above:

We will not extend any insurance coverage to any additional insured person or organization

That is any broader coverage than you are required to provide to the additional insured person or organization in the written contract or agreement; and

We will not provide Limits of Insurance to any additional insured person or organization that exceed the lower of:

The Limits of Insurance provided to you in this policy; or

The Limits of Insurance you are required to provide in the written contract or agreement.

F. Additional Conditions

1. Insurer's using their own additional insured endorsements may also want to add conditions.
2. Most common is imposing on *additional insured* claim reporting requirements similar to that of *named insured*.

a. St. Paul Travelers – Blanket Additional Insured (Contractors) CG D2 46 10 02

- (1.) Failure to comply with any of the following may void coverage for additional insured
- (2.) Give notice of incident that may result in claim or suit
- (3.) Comply with all other policy conditions
- (4.) Tender defense and indemnity to any other insurer that may cover loss
- (5.) Make available any other insurance of the additional insured

As a condition of coverage, each additional insured must:

Give us prompt written notice of any occurrence or offense **which may result in a claim** and prompt written notice of suit;

Immediately forward all legal papers to us, cooperate in the investigation or settlement of the claim or defense against the suit and **otherwise comply with policy conditions**;

Tender the defense and indemnity of any claim or suit to any other insurer which also insures against a loss we cover under this endorsement. This includes but is not limited to any insurer which has issued a policy of insurance in which the additional insured qualifies as an insured. For the purpose of this requirement, the term "insures against" refers to any self-insurance and to any insurer which issued a policy of insurance that may provide coverage for the loss, regardless of whether the additional insured has actually requested that the insurer provide the additional insured with a defense and/or indemnity under that policy of insurance.

Agree to make available any other insurance that the additional insured has for a loss we cover under this endorsement.

b. Zurich – Additional Insured – Automatic – Owners, Lessees or Contractors – Broad Form U-GL-1175A CW (09/03)

- (1.) Provide notice of an incident that may result in claim or suit
- (2.) Request defense and indemnity against any other policy of additional insured

The additional insured must see to it that:

We are notified as soon as practicable of an occurrence or offense that **may result in a claim**;

We receive written notice of a claim or suit as soon as practicable;

A request for defense and indemnity of the claim or suit will promptly be **brought against any policy issued by another insurer under which the additional insured also has rights as an insured or additional insured.**

c. Ohio Casualty General Liability Master Pak – Blanket Additional Insured (Owners, Lessees or Contractors) CG 83 30 12 03

- (1.) Tender defense to any other insurer
- (2.) Make available any other insurance of the additional insured
- (3.) Additional insured is required to provide insurer with written notice to trigger and duty of insurer to defend or indemnify

An additional insured under this endorsement will as soon as practicable:

Give written notice of an occurrence or an offense that may result in a claim or suit under this insurance to us;

Tender defense and indemnity of any claim or suit to all insurers whom also have insurance available to the additional insured; and

Agree to make available any other insurance which the additional insured has for a loss we cover under the Coverage Part

We have no duty to defend or indemnify an additional insured under this endorsement **until we receive written notice of a claim or suit from the additional insured.**

Oregon Additional Insured (ISO)

CG 32 61

Section II – Who is an Insured is amended to include as an additional insured the person(s) or organization(s) shown in the Schedule, but only with respect to liability for “bodily injury”, “property damage” or “personal and advertising injury” caused by your ongoing operations for the additional insured(s) at the location(s) designated above and only to the extent that such “bodily injury”, “property damage” or “personal and advertising injury” is caused by your negligence or the negligence of those performing operations on your behalf.

NOTE: “caused in whole or part by your acts or omissions or the acts or omissions of those acting on your behalf” has been replaced by “caused by your negligence or the negligence of those performing operations on your behalf.”

Question – defense of additional insured?

Hoffman Constr. Co. v. Travelers Indemn. Ins. Co 2005 U.S. District LEXIS 39752 (D. Or. 2005)

Facts: Bremmer is employee of subcontractor J.H. Kelley LLC; Bremmer is injured and sues general contractor Hoffman. Hoffman seeks defense of the suit as additional insured on CGL policy of ATG, another subcontractor of Hoffman. Travelers has issued CGL to ATG, including AI endorsement that includes Hoffman.

Travelers argues that because there is no express allegation in the underlying complaint that ATG caused Bremmer's injuries, Travelers' has no duty to defend or indemnify Bremmer's claims.

Travelers asserts that Bremmer's Amended complaint fails to mention or reference ATG, nor does it allege that Hoffman is secondarily liable for the fault of ATG.

Here, Bremmer's allegations against Hoffman appear premised upon vicarious liability, or liability related to its duties of general supervision.

Bremmer's allegations raise the possibility that Hoffman will be found faultless, or will be deemed only vicariously liable, while Bremmer's injuries will be deemed to be ATG's fault, or to have risen from ATG's work. This creates the possibility that Hoffmans' liability ultimately will be covered under the policy, within the limits of *ORS § 30.140(2)*. The possibility that Bremmer's claims against Hoffman will be covered obligates Travelers to defend Hoffman. The duty to defend is triggered whenever there is a possibility that any claims might be covered

CLOSING REMARKS



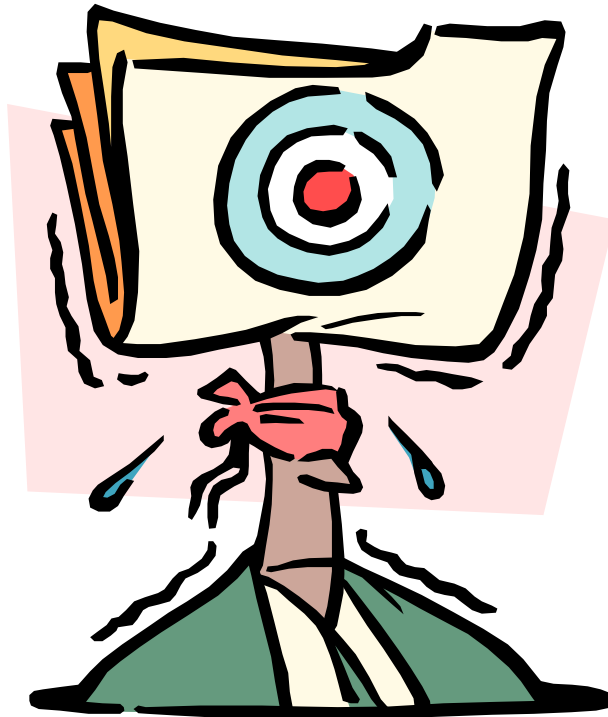
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Section 2

Employment-Related Practices Insurance

EMPLOYMENT-RELATED PRACTICES INSURANCE



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I. EMPLOYMENT LIABILITY EXPOSURES

- A. Employment – Hiring
- B. Supervision
 - 1. Discrimination
 - a. Compensation
 - b. Promotion
 - c. Work activities or assignments
 - 2. Sexual harassment or "hostile working environment"
- C. Termination – Wrongful
 - 1. Sexual harassment
 - 2. Discrimination
 - 3. "Whistle blowing"
 - 4. Contractual
- D. Discipline or retaliation – retaliation claims on the increase!

BASIS OF LIABILITY COMMON & CONTRACT LAW

II. Traditional “At Will” Doctrine¹

Employer’s decision to hire, fire or change condition of employment was restrained only by unions and other market forces (supply & demand for labor)

A. Exceptions to the “At Will” Doctrine – Wrongful Discharge/Wrongful Termination²

1. Contract or Common Law

a. Breach of Express Contract³

- 1). Written Contract
- 2). Oral Representations – “Job for as long you want”
- 3). Implied Contract – Employee Handbook

b. Breach of Implied-in-fact covenant to terminate only for good cause⁴

- 1). Long-term employment and;
- 2). Consistent salary increases, promotions, outstanding performance reviews and;
- 3). Personnel practice to provide poor performance with notice and chance to improve

c. Breach of implied covenant of good faith and fair dealing⁵

- 1). Implied obligation of good faith and fair dealings by employer
- 2). Example: Failure to pay earned bonus or commission after termination/discharge

d. Violation of Public Policy⁶

- 1). Termination for reasons against public policy
- 2). Examples: For serving on jury duty; “whistle blowing”; refusing to commit unlawful act

e. Defamation⁷

- 1). Communication to others (publication) of information to humiliate, ridicule, or embarrass employee—Example: allegations of drinking, drug use, immoral behavior, sexual harassment
- 2). Communication may be oral or written to others
- 3). Truth is a defense
- 4). “Qualified privilege”- communication to someone with legitimate interest AND not reckless or malicious also a defense (even if false)

f. Invasion of Privacy⁸

- 1). Intrusion unreasonable and substantial
- 2). Example: Video surveillance acceptable for security reasons, but not in changing rooms or bathrooms

g. Intentional or Negligent interference with contractual relations⁹

- 1). May be asserted against person who made the decision to terminate—if termination made with malice
- 2). May be asserted against third parties (other than employer) who provided false information that resulted in termination (may be former employer with malicious intent)

h. Intentional or Negligent infliction of emotional distress¹⁰

- 1). Employer's actions "outrageous and extreme" – Restatement (Second) of Tort S46
- 2). Examples: termination conducted publicly by being escorted from building by security guards or police

BASIS OF LIABILITY-STATUTORY

III. Statutory Causes of Action– Affects ALL aspects of Employment

IV. Overview of Major Federal Employment Related Laws

A. TITLE VII OF THE CIVIL RIGHTS ACT OF 1964 AND CIVIL RIGHTS ACT OF 1991 (TITLE VII)¹¹

1. PURPOSE:

Prohibits employment discrimination based on race, color, religion, sex, or national origin.

KEY PROVISIONS:

Prohibits discrimination in hiring/firing and the terms/conditions of employment because of race, religion, sex or national origin.

Prohibits retaliation against employees for opposing discriminatory acts of their employer.

2. IMPORTANT EXCLUSIONS:

Bona fide occupational qualifications (BFOQ) – it is not unlawful for an employer to only hire a person of a certain religion, sex or national origin where that person's religion, sex or national origin is reasonably necessary to the normal operation of the employer's business.

Bona fide seniority or merit system.

3. ENFORCEMENT:

Equal Employment Opportunity Commission (EEOC) or private suit.

4. **REMEDIES: An employee may obtain—**

- An injunction against the employer's unlawful conduct
- Compensatory Damages – cap of between \$50,000 and \$300,000
- Punitive Damages – not available in suit against public employer (also subject to above cap)
- Hiring, promotion or reinstatement (or front pay if reinstatement not feasible)
- Back Pay
- Attorney Fees & Costs

MERITOR SAVINGS BANK V. VINSON 477 U.S. 57 (1986)

IN *MERITOR*, U. S. SUPREME COURT HELD THAT DISCRIMINATION BASED ON SEX INCLUDES “SEXUAL HARASSMENT” AS A MATTER OF LAW

COURT FOUND TWO TYPES OF CLAIMS:

- QUID PRO QUO SEXUAL HARASSMENT
- HOSTILE WORKPLACE SEXUAL HARASSMENT

Sexual Harassment Defined by the EEOC:

- “[U]NWELCOME SEXUAL ADVANCES, REQUESTS FOR SEXUAL FAVORS, AND OTHER VERBAL OR PHYSICAL CONDUCT OF A SEXUAL NATURE . . .”
- WHERE SUBMISSION IS MADE A TERM OR CONDITION OF EMPLOYMENT, IS USED FOR MAKING AN EMPLOYMENT DECISION, OR THE CONDUCT CREATES A HOSTILE WORKING ENVIRONMENT OR INTERFERES WITH THE EMPLOYEE’S JOB PERFORMANCE”

The #MeToo Movement – What does sexual harassment mean today?

B. THE EQUAL PAY ACT OF 1963 (EPA)¹²

1. PURPOSE:

The EPA prohibits discrimination on the basis of sex in the payment of wages or benefits, where men and women perform work of similar skill, effort, and responsibility for the same employer under similar working conditions.

2. KEY PROVISIONS:

Act is violated if unequal wages are paid to workers' of different sexes when those workers' are performing substantially equivalent work under similar conditions in the same establishment.

Act prohibits retaliation against an employee for exercising rights under the EPA.

3. MINIMUM NUMBER OF EMPLOYEES REQUIRED:

No – applies to all public employers and all private employers if the employer has gross sales of \$500,000 or more and has two or more employees engaged in interstate commerce; or

An individual employee is covered if the employee is engaged in interstate commerce.

4. IMPORTANT EXCLUSIONS:

- Seniority Systems
- Merit Systems
- Systems which measure earnings by quantity or quality of production

5. ENFORCEMENT AGENCY:

Equal Employment Opportunity Commission (EEOC), the Secretary of Labor or private suit.

6. REMEDIES:

- Back pay
- Interest on back pay
- Additional liquidated damages equal to the amount of back pay recovered (unless employer can show “good faith” omission)

C. AGE DISCRIMINATION IN EMPLOYMENT ACT OF 1967 (ADEA)¹³

1. PURPOSE:

Prohibits age discrimination against persons age 40 or older

2. KEY PROVISIONS:

Prohibit discrimination in hiring/firing and the terms/conditions of employment because of age (protects workers 40 year or older only).

Prohibits retaliation against any person exercising his/her ADEA rights.

3. MINIMUM NUMBER OF EMPLOYEES REQUIRED:

Yes – 20 or more employees for each working day in each of 20 or more calendar weeks in current or preceding year.

4. IMPORTANT EXCLUSIONS:

Bona fide occupational qualifications (BFOQ) – it is not unlawful for an employer to based on age where the use of age criteria is reasonably necessary to the normal operation of the employer's business.

Bona fide seniority or employee benefits plans.

5. ENFORCEMENT AGENCY:

Equal Employment Opportunity Commission (EEOC) and private suit.

6. REMEDIES:

- Back pay
- Hiring, promotion or reinstatement (or front pay if reinstatement not feasible)
- Liquidated damages for willful violations
- Attorney's fees and costs

D. THE AMERICANS WITH DISABILITIES ACT (ADA)¹⁴

1. PURPOSE:

Prohibits discrimination against individuals with a disability and requires that employers make reasonable accommodations for disabled workers.

2. KEY PROVISIONS:

Employers may not discriminate against a “qualified individual with a disability” in regard to hiring/firing and terms/conditions of employment because of person’s disability

Employers must make “reasonable accommodations” to known physical or mental limitation of an otherwise “qualified individual with a disability”

- Individual with a Disability under the ADA is a person who has a physical or mental impairment that substantially limits one or more major life activities, has a record of such an impairment, or is regarded as having such an impairment.

Major life activities are activities that an average person can perform with little or no difficulty such as walking, breathing, seeing, hearing, speaking, learning, and working.

- A Qualified Individual with a Disability is a qualified employee or applicant with a disability is someone who satisfies skill, experience, education, and other job-related requirements of the position held or desired, and who, with or without reasonable accommodation, can perform the essential functions of that position.
- Reasonable Accommodation includes existing facilities readily accessible to and usable by individuals with disabilities and other forms of scheduling or work assignment modifications that can allow disabled individuals to perform their essential job functions.

3. MINIMUM NUMBER OF EMPLOYEES REQUIRED:

Yes- 15 or more employees for each working day in each of 20 or more calendar weeks in current or preceding year.

4. IMPORTANT EXCLUSIONS:

- Employee that is not a “qualified individual with a disability” is not covered
- Reasonable accommodation not required if such accommodations imposes undue hardship
- Where employer demonstrates good faith efforts, in consultation with disabled employee, to identify and make a reasonable accommodation that would provide such individual with an equally effective opportunity and would not cause an undue hardship on the operation of the employer’s business.
- Certain behaviors excluded, such as illegal use of drugs, kleptomania, pedophilia.

5. ENFORCEMENT AGENCY:

Equal Employment Opportunity Commission (EEOC) or private suit.

6. REMEDIES:

An employee may obtain—

- An injunction against the employer’s unlawful conduct
- Compensatory Damages – cap of between \$50,000 and \$300,000
- Punitive Damages – not available in suit against public employer (also subject to above cap)
- Hiring, promotion or reinstatement (or front pay if reinstatement not feasible)
- Back Pay
- Attorney Fees & Costs

E. FAIR LABOR STANDARDS ACT (FLSA)¹⁵

1. PURPOSE:

Governs the compensation employers must pay to employees.

2. KEY PROVISIONS:

- Employers must pay a specified minimum wage (currently \$7.25 per hour federal law –states may by higher)
- Employers must pay overtime (generally 1.5 times the employee's regular rate for each hour worked over 40 hours per week)
- Employers may not discriminate or retaliate against employees for exercising their FLSA rights
- The Act also prohibits/restricts child labor

3. MINIMUM NUMBER OF EMPLOYEES:

No – applies to all public employers and all private employers if the employer has gross sales of \$500,000 or more and has two or more employees engaged in interstate commerce; or

An individual employee is covered if the employee is engaged in interstate commerce.

4. IMPORTANT EXCLUSIONS:

Certain types of employees are exempt from the act:

“White collar employees” (those paid at a certain minimum salary and who regularly exercise discretion on the job):

- Executives
- Administrative employees
- Professionals
- Outside salespeople

Certain specific industries (e.g. agricultural workers) and certain types of employment (e.g. certain seasonal workers)

5. ENFORCEMENT:

Wage and Hour Division of the Department of Labor or by private suit.

6. REMEDIES:

For minimum wage/overtime violations:

- Back pay (unpaid minimum wages or overtime payments)
- Interest on back pay
- Additional liquidated damages equal to the amount of back pay recovered (unless employer can show “good faith” omission)

For employees exercising their FLSA rights, the above plus:

- Compensatory damages
- Punitive Damages
- Reinstatement, Promotion
- An injunction against further violations
- Attorney’s fees and costs

For willful and repeated violations – civil fines up to \$1,000 per day

F. FAMILY AND MEDICAL LEAVE ACT (FMLA)¹⁶

1. PURPOSE:

Requires that employers grant up to 12 weeks of unpaid leave to employees for specified family reasons

2. KEY PROVISIONS:

Employers must provide employees with up to 12 weeks unpaid leave in any twelve month period for newborn child care, adoption, and serious health conditions affecting the employee himself or any member of his immediate family

Employers must restore employees to their previous position upon conclusion of leave

Employers may not discriminate against employees who exercise their FMLA rights

3. MINIMUM NUMBER OF EMPLOYEES:

Yes – 50 for private employers or more employees for each working day during each of 20 or more calendar workweeks in the current or preceding year; no minimum for public employers

4. IMPORTANT EXCLUSIONS:

- The Act does not apply to any employee who works at a facility with fewer than 50 employees and whose employer has fewer than 50 employees within 75 miles of that facility
- The Act does not apply to employees who have less than 12 months of service with the employer or have worked less than 1250 hours during the previous 12 months
- An employer may refuse to restore an employee to his/her previous position upon conclusion of leave if the employee is salaried and among the highest paid 10% of employees within 75 miles of the facility at which the employee works and restoration would cause grievous economic injury to the employer's operations.

5. ENFORCEMENT:

Secretary of Labor or by private suit.

NEW January 16, 2009 – MILITARY SERVICE MEMBER & FAMILY

- Up to 12 weeks of leave for certain “qualifying exigencies” arising out of a covered military member's active duty status, or notification of an impending call or order to active duty status, in support of a contingency operation, and
- Up to 26 weeks of leave in a single 12-month period to care for a covered service member recovering from a serious injury or illness incurred in the line of duty on active duty. Eligible employees are entitled to a combined total of up to 26 weeks of all types of FMLA leave during the single 12-month period.
- The Department’s final rule defines “qualifying exigency” by referring to a number of broad categories for which employees can use FMLA leave: (1) Short-notice deployment; (2) Military events and related activities; (3) Childcare and school activities; (4) Financial and legal arrangements; (5) Counseling; (6) Rest and recuperation; (7) Post-deployment activities; and (8) Additional activities not encompassed in the other categories, but agreed to by the employer and employee.
- Employers must restore employees to their previous position upon conclusion of leave
- Employers may not discriminate against employees who exercise their FMLA rights

6. REMEDIES:

An employee may obtain/recover:

- Damages equal to the amount of wages and benefits lost; or if none have been lost, then any actual monetary loss sustained as a result of the violations such as the cost of providing care, up to a sum equal to 12 weeks pay for the employees
- Interest
- Additional liquidated damages equal to the amount of back pay recovered (unless employer can show “good faith” omission)
- An injunction against further violations
- Equitable relief such as reinstatement
- Attorney’s fees and costs

G. SARBANES-OXLEY (SOX)

WHISTLEBLOWER PROTECTION FOR EMPLOYEES OF PUBLICLY TRADED COMPANIES

No company with a class of securities registered under section 12 of the Securities Exchange Act of 1934 (15 U.S.C. 781), or that is required to file reports under section 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78o (d)), or any officer, employee, contractor, subcontractor, or agent of such company, may:

Discharge, demote, suspend, threaten, harass, or in any other manner discriminate against an employee in the terms and conditions of employment because of any lawful act done by the employee such as:

1. Provide information, cause information to be provided, or otherwise assist in an investigation regarding any conduct which the employee reasonably believes constitutes a violation of section 1341, or any provision of Federal law relating to fraud against shareholders, when the information or assistance is provided to or the investigation is conducted by;
 - a Federal regulatory or law enforcement agency;
 - any Member of Congress or any committee of Congress; or
 - a person with supervisory authority over the employee (or such other person working for the employer who has the authority to investigate, discovery, or terminate misconduct); or
2. File, cause to be filed, testify, participate in, or otherwise assist in a proceeding filed or about to be filed (with any knowledge of the employer) relating to an alleged violation of section 1341, 1343, 1344, or 1348, any rule or regulation of the Securities and Exchange Commission, or any provision of Federal law relating to fraud against shareholders

H. UNIFORMED SERVICES EMPLOYMENT AND REEMPLOYMENT RIGHTS ACT

USERRA prohibits discrimination in hiring, retention, promotions, or other benefits of employment against a person because that person “is a member of, applies to be a member of, performs, has performed, applies to perform, or has an obligation to perform service in a uniformed service....”

In addition, employers are prohibited from reprisal against anyone who exercises USERRA rights

- **In order to qualify for reemployment rights following military service:**
 - You must have left a civilian job;
 - You must have given notice that you were leaving to perform military service;
 - The cumulative period of service must not have exceeded five years (there are exceptions);
 - You must have been released from service under honorable or general conditions; and
 - You must have reported back to work or applied for reemployment within time constraints prescribed by law.
- **Reemployment Entitlements**
- Following a period of military service:
 - You are entitled to prompt reemployment. You are entitled to seniority, seniority-related benefits (including pension), status, and rate of pay as if you were continuously employed during the military absence.
 - You are entitled to immediate reinstatement of health insurance for you and previously covered dependents, with no waiting period and no exclusion of preexisting conditions

OVERVIEW OF STATE LAWS

Additional Protected Categories – Employers cannot make decisions to hire, fire, promote, demote or otherwise change the terms of employment based upon:

- Pregnancy
- Marital Status
- Sexual Orientation
- Political Affiliation
- Arrest or Conviction Record
- Smoking Status
- Use of Lawful Products (Alcohol)
- AIDS Status

State laws vary greatly by state. See your state's Employment Laws.

V. Coverage for Employment Related Claims

A. CGL Policy

1. Expected or Intended Injury Exclusion

2. Exclusions

This insurance does not apply to:

a. Expected Or Intended Injury

"Bodily injury" or "property damage" expected or intended from the standpoint of the insured. This exclusion does not apply to "bodily injury" resulting from the use of reasonable force to protect persons or property.

2. Mental Anguish alone not generally considered "bodily injury" under CGL

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

3. Loss of wages claimed not generally considered "property damage" under CGL

17. "Property damage" means:

- a. 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**
- b. 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.**

4. Personal Injury Coverage may apply for defense IF covered offense

14. "Personal and advertising injury" means injury, including consequential "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, committed 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 under Personal and Advertising Injury usually removed by EPLI Exclusion

5. Employment Practices Related Exclusion – CGL

COMMERCIAL GENERAL LIABILITY
CG 21 47 12 07

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

EMPLOYMENT-RELATED PRACTICES EXCLUSION

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

- A. The following exclusion is added to Paragraph 2. Exclusions of Section I - Coverage A - Bodily Injury And Property Damage Liability:

This insurance does not apply to:

"Bodily injury" to:

- (1) A person arising out of any:

(a) Refusal to employ that person;

(b) Termination of that person's employment; or

(c) Employment-related practices, policies, acts or omissions, such as coercion, demotion, evaluation, reassignment, discipline, defamation, harassment, humiliation, discrimination or malicious prosecution directed at that person; or

- (2) The spouse, child, parent, brother or sister of that person as a consequence of "bodily injury" to that person at whom any of the employment-related practices described in Paragraphs (a), (b), or (c) above is directed.

This exclusion applies:

- (1) Whether the injury-causing event described in Paragraphs (a), (b), or (c) above occurs before employment, during employment or after employment of that person;

(2) Whether the insured may be liable as an employer or in any other capacity; and

(3) To any obligation to share damages with or repay someone else who must pay damages because of the injury.

B. The following exclusion is added to Paragraph 2. Exclusions of Section I - Coverage B - Personal And Advertising Injury Liability:

This insurance does not apply to:

"Personal and advertising injury" to:

(1) A person arising out of any:

(a) Refusal to employ that person;

(b) Termination of that person's employment; or

(c) Employment-related practices, policies, acts or omissions, such as coercion, demotion, evaluation, reassignment, discipline, defamation, harassment, humiliation or discrimination or malicious prosecution directed at that person; or

(2) The spouse, child, parent, brother or sister of that person as a consequence of "personal and advertising injury" to that person at whom any of the employment-related practices described in Paragraphs (a), (b), or (c) above is directed.

This exclusion applies:

(1) Whether the injury-causing event described in Paragraphs (a), (b), or (c) above occurs before employment, during employment or after employment of that person;

(2) Whether the insured may be liable as an employer or in any other capacity; and

(3) To any obligation to share damages with or repay someone else who must pay damages because of the injury.

B. Employers' Liability Coverage – Express Exclusion

C. Exclusions

This insurance does not cover:

7. damages arising out of coercion, criticism, demotion, evaluation, reassignment, discipline, defamation, harassment, humiliation, discrimination against or termination of any employee, or any personnel practices, policies, acts or omissions;

C. Umbrella Policies

1. Insuring agreement
 - a. Coverages
 - 1) "Bodily injury" or "personal injury"
 - 2) "Occurrence" – expected or intended injury or damage usually excluded
2. Exclusions
 - a. Discrimination
 - b. Employment-related practices excluded
 - c. ERISA and other Federal employment-related laws excluded

D. Directors and Officers Liability Policies

34% of Directors and Officers Claims were by current or former employees.

Source: 2018 Willis Towers Watson Management Liability (Directors and Officers) U.S. Survey

1. Coverage

a. Insuring agreement

- 1) What – Breach of duty as Director or Officer
- 2) Who - directors and officers, not the organization

b. Definitions

- 1) "Wrongful act"
- 2) "Personal injury"

2. Exclusions

a. Discrimination

b. Violation under ERISA

c. Emotional distress and libel/slander

d. Insured vs. insured

e. Employment practices exclusion

VI. Types of specific forms

A. Specific Offenses Coverage

1. ADA – form focuses on liability arising from ADA and other laws relating to discrimination against individual with disabilities
2. Termination – covers termination of employment but would cover discrimination only if it was a part of the termination.

B. Broad

Employment claims including discrimination, termination, or failure to hire or promote, wrongful termination, sexual harassment, breach of employment contract, employment-related defamation, and wrongful infliction of emotional distress.

C. Endorsements to Provide Employment-Related Practices

1. Non-sexual harassment in workplace
2. Non-employment related sexual harassment and discrimination (third party) – “third party” usually means sexual harassment or discrimination against customers, vendors, or other non-employees. It usually does not refer to sexual harassment or discrimination against employees by a third party.

VII. Employment Practices Liability Coverage

A. Common Characteristics

1. Non-standard forms
2. Written on claims-made basis (may be claims-made and reported)

B. Coverage

1. Insuring agreement
 - a. Specified offense/offenses
 - b. Additional insuring agreement or options - may provide third party discrimination and harassment
2. Definitions (critical to define coverage provided)
3. Defense Obligations
 - a. Varies by insurer
 - b. Defense costs usually included within the limit
 - c. Insurer may have duty to defend *or may reimburse for defense provided by insured*
 - d. Insured may have choice of defense counsel – from pre-approved list (panel counsel) or submit defense counsel for approval

4. Who is an Insured
 - a. Entity
 - b. Directors
 - c. Officers
 - d. Employees
5. Typical Exclusions – vary from policy to policy
 - a. If notice to a prior insurer
 - b. Pending or Prior
 - c. Prior Knowledge (before Continuity Date)
 - d. Bodily injury and property damage (but may cover emotional distress, humiliation, mental anguish)
 - e. Workers compensation, unemployment compensation, disability benefits (claims for retaliation may be covered)
 - f. Wage and Hour violations (may provide sublimit for defense)
 - g. Violations of certain federal acts (examples: Workers Adjustment Retraining Notification (WARN), Consolidated Omnibus Budget Reconciliation Act (COBRA), or the Occupational Safety and Health Act (OSHA), Employee Retirement Income Securities Act (ERISA), ADA accommodations.
 - h. Contractual Liability (agreement to indemnify others – unless liable absent contract)
 - i. Breach of Written Contract (may defend such claims)
 - j. Severance payments
 - k. Future compensation if hired, promoted or reinstated
 - l. Pollution (claims for retaliation may be covered)

- m. Costs of non-monetary relief (may defend such actions)
 - n. Strikes and lockouts/collective bargaining
 - o. Benefits administration and compliance
 - p. Claims against subsidiaries for acts occurring prior to acquisition.
 - q. Change in control – policy ends for any subsequent employment related wrongful acts committed after change in control
- 6. Territory (Worldwide is not uncommon)
- 7. Limits of liability
 - a. Per claim
 - b. Annual aggregate
- 8. Deductibles – usually include defense costs
- 9. Coinsurance or co-payments provisions (unusual – may be underwriting requirement)
 - a. Purpose is to encourage loss control
 - b. Coinsurance is usually 5 to 10% of the claim
- 10. Retroactive date (may be date of first policy)
- 11. Consent to Settle (Hammer Clause or “Soft” Hammer Clause)
- 12. Potential Claim (report *specifics* of incident that is not yet a claim – i.e. sexual harassment lodged internally)

13. Extended reporting provisions
 - a. Cost of ERP
 - b. When it is available – insured or insurer cancel or non-renew?
 - c. When must ERP be elected?
14. Applications – usually part of policy and warranty
15. Underwriting considerations
 - a. Industry type or class of business
 - b. Employment Handbook with “at will” statement
 - c. Sexual Harassment policy in place and communicated at least annually to all employees
 - d. Performance evaluations and job applications
 - e. Claim history
 - f. Turnover rate and planned location/plant closings
 - g. Training of supervisors and employees
 - h. Complaint procedures (if any)

VIII. Loss Control Measures – May be the most critical part of Employment Related Practices

- A. Most claims can be avoided
- B. Able to effectively defend those claims that are alleged
- C. Need to have in place BEFORE insurance can be purchased

IX. EPLI Insurance – COVERAGE ANALYSIS

Chubb Group of Insurance Companies

ForeFront Portfolio 3.0

EMPLOYMENT PRACTICES LIABILITY COVERAGE PART Form 14-02-17272
(12/2010)

NOTICE: THE LIABILITY COVERAGE PARTS PROVIDE CLAIMS-MADE COVERAGE, WHICH APPLIES ONLY TO "CLAIMS" FIRST MADE DURING THE "POLICY PERIOD", OR ANY APPLICABLE EXTENDED REPORTING PERIOD. THE LIMIT OF LIABILITY TO PAY DAMAGES OR SETTLEMENTS WILL BE REDUCED AND MAY BE EXHAUSTED BY "DEFENSE COSTS", AND "DEFENSE COSTS" WILL BE APPLIED AGAINST THE RETENTION. IN NO EVENT WILL THE COMPANY BE LIABLE FOR "DEFENSE COSTS" OR THE AMOUNT OF ANY JUDGMENT OR SETTLEMENT IN EXCESS OF THE APPLICABLE LIMIT OF LIABILITY. READ THE ENTIRE POLICY CAREFULLY.

A. Insuring Agreement – What is Covered?

Insuring Clause (A): Employment Practices Liability Coverage

(A) The Company shall pay, on behalf of an **Insured**, **Loss** on account of an **Employment Claim** first made against the **Insured** during the **Policy Period**, or the Extended Reporting Period if applicable, provided the Company's maximum liability for this Insuring Clause (A) shall be the Limit of Liability set forth in Item 3(A) of the EPL Declarations or the unpaid portion of the Maximum Aggregate Limit of Liability set forth in Item 2 of the EPL Declarations for each **Policy Year**, whichever is less.

Insuring Clause (B): Third Party Liability Coverage

(B) The Company shall pay, on behalf of an **Insured**, **Loss** on account of a **Third Party Claim** first made against the **Insured** during the **Policy Period**, or the Extended Reporting Period if applicable, provided the Company's maximum liability for this Insuring Clause (B) shall be the Limit of Liability set forth in Item 3(B) of the EPL Declarations or the unpaid portion of the Maximum Aggregate Limit of Liability set forth in Item 2 of the EPL Declarations for each **Policy Year**, whichever is less.

1. Key Definitions

a. Loss

Loss means the amount which an **Insured** becomes legally obligated to pay as a result of any **Claim**, including:

A) compensatory damages;

(B) (1) punitive, exemplary or multiplied damages, if and to the extent such damages are insurable under the law of the jurisdiction most favorable to the insurability of such damages, provided such jurisdiction has a substantial relationship to the **Insured**, the Company, or to the **Claim** giving rise to such damages; or

(2) liquidated damages awarded pursuant to the Age Discrimination in Employment Act, Family and Medical Leave Act or Equal Pay Act;

(C) back pay, front pay, claimant's attorney's fees awarded by a court against an **Insured** or agreed to by the Company in connection with a settlement (but only if such claimant's attorney's fees are agreed to in writing by the Company at the time of or after a final settlement);

(D) judgments, including pre-judgment and post-judgment interest;

(E) settlements; and

(F) **Defense Costs**,

provided that **Loss** does not include any portion of such amount that constitutes any:

(1) cost of compliance with any order for, grant of, or agreement to provide non-monetary relief, including injunctive relief;

(2) amount uninsurable under the law pursuant to which this Coverage Part is construed;

(3) tax, fine or penalty imposed by law; except as provided above with respect to punitive, exemplary or multiplied damages, or liquidated damages;

(4) future salary, wages, commissions, or **Benefits** of a claimant who has been or shall be hired, promoted or reinstated to employment pursuant to a settlement, order or other resolution of any **Claim**;

(5) salary, wages, commissions, **Benefits** or other monetary payments which constitute severance payments or payments pursuant to a notice period;

(6) **Benefits** due or to become due or the equivalent value of such **Benefits**, except with respect to any **Employment Claim** for **Wrongful Termination**, or **Stock Benefits**;

(7) cost associated with providing any accommodation for persons with disabilities or any other status which is protected under any applicable federal, state, or local statutory law or common law anywhere in the world, including, the Americans with Disabilities Act, the Civil Rights Act of 1964, or any amendments to or rules or regulations promulgated under any such law;

(8) amount incurred by an **Insured** in the defense or investigation of any action, proceeding or demand that was not then a **Claim** even if (a) such amount also benefits the defense of a covered **Claim**; or (b) such action, proceeding, investigation or demand subsequently gives rise to a **Claim**; or

(9) cost incurred in cleaning-up, removing, containing, treating, detoxifying, neutralizing, assessing the effects of, testing for, or monitoring **Pollutants**

b. Employment Practices Wrongful Act

Employment Practices Wrongful Act means any actual or alleged:

(A) **Breach of Employment Contract**;

(B) **Employment Discrimination**;

(C) **Employment Harassment**;

(D) **Retaliation**;

(E) **Workplace Tort**;

(F) **Wrongful Employment Decision**; or

(G) **Wrongful Termination**,

committed, attempted, or allegedly committed or attempted by an **Organization** or by an **Insured Person** while acting in his or her capacity as such.

c. Breach of Employment Contract

Breach of Employment Contract means any breach of any oral, written or implied contract or contractual obligation including any contract or contractual obligation arising out of any personnel manual, employee handbook, policy statement or other representation.

d. Employment Discrimination

Employment Discrimination means any violation of employment discrimination laws including any actual, alleged or constructive employment termination, dismissal, or discharge, employment demotion, denial of tenure, modification of any term or condition of employment, any failure or refusal to hire or promote, or any limitation, segregation or classification of any employee or applicant for employment in any way that would deprive or tend to deprive any person of employment opportunities or otherwise affect his or her status as an employee

based on such person's race, color, religion, creed, genetic information, age, sex, disability, marital status, national origin, pregnancy, HIV status, sexual orientation or preference, Vietnam Era Veteran status or other protected military status or other status that is protected pursuant to any federal, state, or local statutory law or common law anywhere in the world.

e. Employment Harassment

Employment Harassment means:

(A) sexual harassment, including unwelcome sexual advances, requests for sexual favors, or other conduct of a sexual nature that is made a condition of employment with, used as a basis for employment decisions by, interferes with performance or creates an intimidating, hostile or offensive working environment within an **Organization**; or

(B) workplace harassment, including work related harassment or bullying of a non-sexual nature that interferes with performance or creates an intimidating, hostile or offensive working environment within an **Organization**.

f. Retaliation

Retaliation means retaliatory treatment against an **Employee** or **Independent Contractor** of an **Organization** on account of such individual:

(A) exercising his or her rights under law, refusing to violate any law, or opposing any unlawful practice;

(B) having assisted or testified in or cooperated with a proceeding or investigation (including any internal investigation conducted by the **Organization's** human resources department or legal department) regarding alleged violations of law by the **Insured**;

(C) disclosing or threatening to disclose to a superior or to any governmental agency any alleged violations of law; or

(D) filing any claim against the **Organization** under the Federal False Claims Act, Section 806 of the Sarbanes Oxley Act or any other federal, state, local or foreign whistleblower law.

g. Workplace Tort

Workplace Tort means any:

(A) employment-related:

(1) misrepresentation;

(2) defamation (including libel and slander);

(3) invasion of privacy (including the unauthorized use or disclosure of an **Employee's** (a) medical information in violation of the Health Insurance Portability and Accountability Act ("HIPAA"); (b) credit information or related information in violation of the Fair Credit Reporting Act; or (c) other information obtained through an employment-related background check);

(4) negligent evaluation;

(5) wrongful discipline; or

(6) wrongful deprivation of career opportunity; or

(B) employment-related:

(1) negligent retention;

(2) negligent supervision;

(3) negligent hiring;

(4) negligent training;

(5) wrongful infliction of emotional distress, mental anguish or humiliation;

(6) failure to provide or enforce consistent employment-related corporate policies and procedures; or

(7) false imprisonment

h. Wrongful Employment Decision

Wrongful Employment Decision means any wrongful demotion, denial of tenure, or failure or refusal to hire or promote, failure to employ, or wrongful or negligent employee reference.

i. **Wrongful Termination**

Wrongful Termination means any wrongful termination, dismissal or discharge of employment, including constructive termination, dismissal or discharge. **Wrongful Termination** does not include **Breach of Employment Contract**.

B. **Defense Obligation – some EPL policies are defense reimbursement with NO obligation to defend.**

DEFENSE AND SETTLEMENT

(A) Except as provided in Subsection (B) below, the Company shall have the right and duty to defend any **Claim** covered by this Coverage Part. Coverage shall apply even if any of the allegations are groundless, false or fraudulent.

1. Defense – what expenses are included?
2. Who has choice of legal counsel?

Defense Costs means that part of **Loss** consisting of reasonable costs, charges, fees (including attorneys' fees and experts' fees) and expenses (other than regular or overtime wages, salaries, fees, benefits of the **Insured Persons**) incurred in defending, opposing or appealing any **Claim**, and the premium for appeal, attachment or similar bonds.

3. Defense within or outside limit?

THE LIMIT OF LIABILITY TO PAY DAMAGES OR SETTLEMENTS WILL BE REDUCED AND MAY BE EXHAUSTED BY "DEFENSE COSTS",

C. **Who is protected as an Insured?**

Insured means any **Organization** and any **Insured Person**.

Insured Person means any:

(A) **Executive** or **Employee** of an **Organization**; or

(B) **Independent Contractor** working for an **Organization**, but only while acting in his or her capacity as such and only if the **Organization** agrees to indemnify the **Independent Contractor** in the same manner as provided to the **Organization's Employees** for liability arising out of a **Claim**.

D. Coverage Trigger –Insuring Clause (A) and (B)

....on account of an **Employment Claim** first made against the **Insured** during the **Policy Period**, or the Extended Reporting Period, if applicable...

....on account of an **Third Party Claim** first made against the **Insured** during the **Policy Period**, or the Extended Reporting Period, if applicable...

1. What constitutes an Employment Claim?

Employment Claim means:

(A) (1) any:

(a) written demand first received by an **Insured** for monetary or non-monetary relief, including a written demand for reinstatement, reemployment, re-engagement or injunctive relief;

(b) civil proceeding commenced by the service of a complaint or similar pleading;

(c) criminal proceeding outside the United States of America commenced by a return of an indictment, information or similar document;

(d) arbitration proceeding pursuant to an employment contract, policy or practice of an **Organization**, commenced by the receipt by an **Insured** of a demand for arbitration or similar document, or any other external alternative dispute resolution proceeding commenced by receipt by an **Insured** of a demand for an alternative dispute resolution or similar document; or

(e) administrative, regulatory or tribunal proceeding commenced by:

(i) the issuance of a notice of charge, formal investigative order or similar document; or

(ii) in the event the **Insured** is not issued notice as set forth in (e)(i) above, the receipt by an **Insured** of the administrative, regulatory or tribunal proceeding resulting from such notice of charge, formal investigative order or similar document, including any such proceeding brought by or in association with the Equal Employment Opportunity Commission or any similar governmental agency located anywhere in the world with jurisdiction over the **Organization's** employment practices; or

(2) in the context of an audit conducted by the Office of Federal Contract Compliance Programs, a Notice of Violation or Order to Show Cause or written demand for monetary relief or injunctive relief, commenced by the receipt by an **Insured** of such Notice, Order or written demand, which is brought and maintained by or on behalf of a past, present or prospective **Employee** or **Independent Contractor** of an **Organization** against any **Insured** for an **Employment Practices Wrongful Act** (even if such **Employment Practices Wrongful Act** is related to allegations in a criminal proceeding in the United States of America), including any appeal therefrom; or

(B) a written request first received by an **Insured** to toll or waive a statute of limitations relating to a potential **Employment Claim** as described in Subsection (A) above.

Notwithstanding the foregoing, **Employment Claim** shall not include any labor or grievance arbitration or other proceeding pursuant to a collective bargaining agreement.

2. When must a claim be reported (including lodging of complaint with administrative agency)?

IV. REPORTING

(A) An **Insured** shall, as a condition precedent to exercising any right to coverage under this Coverage Part, give to the Company written notice of any **Claim** as soon as practicable after the chief executive officer, chief financial officer, any person with the responsibility for the management of insurance claims (or any equivalent position to any of the foregoing), or any member of the in-house general counsel or human resources departments, of an **Organization** becomes aware of such **Claim**, but in no event later than:

(1) if this Coverage Part expires (or is otherwise terminated) without being renewed with the Company, ninety (90) days after the effective date of such expiration or termination; or

(2) the expiration date of the Extended Reporting Period, if applicable,

(B) Notwithstanding the foregoing Subsection (A) and solely with respect to an **Employment Claim** that is brought as a *formal administrative or regulatory proceeding commenced by the filing of a notice of charges*, an **Insured**, shall, as a condition precedent to exercising any right to coverage under this Coverage Part, give written notice thereof to the Company during the **Policy Period**, or, if applicable, in no event later than the earliest of the following dates:

(1) if this Coverage Part is renewed, 180 days after the end of the **Policy Period**,

(2) if this Coverage Part expires (or is otherwise terminated) without being renewed with the Company and if no Extended Reporting Period is purchased, ninety (90) days after the effective date of such expiration or termination; or

(3) the expiration date of the Extended Reporting Period, if elected,

3. Requirement to “potential claim”?

If during the **Policy Period**, or any applicable Extended Reporting Period, an **Insured** becomes aware of a **Potential Claim** and gives written notice of such **Potential Claim** to the Company, and requests coverage under this Coverage Part for any **Claim** subsequently resulting from such **Potential Claim**, then any **Claim** subsequently arising from the **Potential Claim** shall be deemed made against the **Insured** during the **Policy Year** in which written notice of such **Potential Claim** was first given to the Company,

Potential Claim means a complaint or allegation of a **Wrongful Act** by or on behalf of a potential claimant if such complaint or allegation:

(A) does not constitute a **Claim** but may subsequently give rise to a **Claim**; and

(B) is lodged with:

(1) any supervisory employee having management-level responsibility for personnel matters with respect to such claimant, if such supervisory employee provides notice of such complaint or allegation to any member of an **Organization's** human resources, general counsel or risk management departments, or other comparable department; or

(2) any member of an **Organization's** human resources, general counsel or risk management departments, or other comparable department.

E. Extended Reporting Period Option – Typically one year but must be requested and pay in 60 days

V. EXTENDED REPORTING PERIOD

With respect to the **Liability Coverage Parts**:

(A) If this Policy does not renew or otherwise terminates for a reason other than for failure to pay premium (each a "Termination of Coverage"), then an **Insured** shall have the right to purchase an Extended Reporting Period for the Additional Period and Additional Premium set forth in Item 5 of the GTC Declarations.

This right to purchase an Extended Reporting Period shall lapse unless written notice of election to purchase the Extended Reporting Period, together with payment of the applicable Additional Premium, is received by the Company within sixty (60) days after the effective date of the Termination of Coverage.

F. Important Exclusions

1. Prior Notice

Prior Notice

based upon, arising from or in consequence of any fact, circumstance, situation, transaction, event or **Wrongful Act** that, before the inception date set forth in Item 2 (A), Policy Period, of the GTC Declarations, was the subject of any notice accepted under any employment practices liability policy or coverage part or any other liability policy or coverage part that includes coverage for employment practices liability of which this Coverage Part is a direct or indirect renewal or replacement;

2. Pending or Prior

Pending or Prior Proceedings

based upon, arising from or in consequence of a written demand alleging a **Wrongful Act**, suit, formal administrative or regulatory proceeding commenced by the filing of a notice of charges, formal investigative order or similar document, a Notice of Violation or Order to Show Cause resulting from an audit conducted by the Office of Federal Contract Compliance Programs or arbitration proceeding pending against or order, decree or judgment entered for or against any **Insured** on or prior to the applicable Pending or Prior Proceedings Date as set forth in Item 5 of the EPL Declarations or the same or substantially the same fact, circumstance or situation underlying or alleged therein;

3. Pollution

Pollution

based upon, arising from or in consequence of any:

- (1) discharge, emission, release, dispersal or escape of any **Pollutants** or any threat thereof;
- (2) treatment, removal or disposal of any **Pollutants**; or
- (3) regulation, order, direction or request to test for, monitor, clean up, remove, contain, treat, detoxify or neutralize any **Pollutants**, including any **Claim** for financial loss to an **Organization**, its securityholders or its creditors based upon, arising from or in consequence of any matter described in Paragraphs (1), (2) or (3) of this Exclusion (C), *provided that this Exclusion (C) shall not apply to Loss on account of any Employment Claim for Retaliation*;

4. Bodily Injury or Property Damage

Bodily Injury/ Property Damage

for bodily injury, mental anguish, humiliation, emotional distress, sickness, disease or death of any person or damage to or destruction of any tangible property including the loss of use thereof whether or not it is damaged or destroyed, provided that this Exclusion (D) shall not apply to **Loss** for any mental anguish, humiliation or emotional distress when alleged as part of an otherwise covered **Claim**;

5. Workers' compensation

Workers' Compensation, Unemployment, Social Security, Disability Benefits

for any obligation of any **Insured** pursuant to any workers compensation, unemployment insurance, social security, disability benefits or any similar federal, state, or local statutory law or common law anywhere in the world, provided that this Exclusion (E) shall not apply to **Loss** on account of any **Employment Claim for Retaliation**;

6. Employee Benefit Programs

Employee Benefits Program

for any violation of the responsibilities, obligations or duties imposed by any federal, state, or local statutory law or common law anywhere in the world (including the Employment Retirement Income Security Act of 1974 (except section 510 thereof) and the Consolidated Omnibus Budget Reconciliation Act of 1985)... including any:

(4) severance pay arrangement;

provided that this Exclusion (G) *shall not apply to **Loss** on account of any **Employment Claim** for **Retaliation***;

7. Wage & Hour

Wage and Hour

for any violation of the responsibilities, obligations or duties imposed by any federal, state, or local statutory law or common law anywhere in the world (including the Fair Labor Standards Act) or amendments to or regulations promulgated under any such law that governs wage, hour and payroll policies and practices, except the Equal Pay Act,...

provided that this Exclusion (I) shall not apply to **Loss** on account of any **Employment Claim** for **Retaliation**;

8. Breach of Written Employment Contract

Breach of Written Employment Contract

based upon, arising from or in consequence of any breach of any written employment contract, provided that this Exclusion (L) shall not apply to:

(1) **Loss** to the extent an **Insured** would have been liable for such **Loss** in the absence of such written employment contract; or

(2) **Defense Costs**.

EXHIBITS

Sexual Harassment – Important Case Law

In two significant United States Supreme Court decisions, the issue of an employer's liability for sexual harassment committed by a supervising employee, as well as a possible defense available to the employer for the supervising employee acts, was addressed. The following is a brief summary of what we believe are some relevant sections of the cases:

Burlington Industries, Inc. v. Kimberly Ellerth, Decided June 26, 1998

Facts:

Kimberly Ellerth quit her job after 15 months allegedly because she had been subjected to constant sexual harassment by one of her supervisors, Ted Slowik. Ellerth refused all of Slowik's advances, yet suffered no tangible retaliation, and was, in fact, promoted once. Moreover, she never informed anyone in authority about Slowik's conduct, despite knowing Burlington has a policy against sexual harassment.

The opinion of the court, which was a 7 to 2 majority, was written by Justice Kennedy. He began with the following:

"We decide, whether, under Title VII of the Civil Rights Act of 1964...an employee who refuses the unwelcome and threatening sexual advances of a supervisor, yet suffers no adverse, tangible job consequences, can recover against the employer without showing the employer is negligent or otherwise at fault for the supervisor's actions."

In this case, the lower court had found that:

"Burlington neither knew nor should have known about the conduct. ...the court noted that Ellerth had not used Burlington's internal complaint procedures"

The issue was further refined by Justice Kennedy as follows:

"We must decide, then, whether an employer has vicarious liability when a supervisor creates a hostile work environment by making explicit threats to alter a subordinate's terms or conditions of employment, based on sex, but does not fulfill the threat"

If imposed, vicarious liability would impute the liability to the employer for the acts of the supervisor and would hold the employer liable even if the employer could demonstrate they had no fault relative to the harassment.

The Court took what might be described as a middle ground. They did hold that an employer may be held vicariously liable, but with a possible defense available to the employer. The following is the court's reasoning as expressed by Justice Kennedy:

"An employer is subject to vicarious liability to a victimized employee for an actionable hostile environment created by a supervisor with immediate (or successively higher) authority over the employee. When no tangible employment is taken, a defending employer may raise an affirmative defense to liability or damages, subject to proof by a preponderance of evidence..... The defense comprise two necessary elements: (a) that the employer exercised reasonable care to prevent and correct promptly any sexually harassing behavior, and (b) that the plaintiff employee unreasonably failed to take advantage of any preventive or corrective opportunities provided by the employer or to avoid harm otherwise.

While proof that an employer had promulgated an anti-harassment policy with complaint procedure is not necessary in every instance as a matter of law, the need for a stated policy suitable to the employment circumstances may appropriately be addressed in any case when litigating the first element of defense. And while proof that an employee failed to fulfill the corresponding obligation of reasonable care to avoid harm is not limited to showing any unreasonable failure to use any complaint procedure provided by the employer, a demonstration of such failure will normally suffice to satisfy the employer's burden under the second element of the defense. No affirmative defense is available, however, when the supervisor's harassment culminates in a tangible employment action, such as discharge, demotion, or undesirable reassignment."

In the Burlington case, the Court stated that Burlington could still be held vicariously liable for Slowik's harassment but would have the opportunity to prove (with a preponderance of evidence) the two elements of the defense, remanding the case back to the lower court.

Beth Ann Faragher v. City of Boca Raton- Decided on June 26, 1998

In this case, the Court, in an opinion written by Justice Souter (also a 7 to 2 majority), reiterated verbatim the decision in Burlington regarding the vicarious liability of an employer for sexual harassment.

Facts

A lifeguard for the city of Boca Raton, Beth Ann Faragher, after resigning from her position, alleged that her supervisors had created a sexually hostile atmosphere by repeatedly subjecting Faragher and other female lifeguards, to "uninvited and offensive" touching, to lewd remarks, and to speaking of women in offensive terms.

Similar to Burlington, Faragher did not complain to higher management about the actions of her supervisors. However, the facts showed that the city of Boca Raton, although they had a sexual harassment policy in place, had entirely failed to disseminate its policy among the beach employees and that its officials made no attempt to keep track of beach supervisors.

The result is that the Court concluded that Boca Raton did not exercise reasonable care to prevent supervisors' conduct. Therefore, the first element of the outlined defense was missing and the city could not avail itself of the defense.

Some interesting comments were made by Justice Souter that shed some light on the Court's view of sexual harassment. Justice Souter stated:

"Most recently, we explained that Title VII does not prohibit 'genuine but innocuous differences in the ways men and women routinely interact with members of the same or opposite sex.' A recurring point in these opinions is that 'simple teasing', offhand comments, and isolated incidents (unless extremely serious) will not amount to discriminatory changes in the 'terms and conditions of employment.' These standards for judging hostility are sufficiently demanding to ensure Title VII does not become a 'general civility code.' Properly applied, they will filter out complaints attacking the 'ordinary tribulations of the workplace, such as sporadic use of abusive language, gender-related jokes, and occasional teasing.' We have made it clear that conduct must be extreme to amount to a change in the terms and conditions of employment, and the Courts of Appeals have heeded this view."

Conclusion:

Although this is not a clear a victory for employers, it does begin to clarify some issues. Employers should now have some sense of what they need to do to avoid vicarious liability for their supervisors' acts. First, all employers should adopt and regularly communicate a sexual harassment policy to all employees. Second, a non-adversarial internal complaint procedure must be clear to all and the employer must respond promptly and reasonably to such complaints. Finally, the employer must use reasonable efforts to monitor the workplace for incidents of harassment and deal with them promptly and effectively.

It is important to note that the Court did conclude that the defense to an employer's vicarious liability does NOT apply to situations in which the supervisor's actions have "culminated in a tangible employment action, such as discharge, demotion or undesirable reassignment." In such situation, the employer will be held vicariously liable unless they can show the supervisor's action does not constitute sexual harassment or was sex based. Further, these two cases addressed only the employer's vicarious liability for supervisors and not liability for the actions of co-employees.

■ ENDNOTES

¹ Kelly A.M. Bowdren, Esq., *Employment Practices Liability Insurance*, Second Edition, (Boston: Standard Publishing Corporation, 1999) p. 1.

² Ibid p. 3

³ Ibid p. 3

⁴ Ibid p. 3

⁵ Ibid p. 4

⁶ Ibid p. 4

⁷ Ibid p. 4

⁸ Ibid p. 4

⁹ Ibid p. 5

¹⁰ Ibid p. 5

¹¹ Steven H. Adelman and Kevin D. Kelley, *Employment Practices Liability –Summary of federal and state employment statutes* (Princeton: American Re-Insurance Company Corporate Communications and Advertising Department, 2000) p. 7-8

¹² Ibid p. 11-12

¹³ Ibid p. 14-15

¹⁴ Ibid p. 17-19

¹⁵ Ibid p. 30-32

¹⁶ Ibid p. 41-42



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Section 3

Commercial Property Checklist



Commercial Property Checklist A good beginning!

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I. Introductory Comments

A. Agency Standards

- Every insurance agency should have minimum coverage standards for each type of insurance policy written

B. Exposure Identification

1. Checklist and survey
2. Website Review
3. Flowchart
4. Insurance policy review
5. Physical inspections
6. Compliance review
7. Procedures and policies review
8. Contract review
9. Financial statement analysis
10. Loss data analysis

II. Overview

A. Types of property

1. Owned
2. Rented
3. Leased
4. Otherwise in named insured's care, custody, or control

B. Types of losses

1. Direct
2. Indirect
 - a. Business Income
 - b. Extra Expense
 - c. Loss of Use
 - d. Other Types Of Consequential loss

III. Building And Personal Property Coverage Form - **BUILDING**

A. New Construction – Under Construction – Under Renovation – New Location

1. Must examine Building And Personal Property Coverage Form – Vacancy Condition to determine definition of building, definition of vacant and how construction or renovation is affected by this provision – oftentimes, what the named insured considers vacant may vary from specific policy provisions

Loss Condition - Vacancy

6. Vacancy

a. Description Of Terms

- (1) As used in this Vacancy Condition, the term building and the term vacant have the meanings set forth in (1)(a) and (1)(b) below:
 - (a) When this policy is issued to a tenant, and with respect to that tenant's interest in Covered Property, building means the unit or suite rented or leased to the tenant. **Such building is vacant when it does not contain enough business personal property to conduct customary operations.**
 - (b) When this policy is issued to the owner or general lessee of a building, building means the entire building. **Such building is vacant unless at least 31% of its total square footage is:**
 - (i) Rented to a lessee or sublessee and used by the lessee or sublessee to conduct its customary operations; and/or
 - (ii) Used by the building owner to conduct customary operations.
- (2) Buildings **under construction or renovation** are **not** considered vacant.

b. Vacancy Provisions

If the building where loss or damage occurs has been vacant for more than 60 consecutive days before that loss or damage occurs:

- (1) We will not pay for any loss or damage caused by any of the following even if they are Covered Causes of Loss:
 - (a) Vandalism;
 - (b) Sprinkler leakage, unless you have protected the system against freezing;
 - (c) Building glass breakage;
 - (d) Water damage;
 - (e) Theft; or
 - (f) Attempted theft.
- (2) **With respect to Covered Causes of Loss other than those listed in b.(1)(a) through b.(1)(f) above, we will reduce the amount we would otherwise pay for the loss or damage by 15%.**

- **Vacancy Permit - CP 04 50** – waives the application of the vacancy clause for a specific time period shown on the endorsement
- **Vacancy Changes - CP 04 60** – changes the % for owner or general lessee to below 31%

- B. Tenant is insuring **entire building** – required by contract – policy needs to be endorsed to protect owner’s interest and owner’s involvement in claims settlement

1. **Additional Insured – Building Owner - CP 12 19**

- Adds building owner as a **named insured** as respects the building coverage for direct physical loss or damage to the building(s) described in the Schedule
- Does not require notice of cancellation or nonrenewal to the building owner

2. **Loss Payable Provisions - CP 12 18**

- Used to add building owner under Building Owner Loss Payable Clause
 - ❖ Does not require notice of cancellation or nonrenewal to the building owner
- Used to add mortgage holder under Lender’s Loss Payable Clause
 - ❖ Does require notice of cancellation or nonrenewal to the lender

- C. Tenant is contractually responsible for maintenance/repairs/replacement to a **portion of the building** without regard to cause – e.g., HVAC, glass, etc.

1. Building coverage may be needed – includes exterior glass – will need to add appropriate causes of loss as well

- Must activate Agreed Value to avoid potential coinsurance “problem”

Optional Coverage

G. Optional Coverages

If shown as applicable in the Declarations, the following Optional Coverages apply separately to each item:

1. **Agreed Value**

- a. **The Additional Condition, Coinsurance, does not apply to Covered Property to which this Optional Coverage applies.** We will pay no more for loss of or damage to that property than the proportion that the Limit of Insurance under this Coverage Part for the property bears to the Agreed Value shown for it in the Declarations.
- b. If the expiration date for this Optional Coverage shown in the Declarations is not extended, the Additional Condition, Coinsurance, is reinstated and this Optional Coverage expires.
- c. The terms of this Optional Coverage apply only to loss or damage that occurs:
- (1) On or after the effective date of this Optional Coverage; and
 - (2) Before the Agreed Value expiration date shown in the Declarations or the policy expiration date, whichever occurs first.

2. **Building Glass – Tenant’s Policy - CP 14 70**

- Not needed if there is building coverage – if used, can have its own deductible

3. ISO – Forms Designed for Exposure – 09 2017 edition date

- **Scheduled Building Property – Tenant’s Policy - CP 14 01 09 17**
 - Adds certain building property as insured property, on a scheduled basis. Under this endorsement, building property means the building glass, building fixtures and permanently installed machinery and equipment described in the Schedule.
 - When a Limit Of Insurance is shown for Building Glass, insurance is provided for building glass that is part of the building shown in the Schedule.
 - When a Limit Of Insurance is shown for Building Property Other Than Glass, insurance is provided for building fixtures and permanently installed machinery and equipment that are part of the building shown in the Schedule.
- **Unscheduled Building Property – Tenant’s Policy – CP 14 02 09 17**
 - Adds certain building property as insured property, on an unscheduled basis
 - When a Limit Of Insurance is shown for Building Glass, insurance is provided for building glass that is part of the building shown in the Schedule.
 - When a Limit Of Insurance is shown for Building Property Other Than Glass, insurance is provided for building fixtures and permanently installed machinery and equipment that are part of the building shown in the Schedule.
- **A Deductible is optional for building glass** (as it is currently under CP 14 70), in recognition of having that option in past ISO glass insurance forms. **A separate deductible applies on Building Property Other than Glass.**
- Endorsement **CP 14 70** is being withdrawn because the option to cover building glass is included in new endorsements CP 14 01 and CP 14 02.
- A. We will pay for direct physical loss of or damage to building property at the building shown in the Schedule caused by or resulting from a **Covered Cause of Loss shown in the Schedule**, provided that:
 - 1. You are a tenant of the building shown in the Schedule; and
 - 2. You have a contractual responsibility to insure such property, or a contractual responsibility to pay for loss or damage to such property.
- B. The value of building property covered under this endorsement will be determined in accordance with the terms of the **Valuation Condition indicated in the Schedule**, or at the amount for which you are liable under contract, whichever is less. If required by law, glass is covered at the cost of replacement with safety glazing material. However, the most we will pay for the coverage provided under this endorsement is the applicable Limit Of Insurance shown in the Schedule.
- C. The Coinsurance Condition applies to the property covered under this endorsement **only if a Coinsurance percentage is shown in the Schedule**.
- D. Any coverage provided under this Coverage Form or Policy for Your Business Personal Property or Personal Property Of Others does not apply to the property covered under this endorsement.

D. Other “building” considerations for coverage

1. Replacement Cost Optional Coverage

Optional Coverage

3. Replacement Cost

a. Replacement Cost (without deduction for depreciation) replaces Actual Cash Value in the Valuation Loss Condition of this Coverage Form.

.....

d. We will not pay on a replacement cost basis for any loss or damage:

- (1) Until the lost or damaged property is actually repaired or replaced; and
- (2) Unless the repairs or replacement is made as soon as reasonably possible after the loss or damage.

- How is this addressed by insurance proposals and insurance summaries?

2. Agreed Value Optional Coverage

Optional Coverage

1. Agreed Value

a. The Additional Condition, Coinsurance, does not apply to Covered Property to which this Optional Coverage applies. We will pay no more for loss of or damage to that property than the proportion that the Limit of Insurance under this Coverage Part for the property bears to the Agreed Value shown for it in the Declarations.

b. If the expiration date for this Optional Coverage shown in the Declarations is not extended, the Additional Condition, Coinsurance, is reinstated and this Optional Coverage expires.

c. The terms of this Optional Coverage apply only to loss or damage that occurs:

- (1) On or after the effective date of this Optional Coverage; and
- (2) Before the Agreed Value expiration date shown in the Declarations or the policy expiration date, whichever occurs first.

3. Increased Cost Of Loss And Related Expenses For Green Upgrades – CP 04 02

- Provides coverage for the increased costs of repairing or replacing covered property damaged by a covered cost of loss with materials that provide enhanced energy efficiency or use of environmentally-preferable, sustainable materials, products or methods in design, construction, manufacture or operations
- Can also provide coverage for related expenses of waste reduction and recycling, design and engineering professional expenses, certification fees and related equipment testing and building air-out and related air testing
- Can provide coverage for the increased period of restoration needed to build back in this manner

4. **Ordinance Or Law Coverage – CP 04 05**

- Can provide coverage for loss to the undamaged portion of the **building**, demolition costs for undamaged portion of the **building**, and increased costs of construction of the **building** to comply with ordinances or laws in effect ***at the time of loss – changes covered property which may necessitate increasing Limit Of Insurance – agency standard?***
- ***ISO made changes in 2017*** - CP 04 05 was revised to add an option to include an ordinance or law that is promulgated or revised after the loss but prior to commencement of reconstruction or repair, provided such ordinance or law requires compliance as a condition precedent to obtaining a building permit or certificate of occupancy.

5. **Debris Removal Additional Insurance – CP 04 15**

- Used to increase the additional debris removal coverage granted in the Coverage Form (\$25,000) to the amount specified in the endorsement – ***agency standard?***

6. **Functional Building Valuation – CP 04 38**

- Designed to insure an older building whose architectural style has become obsolete or simply unnecessary to the named insured's current use (replacement cost unnecessary in a total loss – ACV does not meet needs in a partial loss)
- Coinsurance does not apply
- Ordinance Or Law Coverage as part of Limit Of Insurance
- ***ISO made changes in 2017 – CP 04 38*** was revised to add an option to include an ordinance or law that is promulgated or revised after the loss but prior to commencement of reconstruction or repair, provided such ordinance or law requires compliance as a condition precedent to obtaining a building permit or certificate of occupancy

7. **Increase In Rebuilding Expenses Following Disaster (Additional Expense Coverage On Annual Aggregate Basis) – CP 04 09**

- Increases the Limit Of Insurance for expenses for labor and/or building materials for repair or replacement of the damaged property as a result of the declared disaster (required to be declared by state or federal authorities) and the total cost of repair or replacement exceeds the applicable Limit Of Insurance due to such increase in expenses (potential for “demand surge”)

8. **Earthquake And Volcanic Eruption Endorsement – CP 10 40**

- Adds the indicated causes of loss – all earthquake shocks or volcanic eruptions occurring within a 168-hour period are a single occurrence
- Special consideration needed for masonry veneer
- Does NOT change Covered Property – need to endorse – **Additional Covered Property – CP 14 10** – may then need to increase Limit Of Insurance

9. Flood Coverage Endorsement – CP 10 65

- Designed to **wrap around** (not supplement) coverage provided by the National Flood Insurance Program (allows insurer to waive requirement by specific location) – applies in excess of coverage available under NFIP (even if coverage does not exist) – defines flood under the endorsement as a general and temporary condition of partial or complete inundation of normally dry land areas
- Includes mudslide
- Includes coverage for back up and overflow from sewers, drains and sumps if such discharge occurs within 72 hours after the flood recedes
- Provides coverage for loss to underground foundations and underground pipes/flues/drains (changes Covered Property)
- Excludes coverage for bulkheads/pilings/piers/wharves/docks/retaining walls even if they are Covered Property
- Covers removal of flood-borne debris of Covered Property and other property (excluding mud deposits)
- Covers removal of debris of Covered Property from premises other than the named insured's premises
- An annual aggregate limit of insurance applies
- Coinsurance applies unless the NO COINSURANCE OPTION is selected

10. Discharge From Sewer, Drain Or Sump (Not Flood Related) – CP 10 38

- Includes coverage for discharge of water or waterborne material from a sewer, drain (including a roof drain) or sump located on the described premises, provided such discharge is not induced by flood or flood-related conditions
- Does NOT apply if discharge results from insured's failure to perform routine maintenance or repairs OR to sump pump failure resulting from power failure unless policy is endorsed to cover power failure affecting the described premises
- Discharge limit for property damage to Covered Property and business income (if carried) as well as optional Annual Aggregate Limitation

11. Equipment Breakdown Cause Of Loss – CP 10 46

- Used to add coverage for causes of loss otherwise excluded/limited
- Deletes exclusions related to artificially generated electrical, magnetic and electromagnetic energy; mechanical breakdown; explosion of steam equipment
- Deletes limitations applicable to steam equipment and water heating equipment
- Add exclusions for pressure or electrical testing as well as wear and tear and inherent vice
- Coverage for Ammonia Contamination And Hazardous Substance is limited to the lesser of 10% of the Limit Of Insurance or \$25,000 – higher limits may be selected

12. Additional Covered Property – CP 14 10

- Used to add coverage for otherwise excluded property (deletes Property Not Covered)
- Examples, if earthquake added as a cause of loss, then would need to add coverage for foundation, underground pipes/flues/drains, cost of excavations – a restaurant risk on the water may want coverage for pilings, piers, wharves or docks - may want coverage for “full” perils for a fence or detached retaining wall

13. Additional Property Not Covered – CP 14 20

- Used to exclude property that is included automatically as Covered Property
- Examples include tenants improvements and betterments where landlord has required tenant to insure, outdoor fixtures, etc.

14. Additional Building Property – CP 14 15

- Adds coverage for fixtures, machinery, and equipment that are not permanently installed under the building coverage - building rate will apply
- For example, would allow walk-in coolers/freezers to be building items
- Could also “add” tenants improvements and betterments **for the tenant** as building

15. Outdoor Trees, Shrubs And Plants – CP 14 30

- Adds trees, shrubs, and plants to the definition of Covered Property for Basic, Broad, or Special Causes of Loss
- Limit Of Insurance chosen for each tree/shrub/plant as well as all items combined (includes debris removal in Limit Of Insurance for ALL Items)
- In addition to Causes Of Loss exclusions/limitations adds exclusions for dampness or dryness of atmosphere, changes in or extremes of temperature, and rain/snow/ice/sleet – option for Vehicle Exclusion
- Coverage Extension – Outdoor Property and Additional Coverage – Debris Removal do not apply to the property covered under this endorsement

16. Outdoor Signs – CP 14 40

- Increases the BPPCF limitation of \$2500 per occurrence for all outdoor signs to the Limits Of Insurance shown for the described signs
- Will want to properly “address” awnings that are signs

17. Radio Or Television Antennas – CP 14 50

- Adds radio or television antennas (including satellite dishes) and their lead-in wiring, masts or towers, as described in the schedule to the definition of Covered Property for Basic, Broad or Special Causes of Loss
- Limit Of Insurance chosen is shown on Schedule
- In addition to Causes Of Loss exclusions/limitations, adds exclusions for dampness or dryness of atmosphere, changes in or extremes of temperature, and rain/snow/ice/sleet

IV. Building And Personal Property Coverage Form – **BUSINESS PERSONAL PROPERTY**

A. Tenant's Improvements & Betterments

Definition of Your Business Personal Property

- (6)** Your use interest as tenant in improvements and betterments. Improvements and betterments are fixtures, alterations, installations or additions:
- (a)** Made a part of the building or structure you occupy but do not own; and
 - (b)** You acquired or made at your expense but cannot legally remove;

1. Specifically defined in the Coverage Form - may be different from what the named insured thinks these are
2. Can be insured as a separate item under Your Business Personal Property and building rate is then used instead of personal property rate

- **Your Business Personal Property – Separation of Coverage – CP 19 10**

3. Only for direct damage - need indirect loss coverage

- **Leasehold Interest Coverage Form – CP 00 60** - provides coverage for unamortized portion of use interest in improvements and betterments when lease cancellation results from a covered cause of loss at the described premises
- **Additional Building Property – CP 14 15** - can be used to make tenants improvements and betterments Building in order to provide coverage for the tenant for destruction due to enforcement of an ordinance or law – would need to add **Ordinance Or Law Coverage – CP 04 05**
- **ISO made changes in 2017 - Ordinance Or Law Coverage For Tenant's Interest In Improvements And Betterments (Tenant's Policy) – CP 04 26 09 17** - with the exception of terminology relating to improvements and betterments specific to this endorsement, and provisions recognizing the situations in which building codes may impact such property, the scope of Coverage A, Coverage B and Coverage C in new endorsement **CP 04 26** is **equivalent to** that of **CP 04 05**

4. Coverage may be needed/provided for both tenant and building owner – as previously stated, if owner does not want to insure, need to endorse

- **Additional Property Not Covered – CP 14 20** - tenants improvements and betterments can/should be excluded from landlord's BPP Coverage Form (potential coinsurance issue for landlord) if landlord has a contract where tenant must insure and replace

B. Leased Personal Property

Definition of Your Business Personal Property

7. Leased personal property for which you have a **contractual responsibility to insure**, unless otherwise provided for under Personal Property Of Others.

1. Specifically must have a contractual responsibility **to insure**
2. A contractual responsibility for loss is not enough

- **Leased Property – CP 14 60**

- Provides coverage for leased property as Your Business Personal Property
- Valuation may be on an agreed value (stipulated loss value) basis
- Should be attached to every policy even if no leased property at inception – Agency Standard?
- Schedule of endorsement for leased property should indicate “all leased property”
- Schedule of endorsement for agreed value should indicate “as required by lease”

C. Additional Your Business Personal Property Considerations

1. May want to modify causes of loss

- **Utility Services - Direct Damage – CP 04 17**

- Adds coverage for damage to covered property resulting from interruption of any of the utility services identified if the interruption results from a covered cause of loss – overhead transmission lines must be specifically included
- Provides coverage for direct damage only

- **Spoilage Coverage – CP 04 40**

- Adds coverage for damage to perishable stock due to breakdown or contamination (mechanical breakdown or mechanical failure of refrigerating, cooling or humidity control apparatus or equipment and contamination by the refrigerant)
- Adds coverage for damage to perishable stock for power outage beyond named insured’s control
- May be written to include selling price
- Has own set of exclusions/limitations applicable – e.g., disconnection from a source of power, turning the power switch off, breaking of glass that is part of unit, etc.
- May receive a credit for a refrigeration maintenance agreement but if declared agreement is voluntarily terminated, coverage is suspended

- **Earthquake and Volcanic Eruption Endorsement – CP 10 40**

- **Flood Coverage Endorsement – CP 10 65**

- **Discharge From Sewer, Drain or Sump (Not Flood Related) – CP 10 38**

- **Equipment Breakdown Cause Of Loss – CP 10 46**

2. May **not** want to include certain business personal property in coverage as would be included in calculation for compliance with coinsurance

- **Additional Property Not Covered – CP 14 20**

3. Valuation may not meet need

Optional Coverage

3. Replacement Cost

- a. Replacement Cost (without deduction for depreciation) replaces Actual Cash Value in the Valuation Loss Condition of this Coverage Form.
- b. **This Optional Coverage does not apply to:**
 - (1) *Personal property of others;*
 - (2) *Contents of a residence;*
 - (3) Works of art, antiques or rare articles, including etchings, pictures, statuary, marbles, bronzes, porcelains and bric-a-brac; or
 - (4) "Stock," unless the Including "Stock" option is shown in the Declarations.Under the terms of this Replacement Cost Optional Coverage, tenants' improvements and betterments are not considered to be the personal property of others.

- Need for specific coverage for Personal Property Of Others
- Activate **Extension Of Replacement Cost To Personal Property Of Others – Optional Coverage** – to be discussed shortly

4. May want coverage for business personal property stored in a building for which building coverage is not wanted

Definition of Your Business Personal Property

- b. Your Business Personal Property** consists of the following property located in or on the building or structure described in the Declarations or in the open (or in a vehicle) within 100 feet of the building or structure or within 100 feet of the premises described in the Declarations, whichever distance is greater:

- Solution - schedule building but show no Limit Of Insurance for the Building; show Limit Of Insurance for Your Business Personal Property

5. May want to change valuation for certain types of property

- **Distilled Spirits and Wines Market Value – CP 99 05**
 - Producers, processors, distributors, and retailers of alcoholic beverages can cover distilled spirits and wine on a market value basis
 - Bottled distilled spirits are valued at the market price as of the time and place of loss or damage
 - Bottled winery products are valued at the market price the case goods could have been sold as of the time and place of loss or damage
 - Establishes that paid and unpaid taxes that are refundable federal excise taxes and customs duties as well as refundable state and local taxes are either deducted from the value or recoverable by the insurer – these are refundable when they are “damaged” by any peril except theft
- **Alcoholic Beverages Tax Exclusion – CP 99 10**
 - Allows insured to exclude value for refundable federal excise taxes and customs duties as well as refundable state and local taxes from value of business personal property held for sale that consist of distilled spirits, wines, rectified products (e.g., Everclear) and beer for all perils other than theft and increase value of this business personal property for the peril of theft
- **Manufacturer's Selling Price (Finished "Stock" Only) - CP 99 30**
 - Allows insured to be paid for the profit that would otherwise have been earned from the sale of finished stock had it not been damaged by an insured peril – *agency standard for manufacturing risk?*
- **Market Value—Stock - CP 99 31**
 - Allows the insured to be paid the market value of stock that is bought and sold at an established market exchange where the market prices are posted and quoted
- **Manufacturers Consequential Loss Assumption – CP 99 02**
 - Allows the insured to recover the reduction in value of undamaged stock in the process of manufacture that is caused by damage to other stock (e.g., businesses that manufacture products that are sold in matched sets, using the same materials for all parts of the set – when one part is damaged, the other part has less value)
- **Functional Personal Property Valuation (Other Than Stock) – CP 04 39**
 - Allows the insured to replace personal property with the most closely equivalent property available
 - Coinsurance does not apply

6. Business personal property off premises
 - a. As Coverage Extension in Coverage Form

Coverage Extension

d. Property Off-premises

- (1) You may extend the insurance provided by this Coverage Form to apply to your Covered Property while it is away from the described premises, if it is:
 - (a) Temporarily at a location you do not own, lease or operate;
 - (b) In storage at a location you lease, provided the lease was executed after the beginning of the current policy term; or
 - (c) At any fair, trade show or exhibition.
- (2) This Extension does not apply to property:
 - (a) In or on a vehicle; or
 - (b) In the care, custody or control of your salespersons, unless the property is in such care, custody or control at a fair, trade show or exhibition.
- (3) The most we will pay for loss or damage under this Extension is \$10,000.

- b. As Coverage Extension in Causes of Loss – Special Form

Coverage Extension

1. Property In Transit

This Extension applies only to your personal property to which this form applies.

- a. You may extend the insurance provided by this Coverage Part to apply to your personal property (other than property in the care, custody or control of your salespersons) in transit more than 100 feet from the described premises. Property must be in or on a motor vehicle you own, lease or operate while between points in the coverage territory.
- b. Loss or damage must be caused by or result from one of the following causes of loss:
 - (1) Fire, lightning, explosion, windstorm or hail, riot or civil commotion, or vandalism.
 - (2) Vehicle collision, upset or overturn. Collision means accidental contact of your vehicle with another vehicle or object. It does not mean your vehicle's contact with the roadbed.
 - (3) Theft of an entire bale, case or package by forced entry into a securely locked body or compartment of the vehicle. There must be visible marks of the forced entry.
- c. The most we will pay for loss or damage under this Extension is \$5,000.

- Not the best method for insuring this exposure
- **Specified Business Personal Property Temporarily Away From Premises - CP 04 04**
 - Schedule shows Limit Of Insurance as well as type(s) or item(s) of business personal property
 - Not intended to apply to stock or salespersons samples unless at fair, trade show, or exhibit and theft from a vehicle must be visible signs of forced entry
 - **BUT** potential for property shipped at named insured's risk – need to check purchase orders, shipping documents, etc. – may need inland marine coverage

V. Building And Personal Property Coverage Form – **PERSONAL PROPERTY OF OTHERS**

A. As a Coverage Extension

Coverage Extension

b. Personal Effects And Property Of Others

You may extend the insurance that applies to Your Business Personal Property to apply to:

(1) Personal effects owned by you, your officers, your partners or members, your managers or your employees. This Extension does not apply to loss or damage by theft.

(2) Personal property of others in your care, custody or control.

The most we will pay for loss or damage under this Extension is \$2,500 at each described premises. Our payment for loss of or damage to personal property of others will only be for the account of the owner of the property.

1. Limited to \$2,500 and would not apply to Property NOT Covered
2. Previously stated - valuation is also limited to ACV

Optional Coverage

3. Replacement Cost

a. Replacement Cost (without deduction for depreciation) replaces Actual Cash Value in the Valuation Loss Condition of this Coverage Form.

b. This Optional Coverage does not apply to:

(1) Personal property of others;

B. Covered Property - Personal Property of Others

Covered Property

C. Personal Property Of Others that is:

(1) In your care, custody or control; and

(2) Located in or on the building or structure described in the Declarations or in the open (or in a vehicle) within 100 feet of the building or structure or within 100 feet of the premises described in the Declarations, whichever distance is greater.

However, our payment for loss of or damage to personal property of others will only be for the account of the owner of the property.

1. Limited as to where this property is covered
2. Still subject to Property NOT Covered
3. **Only pays for direct damage** - what about potential exposure for loss of use? – **Legal Liability Coverage Form – CP 00 40**
4. Still subject to Causes of Loss Exclusions/Limitations - need to determine exposures/solutions

4. Valuation may be Replacement Cost, if extended

Covered Property

4. Extension Of Replacement Cost To Personal Property Of Others

- a. If the Replacement Cost Optional Coverage is shown as applicable in the Declarations, then this Extension may also be shown as applicable. If the Declarations show this Extension as applicable, then Paragraph **3.b.(1)** of the Replacement Cost Optional Coverage is deleted and all other provisions of the Replacement Cost Optional Coverage apply to replacement cost on personal property of others.
- b. With respect to replacement cost on the personal property of others, the following limitation applies:

If an item(s) of personal property of others is subject to a written contract which governs your liability for loss or damage to that item(s), then valuation of that item(s) will be based on the amount for which you are liable under such contract, **but not to exceed the lesser of the replacement cost of the property or the applicable Limit of Insurance.**

5. Valuation may be changed for certain types of property of others

- **Storage or Repairs Limited Liability – CP 99 42**

- Valuation of property of others held by the insured for storage or repairs becomes the lesser of the item's actual cash value or the value declared on the receipt issued by the insured to the insured's customer

C. Other types of coverages may be needed

- **Garagekeepers Coverage – CA 99 37**

- Insurer will pay all sums the insured legally must pay as damages for loss to a customer's auto or customer's auto equipment left in the insured's care while the insured is attending, servicing, repairing, parking or storing it in the named insured's garage operations under comprehensive, specified causes of loss and collision subject to a deductible
- Coverage may be written on a legal liability basis, a direct excess basis or a direct primary basis
- Does not provide insurance protection for any contents of the customer's auto

- **Bailee's Customers Coverage (or similar commercial inland marine coverages)**

- Can be written on a legal liability basis or without regard to legal liability
- Valuation is ACV but may be changed to replacement costs if written without regard to legal liability
- Usually no insurance protection for loss of use of the damaged or destroyed property

- **Legal Liability Coverage Form - CP 00 40**

- Provide coverage for the named insured's legal liability for direct physical loss or damage (including loss of use) to property, either real or personal (other than electronic data), in the named insured's care, custody, and control caused by an accident and resulting from a covered cause of loss
- Causes Of Loss Form has an exclusion for liability assumed under contract, so this coverage is for tort liability only

- **Money & Securities – Commercial Crime – Loss Sustained or Discovery**
- **Employee Theft – Commercial Crime – Loss Sustained or Discovery**
- **Equipment Breakdown Coverage Form – EB 00 20**
 - The ISO Equipment Breakdown Protection Coverage Form provides coverage by incorporating coverages into the form that are activated by inserting a limit, number of days, or the word “INCLUDED” on the Declarations. (EB DS 07 09 11)

Insurance applies only to a coverage for which a Limit of Insurance, a number of Days/Hours or the word INCLUDED is shown. If INCLUDED is shown, then the limit for that coverage is part of the Limit Per Breakdown.	
Coverage	Limit Of Insurance Or Days/Hours
Limit Per Breakdown	
1. Property Damage	
2. Expediting Expense	
3. Business Income/Extra Expense a. Extra Expense Only b. Extended Period Of Restoration (Number Of Days Of Coverage) c. Data Or Media (\$25,000 Limit Of Insurance) or	Days
4. Spoilage Damage	
5. Utility Interruption a. Coverage applies only if the interruption of services lasts at least:	Hours
6. Newly Acquired Premises a. (Number Of Days Of Coverage)	INCLUD- ED Days
7. Ordinance Or Law	
8. Errors And Omissions	
9. Brands And Labels	
10. Contingent Business Income/Extra Expense a. Covered Premises: b. Sales, Services Or Materials:	
EB DS 07 09 11 © Insurance Services Office, Inc., 2010	

D. Watch out for:

- **Protective Safeguards Endorsement – CP 04 11**

Endorsement – IN PART

B. The following is added to the **Exclusions** section of:

Causes Of Loss – Basic Form
 Causes Of Loss – Broad Form
 Causes Of Loss – Special Form
 Mortgageholders Errors And Omissions Coverage Form
 Standard Property Policy

We will not pay for loss or damage caused by or resulting from fire if, prior to the fire, you:

1. Knew of any suspension or impairment in any protective safeguard listed in the Schedule above and failed to notify us of that fact; or
2. Failed to maintain any protective safeguard listed in the Schedule above, and over which you had control, **in complete working order**.

If part of an Automatic Sprinkler System or Automatic Commercial Cooking Exhaust And Extinguishing System is shut off due to breakage, leakage, freezing conditions or opening of sprinkler heads, notification to us will not be necessary if you can restore full protection within 48 hours.

2017 Changes CP 04 11

A. The following is added to the Commercial Property Conditions:

Protective Safeguards

As a condition of this insurance, you are required to:

1. Maintain the protective safeguards-listed in the Schedule and over which you have control, in complete working order;
2. **Actively engage and maintain in the "on" position at all times any automatic fire alarm or other automatic system listed in the Schedule;** and
3. Notify us if you know of any suspension of or impairment in any protective safeguard listed in the Schedule.

However, if part of an Automatic Sprinkler System or Automatic Commercial Cooking Exhaust And Extinguishing System is shut off due to breakage, leakage, freezing conditions or opening of sprinkler heads, notification to us will not be necessary if you can restore full protection within 48 hours.

B. The following is added to the **Exclusions** section of:

Causes Of Loss – Basic Form
 Causes Of Loss – Broad Form
 Causes Of Loss – Special Form

We will not pay for loss or damage caused by or resulting from fire if, prior to the fire, you failed to comply with any condition set forth in Paragraph **A**.

• **Burglary And Robbery Protective Safeguards – CP 12 11**

Endorsement – IN PART

B. The following is added to the Exclusions section of the Causes Of Loss – Special Form:

BURGLARY AND ROBBERY PROTECTIVE SAFEGUARDS

We will not pay for loss or damage caused by or resulting from theft if, prior to the theft, you:

1. ***1. Knew of any suspension or impairment in any protective safeguard listed in the Schedule above and failed to notify us of that fact,*** or
2. Failed to maintain any protective safeguard listed in the Schedule above, and over which you had control, ***in complete working order.***

2017 Changes CP 12 11

A. The following is added to the Commercial Property Conditions:

Burglary And Robbery Protective Safeguards

As a condition of this insurance, you are required to:

1. Maintain the protective safeguards listed in the Schedule, and over which you have control, in complete working order.;
2. **Actively engage any automatic burglary alarm or other automatic system listed in the Schedule and maintain it in the "on" position during all non-work hours and whenever the premises are unoccupied;**
3. Actively engage an automatic burglary alarm or other automatic system, or parts thereof, in accordance with any other requirements, if any, indicated in the Schedule; and
4. Notify us if you know of any suspension of or impairment in any protective safeguard listed in the Schedule.

However, notification to us of the suspension of or impairment in an automatic burglary alarm or other automatic system listed in the Schedule will not be necessary if you:

- a. Can restore full protection within 48 hours of the suspension or impairment;
- b. Provide at least one watchperson or other means of surveillance at the premises during all non-work hours and whenever the premises are otherwise unoccupied; and
- c. Provide at least one watchperson or other means of surveillance during work hours if the Schedule requires that the premises or part thereof be protected during work hours.

B. The following is added to the **Exclusions** section of the Causes Of Loss – Special Form:

Burglary And Robbery Protective Safeguards

We will not pay for loss or damage caused by or resulting from theft if, prior to the theft, you failed to comply with any condition set forth in Paragraph **A.**

- **Limitation on Loss Settlement—Blanket Insurance (Margin Clause) - CP 12 32**

Endorsement – IN PART

B. Margin Clause

With respect to property that is subject to a Blanket Limit of Insurance, we will determine a maximum loss payable for each building and for the contents of each building or the contents at each premises. The maximum loss **payable is determined by applying the applicable Margin Clause percentage indicated in the Schedule to the value of the property as shown in the latest statement of values reported to us.** If the statement of values does not state individually the value of each building and the value of contents at each building or premises, we will determine individual values as a part of the total reported values prior to application of the Margin Clause percentage.

Actual loss payment will be determined based on the amount of loss or damage subject to all applicable policy provisions including the Limits of Insurance Condition, Coinsurance, Deductible and Valuation Conditions. But the actual loss payment, for each building, for the contents of each building or for the contents at each premises, will not exceed the maximum loss payable as described above and will not exceed the Blanket Limit of Insurance.

The Margin Clause does not increase the Blanket Limit of Insurance.

- **Limitations on Coverage for Roof Surfacing - CP 10 36**

Endorsement – IN PART

A. The following applies with respect to loss or damage by a **Covered Cause of Loss (including wind and hail if covered)** to a building or structure identified in the Schedule as being subject to this Paragraph **A.:**

Replacement Cost coverage (if otherwise applicable to such property) does not apply to roof surfacing. **Instead, we will determine the value of roof surfacing at actual cash value as of the time of loss or damage.**

B. The following applies with respect to loss or damage by **wind and/or hail** to a building or structure identified in the Schedule as being subject to this Paragraph **B.:**

We will not pay for cosmetic damage to roof surfacing caused by wind and/or hail. For the purpose of this endorsement, cosmetic damage means that the wind and/or hail caused marring, pitting or other superficial damage that altered the appearance of the roof surfacing, but such damage does not prevent the roof from continuing to function as a barrier to entrance of the elements to the same extent as it did before the cosmetic damage occurred.

C. For the purpose of this endorsement, roof surfacing refers to the shingles, tiles, cladding, metal or synthetic sheeting or similar materials covering the roof and includes all materials used in securing the roof surface and all materials applied to or under the roof surface for moisture protection, as well as roof flashing.

- **Exclusion of Loss Due to By-Products of Production or Processing Operations (Rental Properties) - CP 10 34**

Endorsement – IN PART

A. The terms of this endorsement apply to the rental unit(s) described in the Schedule, and to the building(s) in which such unit(s) is located, including any contents of such unit(s) and building(s), all of which constitute the described premises for the purpose of this endorsement.

B. We will not pay for loss or damage to the described premises, caused by or resulting from smoke, vapor, gas or any substance released in the course of production operations or processing operations performed at the rental unit(s) described in the Schedule. This exclusion applies regardless of whether such operations are:

1. Legally permitted or prohibited;
2. Permitted or prohibited under the terms of the lease; or
3. Usual to the intended occupancy of the premises.

This exclusion does not apply to loss or damage by fire or explosion that results from the release of a by-product of the production or processing operation.

C. If the loss or damage described in Paragraph **B.** results in Business Income loss or Extra Expense, there is no coverage for such loss or expense under the business income and/or extra expense forms listed in this endorsement, or under any other business interruption insurance if provided under this policy.

D. The conduct of a tenant's production or processing operations will not be considered to be vandalism of the rental premises regardless of whether such operations are:

1. Legally permitted or prohibited;
2. Permitted or prohibited under the terms of the lease; or
3. Usual to the intended occupancy of the premises.

- Other warranty endorsements

VI. Business Income Coverage Form

A. Business Income Defined

A. Coverage

1. Business Income

Business Income means the:

- a. Net Income (Net Profit or Loss before income taxes) that would have been earned or incurred; and
 - b. Continuing normal operating expenses *incurred*, including payroll.
- For manufacturing risks, Net Income includes the net sales value of production.

- 1. Profit not required
- 2. Net loss subtracted from continuing normal operating expenses incurred in determining amount of business income
- 3. While payroll is included in this definition, Loss Determination Loss Condition states that payroll is included only to the extent that it is necessary to resume operations with the same quality of service that existed just before the loss

- And, for certain types of risks, **will tips be included in definition of payroll?**

Loss Condition

3. Loss Determination

a. The amount of Business Income loss will be determined based on:

- (3) The operating expenses, including payroll expenses, necessary to resume "operations" ***with the same quality of service that existed just before the direct physical loss or damage;*** and

- Possibility of insurer/insured disagreement as to what payroll is necessary
- **Discretionary Payroll Expenses – CP 15 04** eliminates any possibility of dispute
 - Job Classifications or Employees are shown in Schedule
 - Includes this payroll if paid for period of restoration/extension of period of restoration (any/all) unless otherwise limited by Schedule in endorsement

B. Options

Coverage is provided as described and limited below for one or more of the following options for which a Limit Of Insurance is shown in the Declarations:

- (1) Business Income Including "Rental Value".
- (2) Business Income Other Than "Rental Value".
- (3) "Rental Value".

- Named insured could have tenant occupancy – e.g., rents upstairs apartment – and would need to include “rental value” – CAUTION: options create errors

C. Coverage “trigger”

We will pay for the actual loss of Business Income you sustain due to the necessary "suspension" of your "operations" during the "period of restoration". The "suspension" must be caused by direct physical loss of or damage to property at premises which are described in the Declarations and for which a Business Income Limit Of Insurance is shown in the Declarations. The loss or damage must be caused by or result from a Covered Cause of Loss. With respect to loss of or damage to personal property in the open or personal property in a vehicle, the described premises include the area within 100 feet of such premises.

With respect to the requirements set forth in the preceding paragraph, if you occupy only part of a building, your premises means:

- (a)** The portion of the building which you rent, lease or occupy;
- (b)** Any area within 100 feet of the building or within 100 feet of the premises described in the Declarations, whichever distance is greater (with respect to loss of or damage to personal property in the open or personal property in a vehicle); and
- (c)** Any area within the building or at the described premises, if that area services, or is used to gain access to, the portion of the building which you rent, lease or occupy.

1. Suspension

6. "Suspension" means:

- a.** The slowdown or cessation of your business activities; or
- b.** That a part or all of the described premises is rendered untenable, if coverage for Business-Income Including "Rental Value" or "Rental Value" applies.

2. Operations

2. "Operations" means:

- a.** Your business activities occurring at the described premises; and
- b.** The tenantability of the described premises, if coverage for Business Income Including "Rental Value" or "Rental Value" applies.

3. Period of Restoration

3. "Period of restoration" means the period of time that:

a. Begins:

- (1) 72 hours after the time of direct physical loss or damage for Business Income Coverage; or
- (2) Immediately after the time of direct physical loss or damage for Extra Expense Coverage; caused by or resulting from any Covered Cause of Loss at the described premises; and

b. Ends on the earlier of:

- (1) The date when the property at the described premises **should be** repaired, rebuilt or replaced with reasonable speed and similar quality; or
- (2) The date when business is resumed at a new permanent location.

"Period of restoration" does not include any increased period required due to the enforcement of or compliance with any ordinance or law that:

- (1) Regulates the construction, use or repair, or requires the tearing down, of any property; or
- (2) Requires any insured or others to test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to, or assess the effects of "pollutants".

The expiration date of this policy will not cut short the "period of restoration".

- 72 hours may be too long as a waiting period deductible – endorsement needed
- **Business Income Changes – Beginning Period of the Period of Restoration – CP 15 56** to change to 24 hours or eliminate entirely
- Remember ordinance or law exposure – if endorsed to policy for direct damage, should endorse to policy for time element coverage - **Ordinance or Law – Increased Period of Restoration - CP 15 31 – *agency standard*?**
- For many risks this time period will not be sufficient – need to extend period for payment of business income loss beyond “period of restoration”
- **Additional Coverage – Extended Business Income** – gives 60 days coverage

c. Extended Business Income

(1) Business Income Other Than "Rental Value"

If the necessary "suspension" of your "operations" produces a Business Income loss payable under this policy, we will pay for the actual loss of Business Income you incur during the period that:

- (a)** Begins on the date property (except "finished stock") is actually repaired, rebuilt or replaced and "operations" are resumed; and
- (b)** Ends on the earlier of:
 - (i)** The date you could restore your "operations", with reasonable speed, to the level which would generate the business income amount that would have existed if no direct physical loss or damage had occurred; or
 - (ii)** 60 consecutive days after the date determined in **(1)(a)** above.

However, Extended Business Income does not apply to loss of Business Income incurred as a result of unfavorable business conditions caused by the impact of the Covered Cause of Loss in the area where the described premises are located.

Loss of Business Income must be caused by direct physical loss or damage at the described premises caused by or resulting from any Covered Cause of Loss.

- Should be extended beyond 60 days
- Available as one of the **Optional Coverages**

4. Extended Period Of Indemnity

Under Paragraph **A.5.c., Extended Business Income**, the number 60 in Subparagraphs **(1)(b)** and **(2)(b)** is replaced by the number shown in the Declarations for this Optional Coverage.

- Should be extended for period needed for exposure
 - 4. Described premises
- Losses may occur at other than the described premises that will affect named insured's business income
 - a. Policy may provide coverage automatically

5. Additional Coverages**a. Civil Authority**

In this Additional Coverage, Civil Authority, the described premises are premises to which this Coverage Form applies, as shown in the Declarations.

When a Covered Cause of Loss causes damage to property other than property at the described premises, we will pay for the actual loss of Business Income you sustain and necessary Extra Expense caused by action of civil authority that prohibits access to the described premises, provided that both of the following apply:

- (1) Access to the area immediately surrounding the damaged property is prohibited by civil authority as a result of the damage, and the described premises are within that area but are not more than one mile from the damaged property; and
- (2) The action of civil authority is taken in response to dangerous physical conditions resulting from the damage or continuation of the Covered Cause of Loss that caused the damage, or the action is taken to enable a civil authority to have unimpeded access to the damaged property.

Civil Authority Coverage for Business Income will begin 72 hours after the time of the first action of civil authority that prohibits access to the described premises and will apply for a period of up to four consecutive weeks from the date on which such coverage began.

Civil Authority Coverage for Extra Expense will begin immediately after the time of the first action of civil authority that prohibits access to the described premises and will end:

- (1) Four consecutive weeks after the date of that action; or
 - (2) When your Civil Authority Coverage for Business Income ends;
- whichever is later.

- Must be caused by act of civil authority
- Proximity to described premises limited
 - May need to endorse – **Civil Authority Changes – CP 15 32** – increase radius
- Covered Cause Of Loss required
- Duration of coverage limited
 - May need to endorse – **Civil Authority Changes – CP 15 32** – increase duration

b. Endorsements may be attached

- **Food Contamination (Business Interruption And Extra Expense) - CP 15 05**
 - Extend coverage to apply to expenses to clean the named insured's equipment as required by governmental authority, to costs to replace the food that is or is suspected to be contaminated, to expenses of necessary medical tests or vaccinations for employees, unless they are provided coverage under a Workers Compensation And Employers Liability Insurance Policy, to the loss of Business Income the named insured sustains due to the necessary suspension of the named insured's operations as a result of the food contamination (as defined in the endorsement) which begins 24 hours after the named insured receives notice of closing from the governmental authority; and to the additional advertising expenses the named insured incurs to restore the named insured's reputation
 - With respect to the coverage provided under this endorsement, any exclusion of virus or bacteria in the policy does not apply
 - There is no coverage for fines or penalties imposed by a governmental authority.
 - There are two annual aggregate limits for each described location – Food Contamination Limit applies to all expenses for which insurance protection is provided except the additional advertising expenses – Additional Advertising Expense Limit applies to that particular expense
- **Business Income from Dependent Properties – Broad Form – CP 15 08**
 - Extends named insured's business income limits to dependent property locations listed on endorsement – may extend coverage as well to secondary contributing or secondary recipient locations (neither named)
- **Business Income from Dependent Properties – Limited Form – CP 15 09**
 - Shows business income limits applicable to dependent property locations listed on endorsement - may extend coverage as well to secondary contributing or secondary recipient locations (neither named)
- **Off-Premises Interruption of Business – Vehicles and Mobile Equipment – CP 15 06**
 - Adds coverage for business income loss, extra expense loss, or both, resulting from loss or damage to vehicles and mobile equipment on which the business depends
- ❖ **Business Interruption Coverage – CA 99 05**
 - Adds coverage for business income and extra expense or business income only resulting from loss or damage to vehicles and mobile equipment on which the business depends

5. Covered Cause of Loss

a. Many of the same concerns as for building/business personal property

- But special need for **Utility Services – Time Element – CP 15 45**
 - Need to be sure to properly address overhead transmission lines
 - **ISO revised 2017** - to enable selection of an independent waiting period for Business Income losses arising from utility services interruption, that is, a waiting period which could be different from the policy's waiting period – options for no-waiting-period; 12 hours; 24 hours; 48 hours; 72 hours; 96 hours; 120 hours; 144 hours; 168 hours
- May have need for **DIC** for additional causes of loss

b. But **Causes of Loss – Special Form - CP 10 30** has specific exclusions applicable

4. Special Exclusions

The following provisions apply only to the specified Coverage Forms.

a. Business Income (And Extra Expense) Coverage Form, Business Income (Without Extra Expense) Coverage Form, Or Extra Expense Coverage Form

We will not pay for:

- (1) Any loss caused by or resulting from:
 - (a) Damage or destruction of "finished stock"; or
 - (b) The time required to reproduce "finished stock".

This exclusion does not apply to Extra Expense.
- (2) Any loss caused by or resulting from direct physical loss or damage to radio or television antennas (including satellite dishes) and their lead-in wiring, masts or towers.
- (3) Any increase of loss caused by or resulting from:
 - (a) Delay in rebuilding, repairing or replacing the property or resuming "operations", due to interference at the location of the rebuilding, repair or replacement by strikers or other persons; or
 - (b) Suspension, lapse or cancellation of any license, lease or contract. But if the suspension, lapse or cancellation is directly caused by the "suspension" of "operations", we will cover such loss that affects your Business Income during the "period of restoration" and any extension of the "period of restoration" in accordance with the terms of the Extended Business Income Additional Coverage and the Extended Period Of Indemnity Optional Coverage or any variation of these.
- (4) Any Extra Expense caused by or resulting from suspension, lapse or cancellation of any license, lease or contract beyond the "period of restoration".
- (5) Any other consequential loss.

- No coverage for business income or extra expense losses resulting from loss or damage to radio or television antennas, etc. – delete exclusion – **Radio or Television Antennas – Business Income or Extra Expense - CP 15 50**
- No coverage for suspension, lapse or cancellation of any contract except during period of restoration – **example** – consideration should be given to **Extended Period Of Indemnity Optional Coverage**

D. Additional Business Income Considerations

1. **Business Income – Landlord As Additional Insured (Rental Value) – CP 15 03 –**
 - Mortgageholder may want to be added as additional insured as well – no standard endorsement available from ISO as of yet
2. **Payroll Limitation Or Exclusion – CP 15 10** - the endorsement is used to exclude or limit coverage for the payroll of all employees - payroll may be limited to a specific number of days or excluded in its entirety – may now exclude all employees and job classifications including officers, executives, management personnel and contract employees **OR** may exclude all employees and job classifications other than officers, executives, management personnel and contract employees **OR** may exclude all employees and job classifications (including officers, executives, management personnel and contract employees), **except OR** may excluded only the job classifications and/or employees listed AND may do this by premises and building
3. Disparagement of reputation and loss of business income
 - Nonstandard coverage - difficult to prove loss – difficult to establish “trigger” of coverage
4. Ingress/egress and loss of business income
 - Nonstandard coverage

VII. Extra Expense Coverage Form

A. Limitation On Loss Payment

Limits On Loss Payment

We will not pay more for Extra Expense than the percentages shown in the Declarations times the Limit Of Insurance.

When the “period of restoration” is:

- a. 30 days or less, the first percentage applies.
- b. 60 days or less, but more than 30 days, the second percentage applies.
- c. More than 60 days, the third percentage applies.

• **EXPANDED LIMITS ON LOSS PAYMENT – CP 15 07**

B. Exposure may exist for dependent properties

• **EXTRA EXPENSE FROM DEPENDENT PROPERTIES – CP 15 34**

VIII. Leasehold Interest Coverage Form

A. Exposure

- Lease provisions that cancel the lease when property is damaged “at or near” the named insured’s premises

B. Coverage

Leasehold Interest Coverage Form - CP 00 60

A. COVERAGE

We will pay for loss of Covered Leasehold Interest you sustain due to the cancellation of your lease. The cancellation must result from direct physical loss or damage to property at the premises described in the Declarations caused by or resulting from any Covered Cause of Loss.

1. Covered Leasehold Interest

Covered Leasehold Interest means the following for which an amount of “net leasehold interest” at inception is shown in the Leasehold Interest Coverage Schedule:

a. Tenant’s Lease Interest, meaning the difference between the:

- (1) Rent you pay at the described premises; and
- (2) Rental value of the described premises that you leased.

b. Bonus Payments, meaning the unamortized portion of cash bonus that will not be refunded to you. A cash bonus is money you paid to acquire your lease. It does not include:

- (1) Rent, whether or not prepaid; or
- (2) Security.

c. Improvements and Betterments, meaning the unamortized portion of payments made by you for improvements and betterments. It does not include the value of improvements and betterments recoverable under any other insurance, but only to the extent of such other insurance.

Improvements and betterments are fixtures, alterations, installations, or additions:

- (1) Made a part of the building or structure you occupy but do not own; and
- (2) You acquired or made at your expense but cannot legally remove.

d. Prepaid Rent, meaning the unamortized portion of any amount of advance rent you paid that will not be refunded to you. This does not include the customary rent due at:

- (1) The beginning of each month; or
- (2) Any other rental period.

Causes of Loss – Special Form - CP 10 30

b. Leasehold Interest Coverage Form

(1) Paragraph B.1.a., Ordinance Or Law, does not apply to insurance under this Coverage Form.

(2) We will not pay for any loss caused by:

- (a) Your cancelling the lease;
- (b) The suspension, lapse or cancellation of any license; or
- (c) Any other consequential loss.

IX. Legal Liability Coverage Form

A. The Exposure

- Named insured can be legally liable for more than just fire to premises rented to them
- “Sutton Doctrine” **may** apply

B. The Coverage

Legal Liability Coverage Form CP 00 40

A. Coverage

We will pay those sums that you become legally obligated to pay as damages because of direct physical loss or damage, including loss of use, to Covered Property caused by accident and arising out of any Covered Cause of Loss. We will have the right and duty to defend any "suit" seeking those damages. However, we have no duty to defend you against a "suit" seeking damages for direct physical loss or damage to which this insurance does not apply. We may investigate and settle any claim or "suit" at our discretion. But:

- (1) The amount we will pay for damages is limited as described in Section **C. Limits Of Insurance**; and
- (2) Our right and duty to defend end when we have used up the Limit of Insurance in the payment of judgments or settlements.

1. Covered Property And Limitations

Covered Property, as used in this Coverage Form, means tangible property of others in your care, custody or control that is described in the Declarations or on the Legal Liability Coverage Schedule.

Covered Property does not include electronic data. Electronic data means information, facts or computer programs stored as or on, created or used on, or transmitted to or from computer software (including systems and applications software), on hard or floppy disks, CD-ROMs, tapes, drives, cells, data processing devices or any other repositories of computer software which are used with electronically controlled equipment. The term computer programs, referred to in the foregoing description of electronic data, means a set of related electronic instructions which direct the operations and functions of a computer or device connected to it, which enable the computer or device to receive, process, store, retrieve or send data. This paragraph does not apply to electronic data which is integrated in and operates or controls the building's elevator, lighting, heating, ventilation, air conditioning or security system.

- Tort liability only – no coverage for liability assumed under contract

Causes of Loss – Special Form - CP 10 30

c. Legal Liability Coverage Form

(1) The following exclusions do not apply to insurance under this Coverage Form:

- (a)** Paragraph **B.1.a.**, Ordinance Or Law;
- (b)** Paragraph **B.1.c.**, Governmental Action;
- (c)** Paragraph **B.1.d.**, Nuclear Hazard;
- (d)** Paragraph **B.1.e.**, Utility Services; and
- (e)** Paragraph **B.1.f.**, War And Military Action.

(2) The following additional exclusions apply to insurance under this Coverage Form:

(a) Contractual Liability

We will not defend any claim or "suit", or pay damages that you are legally liable to pay, solely by reason of your assumption of liability in a contract or agreement. But this exclusion does not apply to a written lease agreement in which you have assumed liability for building damage resulting from an actual or attempted burglary or robbery, provided that:

- (i)** Your assumption of liability was executed prior to the accident; and
- (ii)** The building is Covered Property under this Coverage Form.

(b) Nuclear Hazard

We will not defend any claim or "suit", or pay any damages, loss, expense or obligation, resulting from nuclear reaction or radiation, or radioactive contamination, however caused.

X. Recap



James K. Ruble Seminar

a proud member of The National Alliance for Insurance Education & Research

Section 4

Ethics for Insurance and Risk Management Professionals

Ethics for Insurance and Risk Management Professionals



By Bettye D. Hutchison, CIC, CRM, CPCU, AAI, ARM, CPIA, TRIP

I. ETHICS AND MORALS



A. Ethics Defined

1. A system or set of moral principles
2. Factors such as moral behavior, trust, beliefs and practices, attitudes, even right and wrong, Implies integrity or wholeness.
3. Knowing what is right or wrong in the workplace and then doing what is right.
4. Moral principles of an individual.
5. Any system of guidelines for appropriate conduct toward others, aiming to comply with certain rules or to achieve certain results in particular types or situations.
6. Knowing what to do when a situation presents more than one “right answer”.
7. Set of principles of right conduct.
8. Standards governing the conduct of a person or members of a profession.

Other definitions:

B. Morals defined:

1. Of, or pertaining to, or concerned with the principles of right conduct or the distinction between right and wrong.
2. A cross between official rules or laws and standards of behavior.
3. Entail making a decision between right and wrong.



Ethics are guiding principles based on moral values. Insurance regulations are meant to define what is right and what is wrong. Compliance with the regulations is encouraged by imposition of fines and sanctions. It is vital that insurance professionals know the applicable laws and regulations and fulfill their associated requirements.

II. LAWS AFFECTING INSURANCE

- A. Public Law 15, the McCarran-Ferguson Act:
Established that state regulation and taxation of insurance industry was in the public interest.
- B. Contract Law:
An insurance policy is a contract and subject to contract law. To be enforceable, it must contain offer and acceptance, legality of purpose, consideration and capacity to contract.
- C. Licensing and Continuing Education Laws:
Insurance professionals must meet mandatory licensing/education as well as continuing education requirements for all lines licensed.
- D. Federal Regulations:
Insurance professionals are considered to be part of the financial services sector and as such are subject to federal regulations, i.e. FEMA, NFIP, Privacy Laws, Anti-Trust statutes, Fair Credit Reporting Act and others.
- E. Tort Law:
Applies in determining a wrongdoer's responsibility when an accident or other harmful event occurs. Negligence is a factor as well as Doctrines of Absolute Liability and Strict Liability.



[illegible]

III. ETHICAL AND MORAL BELIEFS

A. *Insurance is a Business of Utmost Good Faith*

1. Implies the highest degree of trust on the part of both the insured and insurer.
2. Good faith must be based on current theories, study, understanding, the building of relationships, and positive actions.
3. In exchange for payment of premium and compliance of the insurance contract terms and conditions, the insured receives a promise of coverage under the contract (payment of claims).
4. Many states require insurers owe good faith duty to third-party claimants.
5. In modern society, insurance has become a necessity.

B. *Why Be Ethical?*

1. Responsibility to society
2. Avoidance of public criticism
3. Avoidance of governmental regulation
4. Enhance your credibility in all business dealings.



C. Core Beliefs of Society

1. Honesty

Necessary for any successful business relationship

A single dishonest act can tarnish an entire career

Would you buy from someone you knew was dishonest?

2. Respect for other persons

Includes respect for a person's physical and emotional well-being

Laws protect against harassment, discrimination, assault, abuse, etc.

Would you buy from someone who is rude to you?

3. Respect for another's property

Disrespect could manifest as neglect, carelessness, vandalism, theft, and destruction

Property and casualty insurance professionals are in the express business of protecting and preserving the assets of their clients

Clients seek assistance and advice from insurance and risk management professionals



D. Criteria of a True Professional

1. High degree of specialized knowledge
2. Broad educational background containing generalized knowledge
3. Code of personal ethics
4. Altruistic attitude and behavior
5. Commitment to continuous education
6. Ability to think and act independently
7. Membership in associations and societies that help promote ethical behavior
8. Public recognition as a professional

Ethics are codes of expected behavior that apply in the absence of laws. Business ethics are applied ethics. Ethics require the insurance and risk management professional to think through each conflict situation, bearing in mind the codes of expected behavior, ethical guidelines, and moral values.

Notes:

E. *The Golden Rule*

1. Do unto others as you would have them do unto you.
2. None of you (truly) believes until he wishes for his brother what he wishes for himself. (Islam)
3. One going to take a pointed stick to pinch a baby bird should first try it on himself to feel how it hurts. (Nigeria)
4. This is the sum of duty: do not do to others what would cause pain if done to you. (Hinduism)
5. All things are our relatives, what we do to everything, we do to ourselves. All is really one. (Native American)
6. Do not do to others what you do not want them to do to you. (Confucianism)



F. What drives ethical behavior?

1. Self-regulation by the profession
2. Legislation passed to enact laws to prohibit unethical behavior and promote ethical behavior
3. Litigation that influences both legislation and self-regulation



Notes:

IV. THE LAW OF AGENCY

A. The law of agency

Agency: Relation in which one acts for or represents another by the latter's authority

Agent: One who represents and acts for another under a contract or relation of agency

Insurance

Agent: Person authorized to represent insurer in dealing with third parties in matters relating to insurance

Insurance

Broker: One who acts as a middleman between insured and company, and who solicits insurance from the public under no employment from any special company and places orders of insurance with company selected by the insured or, in absence of any selection, with company selected by such broker

A broker is agent for the insured though at the same time for some purposes he/she may be agent for the insurer, and his/her acts and representations within the scope of his/her authority as such agent are binding on the insurer

Examples:

B. Three Parties involved under law of agency

1. The insurer (principal)

Grants authority by contract or law

Authorized by the insurer to perform certain functions

2. The insurance agent

Represents the insurer under contract

Authorized by the insurer to perform certain functions

Uses own discretion and means

Establishes contractual relationship between the insurer and insureds

3. The insured (third party)

What is the relationship between the insured and the agent? (Special relationship?)

What are the agent's duties (duty of care)?

What are the insured's duties?



C. Types of Authority Granted

1. Express (Actual): Specifically granted by contract
2. Implied: Not specifically stated in the contract, but required to fulfill contractual obligations, and not prohibited by the contract
3. Apparent (Assumed): Agent assumes, and/or the public perceives, but not specifically granted by the contract or required to fulfill contractual obligations. Courts may impose the doctrine of apparent authority if a consumer would reasonably believe that the agent has the authority but that the insurer did not otherwise grant authority
4. No Authority: No authority is granted, implied, or apparent.



Ethical Dilemma – What would you do?

The ABC Insurance Company regularly permits you to bind drivers who do not fall within the underwriting guidelines. You are not permitted to bind these drivers without referring the account to an underwriter, but you have never had one of these drivers rejected. A valued client's auto insurance is up for renewal today. He has 1 additional violation more than allowed by the underwriting guidelines. The insurance company is closed for business.

D. Insurance Agent Obligations to the Insurer, Consumer and Peers

1. Obligations to the insurer

- a. The agent owes a fiduciary duty to the insurance company or MGA.
- b. The agent owes full compliance with company guidelines, policies, and procedures.
- c. The agent also owes the duties of:
 - Loyalty
 - Good Faith
 - Integrity
 - Fairness
 - Honesty
 - Giving of complete information

2. Obligations to the consumer

- a. The agent should understand the insured looks to the agent for advice about insurance.
- b. The agent owes a fiduciary duty to the insured.
 - Care & Good Faith
 - Obedience & Loyalty
 - Client is entitled to the benefit of the agent's skill and knowledge
- c. The agent is expected and owes the duty to recommend coverage on the best possible terms for the consumer (coverage, service, claims paying ability, solvency and price).
- d. The consumer must be kept informed by the agent.
- e. The agent owes the duty of due diligence to the consumer.
- f. The agent owes the duty to disclose any conflict of interest.

3. Obligation to peers

- a. Agent must not impair the reputation or disparagement of peers.
- b. Agent must be accurate in their advertising.

Notes:



E. Approaches to Ethical Decisions

1. Situation or End-based thinking
 - a. What is the best outcome possible given these circumstances?
 - b. The end justifies the means
 - c. Do whatever benefits the most
2. Rule-based Thinking
 - a. Follow the rules
 - b. Let the chips fall where they may
3. People or Care-based Thinking
 - a. Follow the “Golden Rule”
 - b. What would you have others do if faced with the same decision?



F. Ethical Dilemmas

1. Joe Smooth has been a client of the ABC Agency for many years. He asks his representative, Sally, to shop his commercial auto coverage because he feels he is paying too much. He also wants his son, Jimmy Joe, added as a driver. He tells her that Jimmy Joe is scheduled to fight a DUI ticket and his court date is next month. He wants him added now so that the ticket (if convicted) won't show on the mvr used to underwrite the policy.

What would you do?



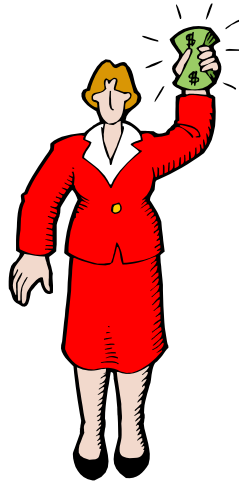
What obligations are owed to the insurer?

What obligations are owed to the consumer?

What obligations are owed to the agency's peers?

2. Mary Jones is a new prospect that was developed from a marketing list. A new agent, Barry Blue is meeting with Mary to discuss her insurance program. He asks her to bring in her current policies. Her current Business Auto Coverage is written using symbol 1 (any auto) for liability coverage. Only two vehicles are scheduled on the policy and Barry will not be able to offer symbol 1 with any of the carriers he represents. He can be competitive with all the other coverages Mary needs

What should Barry do? What would you do?



3. Your competitor, USA Professional Agency, has just posted on Facebook an ad that says “We are here to serve you with all your insurance needs. We will pay you CA\$H for referrals. This offer expires in 10 days. Call us now!”

What would you do?



G. Ethical Problems

Ethical problems usually come from two human qualities:

Ignorance and Greed

Examples of greed are easy to recognize:

- Expense account padding
- Kickbacks
- Employee theft

Examples of ignorance are more difficult to recognize:

- Actual conflict of interest
- Appearance of conflict of interest

H. Conflict of Interest

All employees have a common law duty to their employer to conduct their work with an undivided and unselfish loyalty to the employer.

Conflict of interest defined: a situation that places one between the duty to the employer and the employee's own self-interest. For practical application, the definition also includes the appearance of conflict of interest.

Examples:

The agent's brother is in business to clean and repair fire damage to property. He tells his brother he will reduce his price by 10% on any referrals on insurance claims.

The claim adjuster receives a letter from a local body shop that says they will reduce all repairs by \$200 if the total is over \$5,000 on any referrals.



The insurance agency's Customer Service Representative is promised 2 tickets to a Broadway Musical of her choice if she binds 10 new accounts/policies with AX Managing General Agency.

I. What is conflict of interest?

Additional definitions:

1. Situation that has the potential to undermine the impartiality of a person because of the possibility of a clash between the person's self-interest and professional interest.
2. Situation where a party's responsibility to a second party limits its ability to discharge its responsibility to a third-party.
3. A conflict between a person's private interests and public obligations.

Examples:

1. Accepting gifts from vendors.
2. Placing business with an insurer to qualify for all expense paid trips.

Question: Do contingent commissions create a conflict of interest?

Does your state have statutes regarding acceptance or giving gifts?

J. Steps to manage Conflict of Interest

1. Identification

Must determine what constitutes a conflict of interest

Education

Frequent reminders

2. Avoid the conflict

If any degree of conflict exists, that person should not be making the decision

3. Resolve unavoidable conflicts

Disclose the conflict to all parties involved

Recuse self from making the decision

Recuse self from discussion

4. Formulate responses to conflicts of interest





Dilemma

Jim, a client of ABC Agency for over 20 years had a large fire loss. He called his agent, (a long-time friend and neighbor) Bill, to report the loss. Bill took the information and turned it into the company claims department. At that time, he told Jim that the company would be handling the claim and if any questions arose, he would assist him. Jim met with the adjuster assigned to his claim. After a week or so, the adjuster sent Jim a proof of loss form requiring his signature. Jim felt the claim amount was insignificant to replace and restore his property. He called Bill to express his concerns. Bill told him that he would contact the adjuster and review the claim. He called the adjuster and went over some points that had been brought to his attention. One point was the value of some of his personal property that was not included in the proof of loss statement. The adjuster revised the amount to include the value of the personal property. After the claim was closed, Jim called Bill and offered him play-off tickets for the NFL team that both followed. Should Bill accept the tickets? Is there a conflict of interest? What would you do?

V. ROLE OF INSURANCE REGULATOR

- A. Protect consumers by ensuring safe and competitive insurance marketplace.
- B. Enforce and develop laws to ensure that insurers meet financial obligations.
- C. Enforce and develop laws that promote fair prices and products.

Unfair Trade Practices Act

- ✓ Promotes ethical behavior in the insurance industry by prohibiting:
 - Unfair methods of competition
 - Unfair and deceptive trade practices
- ✓ Penalties can include:
 - Cease and desist orders
 - Fines
 - Revocation and suspension of license
 - Restitution
- D. Enforce and develop laws that regulate agents, brokers, claims adjusters, and insurance companies.

Licensing promotes ethical behavior

- ✓ The state licenses all insurance agents, brokers, adjusters and insurance companies
- ✓ Cannot conduct insurance business without a license.
- ✓ Licenses can be revoked or denied if the individual or company violate any law or fails to demonstrate high ethical standards.



VI. STEPS FOR ETHICAL DECISION MAKING

- A. Identify the conflict or problem
 - ✓ Review from the other's perspective as well as yours
- B. Gather information
 - ✓ Go to the source of the problem
 - ✓ Determine how the problem arose
 - ✓ Identify the stakeholders
 - ✓ Determine the duties owed
- C. Look for an applicable code or standard
 - ✓ Consider codes of conduct and professional codes
 - ✓ Consider organizational businesses practices
 - ✓ Review applicable regulations
- D. Determine who is responsible for resolving the conflict
 - ✓ Know your authority
 - ✓ If outside your authority, provide relevant information to the decision maker
 - ✓ Consider the personal impact of all actions
- E. Ask if there is a duty or loyalty to uphold?
- F. Evaluate from various perspectives
 - ✓ Rules based
 - ✓ Situation based
 - ✓ People based
 - ✓ Determine how the decisions or actions will be seen by others
 - ✓ Analyze the positive and negative impact on the stakeholders (including the decision maker)
- G. Decide on a course of action or inaction and implement the decision
- H. Monitor the outcome
- I. Learn from the experience

VII. SAMPLE ETHICS POLICY OR CODE FOR INSURANCE PROFESSIONALS

- A. Place public interest above self interests
- B. Develop additional knowledge, skills, and competence
- C. Obey all laws, regulations and avoid unjust harm to others
- D. Be diligent in performing duties
- E. Promote professional standards
- F. Maintain honorable relationships
- G. Improve customers' understanding of insurance
- H. Seek excellence in all dealings
- I. Strive to be aware of cultural differences and always show respect
- J. Avoid conflict of interest or the appearance of conflict of interest



VIII. INSURANCE REGULATIONS

- A. Privacy regulations:
 - ✓ Privacy Acts – protects consumers from the release of private non-public information
 - ✓ Fair Credit Reporting Act – Consumers have the right to know the status of their credit

- B. State Regulations:
 - ✓ Replacement – Twisting defined in regulation
 - ✓ Commingling of Funds – require trust account
 - ✓ Rebating – Very state specific, allowed in Florida and California subject to statute
 - ✓ Controlled Business – Regulation exists to prevent a person from being licensed solely to write controlled business
 - ✓ Non-admitted insurer – proper due diligence required to place with a surplus lines carrier
 - ✓ Unfair Claims Settlement Practices
 - Policy misrepresentation
 - Require good faith negotiation
 - Require claims acknowledgement & processing
 - Claims denial must be related to the facts of the claim

- C. NAIC Unfair Trade Practices Act
 - ✓ Misrepresentation & False Advertising of policies
 - ✓ False Information & Advertising
 - ✓ Defamation
 - ✓ Boycott, Coercion, and Intimidation
 - ✓ False Statements and Entries
 - ✓ Stock Operations and Advisory Board Contracts
 - ✓ Rebates – except as provided by law
 - ✓ Misrepresentation in Insurance Applications

IX. ERRORS & OMISSIONS

A. Insurance Agents Errors & Omissions

1. Insurance professionals make mistakes:
 - ✓ Applications
 - ✓ Phone messages
 - ✓ Client requested coverage that was not bound
 - ✓ Insurance company was not given proper information
 - ✓ Company pays uncovered claim due to apparent authority and subrogates against agent
 - ✓ Claim was not submitted or was submitted late
 - ✓ Misrepresentation
 - ✓ Failure to provide standard of care

Standard of Care – BLACKS LAW DICTIONARY

In law of negligence, that degree of care which a reasonably prudent person should exercise under same or similar circumstances. If a person's conduct falls below such standard, he may be liable in damages for injuries or damages resulting from his conduct.

A standard of care is applied to measure the competence of the professional. The traditional standard is that he exercises the "average degree of skill, care, and diligence exercised by members of the same profession, practicing in the same or similar locality."

Who will decide the "standard of care" required?





“Special relationships” can occur at anytime – the court decides!

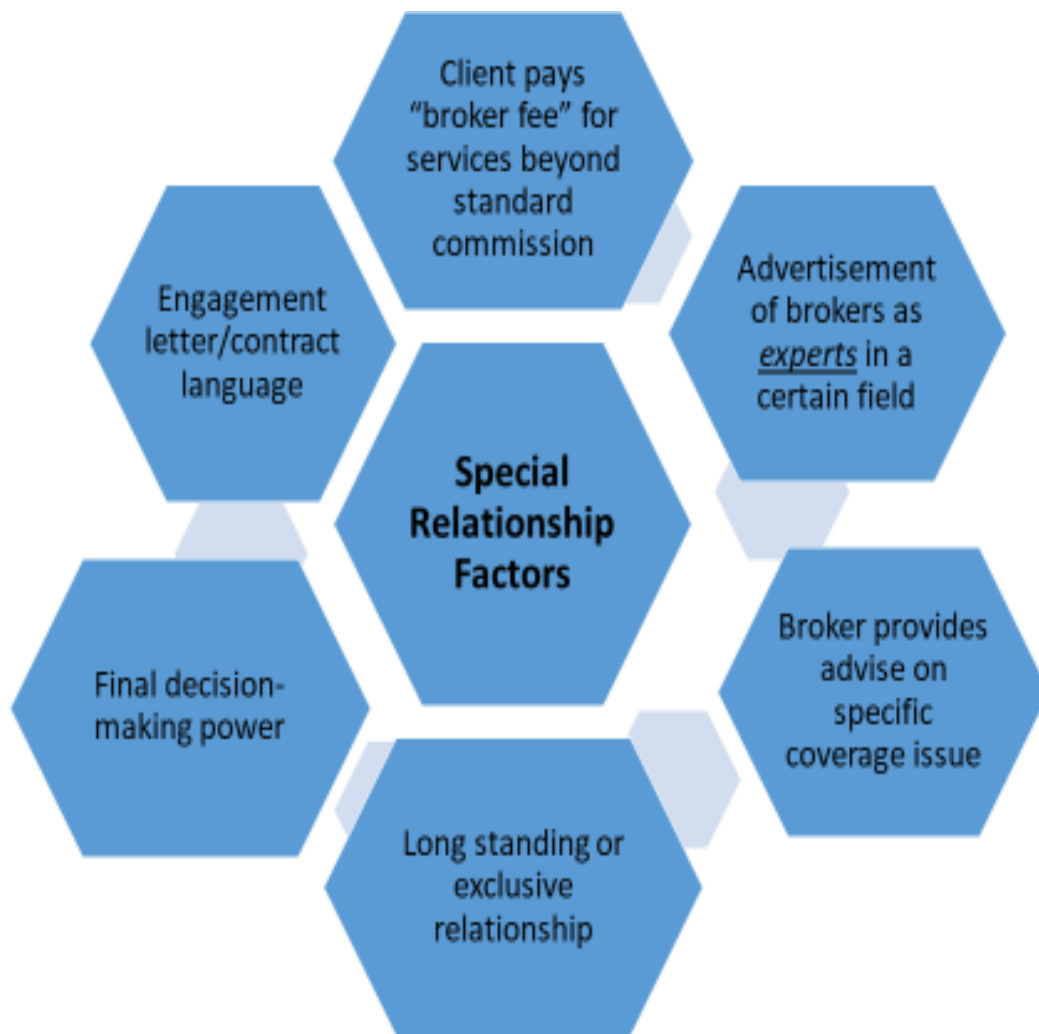
Court decisions are based on where the case is tried!

Every state makes agents/brokers responsible to meet at least the “ordinary” agent-client relationship.

- Use the degree of skill, care and diligence that a reasonable, similarly situated agent would use to procure the coverage his/her customer requested
- If he/she cannot obtain that coverage, there is the duty to inform the customer promptly
- Also the duty not to mislead or misinform customers about their coverage

If the court finds that there was a “special relationship”, the agent may also be responsible to advise the client about additional coverages and/or higher limits that are available

In most states, the law holds that agents have a greater duty to advise if a “special relationship” exists



The Big 3!

DOCUMENT!

CONSISTANCY!

COMMUNICATION!

2. Best Practices
 - Standard procedures
 - ✓ All conversations
 - ✓ Recommendations and rejections
 - ✓ 90% of all agents' E & O claims could have been prevented/avoided through the application of proper, consistent office procedures
 - ✓ Understand exposures exist
 - ✓ Update and review procedures
 - ✓ Understand the importance of effective communication



3. Why is there an increase of E & O Claims?
 - ✓ Influx of new lawyers with debt
 - ✓ Natural disasters
 - ✓ Company failures
 - ✓ Doctrine of reasonable expectations
 - ✓ Growing complexity of coverages and forms
 - ✓ Consumer expectations
 - ✓ Impact of public media
 - ✓ Amount of \$\$\$s involved – property values, liability awards in tort cases, litigation costs and third parties
4. When are E & O Claims most likely to occur?
 - ✓ When there is a merger or acquisition
 - ✓ After the loss of a key employee
 - ✓ Selling new products or services
 - ✓ Brokering through a new MGA
 - ✓ Following changes in business methods and technologies
 - ✓ After a disaster

B. The Errors and Omission Policy

1. Policy features

- Typically claims made – understand retro date
- Limits vary – usually \$1,000,000 and up
- Review defense clause – inside or in addition to limit?
- Negligence covered – FRAUD is excluded
- Look for “Consent to Settle clause”
- Deductible – per claim; including claims expense and defense?
- The application is a warranty and included in the policy
- Definition of “Wrongful Act” and/or “Professional Services”

2. Who is an insured?

- Named insured
- Partners, officers, directors, stockholders and employees while acting within the scope of their duties
- Past partners, officers, directors, stockholders, and employees (LOOK CAREFULLY!)
- Independent contractors licensed by agency
- Acquisitions and mergers

3. Exclusions

- Dishonest, fraudulent, criminal or malicious act of any insured
- Contractual
- Intra-company suits
- Employment related practices
- Related activities unless specifically stated or endorsed
- Employee benefits liability
- Bodily injury and property damages
- Insurer insolvency
- Investment advice

E & O Policies are not standard – need to read and review!

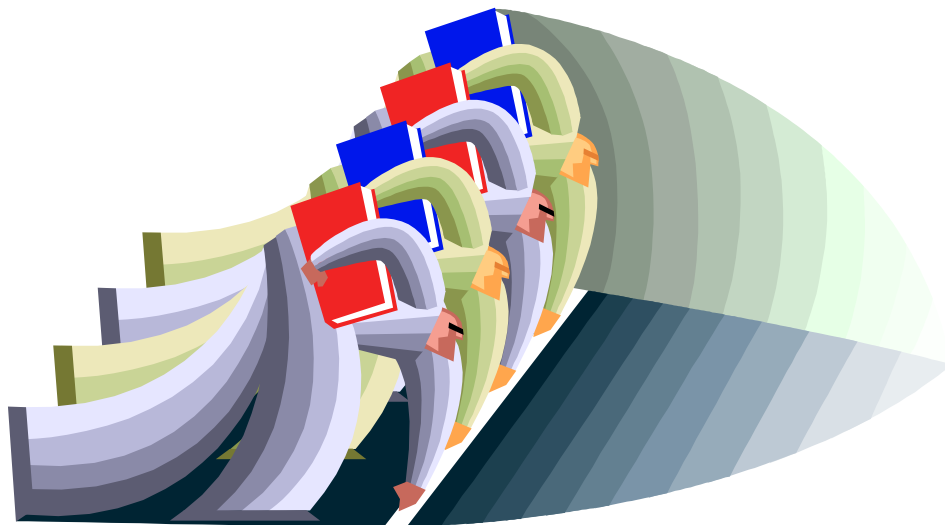


ETHICS CHECKLIST

	Strongly Disagree 1	Disagree 2	Neither Agree Nor Disagree 3	Agree 4	Strongly Agree 5
1.	We have a commitment to ethical core ethical obligations (Integrity, loyalty, honesty, fairness, responsibility).				_____
2.	We typically accomplish a task by “Doing the right thing” rather than compromising our ethical obligations.				_____
3.	We treat all employees with respect and dignity.				_____
4.	We provide clear instructions and training that promote ethical behavior.				_____
5.	We demonstrate that we are as concerned with ethical behavior as we are with task/mission accomplishment.				_____
6.	We maintain appropriate workload balance to reduce stress throughout our company.				_____
7.	We promote an environment in which subordinates can learn from their mistakes.				_____
8.	We ensure all employees are aware of, and are comfortable using, the various channels available to report unethical behavior.				_____
9.	We hold accountable members of our organization who behave unethically.				_____
10.	I understand and am committed to our ethical principles and obligations.				_____
Total score:					_____

Organizational Change Orientation

- All organizational processes and practices must impose a dominating influence on individual ethical behavior within the organization.
- Workplace ethics need to encourage and reward willingness of all to adapt values and behavior patterns to improve the organization's moral maturity.
- Ethical behavior and policies in the workplace must focus on awareness and change rather than just compliance.
- Moving the entire group to the next moral maturity level is far more important to the organizational well-being than punishing an employee for a petty violation that should have been prevented in the first place.
- Ethics training and principles need to be continuously emphasized, integrated, and promoted by management.
- Leadership by example is critical to all within the organization. We must hold ourselves to a higher standard and lead by example.



ETHICAL DILEMMAS

Often, ethical dilemmas involve more than one ethically proper answer. In order to resolve the dilemma, one must:

1. Identify the stakeholders.
2. Determine the motivation for the actions taken.
3. Analyze the relevant issues.
 - ✓ Conflict of interest
 - ✓ Privacy
 - ✓ General business practices

EXAMPLE:

The underwriter: Steve

The insurance agent: Sally

The insured: Jones Construction Company, Inc.
Jenny Jones, President

Employee: Mark

The case: Sally is the agent for Jones Construction Company, Inc. This is her largest commercial client. She has developed a very close business relationship with this client. They have worked together for the past ten years. The insurance requirements for bonding and commercial crime insurance must be applied for each year and a new application is required. Sally is working the renewal and is submitting it to her underwriter, Steve.

The business auto renewal application asks for a current drivers schedule. Jenny supplied this along with copies of motor vehicle records to Sally. One of her new employees, Mark, supplied her with a seven-year driving record he obtained from the DMV along with his resume when he accepted the employment position. All the other records reflect the previous five years information. Mark was convicted of 3 DUIs 6 years ago and one also included a conviction for possession of a controlled substance. The underwriting is based on the past 36 months.

If Sally orders MVRs from her vendor, they show the last 36 months of activity only. Based on the past 36 months, Sally concludes that Mark is an acceptable driver and employee because the past convictions are too dated to be relevant to the work he will do for his employer and also did not involve dishonesty.

Sally's youngest cousin, Sarah, is engaged to Mark. Sally is concerned that Mark has lied to Sarah about his past and may not understand "what she is getting into".

What should Sally do?

Who are the stakeholders?

Is there a conflict of interest?

What are other relevant issues?

CONCLUSION

Good ethics support good risk management. The study of professional ethics entails understanding laws, core beliefs of society, criteria of a professional, following The Golden Rule, and insurance agent obligations to the insurer, consumer, and peers. Ethical problems usually come from two human qualities – ignorance and greed. One must consider conflict of interest (including the appearance of conflict of interest) in conducting business today. Tools are available to assist the insurance professional to manage conflict of interest. Insurance regulators protect consumers by ensuring a safe and competitive insurance marketplace. Insurance and risk management professionals have a duty to make sound, ethical decisions because our business is one of utmost good faith. Simply stated, ethics is just good business!



James K. Ruble Seminar

a proud member of The National Alliance for Insurance Education & Research

Section 5

Business Auto Policy Endorsements Why and Why Not

Business Auto Policy Endorsements Why and Why Not



Bettye D. Hutchison
CIC, CRM, CPCU, AAI, ARM, CPIA, TRIP
Central Insurance Services, Inc.
Adelphi, MD

Once upon a time.....

Our story begins with our commercial prospect, Be Festive, Inc., located in Annapolis, MD and Falls Church, VA. The business specializes in “superior party planning for super special parties”. They own three vehicles:

20XX Audi – driven by Missy Jones, President, as her “corporate car”

20XX Freightliner Step Van – used to transport party supplies to customer locations and driven by several employees

20XX Honda Civic – driven by Garth Gold, Sales Manager

The Audi and Freightliner are garaged in Maryland and the Honda is garaged in Virginia. They currently carry auto insurance on an ISO Business Auto Policy using symbol 7 for all vehicles. No endorsements have been added to the policy. Missy has asked you for help in several new opportunities they have.

The current policy (Named Insured: Be Festive, Inc.) has the following coverage:

\$ 1,000,000 CSL Auto Liability

\$ 300,000 CSL Uninsured Motorist Liability

\$ 250 Deductible Comprehensive

\$ 1,000 Deductible Collision

WHO IS AN INSURED

Discussion: Missy has a teenaged daughter, Bitsy, who wants to take Driver's Education next month. The school has requested auto insurance information on the admission application for Bitsy. Missy has also decided that she will purchase an additional car for Bitsy to drive. It will probably be an older model and her accountant has advised her to title the auto in the name of the corporation so that she can "write it off".

Issues:

- Solutions:
1. PAP on additional vehicle (best)
 2. Add the car to the BAP
 3. Employee As Lessor CA 99 47

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

EMPLOYEE AS LESSOR

This endorsement modifies insurance provided under the following:

AUTO DEALERS COVERAGE FORM
BUSINESS AUTO COVERAGE FORM
MOTOR CARRIER COVERAGE FORM

With respect to coverage provided by this endorsement, the provisions of the Coverage Form apply unless modified by the endorsement.

This endorsement changes the policy effective on the inception date of the policy unless another date is indicated below.

Named Insured:

Endorsement Effective Date:

SCHEDULE

Description Of "Auto":

Information required to complete this Schedule, if not shown above, will be shown in the Declarations.

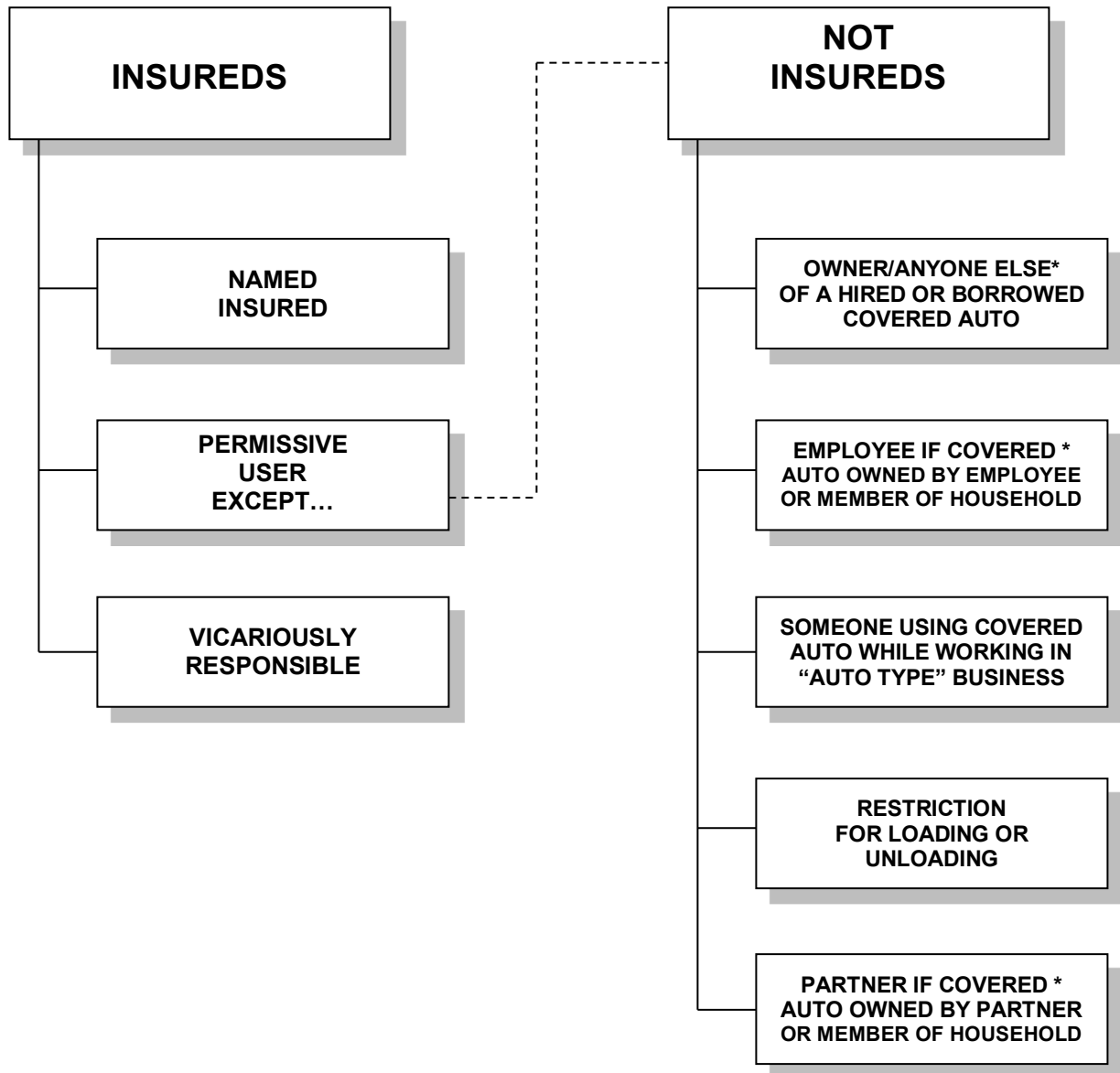
A. Any "auto" described in the Schedule will be considered a covered "auto" you own and not a covered "auto" you hire, borrow or lease.

B. While any covered "auto" described in the Schedule is leased to you by one of your "employees", the **Who Is An Insured** provision under **Covered Autos Liability Coverage** is changed to include that "employee" as an "insured".

[illegible]

BAP Coverages

Who Is An Insured



** May be modified by endorsement.*

Discussion: Missy says she travels quite a bit on business and when she does, she rents a vehicle. Her Sales Manager, Garth, also travels for business and rents a vehicle. Neither Missy or Garth has a Personal Auto Policy.

Issues:

Solutions:

1. Amend/change/add symbols
2. Add Drive Other Car- Broadened Coverage For Named Individuals endorsement CA 99 10
3. Add Employee Hired Autos Endorsement CA 20 54

Description Of Covered Auto Designation Symbols

Symbol 1 – Any “Auto”

Symbol 2 – Owned “Autos” Only

Only those “autos” (and for Covered Autos Liability Coverage any “trailers” you don’t own while attached to power units you own). This includes those “autos” you acquire ownership of after the policy begins.

Symbol 7 – Specifically Described “Autos”

Only those “autos” described in Item Three of the Declarations for which a premium charge is shown (and for Covered Autos Liability Coverage any “trailers” you don’t own while attached to a power unit described in Item Three).

Symbol 8 – Hired “Autos” Only

Only those “autos” you lease, hire, rent or borrow. This does not include any “auto” you lease, hire, rent or borrow from any of your “employees”, partners (if you are a partnership), members (if you are a limited liability company) or members of their households.

Symbol 9 – Non-owned “Autos” Only

Only those “autos” you do not own, lease, hire, rent or borrow that are used in connection with your business. This includes “autos” owned by your “employees”, partners (if you are a partnership), members (if you are a limited liability company) or members of their households but only while used in your business or personal affairs.

DRIVE OTHER CAR (DOC) – BROADENED COVERAGE FOR NAMED INDIVIDUALS

CA 99 10

1. List an individual
 - ⇒ Not named on declarations
 - ⇒ Who does not personally own any autos
 - ⇒ Who does not have a Personal Auto Policy
2. Individuals need to be scheduled (spouse is covered if resident of the same household).
3. Non-owned rented or borrowed autos not owned by any member of household are covered. No "auto business" use.
4. Can provide coverage for Liability, Medical Payments, Uninsured Motorists, Underinsured Motorists, and Physical Damage.
5. Additional Premium.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

DRIVE OTHER CAR COVERAGE – BROADENED COVERAGE FOR NAMED INDIVIDUALS

This endorsement modifies insurance provided under the following:

AUTO DEALERS COVERAGE FORM
BUSINESS AUTO COVERAGE FORM
MOTOR CARRIER COVERAGE FORM

With respect to coverage provided by this endorsement, the provisions of the Coverage Form apply unless modified by the endorsement.

This endorsement changes the policy effective on the inception date of the policy unless another date is indicated below.

Named Insured:

Endorsement Effective Date:

SCHEDULE

Name Of Individual:			
Covered Autos Liability Coverage	Limit:	\$	Premium: \$
Auto Medical Payments	Limit:	\$	Premium: \$
Comprehensive	Deductible:	\$	Premium: \$
Collision	Deductible:	\$	Premium: \$
Uninsured Motorists	Limit:	\$	Premium: \$
Underinsured Motorists	Limit:	\$	Premium: \$
Information required to complete this Schedule, if not shown above, will be shown in the Declarations.			

Note: When Uninsured Motorists Coverage is provided at limits higher than the basic limits required by a financial responsibility law, Underinsured Motorists Coverage is included, unless otherwise noted. If Underinsured Motorists Coverage is provided as a separate coverage, make appropriate entry in the Schedule above.

A. This endorsement changes only those coverages where a premium is shown in the Schedule.

B. Changes In Covered Autos Liability Coverage

1. Any "auto" you don't own, hire or borrow is a covered "auto" while being used by any individual named in the Schedule or by his or her spouse while a resident of the same household except:

- a. Any "auto" owned by that individual or by any member of his or her household.
- b. Any "auto" used by that individual or his or her spouse while working in a business of selling, servicing, repairing or parking "autos".

2. The following is added to **Who Is An Insured:**

Any individual named in the Schedule and his or her spouse, while a resident of the same household, are "insureds" while using any covered "auto" described in Paragraph **B.1.** of this endorsement.

C. Changes In Auto Medical Payments And Uninsured And Underinsured Motorists Coverages

The following is added to **Who Is An Insured:**

Any individual named in the Schedule and his or her "family members" are "insureds" while "occupying" or while a pedestrian when being struck by any "auto" you don't own except:

Any "auto" owned by that individual or by any "family member".

D. Changes In Physical Damage Coverage

Any private passenger type "auto" you don't own, hire or borrow is a covered "auto" while in the care, custody or control of any individual named in the Schedule or his or her spouse while a resident of the same household except:

1. Any "auto" owned by that individual or by any member of his or her household.
2. Any "auto" used by that individual or his or her spouse while working in a business of selling, servicing, repairing or parking "autos".

E. Additional Definition

As used in this endorsement:

"Family member" means a person related to the individual named in the Schedule by blood, marriage or adoption who is a resident of the individual's household, including a ward or foster child.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

EMPLOYEE HIRED AUTOS

This endorsement modifies insurance provided under the following:

AUTO DEALERS COVERAGE FORM
BUSINESS AUTO COVERAGE FORM
MOTOR CARRIER COVERAGE FORM

With respect to coverage provided by this endorsement, the provisions of the Coverage Form apply unless modified by the endorsement.

A. Changes In Covered Autos Liability Coverage

The following is added to the **Who Is An Insured** provision:

An "employee" of yours is an "insured" while operating an "auto" hired or rented under a contract or agreement in an "employee's" name, with your permission, while performing duties related to the conduct of your business.

For Hired Auto Physical Damage Coverage, any covered "auto" hired or rented by your "employee" under a contract in an "employee's" name, with your permission, while performing duties related to the conduct of your business is deemed to be a covered "auto" you own.

B. Changes In General Conditions

Paragraph 5.b. of the **Other Insurance** Condition in the Business Auto and Auto Dealers Coverage Forms and Paragraph 5.f. of the **Other Insurance – Primary And Excess Insurance Provisions** Condition in the Motor Carrier Coverage Form are amended by the addition of the following:

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

EMPLOYEES AS INSURED

This endorsement modifies insurance provided under the following:

BUSINESS AUTO COVERAGE FORM
MOTOR CARRIER COVERAGE FORM

With respect to coverage provided by this endorsement, the provisions of the Coverage Form apply unless modified by the endorsement.

The following is added to the **Section II – Covered Autos Liability Coverage**, Paragraph **A.1. Who Is An Insured** provision:

Any "employee" of yours is an "insured" while using a covered "auto" you don't own, hire or borrow in your business or your personal affairs.

SAMPLE

Discussion: After discussing the need to add non-owned coverage to Be Festive's policy, Missy is concerned that her employees, while driving their personally owned vehicles are not properly protected by their personal auto policy.

Solution: Add CA 99 33 – Employees As Insureds

Covers employees as insureds for liability while using an "auto" not owned, hired or borrowed by the named insured, in the named insured's business or personal affairs. Coverage is excess over PAP.

POLICY NUMBER:

COMMERCIAL AUTO
CA 20 01 11 20

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

LESSOR – ADDITIONAL INSURED AND LOSS PAYEE

This endorsement modifies insurance provided under the following:

AUTO DEALERS COVERAGE FORM
BUSINESS AUTO COVERAGE FORM
MOTOR CARRIER COVERAGE FORM

With respect to coverage provided by this endorsement, the provisions of the Coverage Form apply unless modified by the endorsement.

This endorsement changes the Policy effective on the inception date of the Policy unless another date is indicated below.

Named Insured:
Endorsement Effective Date:

SCHEDULE

Insurance Company:	
Policy Number:	Effective Date:
Expiration Date:	
Named Insured:	
Address:	
Additional Insured (Lessor):	
Address:	
Designation Or Description Of "Leased Autos":	

Discussion: Missy tells you that she is thinking of leasing an auto for her other employee to drive. She says that leasing would work better than ownership because it will not be driven as much and she doesn't want the cash outlay of purchasing another vehicle. She wants to know if she would need to change anything else for her auto coverage.

Solution: Add CA 20 01 – Lessor – Additional Insured and Loss Payee

- ✓ Any “leased auto” designated or described in the Schedule will be considered a covered “auto” you own and not a covered “auto” you hire or borrow
- ✓ For a covered “auto” that is a “leased auto”
Who Is An Insured is changed to include as an “insured” the lessor named in the schedule (CA 20 01 10 01 Edition)
- ✓ For a “leased auto” designated or described in the Schedule, **Who Is An Insured** is changed to include as an “insured” the lessor named in the Schedule. However, the lessor is an “insured” only for BI and PD resulting from the acts or omissions by:
 - You
 - Any of your “employees” or agents; or
 - Any person, except the lessor or any “employee” or agent of the lessor, operating a “leased auto” with the permission of any of the above.
(CA 20 01 03 06 Edition)
(CA 20 01 10 13 Edition)
(CA 20 01 11 20 Edition)

Coverages	Limit Of Insurance Or Deductible
Covered Autos Liability	\$ Each "Accident"
Comprehensive	\$ Deductible For Each Covered "Leased Auto"
Collision	\$ Deductible For Each Covered "Leased Auto"
Specified Causes Of Loss	\$ Deductible For Each Covered "Leased Auto"
Information required to complete this Schedule, if not shown above, will be shown in the Declarations.	

A. Coverage

- Any "leased auto" designated or described in the Schedule will be considered a covered "auto" you own and not a covered "auto" you hire or borrow.
- For a "leased auto" designated or described in the Schedule, the **Who Is An Insured** provision under **Covered Autos Liability Coverage** is changed to include as an "insured" the lessor named in the Schedule. However, the lessor is an "insured" only for "bodily injury" or "property damage" resulting from the acts or omissions by:
 - You;
 - Any of your "employees" or agents; or
 - Any person, except the lessor or any "employee" or agent of the lessor, operating a "leased auto" with the permission of any of the above.
- The coverages provided under this endorsement apply to any "leased auto" described in the Schedule until the expiration date shown in the Schedule, or when the lessor or his or her agent takes possession of the "leased auto", whichever occurs first.

B. Loss Payable Clause

- We will pay, as interest may appear, you and the lessor named in this endorsement for "loss" to a "leased auto".

- The insurance covers the interest of the lessor unless the "loss" results from fraudulent acts or omissions on your part.
- If we make any payment to the lessor, we will obtain his or her rights against any other party.

C. Cancellation

- If we cancel the Policy, we will mail notice to the lessor in accordance with the Cancellation Common Policy Condition.
 - If you cancel the Policy, we will mail notice to the lessor.
 - Cancellation ends this agreement.
- D. The lessor is not liable for payment of your premiums.

E. Additional Definition

As used in this endorsement:

"Leased auto" means an "auto" leased or rented to you, including any substitute, replacement or extra "auto" needed to meet seasonal or other needs, under a leasing or rental agreement that requires you to provide direct primary insurance for the lessor.

Both edition dates provide coverage until the expiration date shown in the Schedule or when the lessor takes possession of the “leased auto” whichever comes first.

- ✓ Both edition dates include a Loss Payable Clause, Cancellation clause and Additional Definition
 - “Leased auto” means an “auto” leased or rented to you, including any substitute, replacement or extra “auto” needed to meet seasonal or other needs, under a leasing or rental agreement that requires you to provide direct primary insurance for the lessor.



Discussion:

Missy is concerned that if anything happens to the vehicles, she will have to rent a replacement and wants to make sure she has appropriate coverage. She says that she is used to driving a certain class of vehicle and wants to make sure that in the event of a loss or accident, she has the proper coverage.

What additional information do you need?

[illegible]

PHYSICAL DAMAGE LOSS OF USE

4. Coverage Extensions

a. Transportation Expenses

We will pay up to **\$30 per day to a maximum of \$900** for temporary transportation expenses incurred by you because of the total theft of a covered “auto” of the private passenger type. We will pay only for those covered “autos” for which you carry either Comprehensive or Specified Causes of Loss Coverage. We will pay for temporary transportation expenses Incurred during the period beginning 48 hours after the theft.....

CA 99 23 – Rental Reimbursement Coverage

- ✓ Schedule vehicle
- ✓ Schedule maximum payment each covered “auto” per day
- ✓ Schedule number of days
- ✓ Schedule any one period
- ✓ Additional premium
- ✓ Does not apply if spare or reserve “autos” available
- ✓ For theft of PPA, excess to coverage extension
- ✓ 24 hours after loss
- ✓ Deductible does not apply

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

RENTAL REIMBURSEMENT COVERAGE

This endorsement modifies insurance provided under the following:

AUTO DEALERS COVERAGE FORM
 BUSINESS AUTO COVERAGE FORM
 MOTOR CARRIER COVERAGE FORM

With respect to coverage provided by this endorsement, the provisions of the Coverage Form apply unless modified by the endorsement.

This endorsement changes the policy effective on the inception date of the policy unless another date is indicated below.

Named Insured:

Endorsement Effective Date:

SCHEDULE

Coverage	Designation Or Description Of Covered "Autos" To Which This Insurance Applies	Maximum Payment Each Covered "Auto"			Premium
		Any One Day	No. Of Days	Any One Period	
Comprehensive		\$		\$	\$
Collision		\$		\$	\$
Specified Causes Of Loss		\$		\$	\$
Total Premium					\$

Information required to complete this Schedule, if not shown above, will be shown in the Declarations.

- A. This endorsement provides only those coverages where a premium is shown in the Schedule. It applies only to a covered "auto" described or designated in the Schedule.
- B. We will pay for rental reimbursement expenses incurred by you for the rental of an "auto" because of "loss" to a covered "auto". Payment applies in addition to the otherwise applicable amount of each coverage you have on a covered "auto". No deductibles apply to this coverage.
- C. We will pay only for those expenses incurred during the policy period beginning 24 hours after the "loss" and ending, regardless of the policy's expiration, with the lesser of the following number of days:
1. The number of days reasonably required to repair or replace the covered "auto". If "loss" is caused by theft, this number of days is added to the number of days it takes to locate the covered "auto" and return it to you.
 2. The number of days shown in the Schedule.
- D. Our payment is limited to the lesser of the following amounts:
1. Necessary and actual expenses incurred.
 2. The maximum payment stated in the Schedule applicable to "any one day" or "any one period".
- E. This coverage does not apply while there are spare or reserve "autos" available to you for your operations.
- F. If "loss" results from the total theft of a covered "auto" of the private passenger type, we will pay under this coverage only that amount of your rental reimbursement expenses which is not already provided for under the Physical Damage Coverage Extension.

CA 99 05 – Business Interruption Coverage

- ✓ Show description of business activities dependent on scheduled property
- ✓ Applicable Coverage(s) selected
- ✓ Choose Option A or Option B
- ✓ Covered Cause of Loss Option(s)
- ✓ Choice of waiting period if other than 72
- ✓ Extended Business Income Additional Coverage
- ✓ Premium
- ✓ Coverage is patterned upon the BI coverage available under ISO's Commercial Property Program
- ✓ Coverage is triggered by direct and accidental loss or damage to covered property by a covered cause of loss
- ✓ Subject to the Limit Of Insurance on schedule

A. Coverage

1. Business Income

We will pay for the actual loss of “business income” you sustain due to the necessary “suspension” of your “operations” during the “period of restoration”. The “suspension” must be caused by direct and accidental loss or damage to “scheduled property”. The direct and accidental loss or damage must be caused by or result from a Covered Cause of Loss and must occur while such “scheduled property” is located within the coverage territory.

2. Extra Expense

If the Schedule indicates that Extra Expense Coverage applies, we will pay the actual and necessary “extra expense” you incur during the “period of restoration” due to direct and accidental loss or damage to “scheduled property”. The direct and accidental loss or damage must be caused by or result from a Covered Cause of Loss and must occur while such “scheduled property” is located within the coverage territory.

POLICY NUMBER:

COMMERCIAL AUTO
CA 99 05 11 20

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

BUSINESS INTERRUPTION COVERAGE

This endorsement modifies insurance provided under the following:

AUTO DEALERS COVERAGE FORM
BUSINESS AUTO COVERAGE FORM
MOTOR CARRIER COVERAGE FORM

With respect to coverage provided by this endorsement, the provisions of the Coverage Form apply unless modified by the endorsement.

This endorsement changes the Policy effective on the inception date of the Policy unless another date is indicated below.

Named Insured:

Endorsement Effective Date:

SCHEDULE

Description Of Business Activities Dependent On Scheduled Property:

Applicable Coverage(s) (select one):

☐

Business Income (Without Extra Expense)

☐

Business Income And Extra Expense

Option A

Description Of Scheduled Property

Limit Of Insurance

1.

\$

2.

\$

3.

\$

4.

\$

5.

\$

6.	\$
Notes: <ul style="list-style-type: none"> ● Use this section of the Schedule (Option A) if there is only one item of scheduled property or to show a separate Limit of Insurance for each item of scheduled property. The Limit of Insurance can be the same amount for each item or a different amount for each item. ● A particular item of scheduled property may be shown under Option A or Option B of this Schedule, but not under both Options. Therefore, if Options A and B are used, each Option must pertain to different items of scheduled property. 	

Option B	
Description Of Scheduled Property	
1.	
2.	
3.	
4.	
5.	
6.	
Limit Of Insurance	\$
Notes: <ul style="list-style-type: none"> ● Use this section of the Schedule (Option B) when a single Limit of Insurance applies to the total of all covered business income loss and extra expense attributable to all items of scheduled property subject to such Limit. ● A particular item of scheduled property may be shown under Option A or Option B of this Schedule, but not under both Options. Therefore, if Options A and B are used, each Option must pertain to different items of scheduled property. 	
Covered Causes Of Loss Option(s) (select all that apply): <input type="checkbox"/> Comprehensive OR <input type="checkbox"/> Specified Causes Of Loss <input type="checkbox"/> Collision	
Business Income Coverage Waiting Period (number of hours, if other than 72):	
Extended Business Income Additional Coverage (number of consecutive days, if other than 60):	
Premium: \$	
Information required to complete this Schedule, if not shown above, will be shown in the Declarations.	

A. Coverage

This endorsement provides coverage in accordance with the entries made in the Schedule.

1. Business Income

We will pay for the actual loss of "business income" you sustain due to the necessary "suspension" of your "operations" during the "period of restoration". The "suspension" must be caused by direct and accidental loss or damage to "scheduled property". The direct and accidental loss or damage must be caused by or result from a Covered Cause of Loss and must occur while such "scheduled property" is located within the coverage territory.

2. Extra Expense

If the Schedule indicates that Extra Expense Coverage applies, we will pay the actual and necessary "extra expense" you incur during the "period of restoration" due to direct and accidental loss or damage to "scheduled property". The direct and accidental loss or damage must be caused by or result from a Covered Cause of Loss and must occur while such "scheduled property" is located within the coverage territory.

B. Additional Coverages

1. Extended Business Income

If the necessary "suspension" of your "operations" produces a "business income" loss payable under this endorsement, we will pay for the actual loss of "business income" you incur during the period that:

- a. Begins on the date "scheduled property" is actually repaired or replaced and "operations" are resumed; and
- b. Ends on the earlier of:
 - (1) The date you could restore your "operations", with reasonable speed, to the level which would generate the "business income" amount that would have existed if no direct and accidental loss or damage had occurred; or
 - (2) 60 consecutive days after the date determined in Paragraph B.1.a., unless a different number of days is shown in the Schedule.

However, Extended Business Income Additional Coverage does not apply to loss of "business income" incurred as a result of unfavorable business conditions caused by the impact of the Covered Cause of Loss in the area where "scheduled property" is normally used.

Loss of "business income" must be caused by direct and accidental loss or damage to "scheduled property" caused by or resulting from a Covered Cause of Loss.

2. Temporary Substitute And Newly Acquired Property

The coverage applicable to "scheduled property" under this endorsement is extended to apply to:

- a. Property that is used as a temporary substitute for "scheduled property", but only while such "scheduled property" is out of service due to breakdown, repair, servicing, destruction or direct and accidental loss or damage;
- b. Newly acquired property, other than temporary substitute property described in Paragraph B.2.a., but only if:
 - (1) It serves as a replacement for "scheduled property"; and
 - (2) You tell us within 30 days after you acquire it that you want it to be added as "scheduled property".

C. Covered Causes Of Loss

With respect to the coverage provided under this endorsement, the following Covered Causes of Loss apply if selected in the Schedule:

- a. Comprehensive, meaning any cause of direct and accidental loss or damage except:
 - (1) "Scheduled property's" collision with another object; or
 - (2) "Scheduled property's" overturn.

Comprehensive also includes direct and accidental loss or damage caused by falling objects, missiles or hitting a bird or animal.

- b. Specified Causes of Loss, meaning direct and accidental loss or damage caused by:
 - (1) Fire, lightning or explosion;
 - (2) Theft;
 - (3) Windstorm, hail or earthquake;
 - (4) Flood;
 - (5) Mischief or vandalism; or
 - (6) The sinking, burning, collision or derailment of any conveyance transporting "scheduled property".
- c. Collision, meaning direct and accidental loss or damage caused by:
 - (1) "Scheduled property's" collision with another object; or
 - (2) "Scheduled property's" overturn.

D. Exclusions

We do not provide coverage under this endorsement:

- 1. When direct and accidental loss or damage is caused by or results from any of the following, regardless of any other cause or event that contributes concurrently or in any sequence to the direct and accidental loss or damage:

a. Nuclear Hazard

- (1) The explosion of any weapon employing atomic fission or fusion; or
- (2) Nuclear reaction or radiation, or radioactive contamination, however caused.

b. War Or Military Action

- (1) War, including undeclared or civil war;
- (2) Warlike action by a military force, including action in hindering or defending against an actual or expected attack, by any government, sovereign or other authority using military personnel or other agents; or
- (3) Insurrection, rebellion, revolution, usurped power or action taken by governmental authority in hindering or defending against any of these.

- 2. When direct and accidental loss or damage to "scheduled property" is caused by or results from "scheduled property" being used in any professional or organized racing or demolition contest or stunting activity, or while practicing for such contest or activity. We also do not provide coverage under this endorsement while that "scheduled property" is being prepared for such contest or activity.

- 3. When direct and accidental loss or damage is due and confined to:

- a. Wear and tear, freezing, mechanical or electrical breakdown.
- b. Blowouts, punctures or other road damage to tires.

- 4. For any increase of "business income" loss caused by or resulting from the suspension, lapse or cancellation of any license, lease or contract. But if the suspension, lapse or cancellation is directly caused by the "suspension" of "operations", we will cover such loss that affects your "business income" during the "period of restoration" and any extension of the "period of restoration" in accordance with the terms of Extended Business Income Additional Coverage.

- 5. For any "extra expense" caused by or resulting from the suspension, lapse or cancellation of any license, lease or contract beyond the "period of restoration".

- 6. For any other consequential loss.

E. Limit Of Insurance

- 1. When a separate Limit of Insurance applies to each item of "scheduled property" as shown in Option A of the Schedule, that Limit is the most we will pay in any one occurrence for the total of all covered "business income" loss and "extra expense" attributable to that item of "scheduled property", regardless of the number of premiums paid or claims made.
- 2. When a single Limit of Insurance applies to more than one item of "scheduled property" as shown in Option B of the Schedule, that Limit is the most we will pay in any one occurrence for the total of all covered "business income" loss and "extra expense" attributable to all items of "scheduled property" to which that Limit applies, regardless of the number of items of "scheduled property", premiums paid or claims made.
- 3. "Business income" loss and "extra expense" attributable to a particular item of "scheduled property" will not be covered under more than one Limit of Insurance. Therefore:
 - a. If more than one such Limit could be said to apply based on the descriptions of "scheduled property", then coverage will be subject to the Limit of Insurance associated with the more specific description of that item;

- b. If the same description of "scheduled property" appears more than once in the Schedule, then coverage for such item of "scheduled property" will be subject to the Limit of Insurance that would provide the highest loss payment.
- 4. Payments made under Extended Business Income Additional Coverage or Temporary Substitute And Newly Acquired Property Additional Coverage will not increase the applicable Limit of Insurance.

F. Changes In Conditions

With respect to the coverage provided by this endorsement, the following conditions are added and replace any provisions to the contrary:

1. Appraisal

If we and you disagree on the amount of Net Income and operating expense or the amount of loss, either may make written demand for an appraisal. In this event, each party will select a competent and impartial appraiser.

The two appraisers will select an umpire. If they cannot agree, either may request that selection be made by a judge of a court having jurisdiction. The appraisers will state separately the amount of Net Income and operating expense or amount of loss. If they fail to agree, they will submit their differences to the umpire. A decision agreed to by any two will be binding. Each party will:

- a. Pay its chosen appraiser; and
- b. Bear the other expenses of the appraisal and umpire equally.

If there is an appraisal, we will still retain our right to deny the claim.

2. Duties In The Event Of Loss

If there is direct and accidental loss or damage to "scheduled property", you must do the following:

- a. Give us or our authorized representative prompt notice of such loss or damage. Include a description of the "scheduled property" involved.
- b. As soon as possible, give us or our authorized representative a description of how, when and where such loss or damage occurred.
- c. Promptly notify the police if "scheduled property" or any of its equipment is stolen.

- d. Take all reasonable steps to protect "scheduled property" from further damage, and keep a record of your expenses necessary to protect "scheduled property", for consideration in the settlement of the claim. Also, if feasible, set such property aside and in the best possible order for examination.
- e. As often as may be reasonably required, permit us to inspect "scheduled property" and examine and make copies of your books and records.
- f. Agree to examinations under oath at our request and give us a signed statement of your answers.
- g. Send us a signed, sworn proof of loss containing the information we request to investigate the claim. You must do this within 60 days after our request. We will supply you with the necessary forms.
- h. Cooperate with us in the investigation or settlement of the claim.
- i. If you intend to continue your business, you must resume all or part of your "operations" as quickly as possible.

3. Other Insurance

- a. You may have other insurance subject to the same plan, terms, conditions and provisions as the insurance provided under this endorsement. If you do, we will pay our share of the covered "business income" loss or "extra expense". Our share is the proportion that the applicable Limit of Insurance under this endorsement bears to the Limits of Insurance of all insurance covering on the same basis.
- b. If there is other insurance covering the same "business income" loss or "extra expense", other than that described in Paragraph F.3.a., we will pay only for the amount of covered "business income" loss or "extra expense" in excess of the amount due from that other insurance, whether you can collect on it or not. But we will not pay more than the applicable Limit of Insurance.

4. Loss Determination

- a. The amount of "business income" loss will be determined based on:
 - (1) The Net Income of your "operations" before the direct and accidental loss or damage occurred;

- (2) The likely Net Income of your "operations" if no direct and accidental loss or damage had occurred, but not including any Net Income that would likely have been earned as a result of an increase in the volume of your "operations" due to favorable business conditions caused by the impact of the Covered Cause of Loss on customers or on other businesses;
- (3) The operating expenses, including payroll expenses, necessary to resume "operations" with the same quality of service that existed just before the direct and accidental loss or damage; and
- (4) Other relevant sources of information, including:
- (a) Your financial records and accounting procedures;
 - (b) Bills, invoices and other vouchers; and
 - (c) Titles, liens or contracts.
- b. The amount of "extra expense" will be determined based on:
- (1) All expenses that exceed the normal operating expenses that would have been incurred by "operations" during the "period of restoration" if no direct and accidental loss or damage had occurred. We will deduct from the total of such expenses:
- (a) The salvage value that remains of any property bought for temporary use during the "period of restoration", once "operations" are resumed; and
 - (b) Any "extra expense" that is paid for by other insurance, except for insurance that is written subject to the same plan, terms, conditions and provisions as the coverage provided by this endorsement; and
- (2) Necessary expenses that reduce the "business income" loss that otherwise would have been incurred.
- 5. Resumption Of Operations**
- a. We will reduce the amount of your "business income" loss, other than "extra expense", to the extent you can resume "operations", in whole or in part, by using any property.
 - b. We will reduce the amount of your "extra expense" loss to the extent you can return "operations" to normal and discontinue such "extra expense".
 - c. If you do not resume "operations", or do not resume "operations" as quickly as possible, we will pay based on the length of time it would have taken to resume "operations" as quickly as possible.
- 6. Loss Payment**
- We will pay for covered "business income" loss or "extra expense" within 30 days after we receive the sworn documentation addressed in Paragraph F.2.g., if you have complied with all of the terms of this Coverage Part and:
- a. We have reached agreement with you on the amount of such loss; or
 - b. An appraisal award has been made.
- G. Additional Definitions**
- As used in this endorsement:
1. "Business income" means the:
 - a. Net Income (Net Profit or Loss before income taxes) that would have been earned or incurred; and
 - b. Continuing normal operating expenses incurred, including payroll.
 2. "Extra expense" means necessary expenses (other than the expense to repair or replace property) that you would not have incurred if there had been no direct and accidental loss or damage to "scheduled property". "Extra expense" includes expenses which are incurred:
 - a. To avoid or minimize the "suspension" of "operations" and to continue "operations";
 - b. To minimize the "suspension" if you cannot continue "operations"; or
 - c. For temporary use of other property.
 3. "Operations" means your business activities described in the Schedule that are dependent on "scheduled property".
 4. "Period of restoration" means the period of time that:
 - a. Begins:
 - (1) 72 hours after the time of direct and accidental loss or damage for Business Income Coverage, unless a different number of hours is shown in the Schedule for the Business Income Coverage Waiting Period; or
 - (2) Immediately after the time of direct and accidental loss or damage for Extra Expense Coverage;
 - caused by or resulting from a Covered Cause of Loss to "scheduled property"; and

b. Ends on the earlier of:

- (1)** The date when "scheduled property" should be repaired or replaced with reasonable speed and similar quality; or
- (2)** The date when "operations" are resumed.

"Period of restoration" does not include any increased period required due to the enforcement of or compliance with any ordinance or law that:

- (1)** Regulates the use or repair of any property, or requires updated emissions controls or safety features which were not part of "scheduled property" prior to the direct and accidental loss or damage; or

- (2)** Requires anyone to test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to, or assess the effects of "pollutants".

The expiration date of this Policy will not cut short the "period of restoration".

- 5.** "Scheduled property" means the items of property described in the Schedule, including machinery or equipment that is permanently installed in such property. "Scheduled property" does not include buildings, locations or premises.
- 6.** "Suspension" means the slowdown or cessation of your "operations".

POLICY NUMBER:

COMMERCIAL AUTO
CA 99 30 10 13

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

TAPES, RECORDS AND DISCS COVERAGE

This endorsement modifies insurance provided under the following:

AUTO DEALERS COVERAGE FORM
BUSINESS AUTO COVERAGE FORM
MOTOR CARRIER COVERAGE FORM

With respect to coverage provided by this endorsement, the provisions of the Coverage Form apply unless modified by the endorsement.

This endorsement changes the policy effective on the inception date of the policy unless another date is indicated below.

Named Insured:
Endorsement Effective Date:

SCHEDULE

Designation Or Description Of Covered "Autos"	Additional Premium
	\$
	\$
	\$
Information required to complete this Schedule, if not shown above, will be shown in the Declarations.	

A. This endorsement provides coverage only to a covered "auto" described or designated in the Schedule.

B. Physical Damage Coverage is amended as follows:

1. The exclusion referring to tapes, records, discs or other similar audio, visual or data electronic devices designed for use with audio, visual or data electronic equipment does not apply.

2. The following is added to Paragraph **A. Coverage** in the Business Auto and Motor Carrier Coverage Forms and Paragraph **F.1. Coverage** in the Auto Dealers Coverage Form:

Under Comprehensive Coverage, we will pay for "loss" to tapes, records, discs or other similar devices used with audio, visual or data electronic equipment. We will pay only if the tapes, records, discs or other similar audio, visual or data electronic devices:

- a. Are your property or that of a family member; and

PHYSICAL DAMAGE COVERAGE – EXCLUSIONS

B. Exclusions

4. We will not pay for “loss” to any of the following:
 - a. Tapes, records, discs or other similar audio, visual or data electronic devices designed for use with audio, visual or data electronic equipment.
 - b. ...
 - c. Any electronic equipment, without regard to whether this equipment is permanently installed, that reproduces, receives or transmits audio, visual or data signals.
 - d. Any accessories used with the electronic equipment described in Paragraph c. above.

2006 Edition does not cover any equipment unless permanently installed or the housing unit is permanently installed in the covered “auto” unless it is **solely for the reproduction of sound**

2010, 2013 and 2020 Edition have a \$1,000 limit for any one accident to all electronic equipment that reproduces, receives or transmits audio, visual or data signals if permanently installed or housing unit is permanently installed in an opening or other location **not normally** used by the “auto” manufacturer.

Endorsements available:

CA 99 30 Tapes, Records and Discs Coverage

- ✓ Additional Premium
- ✓ In the covered “auto” belonging to you or a family member
- ✓ \$200 limit
- ✓ No deductible

POLICY NUMBER:

COMMERCIAL AUTO
CA 99 60 10 13

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

AUDIO, VISUAL AND DATA ELECTRONIC EQUIPMENT COVERAGE ADDED LIMITS

This endorsement modifies insurance provided under the following:

AUTO DEALERS COVERAGE FORM
BUSINESS AUTO COVERAGE FORM
MOTOR CARRIER COVERAGE FORM

With respect to coverage provided by this endorsement, the provisions of the Coverage Form apply unless modified by the endorsement.

This endorsement changes the policy effective on the inception date of the policy unless another date is indicated below.

Named Insured:

Endorsement Effective Date:

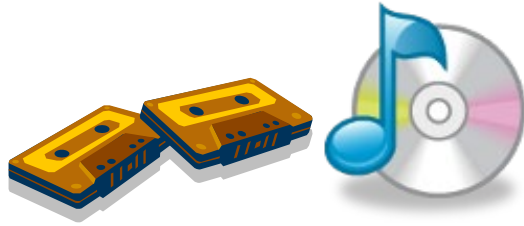
SCHEDULE

Description Of Covered "Auto"	Per "Loss" Limit	Additional Premium
	\$	\$
	\$	\$
	\$	\$

Information required to complete this Schedule, if not shown above, will be shown in the Declarations.

Physical Damage Coverage is amended as follows:

The sublimits in Paragraph **C.1.b.** of the Limits Of Insurance provision in the Business Auto and Motor Carrier Coverage Forms and in Paragraph **4.a.(2)** of the Limits Of Insurance provision in the Auto Dealers Coverage Form are in addition to the Per "Loss" Limit shown in the Schedule of this endorsement.



Endorsement CA 99 60 03 06 – Audio, Visual and Data Electronic Equipment Coverage (Use with 2006 BAP)

- ✓ Limit on schedule
- ✓ \$250 deductible applies
- ✓ Loss amount limited to lesser of ACV, cost of repair or replace or limit shown in schedule

Endorsements for 2010, 2013 and 2020 Editions:

CA 99 60 – Audio, Visual and Data Electronic Equipment Coverage – Added Limits

CA 99 61 – Loss Payable Clause – Audio, Visual and Data Electronic Equipment

- ✓ Schedule limit – in addition to \$1,000
- ✓ Additional premium

POLICY NUMBER:

COMMERCIAL AUTO
CA 20 71 11 20

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

AUTO LOAN/LEASE GAP COVERAGE

This endorsement modifies insurance provided under the following:

AUTO DEALERS COVERAGE FORM
BUSINESS AUTO COVERAGE FORM
MOTOR CARRIER COVERAGE FORM

With respect to coverage provided by this endorsement, the provisions of the Coverage Form apply unless modified by the endorsement.

This endorsement changes the Policy effective on the inception date of the Policy unless another date is indicated below.

Named Insured:
Endorsement Effective Date:

SCHEDULE

Vehicle Number	Description Of Loan/Lease "Auto(s)" Which Are Covered "Autos"	Other Than Collision Additional Premium	Collision Additional Premium
		\$	\$
		\$	\$
		\$	\$

Information required to complete this Schedule, if not shown above, will be shown in the Declarations.

A. Physical Damage Coverage is amended by the addition of the following:

In the event of a total "loss" to a covered "auto" shown in the Schedule or Declarations for which a specific premium charge indicates that Auto Loan/Lease GAP Coverage applies, we will pay any unpaid amount due on the lease or loan for a covered "auto", less:

1. The amount paid under the Policy's Physical Damage Coverage; and
2. Any:
 - a. Overdue or any deferred lease/loan payments at the time of the "loss";
 - b. Financial penalties imposed under a lease for excessive use, abnormal wear and tear or high mileage;
 - c. Security deposits not returned by the lessor;

- d. Costs for extended warranties, Credit Life Insurance, Health, Accident or Disability Insurance purchased with the loan or lease; and

- e. Carry-over balances from previous loans or leases.

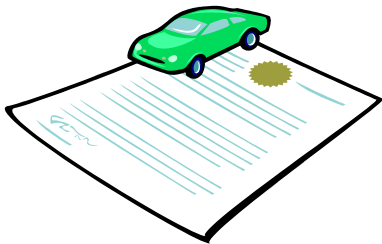
B. For the purposes of this endorsement, the following is added to the Other Insurance Condition in the Business Auto and Auto Dealers Coverage Forms and the Other Insurance – Primary And Excess Insurance Provisions Condition in the Motor Carrier Coverage Form:

The insurance provided by this Auto Loan/Lease GAP Coverage is excess over any other collectible insurance including but not limited to any coverage provided by or purchased from the lessor or any financial institution.

Discussion: Missy is concerned about the valuation if any of her vehicles were a total loss because she has liens on all of them and would need to pay them off.

Solution: Endorsement CA 20 71 – Auto Loan/Lease Gap Coverage

- ✓ Endorsement pays total loss only
- ✓ Pays the difference between ACV and payoff of loan or lease
- ✓ Excludes:
 - Overdue loan/lease payments
 - Penalties
 - Non-refundable security deposits
 - Costs for extended warranties or Credit Life Insurance
 - Carry-over balances from any previous loans or leases



POLICY NUMBER:

COMMERCIAL AUTO
CA 04 41 11 20

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

REPLACEMENT COST COVERAGE – PRIVATE PASSENGER TYPES

This endorsement modifies insurance provided under the following:

AUTO DEALERS COVERAGE FORM
BUSINESS AUTO COVERAGE FORM
MOTOR CARRIER COVERAGE FORM

With respect to coverage provided by this endorsement, the provisions of the Coverage Form apply unless modified by the endorsement.

This endorsement changes the Policy effective on the inception date of the Policy unless another date is indicated below.

Named Insured:

Endorsement Effective Date:

SCHEDULE

Description Of Private Passenger Type Covered "Auto(s)"	Replacement Cost Coverage Premium
	\$
	\$
	\$
	\$
Information required to complete this Schedule, if not shown above, will be shown in the Declarations.	

For each covered "auto" of the private passenger type described in the Schedule and where a premium is shown, **Physical Damage Coverage** is amended as follows:

A. The following is added to Paragraph **A. Coverage** in the Business Auto and Motor Carrier Coverage Forms and Paragraph **F.1. Coverage** in the Auto Dealers Coverage Form:

In the event of a total "loss" to a covered "auto" you own of the private passenger type shown in the Schedule for which Replacement Cost Coverage applies, we will pay to replace such covered "auto", minus any applicable deductible shown in the Declarations, if:

1. Comprehensive and Collision Coverage are provided for that "auto" at the time of "loss";

2. The total "loss" occurs within 24 months after you become the original owner of that "auto"; and

3. The mileage shown on the odometer of that "auto" at the time of the "loss" is less than 24,000 miles.

B. The following is added to Paragraph **C. Limits Of Insurance** in the Business Auto and Motor Carrier Coverage Forms and Paragraph **4. Limits Of Insurance** in the Auto Dealers Coverage Form:

1. The most we will pay will be the amount to replace a covered "auto" shown in the Schedule with a new vehicle of the same make, model, trim level and equipment, or an equivalent.

Solution: Endorsement CA 04 41 – Replacement Cost Coverage – Private Passenger Types

- ✓ Endorsement pays total loss only subject to Schedule
- ✓ Comprehensive and Collision must be provided
- ✓ Total “loss” occurs within 24 months you become original owner
- ✓ Mileage at the time of “loss” is less than 24,000 miles
- ✓ Limits Of Insurance

If a new vehicle with the same make, model, trim level and equipment, or an equivalent, is not available, our limit of liability will be the amount to replace the covered "auto" with a new vehicle that is:

- a. Similar in class, body type, size and equipment; and
- b. Similar in price to the price you paid for the covered "auto" that is being replaced but not to exceed an amount equal to 110% of the Manufacturer's Suggested Retail Price (MSRP) of the covered "auto" being replaced.

2. No one will be entitled to receive duplicate payments for the same elements of "loss" under this endorsement and this Coverage Form's Physical Damage Coverage.

RENTAL CAR AGREEMENTS

Discussion: Missy is confused about the rental car agreement that she and Garth sign when they rent cars for business use while traveling. She would like to know if she should purchase something called CDW or LDW or, if her BAP will provide the coverage for the rental car.

Solution: Although there are no standardized auto rental agreements, most rental contracts state the renter will be responsible for any and all damage to the vehicle and hold the auto rental company harmless for damages arising out of use and operation of the vehicle.

Hold Harmless / Indemnification Agreement (Hertz)

You and all Authorized Operators will indemnify and hold Hertz, its agents and employees harmless from and against any loss, liability and expense in excess of the limits or beyond the scope of the protection provided for above, arising from the use or possession of the Car by You or any Authorized Operators or with Your, his or her permission.

Damage To The Car (Enterprise)

I am responsible for and agree to pay Owner the fair market value of replacing the Car and /or repairing all losses and damages to the Car. I will pay Owner regardless of fault or negligence by me or any person, and regardless if damages are a result of an act of God. For purposes of this Agreement, the fair market value for the cost of replacing Owner's Car will be retail value. This includes:

- (a) administrative fees, and/or
- (b) diminishment of value; and/or
- (c) "loss of use" during the period the Car is unavailable for rental use. Loss of use is measured by the reasonable rental value of renting a comparable replacement Car; and
- (d) towing, storage, impound and appraisal fees.

[illegible]

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

OPTIONAL LIMITS – LOSS OF USE EXPENSES

This endorsement modifies insurance provided under the following:

AUTO DEALERS COVERAGE FORM
BUSINESS AUTO COVERAGE FORM
MOTOR CARRIER COVERAGE FORM

With respect to coverage provided by this endorsement, the provisions of the Coverage Form apply unless modified by the endorsement.

This endorsement changes the policy effective on the inception date of the policy unless another date is indicated below.

Named Insured:

Endorsement Effective Date:

SCHEDULE

Amount Per Day	Maximum	Premium
\$	\$	\$
Information required to complete this Schedule, if not shown above, will be shown in the Declarations.		

Physical Damage Coverage is amended as follows:

The **Coverage Extension for Loss Of Use Expenses** in Paragraph **A.4.b.** in the Business Auto and Motor Carrier Coverage Forms and Paragraph **F.2.** in the Auto Dealers Coverage Form are replaced by the following:

For Hired Auto Physical Damage, we will pay expenses for which an "insured" becomes legally responsible to pay for loss of use of a vehicle rented or hired without a driver under a written rental contract or agreement. We will pay for loss of use expenses caused by:

- (1) Other than collision only if the Declarations indicates that Comprehensive Coverage is provided for any covered "auto";

- (2) Specified Causes Of Loss only if the Declarations indicates that Specified Causes Of Loss Coverage is provided for any covered "auto"; or

- (3) Collision only if the Declarations indicates that Collision Coverage is provided for any covered "auto".

However, the most we will pay under this coverage is the amount shown in the Schedule.

BAP – SECTION III – PHYSICAL DAMAGE COVERAGE EXTENSION

4. Coverage Extensions

b. Loss Of Use Expenses

For Hired Auto Physical Damage we will pay expenses for which an “insured” becomes legally responsible to pay for loss of use of a vehicle rented or hired without a driver under a written rental contract or agreement....

However, the most we will pay for any expenses for loss of use is **\$30 per day to a maximum of \$900.**

CA 99 90 – Optional Limits – Loss of Use Expenses

- ✓ Schedule amount per day
- ✓ Schedule maximum
- ✓ Additional premium
- ✓ Use for Hired Auto Physical Damage
- ✓ Written rental contract or agreement

B. Exclusions

6. We will not pay for “loss” to a covered “auto” due to “diminution in value”

SECTION V DEFINITIONS

- E. “Diminution in value” means the actual or perceived loss in market value or resale value which results from a direct and accidental “loss”.

5. Other Insurance

- b. For Hired Auto Physical Damage Coverage, any covered “auto” you lease, hire, rent or borrow is deemed to be a covered “auto” you own. However, any “auto” that is leased, hired, rented or borrowed with a driver is not a covered “auto”.

➤ Other issues to ponder:

Is there a Stated Amount limit for Hired Auto Physical Damage?

What is ACV of the rental car? Who determines?

Notes: _____

Loss Damage Waiver – buy or take the risk?

Again, while there are no standard rental agreements or LDWs there are some key items that need to be reviewed:

- ✓ Require **full compliance with all terms and conditions**
- ✓ Statement that LDW is optional and not required
- ✓ Statement LDW is not insurance
- ✓ Cost is for each full day even if car is returned prior to a full day

Authorized Operators

Only You, and with Your permission, the following persons, provided that they meet the qualifications set forth in the following sentence (“Authorized Operators”) may operate the car. Your spouse, your domestic partner (if you are not married), Your employer, employees and fellow employees incidental to their business duties, and any other person who meets Hertz’ qualifications and who signs an Additional Authorized Operator form at the time of rental. Except as provided in the following sentence, all Authorized Operators must be at least 25 years old and have a valid driver’s license from a jurisdiction acceptable to Hertz. Except to the extent necessary for valet parking or in an emergency as permitted by law, no other persons are permitted to operate the Car.

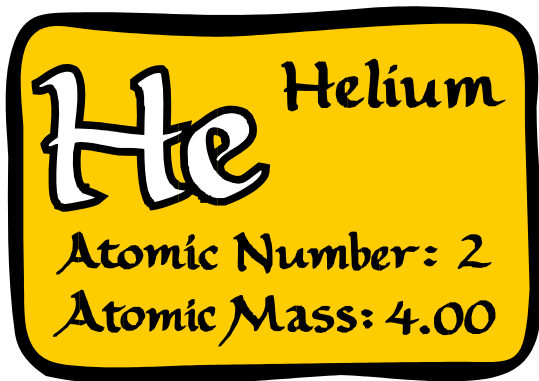
Prohibited Uses Of The Car

1. Use of the car by anyone other than an authorized operator.
2. Intentional damage or aid in the theft of the car.
3. Operation of the car in Mexico.
4. Operation of the car in a reckless manner.
5. Operation of the car on unpaved roads.
6. Leaving the car unlocked or with the keys inside.
7. Use of the car by anyone:
 - Under the influence of alcohol or drugs;
 - In the commission of a crime;
 - To tow or push anything;
 - In a speed contest;
8. If car obtained by fraud or misrepresentation.

[illegible]

Discussion:

When asked about the type of cargo hauled in the step van, Missy explained that they take supplies to the events they have planned. She is a bit evasive about the particulars. You ask if she ever transports hazardous or flammable materials and she says “not that often”. You ask her if her van is registered with DOT and she says yes, it has a DOT number on it because it had a gross vehicle weight of 24,000 pounds.



“Covered pollution cost or expense”

EXCLUDES:

- ❖ **Cargo including loading and unloading**
- ❖ **Otherwise in the course of transit**
- ❖ **Being stored, disposed of, treated or processed in or upon the covered auto**

COVERAGE FOR:

Bodily injury or property damage due to the discharge of pollutants if:

- ❖ **From the covered auto’s part designed by its manufacturer to hold, store, receive or dispose of such pollutants**
- ❖ **Off premises caused by a covered auto damages to a container of the pollutant**
- ❖ **If the loss is covered, and there is bodily injury or property damage, the BAP will also pay for covered pollution cost or expense up to the limit of liability**

A Federal Agency may not conduct or sponsor, and a person is not required to respond to, nor shall a person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act unless that collection of information displays a current valid OMB Control Number. The OMB Control Number for this information collection is 2126-0008. Public reporting for this collection of information is estimated to be approximately 2 minutes per response, including the time for reviewing instructions, gathering the data needed, and completing and reviewing the collection of information. All responses to this collection of information are mandatory. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to: Information Collection Clearance Officer, Federal Motor Carrier Safety Administration, MC-RRR, Washington, D.C. 20590.



United States Department of Transportation
Federal Motor Carrier Safety Administration

Endorsement for Motor Carrier Policies of Insurance for Public Liability
under Sections 29 and 30 of the Motor Carrier Act of 1980

FORM MCS-90

Issued to _____ of _____
(Motor Carrier name) (Motor Carrier state or province)

Dated at _____ on this _____ day of _____, _____

Amending Policy Number: _____ Effective Date: _____

Name of Insurance Company: _____

Countersigned by: _____
(authorized company representative)

The policy to which this endorsement is attached provides primary or excess insurance, as indicated for the limits shown (check only one):

This insurance is primary and the company shall not be liable for amounts in excess of \$_____ for each accident.

This insurance is excess and the company shall not be liable for amounts in excess of \$_____ for each accident in excess of the underlying limit of \$_____ for each accident.

Whenever required by the Federal Motor Carrier Safety Administration (FMCSA), the company agrees to furnish the FMCSA a duplicate of said policy and all its endorsements. The company also agrees, upon telephone request by an authorized representative of the FMCSA, to verify that the policy is in force as of a particular date. The telephone number to call is: _____

Cancellation of this endorsement may be effected by the company of the insured by giving (1) thirty-five (35) days notice in writing to the other party (said 35 days notice to commence from the date the notice is mailed, proof of mailing shall be sufficient proof of notice), and (2) if the insured is subject to the FMCSA's registration requirements under 49 U.S.C. 13901, by providing thirty (30) days notice to the FMCSA (said 30 days notice to commence from the date the notice is received by the FMCSA at its office in Washington, DC).

DEFINITIONS AS USED IN THIS ENDORSEMENT

Accident includes continuous or repeated exposure to conditions or which results in bodily injury, property damage, or environmental damage which the insured neither expected nor intended.

Motor Vehicle means a land vehicle, machine, truck, tractor, trailer, or semitrailer propelled or drawn by mechanical power and used on a highway for transporting property, or any combination thereof.

Bodily Injury means injury to the body, sickness, or disease to any person, including death resulting from any of these.

Property Damage means damage to or loss of use of tangible property.

Environmental Restoration means restitution for the loss, damage, or destruction of natural resources arising out of the accidental discharge, dispersal, release or escape into or upon the land, atmosphere, watercourse, or body of water, of any commodity transported by a motor carrier. This shall include the cost of removal and the cost of necessary measures taken to minimize or mitigate damage to human health, the natural environment, fish, shellfish, and wildlife.

Public Liability means liability for bodily injury, property damage, and environmental restoration.

(continued on next page)

POLLUTION ENDORSEMENTS

MCS90

The insurance policy to which this endorsement is attached provides automobile liability insurance and is amended to assure compliance by the insured, within the limits stated herein, as motor carrier of property, with Section 29 and 30 of the Motor Carrier Act of 1980 and the rules and regulations of the Federal Highway Administration (FHWA) and the Interstate Commerce Commission (ICC).

In consideration of the premium stated in the policy to which this endorsement is attached, the insurer (the company) agrees to pay, within the limits of liability described herein, any final judgment recovered against the insured for public liability resulting from negligence in the operation, maintenance or use of motor vehicles subject to the financial responsibility requirements of Sections 29 and 30 of the Motor Carrier Act of 1980 regardless of whether or not each motor vehicle is specifically described in the policy and whether or not such negligence occurs on any route or in any territory authorized to be served by the insured or elsewhere. Such insurance as is afforded, for public liability, does not apply to injury to or death of the insured's employees while engaged in the course of their employment, or property transported by the insured, designated as cargo. It is understood and agreed that no condition, provision, stipulation, or limitation contained in the policy, this endorsement, or any other endorsement thereon, or violation thereof, shall relieve the company from liability or from the payment of any final judgment, within the limits of liability herein described, irrespective of the financial condition, insolvency or bankruptcy of the insured. However, all terms, conditions, and limitations in the policy to which the endorsement is attached shall remain in full force and effect as binding between the insured and the company. The insured agrees to reimburse the company for any payment made by the company on account of any accident, claim, or suit involving a breach of the terms of the policy, and for any payment that the company would not have been obligated to make under the provisions of the policy except for the agreement contained in this endorsement.

It is further understood and agreed that, upon failure of the company to pay any final judgment recovered against the insured as provided herein, the judgment creditor may maintain an action in any court of competent jurisdiction against the company to compel such payment.

The limits of the company's liability for the amounts prescribed in this endorsement apply separately, to each accident, and any payment under the policy because of any one accident shall not operate to reduce the liability of the company for the payment of final judgments resulting from any other accident.

➤ **Endorsement does not provide pollution coverage!**

➤ **Need to add CA 99 48 – Pollution Liability – Broadened Coverage For Covered Autos**

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

**POLLUTION LIABILITY – BROADENED COVERAGE
FOR COVERED AUTOS – BUSINESS AUTO AND
MOTOR CARRIER COVERAGE FORMS**

This endorsement modifies insurance provided under the following:

BUSINESS AUTO COVERAGE FORM
MOTOR CARRIER COVERAGE FORM

With respect to coverage provided by this endorsement, the provisions of the Coverage Form apply unless modified by the endorsement.

A. Covered Autos Liability Coverage is changed as follows:

1. Paragraph **a.** of the **Pollution** Exclusion applies only to liability assumed under a contract or agreement.
2. With respect to the coverage afforded by Paragraph **A.1.** above, Exclusion **B.6. Care, Custody Or Control** does not apply.

B. Changes In Definitions

For the purposes of this endorsement, Paragraph **D.** of the **Definitions** Section is replaced by the following:

- D.** "Covered pollution cost or expense" means any cost or expense arising out of:
1. Any request, demand, order or statutory or regulatory requirement that any "insured" or others test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to, or assess the effects of "pollutants"; or
 2. Any claim or "suit" by or on behalf of a governmental authority for damages because of testing for, monitoring, cleaning up, removing, containing, treating, detoxifying or neutralizing, or in any way responding to or assessing the effects of "pollutants".

"Covered pollution cost or expense" does not include any cost or expense arising out of the actual, alleged or threatened discharge, dispersal, seepage, migration, release or escape of "pollutants".

- a.** Before the "pollutants" or any property in which the "pollutants" are contained are moved from the place where they are accepted by the "insured" for movement into or onto the covered "auto"; or
- b.** After the "pollutants" or any property in which the "pollutants" are contained are moved from the covered "auto" to the place where they are finally delivered, disposed of or abandoned by the "insured".

Paragraphs **a.** and **b.** above do not apply to "accidents" that occur away from premises owned by or rented to an "insured" with respect to "pollutants" not in or upon a covered "auto" if:

- (1) The "pollutants" or any property in which the "pollutants" are contained are upset, overturned or damaged as a result of the maintenance or use of a covered "auto"; and
- (2) The discharge, dispersal, seepage, migration, release or escape of the "pollutants" is caused directly by such upset, overturn or damage.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

DESIGNATED INSURED FOR COVERED AUTOS LIABILITY COVERAGE

This endorsement modifies insurance provided under the following:

AUTO DEALERS COVERAGE FORM
BUSINESS AUTO COVERAGE FORM
MOTOR CARRIER COVERAGE FORM

With respect to coverage provided by this endorsement, the provisions of the Coverage Form apply unless modified by this endorsement.

This endorsement identifies person(s) or organization(s) who are "insureds" for Covered Autos Liability Coverage under the Who Is An Insured provision of the Coverage Form. This endorsement does not alter coverage provided in the Coverage Form.

This endorsement changes the policy effective on the inception date of the policy unless another date is indicated below.

Named Insured:

Endorsement Effective Date:

SCHEDULE

Name Of Person(s) Or Organization(s):

Information required to complete this Schedule, if not shown above, will be shown in the Declarations.

Each person or organization shown in the Schedule is an "insured" for Covered Autos Liability Coverage, but only to the extent that person or organization qualifies as an "insured" under the Who Is An Insured provision contained in Paragraph **A.1.** of Section **II** – Covered Autos Liability Coverage in the Business Auto and Motor Carrier Coverage Forms and Paragraph **D.2.** of Section **I** – Covered Autos Coverages of the Auto Dealers Coverage Form.

Discussion: Missy recently received a contract from a new client that requires Befestive, Inc. to indemnify and hold them harmless and add them as an Additional Insured with a Waiver of Subrogation on the Business Auto Policy. The contract also contains a provision that their insurance be primary and non-contributory. She asks if this is a common practice and if her insurance policy needs additional changes.

Solution: Endorsement CA 20 48 – Designated Insured For Covered Autos Liability Coverage

- The BAP grants insured status to anyone liable for the conduct of an insured (vicarious liability)
- This endorsement was developed to specifically name a person or organization as an insured
- This endorsement does not provide insured status coverage that was not already there

Endorsement CA 04 44 – Waiver Of Transfer Of Rights Of Recovery Of Others To Us (Waiver Of Subrogation)

- States that the transfer of rights of recovery against others condition does not apply the person or organization shown in the schedule

Endorsement CA 04 43 - Waiver Of Transfer Of Rights Of Recovery Against Others To Us (Waiver Of Subrogation) – Automatic When Required By Written Contract Or Agreement

- Written Contract or agreement required before “accident” or “loss”

Endorsement CA 04 49 – Primary And Noncontributory – Other Insurance Condition

- Only applies with **written** contractual requirement

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

WAIVER OF TRANSFER OF RIGHTS OF RECOVERY AGAINST OTHERS TO US (WAIVER OF SUBROGATION)

This endorsement modifies insurance provided under the following:

AUTO DEALERS COVERAGE FORM
BUSINESS AUTO COVERAGE FORM
MOTOR CARRIER COVERAGE FORM

With respect to coverage provided by this endorsement, the provisions of the Coverage Form apply unless modified by the endorsement.

This endorsement changes the policy effective on the inception date of the policy unless another date is indicated below.

Named Insured:

Endorsement Effective Date:

SCHEDULE

Name(s) Of Person(s) Or Organization(s):

Information required to complete this Schedule, if not shown above, will be shown in the Declarations.

The **Transfer Of Rights Of Recovery Against Others To Us** condition does not apply to the person(s) or organization(s) shown in the Schedule, but only to the extent that subrogation is waived prior to the "accident" or the "loss" under a contract with that person or organization.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

**WAIVER OF TRANSFER OF RIGHTS OF RECOVERY
AGAINST OTHERS TO US (WAIVER OF SUBROGATION) –
AUTOMATIC WHEN REQUIRED BY WRITTEN
CONTRACT OR AGREEMENT**

This endorsement modifies insurance provided under the following:

AUTO DEALERS COVERAGE FORM
BUSINESS AUTO COVERAGE FORM
MOTOR CARRIER COVERAGE FORM

With respect to coverage provided by this endorsement, the provisions of the Coverage Form apply unless modified by the endorsement.

The **Transfer Of Rights Of Recovery Against Others To Us** Condition does not apply to any person(s) or organization(s) for whom you are required to waive subrogation with respect to the coverage provided under this Coverage Form, but only to the extent that subrogation is waived:

- A. Under a written contract or agreement with such person(s) or organization(s); and
- B. Prior to the "accident" or the "loss."

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

PRIMARY AND NONCONTRIBUTORY – OTHER INSURANCE CONDITION

This endorsement modifies insurance provided under the following:

AUTO DEALERS COVERAGE FORM
BUSINESS AUTO COVERAGE FORM
MOTOR CARRIER COVERAGE FORM

With respect to coverage provided by this endorsement, the provisions of the Coverage Form apply unless modified by the endorsement.

- A.** The following is added to the **Other Insurance** Condition in the Business Auto Coverage Form and the **Other Insurance – Primary And Excess Insurance Provisions** in the Motor Carrier Coverage Form and supersedes any provision to the contrary:

This Coverage Form's Covered Autos Liability Coverage is primary to and will not seek contribution from any other insurance available to an "insured" under your policy provided that:

1. Such "insured" is a Named Insured under such other insurance; and
2. You have agreed in writing in a contract or agreement that this insurance would be primary and would not seek contribution from any other insurance available to such "insured".

- B.** The following is added to the **Other Insurance** Condition in the Auto Dealers Coverage Form and supersedes any provision to the contrary:

This Coverage Form's Covered Autos Liability Coverage and General Liability Coverages are primary to and will not seek contribution from any other insurance available to an "insured" under your policy provided that:

1. Such "insured" is a Named Insured under such other insurance; and
2. You have agreed in writing in a contract or agreement that this insurance would be primary and would not seek contribution from any other insurance available to such "insured".

[illegible]

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

AUTO MEDICAL PAYMENTS COVERAGE

This endorsement modifies insurance provided under the following:

AUTO DEALERS COVERAGE FORM
BUSINESS AUTO COVERAGE FORM
MOTOR CARRIER COVERAGE FORM

With respect to coverage provided by this endorsement, the provisions of the Coverage Form apply unless modified by the endorsement.

A. Coverage

We will pay reasonable expenses incurred for necessary medical and funeral services to or for an "insured" who sustains "bodily injury" caused by "accident". We will pay only those expenses incurred, for services rendered within three years from the date of the "accident".

B. Who Is An Insured

1. You while "occupying" or, while a pedestrian, when struck by any "auto".
2. If you are an individual, any "family member" while "occupying" or, while a pedestrian, when struck by any "auto".
3. Anyone else "occupying" a covered "auto" or a temporary substitute for a covered "auto". The covered "auto" must be out of service because of its breakdown, repair, servicing, loss or destruction.

C. Exclusions

This insurance does not apply to any of the following:

1. "Bodily injury" sustained by an "insured" while "occupying" a vehicle located for use as a premises.
2. "Bodily injury" sustained by you or any "family member" while "occupying" or struck by any vehicle (other than a covered "auto") owned by you or furnished or available for your regular use.
3. "Bodily injury" sustained by any "family member" while "occupying" or struck by any vehicle (other than a covered "auto") owned by or furnished or available for the regular use of any "family member".
4. "Bodily injury" to your "employee" arising out of and in the course of employment by you. However, we will cover "bodily injury" to your domestic "employees" if not entitled to workers' compensation benefits. For the purposes of this endorsement, a domestic "employee" is a person engaged in household or domestic work performed principally in connection with a residence premises.
5. "Bodily injury" to an "insured" while working in a business of selling, servicing, repairing or parking "autos" unless that business is yours.
6. "Bodily injury" arising directly or indirectly out of:
 - a. War, including undeclared or civil war;
 - b. Warlike action by a military force, including action in hindering or defending against an actual or expected attack, by any government, sovereign or other authority using military personnel or other agents; or
 - c. Insurrection, rebellion, revolution, usurped power, or action taken by governmental authority in hindering or defending against any of these.

OTHER BAP ENDORSEMENTS

CA 99 03 Auto Medical Payments Coverage

- No-fault medical/funeral per person benefit
 - Incurred for services rendered within 3 years of the date of the “accident”
- Who Is An Insured
 - You while “occupying” or, while a pedestrian when struck by any “auto”
 - If you are an individual, any “family member” while “occupying” or, while a pedestrian when struck by an “auto”
- Additional exclusions
 - While “occupying” a vehicle located for use as a premises
 - Vehicle owned by or furnished for your regular use
 - Vehicle owned by or furnished for regular use of “family member”
 - “Employees” (exception for domestic “employee” not covered by WC)
 - Anyone working in Automobile Business unless yours
 - War
 - Use by someone without permission
 - Racing
- Changes in Conditions
 - Transfer of rights of recovery does not apply
 - Other insurance applies only to other collectible medical payments insurance
- Additional definitions
 - “Family member”
 - “Occupying”

7. "Bodily injury" to anyone using a vehicle without a reasonable belief that the person is entitled to do so.
8. "Bodily Injury" sustained by an "insured" while "occupying" any covered "auto" while used in any professional racing or demolition contest or stunting activity, or while practicing for such contest or activity. This insurance also does not apply to any "bodily injury" sustained by an "insured" while the "auto" is being prepared for such a contest or activity.

D. Limit Of Insurance

Regardless of the number of covered "autos", "insureds", premiums paid, claims made or vehicles involved in the "accident", the most we will pay for "bodily injury" for each "insured" injured in any one "accident" is the Limit Of Insurance for Auto Medical Payments Coverage shown in the Declarations.

No one will be entitled to receive duplicate payments for the same elements of "loss" under this coverage and any Liability Coverage Form, Uninsured Motorists Coverage Endorsement or Underinsured Motorists Coverage Endorsement attached to this Coverage Part.

E. Changes In Conditions

The **Conditions** are changed for **Auto Medical Payments Coverage** as follows:

1. The **Transfer Of Rights Of Recovery Against Others To Us** Condition does not apply.
2. The reference in **Other Insurance** in the Auto Dealers and Business Auto Coverage Forms and **Other Insurance – Primary And Excess Insurance Provisions** in the Motor Carrier Coverage Form to "other collectible insurance" applies only to other collectible auto medical payments insurance.

F. Additional Definitions

As used in this endorsement:

1. "Family member" means a person related to you by blood, marriage or adoption who is a resident of your household, including a ward or foster child.
2. "Occupying" means in, upon, getting in, on, out or off.

[illegible]

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

HIRED AUTOS SPECIFIED AS COVERED AUTOS YOU OWN

This endorsement modifies insurance provided under the following:

AUTO DEALERS COVERAGE FORM
BUSINESS AUTO COVERAGE FORM
MOTOR CARRIER COVERAGE FORM

With respect to coverage provided by this endorsement, the provisions of the Coverage Form apply unless modified by the endorsement.

This endorsement changes the policy effective on the inception date of the policy unless another date is indicated below.

Named Insured:

Endorsement Effective Date:

SCHEDULE

Description Of Auto:

Information required to complete this Schedule, if not shown above, will be shown in the Declarations.

A. Any "auto" described in the Schedule will be considered a covered "auto" you own and not a covered "auto" you hire, borrow or lease.

B. Changes In Covered Autos Liability Coverage

The following is added to the **Who Is An Insured** provision:

While any covered "auto" described in the Schedule is rented or leased to you and is being used by or for you, its owner or anyone else from whom you rent or lease it is an "insured" but only for that covered "auto".

CA 99 16 – Hired Autos Specified As Covered Autos You Own

- Primary coverage
- Owner is an insured for that covered “auto” only
- Primary rating
- **Must be leased to you and used by or for you**

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

INDIVIDUAL NAMED INSURED

This endorsement modifies insurance provided under the following:

BUSINESS AUTO COVERAGE FORM
MOTOR CARRIER COVERAGE FORM

With respect to coverage provided by this endorsement, the provisions of the Coverage Form apply unless modified by the endorsement.

If you are an individual, the policy is changed as follows:

A. Changes In Covered Autos Liability Coverage

1. The Fellow Employee Exclusion does not apply to "bodily injury" to your or any "family member's" fellow "employees".

2. Personal Auto Coverage

If any "auto" you own of the "private passenger type" is a covered "auto" under **Covered Autos Liability Coverage**:

- a. The following is added to the **Who Is An Insured** provision:

"Family members" are "insureds" for any covered "auto" you own of the "private passenger type" and any other "auto" described in Paragraph **2.b.** of this endorsement.

- b. Any "auto" you don't own is a covered "auto" while being used by you or by any "family member" except:

- (1) Any "auto" owned by any "family members".
- (2) Any "auto" furnished or available for your or any "family member's" regular use.
- (3) Any "auto" used by you or by any of your "family members" while working in a business of selling, servicing, repairing or parking "autos".
- (4) Any "auto", other than an "auto" of the "private passenger type", used by you or any of your "family members" while working in any other business or occupation.

- c. The Pollution Exclusion and, if forming a part of the policy, the Nuclear Energy Liability Exclusion (Broad Form), do not apply to any covered "auto" of the "private passenger type".

- d. The following exclusion is added and applies only to "private passenger type" covered "autos".

This insurance does not apply to:

"Bodily injury" or "property damage" for which an "insured" under the policy is also an "insured" under a nuclear energy liability policy or would be an "insured" but for its termination upon its exhaustion of its limit of liability. A nuclear energy liability policy is a policy issued by the Nuclear Energy Liability Insurance Association, Mutual Atomic Energy Liability Underwriters or any of their successors. This exclusion does not apply to "autos" registered or principally garaged in New York.

B. Changes In Physical Damage Coverage

Personal Auto Coverage

If any "auto" you own of the "private passenger type" is a covered "auto" under Physical Damage Coverage, a "non-owned auto" will also be considered a covered "auto". However, the most we will pay for "loss" to a "non-owned auto" which is a "trailer" is \$500.

C. Additional Definitions

As used in this endorsement:

1. "Family member" means a person related to you by blood, marriage or adoption who is a resident of your household, including a ward or foster child.

INDIVIDUAL NAMED INSURED

CA 99 17

1. Fellow Employee Exclusion does not apply to you or "family member's" fellow employees.
2. Named Insured must be an individual listed on the declarations.
3. Individual owns a private passenger type "auto" that is insured under the BAP.
4. The named insured and all "family members" are covered (includes resident spouse and resident relatives).
5. Non-owned rented or borrowed autos not regularly furnished or available for regular use by insured and family members are covered autos. No "auto business" use or business use of non-private passenger type "autos."
6. Provides coverage for Liability and Physical Damage. Maximum for trailer is \$500.
7. No additional premium.

2. The words "you" and "your" include your spouse if a resident of the same household except for notice of cancellation.
3. When the phrase "private passenger type" appears in quotation marks it includes any covered "auto" you own of the pickup or van type not used for business purposes, other than farming or ranching.
4. "Non-owned auto" means any "private passenger type" "auto", pickup, van or "trailer" not owned by or furnished or available for the regular use of you or any "family member", while it is in the custody of or being operated by you or any "family member".

SAMPLE

[illegible]

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

VOLUNTEER HIRED AUTOS

This endorsement modifies insurance provided under the following:

AUTO DEALERS COVERAGE FORM
BUSINESS AUTO COVERAGE FORM
MOTOR CARRIER COVERAGE FORM

With respect to coverage provided by this endorsement, the provisions of the Coverage Form apply unless modified by the endorsement.

A. Changes In Covered Autos Liability Coverage

1. The following is added to the **Who Is An Insured** provision:

A "volunteer" of yours is an "insured" while operating an "auto" hired or rented under a contract or agreement in a "volunteer's" name, with your permission, while performing duties related to the conduct of your business.

2. The following exclusion is added:

This insurance does not apply to:

Volunteer Injury

"Bodily injury" to:

- a. Any "volunteer" or any fellow "volunteer" of the "insured" if sustained while such "volunteer" is performing duties related to the conduct of your business.
- b. The spouse, child, parent, brother or sister of that "volunteer" as a consequence of Paragraph 2.a. above.

B. Changes In General Conditions

Paragraph 5.b. of the **Other Insurance** Condition in the Business Auto and Auto Dealers Coverage Forms and Paragraph 5.f. of the **Other Insurance – Primary And Excess Insurance Provisions** Condition in the Motor Carrier Coverage Form are amended by the addition of the following:

For Hired Auto Physical Damage Coverage, any covered "auto" hired or rented by your "volunteer" under a contract in a "volunteer's" name, with your permission, while performing duties related to the conduct of your business is deemed to be a covered "auto" you own.

C. Changes In Definitions

For the purposes of this endorsement:

1. The "insured contract" definition is amended as follows:

- a. Paragraph 6. is replaced by the following:

That part of any contract or agreement entered into, as part of your business, pertaining to the rental or lease, by you or any of your "employees" or "volunteers", of any "auto". However, such contract or agreement shall not be considered an "insured contract" to the extent that it obligates you or any of your "employees" or "volunteers" to pay for "property damage" to any "auto" rented or leased by you or any of your "employees" or "volunteers".

- b. Exception b. is replaced by the following:

An "insured contract" does not include that part of any contract or agreement that pertains to the loan, lease or rental of an "auto" to you or any of your "employees" or "volunteers", if the "auto" is loaned, leased or rented with a driver.

2. "Volunteer" means a person who is not your "employee" and who donates his or her work and acts at the direction of and within the scope of duties determined by you, and is not paid a fee, salary or other compensation by you or anyone else for their work performed for you.

CA 04 39 – Volunteer Hired Autos

- Adds “volunteer” of NI as an “insured” while operating an “auto” hired or rented under a contract or agreement in their name with the NI’s permission
- While performing duties related to the conduct of the NI’s business
- Exclusion for BI to “volunteer”, fellow “volunteer” or consequential BI

1. The following is added to the **Who Is An Insured provision:**

A "volunteer" of yours is an "insured" while operating an "auto" hired or rented under a contract or agreement in a "volunteer's" name, with your permission, while performing duties related to the conduct of your business.

- Changes to General Conditions
- Changes in Definitions of “insured contract” and adds definition of “volunteer”
- Must have symbol for Hired Auto
- BAP is primary for Hired Auto Physical Damage

CA 05 24 – Non-Ownership Liability Coverage For Volunteers

- Adds “volunteer” of NI as an “insured” subject to Schedule if schedule is completed or acting on NI’s behalf if no activity is described
- Adds exclusion Volunteer Injury

POLICY NUMBER:

COMMERCIAL AUTO
CA 05 24 11 20

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

NON-OWNERSHIP LIABILITY COVERAGE FOR VOLUNTEERS

This endorsement modifies insurance provided under the following:

AUTO DEALERS COVERAGE FORM
BUSINESS AUTO COVERAGE FORM
MOTOR CARRIER COVERAGE FORM

With respect to coverage provided by this endorsement, the provisions of the Coverage Form apply unless modified by the endorsement.

This endorsement changes the Policy effective on the inception date of the Policy unless another date is indicated below.

Named Insured:

Endorsement Effective Date:

SCHEDULE

Description Of Covered Volunteer Activity(ies):

Information required to complete this Schedule, if not shown above, will be shown in the Declarations.

A. Changes In Covered Autos Liability Coverage

1. The following is added to **Who Is An Insured**:

Any "volunteer" is an "insured" while he or she is:

- a. Engaged in the specified activity(ies) described in the Schedule; or
- b. Acting on your behalf, if no activity is described in the Schedule;

and using a covered "auto" you don't own, hire or borrow. Anyone else who furnishes that "auto" to a "volunteer" is also an "insured", but only to the extent of liability arising out of the activities described in preceding Paragraphs a. and b.

2. The following exclusion is added:

This insurance does not apply to:

Volunteer Injury

"Bodily injury" to:

- a. Any "volunteer" or any fellow "volunteer" of the "insured", if sustained while such "volunteer" is:
 - (1) Engaged in the specified activity(ies) described in the Schedule; or
 - (2) Acting on your behalf, if no activity is described in the Schedule.
- b. The spouse, child, parent, brother or sister of that "volunteer" as a consequence of Paragraph 2.a.

B. Additional Definitions

As used in this endorsement:

"Volunteer" means a person, who is not your "employee", and who donates his or her work and acts at the direction of and within the scope of duties determined by you, and is not paid a fee, salary or other compensation by you or anyone else for their work performed for you.

SAMPLE

CA 05 25 – Partners Or Members As Insureds

- Adds partner if NI is a partnership or member if NI is a limited liability company as an insured
- While using individually owned or owned by a member of his/her household in NI's business affairs
- Excess liability only

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

PARTNERS OR MEMBERS AS INSURED

This endorsement modifies insurance provided under the following:

AUTO DEALERS COVERAGE FORM
BUSINESS AUTO COVERAGE FORM
MOTOR CARRIER COVERAGE FORM

With respect to coverage provided by this endorsement, the provisions of the Coverage Form apply unless modified by the endorsement.

The **Who Is An Insured** provision under Paragraph **A.1. of Section II – Covered Autos Liability Coverage** in the Business Auto and Motor Carrier Coverage Forms and Paragraph **D.2. of Section I – Covered Autos Coverages** of the Auto Dealers Coverage Form is amended to include as an "insured" a partner (if you are a partnership) or a member (if you are a limited liability company) while using a covered "auto" owned by him or her or a member of his or her household in your business affairs.

POLICY NUMBER:

COMMERCIAL AUTO
CA 99 40 10 13

0
10

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

EXCLUSION OR EXCESS COVERAGE HAZARDS OTHERWISE INSURED

This endorsement modifies insurance provided under the following:

AUTO DEALERS COVERAGE FORM
BUSINESS AUTO COVERAGE FORM
MOTOR CARRIER COVERAGE FORM

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With respect to coverage provided by this endorsement, the provisions of the Coverage Form apply unless modified by the endorsement.

This endorsement changes the policy effective on the inception date of the policy unless another date is indicated below.

Named Insured:

Endorsement Effective Date:

SCHEDULE

Designation Or Description Of Covered "Autos" You Own:

Information required to complete this Schedule, if not shown above, will be shown in the Declarations.

When you do not want **Covered Autos Liability Coverage** to apply to the covered "autos" you own that are designated in this endorsement because you have other insurance, the following provision indicated by an "X" in the ☐ will apply:

☐ **Covered Autos Liability Coverage** does not apply.

☐ **Covered Autos Liability Coverage** does not apply to "bodily injury" or "property damage" occurring before the other insurance ends.

Date other insurance ends:

☐ **Covered Autos Liability Coverage** does not apply to "bodily injury" or "property damage" occurring before the other insurance ends except to the extent damages exceed the limits of the other insurance. However, the most we will pay is the difference between the Limit of Insurance for Covered Autos Liability Coverage in this Coverage Form and the limits of the other insurance, if this Coverage Form's limits are higher.

Date other insurance ends:

and Limits of Insurance: \$

CA 99 40 – Exclusion Or Excess Coverage Hazards Otherwise Insured

- Designation or description of covered “autos” you own
- Liability coverage does not apply because you have other insurance. Following provision indicated by “X” in the box will apply
 - Covered Autos Liability Coverage does not apply
 - Covered Autos Liability Coverage does not apply to BI or PD occurring before the other insurance ends
Date other insurance ends _____
 - Covered Autos Liability Coverage does not apply to BI or PD occurring before the other insurance ends except to the extent damages exceed the limits of the other insurance. However, the most we will pay is the difference between the Limit of Insurance for Liability Coverage in this Coverage Form and the limits of the other insurance if this Coverage Form’s limits are higher.
Date other insurance ends _____ and
Limits of Insurance _____

CA 23 44 – Public Or Livery Passenger Conveyance Exclusion

- Beware! Auto Liability, Physical Damage, Medical Payments, UM/UIM, PIP coverage does **not apply** to any covered auto while being used as a public or livery conveyance for passengers
- Excludes **any period of time** a covered auto is being used by an insured who is logged into a transportation network platform as a driver

CA 23 45 – Public Or Livery Passenger Conveyance And On-demand Delivery Services

- Same exclusions as CA 23 44 but adds additional exclusion for an insured who is logged into a delivery network platform
- Additional definitions:
 - “Transportation network platform”
 - “Delivery network platform”
 - “Delivery services”
 - “Occupying”

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

PUBLIC OR LIVERY PASSENGER CONVEYANCE EXCLUSION

This endorsement modifies insurance provided under the following:

AUTO DEALERS COVERAGE FORM
BUSINESS AUTO COVERAGE FORM
MOTOR CARRIER COVERAGE FORM

With respect to coverage provided by this endorsement, the provisions of the Coverage Form apply unless modified by the endorsement.

A. Changes In Covered Autos Liability Coverage

The following exclusion is added:

Public Or Livery Passenger Conveyance

This insurance does not apply to any covered "auto" while being used as a public or livery conveyance for passengers. This includes, but is not limited to, any period of time a covered "auto" is being used by an "insured" who is logged into a "transportation network platform" as a driver, whether or not a passenger is "occupying" the covered "auto". However, this exclusion does not apply to business activities performed by an "insured" that are directly related to the Named Insured(s) listed in the Declarations.

B. Changes In Physical Damage Coverage

The following exclusion is added:

We will not pay for "loss" to any covered "auto" while being used as a public or livery conveyance for passengers. This includes, but is not limited to, any period of time a covered "auto" is being used by an "insured" who is logged into a "transportation network platform" as a driver, whether or not a passenger is "occupying" the covered "auto". However, this exclusion does not apply to business activities performed by an "insured" that are directly related to the Named Insured(s) listed in the Declarations.

C. Changes In Auto Medical Payments

If Auto Medical Payments Coverage is attached, then the following exclusion is added:

Public Or Livery Passenger Conveyance

This insurance does not apply to:

"Bodily injury" sustained by an "insured" "occupying" a covered "auto" while it is being used as a public or livery conveyance for passengers. This includes, but is not limited to, any period of time a covered "auto" is being used by an "insured" who is logged into a "transportation network platform" as a driver, whether or not a passenger is "occupying" the covered "auto". However, this exclusion does not apply to business activities performed by an "insured" that are directly related to the Named Insured(s) listed in the Declarations.

D. Changes In Uninsured And/Or Underinsured Motorists Coverage

1. If Uninsured and/or Underinsured Motorists Coverage is attached, and:

- a. Contains, in whole or in part, a public or livery exclusion, then the following exclusion in Paragraph 2. does not apply.
- b. Does not contain a public or livery exclusion, then the following exclusion in Paragraph 2. is added.

2. Public Or Livery Passenger Conveyance

This insurance does not apply to any covered "auto" while being used as a public or livery conveyance for passengers. This includes, but is not limited to, any period of time a covered "auto" is being used by an "insured" who is logged into a "transportation network platform" as a driver, whether or not a passenger is "occupying" the covered "auto". However, this exclusion does not apply to business activities performed by an "insured" that are directly related to the Named Insured(s) listed in the Declarations.

E. Changes In Personal Injury Protection Coverage

1. If Personal Injury Protection, no-fault or other similar coverage is attached, and:
 - a. Contains, in whole or in part, a public or livery exclusion, then the following exclusion in Paragraph 2. does not apply.
 - b. Does not contain a public or livery exclusion, then the following exclusion in Paragraph 2. is added.

2. Public Or Livery Passenger Conveyance

This insurance does not apply to any covered "auto" while being used as a public or livery conveyance for passengers. This includes, but is not limited to, any period of time a covered "auto" is being used by an "insured" who is logged into a "transportation network platform" as a driver, whether or not a passenger is "occupying" the covered "auto". However, this exclusion does not apply to business activities performed by an "insured" that are directly related to the Named Insured(s) listed in the Declarations.

F. Additional Definitions

As used in this endorsement:

1. "Occupying" means in, upon, getting in, on, out or off.
2. "Transportation network platform" means an online-enabled application or digital network used to connect passengers with drivers using vehicles for the purpose of providing prearranged transportation services for compensation.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

PUBLIC OR LIVERY PASSENGER CONVEYANCE AND ON-DEMAND DELIVERY SERVICES EXCLUSION

This endorsement modifies insurance provided under the following:

AUTO DEALERS COVERAGE FORM
BUSINESS AUTO COVERAGE FORM
MOTOR CARRIER COVERAGE FORM

With respect to coverage provided by this endorsement, the provisions of the Coverage Form apply unless modified by the endorsement.

A. Changes In Covered Autos Liability Coverage

The following exclusion is added:

Public Or Livery Passenger Conveyance And On-demand Delivery Services

This insurance does not apply to any covered "auto" while being used:

1. As a public or livery conveyance for passengers. This includes, but is not limited to, any period of time a covered "auto" is being used by an "insured" who is logged into a "transportation network platform" as a driver, whether or not a passenger is "occupying" the covered "auto"; or
2. By an "insured" who is logged into a "transportation network platform" or "delivery network platform" as a driver to provide "delivery services", whether or not the goods, items or products to be delivered are in the covered "auto".

However, this exclusion does not apply to business activities performed by an "insured" that are directly related to the Named Insured(s) listed in the Declarations.

B. Changes In Physical Damage Coverage

The following exclusion is added:

We will not pay for "loss" to any covered "autos" while being used:

1. As a public or livery conveyance for passengers. This includes, but is not limited to, any period of time a covered "auto" is being used by an "insured" who is logged into a "transportation network platform" as a driver, whether or not a passenger is "occupying" the covered "auto"; or

2. By an "insured" who is logged into a "transportation network platform" or "delivery network platform" as a driver to provide "delivery services", whether or not the goods, items or products to be delivered are in the covered "auto".

However, this exclusion does not apply to business activities performed by an "insured" that are directly related to the Named Insured(s) listed in the Declarations.

C. Changes In Auto Medical Payments

If Auto Medical Payments Coverage is attached, then the following exclusion is added:

Public Or Livery Passenger Conveyance And On-demand Delivery Services

This insurance does not apply to:

"Bodily injury" sustained by an "insured" "occupying" a covered "auto" while it is being used:

1. As a public or livery conveyance for passengers. This includes, but is not limited to, any period of time a covered "auto" is being used by an "insured" who is logged into a "transportation network platform" as a driver, whether or not a passenger is "occupying" the covered "auto"; or
2. By an "insured" who is logged into a "transportation network platform" or "delivery network platform" as a driver to provide "delivery services", whether or not the goods, items or products to be delivered are in the covered "auto".

However, this exclusion does not apply to business activities performed by an "insured" that are directly related to the Named Insured(s) listed in the Declarations.

D. Changes In Uninsured And/Or Underinsured Motorists Coverage

1. If Uninsured and/or Underinsured Motorists Coverage is attached, and:

- a. Contains, in whole or in part, a public or livery exclusion, then the following exclusion in Paragraph 2. does not apply.
- b. Does not contain a public or livery exclusion, then the following exclusion in Paragraph 2. is added.

2. Public Or Livery Passenger Conveyance And On-demand Delivery Services

This insurance does not apply to any covered "auto" while being used:

- a. As a public or livery conveyance for passengers. This includes, but is not limited to, any period of time a covered "auto" is being used by an "insured" who is logged into a "transportation network platform" as a driver, whether or not a passenger is "occupying" the covered "auto"; or
- b. By an "insured" who is logged into a "transportation network platform" or "delivery network platform" as a driver to provide "delivery services", whether or not the goods, items or products to be delivered are in the covered "auto".

However, this exclusion does not apply to business activities performed by an "insured" that are directly related to the Named Insured(s) listed in the Declarations.

E. Changes In Personal Injury Protection Coverage

1. If Personal Injury Protection, no-fault or other similar coverage is attached, and:

- a. Contains, in whole or in part, a public or livery exclusion, then the following exclusion in Paragraph 2. does not apply.
- b. Does not contain a public or livery exclusion, then the following exclusion in Paragraph 2. is added.

2. Public Or Livery Passenger Conveyance And On-demand Delivery Services

This insurance does not apply to any covered "auto" while being used:

- a. As a public or livery conveyance for passengers. This includes, but is not limited to, any period of time a covered "auto" is being used by an "insured" who is logged into a "transportation network platform" as a driver, whether or not a passenger is "occupying" the covered "auto"; or
- b. By an "insured" who is logged into a "transportation network platform" or "delivery network platform" as a driver to provide "delivery services", whether or not the goods, items or products to be delivered are in the covered "auto".

However, this exclusion does not apply to business activities performed by an "insured" that are directly related to the Named Insured(s) listed in the Declarations.

F. Additional Definitions

As used in this endorsement:

1. "Delivery network platform" means an online-enabled application or digital network, used to connect customers:
 - a. With drivers; or
 - b. With local vendors using drivers;for the purpose of providing prearranged "delivery services" for compensation. A "delivery network platform" does not include a "transportation network platform".
2. "Delivery services" includes courier services.
3. "Occupying" means in, upon, getting in, on, out or off.
4. "Transportation network platform" means an online-enabled application or digital network used to connect passengers with drivers using vehicles for the purpose of providing prearranged transportation services for compensation.

[illegible]

Clients who lease or rent autos to others (lessor risks)

➤ **Contingent & Excess Liability Coverage covers the lessor's interest only**

Leasing or Rental Concerns – Contingent Coverage CA 20 09

- ❖ Requires the lessee to provide proof of auto liability and any required no-fault insurance as required by the leasing or rental agreement
- ❖ Protects the lessor in case the insurance required by the leasing agreement is not collectible
- ❖ Protects the lessor in case it is sued as the owner of the uninsured vehicle
- ❖ Subject to the limits of liability required by the leasing agreement or the limit shown on the schedule
- ❖ If the lessee's policy is cancelled, the insurance provided by the endorsement end the earlier of:
 1. The date you regain custody of the "leased auto"
 2. 30 days after the cancellation of the lessee's policy
- ❖ Additional definition of "Leased auto"

POLICY NUMBER:

COMMERCIAL AUTO
CA 20 09 10 13

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

LEASING OR RENTAL CONCERNS – CONTINGENT COVERAGE

This endorsement modifies insurance provided under the following:

BUSINESS AUTO COVERAGE FORM
MOTOR CARRIER COVERAGE FORM

With respect to coverage provided by this endorsement, the provisions of the Coverage Form apply unless modified by the endorsement.

This endorsement changes the policy effective on the inception date of the policy unless another date is indicated below.

Named Insured:

Endorsement Effective Date:

SCHEDULE

Limit Of Insurance: \$

Information required to complete this Schedule, if not shown above, will be shown in the Declarations.

A. Covered Autos Liability Coverage and any required no-fault insurance provided by the policy for a covered "auto" that is a "leased auto" apply, subject to the following provisions:

1. The lessee or renter has furnished you with:
 - a. A certificate of insurance;
 - b. A copy of the policy; or
 - c. A copy of the endorsement making you an additional insured on the lessee's or renter's policy;as required by the leasing or rental agreement; and
2. At the time of an "accident", the insurance required by the leasing agreement is not collectible.
3. For you, your "employees" or agents, the Limit of Insurance provided by this endorsement is the lesser of:
 - a. The limits of liability required by the leasing agreement; or

b. The amount shown in the Schedule.

4. For the lessee or renter, any "employee" or agent of the lessee or renter or any person, except you or your "employees" or agents, operating the "leased auto" with the permission of any of these, the Limit of Insurance provided by this endorsement is the minimum limit required by any applicable compulsory or financial responsibility law.
 5. The insurance provided by this endorsement is excess over any other collectible insurance, whether primary, excess or contingent, unless such insurance is specifically written to apply in excess of this policy.
- B.** If the lessee's or renter's policy is cancelled, the insurance provided by this endorsement ends the earlier of the following dates:
1. The date you regain custody of the "leased auto"; or
 2. 30 days after the effective date of cancellation.

C. Additional Definition

The following is added to the **Definitions** section:

"Leased auto" means an "auto" you lease or rent to a lessee or rentee, including any substitute, replacement or extra "auto" needed to meet seasonal or other needs, under a lease or rental agreement that requires the lessee or rentee to provide primary insurance for you.

SAMPLE

This image shows a single page from a notebook or ledger. It features ten horizontal black lines spaced evenly down the page, providing a guide for writing. The margins are consistent on all sides, and there is no handwriting or other markings present.

Leasing or Rental Concerns – Second Level Coverage CA 20 14

- ❖ Provides the lessor with excess coverage over the lessee's liability limit when the lessee is required to provide primary insurance for the leased or rented vehicle
- ❖ Does not stack – it pays the difference between what is required in the lease or rental agreement and the limit shown on the endorsement Schedule
- ❖ Excludes as an “insured”
 - The lessee or rentee
 - Any employee or agent of the lessee or rentee
 - Any permissive user of the above

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

LEASING OR RENTAL CONCERNS – SECOND LEVEL COVERAGE

This endorsement modifies insurance provided under the following:

BUSINESS AUTO COVERAGE FORM
MOTOR CARRIER COVERAGE FORM

With respect to coverage provided by this endorsement, the provisions of the Coverage Form apply unless modified by the endorsement.

This endorsement changes the policy effective on the inception date of the policy unless another date is indicated below.

Named Insured:
Endorsement Effective Date:

SCHEDULE

Limit Of Insurance: \$	Each "Accident"
Information required to complete this Schedule, if not shown above, will be shown in the Declarations.	

The Limit Of Insurance shown in the Schedule replaces the limit of insurance shown elsewhere in the policy or in any lease or rental agreement that requires a lessee or rentee to provide primary insurance for you, subject to the following provisions:

1. For the difference between the Limit Of Insurance shown in the Schedule and the limit of insurance shown in any lease or rental agreement that requires a lessee or rentee to provide primary insurance for you, **Who Is An Insured** applies except that none of the following is an "insured":
 - a. The lessee or rentee;
 - b. Any "employee" or agent of the lessee or rentee; and

- c. Any person operating an "auto" with the permission of any of the above.
2. For the difference between the Limit Of Insurance shown in the Schedule and the limit of insurance shown elsewhere in the policy, **Who Is An Insured** applies except that none of the following is an "insured":
 - a. Any lessee or rentee not described in Paragraph 1, above;
 - b. Any "employee" or agent of the lessee or rentee; and
 - c. Any person operating an "auto" with the permission of any of the above.

Leasing or Rental Concerns – Conversion, Embezzlement or Secretion
Coverage CA 20 10

- ❖ Physical Damage Coverage (Comprehensive or SCL) is excluded for theft, conversion, embezzlement or secretion by any person in possession of a covered “auto” that is under a bailment lease, conditional sale, purchase agreement, mortgage or other encumbrance or as a lessee or rentee or the covered “auto” unless designated in the Schedule for which an additional premium is shown
- ❖ Coverage for scheduled “autos” is 75% of ACV at the time of loss less the amount of deposit if collected at the time of agreement
- ❖ Requires prompt notification to the police
- ❖ Cooperate with prosecution
- ❖ Make every reasonable effort to locate the auto by legal methods

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

LEASING OR RENTAL CONCERNS – CONVERSION, EMBEZZLEMENT OR SECRETION COVERAGE

This endorsement modifies insurance provided under the following:

BUSINESS AUTO COVERAGE FORM
MOTOR CARRIER COVERAGE FORM

With respect to coverage provided by this endorsement, the provisions of the Coverage Form apply unless modified by the endorsement.

This endorsement changes the policy effective on the inception date of the policy unless another date is indicated below.

Named Insured:
Endorsement Effective Date:

SCHEDULE

Designation Of Covered "Autos" To Which The Insurance Afforded By This Endorsement Applies:	Premium
<input type="checkbox"/> All Covered "Autos"	\$
<input type="checkbox"/> Covered "Autos" Described Or Designated Below:	\$
Information required to complete this Schedule, if not shown above, will be shown in the Declarations.	

Physical Damage Coverage is changed as follows:

A. The following exclusion is added.

This insurance does not apply:

Under the Comprehensive and Specified Causes Of Loss Coverages, to "loss" due to theft, conversion, embezzlement or secretion by any person in possession of a covered "auto" either:

1. Under a bailment lease, conditional sale, purchase agreement, mortgage or other encumbrance; or
2. As a rentee or lessee of such covered "auto".

But this exclusion does not apply to covered "autos" designated in the Schedule for which an additional premium is shown.

B. For covered "autos" designated in the Schedule, we will pay under the Comprehensive and Specified Causes Of Loss Coverages, for "loss" to the covered "autos" due to theft, conversion, embezzlement or secretion by any rentee or lessee, subject to the following provisions:

1. The most we will pay for "loss" to any one covered "auto" is 75% of the actual cash value of such covered "auto", at the time of the "loss", reduced by the amount of any deposit secured by you from the rentee or lessee.

- 2. If there is a "loss" or if you learn of any act which may result in a "loss", you must do the following:
 - a. Promptly notify the police and, as soon as practicable, notify us or our agent.
 - b. Cooperate with any public prosecutor if requested by him or her, in prosecuting any person whose acts result in the "loss".
 - c. Submit a proof of "loss" if required by us.
 - d. Make every reasonable effort to locate the covered "auto". If you locate the covered "auto", take possession of it, using legal proceedings if required by us. We will reimburse you for reasonable expenses incurred at our request, or with our consent, in locating and recovering the covered "auto".

SAMPLE

CONCLUSION

- ❖ Endorsements modify coverage
- ❖ Some add coverage
- ❖ Some amend policy provisions
- ❖ Some restrict coverage
- ❖ Need to completely read the endorsement and see that it is completed correctly
- ❖ Oh, don't forget – non-ISO endorsements



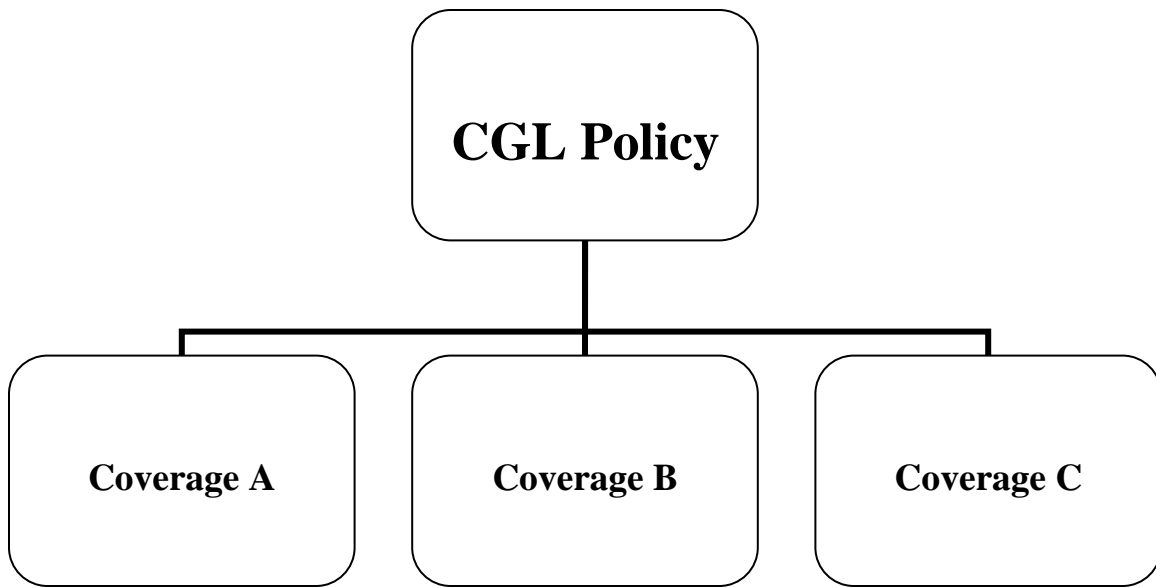


James K. Ruble Seminar

a proud member of The National Alliance for Insurance Education & Research

Section 6

Commercial General Liability Coverage Excitement and Opportunity Awaits



COMMERCIAL GENERAL LIABILITY COVERAGE

Excitement & **O**ppportunity Awaits

ALLEN MESSER, CIC, CPCU
Insurance Concepts & Services
New Braunfels, TX
830-481-7997
AllenMesser24@gmail.com

Commercial Lines Policies & the CGL Coverage Part

A simplified policy program for commercial lines of insurance has been developed by the Insurance Services Office (ISO). The latest policies are designed to be “readable”, which means that the language is supposed to be more understandable to the typical insured than it used to be. The program has also been simplified through modernization of policy coverages and standardization of format. Policies may be written to provide only one type of coverage or may be written on a package basis to provide two or more types of coverage.

The forms and endorsements for a particular line of insurance make up what is known as coverage part. A policy that contains a single **coverage part** (or line of insurance) is called a **monoline policy**. A policy that contains two or more coverage parts is a multiline policy and is called a **Commercial Package Policy (CPP)**.

Regardless of whether a policy is written as a monoline policy or a package policy, the coverage parts used are identical. That is, there is only one set of forms used to provide a given coverage. A particular coverage form may be used alone or it may be combined with other types of coverage forms in the same policy.

- ◆ Commercial General Liability may be written independently as a monoline policy, or it may be written in conjunction with Commercial Property and Commercial Crime under a package policy. The distinguishing feature between the two approaches – monoline vs. package – is merely the number of coverage parts attached to the policy.

The Commercial Lines Program provides a simplified framework for assembling coverage parts. Generally, a commercial lines insurance policy will consist of:

- Common Policy Declarations
- Common Policy Conditions
- One or more Commercial Coverage Parts
- Interline Endorsements (as needed)

In most cases, every commercial policy includes the **Common Policy Declarations** and the **Common Policy Conditions**. These forms apply to the **entire policy** regardless of the number of coverage parts included.

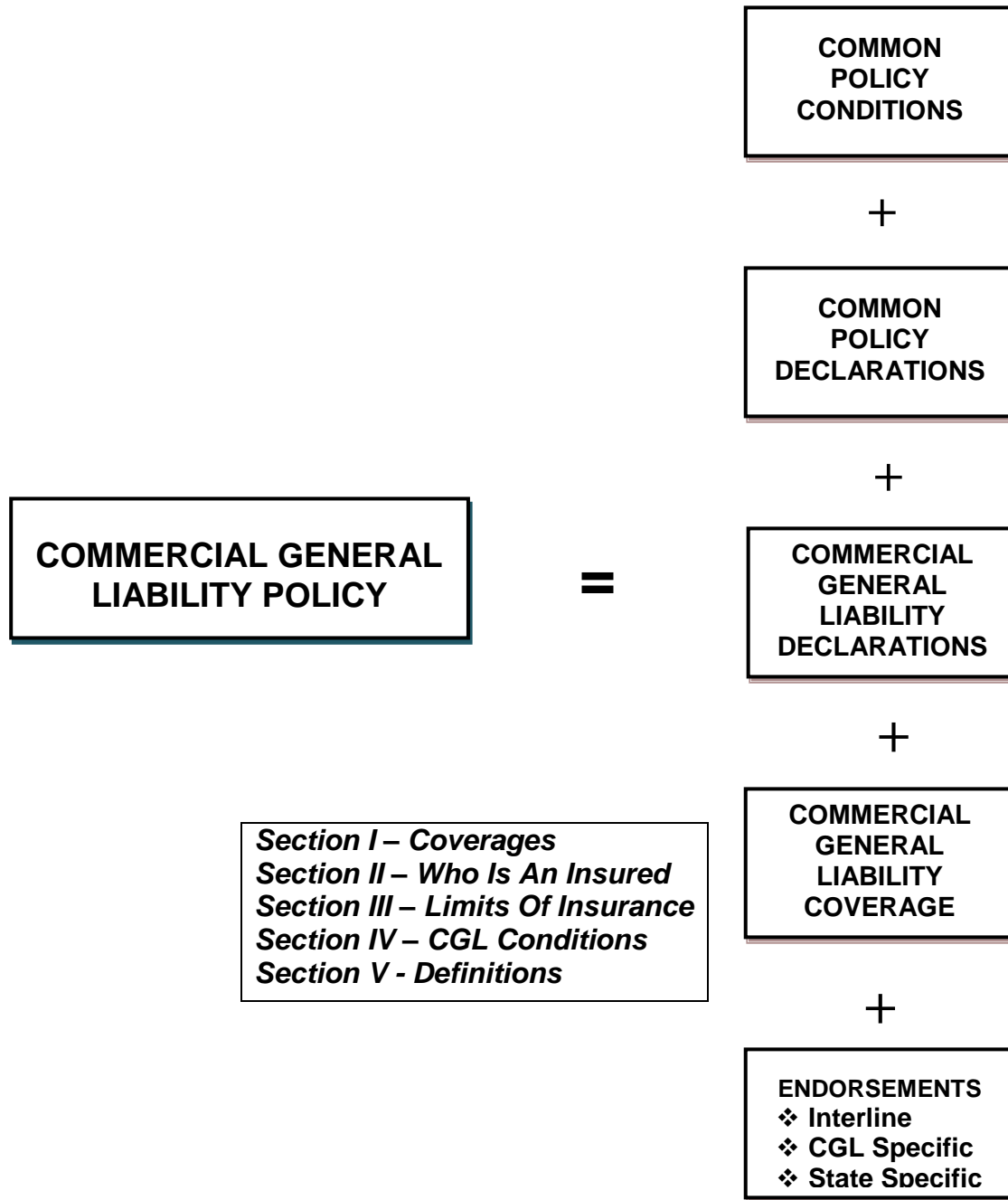
Individual coverage parts each have their own coverage forms, declarations, endorsements, and, in some cases, separate conditions form (**NOT CGL**), which apply **only to that particular coverage**. In addition, **interline endorsements** may be attached to a package policy. These endorsements may apply to more than one coverage part and were developed to reduce redundancy.

The **specific components of the CGL Coverage Part** are:

- **CGL Declarations**
- **CGL Coverage Form**
- **CGL Endorsements**

If written as a monoline policy, the Common Policy Conditions and any specific interline endorsements applicable would also need to be attached to the above listed components.

I. CGL POLICY FORMAT



POLICY NUMBER:

IL DS 00 09 08

COMMON POLICY DECLARATIONS

COMPANY NAME AREA	PRODUCER NAME AREA
NAMED INSURED: _____	
MAILING ADDRESS: _____	
POLICY PERIOD: FROM _____ TO _____ AT 12:01 A.M. STANDARD TIME <u>AT YOUR MAILING ADDRESS SHOWN ABOVE</u>	

BUSINESS DESCRIPTION

IN RETURN FOR THE PAYMENT OF THE PREMIUM, AND SUBJECT TO ALL THE TERMS OF THIS POLICY, WE AGREE WITH YOU TO PROVIDE THE INSURANCE AS STATED IN THIS POLICY.

THIS POLICY CONSISTS OF THE FOLLOWING COVERAGE PARTS FOR WHICH A PREMIUM IS INDICATED. THIS PREMIUM MAY BE SUBJECT TO ADJUSTMENT.	
	PREMIUM
CAPITAL ASSETS PROGRAM (OUTPUT POLICY) COVERAGE PART	\$ _____
COMMERCIAL AUTOMOBILE COVERAGE PART	\$ _____
COMMERCIAL GENERAL LIABILITY COVERAGE PART	\$ _____
COMMERCIAL INLAND MARINE COVERAGE PART	\$ _____
COMMERCIAL LIABILITY UMBRELLA	\$ _____
COMMERCIAL PROPERTY COVERAGE PART	\$ _____
CRIME AND FIDELITY COVERAGE PART	\$ _____
EMPLOYMENT-RELATED PRACTICES LIABILITY COVERAGE PART	\$ _____
EQUIPMENT BREAKDOWN COVERAGE PART	\$ _____
FARM COVERAGE PART	\$ _____
LIQUOR LIABILITY COVERAGE PART	\$ _____
MEDICAL PROFESSIONAL LIABILITY COVERAGE PART	\$ _____
POLLUTION LIABILITY COVERAGE PART	\$ _____
	\$ _____
	TOTAL: \$ _____
Premium shown is payable: \$ _____ at inception. \$ _____	

II. COMMON POLICY DECLARATIONS FORM

A. NAMED INSURED - different types of legal entities

❖ ***What method does the agency use to determine the correct legal entities that should be listed as named insureds? We will discuss the impact on the CGL Policy specifically in just a little while, but this concept is most important for each coverage/policy!***

B. MAILING ADDRESS

C. POLICY PERIOD

D. BUSINESS DESCRIPTION

E. COVERAGE PARTS/ PREMIUM

COMMON POLICY CONDITIONS

All Coverage Parts included in this policy are subject to the following conditions.

A. Cancellation

1. The first Named Insured shown in the Declarations may cancel this policy by mailing or delivering to us advance written notice of cancellation.
2. We may cancel this policy by mailing or delivering to the first Named Insured written notice of cancellation at least:
 - a. 10 days before the effective date of cancellation if we cancel for nonpayment of premium; or
 - b. 30 days before the effective date of cancellation if we cancel for any other reason.
3. We will mail or deliver our notice to the first Named Insured's last mailing address known to us.
4. Notice of cancellation will state the effective date of cancellation. The policy period will end on that date.
5. If this policy is cancelled, we will send the first Named Insured any premium refund due. If we cancel, the refund will be pro rata. If the first Named Insured cancels, the refund may be less than pro rata. The cancellation will be effective even if we have not made or offered a refund.
6. If notice is mailed, proof of mailing will be sufficient proof of notice.

B. Changes

This policy contains all the agreements between you and us concerning the insurance afforded. The first Named Insured shown in the Declarations is authorized to make changes in the terms of this policy with our consent. This policy's terms can be amended or waived only by endorsement issued by us and made a part of this policy.

C. Examination Of Your Books And Records

We may examine and audit your books and records as they relate to this policy at any time during the policy period and up to three years afterward.

D. Inspections And Surveys

1. We have the right to:
 - a. Make inspections and surveys at any time;

- b. Give you reports on the conditions we find; and
 - c. Recommend changes.

2. We are not obligated to make any inspections, surveys, reports or recommendations and any such actions we do undertake relate only to insurability and the premiums to be charged. We do not make safety inspections. We do not undertake to perform the duty of any person or organization to provide for the health or safety of workers or the public. And we do not warrant that conditions:
 - a. Are safe or healthful; or
 - b. Comply with laws, regulations, codes or standards.

3. Paragraphs 1. and 2. of this condition apply not only to us, but also to any rating, advisory, rate service or similar organization which makes insurance inspections, surveys, reports or recommendations.

4. Paragraph 2. of this condition does not apply to any inspections, surveys, reports or recommendations we may make relative to certification, under state or municipal statutes, ordinances or regulations, of boilers, pressure vessels or elevators.

E. Premiums

The first Named Insured shown in the Declarations:

1. Is responsible for the payment of all premiums; and
2. Will be the payee for any return premiums we pay.

F. Transfer Of Your Rights And Duties Under This Policy

Your rights and duties under this policy may not be transferred without our written consent except in the case of death of an individual named insured.

If you die, your rights and duties will be transferred to your legal representative but only while acting within the scope of duties as your legal representative. Until your legal representative is appointed, anyone having proper temporary custody of your property will have your rights and duties but only with respect to that property.

III. COMMON POLICY CONDITIONS

Establishes part of the "ground rules" for the relationship between the insurer and the insured.

A. Conditions Common To All Coverage Parts

1. Cancellation

- **CG 02 24 - EARLIER NOTICE OF CANCELLATION PROVIDED BY US**
- **STATE SPECIFIC ENDORSEMENTS MAY MODIFY**

2. Changes

3. Examination Of Your Books And Records

4. Inspections And Surveys

5. Premiums

6. Transfer Of Your Rights And Duties Under This Policy

B. Concept Of First Named Insured

- *Commercial policies may have many insureds or even many Named Insureds; this language clarifies that specific rights and responsibilities **are reserved for the first Named Insured.***

*1. Authorized to cancel policy

2. Receive notice of cancellation

* 3. Authorized to make changes in the terms of policy with insurer's consent

4. Responsible for payment of all premiums

5. Payee for return premiums



❖ ***From whom does the agency take instructions?***

* **Suggestion - LETTER OF AUTHORIZATION - EXHIBIT A**

POLICY NUMBER:

COMMERCIAL GENERAL LIABILITY
CG DS 01 10 01

COMMERCIAL GENERAL LIABILITY DECLARATIONS

COMPANY NAME AREA	PRODUCER NAME AREA
NAMED INSURED: _____	
MAILING ADDRESS: _____	
POLICY PERIOD: FROM _____ TO _____ AT 12:01 A.M. TIME AT YOUR MAILING ADDRESS SHOWN ABOVE	

IN RETURN FOR THE PAYMENT OF THE PREMIUM, AND SUBJECT TO ALL THE TERMS OF THIS POLICY,
WE AGREE WITH YOU TO PROVIDE THE INSURANCE AS STATED IN THIS POLICY.

LIMITS OF INSURANCE	
EACH OCCURRENCE LIMIT	\$ _____
DAMAGE TO PREMISES RENTED TO YOU LIMIT	\$ _____ Any one premises
MEDICAL EXPENSE LIMIT	\$ _____ Any one person
PERSONAL & ADVERTISING INJURY LIMIT	\$ _____ Any one person or organization
GENERAL AGGREGATE LIMIT	\$ _____
PRODUCTS/COMPLETED OPERATIONS AGGREGATE LIMIT	\$ _____

I think this can be
confusing to insureds

RETROACTIVE DATE (CG 00 02 ONLY)
THIS INSURANCE DOES NOT APPLY TO "BODILY INJURY", "PROPERTY DAMAGE" OR "PERSONAL AND ADVERTISING INJURY" WHICH OCCURS BEFORE THE RETROACTIVE DATE, IF ANY, SHOWN BELOW. RETROACTIVE DATE: _____ (ENTER DATE OR "NONE" IF NO RETROACTIVE DATE)

The designation here may
"trigger" automatic
insureds.

DESCRIPTION OF BUSINESS
FORM OF BUSINESS: <input type="checkbox"/> INDIVIDUAL <input type="checkbox"/> PARTNERSHIP <input type="checkbox"/> JOINT VENTURE <input type="checkbox"/> TRUST <input type="checkbox"/> LIMITED LIABILITY COMPANY <input type="checkbox"/> ORGANIZATION, INCLUDING A CORPORATION (BUT NOT INCLUDING A PARTNERSHIP, JOINT VENTURE OR LIMITED LIABILITY COMPANY) BUSINESS DESCRIPTION: _____

IV. COMMERCIAL GENERAL LIABILITY DECLARATIONS

Provides more specific and detailed information about commercial general liability coverage.

A. NAMED INSURED - different types of legal entities

CAUTION: *May need liability insurance protection NOT only while in business but may also have a **discontinued** products-completed operations exposure that necessitates purchase of a CGL Policy after business operations have ceased*

CGL Insuring Agreement

- b. This insurance applies to “bodily injury” and “property damage” only if:
- 1) The “bodily injury” or “property damage” is caused by an “occurrence” that takes place in the “coverage territory”;
 - 2) *The “bodily injury” or “property damage” occurs during the policy period; and*

- Not when the work is done
- Not when the product is manufactured

B. Limits Of Insurance

1. Combines with CGL Coverage Form Section III - Limits Of Insurance to determine loss payment
2. Six different limits

C. Retroactive Date

1. Claims-made version **only**
2. Determines extent of prior acts to be covered

D. Form Of Business

1. Combines with CGL Coverage Form Section II - Who Is An Insured to establish *automatic insureds*
2. One form of business per named insured

E. All Premises You Own Rent Or Occupy

1. Shows location number
2. Shows address

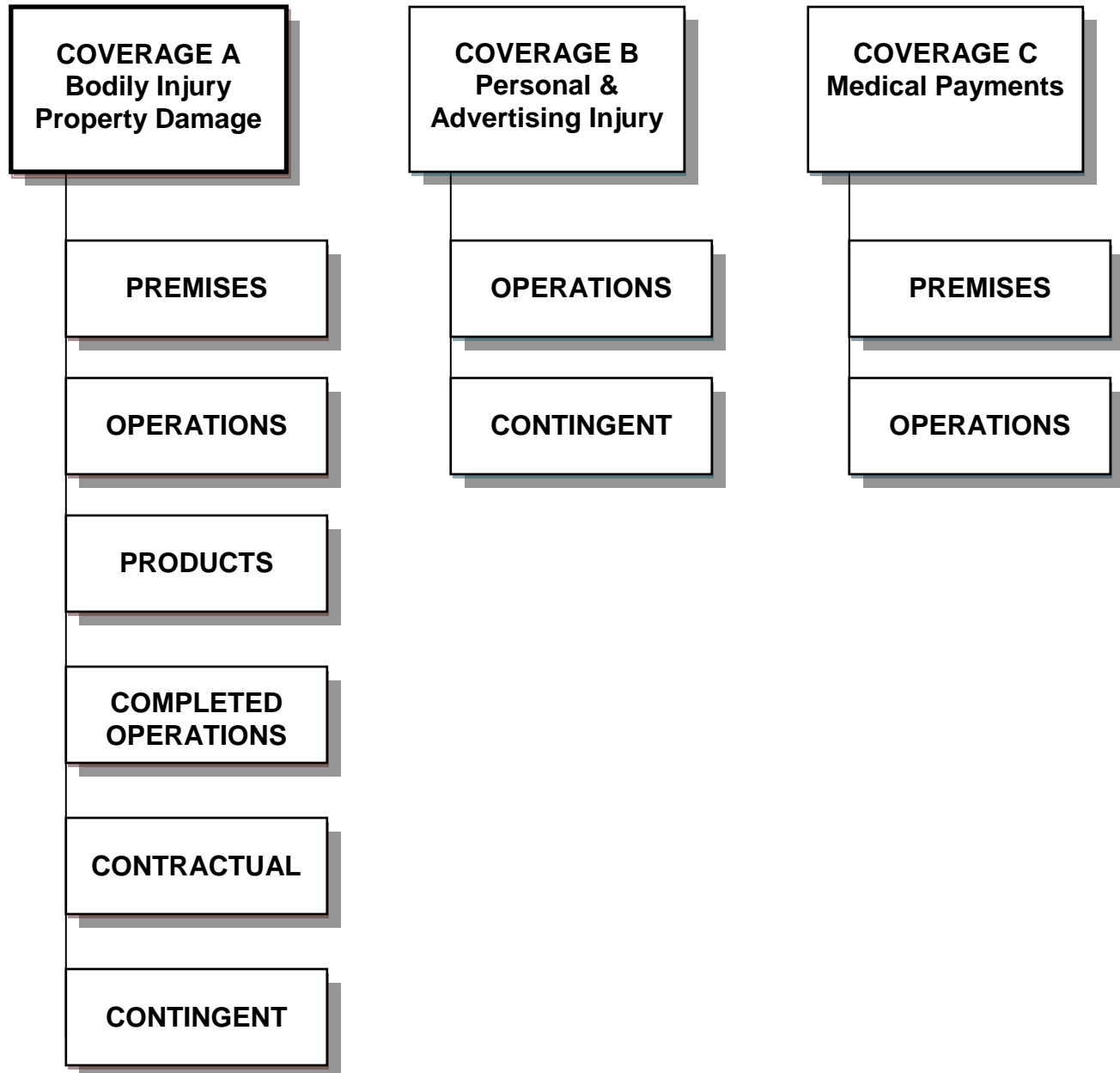
F. Classification And Premium

1. From Commercial Lines Manual
2. Used for premium computation purposes – not coverage purposes
3. Shows audit period, if applicable

G. Endorsements

V. OVERVIEW OF COVERAGES PROVIDED

Section I - Coverages of the Commercial General Liability Coverage Form is **divided into three Insuring Agreements** followed by a set of exclusions that apply to that particular Insuring Agreement.



VI. CGL OCCURRENCE COVERAGE FORM - SECTION I - COVERAGES

A. Coverage A - Bodily Injury And Property Damage Liability

1. Insuring agreement

1. Insuring Agreement

- 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 the insured against any "suit" seeking those damages. However, we will have no duty to defend the insured against any "suit" seeking damages for "bodily injury" or "property damage" to which this insurance does not apply. We may, at our discretion, investigate any "occurrence" and settle any claim or "suit" that may result. But:

(1) The amount we will pay for damages is limited as described in Section III – Limits Of Insurance; and

(2) Our right and duty to defend ends 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.

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.

- Outlines insurer's promise **to pay** - based on insured's **legal obligation**
- Coverage will be subject to the policy terms and conditions
- Contractual **duty** of insurer **to defend** insured extends beyond insured's legal obligation to pay
- BUT . . . **no coverage, no defense**
- **Control** of defense/ settlement **with insurer**
- Amount of insurer's payment limited
- Duty to defend ends when applicable limit of insurance is used up
 - Payment of judgments
 - Payment of settlements
 - Payment of medical expenses
- Limits types of actions for which the coverage form will respond

a. Property damage defined

17. "Property damage" means:

- a. 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
- b. 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.

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 any other media which are used with electronically controlled equipment.

- Stipulates what types of damages to property will be covered
- Direct damage and time element (consequential losses) are both included
- Effectively precludes insurance protection for alleged property damage to intellectual properties; intellectual properties are intangible property
- Specifically states electronic data is not tangible property
 - For coverage to apply, may need to endorse or provide through another coverage form
 - **CG 04 37 05 14 - Electronic Data Liability** - amends the "property damage" definition to include loss of electronic data resulting from physical injury to tangible property – but endorsement has a Schedule where a Limit Of Insurance other than the Policy's occurrence limit may be shown and apply - **AGENCY STANDARD**

b. Occurrence defined

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

- Fortuitous events
- Important as relates to the application of Limits of Insurance and application of deductibles

**NOW BACK
TO THE
INSURING
AGREEMENT**

- b.** This insurance applies to "bodily injury" and "property damage" only if:
- 1)** The "bodily injury" or "property damage" is caused by an "occurrence" that takes place in the "coverage territory"; and
 - 2)** The "bodily injury" or "property damage" occurs during the policy period; and
 - 3)** Prior to the policy period, no insured listed under Paragraph 1. of Section II - Who Is An Insured and no "employee" authorized by you to give or receive notice of an "occurrence" or claim, knew that the "bodily injury" or "property damage" had occurred, in whole or in part. If such a listed insured or authorized "employee" knew, prior to the policy period, that the "bodily injury" or "property damage" occurred, then any continuation, change or resumption of such "bodily injury" or "property damage" during or after the policy period will be deemed to have been known prior to the policy period.

- Occurrence must take place in a **defined geographic area** – the coverage territory
- The bodily injury or property damage must occur **during the policy period**
- Known injury or known damage exclusion – **EXHIBIT B**

c. Coverage territory defined

4. "Coverage territory" means:
- a. The United States of America (including its territories and possessions), Puerto Rico and Canada;
 - b. International waters or airspace, but only if the injury or damage occurs in the course of travel or transportation between any places included in Paragraph a. above; or
 - c. All parts of the world if the injury or damage arises out of:
 - 1) Goods or products made or sold by you in the territory described in Paragraph a. above;
 - 2) The activities of a person whose home is in the territory described in Paragraph 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 Paragraph a. above or in a settlement we agree to.

- Outlines where the occurrence must take place for coverage to apply
- Short time is not a defined phrase and could result in litigation
- Specifies the jurisdiction in which a suit must take place

**BACK TO
THE
INSURING
AGREEMENT**

- c. "Bodily injury" or "property damage" **which occurs during the policy period and was not**, prior to the policy period, **known to have occurred** by any insured listed under Paragraph 1. of Section II – Who Is An Insured or any "employee" authorized by you to give or receive notice of an "occurrence" or claim, **includes any continuation, change or resumption of that "bodily injury" or "property damage" after the end of the policy period.**

- Sets forth the applicability when injury or damage that occurs during the policy period and was not, prior to the policy period, known to have occurred, continues, changes or resumes after the end of the policy period

**MORE OF
THE
INSURING
AGREEMENT**

- d. "Bodily injury" or "property damage" **will be deemed to have been known to have occurred at the earliest time** when any insured listed under Paragraph 1. of Section II - Who Is An Insured or any "employee" authorized by you to give or receive notice of an "occurrence" or claim:
- 1) Reports all, or any part, of the "bodily injury" or "property damage" to us or any other insurer;
 - 2) Receives a written or verbal demand or claim for damages because of the "bodily injury" or "property damage"; or
 - 3) Becomes aware by any other means that "bodily injury" or "property damage" has occurred or has begun to occur.

- Delineates the circumstances under which any insured designated in paragraph b.3) will be deemed to know that bodily injury or property damage had occurred or had begun to occur

**MORE OF
THE
INSURING
AGREEMENT**

- e. Damages because of "bodily injury" include damages claimed by any person or organization for care, loss of services or death **resulting at any time** from the "bodily injury".

- Claims by third parties for care, loss of services or death will be included in definition of bodily injury

2. Exclusions applicable to bodily injury and/or property damage

2. Exclusions

This insurance does not apply to:

(exclusions narrow and shape the coverage to be provided)

a. **Expected or intended injury exclusion**

This insurance does not apply to:

a. **Expected Or Intended Injury**

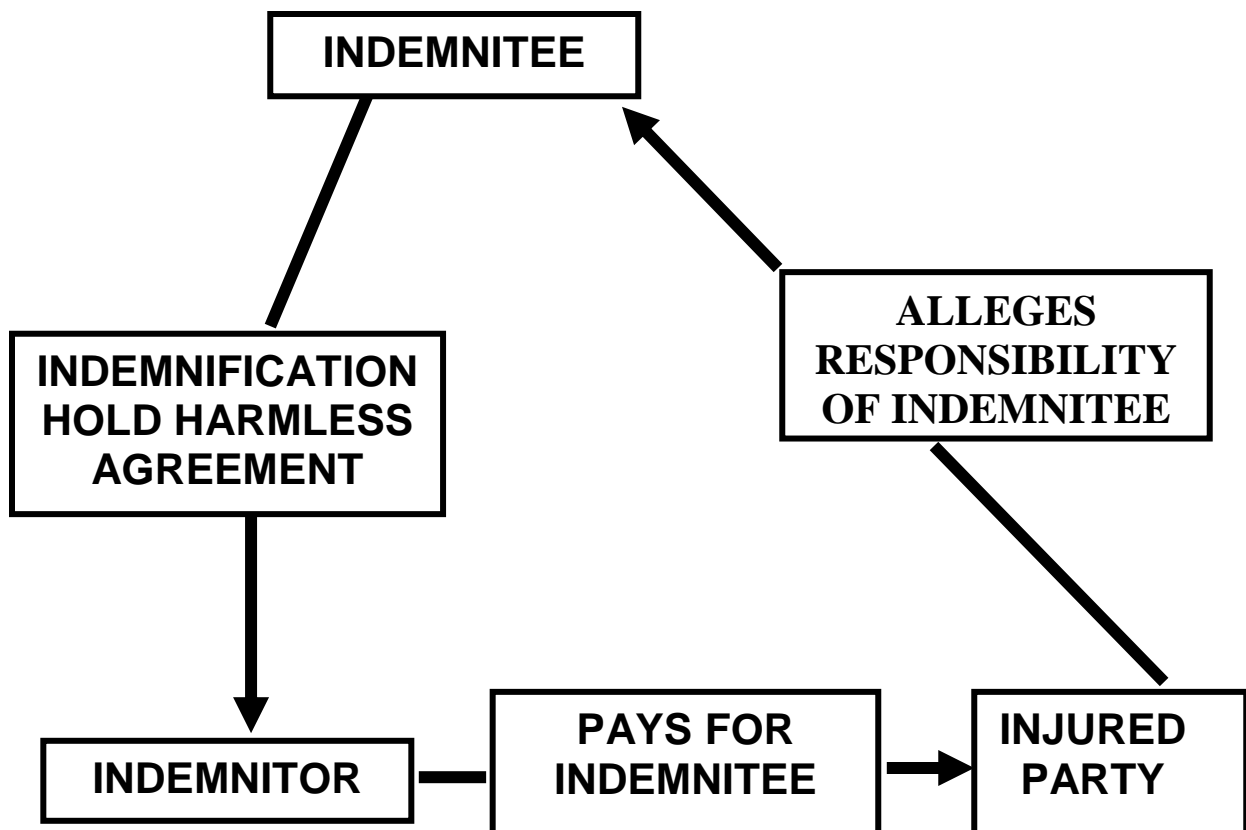
"Bodily injury" or "property damage" expected or intended **from the standpoint of the insured**. This exclusion does not apply to "bodily injury" resulting from the use of reasonable force to protect persons or property.

- Please note the phrase **the insured** rather than **any insured** – this could allow insurance protection for the vicarious liability exposure of employer for acts of employees
- **EXCEPTION: coverage provided** by stated exception for "extended bodily injury coverage" resulting from use of reasonable force to protect persons or property
- Reasonable force defined by Black's Law Dictionary - "that degree of force which is not excessive and is appropriate in protecting oneself or one's property; when such force is used, a person is justified and is not criminally liable, nor is s/he liable in tort"

What is “liability assumed” under contract?

An indemnity agreement transfers from one party (indemnatee) to another party (indemnitor) the financial consequences of a loss. It does not eliminate the indemnatee’s liability for the injured person or damaged property. So it is important that the indemnitor can respond.

There are different levels of indemnification assumed by the indemnitor ranging from the indemnatee’s vicarious responsibility for indemnitor to where the indemnatee and indemnitor are both partially responsible to where the indemnatee is the only one at fault (sole negligence).



b. **Contractual liability exclusion**

This insurance does not apply to:

b. Contractual Liability

"Bodily injury" or "property damage" for which the insured is obligated to pay damages by reason of the assumption of liability in a contract or agreement. This exclusion does not apply to liability for damages:

- (1) That the insured would have in the absence of the contract or agreement; or
- (2) Assumed in a contract or agreement that is an "insured contract", provided the "bodily injury" or "property damage" occurs subsequent to the execution of the contract or agreement. Solely for the purposes of liability assumed in an "insured contract", reasonable attorneys' fees and necessary litigation expenses incurred by or for a party other than an insured are deemed to be damages because of "bodily injury" or "property damage", provided:
 - (a) Liability to such party for, or for the cost of, that party's defense has also been assumed in the same "insured contract"; and
 - (b) Such attorneys' fees and litigation expenses are for defense of that party against a civil or alternative dispute resolution proceeding in which damages to which this insurance applies are alleged.

- Other exclusions (where no specific exceptions are made) apply to the contractual liability coverage, e.g., pollution, automobile, etc.
- No **"blanket contractual"** from insured's perspective
 - Caution: insurance proposals and insurance summaries
 - Contractual liability is only provided for certain exposures
- **EXCEPTION: coverage provided** for liability for damages the insured would have in the absence of the contract or agreement by stated exception
- **EXCEPTION: coverage provided** for oral, written or implied "insured contracts" by stated exception, but only for bodily injury and/or property damage
 - Key to the insurance provided for contractual liability is definition of "insured contract"
 - Bodily injury/ property damage must occur after contract or agreement is executed
- Specifically addresses the assumption of defense costs assumed in an "insured contract"
 - Deemed to be damages
 - Must be assumed in the same insured contract
 - Must be for a covered claim
 - As damages, **defense costs for indemnitee are within limits**

LEASE +

1) Insured contract defined

9. "Insured contract" means:

- a. A contract for a 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 operations 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;
- f. **+** That part of any other contract or agreement pertaining to your business (including an indemnification of a municipality in connection with work performed for a municipality) under which you assume the tort liability of another party to pay for "bodily injury" or "property damage" to a third person or organization. Tort liability means a liability that would be imposed by law in the absence of any contract or agreement.

Paragraph f. does not include that part of any contract or agreement: ...

- Responsibility for the liability exposures of another assumed by the insured will most likely be broader than the insurance coverage provided
- **CG 21 39 - Contractual Liability Limitation** - eliminates Paragraph f. of the definition
- **CG 24 26 - Amendment Of Insured Contract Definition** - eliminates coverage for the sole negligence of the indemnitee under Paragraph f. – only joint negligence or vicarious liability applies

f. That part of any other contract or agreement pertaining to your business (including an indemnification of a municipality in connection with work performed for a municipality) under which you assume the tort liability of another party to pay for "bodily injury" or "property damage" to a third person or organization, **provided the "bodily injury" or "property damage" is caused, in whole or in part, by you or by those acting on your behalf. However, such part of a contract or agreement shall only be considered an "insured contract" to the extent your assumption of the tort liability is permitted by law.** Tort liability means a liability that would be imposed by law in the absence of any contract or agreement.

- ❖ In my opinion, neither of these endorsements is acceptable – **AGENCY STANDARD!**

2) What is not included as an insured contract

- f. That part of any other contract or agreement pertaining to your business (including an indemnification of a municipality in connection with work performed for a municipality) under which you assume the tort liability of another party to pay for "bodily injury" or "property damage" to a third person or organization. Tort liability means a liability that would be imposed by law in the absence of any contract or agreement.

Paragraph f. does not include that part of any contract or agreement:

- (1) That indemnifies a railroad for "bodily injury" or "property damage" arising out of construction or demolition operations, within 50 feet of any railroad property and affecting any railroad bridge or trestle, tracks, road-beds, tunnel, underpass or crossing;
- (2) That indemnifies an architect, engineer or surveyor for injury or damage arising out of:
 - (a) Preparing, approving, or failing to prepare or approve, maps, shop drawings, opinions, reports, surveys, field orders, change orders or drawings and specifications; or
 - (b) Giving directions or instructions, or failing to give them, if that is the primary cause of the injury or damage; or
- (3) Under which the insured, if an architect, engineer or surveyor, assumes liability for an injury or damage arising out of the insured's rendering or failure to render professional services, including those listed in (2) above and supervisory, inspection, architectural or engineering activities.

- Indemnification of a railroad arising out of construction or demolition operations excluded
 - **CG 24 17 Contractual Liability – Railroads** – deletes Paragraph f.(1) – in essence provides coverage for indemnification of a railroad for construction or demolition operations within 50 feet of a railroad

NOTE: If Railroad Protective Policy issued for railroad, will want to add CG 24 17 to contractor's CGL Policy and will want to add CA 20 70 – Coverage For Certain Operations In Connection With Railroads to contractor's BAP

- Indemnification of architects, engineers or surveyors for professional services excluded
- If insured is an architect, engineer or surveyor, indemnification for professional services is excluded

c. **Liquor liability exclusion**

This insurance does not apply to:

c. Liquor Liability

"Bodily injury" or "property damage" for which any insured may be held liable by reason of:

- (1) Causing or contributing to the intoxication of any person;
- (2) The furnishing of alcoholic beverages to a person under the legal drinking age or under the influence of alcohol; or
- (3) Any statute, ordinance or regulation relating to the sale, gift, distribution or use of alcoholic beverages.

This exclusion applies even if the claims against any insured allege negligence or other wrongdoing in:

- (a) The supervision, hiring, employment, training or monitoring of others by that insured; or
- (b) Providing or failing to provide transportation with respect to any person that may be under the influence of alcohol;

if the "occurrence" which caused the "bodily injury" or "property damage", involved that which is described in Paragraph (1), (2) or (3) above.

However, **this exclusion applies only if you are in the business of** manufacturing, distributing, selling, serving or furnishing alcoholic beverages. For the purposes of this exclusion, permitting a person to bring alcoholic beverages on your premises, for consumption on your premises, whether or not a fee is charged or a license is required for such activity, is not by itself considered the business of selling, serving or furnishing alcoholic beverages.

- Applies to liability resulting from common law as well as to liability resulting from statutory law under dram shop acts
- **EXCEPTION - coverage provided** by inferred exception for "host liquor liability"
- "In the business of " – not defined - may involve litigation
- Verbiage in Coverage Form clarifies that BYOB is not to be considered "in the business of "
- Coverage may be further narrowed by endorsement
- **CG 21 50 - Amendment of Liquor Liability Exclusion** (Not applicable in MA, NJ, TX, and WA) – removes phrase *in the business of* - exclusion applies when there is a charge whether or not a profit is derived; exclusion applies when there is a gift if a license or permit is required; also applies to BYOB
- **CG 21 51 Amendment of Liquor Liability Exclusion – Exception For Scheduled Premises Or Activities**

d. Workers' compensation and similar laws exclusion

This insurance does not apply to:

d. Workers' Compensation And Similar Laws

Any obligation of the insured under a workers' compensation, disability benefits or unemployment compensation law or any similar law.

- Excludes statutory responsibility for certain types of employee benefits
- Exposures must be covered by other types of insurance

e. Employer's liability exclusion

This insurance does not apply to:

e. Employer's Liability

"Bodily injury" to:

- (1)** An "employee" of the insured arising out of and in the course of:
 - (a)** Employment by the insured; or
 - (b)** Performing duties related to the conduct of the insured's business; or
- (2)** The spouse, child, parent, brother or sister of that "employee" as a consequence of Paragraph **(1)** above.

This exclusion applies whether the insured may be liable as an employer or in any other capacity and to any obligation to share damages with or repay someone else who must pay damages because of the injury.

This exclusion does not apply to liability assumed by the insured under an "insured contract".

- In many instances, subject of Workers Compensation And Employers Liability Insurance Policy
 - Excludes consequential bodily injury
 - Excludes dual capacity suits – **EXHIBIT C**
 - Excludes third party complaints – **EXHIBIT D**
- **EXCEPTION: coverage provided** by stated exception for liability assumed by the insured under an "insured contract" – **EXHIBIT E**
 - There are insurers who are eliminating the exception to the exclusion in their coverage forms

1) Employee defined

5. "Employee" includes a "leased worker". "Employee" does not include a "temporary worker".

- Definition of employee includes leased worker
- Therefore, employer's liability exclusion applies to "leased worker" as well

2) Leased worker defined

10. "Leased worker" means a person leased to you by a labor leasing firm under an agreement between you and the labor leasing firm, to perform duties related to the conduct of your business. "Leased worker" does not include a "temporary worker".

- Definition of leased worker excludes a "temporary worker"

3) Temporary worker defined

19. "Temporary worker" means a person who is furnished to you to substitute for a permanent "employee" on leave or to meet seasonal or short-term workload conditions.

- Temporary worker, by definition, is not one that is hired directly by the named insured
- **CG 04 24 - Coverage For Injury To Leased Workers** – changes the definition of "employee" as respects the Employers Liability Exclusion to not include a "leased worker" or a "temporary worker"

This insurance does not apply to:

f. Pollution

- (1) "Bodily injury" or "property damage" arising out of the actual, alleged or threatened discharge, dispersal, seepage, migration, release or escape of "pollutants":
- (a) At or from any premises, site or location which is or was at any time owned or occupied by, or rented or loaned to, any insured. However, this subparagraph does not apply to:
 - (i) "Bodily injury" if sustained within a building and caused by smoke, fumes, vapor or soot produced by or originating from equipment that is used to heat, cool or dehumidify the building, or equipment that is used to heat water for personal use, by the building's occupants or their guests;
 - (ii) "Bodily injury" or "property damage" for which you may be held liable, if you are a contractor and the owner or lessee of such premises, site or location has been added to your policy as an additional insured with respect to your ongoing operations performed for that additional insured at that premises, site or location and such premises, site or location is not and never was owned or occupied by, or rented or loaned to, any insured, other than that additional insured; or
 - (iii) "Bodily injury" or "property damage" arising out of heat, smoke or fumes from a "hostile fire";
 - (b) At or from any premises, site or location which is or was at any time used by or for any insured or others for the handling, storage, disposal, processing or treatment of waste;
 - (c) Which are or were at any time transported, handled, stored, treated, disposed of, or processed as waste by or for:
 - (i) Any insured; or
 - (ii) Any person or organization for whom you may be legally responsible; or
 - (d) At or from any premises, site or location on which any insured or any contractors or subcontractors working directly or indirectly on any insured's behalf are performing operations if the "pollutants" are brought on or to the premises, site or location in connection with such operations by such insured, contractor or subcontractor. However, this subparagraph does not apply to:
 - (i) "Bodily injury" or "property damage" arising out of the escape of fuels, lubricants or other operating fluids which are needed to perform the normal electrical, hydraulic or mechanical functions necessary for the operation of "mobile equipment" or its parts, if such fuels, lubricants or other operating fluids escape from a vehicle part designed to hold, store or receive them. This exception does not apply if the "bodily injury" or "property damage" arises out of the intentional discharge, dispersal or release of the fuels, lubricants or other operating fluids, or if such fuels, lubricants or other operating fluids are brought on or to the premises, site or location with the intent that they be discharged, dispersed or released as part of the operations being performed by such insured, contractor or subcontractor;
 - (ii) "Bodily injury" or "property damage" sustained within a building and caused by the release of gases, fumes or vapors from materials brought into that building in connection with operations being performed by you or on your behalf by a contractor or subcontractor; or
 - (iii) "Bodily injury" or "property damage" arising out of heat, smoke or fumes from a "hostile fire".
 - (e) At or from any premises, site or location on which any insured or any contractors or subcontractors working directly or indirectly on any insured's behalf are performing operations if the operations are to test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to, or assess the effects of, "pollutants".
- (2) Any loss, cost or expense arising out of any:
- (a) Request, demand, order or statutory or regulatory requirement that any insured or others test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to, or assess the effects of, "pollutants"; or
 - (b) Claim or suit by or on behalf of a governmental authority for damages because of testing for, monitoring, cleaning up, removing, containing, treating, detoxifying or neutralizing, or in any way responding to, or assessing the effects of, "pollutants".
- However, this paragraph does not apply to liability for damages because of "property damage" that the insured would have in the absence of such request, demand, order or statutory or regulatory requirement, or such claim or "suit" by or on behalf of a governmental authority.

f. **Pollution exclusion**

1) Pollutants defined

15. "Pollutants" mean any solid, liquid, gaseous or thermal irritant or contaminant, including smoke, vapor, soot, fumes, acids, alkalis, chemicals and waste. Waste includes materials to be recycled, reconditioned or reclaimed.

- May not entail noise or light
- Has been argued by insureds to be ambiguous

2) Hostile fire defined

7. "Hostile fire" means one which becomes uncontrollable or breaks out from where it was intended to be. .

- As contrasted with a "friendly fire"
- **EXCEPTION** - **coverage provided** by stated exception for bodily injury if sustained within a building and caused by smoke, fumes, vapor or soot from specific equipment
- **EXCEPTION** - **coverage provided** by stated exception if named insured is a contractor and the exception only applies because of adding "owner" of premises as additional insured to contractor's policy
- **EXCEPTION** - **coverage provided** by stated exception for heat, smoke or fumes from a hostile fire
- **EXCEPTION** - **coverage provided** by inferred exception for certain off premises operations - may be broadened by endorsement
- **EXCEPTION** - **coverage provided** by stated exception for accidental escape of fuels, lubricants or other operating fluids related to the operation of mobile equipment
- **EXCEPTION** - **coverage provided** by stated exception for release of gases, fumes or vapors from materials brought into that building in connection with construction operations
- **EXCEPTION** - **coverage provided** by stated exception for heat, smoke or fumes from a hostile fire
- **EXCEPTION** - **coverage provided** by inferred exception for most products - completed operations exposures

3) Excludes clean up costs for remedial action only

4) Endorsements that expand coverage

- **CG 22 64 - Pesticide or Herbicide Applicator – Limited Pollution Coverage** – Paragraph **f.(1)(d)** does not apply if the operations meet all standards of any statute, ordinance, regulation or license requirement of any federal, state or local government which apply
- **CG 22 93 - Lawn Care Services – Limited Pollution Coverage -** Paragraph **f.(1)(d)** does not apply to the application of herbicides or pesticides by an insured on lawns under the named insured's regular care for which the insured is not required to obtain a license or permit to apply

5) Endorsements that restrict coverage

- **CG 21 49 - Total Pollution Exclusion Endorsement** – eliminates all 8 exceptions
- **CG 21 55 - Total Pollution Exclusion With A Hostile Fire Exception** – only exception is for BI or PD from a hostile fire
- **CG 21 65 - Total Pollution Exclusion With A Building Heating, Cooling And Dehumidifying Equipment Exception And A Hostile Fire Exception** - exceptions for BI caused by smoke, fumes, vapor or soot from heating, cooling and dehumidifying equipment and BI or PD from a hostile fire

g. **Aircraft, auto or watercraft exclusion**

This insurance does not apply to:

g. Aircraft, Auto Or Watercraft

"Bodily injury" or "property damage" arising out of the ownership, maintenance, use or entrustment to others of any aircraft, "auto" or watercraft owned or operated by or rented or loaned to **any insured**. Use includes operation and "loading or unloading".

This exclusion applies even if the claims against any insured allege negligence or other wrongdoing in the supervision, hiring, employment, training or monitoring of others by that insured, if the "occurrence" which caused the "bodily injury" or "property damage" involved the ownership, maintenance, use or entrustment to others of any aircraft, "auto" or watercraft that is owned or operated by or rented or loaned to any insured.

This exclusion does not apply to:

- (1) A watercraft while ashore on premises you own or rent;
- (2) A watercraft you do not own that is:
 - (a) Less than 26 feet long; and
 - (b) Not being used to carry persons or property for a charge;
- (3) Parking an "auto" on, or on the ways next to, premises you own or rent, provided the "auto" is not owned by or rented or loaned to you or the insured;
- (4) Liability assumed under any "insured contract" for the ownership, maintenance or use of aircraft or watercraft; or
- (5) "Bodily injury" or "property damage" arising out of:
 - (a) The operation of machinery or equipment that is attached to, or part of, a land vehicle that would qualify under the definition of "mobile equipment" if it were not subject to a compulsory or financial responsibility law or other motor vehicle insurance law where it is licensed or principally garaged; or
 - (b) The operation of any of the machinery or equipment listed in Paragraph **f.(2)** or **f.(3)** of the definition of "mobile equipment".

- Excludes ownership, maintenance, use or entrustment to others of specific aircraft, "auto" or watercraft
- But, **please note**, this exclusion is not applicable to the ownership, maintenance or use if the exposure does not involve an insured – this means the Coverage Form may provide insurance protection for some non-owned exposures – for example, hire an independent contractor to move equipment from location A to location B and independent contractor does not qualify as an insured

- **EXCEPTION -** coverage provided by stated exception for a watercraft while ashore on premises the named insured owns or rents
- **EXCEPTION -** coverage provided by stated exception for non-owned watercraft liability with limitations
- **EXCEPTION -** coverage provided by stated exception for liability insurance (not physical damage – exclusion **j.(4)** applies and coverage is excluded) for valet parking with limitations
- **EXCEPTION -** coverage provided by stated exception for liability assumed under an "insured contract" for owned/ non-owned aircraft and watercraft
- **EXCEPTION -** coverage provided by stated exception for liability for the operations exposure of certain vehicles considered autos for the locomotion exposure
- **EXCEPTION -** coverage provided by inferred exception for the vicarious liability that may result for the operation of an automobile, aircraft (e.g., *drone*) or watercraft by an independent contractor
 - **CAUTION: CG 21 09 – Exclusion – Unmanned Aircraft**
 - eliminates coverage altogether for the ownership, maintenance, use, or entrustment to others of any aircraft that is an "unmanned aircraft" - exclusion also applies to the use of unmanned aircraft by a contractor engaged by the named insured that is not itself an insured under the CGL Policy – exclusion applies to any liability assumed under contract – adds an exclusion to Coverage B - Personal And Advertising Injury Liability for unmanned aircraft
- May need to expand coverage for completed operations exposure – **CG 22 92 – Snow Plow Operations Coverage** – within the “products-completed operations hazard” – exclusion **g.** does not apply to any “auto” used for snow plow operations
- May want to modify the watercraft exclusion – **CG 24 12 – Boats**

<ol style="list-style-type: none"> 1. Exclusion g. of COVERAGE A (Section I) does not apply to any watercraft owned or used by or rented to the insured shown in the Schedule. 2. WHO IS AN INSURED (Section II) is amended to include as an insured any person or organization legally responsible for the use of any such watercraft you own, provided the actual use is with your permission.
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1) Auto defined

2. "Auto" means:

- a.** A land motor vehicle, trailer or semitrailer designed for travel on public roads, including any attached machinery or equipment; or
- b.** Any other land vehicle that is subject to a compulsory or financial responsibility law or other motor vehicle insurance law where it is licensed or principally garaged.

However, "auto" does not include "mobile equipment".

- Liability resulting from the operation of "autos" is primarily the subject of the Business Auto Coverage Form
- Distinguishes vehicles of this type from mobile equipment
- Verbiage "land motor vehicle, trailer or semitrailer" eliminates watercraft and aircraft from the definition
- The requirement "designed for travel on public roads" helps to differentiate autos from other land motor vehicles
- Definition includes any attached machinery or equipment

2) Mobile equipment defined

12. "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 you own or rent;
- 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 Paragraph **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 Paragraph **a.**, **b.**, **c.** or **d.** above maintained primarily for purposes other than the transportation of persons or cargo.

- CGL Coverage Form intended to provide liability insurance for locomotion and/or operations exposure of certain land vehicles

(1)THESE ARE AUTOS:
*(BAP for both locomotion
& operations)*

(2)THESE ARE AUTOS:
*(BAP for locomotion –
CGL for operations ;
by exception to CGL Auto
exclusion)*

(3)THESE ARE AUTOS:
*(BAP for locomotion –
CGL for operations ‘
by exception to CGL Auto
exclusion)*

THESE ARE AUTOS:
*(BAP for locomotion –
CGL for operations;
by exception to CGL Auto
exclusion)*

However, 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; or

(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.

However, "mobile equipment" does not include any land vehicles that are subject to a compulsory or financial responsibility law or other motor vehicle insurance law where it is licensed or principally garaged. Land vehicles subject to a compulsory or financial responsibility law or other motor vehicle insurance law are considered "autos".

- Definition of "mobile equipment" excludes certain types of vehicles that will be considered "autos"
- Locomotion/ operations exposure of autos in Paragraph **f.(1)** must be covered under Business Auto Coverage Form
- Locomotion exposure of autos in Paragraphs **f.(2)** and **f.(3)** must be covered under Business Auto Coverage Form; by specific exception [Paragraph **(5)**] of the aircraft, auto or watercraft exclusion, "'bodily injury" or "property damage" arising out of the operations exposure of any of the equipment listed in paragraph **f.(2)** or **f.(3)** of the definition of "mobile equipment" is covered under the CGL Coverage Form
- Locomotion exposure of vehicles that are subject to a compulsory or financial responsibility law or other motor vehicle insurance law where it is licensed or principally garaged must be covered under Business Auto Coverage Form; by specific exception [Paragraph **(5)**] of the aircraft, auto or watercraft exclusion, "bodily injury" or "property damage" arising out of the operations exposure of these "autos" that would otherwise qualify as "mobile equipment" is covered under the CGL Coverage Form

3) Loading or unloading defined

11. "Loading or unloading" means the handling of property:

- a.** After it is moved from the place where it is accepted for movement into or onto an aircraft, watercraft or "auto";
- b.** While it is in or on an aircraft, watercraft or "auto"; or
- c.** While it is being moved from an aircraft, watercraft or "auto" to the place where it is finally delivered;

but "loading or unloading" does not include the movement of property by means of a mechanical device, other than a hand truck, that is not attached to the aircraft, watercraft or "auto".

- Loading or unloading exposure (defined here) should be covered by aircraft liability policy, watercraft liability policy or "auto" liability policy
- Movement of property by "mobile equipment" not included in definition of "loading or unloading"; therefore losses involving movement of property by "mobile equipment" is covered by the CGL Coverage Form
- Corresponds to coverage provided by the Business Auto Coverage Form

h. Mobile equipment exclusion

This insurance does not apply to:

h. Mobile Equipment

"Bodily injury" or "property damage" arising out of:

- (1) The transportation of "mobile equipment" by an "auto" owned or operated by or rented or loaned to any insured; or
- (2) The **use of** "mobile equipment" in, or while in practice for, or while being prepared for, any prearranged racing, speed, demolition, or stunting activity.

- The liability coverage for the transportation of "mobile equipment" by an "auto" owned or operated by or rented or loaned to any insured should be the subject of the Business Auto Coverage Form
- **EXCEPTION - coverage provided** by inferred exception for legal liability of the insured for damages for bodily injury or property damage caused by the mobile equipment as a result of the transportation of the mobile equipment on an automobile of an independent contractor
- The use of mobile equipment in, or while in practice for, or while being prepared for extra-hazardous activities is excluded; a Special Event Policy may be needed – use of is different from participating in – and the exclusion does not indicate that the insured must own the mobile equipment – **Could this exclusion include the sponsorship of mobile equipment in this type of activity even if the use of is only for advertising purposes?**

i. **War exclusion**

This insurance does not apply to:

i. **War**

"Bodily injury" or "property damage", however caused, arising, directly or indirectly, out of:

- (1) War, including undeclared or civil war;
- (2) Warlike action by a military force, including action in hindering or defending against an actual or expected attack, by any government, sovereign or other authority using military personnel or other agents; or
- (3) Insurrection, rebellion, revolution, usurped power, or action taken by governmental authority in hindering or defending against any of these.

- Presents a catastrophic exposure which does not necessarily depend on the insured's negligence

j. **Damage to property exclusion**

This insurance does not apply to:

j. **Damage To Property**

"Property damage" to:

- (1) **Property you own, rent, or occupy**, including any costs or expenses incurred by you, or any other person, organization or entity, for repair, replacement, enhancement, restoration or maintenance of such property for any reason, including prevention of injury to a person or damage to another's property;
- (2) **Premises you sell, give away or abandon**, if the "property damage" arises out of any part of those premises;
- (3) **Property loaned to you**;
- (4) **Personal property in the care, custody or control of the insured**;
- (5) **That particular part of real property** on which you or any contractors or subcontractors working directly or indirectly on your behalf are performing operations, if the "property damage" arises out of those operations; or
- (6) **That particular part of any property** that must be restored, repaired or replaced because "your work" was incorrectly performed on it.

Paragraphs (1), (3) and (4) of this exclusion do not apply to "property damage" (other than damage by fire) to premises, including the contents of such premises, rented to you for a period of seven or fewer consecutive days. A separate limit of insurance applies to Damage To Premises Rented To You as described in Section III – Limits Of Insurance.

Paragraph (2) of this exclusion does not apply if the premises are "your work" and were never occupied, rented or held for rental by you.

Paragraphs (3), (4), (5) and (6) of this exclusion do not apply to liability assumed under a sidetrack agreement.

Paragraph (6) of this exclusion does not apply to "property damage" included in the "products-completed operations hazard".

- **Only property damage is excluded**
- Many of the excluded exposures are more appropriately handled by the use of property insurance, including bailee's coverage
- Some exposures such as property damage to alienated premises and faulty workmanship are not supposed to be the subject of this insurance

- **EXCEPTION -** **coverage provided** for property damage to premises, including the contents of such premises, rented to the named insured on a short term basis, subject to a separate limit
- **EXCEPTION -** **coverage provided** for property damage for a speculative builder who does not occupy, rent or hold for rental his/her work
- **EXCEPTION -** **coverage provided** for “broad form property damage” for real property while operations are in progress
- **EXCEPTION -** **coverage provided** for resulting damage for faulty workmanship while operations are in progress
- **EXCEPTION -** **coverage provided** for contractual liability for property damage under a sidetrack agreement
- **EXCEPTION -** faulty workmanship exclusion **does not apply to** "products-completed operations hazard"; own set of exclusions apply to this exposure

1) Products-completed operations hazard defined

16. "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:

- First requirement is that the bodily injury and property damage must occur away from premises the named insured owns or rents

• **CG 24 07 - Products/Completed Operations Hazard Redefined –**

Paragraph a. of the definition of "Products—completed operations hazard" in the DEFINITIONS Section is replaced by the following:

"Products-completed operations hazard":

- a. Includes all "bodily injury" and "property damage" that arises out of "your products" if the "bodily injury" or "property damage" occurs after you have relinquished possession of those products.

- (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 job site has been completed if your contract calls for work at more than one job site.
- (c)** When that part of the work done at a job site has been put to its intended use by any person or organization other than another contractor or subcontractor working on the same project.
- Work that may need service, maintenance, correction, repair or replacement, but which is otherwise complete, will be treated as completed.

- Exception applies for products still in physical possession of the named insured or work that has not been completed or abandoned
- This paragraph also delineates between premises-operations and products-completed operations by establishing the circumstances under which the named insured's work will be considered completed

- b.** 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; or
- (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.

- Outlines situations that, by definition, will not be considered part of the products-completed operations hazard

k. **Damage to your product exclusion**

This insurance does not apply to:

k. Damage To Your Product

"Property damage" to "your product" arising out of it or any part of it.

- **Only applies to property damage**
- Because of the phrase "or any part of it", the exclusion applies to damage to the entire product even if only a component part is defective but the entire product is damaged

1) Your product defined

21. "Your product":

a. Means:

(1) Any goods or products, other than real property, manufactured, sold, handled, distributed or disposed of by:

(a) You;

(b) Others trading under your name; or

(c) A person or organization whose business or assets you have acquired; and

(2) Containers (other than vehicles), materials, parts or equipment furnished in connection with such goods or products.

b. Includes:

(1) Warranties or representations made at any time with respect to the fitness, quality, durability, performance or use of "your product"; and

(2) The providing of or failure to provide warnings or instructions.

c. Does not include vending machines or other property rented to or located for the use of others but not sold.

- Specifically excludes real property; therefore, allows a clear separation of what constitutes products liability as contrasted to completed operations liability
- Only necessary to trade or deal in an item
- Includes containers
- Includes both implied and express warranties

I. Damage to your work exclusion

This insurance does not apply to:

I. Damage To Your Work

"Property damage" to "your work" arising out of it or any part of it and included in the "products-completed operations hazard".

This exclusion does not apply if the damaged work or the work out of which the damage arises was performed on your behalf by a subcontractor.

- Only applies to property damage
- Aimed at eliminating from coverage any protection for damage to defective work of contractors or service providers
- **EXCEPTION - coverage provided** for the named insured if the damaged work **OR** the work out of which the damage arises was performed on behalf of the named insured by a subcontractor
 - Property damage to the work of a subcontractor resulting from the insured's work - **COVERED**
 - Property damage to the work of a subcontractor resulting from that subcontractor's work - **COVERED**
 - Property damage to the work of a subcontractor resulting from another subcontractor's work - **COVERED**
 - Property damage to the work of the insured resulting from a subcontractor's work - **COVERED**
 - Property damage to the work of the insured resulting from the insured's work – **EXCLUDED**
- **CG 22 94 - Exclusion – Damage To Work Performed By Subcontractors On Your Behalf** - removes the exception to the exclusion
- **CG 22 95 - Exclusion – Damage To Work Performed By Subcontractors On Your Behalf – Designated Sites Or Operations** - removes the exception to the exclusion at the sites or operations described in the Schedule of the endorsement
- ❖ In my opinion, neither of these endorsements is acceptable – **AGENCY STANDARD!**

1) Your work defined

22. "Your work":

a. Means:

- (1)** Work or operations performed by you or on your behalf; and
- (2)** Materials, parts or equipment furnished in connection with such work or operations.

b. Includes:

- (1)** Warranties or representations made at any time with respect to the fitness, quality, durability, performance or use of "your work"; and
- (2)** The providing of or failure to provide warnings or instructions.

- Includes work performed by some other person or organization on behalf of the named insured
- Both express warranties and implied warranties are included in the definition

m. **Damage to impaired property or property not physically injured exclusion**

This insurance does not apply to:

m. Damage To Impaired Property Or Property Not Physically Injured

"Property damage" to "impaired property" or property that has not been physically injured, arising out of:

- (1) A defect, deficiency, inadequacy or dangerous condition in "your product" or "your work"; or
- (2) A delay or failure by you or anyone acting on your behalf to perform a contract or agreement in accordance with its terms.

This exclusion does not apply to the loss of use of other property arising out of sudden and accidental physical injury to "your product" or "your work" after it has been put to its intended use.

- Applies to property damage only
- Designed to preclude liability coverage for the business risk exposure originated from the failure of the named insured's product or named insured's work to perform or serve the purpose represented by the named insured
- Designed to preclude liability coverage for the business risk exposure originated from the failure of the named insured (or someone acting on behalf of the named insured) to perform contractual obligations in an agreed upon time frame
- Primary exposure excluded is for a loss of use claim or a decrease in value claim where the named insured's product or named insured's work has not actively malfunctioned
- **EXCEPTION - coverage provided** for loss of use of other property arising out of active malfunction after the named insured's product or named insured's work has been put to its intended use

1) Impaired property defined

8. "Impaired property" means tangible property, other than "your product" or "your work", that cannot be used or is less useful because:
- a. It incorporates "your product" or "your work" that is known or thought to be defective, deficient, inadequate or dangerous; or
 - b. You have failed to fulfill the terms of a contract or agreement; if such property can be restored to use by the repair, replacement, adjustment or removal of "your product" or "your work" or your fulfilling the terms of the contract or agreement.

- Property **must meet two requirements** or it is not impaired property
- Definition is intended to clarify the failure to perform exclusion

n. Recall of products, work or impaired property exclusion

This insurance does not apply to:

n. Recall Of Products, Work Or Impaired Property

Damages claimed for any loss, cost or expense incurred by you or others for the loss of use, withdrawal, recall, inspection, repair, replacement, adjustment, removal or disposal of:

- (1) "Your product";
- (2) "Your work"; or
- (3) "Impaired property";

if such product, work, or property is withdrawn or recalled from the market or from use by any person or organization because of a known or suspected defect, deficiency, inadequacy or dangerous condition in it.

- This is usually a first party loss, not a liability claim
- Specific first party insurance is available through standard and excess-surplus lines markets

o. **Personal and advertising injury exclusion**

This insurance does not apply to:

o. Personal And Advertising Injury

"Bodily injury" arising out of "personal and advertising injury".

- Consequential bodily injury is included in definition of personal and advertising injury; as a result, an exclusion for bodily injury arising out of personal and advertising injury applies here
- Any bodily injury suffered as a consequence of a covered offense under Coverage B will be subject to the provisions of Coverage B only

p. **Electronic Data**

(Paragraph p. replaced by mandatory endorsement **CG 21 06 - Exclusion - Access Or Disclosure Of Confidential Or Personal Information And Data-related Liability – With Limited Bodily Injury Exception**

This insurance does not apply to:

p. Access Or Disclosure Of Confidential Or Personal Information And Data-related Liability

Damages arising out of:

(1) Any access to or disclosure of any person's or organization's confidential or personal information, including patents, trade secrets, processing methods, customer lists, financial information, credit card information, health information or any other type of nonpublic information; or

(2) The loss of, loss of use of, damage to, corruption of, inability to access, or inability to manipulate electronic data.

This exclusion applies even if damages are claimed for notification costs, credit monitoring expenses, forensic expenses, public relations expenses or any other loss, cost or expense incurred by you or others arising out of that which is described in Paragraph **(1)** or **(2)** above.

However, unless Paragraph **(1)** above applies, this exclusion does not apply to damages because of "bodily injury".

As used in this exclusion, 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 any other media which are used with electronically controlled equipment.

- Excludes damages arising out of disclosure of any confidential or personal information

- Excludes loss exposures not reached by the limiting language of the definition of property damage
- Exception to damages because of “bodily injury”

q. **Recording And Distribution Of Material Or Information In Violation Of Law**

This insurance does not apply to:

q. Recording And Distribution Of Material Or Information In Violation Of Law

"Bodily injury" or "property damage" arising directly or indirectly out of any action or omission that violates or is alleged to violate:

- (1) The Telephone Consumer Protection Act (TCPA), including any amendment of or addition to such law;
- (2) The CAN-SPAM Act of 2003, including any amendment of or addition to such law;
- (3) The Fair Credit Reporting Act (FCRA), and any amendment of or addition to such law, including the Fair and Accurate Credit Transactions Act (FACTA); or
- (4) Any federal, state or local statute, ordinance or regulation, other than the TCPA, CAN-SPAM Act of 2003 or FCRA and their amendments and additions, that addresses, prohibits, or limits the printing, dissemination, disposal, collecting, recording, sending, transmitting, communicating or distribution of material or information.

- Excludes coverage for violation of specific statutes that govern e-mails, faxes, phone calls, etc.

3. Exception to the exclusions - fire damage liability coverage is provided

**STATEMENT
AT END OF
COVERAGE A
BODILY
INJURY AND
PROPERTY
DAMAGE
LIABILITY
EXCLUSIONS**

Exclusions **c.** through **n.** do not apply to damage by fire to premises while rented to you or temporarily occupied by you with permission of the owner. A separate limit of insurance applies to this coverage as described in Section **III** – Limits Of Insurance.

- Expected or intended exclusion and the contractual liability exclusion still apply

EXCEPTION **coverage provided** for fire damage due to the tort liability of the named insured for premises rented or temporarily occupied by the named insured

- Separate limit applies but is subject to Each Occurrence Limit

B. Coverage B - Personal And Advertising Injury Liability

1. Insuring agreement

COVERAGE B - PERSONAL AND ADVERTISING INJURY LIABILITY

1. Insuring Agreement

a. We will pay those sums that the insured becomes legally obligated to pay as damages because of "personal and advertising injury" to which this insurance applies. We will have the right and duty to defend the insured against any "suit" seeking those damages. However, we will have no duty to defend the insured against any "suit" seeking damages for "personal and advertising injury" to which this insurance does not apply. We may, at our discretion, investigate any offense and settle any claim or "suit" that may result. But:

(1) The amount we will pay for damages is limited as described in Section III – Limits Of Insurance; and

(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.

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.

b. This insurance applies to "personal and advertising injury" caused by an offense arising out of your business but only if the offense was committed in the "coverage territory" during the policy period.

- Outlines insurer's promise to pay
- Coverages will be subject to the policy terms and conditions
- Contractual duty of the insurer to defend
- But . . . no coverage, no defense
- Control of defense / settlement with insurer
- Amount of insurer's payment limited
- Limits types of actions for which coverage form responds
- Personal and advertising injury must arise out of named insured's business
- Offense must take place in a defined geographic area
- Offense must take place during the policy period
- Very similar verbiage to Coverage A

a. Personal and advertising injury defined

- 14.** "Personal and advertising injury" means injury, including consequential "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, committed by or on behalf of its owner, landlord or lessor;
 - d.** Oral or written publication, in any manner, 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, in any manner, 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".

- There is a possibility of resulting bodily injury because of such offenses as false arrest, detention or imprisonment; definition specifically includes consequential bodily injury arising out of enumerated offenses
- Enumerates the offenses for which personal and advertising injury coverage will respond
- The first three offenses do not relate to an advertisement
- The last two offenses will only apply if committed in the insured's advertisement; advertisement is a defined term
- **CG 24 13 - Amendment Of Personal And Advertising Injury Definition** – removes **14. e.** from definition

b. Advertisement defined

1. "Advertisement" means a notice that is broadcast or published to the general public or specific market segments about your goods, products or services for the purpose of attracting customers or supporters. For the purposes of this definition:
 - a. Notices that are published include material placed on the Internet or on similar electronic means of communication; and
 - b. Regarding web sites, only that part of a web site that is about your goods, products or services for the purposes of attracting customers or supporters is considered an advertisement.

- Clarifies the intent of coverage
- Restricts coverage

2. Exclusions

This insurance does not apply to:

a. Knowing Violation Of Rights Of Another

"Personal and advertising injury" caused by or at the direction of the insured with the knowledge that the act would violate the rights of another and would inflict "personal and advertising injury".

b. Material Published With Knowledge Of Falsity

"Personal and advertising injury" arising out of oral or written publication, in any manner, of material, if done by or at the direction of the insured with knowledge of its falsity.

c. Material Published Prior To Policy Period

"Personal and advertising injury" arising out of oral or written publication, in any manner, of material whose first publication took place before the beginning of the policy period.

d. Criminal Acts

"Personal and advertising injury" arising out of a criminal act committed by or at the direction of the insured.

e. Contractual Liability

"Personal and advertising injury" for which the insured has assumed liability in a contract or agreement. This exclusion does not apply to liability for damages that the insured would have in the absence of the contract or agreement.

f. Breach Of Contract

"Personal and advertising injury" arising out of a breach of contract, except an implied contract to use another's advertising idea in your "advertisement".

- **CG 22 74 - Limited Contractual Liability Coverage For Personal And Advertising Injury** - deletes exclusion for the offenses of false arrest, detention or imprisonment for the contracts shown in the Schedule of the endorsement – **AGENCY STANDARD**

This insurance does not apply to:

g. Quality Or Performance Of Goods – Failure To Conform To Statements

"Personal and advertising injury" arising out of the failure of goods, products or services to conform with any statement of quality or performance made in your "advertisement".

h. Wrong Description Of Prices

"Personal and advertising injury" arising out of the wrong description of the price of goods, products or services stated in your "advertisement".

i. Infringement Of Copyright, Patent, Trademark Or Trade Secret

"Personal and advertising injury" arising out of the infringement of copyright, patent, trademark, trade secret or other intellectual property rights. Under this exclusion, such other intellectual property rights do not include the use of another's advertising idea in your "advertisement".

However, this exclusion does not apply to infringement, in your "advertisement", of copyright, trade dress or slogan.

j. Insureds In Media And Internet Type Businesses

"Personal and advertising injury" committed by an insured whose business is:

- (1) Advertising, broadcasting, publishing or telecasting;
- (2) Designing or determining content of web sites for others; or
- (3) An Internet search, access, content or service provider.

However, this exclusion does not apply to Paragraphs **14.a.**, **b.** and **c.** of "personal and advertising injury" under the Definitions section.

For the purposes of this exclusion, the placing of frames, borders or links, or advertising, for you or others anywhere on the Internet, is not by itself, considered the business of advertising, broadcasting, publishing or telecasting.

k. Electronic Chatrooms Or Bulletin Boards

"Personal and advertising injury" arising out of an electronic chatroom or bulletin board the insured hosts, owns, or over which the insured exercises control.

l. Unauthorized Use Of Another's Name Or Product

"Personal and advertising injury" arising out of the unauthorized use of another's name or product in your e-mail address, domain name or metatag, or any other similar tactics to mislead another's potential customers.

m. Pollution

"Personal and advertising injury" arising out of the actual, alleged or threatened discharge, dispersal, seepage, migration, release or escape of "pollutants" at any time.

n. Pollution-related

Any loss, cost or expense arising out of any:

- (1) Request, demand, order or statutory or regulatory requirement that any insured or others test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to, or assess the effects of, "pollutants"; or
- (2) Claim or suit by or on behalf of a governmental authority for damages because of testing for, monitoring, cleaning up, removing, containing, treating, detoxifying or neutralizing, or in any way responding to, or assessing the effects of, "pollutants".

o. War

"Personal and advertising injury", however caused, arising, directly or indirectly, out of:

- (1) War, including undeclared or civil war;
- (2) Warlike action by a military force, including action in hindering or defending against an actual or expected attack, by any government, sovereign or other authority using military personnel or other agents; or
- (3) Insurrection, rebellion, revolution, usurped power, or action taken by governmental authority in hindering or defending against any of these.

p. Recording And Distribution Of Material Or Information In Violation Of Law

"Personal and advertising injury" arising directly or indirectly out of any action or omission that violates or is alleged to violate:

- (1) The Telephone Consumer Protection Act (TCPA), including any amendment of or addition to such law;
- (2) The CAN-SPAM Act of 2003, including any amendment of or addition to such law;
- (3) The Fair Credit Reporting Act (FCRA), and any amendment of or addition to such law, including the Fair and Accurate Credit Transactions Act (FACTA); or
- (4) Any federal, state or local statute, ordinance or regulation, other than the TCPA, CAN-SPAM Act of 2003 or FCRA and their amendments and additions, that addresses, prohibits, or limits the printing, dissemination, disposal, collecting, recording, sending, transmitting, communicating or distribution of material or information.

- The following exclusion has been added to Coverage B by mandatory endorsement **CG 21 06** previously discussed under Coverage A

The following is added to Paragraph **2. Exclusions** of **Section I – Coverage B – Personal And Advertising Injury Liability**:

2. Exclusions

This insurance does not apply to:

Access Or Disclosure Of Confidential Or Personal Information

"Personal and advertising injury" arising out of any access to or disclosure of any person's or organization's confidential or personal information, including patents, trade secrets, processing methods, customer lists, financial information, credit card information, health information or any other type of nonpublic information.

This exclusion applies even if damages are claimed for notification costs, credit monitoring expenses, forensic expenses, public relations expenses or any other loss, cost or expense incurred by you or others arising out of any access to or disclosure of any person's or organization's confidential or personal information.

- Excludes damages arising out of disclosure of any confidential or personal information

C. Coverage C - Medical Payments

1. Insuring Agreement

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:

- (a) The accident takes place in the "coverage territory" and during the policy period;
- (b) The expenses are incurred and reported to us within one year of the date of the accident; and
- (c) 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 administered 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.

- Medical payments are for the premises and operations exposures
- Event must take place in a defined geographic area
- Limitations apply in order to be paid
- Unlike Coverage A and Coverage B, which required legal liability, there is no such requirement for Coverage C
- Insurer is obligated to pay
- Not subject to Other Insurance Condition
- Per person Limit Of Insurance that is subject to Each Occurrence Limit that is subject to General Aggregate Limit
- **CG 21 35 - Exclusion – Coverage C – Medical Payments** – excludes Coverage C. and amends Supplementary Payments to include first aid expenses to others

2. Exclusions

2. Exclusions

We will not pay expenses for "bodily injury":

a. Any Insured

To any insured, except "volunteer workers".

b. Hired Person

To a person hired to do work for or on behalf of any insured or a tenant of any insured.

c. Injury On Normally Occupied Premises

To a person injured on that part of premises you own or rent that the person normally occupies.

d. Workers' Compensation And Similar Laws

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. Athletics Activities

To a person injured while practicing, instructing or participating in any physical exercises or games, sports, or athletic contests.

f. Products-Completed Operations Hazard

Included within the "products-completed operations hazard".

g. Coverage A Exclusions

Excluded under Coverage A.

- Excludes medical payments for certain persons and/or situations

D. Supplementary Payments – Coverages

SUPPLEMENTARY PAYMENTS – COVERAGES A AND B

1. We will pay, with respect to any claim we investigate or settle, or any "suit" against an insured 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 court costs taxed against the insured in the "suit". However, these payments do not include attorneys' fees or attorneys' expenses taxed against the insured.
 - 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.

- Enumerates the types and amounts of payments the insurer will make in addition to the Limits Of Insurance

2. If we defend an insured against a "suit" and an indemnitee of the insured is also named as a party to the "suit", **we will defend that indemnitee if all of the following conditions are met:**

- a. The "suit" against the indemnitee seeks damages for which the insured has assumed the liability of the indemnitee in a contract or agreement that is an "insured contract";
- b. This insurance applies to such liability assumed by the insured;
- c. The obligation to defend, or the cost of the defense of, that indemnitee, has also been assumed by the insured in the same "insured contract";
- d. The allegations in the "suit" and the information we know about the "occurrence" are such that no conflict appears to exist between the interests of the insured and the interests of the indemnitee;
- e. The indemnitee and the insured ask us to conduct and control the defense of that indemnitee against such "suit" and agree that we can assign the same counsel to defend the insured and the indemnitee; and
- f. The indemnitee:
 - (1) Agrees in writing to:
 - (a) Cooperate with us in the investigation, settlement or defense of the "suit";
 - (b) Immediately send us copies of any demands, notices, summonses or legal papers received in connection with the "suit";
 - (c) Notify any other insurer whose coverage is available to the indemnitee; and
 - (d) Cooperate with us with respect to coordinating other applicable insurance available to the indemnitee; and
 - (2) Provides us with written authorization to:
 - (a) Obtain records and other information related to the "suit"; and
 - (b) Conduct and control the defense of the indemnitee in such "suit".

So long as the above conditions are met, attorneys' fees incurred by us in the defense of that indemnitee, necessary litigation expenses incurred by us and necessary litigation expenses incurred by the indemnitee at our request will be paid as Supplementary Payments. Notwithstanding the provisions of Paragraph 2.b.(2) of Section I – Coverage A – Bodily Injury And Property Damage Liability, such payments will not be deemed to be damages for "bodily injury" and "property damage" and will not reduce the limits of insurance.

Our obligation to defend an insured's indemnitee and to pay for attorneys' fees and necessary litigation expenses as Supplementary Payments ends when we have used up the applicable limit of insurance in the payment of judgments or settlements or the conditions set forth above, or the terms of the agreement described in Paragraph f. above, are no longer met.

- On rare occasions, assumed defense costs of an indemnitee may qualify as Supplementary Payments
- If assumed defense costs qualify as Supplementary Payments, the Limits Of Insurance will not be reduced by their payment

VII. CGL COVERAGE FORM - SECTION II - WHO IS AN INSURED – EXHIBIT F

A. Paragraph 1. Is “Triggered” From The Declarations

1. If you are designated in the Declarations as:

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, joint venture or limited liability company, 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.

- Business descriptions on Declarations do not apply simultaneously to the same named insured
- Automatically considered to be insureds
- Executive officer is a defined term

6. "Executive officer" means a person holding any of the officer positions created by your charter, constitution, by-laws or any other similar governing document.

- As we will read, limitation for co-"employee" injury does not apply to an executive officer

B. Additional Persons / Entities As Automatic Insureds

1. Volunteer Workers/Employees

2. Each of the following is also an insured:

- a. Your "volunteer workers" only while performing duties related to the conduct of your business, or your "employees", other than either your "executive officers" (if you are an organization other than a partnership, joint venture or limited liability company) or your managers (if you are a limited liability company), but only for acts within the scope of their employment by you or while performing duties related to the conduct of your business. **However, none of these "employees" or "volunteer workers" are insureds for:**

(1) "Bodily injury" or "personal and advertising injury":

- (a) To you, to your partners or members (if you are a partnership or joint venture), to your members (if you are a limited liability company), **to a co-"employee"** while in the course of his or her employment or performing duties related to the conduct of your business, or to your other "volunteer workers" while performing duties related to the conduct of your business;
- (b) To the spouse, child, parent, brother or sister of that co-"employee" or "volunteer worker" **as a consequence** of Paragraph (1)(a) above;
- (c) For which there is any **obligation to share damages** with or repay someone else who must pay damages because of the injury described in Paragraph (1)(a) or (b) above; or
- (d) **Arising out of his or her providing or failing to provide professional health care services.**

(2) "Property damage" to property:

- (a) Owned, occupied or used by;
- (b) Rented to, in the care, custody or control of, or over which physical control is being exercised for any purpose by;
- you, any of your "employees", "volunteer workers", any partner or member (if you are a partnership or joint venture), or any member (if you are a limited liability company).

- Includes volunteer workers as insured
- Includes employees as insureds
- Includes leased workers as insureds as definition of employee includes leased worker
- Several limitations (are NOT insureds for specific BI/PD) do apply to this category of insureds – **examples**

2. Real Estate Manager

b. Any person (other than your "employee" or "volunteer worker"), or any organization while acting as your real estate manager.

- A real estate manager of the named insured may handle many of the routine matters of property ownership
- "Real estate manager" is not a defined term
- NO endorsement necessary, although often requested

3. Temporary Custodian / Legal Representative

c. Any person or organization having proper temporary custody of your property if you die, but only:
(1) With respect to liability arising out of the maintenance or use of that property; and
(2) Until your legal representative has been appointed.
d. Your legal representative if you die, but only with respect to duties as such. That representative will have all your rights and duties under this Coverage Part.

- Allows CGL Policy to remain in force if an individual named insured dies

C. Newly Acquired Or Formed Organizations

- 3.** Any organization you newly acquire or form, other than a partnership, joint venture or limited liability company, and over which you maintain ownership or majority interest, will qualify as a Named Insured if there is no other similar insurance available to that organization. However:
- a.** Coverage under this provision is afforded only until the 90th day after you acquire or form the organization or the end of the policy period, whichever is earlier;
 - b.** Coverage A does not apply to "bodily injury" or "property damage" that occurred before you acquired or formed the organization; and
 - c.** Coverage B does not apply to "personal and advertising injury" arising out of an offense committed before you acquired or formed the organization.

- Not just an insured, a Named Insured
- Does not apply to partnerships or joint ventures or limited liability companies
- No other similar insurance available
- Until the 90th day after acquisition or the end of the policy period, whichever is earlier
- No prior acts coverage

D. Statement At End Of Section II Who Is An Insured; Excluded From Insured Status

No person or organization is an insured with respect to the conduct of any current or past partnership, joint venture or limited liability company that is not shown as a Named Insured in the Declarations.

- Can create coverage gaps - example
- May need to write a separate policy for "discontinued products-completed operations insurance"

E. Others may be added/included as insureds by endorsement

VIII. CGL COVERAGE FORM - SECTION III - LIMITS OF INSURANCE – EXHIBIT G

A. Limits Of Insurance

SECTION III – LIMITS OF INSURANCE

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".

- In conjunction with Limits of Insurance shown in Declarations
- To prevent stacking

B. General Aggregate Limit

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.

- *Everything* but products-completed operations hazard
- **CG 25 03 - Designated Construction Project(s) General Aggregate Limits** - a separate General Aggregate Limit applies to each designated construction project – ALL in Schedule – **AGENCY STANDARD** for this class of business
- **CG 25 04 - Designated Location(s) General Aggregate Limits** - a separate General Aggregate Limit applies to each designated location – ALL in Schedule – **AGENCY STANDARD**

C. Products - Completed Operations Aggregate Limit

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".

- Coverage A only
- "Products-completed operation hazard" as defined

D. Personal And Advertising Injury Limit

4. Subject to Paragraph 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 "personal and advertising injury" sustained by any one person or organization.

- Per person or organization regardless of the number of claims
- Not subject to Each Occurrence Limit - BUT equal to Each Occurrence Limit
- Subject to General Aggregate Limit

E. Each Occurrence Limit

5. Subject to Paragraph 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"

- Coverage A and Coverage C only
- Subject to General Aggregate Limit OR Products-Completed Operations Aggregate Limit

F. Damage to Premises Rented To You Limit

6. Subject to Paragraph 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 any one 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.

- Subject to Each Occurrence Limit
- Subject to General Aggregate Limit
- \$100,000 any one premises may be customary – may not meet exposure

G. Medical Expense Limit

7. Subject to Paragraph 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.

- Subject to Each Occurrence Limit
- Subject to General Aggregate Limit
- \$5,000 maximum any one person

H. Periods Of Time To Which Limits Apply

The Limits of Insurance 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.

- Normally each 12 months
- CAUTION: Extending policy period

IX. CGL COVERAGE FORM - SECTION IV. - SELECTED CONDITIONS

A. Duties In The Event Of Occurrence, Offense, Claim Or Suit

2.Duties In The Event Of Occurrence, Offense, Claim Or Suit

- a. You must see to it that we are notified as soon as practicable of an "occurrence" or an offense which may result in a claim. To the extent possible, notice should include:
 - (1) How, when and where the "occurrence" or offense took place;
 - (2) The names and addresses of any injured persons and witnesses; and
 - (3) The nature and location of any injury or damage arising out of the "occurrence" or offense.
- b. If a claim is made or "suit" is brought against any insured, you must:
 - (1) Immediately record the specifics of the claim or "suit" and the date received; and
 - (2) Notify us as soon as practicable.

You must see to it that we receive written notice of the claim or "suit" as soon as practicable.
- c. You and any other involved insured must:
 - (1) Immediately send us copies of any demands, notices, summonses or legal papers received in connection with the claim or "suit";
 - (2) Authorize us to obtain records and other information;
 - (3) Cooperate with us in the investigation or settlement of the claim or defense against the "suit"; and
 - (4) Assist us, upon our request, in the enforcement of any right against any person or organization which may be liable to the insured because of injury or damage to which this insurance may also apply.
- d. No insured will, except at that insured's own cost, voluntarily make a payment, assume any obligation, or incur any expense, other than for first aid, without our consent.

- Named insured must notify the insurance company – knowledge of the agent is knowledge of the principal (insurer)
- Clarification may be necessary to acknowledge that knowledge by someone within the entity will not necessarily constitute knowledge of a named insured

NON-STANDARD OR COMPANY SPECIFIC ENDORSEMENT – AGENCY STANDARD

SUPPLEMENTARY DUTIES IN THE EVENT OF OCCURRENCE, OFFENSE, CLAIM OR SUIT

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE FORM

Section IV - Commercial General Liability Conditions, Paragraph 2.a., Duties In The Event Of Occurrence, Offense, Claim or Suit adds the following:

Knowledge of an "occurrence" or offense by your agent, servant, or employee shall not in itself constitute knowledge by you unless individuals in the following positions shall have received such notice from the agent, servant or employee:

B. Separation Of Insureds Condition

7. Separation Of Insureds

Except with respect to the Limits of Insurance, and any rights or duties specifically assigned in this Coverage Part to the first Named Insured, this insurance applies:

- a. As if each Named Insured were the only Named Insured; and
- b. Separately to each insured against whom claim is made or "suit" is brought.

- One insured may file a claim against another insured under the policy and coverage will apply
- **CG 21 41 - Exclusion – Intercompany Products Suits Endorsement** - excludes coverage for any claim by any named insured against another named insured arising out of the named insured's products and included within the "products-completed operations hazard"

C. Transfer Of Rights Of Recovery Against Others To Us

8. Transfer Of Rights Of Recovery Against Others To Us

If the insured has rights to recover all or part of any payment we have made under this Coverage Part, those rights are transferred to us. The insured must do nothing after loss to impair them. At our request, the insured will bring "suit" or transfer those rights to us and help us enforce them.

- Insured may waive rights of recovery prior to loss
- May need to be evidenced by an endorsement - **only** one standard ISO endorsement to show specific persons or organizations - **CG 24 04 - Waiver of Transfer of Rights of Recovery Against Others To Us**

WAIVER OF TRANSFER OF RIGHTS OF RECOVERY AGAINST OTHERS TO US

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART
SCHEDULE

Name of Person or Organization:

The following is added to **Paragraph 8. Transfer Of Rights Of Recovery Against Others To Us** of **Section IV - Conditions**:

We waive any right of recovery we may have against the person or organization shown in the Schedule above because of payments we make for injury or damage arising out of your ongoing operations or "your work" done under a contract with that person or organization and included in the "products-completed operations hazard." This waiver applies only to the person or organization shown in the Schedule above.

CG 24 04 05 09

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D. Other Insurance

4. Other Insurance

If other valid and collectible insurance is available to the insured for a loss we cover under Coverages **A** or **B** of this Coverage Part, our obligations are limited as follows:

a. Primary Insurance

This insurance is primary except when Paragraph **b.** below applies. If this insurance is primary, our obligations are not affected unless any of the other insurance is also primary. Then, we will share with all that other insurance by the method described in Paragraph **c.** below.

b. Excess Insurance

(1) This insurance is excess over:

(a) Any of the other insurance, whether primary, excess, contingent or on any other basis:

- (i) That is Fire, Extended Coverage, Builder's Risk, Installation Risk or similar coverage for "your work";
- (ii) That is Fire insurance for premises rented to you or temporarily occupied by you with permission of the owner;
- (iii) That is insurance purchased by you to cover your liability as a tenant for "property damage" to premises rented to you or temporarily occupied by you with permission of the owner; or
- (iv) If the loss arises out of the maintenance or use of aircraft, "autos" or watercraft to the extent not subject to Exclusion **g.** of Section **I** – Coverage **A** – Bodily Injury And Property Damage Liability.

(b) Any other primary insurance available to you covering liability for damages arising out of the premises or operations, or the products and completed operations, for which you have been added as an additional insured.

(2) When this insurance is excess, we will have no duty under Coverages **A** or **B** to defend the insured against any "suit" if any other insurer has a duty to defend the insured against that "suit". If no other insurer defends, we will undertake to do so, but we will be entitled to the insured's rights against all those other insurers.

(3) When this insurance is excess over other insurance, we will pay only our share of the amount of the loss, if any, that exceeds the sum of:

- (a) The total amount that all such other insurance would pay for the loss in the absence of this insurance; and
- (b) The total of all deductible and self-insured amounts under all that other insurance.

(4) We will share the remaining loss, if any, with any other insurance that is not described in this Excess Insurance provision and was not bought specifically to apply in excess of the Limits of Insurance shown in the Declarations of this Coverage Part.

c. Method Of Sharing

If all of the other insurance permits contribution by equal shares, we will follow this method also. Under this approach each insurer contributes equal amounts until it has paid its applicable limit of insurance or none of the loss remains, whichever comes first.

If any of the other insurance does not permit contribution by equal shares, we will contribute by limits. Under this method, each insurer's share is based on the ratio of its applicable limit of insurance to the total applicable limits of insurance of all insurers.

- Primary except when it is excess
- If there is other primary insurance, then share on an equal shares basis
- Excess over any other primary insurance available to the named insured covering liability for damages arising out of the premises or operations, or the products and completed operations, for which the named insured has been added as an additional insured
- May be a contract requirement that named insured adds another party as an additional insured and named insured's policy be primary and non-contributory
- Standard "primary and non-contributory" endorsement available for CGL Policy

COMMERCIAL GENERAL LIABILITY

CG 20 01 04 13

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

PRIMARY AND NONCONTRIBUTORY – OTHER INSURANCE CONDITION

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

The following is added to the **Other Insurance** Condition and supersedes any provision to the contrary:

Primary And Noncontributory Insurance

This insurance is primary to and will not seek contribution from any other insurance available to an additional insured under your policy provided that:

- (1) The additional insured is a Named Insured under such other insurance; and
- (2) You have agreed in writing in a contract or agreement that this insurance would be primary and would not seek contribution from any other insurance available to the additional insured.

CG 20 01 04 13

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X. ADDITIONAL ENDORSEMENTS - PURPOSES

- A. Expand Coverage
- B. Restrict Coverage
- C. Clarify Coverage
- D. State Specific

XI. CONCLUSION

EXHIBIT #	EXHIBIT TITLE
A.	LETTER OF AUTHORIZATION
B.	KNOWN INJURY OR DAMAGE
C.	DUAL CAPACITY SUITS
D.	THIRD PARTY COMPLAINTS
E.	EXCEPTION TO EMPLOYER'S LIABILITY EXCLUSION
F.	WHO IS INSURED
G.	LIMITS OF INSURANCE

Exhibits

EXHIBIT A

LETTER OF AUTHORIZATION

**ABC Insurance Agency
1234 Main Street
Any Town, U.S.A.**

RE: First Named Insured

To Whom It May Concern;

Please be advised that the following persons/entities are authorized to act on behalf of (First Named Insured) for the purposes of cancellation and/or changes.

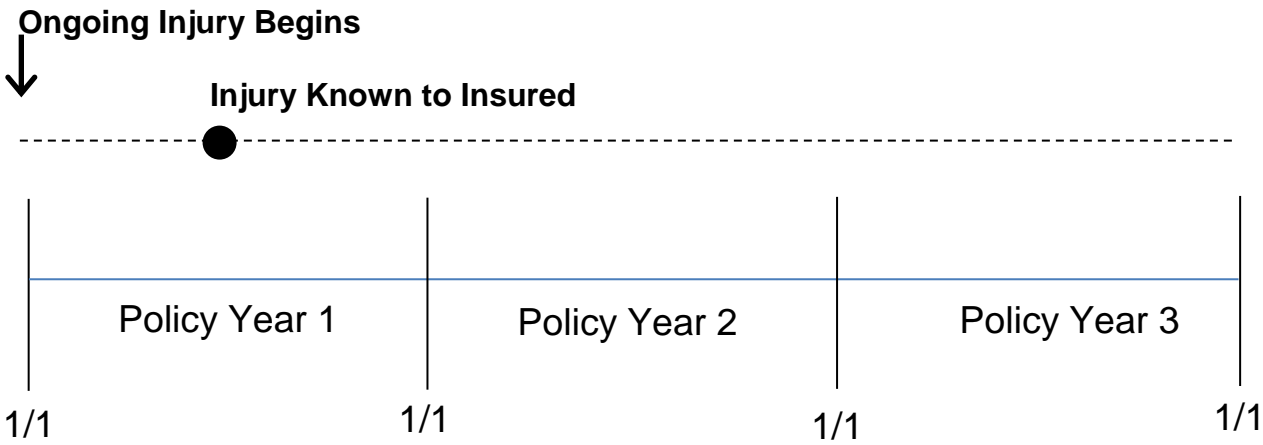
You are authorized to accept instructions from them for policy numbers CPP12345, BAC12345, WC12345, ETC.

**Sincerely,
(First Named Insured)**

**Name
President**

EXHIBIT B

KNOWN INJURY OR DAMAGE



There will be no insurance protection provided in Policy Year 2 or Policy Year 3 for the injury known to insured prior to the effective dates of these Policies.

EXHIBIT C

EMPLOYERS LIABILITY COVERAGE
DUAL CAPACITY SUITS

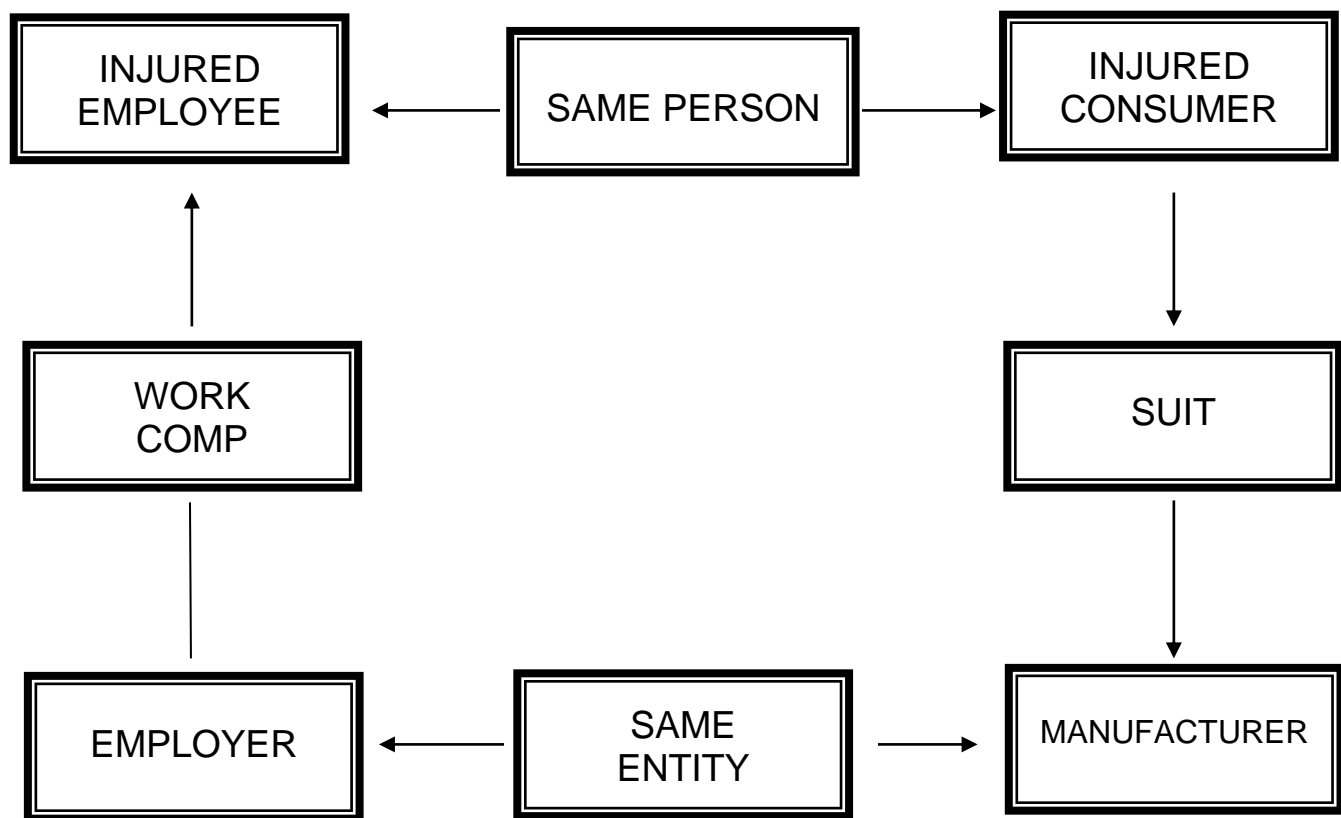


EXHIBIT D

EMPLOYERS LIABILITY COVERAGE
THIRD PARTY COMPLAINTS

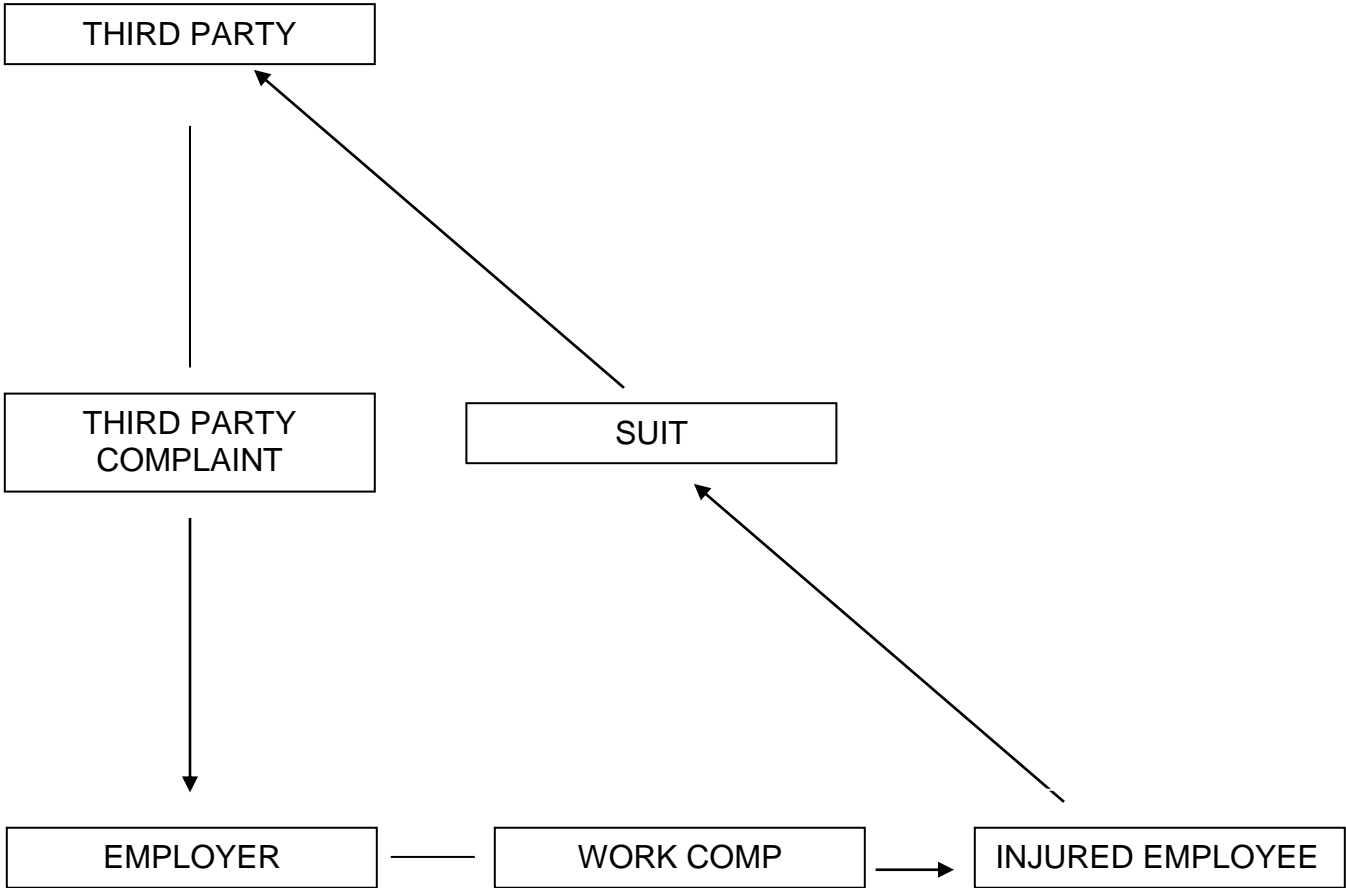


EXHIBIT E

COMMERCIAL GENERAL LIABILITY EXCEPTION TO EMPLOYER'S LIABILITY EXCLUSION

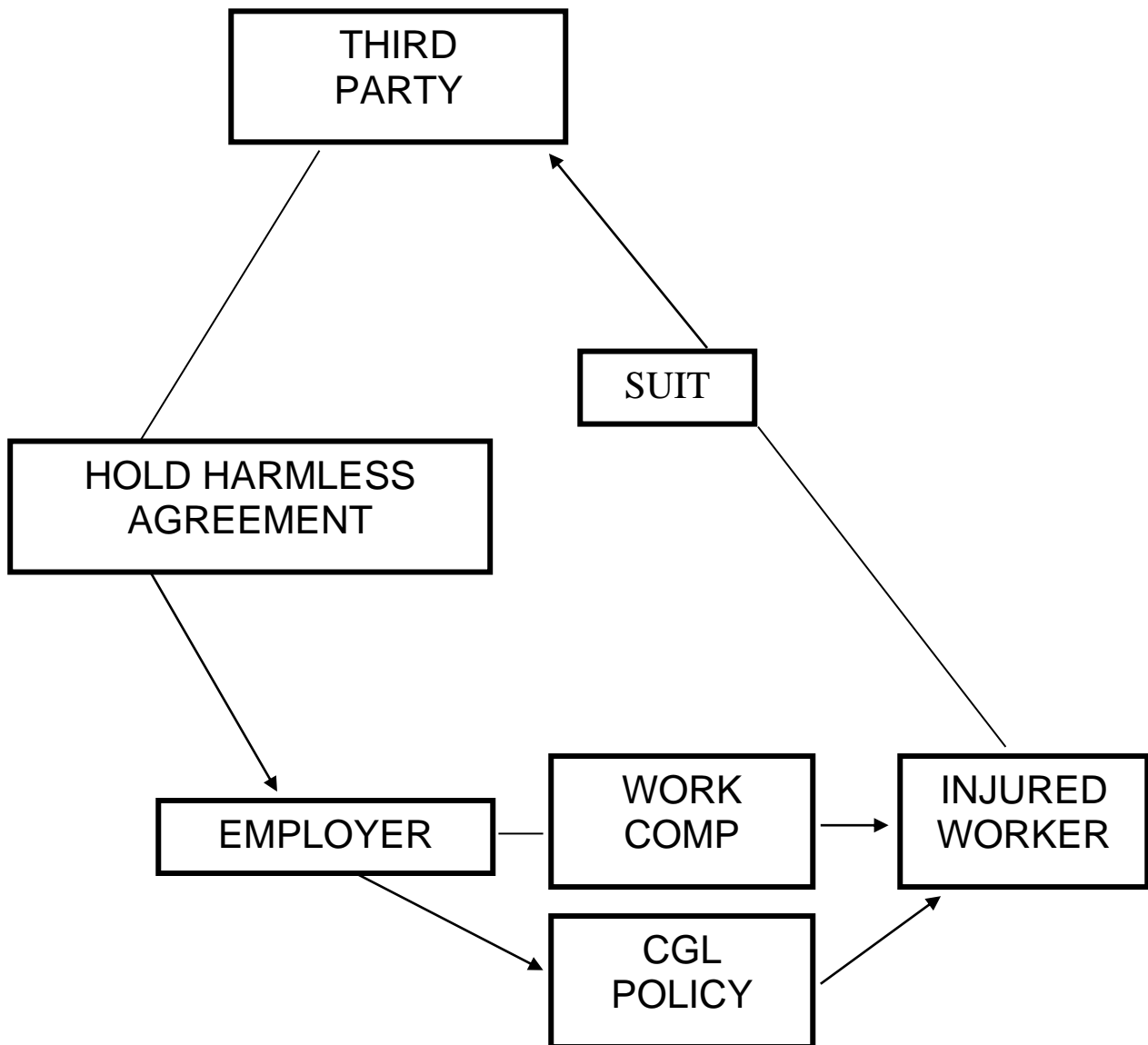


EXHIBIT F

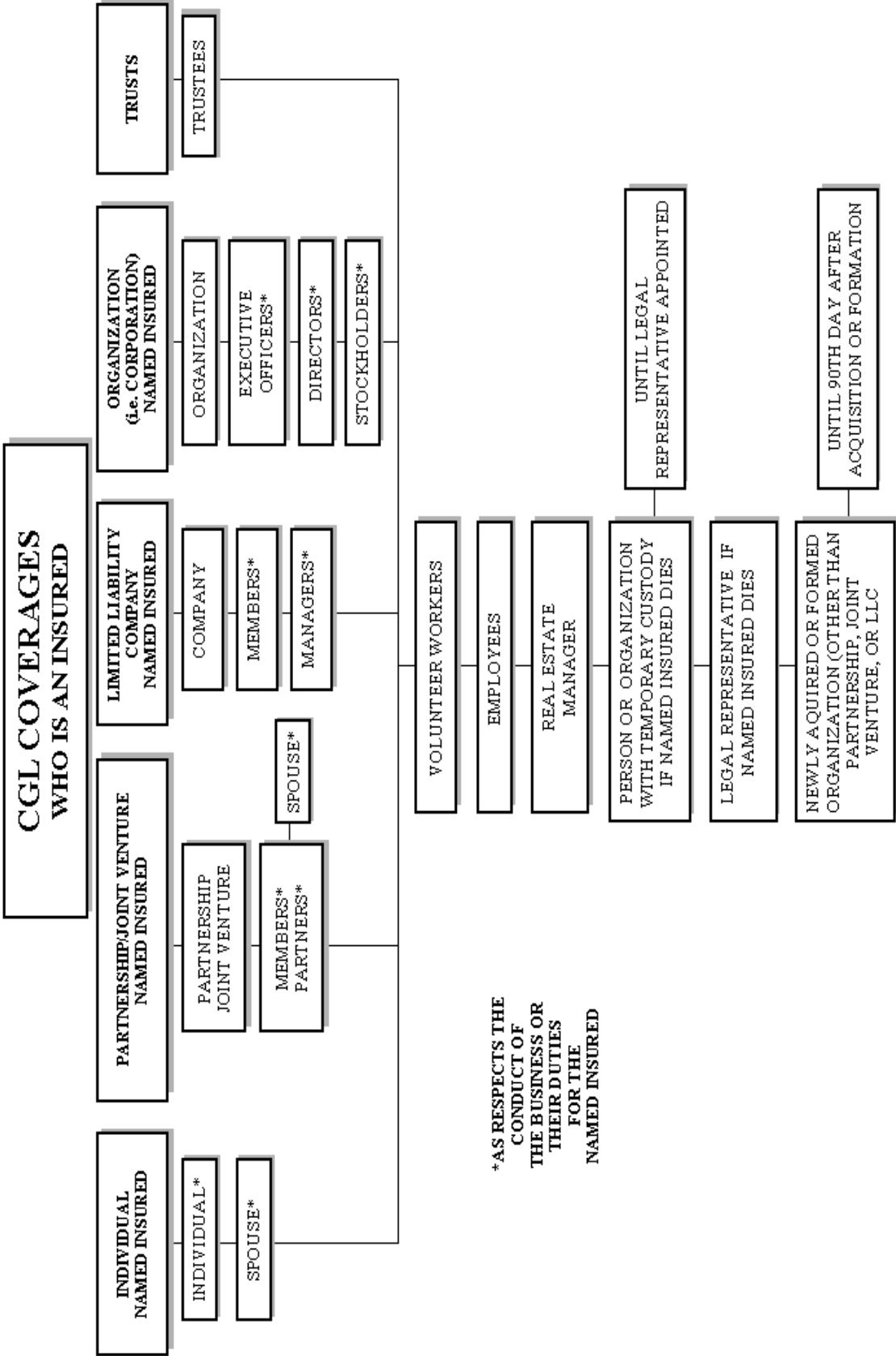
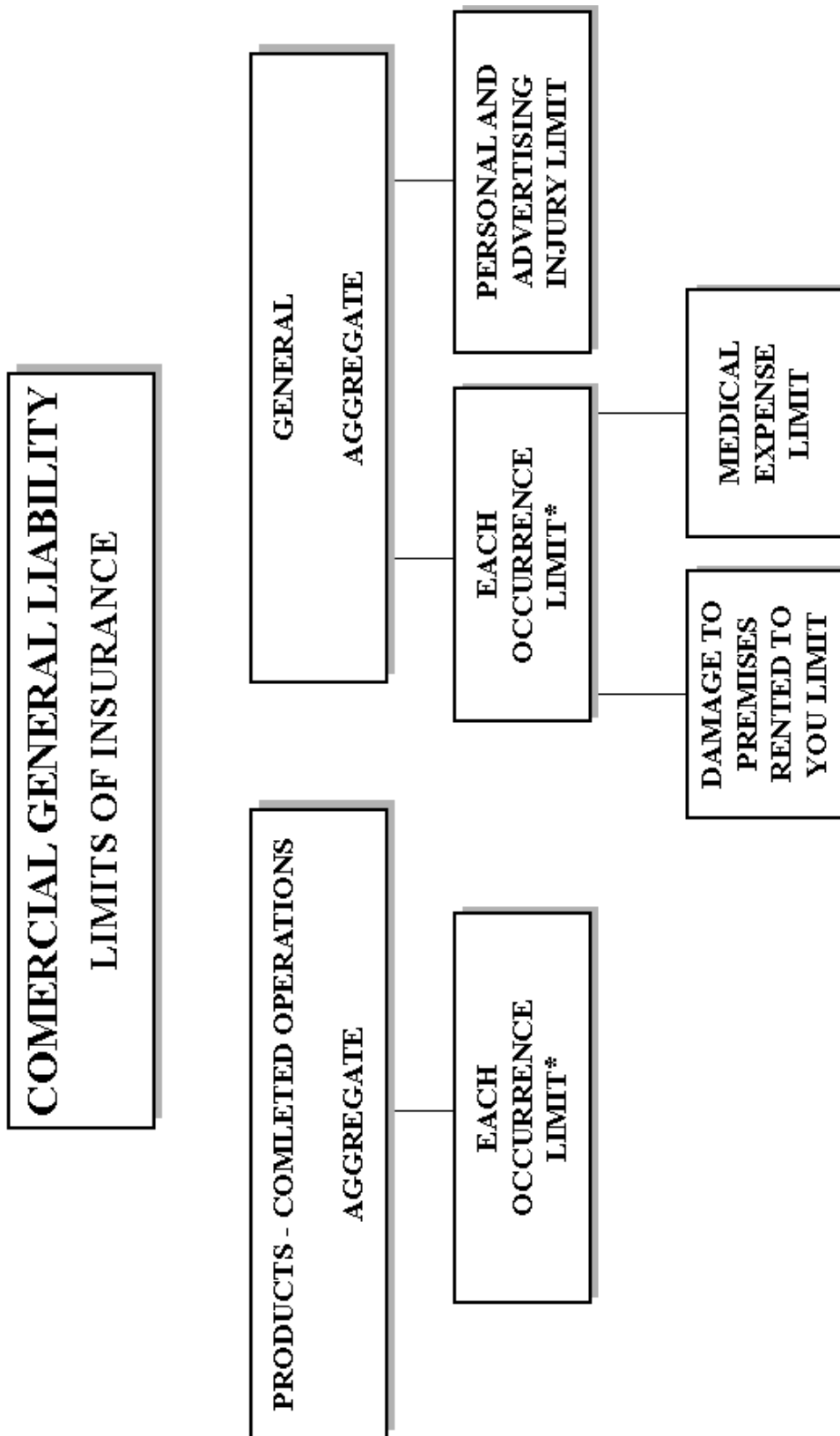


EXHIBIT G



*For illustrative purposes only, the EACH OCCURRENCE LIMIT is shown separately for products-completed operations and for premises-operations. However, the EACH OCCURRENCE LIMIT is the most that will be paid for the sum of damages for Bodily Injury and Property Damage under Coverage A and Medical Expenses under Coverage C.

