



James K. Ruble Seminar

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Section 6

Contractors Liability Exposures & Coverages



LIABILITY EXPOSURES AND COVERAGES FOR CONTRACTORS

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Liability Exposures And Coverages For Contractors

AIA A101 – 2017 Exhibit A (Exhibit A is attached to A201™-2017 General Conditions of the Contract for Construction) © 2017 The American Institute of Architects

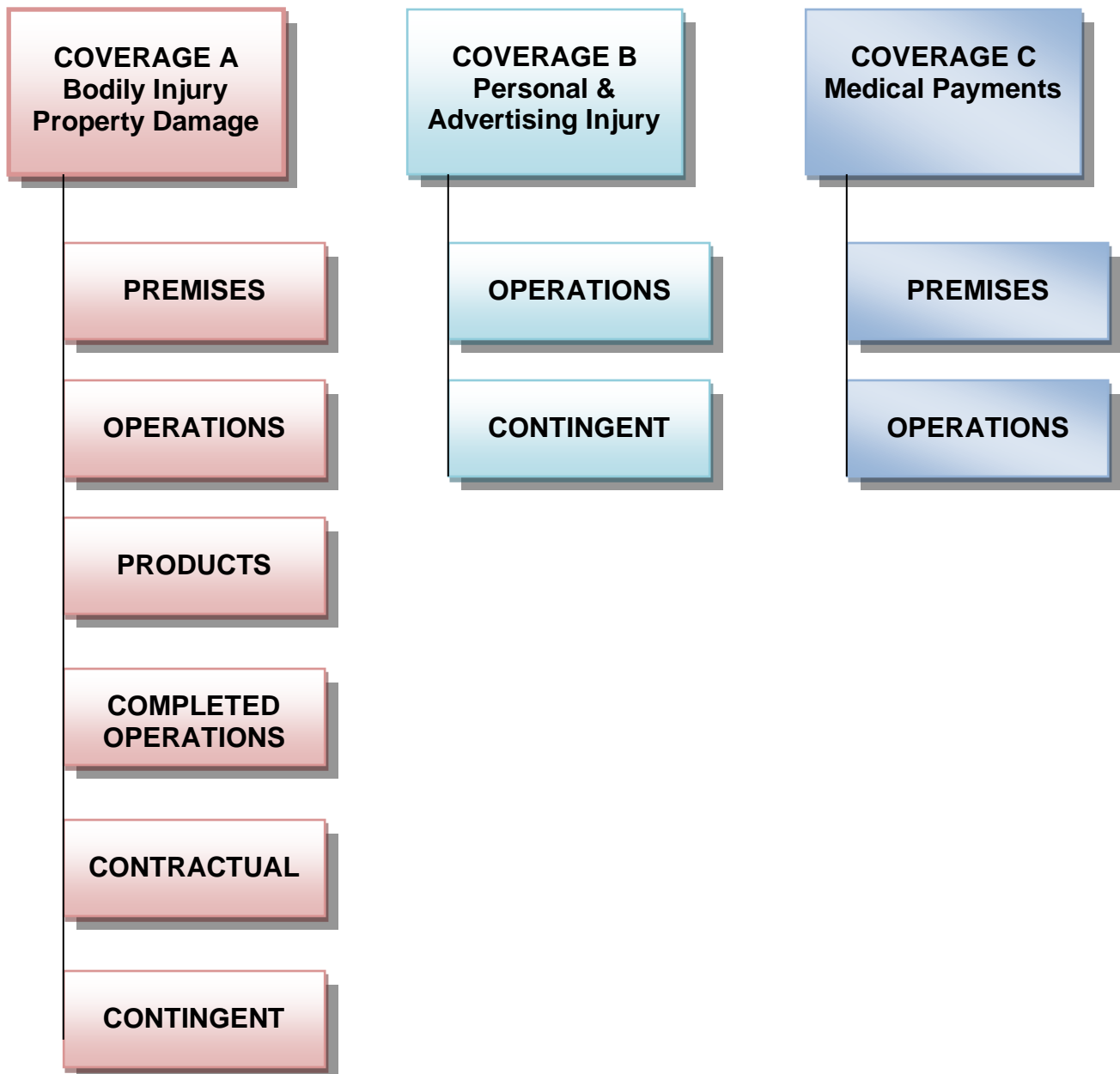
Prohibited Exclusions or Restrictions – AIA 2017 (Article 3 - §A.3.2.2.2 Commercial General Liability)

1. Claims by one insured against another insured, if the exclusion or restriction is based solely on the fact that the claimant is an insured, and there would otherwise be coverage for the claim. **(Insured v. Insured not allowed!)**
2. Claims for property damage to the Contractor's Work arising out of the products-completed operations hazard where the damaged Work or the Work out of which the damage arises was performed by a Subcontractor **(CG 22 94 or CG 22 95 not allowed!)**
3. Claims for bodily injury other than to employees of the insured. **(Excluding employees of any insured prohibited!)**
4. Claims for indemnity under Section 3.18 of the General Conditions arising out of injury to employees of the insured. **(Removing exception to EL exclusion for liability assumed in an "insured contract" not allowed!)**
5. Claims or loss excluded under a prior work endorsement or other similar exclusionary language. **(Prior work limitations not allowed!)**
6. Claims or loss due to physical damage under a prior injury endorsement or similar exclusionary language. **(Exclusions for unknown losses commencing prior to the policy period not allowed!)**
7. Claims related to **residential**, multi-family, or other habitational projects, if the Work is to be performed on such a project.
8. Claims related to **roofing**, if the Work involves roofing.
9. Claims related to exterior insulation finish systems **(EIFS)**, synthetic stucco or similar exterior coatings or surfaces, if the Work involves such coatings or surfaces.
10. Claims related to **earth subsidence or movement**, where the work involves such hazards.
11. Claims related to **explosion, collapse, and underground** hazards, where the Work involves such hazards.

Liability Exposures And Coverages For Contractors

I. OVERVIEW OF COVERAGES PROVIDED - CGL POLICY

As you know, Section I - Coverages of the Commercial General Liability Coverage Form are divided into three insuring agreements followed by a set of exclusions that apply to that particular insuring agreement.



II. 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

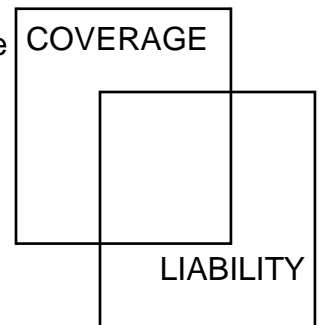
(2) Our right and duty to defend ends when we have used up the applicable limit of insurance in the payment of judgments or settlements under Coverages A or B or medical expenses under Coverage C.

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
 - "Four corners" versus "extrinsic facts"
 - Covered allegations versus uncovered allegations

Is insurer entitled to reimbursement of defense cost for defending uncovered allegations?

- But . . . no possibility or potential for coverage, no defense
- Control of defense/ settlement with insurer
- Amount of insurer's payment limited
 - Payment of judgments
 - Payment of settlements
 - Payment of medical expenses
- Limits types of obligations for which Coverage Form will respond



Liability Exposures And Coverages For Contractors

LET'S LOOK AT FOUR DEFINITIONS

- BODILY INJURY
- PROPERTY DAMAGE
- SUIT
- OCCURRENCE

a. Bodily injury defined

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

- Physical harm to the body should be a requirement
- Can include mental anguish without physical harm

b. 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 constitutes property damage
- Direct damage and time element (consequential losses) are both included
- Effectively precludes insurance protection for alleged property damage to any item that is not tangible property
- Specifically states electronic data is not tangible property
 - Exposure(s) for contractor
 - Potential solution(s)

❖ **ELECTRONIC DATA LIABILITY – CG 04 37**

Liability Exposures And Coverages For Contractors

c. Suit defined

18. "Suit" means a civil proceeding in which damages because of "bodily injury", "property damage" or "personal and advertising injury" to which this insurance applies are alleged. "Suit" includes:

- a.** An arbitration proceeding in which such damages are claimed and to which the insured must submit or does submit with our consent; or
- b.** Any other alternative dispute resolution proceeding in which such damages are claimed and to which the insured submits with our consent.

- Clarifies that term includes alternative dispute resolutions that could be required by construction contract

d. Occurrence defined

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

- Fortuitous events – may happen over time
- Is construction defect an occurrence?
 - Varies by jurisdiction
 - If faulty workmanship is not an occurrence, the insured has not carried its burden to demonstrate that the claim falls within the insuring agreement – the result of which there is no coverage in the CGL Policy - exclusions and exceptions to those exclusions do not create coverage not granted in the first instance
- Definition of occurrence is important as relates to the application of Limits of Insurance and application of deductibles

Liability Exposures And Coverages For Contractors

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 – **does NOT matter when work is done**
- Known injury or damage exclusion – **reason for verbiage**

Illustration #1

C&S Construction installs a deck on Rich’s house today. The installation is done in a negligent manner – the deck is not properly fastened to the house. Two years after the deck was negligently installed, Rich is sitting on his deck when it collapses, seriously injuring Rich. He sues C&S for his BI ONLY (no claim for damage to the deck is made).

- CGL Insurance in effect for C&S:
 - Today (Time Deck is Built) is Travelers
 - \$1,000,000 Each Occurrence Limit
 - January 1st to January 1st effective dates
 - Two Years Later (When Deck Collapses) is Hartford
 - \$1,000,000 Each Occurrence Limit
 - January 1st to January 1st effective dates

Who pays for damages caused by the BI to Rich? Why?

Liability Exposures And Coverages For Contractors

Illustration #2

What if exactly when BI or PD took place is difficult to determine?

- BI or PD may happen over time (progressive, cumulative or continuous injury or damage)
- Does this change the CGL Policy “trigger”?

Courts will determine when BI or PD took place - four “trigger” theories

Exposure Theory—The CGL Policy is triggered if it is in effect during *exposure* to injurious or harmful conditions. Primarily used in asbestos cases, this theory considers bodily injury to begin when a person was first exposed to asbestos, usually at the first inhalation of asbestos fibers.

Manifestation Theory—The CGL Policy is triggered when the injury or damage is discovered or *manifests* itself (or in some cases is capable of being discovered) during the policy period. That the injury or damage may have been occurring prior to discovery may not be taken into account in this theory.

Injury-in-Fact Theory—All CGL Policies are triggered if they are in effect during the time the injury or damage is shown to have *actually taken place*, even if the injury or damage continues over time.

Continuous Trigger Theory—All CGL Policies are triggered if they are in effect during any of the following times: *exposure* to harmful conditions; *actual* injury or damage; and upon and after *manifestation* of the injury or damage.

HEADS UP!!

Insurer may use non-ISO limitation or exclusionary endorsement such as:

- Prior Work (excludes BI or PD arising out of any prior work)
- Exclusion for progressive injury or damage (if BI or PD *commences* prior to policy period, whether or not known to any insured, BI or PD is excluded)
- First Manifestation endorsement (CGL Policy responds only to BI or PD that first manifests itself during policy period)
- Non-Cumulation Endorsement (limits policy to pay limit once even if multiple policies are triggered)

Liability Exposures And Coverages For Contractors

MORE ON 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
- Applicability for contractor example

e. Coverage territory defined

ANOTHER DEFINITION

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
- Specifies the jurisdiction in which a suit must take place

Liability Exposures And Coverages For Contractors

MORE ON
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 ON
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

1. Selected 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. Pollution exclusion

NOTE: CG 21 49 – Total Pollution Exclusion may be attached and none of the standard exceptions will apply

- Coverage provided for contractor must be read in context of CGL Policy, taking into account all other terms and conditions, including other exclusions

Liability Exposures And Coverages For Contractors

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.

Liability Exposures And Coverages For Contractors

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 building heating equipment used to heat that building
- **EXCEPTION - coverage provided** by stated exception if named insured is a contractor and exclusion 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 (**BOTH PREMISES & OPERATIONS**)
- **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 inferred exception for most products - completed operations exposures
- Excludes cleanup costs for remedial action only
- Endorsements may apply

Liability Exposures And Coverages For Contractors

- **PESTICIDE OR HERBICIDE APPLICATOR – LIMITED POLLUTION COVERAGE – CG 22 64**

PESTICIDE OR HERBICIDE APPLICATOR – LIMITED POLLUTION COVERAGE

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

Description Of Operations: With respect to the operations shown in the Schedule, Paragraph (1)(d) of Exclusion f. of **Section I – Coverage A – Bodily Injury And Property Damage Liability** 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 to those operations

- **LAWN CARE SERVICES – LIMITED POLLUTION COVERAGE – CG 22 93**

LAWN CARE SERVICES – LIMITED POLLUTION COVERAGE

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

Paragraph (1)(d) of Exclusion f. under **Section I – Coverage A – Bodily Injury And Property Damage Liability** does not apply to the application of herbicides or pesticides by an insured on lawns under your regular care.

Liability Exposures And Coverages For Contractors

b. 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

Liability Exposures And Coverages For Contractors

- **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) 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 by an independent contractor who has NOT been named as an additional insured

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

What about contractor who puts blade on front of truck to "push" snow in the winter? Completed operations exposure?

Liability Exposures And Coverages For Contractors

CG 22 92

SNOW PLOW OPERATIONS COVERAGE

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

Within the "products-completed operations hazard", Exclusion **g.** under Section **I – Coverage A – Bodily Injury And Property Damage Liability** does not apply to any "auto" used for snow plow operations.

What about contractor who owns a drone or has an independent contract operate a drone on behalf of the 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

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.

Liability Exposures And Coverages For Contractors

THESE ARE AUTOS:

(BAP for both locomotion & operations) f.(1)

THESE ARE AUTOS:

(BAP for locomotion – operations CGL by exception to CGL exclusion) f.(2)

THESE ARE AUTOS:

(BAP for locomotion – operations CGL by exception to CGL exclusion) f.(3)

THESE ARE AUTOS:

(BAP for locomotion – operations CGL by exception to CGL exclusion) – **ending paragraph**

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 paragraph f.(1) must be covered under Business Auto Coverage Form
- Locomotion exposure of 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 operation 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 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 "autos" that would otherwise qualify as "mobile equipment" is covered under the CGL Coverage Form

Liability Exposures And Coverages For Contractors

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 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

Liability Exposures And Coverages For Contractors

c. 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 events policy may be needed

Liability Exposures And Coverages For Contractors

d. **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 7 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".

Liability Exposures And Coverages For Contractors

- 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 - exclusion does not apply** for property damage for a speculative builder who does not occupy, rent or hold for rental his/her work – **Exclusion - Damage To Your Work** may still apply
- **EXCEPTION - coverage provided** for “broad form property damage” for real property while operations are in progress

What is “that particular part”?

- **EXCEPTION - coverage provided** for resulting damage for faulty workmanship while operations are in progress

What is “that particular part”? When is work completed?

Illustration:

A general contractor has been engaged by the owner to build a school building. During the construction itself (but after the gymnasium floor has been finished), an excavation subcontractor (engaged by the GC) blocks several drains during the grading. During heavy rains, water backed up and flooded the gymnasium floor, causing heavy water damage. The owner demands replacement of the gymnasium floor – the GC tenders the owner's claim to its CGL Policy insurer.

The GC's CGL Policy insurer denies coverage for the GC's liability to replace the gymnasium floor – citing exclusions J(5) and J(6).

The insurer contends the *entire school* was “that particular part” from the perspective of the General Contractor and thus excluded for the property damage. Is this correct?

Liability Exposures And Coverages For Contractors

The exclusions apply only to subject of incorrectly performed work

The plain meaning of the exclusion—property damage to “[t]hat particular part of any property that must be restored, repaired or replaced because ‘your work’ was incorrectly performed on it”—is that property damage only to parts of the property that were themselves the subjects of the defective work is excluded.

This becomes clear when the exclusion is broken down into its component requirements: the “particular part” referred to is the part of the property that (1) must be restored, repaired or replaced (2) because the insured’s work was incorrectly performed on it. The second requirement makes clear that the “particular part” of the property must have been the subject of incorrectly performed work.

The narrowing “that particular part” language is used to distinguish the damaged property that was itself the subject of the defective work from other damaged property that was either the subject of non-defective work by the insured or that was not worked on by the insured at all. ***Mid-Continent Casualty Co. v. JHP Development, Inc.* 557 F.3d 207 (5th Circuit 2007)**

The exclusions apply to the entire project – but only to the Work within contract

Bearing these principles in mind, the trial court correctly concluded that the term “that particular part” in the exclusions referred not to Browning Hall as a whole, but “only to the room and the plumbing on which [the sub-contractor] was working prior to the fire starting. Thus, the court interprets the phrase to mean that Room 143 and the plumbing are ‘that particular part’ of Browning Hall (which constitutes the whole) on which the work was being performed.” The trial court continued:

[T]he damage to the rest of the building clearly resulted from an unpredictable business accident that consequently created additional work outside the original contractual obligations. ***Transportation Insurance Co. v. Piedmont Construction Group, LLC* 686 S.E. 824 (Ga. Ct. App. 2009)**

- **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”;**
Exclusion – Damage To Your Work may apply

Liability Exposures And Coverages For Contractors

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

(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

Liability Exposures And Coverages For Contractors

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

e. **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**

Liability Exposures And Coverages For Contractors

- 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**

- **EXCLUSION ADDED BY ENDORSEMENT – DAMAGE TO WORK PERFORMED BY SUBCONTRACTORS ON YOUR BEHALF – CG 22 94**

EXCLUSION – DAMAGE TO WORK PERFORMED BY SUBCONTRACTORS ON YOUR BEHALF

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

Exclusion I. of **Section I – Coverage A – Bodily Injury And Property Damage Liability** is replaced by the following:

2. Exclusions

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.

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

Liability Exposures And Coverages For Contractors

f. **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

Liability Exposures And Coverages For Contractors

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
- Example for contractor

g. 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; it is a cost to keep bodily injury or property damage from occurring
- Specific first party insurance is available through standard and excess-surplus lines markets – “rip and tear” coverage
- Example for contractor

Liability Exposures And Coverages For Contractors

2. Rip and Tear Costs – covered by the CGL?

- a. What are the “rip and tear” costs?
 - Sometimes referred to as "access costs," rip and tear costs refer to costs incurred in tearing out, and then replacing, non-defective work to get to and repair damaged work.
 - These costs can be a substantial portion of the loss, especially in major construction defect cases, and coverage for these costs in the CGL policy can be difficult to determine.¹
- b. Courts mixed on results
- c. Questions that are raised:
 - Are costs damages because of property damage?
 - Are costs the result of an occurrence?
 - Are costs excluded by “your work” or “your product” exclusion?

¹ Jeffery D. Masters, CGL Coverage for Rip and Tear Costs – IRMI Construction Conference © 2012 International Risk Management Institute, Inc.

Liability Exposures And Coverages For Contractors

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 insured extends beyond insurer's legal obligation to pay
- But no possibility or potential for coverage, no defense
- Control of defense / settlement with insurer
- Amount of insurer's payment limited
- Limits types of obligations 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

Liability Exposures And Coverages For Contractors

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

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

Liability Exposures And Coverages For Contractors

2. Selected exclusions

This insurance does not apply to:

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.

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".

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.

- Exposures for contractor
- **LIMITED CONTRACTUAL LIABILITY COVERAGE FOR PERSONAL AND ADVERTISING INJURY – CG 22 74**

LIMITED CONTRACTUAL LIABILITY COVERAGE FOR PERSONAL AND ADVERTISING INJURY

This endorsement modifies insurance provided under the following:

**COMMERCIAL GENERAL LIABILITY COVERAGE PART
SCHEDULE**

Designated Contract Or Agreement:

- A.** With respect to the contract or agreement designated in the Schedule above, Subparagraph **e.** of Paragraph **2. Exclusions** of **Section I – Coverage B – Personal And Advertising Injury Liability** is replaced by the following:

2. Exclusions

This insurance does not apply to:

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:

- (1)** Liability for damages that the insured would have in the absence of the contract or agreement; or
- (2)** Liability for "personal and advertising injury" if:
 - (a)** The liability pertains to your business and is assumed in the designated contract or agreement shown in the Schedule in which you assume the tort liability of another. Tort liability means a liability that would be imposed by law in the absence of any contract or agreement;
 - (b)** The "personal and advertising injury" occurs subsequent to the execution of the designated contract or agreement shown in the Schedule; and
 - (c)** The "personal and advertising injury" arises out of the offenses of false arrest, detention or imprisonment.

Liability Exposures And Coverages For Contractors

C. 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
- Court costs does not include plaintiff's attorney fees as Supplementary Payments – but if insured is required to pay plaintiff's attorney fees, these attorney fees will be paid as damages

Liability Exposures And Coverages For Contractors

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.

Liability Exposures And Coverages For Contractors

- On occasion, assumed defense costs of an indemnitee may qualify as Supplementary Payments
 - Both insured and indemnitee are named as parties to the suit; must be a covered contract for which insurance applies; obligation for defense must be part of the insured contract
 - Allegations in the suit and the information insurer knows about the occurrence are such that no conflict appears to exist between the interests of the insured and the interests of the indemnitee
 - Indemnitee and insured ask insurer to conduct and control the defense of that indemnitee against such suit and agree that the insurer can assign the same legal counsel to defend the insured and the indemnitee
 - Indemnitee agrees to specific policy conditions, i.e., cooperation, notice, authorization, etc.
- If assumed defense costs qualify as Supplementary Payments, the Limits of Insurance will not be reduced by their payment

III. CGL COVERAGE FORM - SECTION III - LIMITS OF INSURANCE

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 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
- **DESIGNATED CONSTRUCTION PROJECT(S)
GENERAL AGGREGATE LIMIT – CG 25 03**

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
- **DESIGNATED PROJECT(S) PRODUCTS-COMPLETED
OPERATONS AGGREGATE LIMIT – CG 25 45 12 19**

Liability Exposures And Coverages For Contractors

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 Occurrence Limit / But equal to per 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 Occurrence Limit
- Subject to General Aggregate Limit
- \$100,000 any one premises may be customary but may not be enough

Liability Exposures And Coverages For Contractors

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 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 after policy inception

Liability Exposures And Coverages For Contractors

IV. ADDITIONAL SELECTED ENDORSEMENTS THAT MAY BE ATTACHED

What is Wrap-Up Insurance Program?

For large construction projects, the liability (and workers' compensation) insurance is sometimes placed centrally, including most contractors and subcontractors as named insured, but only for the liability of each arising out of the project site. This arrangement of insurance is called a "wrap-up" insurance program or a consolidated insurance program or CIP.

The persons arranging and purchases the insurance for the CIP is the sponsor. If the sponsor is the owner of the project, the wrap-up is called an OCIP or owner controlled (or consolidated) insurance program. If the contractor is the sponsor, the wrap-up is called a CCIP or contractor controlled (or consolidated) insurance program.

How is it Different?

The wrap-up approach to purchasing insurance is different from the "traditional" insurance arrangement, in which each contractor or subcontractor purchases its own liability (and workers' compensation) insurance and includes in overhead charges the cost of insurance allocated to the project.

In a wrap-up, the contractors and subcontractors must remove from the cost of their work the portion of the overhead that represents their insurance premium – the "wrap-up" insurance program is to be the sole source of their insurance at the project site. Consequently, the CGL Policy of the contractors and subcontractors that enroll in a wrap-up insurance program typically excludes any liability coverage arising out of the project. Further, the CGL Policy insurer for the contractors or subcontractors enrolled in the project does not charge for the payroll (or receipts) attributed to the project. The exclusion attached to the contractors' and subcontractors' policies is typically:

Limited Exclusion – Designated Operations Covered by a Controlled (Wrap-Up) Insurance Program CG 21 31 or Exclusion – Designated Operations Covered by a Controlled (Wrap-Up) Insurance Program CG 21 54

The primary difference between these two endorsements is whether or not coverage will apply once the insurance protection provided by the wrap-up no longer remains in effect. Therefore, the preferred endorsement is CG 21 31.

Two alternate endorsements are available when the contractor must name a person or organization as an additional insured in relationship to the wrap-up and that additional insured is not enrolled in the wrap-up - **Exclusion – Designated Operations Covered By A Controlled (Wrap-Up) Insurance Program – Limited Exception For Additional Insureds – CG 40 07 12 19** (similar to CG 21 54 with limited exception) and **Limited Exclusion – Designated Operations Covered By A Controlled (Wrap-Up) Insurance Program – Limited Exception For Additional Insureds – CG 40 08 12 19** (similar to CG 21 31 with limited exception)

Nonetheless, a contractor or subcontractor enrolled in a wrap-up insurance program still typically must purchase:

- CGL/Excess Liability Insurance for off-project exposures
- Auto liability insurance

The sponsor of the wrap-up program typically uses a loss sensitive rating plan (commonly a SIR or deductible of \$250,000 or greater) and thus reduces insurance costs. Therefore, the success of a wrap-up insurance program is generally determined by controlling the losses that occur within the SIR or deductible and at the project site.

Liability Exposures And Coverages For Contractors

- A. EXCLUSION – DESIGNATED WORK – CG 21 34
- B. EXCLUSION – DESIGNATED ONGOING OPERATIONS – CG 21 53
- C. EXCLUSION – EXTERIOR INSULATION AND FINISH SYSTEMS – CG 21 86
- D. EXCLUSION – CONSTRUCTION MANAGEMENT ERRORS AND OMISSIONS – CG 22 34
- E. EXCLUSION – ENGINEERS, ARCHITECTS OR SURVEYORS PROFESSIONAL LIABILITY – CG 22 43

Complete exclusion for any professional liability with no exception for means, methods or techniques as construction contractor
- F. EXCLUSION – CONTRACTORS – PROFESSIONAL LIABILITY – CG 22 79

Excludes professional services – engineering, architectural or surveying services – BUT does not *exclude means, methods and techniques of named insured in their capacity as a construction contractor*
- G. LIMITED EXCLUSION – CONTRACTORS – PROFESSIONAL LIABILITY – CG 22 80

Excludes professional design services ONLY if the design services are provided to others NOT in connection with the named insured's *construction operations*
- H. EXCLUSION – EARTH MOVEMENT – CG 40 04 12 19
- I. EXCLUSION – EARTH MOVEMENT – COMPLETED CG 40 05 12 19
- J. EARTH MOVEMENT – EXCLUSION FOR DESIGNATED OPERATION(S) OR PROJECT(S) – CG 40 06 12 19
- K. PREMIUM AUDIT NONCOMPLIANCE CHARGE – CG 99 09 12 19

V. CONCLUSION

