



JAMES K. RUBLE SEMINAR

Ruble Graduate Seminar

IA&B Webinar

October 13-14, 2021

James K. Ruble Seminar

Ruble Graduate Seminar

October 13-14, 2021 • IA&B Webinar

Wednesday, October 13, 2021

7:45 AM - 8:00 AM

8:00 AM - 12:00 PM

Section 1

Join Webinar

Certificates of Insurance and Additional Insureds: Navigating the Maze

Cathy Trischan

12:00 PM - 1:15 PM

Lunch

1:15 PM - 5:15 PM

Section 2

Commercial Liability Endorsements To Watch Out For

Cathy Trischan

Thursday, October 14, 2021

7:45 AM - 8:00 AM

Join Webinar

8:00 AM - 12:00 PM

Section 3

Anatomy of a Construction Injury Claim

Richard Pitts

12:00 PM - 1:15 PM

Lunch

1:15 PM – 5:15 PM

Section 4

Insuring the Cannabis Risks: The Challenges

Richard Pitts

Faculty

Cathy Trischan, CIC, CRM, CPCU, ARM, AAI, AU CRIS, MLIS, TRIP
E&K Insurance Group

Richard Pitts, J.D.

Arlington/Roe & Co., Inc.

Educational Consultant

Thomas R. Humphreys, CIC, CPCU, CLU, ChFC
Olivet College

JAMES K. RUBLE SEMINAR
Ruble Graduate Seminar
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4 — INSURING THE CANNABIS RISKS: THE CHALLENGES



A Letter from William J. Hold, President/CEO

We know that choosing the right professional development programs to strengthen your career can be challenging. There are many options for you to choose from; so how can you be sure that your time, efforts, and money are being invested and not wasted?

By becoming a committed participant of The National Alliance, you can rest assured that you are also making the best educational choice for your career—no matter what step of your learning path you are on.

For the last 50 years, our designations have been regarded throughout the industry as symbols of quality and trust. Our practical insurance and risk management courses are taught by active insurance practitioners, include policies and forms currently used in the field, and guide you through real-world scenarios to give you a deeper understanding of what your clients are facing today. The knowledge and skills you develop in any one of our courses (or designation programs) can be put to use immediately.

You will build long-lasting relationships with your clients, stay ahead of industry trends, emerging risks, and products that are constantly evolving in our dynamic market. You will have access to the industry's latest learning materials and will be the first to hear about new courses. With a learning path customized to fit your needs, you will be better equipped to protect your clients.

Have no doubt that your success is our priority. Whether you are new to your career, or a seasoned professional, you are about to embark on a wonderful professional development journey. Thank you for choosing The National Alliance for Insurance Education & Research as your guide toward a thriving career.

Let's take the first step.

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



James K. Ruble Seminar

a proud member of The National Alliance for Insurance Education & Research

Section 1

Certificates of Insurance and Additional Insureds: Navigating the Maze

Certificates of Insurance and Additional Insureds: Navigating the Maze

Catherine Trischan, CPCU, CRM, CIC, ARM, AU, AAI, CRIS, MLIS, TRIP
catherine.trischan@gmail.com
E&K Insurance Group
Eatontown, NJ

The Role of the Certificate

- Informational
- Does it change the policy?
- Disclaimer language

Disclaimers ACORD 25 (2016/03)

		CERTIFICATE OF LIABILITY INSURANCE		DATE (MM/DD/YYYY)
		<p>THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.</p> <p>IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must have ADDITIONAL INSURED provisions or be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).</p>		
PRODUCER	CONTACT NAME: _____ PHONE (A/C, No, Ext): _____ FAX (A/C, No): _____ E-MAIL: _____ ADDRESS: _____			
	INSURER(S) AFFORDING COVERAGE		NAIC #	
INSURED	INSURER A:			
	INSURER B:			
	INSURER C:			
	INSURER D:			
	INSURER E:			
	INSURER F:			
COVERAGES		CERTIFICATE NUMBER:		REVISION NUMBER:
<p>THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.</p>				

Disclaimers ACORD 25 (2016/03)

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Certificate Holder Expectations

I will get an accurate representation of coverage

- Certificate may include incorrect information
- Certificate may be issued on a cancelled policy
- Certificate may include language inconsistent with the policy
- Aggregate limits may be impaired

7

Any important restrictions or exclusions will be disclosed to me

- Policy exclusions are rarely listed on a certificate
- Exclusions may be added after the certificate is issued

Certificate Holder Expectations

If the certificate says I'm additional insured, I am

- A "Y" in the AI box gives little information
- Has an endorsement been issued?
- Has the proper endorsement been issued?
- Have the terms of the additional insured coverage been made clear?

8

I will be notified if the policy cancels

Insured Misconceptions

If my broker issues a certificate, I'm in compliance with the requirements of the certificate holder

Policies rarely conform exactly to contracts

- Outdated contract language
- Unrealistic requirements
- Required coverage is more than the insured carries

Producer Misconceptions

- It's better to issue the certificate the way it's requested than to challenge the request
- It doesn't matter what I put on the certificate; it's informational only
- If I describe an entity as additional insured on the COI, it is an additional insured
- If the certificate holder accepts the certificate, my insured doesn't have to worry about contract requirements

Acord 25 – Liability

- Issue forms in compliance with Acord's Forms Instruction Guide
- Do not use for auto/equipment lessors/finance companies

To provide information to the owner of a leased motor vehicle or equipment, or the lender about both liability and physical damage or property coverages applying to a vehicle or equipment, use ACORD 23, Vehicle or Equipment Certificate of Insurance.

Acord 25 – Liability

- Insurer information

The insurer's full legal company name(s) as found in the file copy of the policy...This is not the insurer's group name or trade name.

- Insured information

The named insured(s) as it/they will appear on the policy declarations page.

Acord 25 – Liability

INSR LTR	TYPE OF INSURANCE	ADDL SUBR INSR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
	COMMERCIAL GENERAL LIABILITY					EACH OCCURRENCE \$
	<input type="checkbox"/> CLAIMS-MADE <input type="checkbox"/> OCCUR					DAMAGE TO RENTED PREMISES (Ea occurrence) \$
						MED EXP (Any one person) \$
						PERSONAL & ADV INJURY \$
	GEN'L AGGREGATE LIMIT APPLIES PER:					GENERAL AGGREGATE \$
	<input type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC					PRODUCTS - COMPIOP AGG \$
	OTHER:					\$
	AUTOMOBILE LIABILITY					COMBINED SINGLE LIMIT (Ea accident) \$
	<input type="checkbox"/> ANY AUTO					BODILY INJURY (Per person) \$
	<input type="checkbox"/> OWNED AUTOS ONLY <input type="checkbox"/> SCHEDULED AUTOS					BODILY INJURY (Per accident) \$
	<input type="checkbox"/> HIRED AUTOS ONLY <input type="checkbox"/> NON-OWNED AUTOS ONLY					PROPERTY DAMAGE (Per accident) \$
						\$
	UMBRELLA LIAB					EACH OCCURRENCE \$
	<input type="checkbox"/> EXCESS LIAB <input type="checkbox"/> OCCUR <input type="checkbox"/> CLAIMS-MADE					AGGREGATE \$
	DED <input type="checkbox"/> RETENTION \$					\$
	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY					PER STATUTE <input type="checkbox"/> OTH-ER <input type="checkbox"/>
	ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH)	Y/N <input type="checkbox"/>				E.L. EACH ACCIDENT \$
	If yes, describe under DESCRIPTION OF OPERATIONS below	N/A				E.L. DISEASE - EA EMPLOYEE \$
						E.L. DISEASE - POLICY LIMIT \$
DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)						

Acord 25 – Liability

■ Additional Insured - Y or N

Enter Y for a "Yes" response. Input N for "No" response.
Indicates if the certificate holder has been named as an additional insured on the general liability policy.

■ Waiver of Subrogation- Y or N

Enter Y for a "Yes" response. Input N for "No" response.
Indicates if subrogation has been waived on the general liability policy.

“Blanket” Additional Insured

Commonly Used Language

XYX is included as additional insured if required by written contract.

What do you think?

“Blanket” Additional Insured

The NYDFS provides the following sample language to address “blanket” or “automatic” additional insured situations:

"Named Entity is an additional insured to the extent covered by the CG 20 33 ADDITIONAL INSURED—OWNERS, LESSEES OR CONTRACTORS—AUTOMATIC STATUS WHEN REQUIRED IN CONSTRUCTION AGREEMENT WITH YOU endorsement"

"ABC Company is an additional insured if required by written contract, per endorsement number XX XX XX (copy attached)" or

"ABC Company would be covered as an additional insured per endorsement X, to the extent provided therein."

NOTE: This language may not be acceptable in all states. Know the COI law!

Acord 25 – Liability

- Policy Number
- Effective Dates

The date on which the terms and conditions of the policy commence/ will expire.

Acord 25 – Liability

Policy Limits

e.g. The general liability, each occurrence limit amount. Any questions about appropriate limits or applicable policy coverage(s) should be answered by the issuing insurer(s). As used here, the limit should be listed as a whole dollar amount, as governed by the policy.

Acord 25 – Liability

CGL

- Claims Made/Occurrence
- Open options
Indicates other coverage not found on the form exists for the general liability policy.
- How does the aggregate apply?
 - Is there an overall policy aggregate?

Acord 25 – Liability

INSR LTR	TYPE OF INSURANCE	ADDL SUBR INSD WVR	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
	COMMERCIAL GENERAL LIABILITY					
	<input type="checkbox"/> CLAIMS-MADE <input type="checkbox"/> OCCUR					EACH OCCURRENCE \$
						DAMAGE TO RENTED PREMISES (Ea occurrence) \$
						MED EXP (Any one person) \$
						PERSONAL & ADV INJURY \$
						GENERAL AGGREGATE \$
						PRODUCTS - COM/OP AGG \$
						\$
	GEN'L AGGREGATE LIMIT APPLIES PER:					
	<input type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC					
	OTHER:					
	AUTOMOBILE LIABILITY					
	<input type="checkbox"/> ANY AUTO					COMBINED SINGLE LIMIT (Ea accident) \$
	<input type="checkbox"/> OWNED AUTOS ONLY					BODILY INJURY (Per person) \$
	<input type="checkbox"/> HIRED AUTOS ONLY					BODILY INJURY (Per accident) \$
	<input type="checkbox"/> SCHEDULED AUTOS					PROPERTY DAMAGE (Per accident) \$
	<input type="checkbox"/> NON-OWNED AUTOS ONLY					\$
	UMBRELLA LIAB	<input type="checkbox"/> OCCUR				EACH OCCURRENCE \$
	EXCESS LIAB	<input type="checkbox"/> CLAIMS-MADE				AGGREGATE \$
	DED <input type="checkbox"/> RETENTION \$					\$
	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY	<input type="checkbox"/> Y/N				
	ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH)	<input type="checkbox"/> N/A				PER STATUTE <input type="checkbox"/> OTH-SR \$
	If yes, describe under DESCRIPTION OF OPERATIONS below					E.L. EACH ACCIDENT \$
						E.L. DISEASE - EA EMPLOYEE \$
						E.L. DISEASE - POLICY LIMIT \$

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

Acord 25 – Liability

Auto

- Which box(es) to check
- Leased/Financed Autos (use Acord 23)

Excess Liability

- Umbrella or Excess Liability
- Claims Made or Occurrence
- Deductible or Retention

Acord 25 – Liability

INSR LTR	TYPE OF INSURANCE	ADDITIONAL INSURANCE	POLICY NUMBER	POLICY EFF (MM/CC/YY)	POLICY EXP (MM/CC/YY)	LIMITS
	COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input type="checkbox"/> OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC OTHER:					EACH OCCURRENCE \$ DAMAGE TO RENTED PREMISES (Ea occurrence) \$ MED EXP (Any one person) \$ PERSONAL & ADV INJURY \$ GENERAL AGGREGATE \$ PRODUCTS - COM/OP AGG \$ \$
	AUTOMOBILE LIABILITY <input type="checkbox"/> ANY AUTO <input type="checkbox"/> OWNED AUTOS ONLY <input type="checkbox"/> HIRED AUTOS ONLY <input type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> NON-OWNED AUTOS ONLY					COMBINED SINGLE LIMIT (Ea accident) \$ BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ \$
	UMBRELLA LIAB <input type="checkbox"/> EXCESS LIAB <input type="checkbox"/> DED <input type="checkbox"/> RETENTION \$	<input type="checkbox"/> OCCUR <input type="checkbox"/> CLAIMS-MADE				EACH OCCURRENCE \$ AGGREGATE \$ \$
	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	<input type="checkbox"/> Y <input type="checkbox"/> N <input type="checkbox"/> N/A				PER STATUTE <input type="checkbox"/> OTHER <input type="checkbox"/> E.L. EACH ACCIDENT \$ E.L. DISEASE - EA EMPLOYEE \$ E.L. DISEASE - POLICY LIMIT \$
DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)						

Acord 25 – Liability

WC

- Per Statute or Other?
- Employers' Liability Limits
- Is anyone excluded?
- Is subrogation waived?

Other Liability Policies

Acord 25 – Liability

- Description of Operations/Locations/
Vehicles

The Certificate of Liability Insurance general remarks. The additional comments or special conditions that may exist upon the policy. Acord 101, Additional Remarks Schedule, may be attached if more space is required. As used here, records information necessary to identify the operations, locations and vehicles for which the certificate was issued.

- Authorized Representative

Acord 24 – Property

- Provides evidence of property insurance to those with no direct interest in the policy
- Acord recommends not using this form for a mortgagee or lienholder

Evidence of Property Insurance

- **Acord 27**
Provides a coverage statement for mortgagees and loss payees who provide mortgages or loans on residential property, personal property or small commercial properties, and are named in the policy.
- **Acord 28**
Provides information to mortgagees and loss payees who provide mortgages or loans on real property or personal property insured under a Commercial Lines policy and more detail is required by the mortgagee or loss payee.

For all COIs/EPs

Watch the Edition Dates!
The most current forms are:

- Acord 23 (2016/03)
- Acord 24 (2016/03)
- Acord 25 (2016/03)
- Acord 27 (2016/03)
- Acord 28 (2016/03)

State COI Laws

What may be addressed:

- What can and can't be done
- Which COI forms can be used
- To whom the law applies
- What the penalties are

Additional Insured Endorsements

Pre 07/04

Arising Out Of

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 "your work" for that insured by or for you.

CG 20 10 11 85

07/04 change

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.

CG 20 10 07 04

04/13 Additional Insured Changes

- The insurance afforded the AI applies only to the extent permitted by law.
- If coverage is required by contract, the insurance afforded the AI will be no broader than the contract requires.
- If coverage is required by contract, the limits available to the AI will be no higher than the contract requires.

04/13 Additional Insured Changes

The professional liability exclusion in the additional insured endorsement 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 loss involved professional architectural, engineering or surveying services. Note: This language appears only in some AI forms.

12/19 Additional Insured Changes

- New endorsements added to the ISO library
- Various changes to existing AI endorsements
- Recognition of the fact that policy endorsements may change the limits on the declarations

e.g. Available under the applicable Limits of Insurance ~~shown in the declarations~~

Additional Insured – Vendors – Automatic Status When Required in Agreement

CG 20 44 12 19

Section II - Who Is An Insured is amended to include as an additional insured any “vendor”, but only with respect to liability for “bodily injury” or “property damage” arising out of “your product” which is distributed or sold in the regular course of the “vendor’s” business.

Additional Insured – Vendors – Automatic Status When Required in Agreement

CG 20 44 12 19

Vendor defined

- *Any person or organization who distributes or sells “your product” in the regular course of its business when you have agreed in writing in a contract or agreement that such person or organization be added as an additional insured on your policy*

POLICY NUMBER:

COMMERCIAL GENERAL LIABILITY
CG 20 15 12 19

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.	

Additional Insured - Vendors**CG 20 15 12 19**

- Scheduled vendors
- Scheduled products
- Products must be distributed or sold in the regular course of the vendor's business

Additional Insured – Vendors

CG 20 44/CG 20 15 12 19 (additional exclusions)

- Vendor's contractual liability
- Unauthorized express warranties
- Vendor's intentional physical or chemical change to the product
- Repackaging
- Vendor's failure to make inspections, adjustments, tests or servicing
- Demonstration, installation, servicing or repair except on the vendor's premises in connection with sale of the product
- Labeling, re-labeling or use as part of something else
- Sole negligence of the vendor

POLICY NUMBER:

COMMERCIAL GENERAL LIABILITY
CG 20 11 12 19

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.

Additional Insured - Managers or Lessors of Premises

41

CG 20 11 12 19

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 or "bodily injury", "property damage" or "personal or advertising injury" caused, in whole or in part, by you or those acting on your behalf in connection with the ownership, maintenance or use of that part of the premises leased to you and shown in the Schedule.....

Additional Insured - Managers or Lessors of Premises

42

CG 20 11 12 19

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.*

POLICY NUMBER:

COMMERCIAL GENERAL LIABILITY
CG 20 24 12 19**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.****ADDITIONAL INSURED – OWNERS OR OTHER
INTERESTS FROM WHOM LAND HAS BEEN LEASED**

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

SCHEDULE

Name Of Person(s) Or Organization(s)	Designation Of Land (Part Leased To You)
Information required to complete this Schedule, if not shown above, will be shown in the Declarations.	

**Additional Insured - Owners or Other Interests
from Whom Land Has Been Leased****CG 20 24 12 19**

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 you or those acting on your behalf in connection with the ownership, maintenance or use of that part of the land leased to you and shown in the Schedule.

Additional Insured - Owners or Other Interests from Whom Land Has Been Leased

CG 20 24 12 19

This insurance does not apply to:

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

Additional Insured – Lessor of Leased Equipment

Additional Insured - Lessor of Leased
Equipment

- CG 20 28 12 19

Additional Insured - Lessor of Leased
Equipment – Automatic Status When
Required in Lease Agreement With You

- CG 20 34 12 19

Additional Insured - Lessor of Leased Equipment

- ...The AI 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(s) or organization(s).*
- ...*This insurance does not apply to any "occurrence" which takes place after the equipment lease expires.*

POLICY NUMBER:

COMMERCIAL GENERAL LIABILITY
CG 20 18 12 19

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

ADDITIONAL INSURED – MORTGAGEE, ASSIGNEE OR RECEIVER

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

SCHEDULE

Name(s) Of Person(s) Or Organization(s)	Designation Of Premises
Information required to complete this Schedule, if not shown above, will be shown in the Declarations.	

Additional Insured - Mortgagee, Assignee or Receiver

CG 20 18 12 19

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 their liability as mortgagee, assignee or receiver and arising out of the ownership, maintenance or use of the premises by you and shown in the Schedule.

B. This insurance does not apply to structural alterations, new construction and demolition operations performed by or for that person or organization.

CG 20 10 11 85

POLICY NUMBER:

COMMERCIAL GENERAL LIABILITY

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

ADDITIONAL INSURED – OWNERS, LESSEES OR CONTRACTORS – (FORM B)

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART.

SCHEDULE

Name of Person or Organization:

(If no entry appears above, information required to complete this endorsement will be shown in the Declarations as applicable to this endorsement.)

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 "your work" for that insured by or for you.

Carrier Specific Form

- b. Only as described in Paragraph (1), (2) or (3) below, whichever applies:

(1) If the written contract or agreement specifically requires you to provide additional insured coverage to that person or organization by the use of:

(a) The Additional Insured – Owners, Lessees or Contractors – (Form B) endorsement CG 20 10 11 85; or

(b) Either or both of the following: the Additional Insured – Owners, Lessees or Contractors – Scheduled Person Or Organization endorsement CG 20 10 10 01, or the Additional Insured – Owners, Lessees or Contractors – Completed Operations endorsement CG 20 37 10 01;

the person or organization is an additional insured only if the injury or damage arises out of "your work" to which the written contract or agreement applies;

Another Carrier Specific Form

1. BLANKET ADDITIONAL INSURED

a. Ongoing Operations

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 a written contract, written agreement or written permit that such person or organization be added as an additional insured on your commercial general liability policy; and
2. Any other person or organization, including any architects, engineers or surveyors not engaged by you, whom you are required to add as an additional insured under your policy in the contract or agreement in Paragraph 1. above;

Such person or organization is an additional insured only with respect to liability arising out of your ongoing operations performed under that contract, agreement, or permit when that contract, agreement, or permit requires the additional insured be added with respect to liability arising out of your ongoing operations.

If the written contract, written agreement, or written permit does not require that the additional insured be added with respect to liability arising out of your ongoing operations, then such person or organization is an additional insured only with respect to "bodily injury", "property damage" or "personal and advertising injury" caused in whole or in part by your ongoing operations performed under that contract, agreement, or permit.

CG 20 10 12 19

POLICY NUMBER:

COMMERCIAL GENERAL LIABILITY
CG 20 10 12 19

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.	

Additional Insured - Owners, Lessees or Contractors – Scheduled Person or Organization

CG 20 10 12 19

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.

04/13 language is added.

**Additional Insured - Owners, Lessees or Contractors
– Scheduled Person or Organization**

CG 20 10 12 19

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.*

**Additional Insured - Owners, Lessees or Contractors –
Automatic Status When Required in a Written Construction
Agreement With You**

CG 20 33 12 19

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.

**Additional Insured - Owners, Lessees or Contractors –
Automatic Status When Required in a Written Construction
Agreement With You**

CG 20 33 12 19

- Named Insured must be performing operations for the Additional Insured
- Contract must be between Named Insured and Additional Insured (privity of contract issue)
 - Note: This has been interpreted differently in different jurisdictions
- Ongoing operations coverage only
- Professional Liability exclusion applies

**Additional Insured - Owners, Lessees or Contractors –
Automatic Status When Required in a Written Construction
Agreement With You**

CG 20 33 12 19

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.*

**Additional Insured - Owners, Lessees or Contractors –
Automatic Status When Required in a Written Construction
Agreement With You**

CG 20 33 12 19

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.

CG 20 38 12 19 – a better choice

**Additional Insured - Owners, Lessees or Contractors-
Automatic Status For Other Parties When Required in a
Written Construction Agreement**

(paragraph 1) CG 20 33 12 19 +

(paragraph 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....

In the performance of your ongoing operations for the additional insured described in Paragraph 1. or 2.

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

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.

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**Additional Insured - Owners, Lessees or Contractors- Automatic
Status For Other Parties When Required in a Written Construction
Agreement – CG 20 38 12 19**

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 described in Paragraph 1. or 2. above.

Additional Insured - Owners, Lessees or Contractors- Automatic Status For Other Parties When Required in a Written Construction Agreement

CG 20 38 12 19

- Ongoing operations coverage only
- Professional Liability exclusion applies
- ISO says (Circular GL-2018-OFR18)

“to reinforce that the additional insured status provided by this endorsement extends to the person or organization described in Paragraph A.2. even when the named insured’s ongoing operations are only performed for the person or organization described in Paragraph A.1.”

“There is no impact on coverage.”

POLICY NUMBER:

COMMERCIAL GENERAL LIABILITY
CG 20 37 12 19

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.	

Additional Insured - Owners, Lessees or Contractors – Completed Operations

CG 20 37 12 19

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".....

POLICY NUMBER:

COMMERCIAL GENERAL LIABILITY
CG 20 41 12 19

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

ADDITIONAL INSURED – OWNERS, LESSEES OR CONTRACTORS – COMPLETED OPERATIONS SUBJECT TO THE GENERAL AGGREGATE

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

SCHEDULE

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

**Additional Insured - Owners, Lessees or Contractors
– Completed Operations Subject to the General
Aggregate (CG 20 41 12 19)**

- 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 of this endorsement, but only with respect to liability for:
1. "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(s) at the location(s) shown and described in the Schedule of this endorsement; or
 2. "Bodily injury" or "property damage" caused, in whole or in part, by "your work", other than that described in A.1., at the location(s) shown and described in the Schedule of this endorsement performed for the additional insured(s).
- ...

**Additional Insured - Owners, Lessees or Contractors 68
– Automatic Status When Required in Written
Construction Agreement With You (Completed
Operations)**

CG 20 39 12 19

Section II – Who Is An Insured is amended to include as an additional insured any person or organization for whom you have performed 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.

Completed Operations version of the CG 20 33 12 19

Additional Insured - Owners, Lessees or Contractors – 69
Automatic Status When Required in Written
Construction Agreement With You (Completed
Operations)

CG 20 39 12 19

- Named Insured must have performed operations for the Additional Insured
- Contract must be between Named Insured and Additional Insured (privity of contract issue)
- Completed operations coverage only
- Professional Liability exclusion applies

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CG 20 40 12 19 – a better choice

Additional Insured - Owners, Lessees or Contractors-
Automatic Status For Other Parties When Required in Written
Construction Agreement (Completed Operations)

(paragraph 1) CG 20 39 12 19 +

(paragraph 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....

....caused in whole or in part by "your work" performed for the additional insured described in Paragraph 1. or 2. above and included in the "products-completed operations hazard".

Completed Operations version of the CG 20 38 12 19

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**Additional Insured - Owners, Lessees or Contractors- Automatic
Status For Other Parties When Required in a Written Construction
Agreement (Completed Operations) – CG 20 40 12 19**

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

1. Any person or organization for whom you have performed 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" or "property damage" caused, in whole or in part, by "your work" performed for the additional insured described in Paragraph 1. or 2. above and included in the "products-completed operations hazard".

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POLICY NUMBER:

COMMERCIAL GENERAL LIABILITY
CG 20 42 12 19

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

**ADDITIONAL INSURED – AUTOMATIC STATUS FOR
DESIGNATED OPERATIONS**

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

SCHEDULE

Description Of Operation(s):

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

Additional Insured – Automatic Status for Designated Operations

CG 20 42 12 19

Section II – Who Is An Insured is amended to include as an additional insured any person(s) or organization(s) for whom you have agreed to add under any contract or agreement, but only with respect to liability for:

1. *"Bodily injury" or "property damage" not included in the "products-completed operations hazard"; or*
2. *"Personal and advertising injury";*
caused by, in whole or in part, your acts or omissions or the acts or omissions of those acting on your behalf in the performance of your operations as described in the Schedule above.

Note: Professional exclusion applies

Additional Insured – Automatic Status When Required in Written Contract Or Agreement - CG 20 43 12 19

A. Section II – Who Is An Insured is amended to include as an additional insured any person(s) or organization(s) for whom you have agreed in writing in a contract or agreement that such person(s) or organization(s) be added as an additional insured on your policy. Such person(s) or organization(s) is an additional insured only with respect to liability for:

1. "Bodily injury" or "property damage" not included in the "products-completed operations hazard"; or
2. "Personal and advertising injury";
 caused by, in whole or in part, your acts or omissions or the acts or omissions of those acting on your behalf in the performance of your operations.

Note: Professional exclusion applies

POLICY NUMBER:

COMMERCIAL GENERAL LIABILITY
CG 20 12 12 19

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

**ADDITIONAL INSURED – STATE OR GOVERNMENTAL
AGENCY OR SUBDIVISION OR POLITICAL
SUBDIVISION – PERMITS OR AUTHORIZATIONS**

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART
SCHEDULE

State Or Governmental Agency Or Subdivision Or Political Subdivision:

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

**Additional Insured – State or Governmental Agency
or Subdivision or Political Subdivision – Permits or
Authorizations****CG 20 12 12 19***Section II – Who Is An Insured is amended to
include as an additional insured any state or
governmental agency or subdivision or political
subdivision shown in the Schedule, subject to the
following provisions:*

- 1. This insurance applies only with respect to operations performed by you or on your behalf for which the state or governmental agency or subdivision or political subdivision has issued a permit or authorization.*

**Additional Insured – State or Governmental Agency
or Subdivision or Political Subdivision – Permits or
Authorizations**

CG 20 12 12 19

2. *This insurance does not apply to:*
- a. *"Bodily injury", "property damage" or "personal and advertising injury" arising out of operations performed for the federal government, state or municipality; or*
 - b. *"Bodily injury" or "property damage" included within the "products-completed operations hazard".*

POLICY NUMBER:

COMMERCIAL GENERAL LIABILITY
CG 20 13 12 19

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

**ADDITIONAL INSURED – STATE
OR GOVERNMENTAL AGENCY OR SUBDIVISION
OR POLITICAL SUBDIVISION – PERMITS
OR AUTHORIZATIONS RELATING TO PREMISES**

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART
SCHEDULE

State Or Governmental Agency Or Subdivision Or Political Subdivision:

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

**Additional Insured – State or Governmental Agency
or Subdivision or Political Subdivision – Permits or
Authorizations Relating to Premises**

CG 20 13 12 19

Section II – Who Is An Insured is amended to include as an additional insured any state or governmental agency or subdivision or political subdivision shown in the Schedule, subject to the following provisions:

This insurance applies only with respect to the following hazards for which the state or governmental agency or subdivision or political subdivision has issued a permit or authorization in connection with premises you own, rent or control and to which this insurance applies:

**Additional Insured – State or Governmental Agency
or Subdivision or Political Subdivision – Permits or
Authorizations Relating to Premises**

CG 20 13 12 19

1. *The existence, maintenance, repair, construction, erection or removal of advertising signs, awnings, canopies, cellar entrances, coal holes, driveways, manholes, marquees, hoist away openings, sidewalk vaults, street banners or decorations and similar exposures; or*
2. *The construction, erection or removal of elevators; or*
3. *The ownership, maintenance or use of any elevators covered by this insurance.*

Additional Insured – Engineers, Architects or Surveyors

CG 20 07 12 19

Section II – Who Is An Insured is amended to include as an additional insured any architect, engineer, or surveyor engaged by you, but only with respect to liability for “bodily injury”, “property damage” or “personal and advertising injury” caused, in whole or in part, by your acts or omissions or the acts or omissions of those acting on your behalf:

1. *In connection with your premises; or*
2. *In the performance of your ongoing operations.*

Note:

- No contract is required to trigger coverage
- Professional liability exclusion applies

POLICY NUMBER:

COMMERCIAL GENERAL LIABILITY
CG 20 32 12 19

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

ADDITIONAL INSURED – ENGINEERS, ARCHITECTS OR SURVEYORS NOT ENGAGED BY THE NAMED INSURED

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

SCHEDULE

Name(s) Of Additional Insured Engineer(s), Architect(s) Or Surveyor(s) Not Engaged By The Named Insured:

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

Additional Insured – Engineers, Architects or Surveyors Not Engaged by the Named Insured

CG 20 32 12 19

Section II – Who Is An Insured is amended to include as an additional insured the architects, engineers or surveyors 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 omission; or*
- 2. The acts or omissions of those acting on your behalf*

In the performance of your ongoing operations performed by your or on your behalf.

Such architects, engineers or surveyors, while not engaged by you, are contractually required to be added as an additional insured to your policy.

Note: Professional liability exclusion applies

POLICY NUMBER:

COMMERCIAL GENERAL LIABILITY
CG 20 26 12 19

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

ADDITIONAL INSURED – DESIGNATED 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):

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

Additional Insured – Designated Person or Organization - CG 20 26 12 19

- 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 acts or omissions or the acts or omissions of those acting on your behalf:
1. In the performance of your ongoing operations; or
 2. In connection with your premises owned by or rented to you.
- 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;
- whichever is less.
- This endorsement shall not increase the applicable limits of insurance.

Automatic Additional Insured Endorsements

Potential Dangers

- Manuscript language
- Is there a written contract? With whom?
- Nature of interest
- Assumptions

Automatic Additional Insured Endorsements

Potential Advantages

- Less chance of forgetting to add the additional insured
- Administrative Ease
- Cost

Automatic AI - Considerations

Who is covered? Possibilities:

- Only the entity that signed the contract with the insured, if the insured is performing operations for that entity
- Parties for which the insured is performing operations if the contract requires that they be covered
- Other parties that the Named Insured is required to include as Additional Insured if the contract requires that they be covered
- Something else

Automatic AI - Considerations

What is the breadth of coverage? Possibilities:

- Must the liability arise in whole or in part from the Named Insured's acts or omissions?
- Is an Additional Insured covered only for its vicarious liability?
- Is negligence of the Named Insured required?
- Is the breadth of coverage limited to what the contract requires?

Automatic AI - Considerations

Is coverage primary? Possibilities:

- Does the endorsement include primary wording?
- Is coverage excess, unless the contract requires that it be primary?
- Is coverage primary if the contract requires that it be primary?
- Is coverage excess over coverage the Additional Insured has under another's policy?
- Is coverage always excess?

Automatic AI - Considerations

What triggers coverage? Possibilities:

- Written contract
- Written agreement
- Permit
- Oral agreement
- Executed contract
- Something else

Automatic AI - Considerations

What triggers coverage?

Something else example

WHO IS AN INSURED is amended to include as an additional insured any of your vendors located in the United States of America (including its territories and possessions), Puerto Rico and Canada with whom you have agreed in writing in a contract or agreement or received a written request or written insurance specifications, including email or fax, to add them as an additional insured on your policy.

Automatic AI - Considerations

- Ongoing and/or completed operations?
- Is a certificate required?
- Are limits available to the AI limited to what the contract requires?
- Does the AI have additional duties? e.g.
 - Notify the carrier
 - Tender the claim and defense
 - Notify its own carrier
- Do additional exclusions apply to the AI?

Reviewing Contracts

Should agents review contracts?

- Have a clear position and be consistent
- Should you decide to offer the service:
 - ✓ Know what you're doing
 - ✓ Make sure you have the entire contract
 - ✓ Limit the review to insurance issues and be clear about that
 - ✓ What if the insured wants a COI with the coverage he has?

!!! BE CLEAR !!!

- State which portions were reviewed
- Make it clear you are reviewing only to determine if the insurance program meets the requirements of the contract
- Summarize changes needed to comply
- Note the items that cannot be part of the insurance program
- Be clear that you are not offering a legal opinion
- Refer the insured to an attorney
- Know that even if you refer the insured to an attorney, you can still be responsible for any misrepresentation

Communicate with Insured (even if not reviewing a contract)

- State that the certificate represents coverage in force which doesn't necessarily comply with the requirements of the contract
- Let the insured know that you'll only issue accurate certificates in accordance with company and state guidelines
- Do not warrant coverage!

Issuing the Certificate

Considerations:

- Who is requesting the certificate?
 - Document the request
- Who is issuing the certificate?
- What if the account is in cancellation?

Issuing the Certificate

- Always confirm coverage before issuing
- Always represent coverage accurately
- If an endorsement is needed, be sure it will be approved – be sure the insured agrees to pay for it - then request it!
- Check state or carrier directives
- Don't consider certificates "nuisance" paperwork

Issuing the Certificate

- Never issue a non-standard or modified certificate without carrier approval. This assumes the non-standard COI is allowed under the state COI law.
- Have agency procedures and be consistent

Primary and Noncontributory

CG 00 01 04 13 Other Insurance Clause

- a. Primary Insurance. This insurance is primary except when Paragraph b. below applies.....*
- 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*

CG 20 01 12 19 - Endorsement

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.*

Primary – What About the Excess/Umbrella?

ISO CGL Other Insurance Clause

- a. Primary Insurance. This insurance is primary except when Paragraph b. below applies.....*
- 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.*

Primary – What About the Excess/Umbrella?

ISO Excess/Umbrella Other Insurance Clause

This insurance is excess over, and shall not contribute with any of the other insurance, whether primary, excess, contingent or on any other basis. This condition will not apply to insurance specifically written as excess over this Coverage Part.

There is no provision for sharing of limits with another policy

Excess/Umbrella

Sample Non-Standard Language

With respect to Insuring Agreement A only, if you have agreed in a written contract with another...that this policy shall be primary and non-contributory with such other person or entity's coverage...other insurance of that person or organization will apply as excess and non-contributory to the insurance afforded by this policy.

Waiver of Subrogation

CG 00 01 04 13

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.*

Waiver of Subrogation CG 24 04 05 09

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.

**Waiver of Subrogation
CG 24 04 12 19
(Specific)**

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 against the person(s) or organization(s) shown in the Schedule above because of payments we make under this Coverage Part. Such waiver by us applies only to the extent that the insured has waived its right of recovery against such person(s) or organization(s) prior to loss. This endorsement applies only to the person(s) or organization(s) shown in the Schedule above.

**Waiver of Subrogation
CG 24 53 12 19
Automatic**

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 against any person or organization, because of any payment we make under this Coverage Part, to whom the insured has waived its right of recovery in a written contract or agreement. Such waiver by us applies only to the extent that the insured has waived its right of recovery against such person or organization prior to loss.

Contractual Liability Exclusion CG 00 01 04 13 (Coverage A)

"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.....

Insured Contract – CG 00 01 04 13

"Insured Contract"

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;

Insured Contract

LEASE

Lease

Easement

Agreement to Indemnify a
Municipality

Sidetrack

Elevator Maintenance
Agreement

Insured Contract

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.

Insured Contract

Exceptions:

1. Indemnification of a railroad for operations within 50 feet of railroad property
2. Indemnification regarding an architect, engineer or surveyor's professional liability

Railroads

- **CG 24 17 10 01** Contractual Liability – Railroads
- **CG 24 27 04 13** Limited Contractual Liability – Railroads
- **CA 20 70 10 13** Coverage for Certain Operations in Connection with Railroads

Endorsements Affecting Contractual Liability

COMMERCIAL GENERAL LIABILITY
CG 21 39 10 93

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

CONTRACTUAL LIABILITY LIMITATION

This endorsement modifies insurance provided under the following:

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

The definition of "insured contract" in the DEFINITIONS Section is replaced by the following:

"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.

Amendment of Insured Contract Definition

CG 24 26 04 13

- 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.*

Old COI Cancellation Clause

Should any of the above described policies be cancelled before the expiration date thereof, the issuing insurer will endeavor to mail _____ days written notice to the certificate holder named to the left, but failure to do so shall impose no obligation or liability of any kind upon the insurer, its agents or representatives.

Current COI Cancellation Clause

Should any of the above described policies be cancelled before the expiration date thereof, notice will be delivered in accordance with the policy provisions.

Cancellation Notice

- Will the carrier add a NOC endorsement?
- Will it apply if insured initiates cancellation?
- Will it apply to non-pay cancellation?

**Thank You for
Being Here!**



VEHICLE OR EQUIPMENT CERTIFICATE OF INSURANCE

DATE (MM/DD/YYYY)

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

This form is used to report coverages provided to a single specific vehicle or equipment. Do not use this form to report liability coverage provided to multiple vehicles under a single policy. Use ACORD 25 for that purpose.

PRODUCER	CONTACT NAME:		
	PHONE (A/C, No, Ext):	FAX (A/C, No):	
	E-MAIL ADDRESS:		
	PRODUCER CUSTOMER ID #:		
	INSURER(S) AFFORDING COVERAGE		NAIC #
	INSURED	INSURER A :	
	INSURER B :		
	INSURER C :		
	INSURER D :		
	INSURER E :		

DESCRIPTION OF VEHICLE OR EQUIPMENT

YEAR	MAKE / MANUFACTURER	MODEL	BODY TYPE	VEHICLE IDENTIFICATION NUMBER
DESCRIPTION			VEHICLE / EQUIPMENT VALUE \$	SERIAL NUMBER

COVERAGES

CERTIFICATE NUMBER:

REVISION NUMBER:

THIS IS TO CERTIFY THAT THE POLICY(IES) OF INSURANCE LISTED BELOW HAS/HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD(S) INDICATED, NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICY(IES) DESCRIBED HEREIN IS/ARE SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICY(IES).

INSR LTR	ADD'L INSRD	TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE (MM/DD/YYYY)	POLICY EXPIRATION DATE (MM/DD/YYYY)	LIMITS
		VEHICLE LIABILITY				COMBINED SINGLE LIMIT \$ BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE \$
		GENERAL LIABILITY				EACH OCCURRENCE \$ GENERAL AGGREGATE \$ \$
INSR LTR	LOSS PAYEE	TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE (MM/DD/YYYY)	POLICY EXPIRATION DATE (MM/DD/YYYY)	LIMITS / DEDUCTIBLE
		VEH COLLISION LOSS				<input type="checkbox"/> ACV <input type="checkbox"/> AGREED AMT \$ LIMIT <input type="checkbox"/> <input type="checkbox"/> STATED AMT \$ DED
		VEH COMP <input type="checkbox"/> VEH OTC				<input type="checkbox"/> ACV <input type="checkbox"/> AGREED AMT \$ LIMIT <input type="checkbox"/> <input type="checkbox"/> STATED AMT \$ DED
		EQUIPMENT				<input type="checkbox"/> ACV <input type="checkbox"/> AGREED AMT \$ LIMIT <input type="checkbox"/> RC <input type="checkbox"/> STATED AMT \$ DED <input type="checkbox"/>
		BASIC <input type="checkbox"/> BROAD <input type="checkbox"/>				
		SPECIAL <input type="checkbox"/>				

REMARKS (INCLUDING SPECIAL CONDITIONS / OTHER COVERAGES) (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

ADDITIONAL INTEREST

CANCELLATION

Select one of the following: <input type="checkbox"/> The additional interest described below has been added to the policy(ies) listed herein by policy number(s). <input type="checkbox"/> A request has been submitted to add the additional interest described below to the policy(ies) listed herein by policy number(s).		SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.
VEHICLE / EQUIPMENT INTEREST:	LEASED <input type="checkbox"/> FINANCED <input type="checkbox"/>	DESCRIPTION OF THE ADDITIONAL INTEREST
NAME AND ADDRESS OF ADDITIONAL INTEREST		<input type="checkbox"/> ADDITIONAL INSURED <input type="checkbox"/> LOSS PAYEE <input type="checkbox"/> LENDER'S LOSS PAYABLE <input type="checkbox"/>
		LOAN / LEASE NUMBER
		AUTHORIZED REPRESENTATIVE

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CERTIFICATE OF PROPERTY INSURANCE

DATE (MM/DD/YYYY)

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

PRODUCER	CONTACT NAME:	
	PHONE (A/C, No. Ext):	FAX (A/C, No):
	E-MAIL ADDRESS:	
	PRODUCER CUSTOMER ID:	
	INSURER(S) AFFORDING COVERAGE	
	NAIC #	
INSURED	INSURER A :	
	INSURER B :	
	INSURER C :	
	INSURER D :	
	INSURER E :	
	INSURER F :	

COVERAGES

CERTIFICATE NUMBER:

REVISION NUMBER:

LOCATION OF PREMISES / DESCRIPTION OF PROPERTY (Attach ACORD 101, Additional Remarks Schedule, if more space is required)

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE		POLICY NUMBER	POLICY EFFECTIVE DATE (MM/DD/YYYY)	POLICY EXPIRATION DATE (MM/DD/YYYY)	COVERED PROPERTY	LIMITS
	PROPERTY					BUILDING	\$
	CAUSES OF LOSS	DEDUCTIBLES				PERSONAL PROPERTY	\$
	BASIC	BUILDING				BUSINESS INCOME	\$
	BROAD	CONTENTS				EXTRA EXPENSE	\$
	SPECIAL					RENTAL VALUE	\$
	EARTHQUAKE					BLANKET BUILDING	\$
	WIND					BLANKET PERS PROP	\$
	FLOOD					BLANKET BLDG & PP	\$
							\$
							\$
	INLAND MARINE		TYPE OF POLICY				\$
	CAUSES OF LOSS						\$
	NAMED PERILS		POLICY NUMBER				\$
							\$
	CRIME						\$
	TYPE OF POLICY						\$
							\$
	BOILER & MACHINERY / EQUIPMENT BREAKDOWN						\$
							\$
							\$
							\$

SPECIAL CONDITIONS / OTHER COVERAGES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

CERTIFICATE HOLDER

CANCELLATION

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

AUTHORIZED REPRESENTATIVE



CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an **ADDITIONAL INSURED**, the policy(ies) must have **ADDITIONAL INSURED** provisions or be endorsed. If **SUBROGATION IS WAIVED**, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER	CONTACT NAME:	
	PHONE (A/C, No, Ext):	FAX (A/C, No):
INSURED	E-MAIL ADDRESS:	
	INSURER(S) AFFORDING COVERAGE	
	NAIC #	
	INSURER A:	
	INSURER B:	
	INSURER C:	
	INSURER D:	
	INSURER E:	
INSURER F:		

COVERAGES**CERTIFICATE NUMBER:****REVISION NUMBER:**

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
	COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input type="checkbox"/> OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC OTHER:						EACH OCCURRENCE \$ DAMAGE TO RENTED PREMISES (Ea occurrence) \$ MED EXP (Any one person) \$ PERSONAL & ADV INJURY \$ GENERAL AGGREGATE \$ PRODUCTS - COMP/OP AGG \$ \$
	AUTOMOBILE LIABILITY <input type="checkbox"/> ANY AUTO <input type="checkbox"/> OWNED AUTOS ONLY <input type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> HIRED AUTOS ONLY <input type="checkbox"/> NON-OWNED AUTOS ONLY						COMBINED SINGLE LIMIT (Ea accident) \$ BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ \$
	UMBRELLA LIAB <input type="checkbox"/> OCCUR EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE DED <input type="checkbox"/> RETENTION \$						EACH OCCURRENCE \$ AGGREGATE \$ \$
	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? <input type="checkbox"/> Y/N <input type="checkbox"/> N/A (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below						PER STATUTE <input type="checkbox"/> OTH-ER <input type="checkbox"/> E.L. EACH ACCIDENT \$ E.L. DISEASE - EA EMPLOYEE \$ E.L. DISEASE - POLICY LIMIT \$

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)

CERTIFICATE HOLDER**CANCELLATION**

	SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.
	AUTHORIZED REPRESENTATIVE

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EVIDENCE OF PROPERTY INSURANCE

DATE (MM/DD/YYYY)

THIS EVIDENCE OF PROPERTY INSURANCE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE ADDITIONAL INTEREST NAMED BELOW. THIS EVIDENCE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS EVIDENCE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE ADDITIONAL INTEREST.

AGENCY	PHONE (A/C, No, Ext):	COMPANY	
FAX (A/C, No):		E-MAIL ADDRESS:	
CODE:		SUB CODE:	
AGENCY CUSTOMER ID #:		INSURED	
LOAN NUMBER		POLICY NUMBER	
EFFECTIVE DATE		EXPIRATION DATE	<input type="checkbox"/> CONTINUED UNTIL TERMINATED IF CHECKED
THIS REPLACES PRIOR EVIDENCE DATED:			

PROPERTY INFORMATION

LOCATION/DESCRIPTION

THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS EVIDENCE OF PROPERTY INSURANCE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

COVERAGE INFORMATION

PERILS INSURED

BASIC

BROAD

SPECIAL

COVERAGE / PERILS / FORMS

AMOUNT OF INSURANCE

DEDUCTIBLE

REMARKS (Including Special Conditions)

CANCELLATION

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

ADDITIONAL INTEREST

NAME AND ADDRESS	<input type="checkbox"/>	ADDITIONAL INSURED	<input type="checkbox"/>	LENDER'S LOSS PAYABLE	<input type="checkbox"/>	LOSS PAYEE
	<input type="checkbox"/>	MORTGAGEE	<input type="checkbox"/>			
	LOAN #					
	AUTHORIZED REPRESENTATIVE					



EVIDENCE OF COMMERCIAL PROPERTY INSURANCE

DATE (MM/DD/YYYY)

THIS EVIDENCE OF COMMERCIAL PROPERTY INSURANCE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE ADDITIONAL INTEREST NAMED BELOW. THIS EVIDENCE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS EVIDENCE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE ADDITIONAL INTEREST.

PRODUCER NAME, CONTACT PERSON AND ADDRESS		PHONE (A/C, No, Ext):	COMPANY NAME AND ADDRESS		NAIC NO:
FAX (A/C, No):		E-MAIL ADDRESS:	IF MULTIPLE COMPANIES, COMPLETE SEPARATE FORM FOR EACH		
CODE:		SUB CODE:	POLICY TYPE		
AGENCY CUSTOMER ID #:			LOAN NUMBER		POLICY NUMBER
NAMED INSURED AND ADDRESS			EFFECTIVE DATE	EXPIRATION DATE	<input type="checkbox"/> CONTINUED UNTIL TERMINATED IF CHECKED
ADDITIONAL NAMED INSURED(S)			THIS REPLACES PRIOR EVIDENCE DATED:		

PROPERTY INFORMATION (ACORD 101 may be attached if more space is required) ☐ BUILDING OR ☐ BUSINESS PERSONAL PROPERTY

LOCATION / DESCRIPTION
THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS EVIDENCE OF PROPERTY INSURANCE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

COVERAGE INFORMATION		PERILS INSURED	BASIC	BROAD	SPECIAL	
COMMERCIAL PROPERTY COVERAGE AMOUNT OF INSURANCE: \$		DED:				
		YES	NO	N/A		
<input type="checkbox"/> BUSINESS INCOME	<input type="checkbox"/> RENTAL VALUE				If YES, LIMIT: Actual Loss Sustained; # of months:	
BLANKET COVERAGE					If YES, indicate value(s) reported on property identified above: \$	
TERRORISM COVERAGE					Attach Disclosure Notice / DEC	
IS THERE A TERRORISM-SPECIFIC EXCLUSION?						
IS DOMESTIC TERRORISM EXCLUDED?						
LIMITED FUNGUS COVERAGE					If YES, LIMIT: DED:	
FUNGUS EXCLUSION (If "YES", specify organization's form used)						
REPLACEMENT COST						
AGREED VALUE						
COINSURANCE					If YES, %	
EQUIPMENT BREAKDOWN (If Applicable)					If YES, LIMIT: DED:	
ORDINANCE OR LAW - Coverage for loss to undamaged portion of bldg					If YES, LIMIT: DED:	
- Demolition Costs					If YES, LIMIT: DED:	
- Incr. Cost of Construction					If YES, LIMIT: DED:	
EARTH MOVEMENT (If Applicable)					If YES, LIMIT: DED:	
FLOOD (If Applicable)					If YES, LIMIT: DED:	
WIND / HAIL INCL <input type="checkbox"/> YES <input type="checkbox"/> NO Subject to Different Provisions:					If YES, LIMIT: DED:	
NAMED STORM INCL <input type="checkbox"/> YES <input type="checkbox"/> NO Subject to Different Provisions:					If YES, LIMIT: DED:	
PERMISSION TO WAIVE SUBROGATION IN FAVOR OF MORTGAGE HOLDER PRIOR TO LOSS						

CANCELLATION

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

ADDITIONAL INTEREST

<input type="checkbox"/> CONTRACT OF SALE	<input type="checkbox"/> LENDER'S LOSS PAYABLE	<input type="checkbox"/> LOSS PAYEE	LENDER SERVICING AGENT NAME AND ADDRESS
<input type="checkbox"/> MORTGAGEE			
NAME AND ADDRESS			AUTHORIZED REPRESENTATIVE

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THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

ADDITIONAL INSURED – ENGINEERS, ARCHITECTS OR SURVEYORS

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 architect, engineer or surveyor engaged by you, but only with respect to liability for "bodily injury", "property damage" or "personal and advertising injury" caused, in whole or in part, by your acts or omissions or the acts or omissions of those acting on your behalf:

1. In connection with your premises; or
2. In the performance of your ongoing operations.

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 exclusion applies:

This insurance does not apply to "bodily injury", "property damage" or "personal and advertising injury" arising out of the rendering of or the failure to render any professional services by or for you, including:

1. The preparing, approving, or failing to prepare or approve, maps, shop drawings, opinions, reports, surveys, field orders, change orders or drawings and specifications; or

2. 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 services by or for you.

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;

whichever is less.

This endorsement shall not increase the applicable limits of insurance.

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;

whichever is less.

This endorsement shall not increase the applicable limits of insurance.

SAMPLE

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 for "bodily injury", "property damage" or "personal and advertising injury" caused, in whole or in part, by you or those acting on your behalf in connection with 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;

whichever is less.

This endorsement shall not increase the applicable limits of insurance.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

ADDITIONAL INSURED – STATE OR GOVERNMENTAL AGENCY OR SUBDIVISION OR POLITICAL SUBDIVISION – PERMITS OR AUTHORIZATIONS

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

SCHEDULE

State Or Governmental Agency Or Subdivision Or Political Subdivision:

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 state or governmental agency or subdivision or political subdivision shown in the Schedule, subject to the following provisions:

1. This insurance applies only with respect to operations performed by you or on your behalf for which the state or governmental agency or subdivision or political subdivision has issued a permit or authorization.

However:

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

2. This insurance does not apply to:

- a. "Bodily injury", "property damage" or "personal and advertising injury" arising out of operations performed for the federal government, state or municipality; or
- b. "Bodily injury" or "property damage" included within the "products-completed operations hazard".

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;

whichever is less.

This endorsement shall not increase the applicable limits of insurance.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

ADDITIONAL INSURED – STATE OR GOVERNMENTAL AGENCY OR SUBDIVISION OR POLITICAL SUBDIVISION – PERMITS OR AUTHORIZATIONS RELATING TO PREMISES

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

SCHEDULE

State Or Governmental Agency Or Subdivision Or Political Subdivision:

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 state or governmental agency or subdivision or political subdivision shown in the Schedule, subject to the following additional provision:

This insurance applies only with respect to the following hazards for which the state or governmental agency or subdivision or political subdivision has issued a permit or authorization in connection with premises you own, rent or control and to which this insurance applies:

1. The existence, maintenance, repair, construction, erection or removal of advertising signs, awnings, canopies, cellar entrances, coal holes, driveways, manholes, marquees, hoist away openings, sidewalk vaults, street banners or decorations and similar exposures; or
2. The construction, erection or removal of elevators; or
3. The ownership, maintenance or use of any elevators covered by this insurance.

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;

whichever is less.

This endorsement shall not increase the applicable limits of insurance.

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 of this endorsement, but only with respect to liability for "bodily injury" or "property damage" arising out of "your products" shown in the Schedule of this endorsement 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 Subparagraphs 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;

whichever is less.

This endorsement shall not increase the applicable limits of insurance.

SAMPLE

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

ADDITIONAL INSURED – MORTGAGEE, ASSIGNEE OR RECEIVER

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

SCHEDULE

Name(s) Of Person(s) Or Organization(s)	Designation Of Premises
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 their liability as mortgagee, assignee or receiver and arising out of the ownership, maintenance or use of the premises by you and 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. This insurance does not apply to structural alterations, new construction and demolition operations performed by or for that person or organization.

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;
- whichever is less.

This endorsement shall not increase the applicable limits of insurance.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

ADDITIONAL INSURED – OWNERS OR OTHER INTERESTS FROM WHOM LAND HAS BEEN LEASED

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

SCHEDULE

Name Of Person(s) Or Organization(s)	Designation Of Land (Part Leased To You)
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 you or those acting on your behalf in connection with the ownership, maintenance or use of that part of the land leased to you and 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 additional exclusions apply:

This insurance does not apply to:

1. Any "occurrence" which takes place after you cease to lease that land;

2. Structural alterations, new construction or demolition operations performed by or on behalf of the person(s) or organization(s) shown in the Schedule.

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;

whichever is less.

This endorsement shall not increase the applicable limits of insurance.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

ADDITIONAL INSURED – DESIGNATED 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):

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 acts or omissions or the acts or omissions of those acting on your behalf:

1. In the performance of your ongoing operations; or
2. In connection with your premises owned by or rented to you.

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;

whichever is less.

This endorsement shall not increase the applicable limits of insurance.

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;

whichever is less.

This endorsement shall not increase the applicable limits of insurance.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

ADDITIONAL INSURED – ENGINEERS, ARCHITECTS OR SURVEYORS NOT ENGAGED BY THE NAMED INSURED

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

SCHEDULE

Name(s) Of Additional Insured Engineer(s), Architect(s) Or Surveyor(s) Not Engaged By The Named Insured:

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 architects, engineers or surveyors 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 performed by you or on your behalf.

Such architects, engineers or surveyors, while not engaged by you, are contractually required to be added as an additional insured to your policy.

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.

B. With respect to the insurance afforded to these additional insureds, the following additional exclusion applies:

This insurance does not apply to "bodily injury", "property damage" or "personal and advertising injury" arising out of the rendering of or the failure to render any professional services, including:

1. The preparing, approving, or failing to prepare or approve, maps, drawings, opinions, reports, surveys, change orders, designs or specifications; or
2. Supervisory, inspection or engineering services.

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 services.

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

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;

whichever is less.

This endorsement shall not increase the applicable limits of insurance.

SAMPLE

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

**ADDITIONAL INSURED – OWNERS, LESSEES OR
CONTRACTORS – AUTOMATIC STATUS WHEN
REQUIRED IN A WRITTEN 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.

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
- b. 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:**

The most we will pay on behalf of the additional insured is the amount of insurance:

1. Required by the contract or agreement you have entered into with the additional insured; or
2. Available under the applicable limits of insurance;

whichever is less.

This endorsement shall not increase the applicable limits of insurance.

SAMPLE

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

ADDITIONAL INSURED – LESSOR OF LEASED EQUIPMENT – AUTOMATIC STATUS WHEN REQUIRED IN LEASE 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(s) or organization(s) from whom you lease equipment when you and such person(s) or organization(s) have agreed in writing in a contract or agreement that such person(s) or organization(s) be added as an additional insured on your policy. Such person(s) or organization(s) 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(s) or organization(s).

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 their contract or agreement with you for such leased equipment ends.

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:**

The most we will pay on behalf of the additional insured is the amount of insurance:

1. Required by the contract or agreement you have entered into with the additional insured; or
2. Available under the applicable limits of insurance;

whichever is less.

This endorsement shall not increase the applicable limits of insurance.

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;

whichever is less.

This endorsement shall not increase the applicable limits of insurance.

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 described in Paragraph 1. or 2. above.

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

b. 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. Available under the applicable limits of insurance;
whichever is less.

This endorsement shall not increase the applicable limits of insurance.

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

The most we will pay on behalf of the additional insured is the amount of insurance:

1. Required by the contract or agreement described in Paragraph **A.1.**; or

SAMPLE

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

**ADDITIONAL INSURED – OWNERS, LESSEES OR
CONTRACTORS – AUTOMATIC STATUS WHEN
REQUIRED IN WRITTEN CONSTRUCTION AGREEMENT
WITH YOU (COMPLETED OPERATIONS)**

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART
PRODUCTS/COMPLETED OPERATIONS 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 have performed 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" or "property damage" caused, in whole or in part, by "your work" performed for that additional insured and included in the "products-completed operations hazard".

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.

- B.** With respect to the insurance afforded to these additional insureds, the following additional exclusion applies:

This insurance does not apply to:

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

1. The preparing, approving, or failing to prepare or approve, maps, shop drawings, opinions, reports, surveys, field orders, change orders or drawings and specifications; or

2. 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" involved the rendering of or the failure to render any professional architectural, engineering or surveying services.

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

The most we will pay on behalf of the additional insured is the amount of insurance:

1. Required by the contract or agreement you have entered into with the additional insured; or
2. Available under the applicable limits of insurance;

whichever is less.

This endorsement shall not increase the applicable limits of insurance.

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 (COMPLETED
OPERATIONS)**

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART
PRODUCTS/COMPLETED OPERATIONS 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 have performed 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" or "property damage" caused, in whole or in part, by "your work" performed for the additional insured described in Paragraph 1. or 2. above and included in the "products-completed operations hazard".

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.

B. With respect to the insurance afforded to these additional insureds, the following additional exclusion applies:

This insurance does not apply to:

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

1. The preparing, approving, or failing to prepare or approve, maps, shop drawings, opinions, reports, surveys, field orders, change orders or drawings and specifications; or
2. 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" involved the rendering of, or the failure to render, any professional architectural, engineering or surveying services.

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

The most we will pay on behalf of the additional insured is the amount of insurance:

1. Required by the contract or agreement described in Paragraph **A.1.**; or

2. Available under the applicable limits of insurance;
whichever is less.

This endorsement shall not increase the applicable limits of insurance.

SAMPLE

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

ADDITIONAL INSURED – OWNERS, LESSEES OR CONTRACTORS – COMPLETED OPERATIONS SUBJECT TO THE GENERAL AGGREGATE

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

SCHEDULE

Name Of Additional Insured Person(s) Or Organization(s)	Location And Description
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 of this endorsement, but only with respect to liability for:

1. "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(s) at the location(s) shown and described in the Schedule of this endorsement; or

2. "Bodily injury" or "property damage" caused, in whole or in part, by "your work", other than that described in **A.1.**, at the location(s) shown and described in the Schedule of this endorsement performed for the additional insured(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, 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;

whichever is less.

This endorsement shall not increase the applicable limits of insurance.

SAMPLE

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

ADDITIONAL INSURED – AUTOMATIC STATUS FOR DESIGNATED OPERATIONS

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

SCHEDULE

Description Of Operation(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 any person(s) or organization(s) for whom you have agreed to add under any contract or agreement, but only with respect to liability for:

1. "Bodily injury" or "property damage" not included in the "products-completed operations hazard"; or

2. "Personal and advertising injury";

caused by, in whole or in part, your acts or omissions or the acts or omissions of those acting on your behalf in the performance of your operations as described in the Schedule above.

B. The insurance afforded to such additional insured described in Paragraph **A.** above:

1. Only applies to the extent permitted by law; and

2. Will not be broader than any coverage requirement in a contract or agreement to provide for such additional insured.

C. With respect to insurance afforded to these additional insureds, the following additional exclusion applies:

This insurance does not apply to "bodily injury", "property damage" or "personal and advertising injury" due to rendering of or failure to render any professional service. This includes but is not limited to:

1. Legal, accounting or advertising services;

2. Preparing, approving, or failing to prepare or approve, maps, shop drawings, opinions, reports, surveys, field orders, change orders or drawings or specifications;

3. Inspection, supervision, quality control, architectural or engineering activities done by or for you on a project on which you serve as construction manager;

4. Engineering services, including related supervisory or inspection services;

5. Medical, surgical, dental, X-ray or nursing services treatment, advice or instruction;

6. Any health or therapeutic service treatment, advice or instruction;

7. Any service, treatment, advice or instruction for the purpose of appearance or skin enhancement, hair removal or replacement, or personal grooming or therapy;

8. Any service, treatment, advice or instruction relating to physical fitness, including service, treatment, advice or instruction in connection with diet, cardiovascular fitness, bodybuilding or physical training programs;

9. Optometry or optical or hearing aid services including the prescribing, preparation, fitting, demonstration or distribution of ophthalmic lenses and similar products or hearing aid devices;

10. Body piercing services;

11. Services in the practice of pharmacy;

12. Law enforcement or firefighting services; and

13. Handling, embalming, disposal, burial, cremation or disinterment of dead bodies.

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 failure to render any professional service.

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

The most we will pay on behalf of the additional insured is the amount of insurance:

1. Required by the contract or agreement described in Paragraph **A.** above; or

2. Available under the applicable limits of insurance;
whichever is less.

This endorsement shall not increase the applicable limits of insurance.

SAMPLE

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

ADDITIONAL INSURED – AUTOMATIC STATUS WHEN REQUIRED IN WRITTEN CONTRACT OR 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 any person(s) or organization(s) for whom you have agreed in writing in a contract or agreement that such person(s) or organization(s) be added as an additional insured on your policy. Such person(s) or organization(s) is an additional insured only with respect to liability for:

1. "Bodily injury" or "property damage" not included in the "products-completed operations hazard"; or
2. "Personal and advertising injury";
caused by, in whole or in part, your acts or omissions or the acts or omissions of those acting on your behalf in the performance of your operations.

B. The insurance afforded to such additional insured described in Paragraph **A.** of this endorsement:

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.

C. With respect to insurance afforded to these additional insureds, the following additional exclusion applies:

This insurance does not apply to "bodily injury", "property damage" or "personal and advertising injury" due to rendering of or failure to render any professional service. This includes but is not limited to:

1. Legal, accounting or advertising services;
2. Preparing, approving, or failing to prepare or approve, maps, shop drawings, opinions, reports, surveys, field orders, change orders or drawings or specifications;
3. Inspection, supervision, quality control, architectural or engineering activities done by or for you on a project on which you serve as construction manager;

4. Engineering services, including related supervisory or inspection services;
5. Medical, surgical, dental, X-ray or nursing services treatment, advice or instruction;
6. Any health or therapeutic service treatment, advice or instruction;
7. Any service, treatment, advice or instruction for the purpose of appearance or skin enhancement, hair removal or replacement, or personal grooming or therapy;
8. Any service, treatment, advice or instruction relating to physical fitness, including service, treatment, advice or instruction in connection with diet, cardiovascular fitness, bodybuilding or physical training programs;
9. Optometry or optical or hearing aid services including the prescribing, preparation, fitting, demonstration or distribution of ophthalmic lenses and similar products or hearing aid devices;
10. Body piercing services;
11. Services in the practice of pharmacy;
12. Law enforcement or firefighting services; and
13. Handling, embalming, disposal, burial, cremation or disinterment of dead bodies.

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 failure to render any professional service.

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

The most we will pay on behalf of the additional insured is the amount of insurance:

1. Required by the contract or agreement described in Paragraph A.; or

2. Available under the applicable limits of insurance;

whichever is less.

This endorsement shall not increase the applicable limits of insurance.

SAMPLE

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

ADDITIONAL INSURED – VENDORS – AUTOMATIC STATUS WHEN REQUIRED IN AGREEMENT

This endorsement modifies insurance provided under the following:

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

- A. Section II – Who Is An Insured** is amended to include as an additional insured any "vendor", but only with respect to liability for "bodily injury" or "property damage" arising out of "your product" which is distributed or sold in the regular course of the "vendor's" business.
- However, the insurance afforded to such "vendor":
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 "vendor".
- B. With respect to the insurance afforded to any "vendor", 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;
 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**:**
- 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;
- whichever is less.
- 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 Subparagraphs **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.

This endorsement shall not increase the applicable limits of insurance.

D. The following definition is added to the **Definitions** section:

"Vendor" means any person or organization who distributes or sells "your product" in the regular course of its business when you have agreed in writing in a contract or agreement that such person or organization be added as an additional insured on your policy.

SAMPLE



James K. Ruble Seminar

a proud member of The National Alliance for Insurance Education & Research

Section 2

Commercial Liability Endorsements To Watch Out For

Commercial Liability Endorsements to Watch Out For

Catherine Trischan, CIC, CRM, CPCU, ARM, AU, AAI, CRIS, MLIS, TRIP
E&K Insurance Group
Eatontown, NJ
catherine.trischan@gmail.com

Covered Operations and Locations

Covered Operations and Locations

Coverage A Insuring Agreement (CG 00 01 04 13)

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.....

Insurer Areas of Concern

- Eliminating coverage when an exposure is to be insured elsewhere
- High hazard operations
- Work in specific states – eg.
 - New York – labor law concerns
 - Construction defect concerns

Premises Exclusion

Exclusion – All Hazards in Connection with Designated Premises (CG 21 00 07 98)

This insurance does not apply to "bodily injury", "property damage" or "personal and advertising injury" arising out of:

- 1. The ownership, maintenance or use of the premises show in the Schedule or any property located on these premises;*
- 2. Operations on those premises or elsewhere which are necessary or incidental to the ownership, maintenance or use of those premises; or*
- 3. Goods or products manufactured at or distributed from those premises.*

Designated Ongoing Operations Exclusion

Exclusion - Designated Ongoing Operations (CG 21 53 01 96)

This insurance does not apply to "bodily injury" or "property damage" arising out of the ongoing operations described in the Schedule of this endorsement, regardless of whether such operations are conducted by you or on your behalf or whether the operations are conducted for yourself or for others.....

Designated Work Exclusion

Exclusion - Designated Work (CG 21 34 01 87)

This insurance does not apply to "bodily injury" or "property damage" included in the "products-completed operations hazard" and arising out of "your work" shown in the Schedule.

Designated Work Exclusion - used as a prior work exclusion

EXCLUSION – DESIGNATED WORK

This endorsement modifies insurance provided under the following:

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

SCHEDULE

Description of your work:

Any operations started prior to xx/xx/xxxx

(If no entry appears above, information required to complete this endorsement will be shown in the Declarations as applicable to this endorsement.)

This insurance does not apply to "bodily injury" or "property damage" included in the "products-completed operations hazard" and arising out of "your work" shown in the Schedule.

CG 21 34 01 87

EIFS Exclusion CG 21 86 12 04

- A.** This insurance does not apply to "bodily injury", "property damage" or "personal and advertising injury" arising out of, caused by, or attributable to, whether in whole or in part, the following:
1. The design, manufacture, construction, fabrication, preparation, distribution and sale, installation, application, maintenance or repair, including remodeling, service, correction or replacement, of any "exterior insulation and finish system" or any part thereof, or any substantially similar system or any part thereof, including the application or use of conditioners, primers, accessories, flashings, coatings, caulking or sealants in connection with such a system; or
 2. "Your product" or "your work" with respect to any exterior component, fixture or feature of any structure if an "exterior insulation and finish system", or any substantially similar system, is used on the part of that structure containing that component, fixture or feature.
- B.** The following definition is added to the **Definitions** Section:
- "Exterior insulation and finish system" means a non-load bearing exterior cladding or finish system, and all component parts therein, used on any part of any structure, and consisting of:
1. A rigid or semi-rigid insulation board made of expanded polystyrene and other materials;
 2. The adhesive and/or mechanical fasteners used to attach the insulation board to the substrate;
 3. A reinforced or unreinforced base coat;
 4. A finish coat providing surface texture to which color may be added; and
 5. Any flashing, caulking or sealant used with the system for any purpose.

Excluded Locations/Operations

Nonstandard endorsements

- Building heights
- Roofing
- Snow and ice removal
- Others

Snow and Ice Removal

Sample Language

This insurance does not apply to "bodily injury", "property damage" or "personal and advertising injury" arising out of snow and ice removal activities that are performed for others by the insured or by any contractors or subcontractors working on the insured's behalf. Snow and Ice Removal includes but is not limited to: snow plowing, snow blowing, snow or ice clearing, shoveling or salting, by any means whether mechanical or by hand.

COMMERCIAL GENERAL LIABILITY
CG 22 92 12 07

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

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.

CGL exclusion

CG 00 01 04 13 – exclusion

g. Aircraft, Auto Or Watercraft

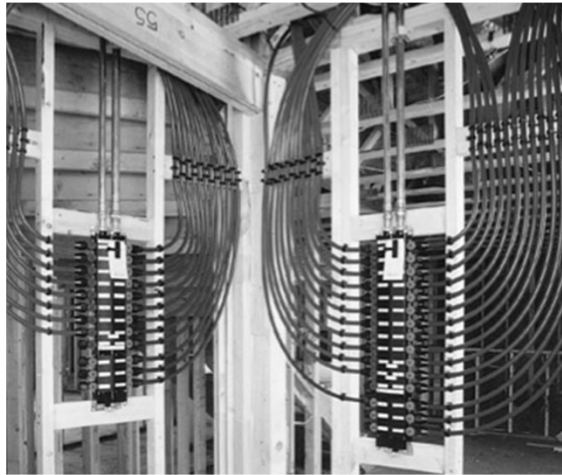
"Bodily injury" or "property damage" arising out of the ownership, maintenance, use or entrustment to others of any aircraft, "auto" or watercraft owned or operated by or rented or loaned to any insured. Use includes operation and "loading or unloading".

Pex Piping

Sample Language

This insurance does not apply to "bodily injury", "property damage" or "personal and advertising injury" arising out of, caused by, or attributable to, whether in whole or in part, the following:

- 1. The design, manufacture, construction, fabrication, preparation, distribution and sale, installation, application, maintenance or repair, including remodeling, service, correction or replacement, of any "Pex piping system" or any part thereof, or any substantially similar system or any part thereof, including the application or use of, mechanical or compression fittings or sealants in connection with such a system; or*
- 2. "Your product" or "your work" with respect to any component, fixture or feature of any structure if a "Pex piping system", or any substantially similar system, is used on the part of that structure containing that component, fixture or feature.*



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FUND RAISING EVENTS ENDORSEMENT

16

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

A. This insurance applies to "bodily injury", "property damage", and "personal and advertising injury" arising out of all of your fund raising events with the following exceptions unless scheduled in paragraph C. below:

- Parades sponsored by the Insured
- Aircraft
- Motorcycle runs and automobile rallies
- Fireworks – exhibitors operated by the Insured.
- Firearms
- Animals – other than house pets
- Carnivals and fairs with mechanical rides sponsored by the Insured
- Rock, Hip-Hop or Rap concerts – with admission over 500 people
- Events including contact sports
- Rodeos sponsored by the Insured
- Political Rallies
- Any event lasting more than 5 days (including otherwise acceptable events)
- Any event with greater than 500 people at any one time (including otherwise acceptable events)
- Any event with liquor provided by the Insured if a license is required for such activity.
- Any activities by third party telemarketing, direct mail, or internet advertising (including spam) firms.

COMMERCIAL GENERAL LIABILITY
CG 40 04 12 19

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

EXCLUSION – EARTH MOVEMENT

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" or "property damage" arising out of "earth movement" that is:
1. Caused by or alleged to have been caused by, in whole or in part; or
 2. Aggravated by or alleged to have been aggravated by, "your work".
- B. The following definition is added to the Definitions section:
- "Earth movement" means:
1. Earthquake, including tremors and aftershocks and any earth sinking, rising or shifting related to such event;
 2. Landslide, including any earth sinking, rising or shifting related to such event;
 3. Mine subsidence, meaning subsidence of a man-made mine whether or not mining activity has ceased; or
 4. Earth sinking, rising or shifting including soil conditions which cause settling, cracking or other disarrangement of foundations or other parts of reality. Soil conditions include contraction, expansion, freezing, thawing, erosion, improperly compacted soil and the action of water under the ground surface.

Cannabis Exclusion CG 40 14 12 20

"Cannabis":

1. *Means:*

Any good or product that consists of or contains any amount of Tetrahydrocannabinol (THC) or any other cannabinoid, regardless of whether any such THC or cannabinoid is natural or synthetic.

2. *Paragraph C.1. above includes, but is not limited to, any of the following containing such THC or cannabinoid:*

a. Any plant of the genus Cannabis L., or any part thereof, such as seeds, stems, flowers, stalks and roots; or

b. Any compound, by-product, extract, derivative, mixture or combination, such as:

(1) Resin, oil or wax;

(2) Hash or hemp; or

(3) Infused liquid or edible cannabis;

whether or not derived from any plant or part of any plant set forth in Paragraph C.2.a.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

CANNABIS EXCLUSION

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART
PRODUCTS/COMPLETED OPERATIONS LIABILITY COVERAGE PART**A. The following exclusion is added:**

This insurance does not apply to:

1. "Bodily injury", "property damage" or "personal and advertising injury" arising out of:

a. The design, cultivation, manufacture, storage, processing, packaging, handling, testing, distribution, sale, serving, furnishing, possession or disposal of "cannabis"; or

b. The actual, alleged, threatened or suspected inhalation, ingestion, absorption or consumption of, contact with, exposure to, existence of, or presence of "cannabis"; or

2. "Property damage" to "cannabis".

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 that which is described in Paragraph A.1. or A.2. above.

However, Paragraph A.1.b. does not apply to "bodily injury" or "property damage" arising out of the actual, alleged, threatened or suspected inhalation, ingestion, absorption or consumption of, or contact with, "cannabis" by:

- (1) An insured; or
- (2) Any other person for whom you are legally responsible;

but only if the "bodily injury" or "property damage" does not arise out of your selling, serving or furnishing of "cannabis" to any person described above.

B. The exclusion in Paragraph A. does not apply to "personal and advertising injury" arising out of the following offenses:

1. False arrest, detention or imprisonment; or
2. 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.

C. The following definition is added to the Definitions section:**"Cannabis":****1. Means:**

Any good or product that consists of or contains any amount of Tetrahydrocannabinol (THC) or any other cannabinoid, regardless of whether any such THC or cannabinoid is natural or synthetic.

2. Paragraph C.1. above includes, but is not limited to, any of the following containing such THC or cannabinoid:

a. Any plant of the genus Cannabis L., or any part thereof, such as seeds, stems, flowers, stalks and roots; or

b. Any compound, by-product, extract, derivative, mixture or combination, such as:

- (1) Resin, oil or wax;
- (2) Hash or hemp; or
- (3) Infused liquid or edible cannabis; whether or not derived from any plant or part of any plant set forth in Paragraph C.2.a.

Cannabis Exclusion (variation)**CG 40 15 12 20 Cannabis Exclusion with Hemp Exception****B. The exclusion in Paragraph A. does not apply to:****1. "Bodily injury", "property damage" or "personal and advertising injury" arising out of goods or products containing or derived from hemp, including, but not limited to:**

- a. Seeds;
- b. Food;
- c. Clothing;
- d. Lotions, oils or extracts;
- e. Building Materials; or
- f. Paper.

2. "Property damage" to goods or products described in Paragraph B.1. above.

.....

Cannabis Exclusion (variation)

21

CG 40 16 12 20 Cannabis Exclusion with Hemp and Lessors Risk Exceptions

B. The exclusion in Paragraph A. does not apply to:

1. and 2. from the CG 40 15 +

3. "Bodily injury", "property damage" or "personal and advertising injury" arising out of the ownership, maintenance or use of a premises leased to others by you; or

4. "Personal and advertising injury" arising out of the following offenses:

a. False arrest, detention or imprisonment; or

b. The wrongful eviction from, wrongful entry into, or invasion of the right or private occupancy of a room, dwelling or premises that a person occupies, committed by or on behalf of its owner, landlord or lessor.

Premises/Project Limitation

22

Exclusion - Limitation of Coverage to Designated Premises or Project (CG 21 44 07 98)

This insurance applies only to "bodily injury", "property damage", "personal and advertising injury" and medical expenses arising out of:

1. The ownership, maintenance or use of the premises shown in the Schedule and operations necessary or incidental to those premises; or

2. The project shown in the Schedule

Premises/Project Limitation

Exclusion - Limitation of Coverage to Designated Premises or Project (CG 21 44 04 17) BEWARE!

This insurance applies to "bodily injury" and "property damage" caused by an "occurrence" that takes place in the "coverage territory" only if:

(1) The "bodily injury" or "property damage":

(a) Occurs on the premises shown in the Schedule or the grounds and structures appurtenant to those premises; or

(b) Arises out of the project or operation shown in the Schedule;

Designated Operations – Coverage Limitation

Sample Language

The "bodily injury" or "property damage" is caused by or results from the business described in the Schedule.....This insurance applies to "personal and advertising injury" caused by an offense in the course of the business described in the Schedule.

Designated Classifications – Coverage Limitation

Sample Language

Coverage under this contract is strictly limited to the classification(s) and code(s) listed on the policy Declarations page. No coverage is provided for any classification(s) and code(s) not specifically listed on the Declarations page of this policy.

Designated Classifications – Coverage Limitation

91342 Carpentry (NOC)

91340 Carpentry – construction of residential property not exceeding three stories in height

91583 Contractors – subcontracted work – in connection with building construction, reconstruction, repair or erection – one or two family dwellings

Wrap-Ups

- OCIP—Owner Controlled Insurance Program
- CCIP— Contractor Controlled Insurance Program
- Potential concerns for participants
 - What are the limits of coverage?
 - What are the terms of coverage?
 - When does the wrap-up terminate?
 - How long is the extended completed operations coverage? How does it compare to the statute of repose?

EXCLUSION – DESIGNATED OPERATIONS COVERED BY A CONTROLLED (WRAP-UP) INSURANCE PROGRAM (CG 21 54 12 19)

- 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" or "property damage":
1. Arising out of your ongoing operations; or
 2. Included in the "products-completed operations hazard";
- at the location(s) described in the Schedule of this endorsement, but only if you are enrolled in a "controlled (wrap-up) insurance program" with respect to the "bodily injury" or "property damage" described in Paragraphs **A.1.** and **A.2.** above at such location(s).
- This exclusion applies whether or not the "controlled (wrap-up) insurance program":
- a. Provides coverage identical to that provided by this Coverage Part;
 - b. Has limits adequate to cover all claims; or
 - c. Remains in effect.
- B.** The following definition is added to the **Definitions** section:
- "Controlled (wrap-up) insurance program" means a centralized insurance program under which one party has secured either insurance or self-insurance covering some or all of the contractors or subcontractors performing work on one or more specific project(s).

EXCLUSION – DESIGNATED OPERATIONS COVERED BY A CONTROLLED (WRAP-UP) INSURANCE PROGRAM (CG 21 54 12 19)

29

SCHEDULE

Description And Location(s) Of Operation(s):
ALL

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

- 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" or "property damage":
1. Arising out of your ongoing operations; or
 2. Included in the "products-completed operations hazard";
- at the location(s) described in the Schedule of this endorsement, but only if you are enrolled in a "controlled (wrap-up) insurance program" with respect to the "bodily injury" or "property damage" described in Paragraphs A.1. and A.2. above at such location(s).
- This exclusion applies whether or not the "controlled (wrap-up) insurance program":
- a. Provides coverage identical to that provided by this Coverage Part;
 - b. Has limits adequate to cover all claims; or
 - c. Remains in effect.
- B.** The following definition is added to the **Definitions** section:
- "Controlled (wrap-up) insurance program" means a centralized insurance program under which one party has secured either insurance or self-insurance covering some or all of the contractors or subcontractors performing work on one or more specific project(s).

LIMITED EXCLUSION – DESIGNATED OPERATIONS COVERED BY A CONTROLLED (WRAP-UP) INSURANCE PROGRAM (CG 21 31 12 19)

30

- A.** The following exclusion is added to Paragraph 2. **Exclusions of Section I – Coverage A – Bodily Injury And Property Damage Liability:**
1. This insurance does not apply to "bodily injury" or "property damage":
 - a. Arising out of your ongoing operations; or
 - b. Included in the "products-completed operations hazard";

at the location(s) described in the Schedule of this endorsement, but only if you are enrolled in a "controlled (wrap-up) insurance program" with respect to the "bodily injury" or "property damage" described in Paragraphs 1.a. and 1.b. above at such location(s).
 2. This exclusion applies whether or not the "controlled (wrap-up) insurance program":
 - a. Provides coverage identical to that provided by this Coverage Part; or
 - b. Has limits adequate to cover all claims.
 3. However, this exclusion does not apply if the "controlled (wrap-up) insurance program" in which you are enrolled with respect to the "bodily injury" or "property damage" described in Paragraph A.1. above at the location(s) described in the Schedule of this endorsement has been cancelled, nonrenewed or otherwise no longer applies for reasons other than the exhaustion of all available limits, whether such limits are available on a primary, excess or on any other basis. You must advise us of such cancellation, nonrenewal or termination as soon as practicable.

LIMITED EXCLUSION – DESIGNATED OPERATIONS COVERED BY A CONTROLLED (WRAP-UP) INSURANCE PROGRAM (CG 21 31 12 19)

31

SCHEDULE

Description And Location(s) Of Operation(s):

ALL

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

- A. The following exclusion is added to Paragraph 2, Exclusions of Section I – Coverage A – Bodily Injury And Property Damage Liability:**
1. This insurance does not apply to "bodily injury" or "property damage":
 - a. Arising out of your ongoing operations; or
 - b. Included in the "products-completed operations hazard";
 at the location(s) described in the Schedule of this endorsement, but only if you are enrolled in a "controlled (wrap-up) insurance program" with respect to the "bodily injury" or "property damage" described in Paragraphs 1.a. and 1.b. above at such location(s).
 2. This exclusion applies whether or not the "controlled (wrap-up) insurance program":
 - a. Provides coverage identical to that provided by this Coverage Part; or
 - b. Has limits adequate to cover all claims.
 3. However, this exclusion does not apply if the "controlled (wrap-up) insurance program" in which you are enrolled with respect to the "bodily injury" or "property damage" described in Paragraph A.1. above at the location(s) described in the Schedule of this endorsement has been cancelled, nonrenewed or otherwise no longer applies for reasons other than the exhaustion of all available limits, whether such limits are available on a primary, excess or on any other basis. You must advise us of such cancellation, nonrenewal or termination as soon as practicable.

Wrap-Ups – DIC/Excess a better option

32

Sample Language

It is hereby agreed and understood:

1. *This policy shall apply to the Named Insured's interest in projects insured under a "wrap-up" or similar rating plan, but only to the extent that this policy provides coverage for legal liabilities or hazards which are not covered by the other "wrap-up" insurance. This policy responds only for the differences in conditions and will apply in excess of the other "wrap-up" insurance. This policy excludes any liability which is covered by the other "wrap-up" insurance.....*

Residential Exclusions

How is residential defined? Does it include?

- Single family houses
- Multi-family houses
- Residential condos
- Residential cooperatives
- Townhouses/townhomes
- Projects over a certain number of units
- Buildings of a certain construction type
- Mixed-use buildings
- Apartment buildings



Residential Construction/Roofing Operations



Residential Exclusions

- Does the exclusion apply to Bodily Injury and/or Property Damage?
- Conversion to Habitational Exclusions

Conversion to Habitational Endorsement

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

2. Exclusions

This insurance does not apply to:
Condominium or Townhouse Conversion
 "Bodily injury" or "property damage" arising from "Your work" or "your product" related to any project or structure that is converted, by any party, into a "condominium or townhouse project".

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

2. Exclusions

This insurance does not apply to:
Condominium or Townhouse Conversion
 "Personal and advertising injury" arising from "Your work" or "your product" related to any project or structure that is converted, by any party, into a "condominium or townhouse project".

C. The following definition is added to the Definitions Section:

"Condominium or townhouse project" means a project that includes or is intended to include structure(s) with two or more habitational units and in which each unit is separately owned and titled. "Condominium or townhouse project" includes site improvements and all related common areas.

Cross Liability
a/k/a
Cross Suits
a/k/a
Cross Claims

Cross Liability/Cross Suits

CG 00 01 04 13 - 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.*

Cross Suits Exclusion

Named Insured vs. Named Insured

Sample Language

This insurance does not apply to:

Any claim or "suit" for damages by any named insured against another named insured.

COMMERCIAL GENERAL LIABILITY
CG 40 10 12 19

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

EXCLUSION – CROSS SUITS LIABILITY

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

- | | |
|---|--|
| <p>A. The following exclusion is added to Paragraph 2, Exclusions of Section I – Coverages – Coverage A – Bodily Injury And Property Damage Liability:</p> <p>This insurance does not apply to:</p> <p>Cross Suits</p> <p>Any claim made or "suit" brought by any Named Insured under this Policy against another Named Insured under this Policy for damages because of "bodily injury" or "property damage".</p> | <p>B. The following is added to Paragraph 2, Exclusions of Section I – Coverages – Coverage B – Personal And Advertising Injury Liability:</p> <p>This insurance does not apply to:</p> <p>Cross Suits</p> <p>Any claim made or "suit" brought by any Named Insured under this Policy against another Named Insured under this Policy for damages because of "personal and advertising injury".</p> |
|---|--|

Cross Suits Exclusion

Exclusion – Intercompany Products Suits (CG 21 41 12 19)

This insurance does not apply to any claim made or "suit" brought 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."

Why? Intercompany sales are not charged for.

Cross Suits Exclusion

Any Insured vs. Any Insured

Sample Language

This insurance does not apply to:

Any claim or "suit" for damages by any insured against another insured.

Cross Suits Exclusion (something in between)

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This insurance does not apply to bodily injury, property damage, personal or advertising injury arising from claims or suits brought by:

- a. One Named Insured against another Named Insured;*
- b. Any parent company, parent corporation, or holding company that owns any interest in any Named Insured, or any subsidiary company or subsidiary corporation which owns any interest in any Named Insured;*
- c. Any other company or corporation of which any interest is owned by any of the entities described in a. or b. above;*
- d. Any division or department of any of the entities described in a., b., or c. above;*
- e. Any officer, director or employee of any of the entities described in a., b., c., or d. above.***

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Contractual Liability

Contractual Liability Exclusion

CG 00 01 04 13

"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....*

Insured Contract – CG 00 01 04 13

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;*

Insured Contracts

L ease

E asement

A greement to Indemnify a
Municipality

S idetrack

E levator Maintenance Agreement

Insured Contract – CG 00 01 04 13

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.

Agreements

- Hold Harmless
- Indemnification
- Two Parties
 1. Indemnitor (the protector)
 2. Indemnitee (the one protected)

Indemnify

Black's Law Dictionary

To save harmless; to secure against loss or damage; to give security for the reimbursement of a person in case of an anticipated loss falling upon him. Also to make good; to compensate; to make reimbursement to one of a loss already incurred by him.

Indemnification Agreement

Indemnification is the obligation of one party (indemnitor) to reimburse another party (indemnatee) for the losses the indemnatee incurs or the damages for which it may be held liable.

- 1) One party, the indemnitor, assumes responsibility for the financial consequences of the liabilities of another, the indemnatee.
- 2) Involves injury or damage to a third party
- 3) May include defense or legal fees
- 4) May require indemnification at the close of the claim or suit or it may require that the indemnitor assume the defense obligation

Hold Harmless Agreement

- The obligation of one party to assume financial responsibility for the legal liability of another party
- Pay on behalf (hold harmless) vs. reimburse (indemnification)
- As is the case with an indemnification agreement, the liability is not transferred; only the responsibility is transferred.

Insured Contract - Exception

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;

Railroads - Coverage Enhancing Endorsements

- **CG 24 17 10 01** Contractual Liability – Railroads
- **CG 24 27 04 13** Limited Contractual Liability – Railroads
- **CA 20 70 10 13** Coverage for Certain Operations in Connection with Railroads

Insured Contract – Exception CG 00 01 04 13

Paragraph f. does not include that part of any contract or agreement:

(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.

Defense of Indemnitees CG 00 01 04 13

Conditions that must be met for an insurer to defend the indemnitee and for those defense costs to be supplementary payments:

- Insured and indemnitee are named co-defendants
- Contract is an insured contract to which insurance applies
- Contract includes the obligation to defend
- No existing or potential conflicts
- Indemnitee and insured concur in the request for defense
- Represented by single counsel
- Indemnitee must agree to cooperate

Endorsements Affecting Contractual Liability

COMMERCIAL GENERAL LIABILITY
CG 21 39 10 93

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

CONTRACTUAL LIABILITY LIMITATION

This endorsement modifies insurance provided under the following:

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

The definition of "insured contract" in the DEFINITIONS Section is replaced by the following:

"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.

Indemnification Agreements

Limited Form

- a/k/a Common Law a/k/a Comparative
- The indemnitor assumes responsibility when liability is imputed to the indemnitee because of the indemnitor's actions or inactions (e.g. negligence)
- The indemnitor is obligated only to the extent of its own fault.

Indemnification Agreements

Intermediate Form

- Limited + responsibility for indemnitor's and indemnitee's joint actions/inactions (e.g. negligence) - % of responsibility of each party does not matter
- The indemnitor assumes all liabilities of the indemnitee, except where the injury or damage is caused solely by the indemnitee or a third party.
- Not permitted in some states in certain kinds of contracts

Indemnification Agreements

Broad Form

- Limited + Intermediate + Indemnitor agrees to be responsible even if he is without fault (e.g. indemnitee's sole negligence)
- The indemnitor assumes an unqualified obligation to hold the indemnitee harmless for all liabilities even if the injury or damage is not due to any wrongdoing on the part of the indemnitor.
- Not permitted in many states in certain types of contracts

AIA 201 3.18.1**§ 3.18 Indemnification**

§3.18.1 To the fullest extent permitted by law, the Contractor shall indemnify and hold harmless the Owner, Architect, Architect's consultants, and agents and employees of any of them from and against claims, damages, losses, and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work, provided that such claim, damage, loss, or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself), but only to the extent caused by the negligent acts or omissions of the Contractor, a Subcontractor, anyone directly or indirectly employed by them, or anyone for whose acts they may be liable, regardless of whether or not such claim, damage, loss, or expense is caused in part by a party indemnified hereunder. Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity that would otherwise exist as to a party or person described in this Section 3.18.

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AIA 201 3.18.1**§ 3.18 Indemnification**

§3.18.1 To the fullest extent permitted by law, the Contractor shall indemnify and hold harmless the Owner, Architect, Architect's consultants, and agents and employees of any of them from and against claims, damages, losses, and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work, provided that such claim, damage, loss, or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself), but only to the extent caused by the negligent acts or omissions of the Contractor, a Subcontractor, anyone directly or indirectly employed by them, or anyone for whose acts they may be liable, regardless of whether or not such claim, damage, loss, or expense is caused in part by a party indemnified hereunder. Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity that would otherwise exist as to a party or person described in this Section 3.18.

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Amendment of Insured Contract Definition Endorsement

CG 24 26 04 13

- 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.*

What About Breach of Contract?

***VANDENBERG V. SUPERIOR COURT OF SACRAMENTO COUNTY
(Centennial Ins., Co.), 21 CAL. 4TH 815, 88 Ca. Rptr. 2d 366 (CAL. Aug 30, 1999)***

"[W]hether a particular claim falls within the coverage afforded by a liability policy is not affected by the form of the legal proceeding. Accordingly, the legal theory asserted by the claimant is immaterial to the determination of whether the risk is covered." (9 Couch, Insurance (3d ed. 1997) § 126:3, p. 126-8.)

"The expression 'legally obligated' connotes legal responsibility that is *broad* in scope. It is directed at civil liability [which] can arise from either unintentional (negligent) or intentional tort, under common law, statute, or contract." (Malecki & Flitner, Commercial General Liability (6th ed. 1997) p. 6, italics added.)

What About Breach of Contract?

VANDENBERG V. SUPERIOR COURT OF SACRAMENTO COUNTY
(Centennial Ins., Co.), 21 CAL. 4TH 815, 88 Ca. Rptr. 2d 366 (CAL. Aug 30, 1999)

"The coverage agreement [which] embraces 'all sums which the insured shall become legally obligated to pay as damages is intentionally broad enough to include the insured's obligation to pay damages for breach of contract as well as for tort, within limitations imposed by other terms of the coverage agreement (e.g. bodily injury and property damage as defined, caused by an occurrence) and by the exclusions" (Tinker, *Comprehensive General Liability Insurance-Perspective and Overview* (1975) 25 Fed. Ins. Coun. Q. 217, 265.)

Breach of Contract Exclusion

Sample Language

This insurance does not apply to any claim or "suit" for breach of contract, whether express or oral, nor claims for breach of an implied in law or implied in fact contract, whether "bodily injury", "property damage", "personal and advertising injury" or an "occurrence" is alleged.

This exclusion also applies to any additional insureds under this policy.

Furthermore, no obligation to defend will arise or be provided by the Company for such excluded claims.

What About Coverage B?

CG 00 01 04 13

Coverage B – Personal and Advertising Injury Liability

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.

There is no "insured contract" exception.

What About Coverage B?

CG 22 74 10 01

Limited Contractual Liability Coverage for Personal and Advertising Injury Endorsement

- False arrest
- Detention
- Imprisonment

Adds coverage for scheduled contracts

What About Coverage B?

Sample Language

CONTRACTUAL LIABILITY AMENDMENT — (PERSONAL AND ADVERTISING INJURY)

If it is required in a written contract, written agreement or written permit with the insured that any contractual liability exclusion for Personal Injury be removed from the policy, then Exclusion e. Contractual Liability under COVERAGE B PERSONAL AND ADVERTISING INJURY, 2. Exclusions is deleted in its entirety and replaced with the following:

e. Contractual Liability

"Personal and advertising Injury" for which the insured has assumed liability in a contract or agreement arising out of an "advertisement". This exclusion does not apply to liability for damages that the insured would have in the absence of the contract or agreement.

What About Coverage B?

CG 00 01 04 13

Coverage B – Personal and Advertising Injury Liability

Exclusions:

This insurance does not apply to:

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."

Subcontractor Issues (from the gc/project owner point of view)

Inadequately Insured Subcontractor

- Premium issue
- Coverage issue – endorsements may:
 - Eliminate coverage completely
 - Give coverage, but with a much lower limit
 - Give coverage, but with a much higher deductible
 - Include requirements for contract language, coverage features, COIs

Inadequately Insured Subcontractor

What are the requirements?

- Certain language in a hold harmless agreement – e.g.

Such independent contractors or sub-contractors agree in writing to defend, indemnify, and hold harmless you and.....[others] from and against all claims, damages, losses, and expenses attributable to, resulting from, or arising out of the independent contractor's or sub-contractor's operations performed for you, caused in whole or in part by any act or omission of the independent contractor or sub-contractor or any one directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, regardless of whether or not it is caused in part by you.

Inadequately Insured Subcontractor

What are the requirements?

- Certain limits on a CGL policy
- Certain coverage features on a CGL policy
- Specific additional insured endorsements
- Obtaining a COI
- Others

Subcontractor Warranty/Conditions Sample Language I

75

Additional Conditions - Certificates of Insurance and Hold Harmless Agreements – Deductible Amount Applies if Conditions Not Met

- a. You must obtain from all subcontractors or independent contractors, prior to commencement of any work performed on your behalf by that contractor, certificates of Insurance evidencing:
 - (1) Commercial General Liability limits of insurance of \$1,000,000 for Each Occurrence, \$1,000,000 for the General Aggregate and \$1,000,000 for the Products-Completed Operations Aggregate, and
 - (2) Workers compensation insurance in compliance with the statutes of the applicable state.
- b. You must obtain written hold harmless agreements from subcontractors or independent contractors indemnifying you against all losses for the work performed for you by any and all subcontractors or independent contractors, prior to the commencement of any work performed on your behalf by that contractor; and
- c. You must be listed as an Additional Insured on all subcontractors or independent contractor's General Liability policies either by endorsement or by written contract, prior to the commencement of any work performed on your behalf by that contractor.

Subcontractor Warranty/Conditions Sample Language II

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INDEPENDENT CONTRACTORS RESTRICTION

The following Condition is added to section IV.:

1. You must see to it that:
 - a. all independent contractors have inforce, at the time they commence working for you, insurance of the type provided by this Policy and the limits for such insurance are equal to or greater than the Limits of Insurance provided by this Policy;
 - b. such independent contractors have held you harmless under contract as respects liability arising from their negligence; and
 - c. the Insured will obtain copies of a Certificate of Insurance from each independent contractor showing inforce insurance Limits of Liability as required in 1.a. above.
2. Such insurance as is afforded by this Policy will be excess over the independent contractor's insurance Limits of Liability as required in 1.a. above.
3. Your failure to comply with the terms of this endorsement will not invalidate this Policy but, in the event you fail to comply, we will be liable only to the same extent we would have been had you complied with the terms of this endorsement.

Subcontractor Warranty/Conditions

Sample Language III

77

Except in the State of New York, it is agreed that the following Condition is added to Section IV – Commercial General Liability Conditions

- 10 a. *It is agreed that any independent contractors or subcontractors hired by or for you shall maintain insurance of the type described in the Schedule and with limits of insurance equal to or greater than those shown in the Schedule.*
- b. *It is further agreed that you will obtain a valid certificate of insurance from independent contractors or subcontractors hired by or for you stating that you have been named as an Additional Insured on the independent contractor's or subcontractor's insurance policy.....*

Subcontractor Warranty/Conditions

Sample Language IV

78

"Adequate" insurance means Commercial General Liability, Workers' Compensation and Employer's Liability Insurance written by an insurance carrier with an A.M. Best rating of not less than A- VII and which:

1. *Remains in force and effect from the dates in which the contract for work being performed for the insured or on the insured's behalf is executed until the date in which the work is completed and the insurance is not cancelled, discontinued nor does not expire during this period of time;.....*
5. *Does not contain any conditions or provisions that preclude coverage based on requirements for hiring or contracting with subcontractors or independent contractors.....*

CG 00 01 04 13

Employee Injuries

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

Employers' Liability Exclusion

CG 00 01 04 13

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*

.....

This exclusion does not apply to liability assumed by the insured under an "insured contract"

Subcontractor employees

What if “employee” is redefined to include employees of subcontractors?

Exclusion:

“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

.....

This exclusion does not apply to liability assumed by the insured under an “insured contract”

Subcontractor Injury - Sample Exclusion I

The following exclusion is added.....

This insurance does not apply to:

Bodily injury to any contractor hired or retained by or for any insured or to any employee of such contractor, if bodily injury arises out of and in the course of employment or retention of such contractor by or for any insured, for which any insured may become liable in any capacity.....

Subcontractor Injury - Sample Exclusion II

It is agreed that this insurance does not apply to bodily injury, property damage or personal and advertising injury to:

Any independent contractor or the employee of any independent contractor while such independent contractor or their employee is working on behalf of any insured.....

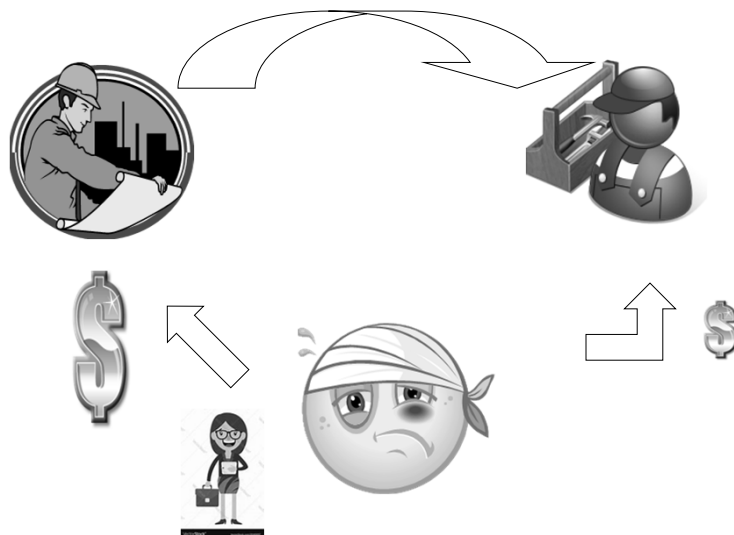
Excluding the acts of contractors and subcontractors

Sample Language

This insurance does not apply to "bodily injury", "property damage", "personal and advertising injury" or medical payments arising out of operations performed for you by contractors or subcontractors you hire or your acts or omissions in connection with your general supervision of such operations.

The Third Party Over Claim

Third Party Over Claim



Employers' Liability Exclusion

CG 00 01 04 13

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

.....

This exclusion does not apply to liability assumed by the insured under an "insured contract"

Cross Liability Exclusion

Sample Language

This insurance does not apply to:

Any claim or "suit" for damages by any insured against another insured.

.....

Modified CGL Employers' Liability Exclusion

BEWARE

Sample Language

This insurance does not apply to:

"Bodily injury" to:

- (1) An "employee" or temporary worker of any insured arising out of and in the course of:*
 - (a) Employment by any insured; or*
 - (b) Performing duties related to the conduct of any insured's business; or.....*

This exclusion applies...to any liability assumed under any contract or agreement.

Action Over Exclusion – Another Version

ACTION OVER EXCLUSION

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

It is agreed that the following change is made to Coverage A. 2. Exclusions:

Exclusion e. **Employer's Liability** is deleted in its entirety and replaced with the following:

e. Employer's Liability

"Bodily injury" to:

- (1)** An "employee" of the named insured arising out of and in the course of:
 - (a)** Employment by the named insured; or
 - (b)** Performing duties related to the conduct of the named 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:

- (1)** Whether the named insured may be liable as an employer or in any other capacity; and
- (2)** To any obligation to share damages with or repay someone else who must pay damages because of the injury.

What if the AI's employee gets hurt?

Sample Language (sub's policy)

This insurance does not apply to "bodily injury" to:

.....

(3) Any person who is employed by, is leased to or contracted with any organization that:

(a) Contracted with you or with any insured for services; or

(b) Contracted with others on your behalf for services; arising out of and in the course of employment by that organization or performing duties related to the conduct of that organization's business; or

Known Loss or Damage

Insuring Agreement CG 00 01 04 13

Coverage A - Bodily Injury or Property Damage

Historically:

- Insured must be legally obligated to pay
- BI or PD must be caused by an occurrence that takes place in the coverage territory
- BI or PD must occur during the policy period

Something else is now important (and has been since 1999)!

The Way It Was

- Known Loss Rule a/k/a Loss in Progress Rule
- Common law principle
- For a risk to be insurable, losses must be accidental and unexpected.
- Montrose Chemical Corporation v. Admiral Insurance Company
- The end of the known loss rule as we'd known it

Additional Question added

Adds an additional question to ask to determine if coverage is triggered

- Was BI or PD caused by an occurrence in the coverage territory?
- Did BI or PD occur during the policy period?
- Who knew what, and when did they know it?

Insuring Agreement CG 00 01 04 13

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.

Who Must Know?

Depending on the form of business:

- Individual Named Insured and spouse
- Partners in a partnership (and spouses)
- Members of a joint venture (and spouses)
- Limited liability company (LLC) members and managers
- Executive officers, directors and stockholders of organizations
- Trustees of a trust

Any "employee" authorized by you to give or receive notice of an "occurrence" or claim.

Insuring Agreement CG 00 01 04 13

"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.

Insuring Agreement CG 00 01 04 13

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.*

The Problem

If a responsible person knows, prior to the policy period, that the BI or PD occurred, in whole or in part, then any continuation, change or resumption of such BI or PD during or after the policy period will be deemed to have been known prior to the policy period.

- What about the small PD loss the insured just pays for or fixes that later turns into a larger loss?
- What if PD results in later BI?

The Problem

Policy Intent

- Policy A – damage starts
- Policy B – damage continues
- Policy C – damage continues

Policy A should be responsible for all damages.

BUT

CG 00 01 04 13

Duties In The Event Of Occurrence, Offense, Claim or Suit

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.

The Problem

ABC, Inc. builds houses. During Policy A term, ABC became aware of some minor damage to the foundation of a home that was sold and repaired it. During Policy C, it was discovered that the repair didn't work and the damage continued. It's now a major claim.

Policy A is triggered, but Policy A was not put on notice.

What about Policy C? It is a known loss.

Modifying the Language

Sample Language

Prior to the policy period, no one knew that the "bodily injury" or "property damage" had occurred, in whole or in part. If anyone 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.

"Bodily injury" or "property damage" which occurs during the policy period and was not, prior to the policy period, known to have occurred by anyone includes any continuation, change or resumption of that "bodily injury" or "property damage" after the end of the policy period.

Pre-Existing Damage or Injury Exclusion

EXCLUSION - PRE-EXISTING DAMAGE OR INJURY

The following exclusion is added to the policy:

This insurance does not apply to:

- (1) Any "bodily injury" or "property damage," whether such "bodily injury" or "property damage" is known or unknown:
 - (a) Which first occurred prior to the inception date of this policy (or the retroactive date of this policy, if any, whichever is earlier); or
 - (b) Which is, or alleged to be, in the process of occurring at the inception date of the policy (or the retroactive date of this policy, if any, whichever is earlier) even if the "occurrence" continues during this policy period.
- (2) Any "bodily injury" or "property damage," whether known or unknown, which is in the process of settlement, adjustment or "suit" as of the inception date of this policy (or the retroactive date of this policy, if any, whichever is earlier).

"Bodily injury" or "property damage" which first occurs during this policy period includes any continuation, change or resumption of that "bodily injury" or "property damage" after the end of this policy period.

We have no duty to either defend or indemnify any Insured for any claim or "suit" to which this exclusion applies.

Pollution

Pollution Exclusion

What is a pollutant?

- Any solid, liquid, gaseous or thermal irritant or contaminant
- Includes smoke, vapor, soot, fumes, acids, alkalis, chemicals and waste
- Waste includes materials to be recycled, reconditioned or reclaimed.

What is a Pollutant? When does the Exclusion Apply?
It Depends

- | | |
|---|-----------------------------|
| • Odors from a meat processing plant | Yes, NE 1996 |
| • Bacteria which causes Legionnaire's disease | No – LA 2014, FL 2013 |
| • Bacteria in cow manure | Yes – WI 2014, WA 2017 |
| • Storm water runoff | Yes – GA 2018 |
| • Sewage | Yes – NY 2017; No – AL 2017 |
| • Curry Aroma | Yes – AL 2011 |
| • Cooking grease in a sewer drain | Yes – CO 2013 |

**Pollution Exclusion
(premises)
CG 00 01 04 13**

109

General rule for premises that are or were owned or occupied by or rented or loaned to any insured:

- No coverage for BI/PD arising out of the actual, alleged or threatened discharge, dispersal, seepage, migration, release or escape of "pollutants"

**Exceptions To Pollution
Liability Exclusion (premises)**

110

Pollution Liability Coverage provided for:

- BI sustained within a building and caused by smoke fumes, vapor or soot from building heating, cooling, dehumidifying or water heating equipment
- BI/PD if the named insured is a contractor performing operations at a premises where the owner has been added as an additional insured to the named insured contractor's CGL Policy
- BI/PD arising out of heat, smoke or fumes from a hostile fire

**Pollution Exclusion (premises)
- continued -**

111

- Excludes pollution at/from any premises used for handling, storage, disposal, processing or treatment of waste
- Excludes pollutants transported, handled, stored, treated, disposed of, or processed as waste

**Pollution Exclusion
(operations)
CG 00 01 04 13**

112

General rule for the insured's off - premises operations :

- No coverage for BI/PD arising out of the actual, alleged or threatened discharge, dispersal, seepage, migration, release or escape of "pollutants" at or from a premises where the insured is performing operations if the pollutants are brought on or to the premises in connection with the operations

Exceptions To Pollution Liability Exclusion (operations)

Coverage provided for:

- BI/PD from arising out of the accidental release of fuels, lubricants or other operating fluids related to the operation of mobile equipment
- BI/PD caused by the release of gases, fumes or vapors from materials brought into that building in connection with the operations being performed
- BI/PD arising out of heat, smoke or fumes from a "hostile fire"





Pollution Liability Inferred Exceptions CG 00 01 04 13

Coverage provided for:

- Off - premises operations when the insured does not bring the pollutant
- Most products – completed operations exposures (waste can't be the product)

Pollution Exclusion

- Excludes operations to test for, monitor, clean up, remove, contain, treat, detoxify, or neutralize, or assess
- Excludes cleanup costs arising out of regulatory requirements, or for claims by governmental authority for damages because of testing or clean up
- **EXCEPTION**
Cleanup costs may be covered if the expense was included as part of the damages in a covered claim.

COMMERCIAL GENERAL LIABILITY
CG 21 49 09 99

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

TOTAL POLLUTION EXCLUSION ENDORSEMENT

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

Exclusion f. under Paragraph 2., Exclusions of Section I – Coverage A – Bodily Injury And Property Damage Liability is replaced by the following:

This insurance does not apply to:

f. Pollution

- (1) "Bodily injury" or "property damage" which would not have occurred in whole or part but for the actual, alleged or threatened discharge, dispersal, seepage, migration, release or escape of "pollutants" at any time.

- (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".

Pollution Endorsements

- **CG 21 55 09 99** - Total Pollution Exclusion with a Hostile Fire Exception
- **CG 21 65 12 04** - Total Pollution Exclusion with a Building Heating, Cooling and Dehumidifying Equipment Exception and a Hostile Fire Exception

Pollution Endorsements

It is not uncommon for an insurer to add specific exclusions for:

- Asbestos
- Lead
- Silica
- Welding/Metal Gas and other By-Products
- Others

Fungi or Bacteria Exclusion

CG 21 67 12 04

121

This insurance does not apply to:

- a. *"Bodily injury" or "property damage" which would not have occurred, in whole or in part, but for the actual, alleged or threatened inhalation of, ingestion of, contact with, exposure to, existence of, or presence of, any "fungi" or bacteria on or within a building or structure, including its contents, regardless of whether any other cause, event, material or product contributed concurrently or in any sequence to such injury or damage.*
- b. *Any loss, cost or expenses arising out of the abating, testing for, monitoring, cleaning up, removing, containing, treating, detoxifying, neutralizing, remediating or disposing of, or responding to, or assessing the effects of, "fungi" or bacteria, by any insured or by any other person or entity.*

This exclusion does not apply to any "fungi" or bacteria that are, are on, or are contained in, a good or product intended for bodily consumption.

Communicable Disease Exclusion

CG 21 32 05 09

122

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

2. Exclusions

This insurance does not apply to:

Communicable Disease

"Bodily injury" or "property damage" arising out of the actual or alleged transmission of a communicable disease.

This exclusion applies even if the claims against any insured allege negligence or other wrongdoing in the:

- a. Supervising, hiring, employing, training or monitoring of others that may be infected with and spread a communicable disease;
- b. Testing for a communicable disease;
- c. Failure to prevent the spread of the disease; or
- d. Failure to report the disease to authorities.

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

2. Exclusions

This insurance does not apply to:

Communicable Disease

"Personal and advertising injury" arising out of the actual or alleged transmission of a communicable disease.

This exclusion applies even if the claims against any insured allege negligence or other wrongdoing in the:

- a. Supervising, hiring, employing, training or monitoring of others that may be infected with and spread a communicable disease;
- b. Testing for a communicable disease;
- c. Failure to prevent the spread of the disease; or
- d. Failure to report the disease to authorities.

Damage To Your Work

CG 00 01 04 13

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.

CG 00 01 04 13

"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.

CG 00 01 04 13

"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.

Before We Proceed

- The coverage triggers in the insuring agreement must be satisfied before exclusions are considered.
- We are assuming here that the loss in question is an occurrence of property damage and that the property damage occurred during the policy period.
 - Policy language is important.
 - State statutes may address the issue.
 - Case law is important.

Before We Proceed

- Most courts say that defective workmanship that doesn't damage anything other than the insured's completed work is not covered. (There are exceptions.)
- Reasons:
 1. It is not an occurrence of property damage.
 2. The Damage to Your Work exclusion applies.
 - In this case, the subcontractor exception may restore coverage.

Sample Carrier (Coverage Enhancing) Endorsement

Resulting Damage to Your Work Endorsement

This endorsement modifies insurance provided under the:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

The Definition of "occurrence" is deleted in its entirety and replaced by the following:

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

- a. "Property damage" to property that is not "your work" but is caused by "your work"; and
- b. "Your work" if the damaged work or the work out of which the damage arises was performed on your behalf by a subcontractor and the "property damage" to "your work" is included in the "products-completed operations hazard."

All other terms, conditions, provisions, and exclusions of the policy not changed by this endorsement shall continue to apply as written.

Damage to Your Work Exclusion

Assumption: The loss is an occurrence of property damage for which the insured is legally liable.

Damaged Work **Damage Done By**

Covered	insured's	sub's work
Covered	sub's	sub's work
Covered	sub's	insured's work
Excluded	insured's	insured's work

Damage to Your Work Exclusion

Assumption: The loss is an occurrence of property damage for which the insured is legally liable.

Residential home builder builds a house and does all of the work himself, except for the electrical system and the heating system, which were performed by two separate subcontractors. Two years after the house is sold, a problem with the electrical system causes the house to burn to the ground.

What's covered under the builder's CGL?

Everything

Damage to Your Work Exclusion

Assumption: The loss is an occurrence of property damage for which the insured is legally liable.

Residential home builder builds a house and does all of the work himself, except for the electrical system and the heating system, which were performed by two separate subcontractors. Two years after the house is sold, a problem with the foundation causes the house to collapse, completely destroying it.

What's covered under the builder's CGL?

Electrical and Heating

Damage to Your Work - Endorsements

133

CG 22 94 10 01 Exclusion- Damage to Work Performed by Subcontractors on Your Behalf

- Eliminates the subcontractor exception to the Damage to Your Work exclusion

CG 22 95 10 01 Exclusion- Damage to Work Performed by Subcontractors on Your Behalf – Designated Sites or Operations

- Eliminates the subcontractor exception to the Damage to Your Work exclusion
- The restriction only applies to scheduled sites or operations

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Liquor Liability

CG 00 01 04 13

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.*

CG 00 01 04 13

Liquor Liability Exclusion (continued)

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.

CG 00 01 04 13

Liquor Liability Exclusion (continued)

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.

Liquor Liability Endorsements

- Amendment of Liquor Liability Exclusion - CG 21 50 04 13
- Amendment of Liquor Liability Exclusion – Exception for Scheduled Premises or Activities - CG 21 51 04 13
- Amendment of Liquor Liability Exclusion – Limited Exception for Bring Your Own Alcohol - CG 40 09 12 19

CG 21 50 and CG 21 51

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, including causing or contributing to the intoxication of any person because alcoholic beverages were permitted to be brought on your premises, for consumption on your premises;

This exclusion applies only if you:

- (1) Manufacture, sell or distribute alcoholic beverages;**
- (2) Serve or furnish alcoholic beverages for a charge whether or not such activity:**
 - (a) Requires a license;**
 - (b) Is for the purpose of financial gain or livelihood;**
- (3) Serve or furnish alcoholic beverages without a charge, if a license is required for such activity; or**
- (4) Permit any person to bring any alcoholic beverages on your premises, for consumption on your premises.**

AMENDMENT OF LIQUOR LIABILITY EXCLUSION – LIMITED EXCEPTION FOR BRING YOUR OWN ALCOHOL -

CG 40 09 12 19 (NEW!)

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, ~~including causing or contributing to the intoxication of any person because alcoholic beverages were permitted to be brought on your premises, for consumption on your premises;~~

This exclusion applies only if you:

- (1) Manufacture, sell or distribute alcoholic beverages;**
- (2) Serve or furnish alcoholic beverages for a charge whether or not such activity:**
 - (a) Requires a license;**
 - (b) Is for the purpose of financial gain or livelihood;**
- (3) Serve or furnish alcoholic beverages without a charge, if a license is required for such activity; or**
- ~~(4) Permit any person to bring any alcoholic beverages on your premises, for consumption on your premises.~~**

Assault and Battery

CG 00 01 04 13

Coverage A 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";

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

CG 00 01 04 13

143

Expected or Intended Injury Exclusion

This insurance does not apply to:

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.

CG 00 01 04 13

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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.*

What is Reasonable Force?

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.

Make my day/Stand your ground/Castle laws

Assault and Battery Exclusion

Sample Language

This insurance does not apply to:

(1) Assault or Battery

"Injury" arising out of any assault, battery, fight, altercation, misconduct or similar incident or act of violence.

This exclusion applies whether the assault, battery, fight, altercation, misconduct or similar incident or act of violence was:

(a) caused by;

(b) at the instigation of; or

(c) at the direction of

you, your "employee", your customers, patrons, guests or any other person or cause whatsoever.

Assault and Battery Exclusion

Sample Language (Continued)

This exclusion also applies whether the insured may be liable as an employer or in any other capacity.

(2) Coverage of any kind, including but not limited to the cost of defense, for Bodily Injury and/or Property Damage arising out of, or caused in whole or in part by an assault and/or battery.

C. No Coverage is provided under this policy if the underlying operative facts constitute an assault and/or battery irrespective of whether the claim alleges negligent hiring, training, supervision and/or retention against the insured, or for any other negligent actions of the insured.

Assault and Battery Coverage

Sample Language

We will pay those sums that the insured becomes legally obligated to pay as damages for "bodily injury", "property damage", or "personal and advertising injury" arising from "Assault and/or Battery."

This endorsement applies regardless of the degree of culpability or intent and without regard to:

- 1) whether the acts are alleged to be by or at the instruction or at the direction of the insured, his officers, "employees", agents or servants; or by any other person lawfully or otherwise on, at or near the premises owned or occupied by the insured; or by any other person;*

Assault and Battery Coverage

Sample Language (continued)

This endorsement applies regardless of the degree of culpability or intent and without regard to:

- 2) the alleged failure of the insured or his officers, "employees", agents or servants in the hiring, supervision, retention or control of any person, whether or not an officer, "employee", agent or servant of the insured.*

Assault and Battery Each Occurrence Limit	\$100,000
Assault and Battery P&AI Limit	\$100,000
Assault and Battery Aggregate Limit	\$100,000

Assault and Battery Coverage

Sample Language (continued)

This insurance does not apply to:

- 1) Emotional distress or for loss or society, services, consortium and/or income; or*
- 2) Reimbursement for expenses (including but not limited to medical expenses, hospital expenses and wages) paid or incurred by such other person, firm or organization; or*
- 3) Any obligation to share damages with or repay someone who must pay damages because of the injury*

David Cohne v. Navigators Specialty Insurance Co.

151

- David Cohne was a bouncer/doorman at the Royale Night Club in Boston
- Kenneth Yianacopolus was a patron of the club
- Kenneth left the club and attempted to re-enter. When David tried to stop him, there was a physical altercation.
- Kenneth filed suit against David and Royale Night Club

David Cohne v. Navigators Specialty Insurance Co.

152

Issue #1 – Was David acting within the scope of his employment or while performing duties related to the conduct of the Club's business?

- Navigators claimed no.
- Court decided yes.

Effect: David is an insured under the CGL.

**David Cohne v. Navigators Specialty
Insurance Co.**

153

Issue #2 – Was coverage excluded by the A&B exclusion?

The policy excluded BI or PD arising from:

I. A. Assault and/or battery committed or alleged to have been committed by any person; or

Any act or omission connected directly or indirectly with the prevention or suppression of any act indicated in [Item A]..including the protection of persons or property, whether caused by or at the instigation or direction of any insured, an insured's employee, an insured's patrons or guests, or volunteers working for or on behalf of an insured, or any other person.

**David Cohne v. Navigators Specialty
Insurance Co.**

154

Issue #2 – Was coverage excluded by the A&B exclusion?

Notwithstanding the foregoing, we shall pay up to the following amounts you become obligated to pay for all damages and claim expenses which result from claims or suits based on allegations of any of the acts or omissions in item I. above.

\$250,000 any one claim or suit

\$250,000 aggregate for the policy period

A Related Issue Firearms Exclusion

155

Sample Language

This insurance does not apply to:

"Bodily injury", "property damage", "personal and advertising injury", or any loss, cost, damage or expense arising out of the ownership, rental, maintenance, use or misuse of any firearm.

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Commercial Liability Endorsements to Watch Out For

Thank You for Being Here



James K. Ruble Seminar

a proud member of The National Alliance for Insurance Education & Research

Section 3

Anatomy of a Construction Injury Claim

Anatomy of a Construction Injury Claim



A Continuing Education
Program

1

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2

Anatomy of a Construction Injury Claim

- Introduction
- Project Delivery Systems (and OCIPs, CCIPs)
- Major Contract Families (AIA)
- Defective Workmanship
- Indemnification Agreements, A/Is and Certs
- Design Professionals
- Material Suppliers

3

Introduction

4

Introduction

According to OSHA:

Out of 4,693 worker fatalities in private industry in calendar year 2016, 991 or **21.1% were in construction** — that is, **one in five worker deaths last year were in construction**. The leading causes of private sector worker deaths (excluding highway collisions) in the construction industry were falls, followed by struck by object, electrocution, and caught-in/between.

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Introduction

According to OSHA: Top Ten OSHA Standard Violations

1. Fall protection – construction
3. Scaffolding
6. Ladders
9. Fall protection – training
10. Electrical wiring and components

6

Introduction

According to the BLS:

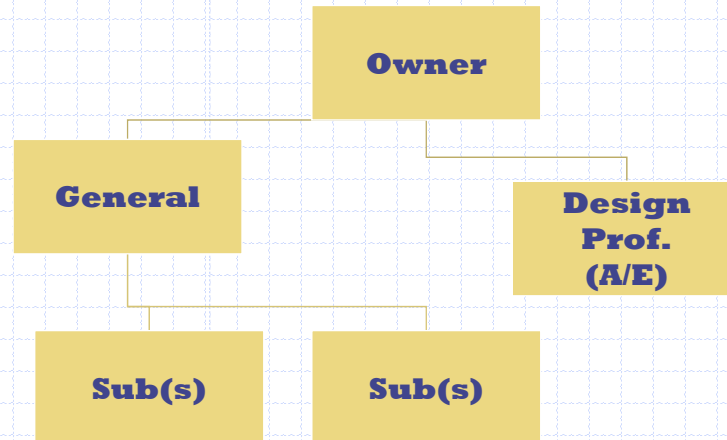
- 2,900,000 nonfatal workplace injuries and illnesses in 2016, or about 2.9 per 100 FTEs
- The construction industry had about 204,000, or about 3.2 per 100 FTEs, which is a marked decline.

7

Project Delivery Systems

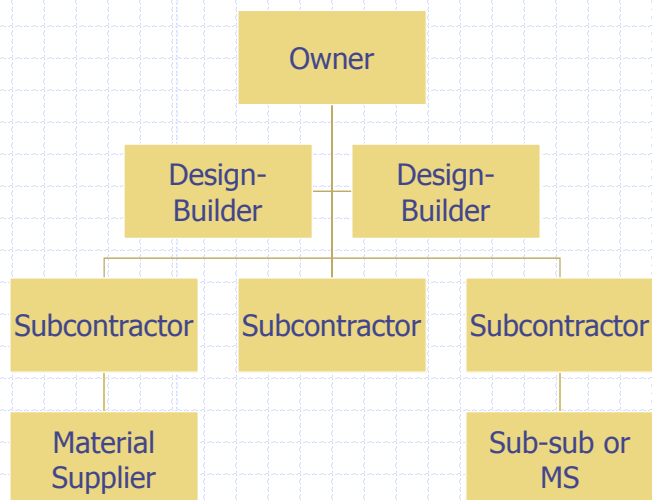
8

Project Delivery Systems



9

Project Delivery Systems



10

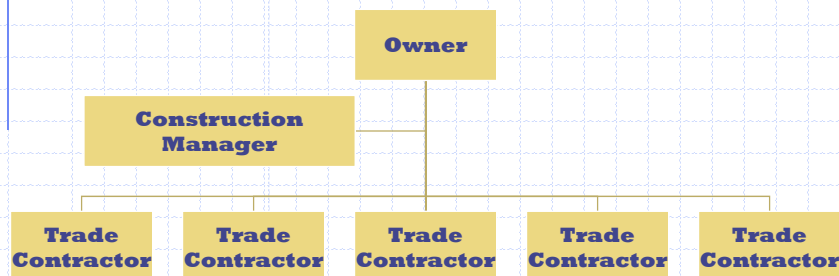
Project Delivery Systems

The Typical Trades Are

- Sitework
- Concrete
- Structural and Miscellaneous Steel
- Masonry
- Drywall and Plaster
- Roofing
- Mechanical
- Electrical
- Fire protection
- Flooring
- Wallcovering
- Elevators
- Carpentry
- General Construction
- Doors, Windows and Hardware

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Project Delivery Systems: Construction Management



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Project Delivery Systems: Other New Forms

- Building Information Modeling ("BIM")
- LEED/Green Building
- Integrated Project Delivery

13

But what About OCIPs and CCIPs?

According to USDOT: The basic operational features of an OCIP are:

- (1) The owner purchases insurance coverage (all or some specific elements) to cover all contractors and subcontractors on a project;
- (2) There is an integrated owner-contractor managed safety program on the project; and
- (3) Claims are processed centrally.

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OCIPs and CCIPs

According to Wrap-Up Resources, LLC, OCIPs generally include:

- Necessary "general liability coverage for insureds' activities at the project site, including both bodily injury and property damage protection to non-project property.
- Typically, "provid[ing] completed operations protection against construction defect lawsuits matching in length the longest applicable statute of limitations..."

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OCIPs and CCIPs – What Are They?

According to The Contractors Group:

- The premise is that the insurance will cost less to purchase it in "bulk" (covering all contractors under the same policy) than it costs when each contractor purchases insurance on his own.

16

OCIPs and CCIPs – What Are They?

- The Owner then looks to each contractor to credit back to him the cost of the insurance that the contractor would normally include in the bid as overhead costs. The Owner requires the contractor(s) to break his bid down and show how much of the bid is insurance costs.

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The Drawbacks:

- **MORE PAPERWORK.** The, uncompensated for, additional administration costs involved with dealing with the paperwork generated by the OCIP.
- **INADEQUATE LIMITS.** The possibility that the insurance coverage provided through the OCIP will not be enough coverage for the contractor.

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More Drawbacks:

- VARIATIONS IN COVERAGE. Contract deductions that exceed the contractor's actual insurance costs.
- HIGH DEDUCTIBLES. \$50,000 or more.
- PROFESSIONAL COVERAGE. Are professionals (engineers, etc.) covered?

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More Drawbacks:

- SHIFTS Insurance; DOES NOT ELIMINATE it.
- Subcontractors still need to carry and provide the owner/builder with Certificates of Insurance for auto liability and workers' compensation.
- Subcontractors still need to carry and provide proof of Commercial General Liability insurance for their own construction activities away from the project site.

20

When Are Wrap-Ups Used?

- Commercial Wrap-ups –for over 50 years
 - Predominantly for large (\$100M) public works or private, single purpose projects
 - General Liability, Workers Compensation and Builders Risk
- Residential Wrap-ups – for 5-10 years
 - Condominium / Townhouse Projects
 - Large Tract Residential Developments
 - General Liability and occasionally some form of limited (B.I. & P.D.) professional Liability.

Source: Houck, Yaron, Wrap-Up Policies, Current Policy Concerns, and Insurance Trends (Assoc. of Defense Counsel, Northern Ca. and Nev. 2008)

21

Wrap-up Problems and Pitfalls

- Proper Policy Construction
 - Remove Exclusion "L" (damage to "your work")
 - Confirm completed operations coverage extension for full statute period
 - Warranty / Repair Extension
- Environmental / Mold Coverage
- Enrollment & Administration Procedures

22

Major Contract Families

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Major Contract Families

- AIA (American Institute of Architects)
- AGC (Associated General Contractors of America)
- CONSENSUS Docs
- EJCDC (Engineers Joint Contract Document Committee)(formerly NSPE)
- DBIA (Design Build Institute of America)

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Major Contract Families

AIA forms are standard, and have the following benefits

- Common industry knowledge of AIA terms.
- Tendency to be more balanced and neutral than manuscripted forms.
- Less ambiguity due to wide and prolonged use.
- A great deal of case law interpretation exists.
- The AIA forms constitute an integrated set of documents.

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The American Institute of Architects' A-201

26

Article 11 of the AIA A201-2007

- The basic commandment of the AIA's A-201 as regards insurance is that the contractor obtain the insurance.
- As for the typical subcontract, the A-401, Article 13 calls for insurance to be maintained by the Subcontractor on a project, but the types and extent of coverage are to be manuscripted.

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Article 11 of the AIA A201-2007

Contractor's Basic Insurance Requirements (¶ 11.1.1)

- The Contractor shall purchase from and maintain in a company or companies lawfully authorized to do business in the jurisdiction in which the Project is located such insurance as will protect the Contractor from claims set forth below...

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Article 11 of the AIA A201-2007

Scope of Coverage Requirements (§ 11.1.1):

- ...which may arise out of or result from the Contractor's operations under the Contract and for which the Contractor may be legally liable, whether such operations be by the Contractor or by a Subcontractor or by anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable...

29

Article 11 of the AIA A201-2007

- Worker's Comp and Employer's Liability
- Bodily injury for other than employees
- "Usual" personal injury coverage
- Damage to tangible property
- Motor vehicle liability
- "Claims for bodily injury or property damage arising out of completed operations"
- Claims for indemnity under §3.18

30

Article 11 of the AIA A201-2007

Continuity of Coverage (§11.1.2):

- Coverages, whether written on an occurrence or claims-made basis, shall be maintained without interruption from date of commencement of the Work until date of final payment and termination of any coverage required to be maintained after final payment...

31

Article 11 of the AIA A201-2007

Continuity of Coverage (§11.1.2):

- ...and, with respect to the Contractor's completed operations coverage, until the expiration of the period for correction of the work or for such other period...specified...

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Article 11 of the AIA A201-2007

A Mixed Bag for this Change...

- The good: a recognition that policies do expire, and an understanding that the continuity of coverage is a matter of contract, not certificate
- The bad: failing to meet the insurance requirements of a long-finished project can trigger a contract breach

33

Article 11 of the AIA A201-2007

Certificates of Insurance (§ 11.1.3):

- Certificates of insurance acceptable to the Owner shall be filed with the Owner prior to commencement of the Work...

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Article 11 of the AIA A201-2007

Certificates of Insurance (§ 11.1.3):

- ...and thereafter upon renewal or replacement of each required policy of insurance...

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Article 11 of the AIA A201-2007

Certificates of Insurance (§ 11.1.3):

- Information concerning reduction of coverage on account of revised limits or claims paid under the General Aggregate, or both, shall be furnished by the Contractor with reasonable promptness

[DELETE: in accordance with the Contractor's information and belief].

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Article 11 of the AIA A201-2007

Additional Insured Status (§ 11.1.4):

- The Contractor shall cause the commercial liability coverage required by the Contract Documents to include (1) the Owner, the Architect and the Architect's Consultants as additional insureds for claims caused in whole or in part by the Contractor's negligent acts or omissions during the Contractor's operations...

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Article 11 of the AIA A201-2007

Additional Insured Status (§ 11.1.4):

- ...and the Owner as an additional insured for claims caused in whole or in part by the Contractor's negligent acts or omissions during the Contractor's completed operations.

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Article 11 of the AIA A201-2007

A Mixed Bag?

- Until now, AIA did not require additional insured status for Owner, but it did require the contractor to insure, "Claims of contractual liability insurance arising under ¶ 3.18 (indemnification)."
- This was usually accomplished via an additional insured endorsement...

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Article 11 of the AIA A201-2007

A Mixed Bag?

- ...But the new clause is a radical expansion of the additional insured status...
- ...that surely changes the underwriting...
- And one can sincerely question whether the ISO form 20 37 07 04 meets the contract requirements...

40

Article 11 of the AIA A201-2007

A Mixed Bag?

- The AIA's comment about the expanded additional insured status is:
 - "It has become common industry practice..." and "This practice saves legal expenses...by consolidating defense costs under one insurance policy."
- AIA omits "and we're glad it's not ours!"

41

The AIA Forms Changes in 2017 Impacting Insurance

42

Exhibit A (Insurance and Bonds)

- Used with the A101, A102 and A103 Owner/Contractor Agreements
- Outlines the required insurance and bonds for the Project
- Includes some terms that were formerly in A201-2007 Article 11
- ***But why do an "Exhibit"?***

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The AIA 2007 Conflict

A201-2007, Section 11.1.3:

- *Certificates of insurance: These certificates and the insurance policies required by this Section 11.1 shall contain a provision that coverages afforded under the policies will not be canceled or allowed to expire until at least 30 days' prior written notice has been given to the Owner...*

44

The AIA 2007 Conflict

A201-2007, Section 9.10.2:

- *Neither final payment nor any remaining retained percentage shall become due until the Contractor submits to the Architect ... (2) a certificate evidencing that insurance required by the Contract Documents to remain in force after final payment is currently in effect and will not be canceled or allowed to expire until at least 30 days' prior written notice has been given to the Owner...*

45

The AIA 2007 Conflict

ACORD 25 Certificate of Liability Insurance (as of 2007):

- *SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING INSURER WILL ENDEAVOR TO MAIL _____ DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED TO THE LEFT, BUT FAILURE TO DO SO SHALL IMPOSE NO OBLIGATION OR LIABILITY OF ANY KIND UPON THE INSURER, ITS AGENTS OR REPRESENTATIVES.*

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The AIA 2017 Conflict

ACORD 25 (2010/05) Certificate of Liability Insurance:

- *SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.*

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The AIA 2017 "Fix"

A201-2017, Section 11.1.4:

- Within 3 business days of date Contractor becomes aware of impending or actual cancellation of any required insurance, **the Contractor shall provide notice** to Owner of such impending or actual cancellation or expiration.

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The 2017 Exhibit A – Insurance and Bonds

Builder's Risk

- A2.3.1. Still "all risk" coverage. Owner adjusts loss as fiduciary.11.5.1.
- A2.3.1. No more "as their interests may appear". Other project participants are listed as insureds which is probably a smart way to address the debate whether participants should listed as named insureds. Gives project participants de facto waiver of subrogation protection.

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Exhibit A – Insurance and Bonds

- A2.3.1.1. Provides for specific coverage for ensuing loss caused by negligence.
- A2.3.1.2. Provides a laundry list of required coverages. This is useful to review what type of coverages you want but just because it is in the contract does not mean the specimen policy will provide coverage.

50

Exhibit A – Insurance and Bonds

A2.3.3 Requires the Owner to have property insurance in place for an existing structure when the "Work" is remodeling or constructing an existing structure. The waiver of subrogation extends to this new requirement.

51

Exhibit A – Insurance and Bonds

Subrogation Issues

- Purpose of waiver
- 11.3.1. Addresses split of authority as to whether waiver extends beyond "work" and makes it clearer that it does.
- Also clears up whether waiver applies to post completion property insurance
- Welcome changes, but true effect won't be felt for some time.

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Exhibit A – Insurance and Bonds

Other Subrogation Issues

- The relationship between subrogation and indemnity. Insurers try to use anti-indemnity statutes to avoid the waiver of subrogation.
- Does the waiver of subrogation apply to a CGL policy? *Tellspen Builder, L.P. v. Kendall Heaton Insurance*, 325 S.W.2d 692 (Tex. App. 2010)

53

§A.2.4 - New, Optional Coverages for Owners:

- Loss of Use, Business Interruption, and Delay in Completion Insurance
- Ordinance or Law Insurance
- Expediting Cost Insurance
- Extra Expense Insurance
- Ingress/Egress Insurance
- Soft Costs Insurance

54

§A.2.4 - New, Optional Coverages

- Most all of these enhanced builder's risk coverages have to be amended **IN**.
- For instance, a standard builder's risk policy **EXCLUDES**: "The enforcement of any ordinance or law (1) regulating the construction, use or repair of any property; or (2) requiring the tearing down of any property, including the cost of removing its debris."

55

§A.2.4 - New, Optional Coverages

The standard amendatory endorsement adds back **IN**:

- "loss to the undamaged portion of the building caused by enforcement of any ordinance or law
 - Requiring demolition or
 - Regulating construction or repair

56

OK...what's the skinny...really...?

- The builder's risk market is strong – there are many carriers in it.
- From an underwriting perspective, the real challenge in the market is the partially occupied structure.
- On a related note, ingress/egress insurance is problematic in the renovation context

57

OK...what's the skinny...really...?

- Law and ordinance coverage is typically added in, but also normally capped at 10% of cost.
- Specifying to add "Civil Authority" insurance is more difficult in the marketplace.
- Soft Costs coverage (for delay in completion, etc.) is not a marketplace challenge and often is included automatically

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§A.2.5 - New, Optional Owner Coverage

Cyber Security Insurance for loss to the Owner due to data security and privacy breach, including costs of investigating a potential, or actual breach of confidential or private information *(Indicate applicable limits of coverage or other conditions in the fill point below.)*

59

Section A.3.1.3 – Additional Insureds

"To the extent commercially available, the additional insured coverage shall be no less than that provided by Insurance Services Office, Inc. (ISO) forms CG 20 10 07 04, CG 20 37 07 04, and, with respect to the Architect and the Architect's consultants, CG 20 32 07 04."

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For the Contractor: §A.3.2.2.2.7

Specification:

The Contractor's CGL shall not exclude...claims related to residential, multi-family or other habitational projects, if the Work is to be performed on such a project

Insurance Industry:

The availability of habitational coverage can be quite jurisdiction specific.

Many carriers will have searching underwriting.

This coverage is tough to write on a "standard" commercial general liability form.

61

Contractor: §A.3.2.2.2.9

Specification:

The Contractor's CGL shall not exclude...claims related to exterior insulation finish systems (EIFS), synthetic stucco or similar exterior coatings or surfaces...

Insurance Industry:

A/R represents over 150 insurance companies and has around 2 to 4 companies that will consider this risk.

62

Contractor: §A.3.2.2.2.5 and .6

Specification:

The Contractor's CGL shall not exclude...claims or loss excluded under a **prior work** endorsement or other similar exclusionary language [OR] under a prior injury endorsement or other exclusionary language...

Insurance Industry:

These are routine exclusions in the excess and surplus lines segment of the insurance industry.

Be wary of the "troubled" contractor's ability to meet these.

63

Contractor: §A.3.2.8

Specification:

The Contractor shall purchase and maintain...Professional Liability Insurance covering performance of the professional services...

Insurance Industry:

Be cautious of this specification – common usage for "Contractor's E&O" is actually for a policy provision to buy back the "your work" exclusion, not to provide true "professional liability" coverage.

64

Insurance and Defective Workmanship Claims

65

Defective Workmanship Claims

Why Won't a CGL Work? The answer begins in the definitions and the exclusions:

- The three main triggers are "bodily injury" and "property damage" and "occurrence"
- "Bodily injury" means bodily injury, sickness or disease sustained by a person, including death resulting from any of these at any time.

66

Defective Workmanship Claims

"Occurrence" means:

- "... an accident, including continuous or repeated exposure to substantially the same general harmful conditions."
- ...something other than faulty workmanship. *State Farm v. Tillerson* (Ill.App. 2002); *R.N. Thompson v. Monroe Guaranty* (Ind.App. 1997).

67

Defective Workmanship Claims

"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.

68

Defective Workmanship Claims

Why Won't a CGL Work? The answer concludes in the exclusions:

- **j. Damage To Property**

- (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.

69

Defective Workmanship Claims

Why Won't a CGL Work? The answer concludes in the exclusions:

- **k. Damage To Your Product**

- "Property damage" to "your product" arising out of it or any part of it.

- **l. 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.

70

Defective Workmanship Claims

Why Won't a CGL Work? The answer concludes in the exclusions:

- **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"...

71

Defective Workmanship Claims

The bottom line:

"...The coverage is for tort liability for physical damages to others, and not for contractual liability of the insured for economic loss suffered because the completed work is not what the damaged person bargained for."

72

Defective Workmanship Claims

- "[T]he policy in question does not cover an accident of faulty workmanship but rather faulty workmanship which causes an accident."
- Damage arising from inadequate materials and substandard construction work is generally NOT covered by a CGL insurance policy because they are not
 - "Property damage" or
 - An "occurrence."

Indiana Ins. Co. v. DeZutti (Ind. 1980)

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Defective Workmanship Claims

- September 30, 2010
- Indiana Supreme Court
- *Sheehan Construction v. Continental Casualty*
- *Sheehan* changes the approach to insurance coverage for claims of faulty workmanship.
- Broadens prospects for coverage.

74

Defective Workmanship Claims

The Damage:

- Leaking windows
- Fungus growth on the siding
- Decayed OSB [oriented strand board] sheathing
- Deteriorating and decaying floor joists
- Water damage to the interior of the home including water stained carpeting

75

Defective Workmanship Claims

The Causes:

- Lack of adequate flashing and quality caulking around the windows
- Lack of a weather resistant barrier behind the brick veneer to protect the wood components of the wall
- Bad shingles; bad flashing
- Poor ventilation in the crawl space

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Defective Workmanship Claims

- Continental was Sheehan's insurer with a standard CGL
- Sheehan was the general contractor
- Continental said:
 - faulty workmanship is not an "occurrence" because it is not an "accident;" and
 - even if there is an "accident" or "occurrence," there is no coverage because of the "your work" exclusion.

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Defective Workmanship Claims

"We align ourselves with those jurisdictions adopting the view that improper or faulty workmanship **does** constitute an accident so long as the resulting damage is an event that occurs without expectation or foresight."

78

Defective Workmanship Claims

- Contractor insureds will still have to fight through the various business pursuits exclusions.
- The "your work" exclusion will continue to figure prominently in coverage decisions.

79

Defective Workmanship Claims

- How will the marketplace respond?
 - CGL carriers?
 - Bonding companies?
- How will the general versus subcontractor issue play out?

80

Defective Workmanship Claims

"[W]e join the majority of other courts by holding that *a claim for faulty workmanship*, in and of itself, **is not an 'occurrence'** under a commercial general liability policy because a failure of workmanship does not involve the fortuity required to constitute an accident."

Cincinnati Ins. v. Motorists Mutual (Ky. 2010)

81

Indemnity, additional insureds, and certificates

82

Indemnification Agreements:

- The indemnification agreement does not relieve the indemnitee of liability to an injured third party. Indemnitee is still liable and must pay damages, whether or not the indemnitor responds. However, the indemnitee has right to sue the indemnitor to force it to honor the obligations of the contract.

83

Types of Indemnity Agreements:

- Each Indemnity Agreement is unique, however, there are three general types:
 - Broad Form
 - Intermediate Form
 - Narrow or Limited Form

84

Types of Indemnity Agreements:

- Courts look at intent of the parties, as expressed in the indemnity provision, when determining the rights and obligations of the parties under an indemnity provision.

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Narrow or Limited Form:

- Obligates the indemnitor to indemnify the indemnitee **only** to the extent of the indemnitor's own negligence.
- Does little or nothing to increase the indemnitor's liability under common law principles.

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Narrow or Limited Form:

- Agreement is useful in proving to the other party's insurer that the agreement qualifies as an insured contract.
- Example: Adams Corp agrees to indemnify Smith Corp for "any liability arising from the negligence of Adams Corp." (only covers liability arising out of Adams acts.)

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Intermediate Form:

- Indemnitee is usually indemnified only for acts of **passive** rather than **active** negligence, which cause or contribute to a loss.
- Does not specifically address the issue of the indemnitee's own negligence.

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Intermediate Form:

- If language does not clearly state an intent to indemnify the indemnitee from the consequence of its own active negligence, then the agreement will probably be considered "intermediate" by the courts.

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Intermediate Form:

- Example: Adams Corp and Smith Corp enter into an agreement where Adams agrees to defend and indemnify Smith against "any and all liability or damages, of any sort, whatsoever." (specifically covers negligent acts of Smith)

90

Broad Form:

- Indemnitor assumes an **unqualified** obligation to hold the indemnitee harmless for all liability associated with the subject of the agreement, regardless of which party was at fault.
- Indemnitor is obligated to respond.

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Broad Form:

- Indemnity provision is most favorable to the indemnitee.
- Example: Adams Corp. agrees to indemnify Smith Corp for "all liabilities **arising out of** the Adams work, whether caused in whole or in part by any act or omission of Smith."

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So, Which Kind Is It?

- Netflix Lease in Los Gatos, CA:
- "Except to the extent due to the negligence or willful misconduct of Landlord..."
- **Not broadest form – perhaps intermediate?**

93

Indemnity, A/Is, and Certs

Indemnification clauses have existed in the AIA documents since 1911, with the advent of the very first A-201. The tensions between the various contracting organizations and the scope of indemnification language led to anti-indemnification statutes in multiple states, including Florida, New York and California.

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Indemnity, A/Is, and Certs

The "Core" of the Clause (§ 3.18.1):

- the Contractor shall indemnify and hold harmless...against claims, damages, losses and expenses, including but not limited to attorneys' fees....

Who receives indemnity:

- the Owner, Architect, Architect's consultants, and agents and employees of any of them....

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Indemnity, A/Is, and Certs

What indemnity relates to:

- ...arising out of or resulting from performance of the Work, provided that such claim, damage, loss or expense is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself...

96

Indemnity, A/Is, and Certs

Limitations on the scope of indemnity:

- ...but only to the extent caused by the negligent acts or omissions of the Contractor, a Subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, regardless of whether or not such claim, damage, loss or expense is caused in part by a party indemnified hereunder.

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Indemnity, A/Is, and Certs

More Limitations on Scope of Indemnity (¶ 3.18.2):

- In claims against any person or entity indemnified under this Paragraph 3.18 by an employee of the Contractor, a Subcontractor, anyone directly or indirectly employed by them or anyone for whose acts they may be liable, the indemnification obligation under Subparagraph 3.18.1 **shall not be limited by a limitation on amount or type of damages, compensation or benefits payable by or for the Contractor or a Subcontractor under workers' compensation acts, disability benefit acts or other employee benefit acts.**

98

Why "unlimit" the indemnity?

- That language is in response to cases such as *Kotecki v. Cyclops Welding*, *Hankins v. Pekin Insurance*, and *Briseno v. Chicago Union Station* in Illinois.

99

The Employer / Sub says...

- "It's MY employee that got hurt."
- "His sole remedy is a Worker's Compensation action."
- "He can't go to court."
- "I don't have a general liability exposure..."
- "To the employee or anybody else..."

100

The Owner and GC say...

- "But WE'RE not the employer. You are."
- "WE'RE being sued in court, you're not."
- "We've asked you to indemnify us for losses that we suffer."
- "Your employee's claim is a 'loss' to us, so you need to indemnify us."
- "If we get hit for big, big damages, YOU need to pay it."

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The *Kotecki v. Cyclops* Protection

Valentino, "Let the Broker Be(a)ware."

- "In *Kotecki* the court held that an employer's maximum liability in a third-party suit for contribution is limited to an amount no greater than its liability to its employee (the plaintiff) under the Workers' Compensation Act."

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The *Kotecki v. Cyclops* Protection

Valentino, "Let the Broker Be(a)ware."

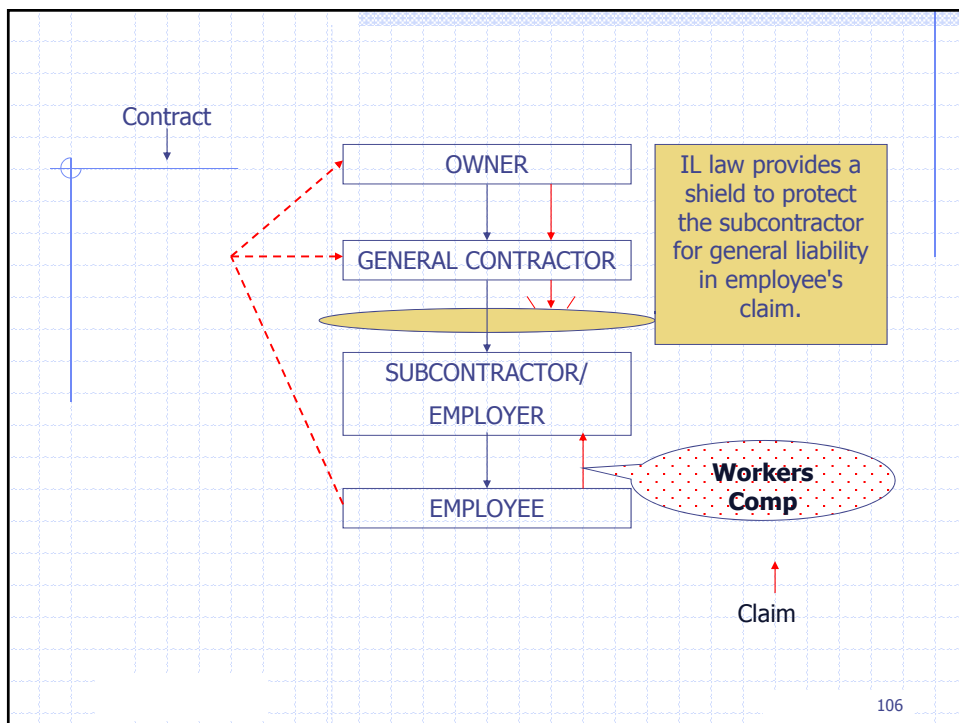
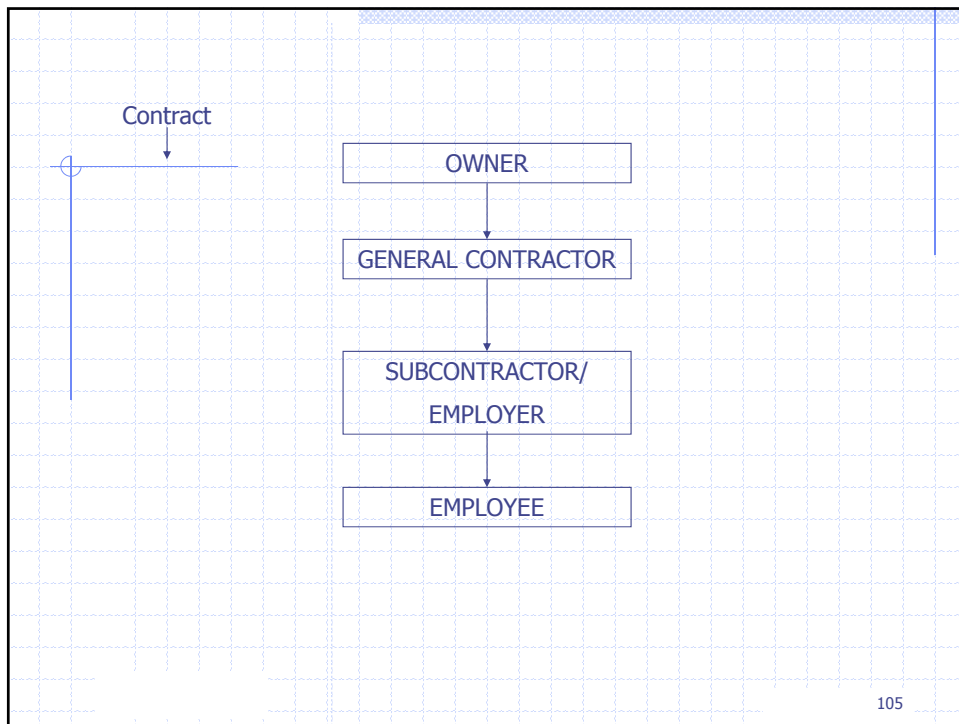
- "This balance allowed non-employer defendants, such as manufacturers or general contractors, to recover limited contribution from the employer, but still gave the employer benefit of the limited liability protection of the Workers' Compensation Act."

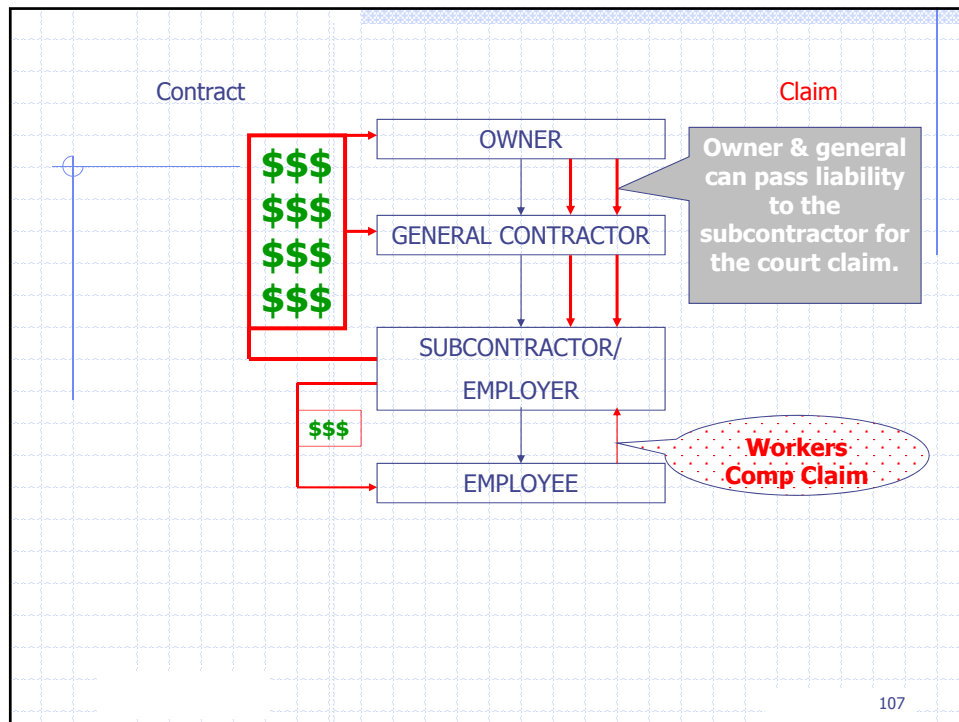
103

The *Kotecki* Waiver

- The clauses of
 - "Thou shalt indemnify me" and
 - "Thou shalt fully insure the project"
- Are construed as being waivers of the protections afforded by the *Kotecki* decision.
- Waivers have been tacitly validated as recently as January of 2007.

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What to Do...

- The key issue from a risk management standpoint is to
 - Review agreements to see if they contain a waiver of the protection afforded by the *Kotecki* decision, AND
 - Seek clauses which make the insurance the sole and exclusive remedy as between the contracting parties, AND
 - Check to see if the agreement having the waiver is otherwise an "insured contract" for purposes of CGL coverage.

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Again, remember...

- The AIA 2007 changes have made "additional insured" status EXPLICIT for Owners, Architects and consultants.
- The AIA's comment about the expanded additional insured status is:
 - "It has become common industry practice..."
 - "This practice saves legal expenses...by consolidating defense costs under one insurance policy."

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Indemnity, A/Is, and Certs

Additional Insured with P/COH: Additional Insured – Owners, Lessees or Contractors – Completed Operations

- ISO Form 20 37 07 04
- Modified in July, 2004
- "'Who Is An Insured' is amended to include... as an additional insured the person(s) or organization(s) shown in the Schedule...."

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Indemnity, A/Is, and Certs

Additional Insured with P/COH:

- "...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'.*"

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Indemnity, A/Is, and Certs

Additional Insured without P/COH:

- Additional Insured – Owners, Lessees or Contractors – Scheduled Person or Organization
- Also modified July, 2004
- ISO Form 20 10 07 04

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Indemnity, A/Is, and Certs

Additional Insured Without P/COH:

- Additional Insured status, but
- Only for injuries "...caused, in whole or in part, by..."
 - Your acts or omissions; or
 - The acts or omissions of those acting on your behalf;
 - in the performance of your ongoing operations for the additional insured(s)..."

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Indemnity, A/Is, and Certs

The ACORD Certificate family:

- 23 Leased Autos
- 24 Certificate of Property Insurance
- 25 Certificate of Liability Insurance
- 27 Evidence of Property Insurance

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Indemnity, A/Is, and Certs

OLD Form 25

- Should any of the above described policies be cancelled, [the issuing insurer] **will endeavor to mail** ___ days written **notice**...But failure to do so shall impose no obligation or liability of any kind upon the insurer, its agents or representatives.

NEW Form 25

- Should any of the above described policies be cancelled...**notice will be delivered in accordance with the policy provisions.**

115

Indemnity, A/Is, and Certs

The ACORD Certificates are:

- Limited by their terms
- Designed to be a "snapshot"
- Speaking as of the day they were issued
- NOT supposed to create a "motion picture" of ongoing obligations

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Indemnity, A/Is, and Certs

ACORD 25 – limitations:

- "This certificate is issued as a matter of information only..."
- "It confers no rights upon the certificate holder..."
- "This certificate does not amend, extend, or alter the coverage afforded by the policy..."

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Indemnity, A/Is, and Certs

ACORD 25 – limitations:

- "The insurance afforded by the policies described herein is subject to all the terms, exclusions and conditions of such policies."
- "Aggregate limits shown may have been reduced by paid claims."

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Indemnity, A/Is, and Certs

ACORD 25 – additional insureds:

- "If the certificate holder is an additional insured, the policy(ies) must be endorsed."
- "A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s)."

119

Indemnity, A/Is, and Certs

Do ACORD disclaimers work?

- Yes.
- *Pekin v. American Country* (1991)
- Policy language (manuscripted exclusion) trumps certificate

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Indemnity, A/Is, and Certs

Do ACORD disclaimers work?

- Loss payee clause of policy trumps erroneous certificate
- *Lu-An-Do, Inc. v. Kloots* (1999)
- On personal property claim by mortgagee

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Indemnity, A/Is, and Certs

Do ACORD disclaimers work?

- Yes
- *U.S. Pipe and Foundry v. U.S. Fidelity and Guaranty* (1974)
- Failure to notify of cancellation
- No liability for carrier
- For 1100 lawsuits from an explosion

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Indemnity, A/Is, and Certs

Do ACORD disclaimers work?

- Yes
- But only if YOU don't modify them.
- What happens if "endeavor" to notify is stricken from the form in the *Pipe* case?

123

Indemnity, A/Is, and Certs

- Do ACORD disclaimers work? Agents have the authority to bind the company.
- *Dumenric v. Union Oil Co.* (1992)
- Including binding them through issuance of certificates.
- So...would the 1100 explosion suits be covered?

124

Indemnity, A/Is, and Certs

Do ACORD disclaimers work?

- Possibly... Part 1. The carrier is left without the ability to deny coverage.
- Part 2. The carrier unable to deny coverage may look to the agent who issued the certificate that stopped the coverage denial.
- Part 3. The result is an errors and omissions loss.

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Indemnity, A/Is, and Certs

Do ACORD disclaimers work?

- Bill Wilson, Ret. Director of the Virtual University for IIABA writes, "NEVER, EVER modify an ACORD certificate or policy form."
- "The odds are real, REAL good that you have no authority to do so in your agency/company agreement ...
- "[A]nd/or doing so is illegal in your state."

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Indemnity, A/Is, and Certs

Do ACORD disclaimers work?

- ACORD says:
- "Agents or brokers should not change any provisions on this form without prior consent of the issuing company."
- The certificate is not designed to
 - Waive rights
 - Amend a policy
 - Attach an endorsement.

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Design Professionals

128

First, a little law:

- Defective Specifications
 - Prepare plans and specs
 - Workable and not defective
 - Claims by Owner for defective specifications
 - Breach of Contract
 - Negligence
 - What if you are not the owner?

129

First, a little law

- The Spearin Doctrine: the Implied Warranty of the Adequacy of the Specifications [US v. Spearin, 248 U.S. 132 (1918)]
- The Spearin Doctrine is used as both sword and shield

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First a little law:

"[T]he insertion of the articles prescribing the character, dimensions and location of the sewer imported a warranty that if the specifications were complied with, the sewer would be adequate."

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First, a little law:

The *Spearin* doctrine

1. Needs only inaccuracy – not negligence or fraud
2. Cannot be evaded with disclaimers
3. Cannot be rendered inapplicable based on knowledge or expertise
4. Can be limited if there is a breach of the duty to make pre-award inquiries

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First, a little law:

The Spearin doctrine may depend on whether it is a design or a performance specification:

- **Design** Specifications are exact dimensions, materials, specific services, and designs; no substitution
- **Performance** Specifications are more discretionary and focus on end result

133

Law and Insurance:

- Is a construction manager's risk primarily a design exposure (a professional malpractice policy) or is it primarily a general business exposure (a CGL exposure)?
- Are there other policies that are "in play"?
- Is there "additional insured" status?

134

Law and Insurance:

- 2009 decision – Regal Construction v. Nat'l Union (New York courts)
- Construction manager was an additional insured under the GC's policy...
- ***"...only with respect to liability arising out of the [GC's] operations performed for the [CM]."***

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Law and Insurance:

- Employee slips and falls on a painted joist
- CM seeks coverage under GC's policy; insurer refuses
- Court reads the "arising out of" language broadly
- The work was within GC's scope of work, so it was sufficiently connected to trigger AI status.

136

Design Professional Insurance Issues

- Definition of "Covered Services" or "Covered Acts"
- Declarations? Insuring Agreement? Definitions? Endorsement?
- How broad is it? What if engineering work is subcontracted?

137

Design Professional Insurance Issues

IRMI Online (1998) suggests:

- Understand the insured's daily activities
- Review the form and the endorsements
- Negotiate the policy – request removal of exclusions as needed
- Look to the specialty market

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Design Professional Insurance Issues

- Past Personnel: does the policy cover past owners, partner, officer, director or employee while acting within the scope of their duties?
- Future Personnel: does the policy cover individuals who join the insured organization? Does it require notice?
- Will the policy respond for acts committed by either outside the policy period?

139

Design Professional Insurance Issues

Two major options:

- Defense Cost Coverage **within** Policy Limits
- Defense Cost Coverage **in Addition to** Policy Limits

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Design Professional Insurance Issues

Pros and Cons of Defense Coverage in Addition to Policy Limits:

- Pros: Defense in addition to limits gives a longer leash to defend against questionable claims
- Cons: Unlimited defense costs do not impose discipline on all parties involved

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Design Professional Insurance Issues

A third option? "First-Dollar" Defense Costs Coverage:

- Policy language states that deductible or SIR is payable only on indemnity, not defense.
- Insurer has marketing advantage
- Example: "If the block in the Declarations labeled 'Deductible Applies To: Loss Only' is checked, the insured shall pay the deductible amount set forth in the Declarations for each loss. The deductible does not include claims expenses."

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Design Professional Insurance Issues

Retroactive Dates:

- A retroactive date is an "occurrence" limitation residing inside a claims-made policy
- The general theory is that the event – the act, error or omission – has to occur after the retroactive date (without regard to when the claim is made) for coverage to apply.

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Design Professional Insurance Issues

Retroactive Dates:

- The opposite of a retroactive date is a professional liability policy providing "full prior acts" coverage
- Retroactive dates are being used more and more aggressively, particularly in the arena of lawyers professional liability insurance.
- The rationale is to prevent coverage for known losses, to prevent stale claims, or long lag time claims.

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Subs and Suppliers and Risk Management

145

Risk Management for the Subcontractor or Mat. Supplier

According to AGC, subcontractors and others downstream resist A/I endorsements because:

- Defects occur from multiple causes
- Multiple defects can occur simultaneously
- Each party should bear its own consequences (as a matter of liability AND insurance).

146

Risk Management for the Subcontractor or Mat. Supplier

How do subcontractors resist the exposure?

- Use standard contract modifications or addenda.
- Refuse to execute contracts, but perform the work.
- Modify the contract form.
- Legislative solutions.

147

Risk Management for the Subcontractor or Mat. Supplier

How do subcontractors resist the exposure?

- Not very well. None of those are perfect solutions.
- Encourage subcontractors and material suppliers to use their own forms whenever possible.

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James K. Ruble Seminar

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Section 4

Insuring the Cannabis Risks: The Challenges

Insuring Cannabis in 2020: The Challenges in a Growing Industry

AN INSURANCE CONTINUING EDUCATION SEMINAR

1

Richard S. Pitts



Vice-President and General
Counsel, Arlington/Roe & Co., Inc.

General Counsel, Independent
Insurance Agents of Indiana, Inc.

Executive Vice-President, Mutual
Insurance Companies Association
of Indiana

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Agenda

1. Introduction
2. What is the Legal and Regulatory Climate?
 - Federal
 - State
3. Commercial Property and Liability Considerations
4. Worker's Compensation and Cannabis

3

Agenda

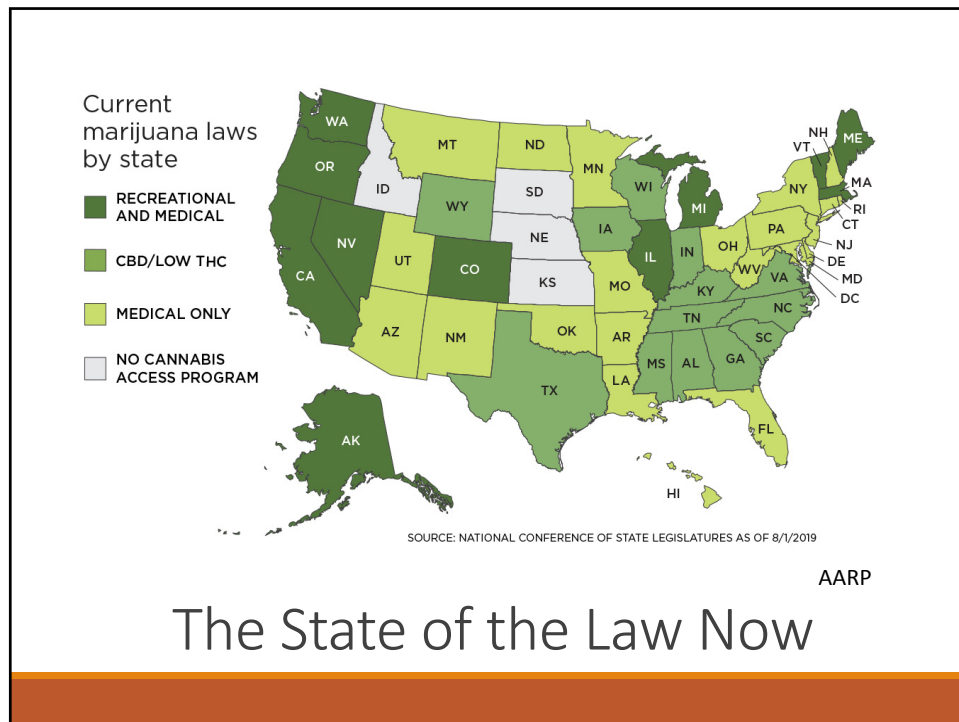
5. Employment Practices Considerations Generally and Issues in Professional Liability
6. Products Liability and Products Recall
7. Case Study: Hopkins v. Uninsured Employers' Fund

4

JUST HOW BIG IS THIS? HOW MUCH IS OUT THERE?

6





7

Wait...why the discrepancy?

Dr. Wells explains:

"Marijuana consists of the dried flowers and leaves from the Cannabis sativa plant. The cannabis plant contains over 500 chemicals, including over 100 different cannabinoids, one of which is a psychoactive substance known as delta-g-tetrahydro-cannabinol (THC)."

- Dr. Brenda Wells, *Legalizing Marijuana: Risk Management And Insurance Implications*, The Risk Report (Jan. 2018)

8

Wait...why the discrepancy?

Dr. Wells explains:

THC binds to brain receptors and produces a number of physiological effects, including pleasure, relaxation, pain relief, decreased muscle spasticity, and even reduction of glaucoma eye pressure. **THC is the primary cause of the "high" that results from ingesting marijuana.**

Marijuana as most commonly ingested via smoking, but **it can also be consumed via food items** (e.g., candy, brownies, cookies, etc.), as well as by vaporization and tinctures.

9

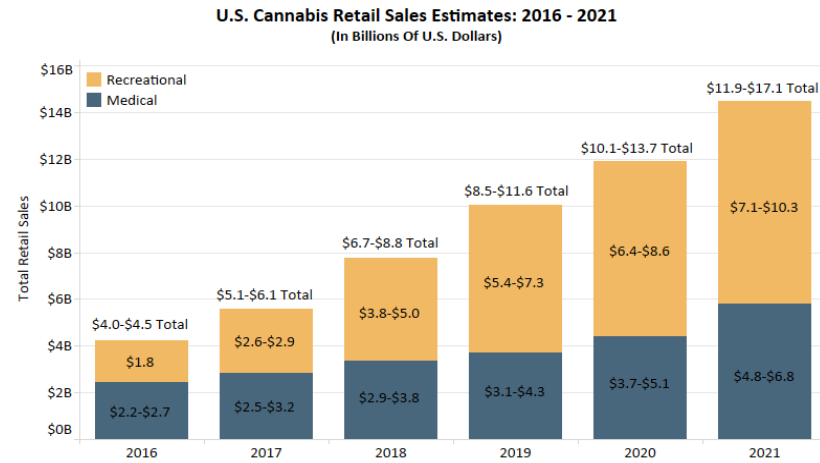
Wait...why the discrepancy?

Dr. Wells explains:

- "The cannabis plant is also sometimes referred to as hemp; however, they are not the same. Cannabis and hemp have certain genetic differences, and the two are different primarily in terms of their THC content.
- "Marijuana is used for medicinal and recreational purposes, whereas hemp is largely used for industrial products, such as housing construction materials, clothing, and paper.
- "[Typically] the terms 'marijuana' and 'cannabis' ... refer to the plants and products that contain THC. When the term 'hemp' is used, that refers to the plants that are considered to have little or no THC in them."

10

What we thought in 2017...

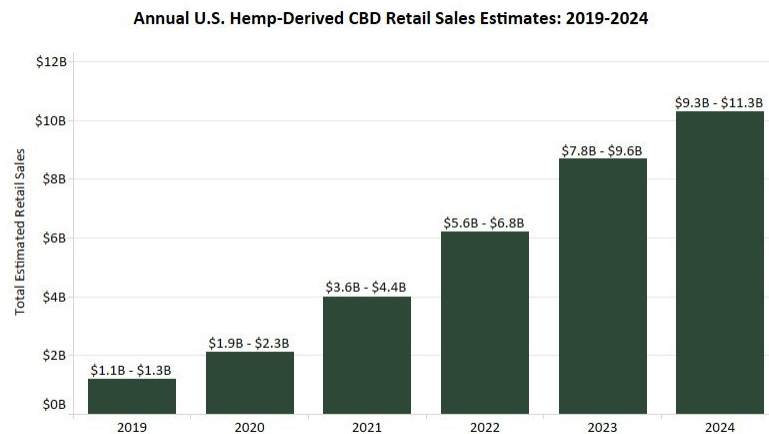


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What we think now...



Source: 2019 Hemp Business Factbook
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Fortune Magazine, February 1, 2016

"Just how big is the market for legal pot? A new report by a leading marijuana industry investment and research firm found **legal cannabis sales jumped 17%, to \$5.4 billion**, in 2015 and they will grow by a whopping 25% this year to reach **\$6.7 billion in total U.S. sales.**"

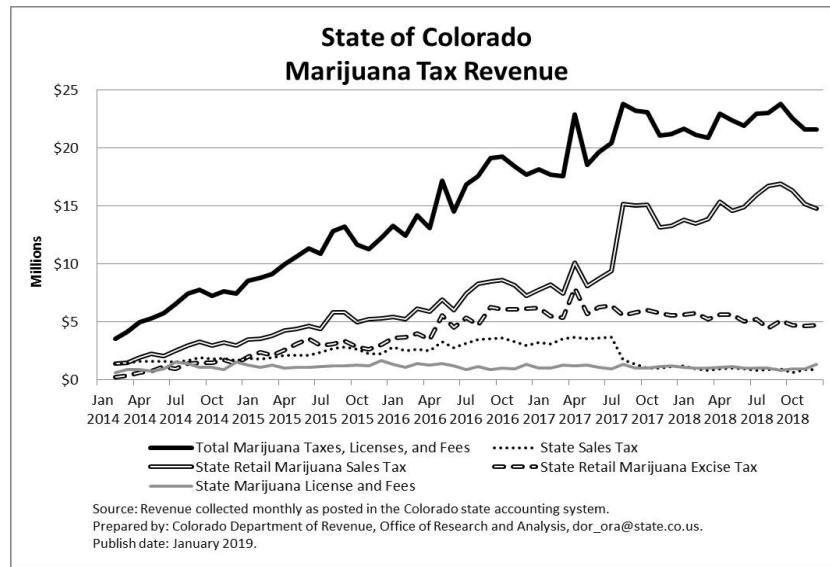
"The numbers are staggering, considered the first recreational dispensaries opened for business in Colorado *only two years ago.*"

13

CNBC, California's high on its billion-dollar 'green rush' July 14, 2016

*A California measure to allow for recreational adult use of marijuana will appear on the Nov. 8 state ballot...If passed, the rollout of the adult-use market would add an estimated **\$1.4 billion** in revenues within the first year of a fully operational cannabis market, according to Arcview.*

14



15

Legal and Regulatory Climate – Federal

WHERE IS THE STATE OF THE LAW NOW?

16

A Little History

According to History Channel,

- ✓ Hemp growing dates back to the Virginia colony
 - Considered a "proper form of currency"
 - Mandated to be grown on all farms

- ✓ "The drug started gaining traction in the U.S. in the 1910s after Mexican refugees brought marijuana with them as they fled the violence of the Mexican Revolution. In the 1930s, it became popular among the hepsters, the black jazz community made up of 'hep cats' like jazz singer Cab Calloway, who had a hit with his song 'Reefer Man.'"

17

A Little History

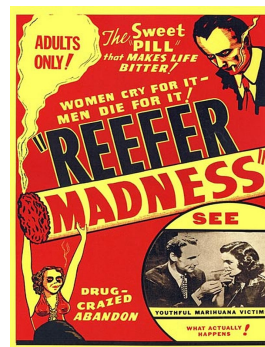
FROM THIS:



Biography.com

TO THIS:

Wikipedia images



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A Little History

"Hemp cultivation became illegal in the U.S. in 1937, under provisions in the Marihuana Tax Act, which was drafted by prohibitionist Harry Anslinger. In the intervening eight decades, American culture has steadily warmed to the idea of reviving the agricultural commodity and its many commercial uses."

Eric Sandy and Melissa Schiller, "Congress Passed the 2018 Farm Bill, Legalizing Hemp. What's Next for Cannabis Businesses?" Cannabisbusiness Times

December 13, 2018

19

The 2018 Farm Bill

Sandy and Schiller

"The Farm Bill removes hemp from the Controlled Substances Act and allows farmers to pursue federal hemp cultivation permits, while individual states can regulate the industry within their borders as they see fit. Already, 40 states have established hemp cultivation 'pilot programs' for industrial and commercial purposes, although the plant has been strictly regulated."

20

The 2018 Farm Bill

The Farm Bill, hemp legalization and the status of
CBD: An explainer

John Hudak of the

Brookings Institute, Friday, December 14, 2018

"It's true that hemp policy in the United States has
been **drastically transformed** by this new
legislation. However, **there remain some**
misconceptions about what, exactly, this policy
change does."

21

The 2018 Farm Bill

Hudak:

- "First...hemp cannot contain more than 0.3 percent THC, per section 10113 of the Farm Bill."
- "Second, there will be significant, shared state-federal regulatory power over hemp cultivation and production." This means...

22

The 2018 Farm Bill

Hudak:

"[S]tate departments of agriculture must consult with the state's governor and chief law enforcement officer to devise a plan that must be submitted to the Secretary of USDA."

- "Third, the law outlines actions that are considered violations of federal hemp law (including such activities as cultivating without a license or producing cannabis with more than 0.3 percent THC).

23

The 2018 Farm Bill

Hudak:

"One big myth that exists about the Farm Bill is that cannabidiol (CBD)—a non-intoxicating compound found in cannabis—is legalized. It is true that section 12619 of the Farm Bill removes hemp-derived products from its Schedule I status under the Controlled Substances Act, **but the legislation does not legalize CBD generally.**"

24

So, there is STILL Federal Law to Consider...

"[C]annabis is classified as a Schedule I substance under the CSA of 1970 (see Title 21-Food and Drugs, Chapter II-Drug Enforcement Administration, Part 1308)...

"Schedule I drugs are defined as '...substances that have a high potential for abuse, have no currently accepted medical use in treatment in the United States, and there is a lack of accepted safety for use of the drug or other substance under medical supervision."

"Other Schedule I substances include heroin, peyote, and lysergic acid diethylamide (LSD)."

Dr. Brenda Wells, *Legalizing Marijuana: Risk Management And Insurance Implications*, The Risk Report (Jan. 2018)

25

The Eight Priorities of Cole Memo One

Preventing

1. Sales to Minors
2. Revenue to Cartels and Gangs
3. State-to-state transport
4. Marijuana as a "pretext or cover" for other trafficking

Preventing

5. Violence and firearms use
6. Drugged driving and other health issues
7. Growing marijuana on public lands
8. Marijuana possession or use on federal property

26

Cole Memo Two (2/14/2014)

[I]f a financial institution or individual provides banking services to a marijuana-related business knowing that the business is diverting marijuana from a state where marijuana sales are regulated to ones where such sales are illegal under state law, or is being used by a criminal organization to conduct financial transactions for its criminal goals...

27

Cole Memo Two (2/14/2014)

...such as the concealment of funds derived from other illegal activity or the use of marijuana proceeds to support other illegal activity, prosecution for violations of 18 U.S.C. §§ 1956, 1957, 1960 or the BSA might be appropriate....

28

The Specter of BSA Enforcement

"The state-legal marijuana sector operates in a largely cash-based economy—only about 400 banks and credit unions in the U.S. actively provide financial services to this sector—because marijuana remains illegal under federal law, despite the increasing number of states acting to legalize medical and/or recreational use. **There is no carveout for state-legal activity and no safe harbor for financial institutions to serve customers engaged in such activity.**"

Elizabeth A. Khalil of Dykema Gossett PLLC

29

Atty. Gen. Sessions 1/4/18:

In deciding which marijuana activities to prosecute under these laws with the Department's finite resources, prosecutors should follow the well-established principles that govern all federal prosecutions.... Given the Department's well-established general principles, **previous nationwide guidance specific to marijuana enforcement is unnecessary and is rescinded**, effective immediately.

30

But what about the banking bill?

According to Reuters:

1. The House of Representatives voted in September to “allow banks to provide services to cannabis companies in states where it is legal.”
2. “The bill clarifies that proceeds from legitimate cannabis businesses would not be considered illegal, and directs federal regulators to write up rules for how they would supervise such banking activity.”
3. The bill has not been taken up in the Senate.

31

Legal and Regulatory Environment - State

USING OREGON AS AN EXAMPLE...

32

The History

IN NOVEMBER, 2014:

Measure 91 – Grants Oregon Liquor Control Commission authority to:

- Regulate the purchase, sale, production, processing, transportation, and delivery of marijuana items in accordance with the provisions of this Act.
- Grant, refuse, suspend or cancel licenses for the sale, processing, or production of marijuana items, or other licenses in regard to marijuana items, and to permit, in its discretion, the transfer of a license of any person.

House Bill 3400 – Tracks Measure 91

Division 25 Rules – Effective September 1, 2016, putting in place rules on licensure

33

Oregon Liquor Control Commission

GRANTS LICENSES TO / FOR:

Producers
Labs
Processors
Wholesalers
Research (Certificate)
Retail

ALSO REGULATES:

Inventory Transfer Requests
Change Forms
Marijuana Worker Permits

34

Oregon Liquor Control Commission

There are five types of recreational marijuana licenses:

Producer: A producer is also known as the grower.

Processor: A processor is a business that will transform the raw marijuana into another product (topicals, edibles, concentrates, or extracts).

Wholesaler: A wholesaler is a business that buys in bulk and sells to licensees rather than to consumers.

Retail: A retailer is a business that sells directly to consumers.

Laboratory / Certificate for Research: A laboratory will test marijuana based on rules established by the Oregon Health Authority. To receive a Laboratory license a Lab must be accredited by the Oregon Environmental Laboratory Accreditation program (ORELAP).

35

Oregon Liquor Control Commission

Number of applicants through October 19, 2016:

Producer: 870

Processor: 161

Wholesaler: 92

Retail: 373

Laboratory / Certificate for Research: 23

Grand Total: 1,519

36

Oregon Liquor Control Commission

January, 2016

TEMPORARY RULES EFFECTIVE

April, 2016

FIRST PRODUCER LICENSES

Spring, 2016

PROCESSOR, LAB, WHOLESALER LICENSING
BEGINS

37

Oregon Liquor Control Commission

July 1, 2016

WORKER'S PERMITS BEGIN

August, 2016

LABELING AND PACKAGING REGULATION
BEGINS

October 1, 2016

RETAIL STORE LICENSING BEGINS; REC. SALES
AT MEDICAL TO END 12/31/16

38

Commercial Property and Liability Considerations

39

Widmer, "High Times," *Rough Notes Magazine*,
February 1, 2016

Big carriers aren't moving in to the market quickly

- Most still want to follow federal law.
- Most are afraid of losing Medicare and Medicaid contracts

Some insurers are declining renewals when the dispensaries come to the insured's area

Small insurers are having trouble meeting financial requirements.

- Oregon is seen as most lenient on this

40

Widmer, "High Times," *Rough Notes Magazine*,
February 1, 2016

Financing is an underwriting problem.

- Banks are as shy as the major carriers.
- Credit unions aren't so much so.
- Dispensaries may have to use state-chartered banks.

41

Widmer, "High Times," *Rough Notes Magazine*,
February 1, 2016

"For agents trying to open up a new sales channel, the marijuana industry represents a *yin-yang style of opposing forces*. [Pamela Adams, Chair and CEO of ISU Insurance Services of Colorado] says agents wanting to take on the marijuana insurance business have their work cut out for them."

"'You're going to have to go to the specialty market,' she says. 'It's causing more work. It may take you a while to find the right E&S market that will provide that coverage. When you do, the premium is likely higher.'"

'With higher premiums come higher commissions, she points out. However, she adds, 'Once you get to the excess and surplus lines carriers, they're paying less commission.'"

42

A bit of background

History of ISO CGL and the Changes:

- ❑ Prior to 1940, most, if not all, insurance written in the United States was provided on a "named perils" basis
- ❑ Beginning in the 1940s, insurance companies began providing insurance coverage on an "all-risk" policy coverage form or on a comprehensive general liability (CGL) insurance form

43

A bit of background

History of ISO CGL and the Changes:

- Some changes through the 1950's, 1960's and 1970's...
- Exclusions did begin to multiply.
- Occurrence versus claims made both became available products
- Big change in the '80's was the switch in name – from "comprehensive" to "commercial" general liability

44

A bit of background

History of ISO CGL:

1. 1966: switch from "accident" to "occurrence"
2. 1973: the first pollution exclusion
3. 1976: advertising injury "arrives"
4. 1983: the "absolute" pollution exclusion
5. 1993: the bolstering of the "workmanship" exclusions

45

A bit of background

ISO and AAIS (American Association of Insurance Services):

- AAIS tends more toward the standard and smaller market commercial risks
- Maybe better in the farm area.
- Still has fairly sophisticated commercial forms
- ISO's forms are more broadly used; more flexible; perhaps more powerful.

46

Structure of the CGL:

Section 1 – Coverages

- Coverage A – bodily injury and property damage
- Coverage B – personal and advertising injury
- Coverage C – Medical Payments

Section 2 – Who is an insured?

Section 3 – Limits of Insurance

47

Structure of the CGL:

Section 4 – Conditions

- Bankruptcy
- Reporting requirements
- Other insurance

Section 5 – Definitions

- "products/completed operations hazard"
- "your product" and "your work"

48

Structure of the CGL:

The CGL insuring clause (Coverage A) reads:

We will pay those sums that the insured becomes legally obligated to pay as damages because of **bodily injury or property damage** to which this insurance applies. We will have the right and duty to defend any "suit" seeking those damages....

49

Structure of the CGL:

An "occurrence" is:

"[A]n accident, including continuous or repeated exposure to substantially the same general harmful conditions."

50

Structure of the CGL:

The two main triggers are "bodily injury" and "property damage"

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

"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.

51

Structure of the CGL:

Coverage B only covers "personal injury" and "advertising injury"

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

- a. False arrest, detention or imprisonment;
- b. Malicious prosecution;
- c. The wrongful eviction ...

52

Structure of the CGL:

"Advertising injury" means injury arising out of one or more of the following offenses:

- Oral or written publication of material that slanders or libels...
- Invasion of privacy...
- Infringement of copyright, title or slogan...

53

The Commercial Property Form

The Commercial Property Form

CP 00 10 10 12

A. Coverage

"We will pay for direct physical loss of or damage to **Covered Property** at the premises described in the Declarations caused by or resulting from any **Covered Cause of Loss**."

54

The Commercial Property Form

2. Property Not Covered “Covered Property does not include:”

- a. Accounts, bills, currency, food stamps or other evidences of debt, **money**, notes or securities. Lottery tickets held for sale are not securities;
- b. Animals, unless owned by others and boarded by you, or if owned by you, only as ‘stock’ while inside of buildings;
- c. Automobiles held for sale;

55

The Commercial Property Form

2. Property Not Covered “Covered Property does not include:”

- d. Bridges, roadways, walks, patios or other paved surfaces;
- e. Contraband, or property in the course of illegal transportation or trade;**
- f. The cost of excavations, grading, backfilling or filling;

56

The Commercial Property Form

2. Property Not Covered “Covered Property does not include:”

g. Foundations of buildings, structures, machinery or boilers...

h. Land (including land on which the property is located), water, **growing crops** or lawns (other than lawns which are part of a vegetated roof);

57

The Commercial Property Form

2. Property Not Covered “Covered Property does not include:”

i. Personal property while airborne or waterborne;

j. Bulkheads, pilings, piers, wharves or docks;

k. **Property that is covered under another coverage form of this or any other policy in which it is more specifically described**, except for the excess of the amount due (whether you can collect on it or not) from that other insurance;

58

The Commercial Property Form

2. Property Not Covered "Covered Property does not include:"

l. Retaining walls that are not part of a building;

m. Underground pipes, flues or drains;

n. **Electronic data, except as provided under the Additional Coverage, 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...

o. The cost to replace or restore the information on valuable papers and records, including those which exist as electronic data....

p. Vehicles or self-propelled machines...

59

The Commercial Property Form

2. Property Not Covered "Covered Property does not include:"

q. The following property while outside of buildings:

- **(1) Grain, hay, straw or other crops;**
- (2) Fences, radio or television antennas (including satellite dishes) and their lead-in wiring, masts or towers, trees, shrubs or plants (other than trees, shrubs or plants which are "stock" or are part of a vegetated roof), all except as provided in the Coverage Extensions.

60

The Commercial Property Form – Covered Causes of Loss

The CP 10 10 10 12:

When Basic is shown in the Declarations, Covered Causes of Loss means the following:

1. Fire.
2. Lightning.
3. Explosion...

61

The Commercial Property Form – Covered Causes of Loss

Covered Causes of Loss means the following:

4. Windstorm or Hail....
5. **Smoke causing sudden and accidental loss or damage.** This cause of loss does not include smoke from agricultural smudging or industrial operations.
6. Aircraft or Vehicles...
7. Riot or Civil Commotion...
8. Vandalism...

62

The Commercial Property Form – Covered Causes of Loss

Covered Causes of Loss means the following:

9. Sprinkler Leakage...

10. Sinkhole Collapse...

11. Volcanic Action...

63

The Commercial Property Form – Covered Causes of Loss - Exclusion

B. Exclusions

1. We will not pay for loss or damage caused directly or indirectly by any of the following. Such loss or damage is excluded regardless of any other cause or event that contributes concurrently or in any sequence to the loss

...

c. Governmental Action

Seizure or destruction of property by order of governmental authority.

But we will pay for loss or damage caused by or resulting from acts of destruction ordered by governmental authority and taken at the time of a fire to prevent its spread, if the fire would be covered under this Coverage Part

64

So, why belabor the point?

The issue really is which exclusions or which causes of loss will be applicable given the uncertainty regarding the legality of the product.

Simply put, will the policy language be tested in new and unpredictable way?

Two possible answers...

65

One: ISO's Oregon Response

Commercial Lines Manual Oregon

Division Six

General Liability

Exception Pages

Rule A3. Oregon - Marijuana Exclusion
Endorsements

66

One: ISO's Oregon Response

Oregon Bulletin 2017-04 provides, in part, the following stated "guidance":

1. "Insurers issuing property and casualty policies that could potentially cover loss, damage, or liability associated with marijuana items and marijuana activities *should explicitly state in the policy whether, and to what extent, these interests are covered or excluded.*"

67

One: ISO's Oregon Response

(Still quoting Oregon Bulletin 2017-04)

2. "If the terms of the policy would otherwise cover marijuana items or marijuana activities, **general language excluding 'illegal activity', 'contraband', or 'coverage inconsistent with public policy' is not sufficient to describe the coverage provided.** Similarly, language that refers to 'illegal' or 'criminal acts under federal law' provides insufficient guidance to policyholders as to their rights under an insurance policy."

68

One: ISO's Oregon Response

Commercial Property Endorsement CP 99 01 10 17

OREGON - MARIJUANA EXCLUSION

...

B. "Marijuana" is added to Property Not Covered.

C. The Business Income (With Extra Expense) Coverage Form CP 00 30, Business Income (Without Extra Expense) Coverage Form CP 00 32 and Extra Expense Coverage Form CP 00 50 do not apply to that part of Business Income loss or Extra Expense incurred due to a "suspension" of your "operations" which involve the design, manufacture, distribution, sale, serving, furnishing, use or possession of "marijuana".

69

One: ISO's Oregon Response

Commercial Property Endorsement CP 99 01 10 17

D. Paragraphs B. and C. above do not apply to any "marijuana" that is not designed, manufactured, distributed, sold, served or furnished for bodily:

- a. Ingestion;
- b. Inhalation;
- c. Absorption; or
- d. Consumption.

70

One: ISO's Oregon Response

Commercial Property Endorsement CP 99 01 10 17

E. For the purpose of this endorsement, the following definition is added:

"Marijuana":

- 1. Means... Any good or product that consists of or contains any amount of Tetrahydrocannabinol (THC) or any other cannabinoid, regardless of whether any such THC or cannabinoid is natural or synthetic.

71

One: ISO's Oregon Response

Commercial Property Endorsement CP 99 01 10 17

[Marijuana] includes, but is not limited to, any of the following containing such THC or cannabinoid:

- a. Any plant of the genus Cannabis L., or any part thereof, such as seeds, stems, flowers, stalks and roots; or
- b. Any compound, byproduct, extract, derivative, mixture or combination, such as, but not limited to:
 - (1) Resin, oil or wax;
 - (2) Hash or hemp; or
 - (3) Infused liquid or edible marijuana;

whether derived from any plant or part of any plant set forth in Paragraph E.2.a. above or not.

72

Two: Green Earth v. Atain Spec.

United States District Court for the District of Colorado

February 17, 2016

Order Granting Partial Summary Judgment

Subsequently Settled

73

Green Earth v. Atain Spec.



"Green Earth operates a retail medical marijuana business and an adjacent growing facility in Colorado Springs, Colorado."

On June 29, 2012, Green Earth obtains a commercial property and general liability policy from Atain.

© 2020 Atain Group, Inc.

74

Green Earth v. Atain Spec.

"[O]n June 23, 2012, a wildfire started in Waldo Canyon outside of Colorado Springs. Over the course of several days, the fire advanced towards the city.

"The fire did not directly affect Green Earth's business, but Green Earth contends that smoke and ash from the fire overwhelmed its ventilation system, eventually intruding into the growing operation and causing damage to Green Earth's marijuana plants.

75

Green Earth v. Atain Spec.

Green Earth's claim under the Policy relating to the Waldo Canyon fire can be broken into two parts:

- a claim for more than **\$200,000** in damage to Green Earth's grow operation, namely its growing **mother plants and clones**, and
- a claim for approximately **\$40,000** in damage to **buds and flowers** that had already been harvested and were being prepared for sale.

76

Green Earth v. Atain Spec.

Atain denies the claim. In part, Atain says:

1. "Stock" does not apply to the growing plants;
2. Any coverage is barred by the "growing crops" exclusion;
3. any coverage of growing or finished marijuana is subject to an exclusion of coverage as "contraband"; and
4. any grant of coverage is void as against public policy.

77

Green Earth v. Atain Spec.

The District Court sides with Atain, at least in part, finding:

"...the Policy's exclusion of coverage for 'growing crops' unambiguously encompasses any body of plants tended for their agricultural yield, at least until they are harvested. This term clearly encompasses Green Earth's mother plants and clones."

78

Green Earth v. Atain Spec.

While that answers the "crop" question, it doesn't answer the "stock" question, which the Court resolves for Green Earth:

Just as the extrinsic evidence strongly suggested that the parties intended to exclude coverage for growing plants, the same evidence strongly suggests that the parties mutually intended to include coverage for harvested plants constituting Green Earth's inventory.

79

Green Earth v. Atain Spec.

...Which leads to the larger discussion of coverage and the state of the law:

More fundamentally, it is undisputed that, before entering into the contract of insurance, Atain knew that Green Earth was operating a medical marijuana business. It is also undisputed that Atain knew – or very well should have known – that federal law nominally prohibited such a business.

80

Green Earth v. Atain Spec.

Notwithstanding that knowledge, Atain nevertheless elected to issue a policy to Green Earth, and that policy unambiguously extended coverage for Green Earth's inventory of saleable marijuana. [Atain never told Green Earth] of its position that such inventory was not insurable...**the parties shared a mutual intention that the Policy would insure Green Earths' marijuana inventory and that the 'Contraband' exclusion would not apply to it.**

81

Workers' Compensation Issues

82

The Medical Issue

According to FC&S, “each state that allows [marijuana] medically has a list of allowed conditions such as the following partial list:”

AIDS

Anorexia

Arthritis

Cachexia (condition that causes extreme weight loss and muscle wasting)

Cancer

83

The Medical Issue

FC&S:

Chronic pain

Depression

Glaucoma

Migraine

Persistent muscle spasms, including, but not limited to, spasms associated with multiple sclerosis

Seizures, including, but not limited to, seizures associated with epilepsy

84

Do we have to cover medical marijuana?

There is no clear trend in the case law

Proponents argue:

- 1) It is a safer and effective treatment for pain;
- 2) A physician authorization makes it a reasonable and necessary treatment option

85

St. Pierre v. Workers' Comp. Trust Fund

- Administrative Action
- Department of Industrial Accidents in Massachusetts
- April, 2018.
- Hearing officer orders reimbursement for medical marijuana.
- St. Pierre suffered severe (amputation) injuries in a work accident.
- St. Pierre is a Vermont resident.

86

St. Pierre v. Workers' Comp. Trust Fund

Trust Fund says the decision is arbitrary and capricious because:

1. the Massachusetts Act for Humanitarian Medical Use of Marijuana explicitly states that an insurer cannot be required to reimburse for medical marijuana, and
2. the use or distribution of medical marijuana is a federal crime under the Controlled Substances Act

87

St. Pierre v. Workers' Comp. Trust Fund

The “dodge”:

[T]he parties stipulated that the Employee is a registered patient through the Vermont Medical Marijuana Registry with a valid registration, and that he obtains medical marijuana from an authorized dispensary, all pursuant to the laws of the State of Vermont.

88

St. Pierre v. Workers' Comp. Trust Fund

The “dodge”:

Accordingly, we agree with the Trust Fund and hold that the Massachusetts Act and its statutorily prescribed regulations are specifically limited to ‘qualifying patients’ who are Massachusetts residents with registration cards issued by the Massachusetts Department of Public Health, and to physicians and dispensaries located in Massachusetts.

89

Do we have to cover medical marijuana?

Opponents argue:

- 1) It is illegal at the federal level;
- 2) It is not an FDA approved treatment option;
- 3) There is no proof of efficacy beyond anecdotal evidence;
- 4) There are no evidence-based guidelines for use;
- 5) It has a negative impact on performance

PLUS CONFERENCE 2015, Growing Insurance Issues with the Rise of Medical and Recreational Marijuana

90

Do we have to cover medical marijuana?

According to IA Magazine:

“New Mexico was the first [to do so] in the 2014 case *Vialpando v. Ben’s Automotive Services*, when the state’s Court of Appeals upheld the validity of a workers compensation award directing an employer and insurer to reimburse a worker for the cost of medical marijuana used to relieve pain.”

“And so far, only five states—Connecticut, Maine, Minnesota, New Jersey and New Mexico—officially require insurers to pay workers comp claims involving medical marijuana.”

91

Is Marijuana use a disqualifier for benefits?

At Owen-Dunn Insurance Services, headquartered in Sacramento, California, a workers comp client’s employee was recently completing a painting job when he fell off a ladder. **“He acknowledged he fell out of the ladder because he was pretty high,”** says Owen Taylor, president. “He uses medical marijuana for control of Tourette’s syndrome, and the employer was aware that he used medical marijuana because of that. So they had to make accommodations to the kind of work he was doing.”

High and Dry: How Will Legal Marijuana Impact Workers Comp?
BY Jacquelyn Connelly, IA Magazine, Oct. 23, 2017

92

Is Marijuana use a disqualifier for benefits?

But short of an injured worker coming clean of their own accord, proving marijuana impairment in the event of an injury is a tall order. “You can’t breathalyze for marijuana,” Ring says. “That’s what makes alcohol so easy. ‘Are you drunk?’ It’s a simple yes or no question that we can test for right this second. But the science hasn’t gotten there for marijuana or even for prescription pain medications. It may never get there.”

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Is Marijuana use a
disqualifier for
benefits?
More later...

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Employment Practices Liability and Professional Liability

95

EPLI: How are Insurance Carriers Dealing with the Legalization of Marijuana?

- "Presently, there is no impact on coverage for General Liability, Workers Compensation, or Employer Liability insurance."
- "Coverage is dependent upon the employer's policy and procedure."
- "An employer with a zero tolerance drug policy needs to ensure that it complies with the law in their respective jurisdictions."

How will the Legalization of Marijuana Affect Your Employment Policies?, RIMS 2014 Annual Conference

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EPLI: Americans with Disabilities Act Issues Involving Marijuana

- "ADA does not require employers to accommodate the use of marijuana.
 - "However, if an employee enters a substance abuse program, employers have to accommodate the employee's participation.
 - "ADA does not consider drug testing to be a medical examination.

*How will the Legalization of Marijuana Affect Your Employment Policies?, RIMS
2014 Annual Conference*

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Americans with Disabilities Act (ADA):

Protected Group:	Disabled – having a long-term physical or mental impairment that substantially limits a major life activity
No. of employees:	15
Prohibits:	Discriminatory treatment in pre-employment screening, hiring, promotion, and firing
Requires:	"Reasonable accommodations" for disabled employees

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Americans with Disabilities Act (ADA):

Medical examinations (**including drug tests**)

1. After offer of employment
2. Before employment commences
3. If consistently administered
4. A business necessity
5. And information is confidential

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...and from the headlines

"It will be illegal in Colorado for employers to fire workers solely on the basis of a positive test for marijuana if a newly proposed bill is passed at the state house."

"The Marijuana Consumer Employment Discrimination Protection Bill would clarify that a positive drug test for traces of marijuana can't be grounds to fire an employee unless the person 'used, possessed, or was impaired by marijuana during the hours of employment.'"

"New bill would prohibit employers from firing workers based solely on positive marijuana tests"

Boulder Weekly, by Matt Cortina February 15, 2018

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Professional Liability: Oregon Board of Accountancy -Guidance for Licensees Providing Services to the Marijuana Industry

After careful consideration, the Board has determined that Oregon licensees and firms that elect to provide services to the marijuana industry legalized in any state in which the licensee practices, will not face action by the Board for violation of the State of Oregon Board of Accountancy's Code of Professional Conduct, based solely on the fact that the licensee or firm is providing such services. However, ***all licensees should be reminded that any and all services provided are subject to the same professional standards, laws and rules applicable to all other services provided by the licensee.***

March, 2015

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Products Liability and Products Recall

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Products Liability and Products Recall:



www.puffpuffpost.com/marijuana-edibles-in-canada-is-a-growing-industry/

103

Products Liability and Products Recall:

MedPharm, one of two licensed distributors of medical marijuana products in Iowa, announced Wednesday that it will be producing three products: creams, capsules and tinctures.



The Cedar Rapids Gazette, October 17, 2018

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Products Liability and Products Recall:

According to FC&S

[D]ispensaries will indicate a level of potency of the marijuana they have for sale; if the potency is not what the dispensary claims it is, a claim could be filed.

Also, some dispensaries are getting into baked goods such as brownies, so there are product liability issues for baked goods as well.

Maintaining quality control is extremely important, especially since the customers are often medically fragile.

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Products Liability and Products Recall:

"Canna-Beer – Dad & Dudes Breweria's marijuana-infused beer – may soon be available in more than just Colorado. The adult beverage brand, which officially rolled out the first line of Drew's Brews packaged cannabis-infused beers back in 2015, recently announced plans to sell their General Washington's Secret Stash in stores across the United States."

"Cannabis Beer May Soon Be On US Liquor Store Shelves"
msn.com

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Products Recall: The CGL and Products Recall

Part 1 of the Sistership Exclusion (Exclusion "n") of the ISO CGL carves out:

"[d]amages 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" the named insured's 'product,' 'work' or 'impaired property'... **IF**

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Products Recall: The CGL and Products Recall

Part 2 of Exclusion "n" continued:

"**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."

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Products Recall: The CGL and Products Recall

The language of "withdrawn or recalled" and the language of "by any person or organization" are both significant.

The "withdrawn or recalled" is generally construed as a **limitation** on the exclusion, while

The "by any person or organization" is a **broadening** of the exclusion.

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Products Recall: CGL and Products Recall

Why? The exclusion is only triggered when a product is "withdrawn or recalled" from the marketplace, BUT

"By any person or organization" is a **broadening** of the exclusion because it includes both voluntary and government-ordered withdrawals.

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Homeowners and Personal Lines

111

What is a moral hazard?

According to IRMI:

[Moral Hazard is] used to describe a subjective hazard that tends to increase the probable frequency or severity of loss due to an insured peril. Moral hazard is measured by the **character of the insured** and the circumstances surrounding the subject of the insurance, especially the extent of potential loss or gain to the insured in case of loss.

112

What is a moral hazard?

For example, insurance on a thriving business is not subject to a moral hazard to as great an extent as insurance on an unprofitable business...Moral hazards are considered when underwriting insurance, particularly fire insurance, and are addressed by certain policy exclusions.

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Related Coverage Issues

Insured “Bad Acts”

- Arson
- Criminal Conduct
- Intoxication
- Other “Bad” Behavior

Those can’t be covered....can they?

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Related Coverage Issues

Insured “Bad Acts”

Arson: Economy Fire and Casualty Company v. Warren (Ill.); American Economy Ins. Co. v. Liggett (Ind.).

“Innocent spouse” not involved in any concealment, misrepresentation, or fraud; therefore, the clauses barring recovery did not apply.

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Related Coverage Issues

Intoxication

Smith v. Cincinnati Insurance: Deem insured by Cincinnati; was intoxicated; gave keys to Smith (age 15); Smith drives off the road

Question is permissive use. The Supreme Court said there is a “sound policy” to encourage sober drivers and therefore, “[T]he fact that a would-be driver is extremely intoxicated has no bearing on whether she can nonetheless give her permission for a sober designated driver to drive her car.”

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Related Coverage Issues

Insured “Bad Acts”

Criminal Behavior, e.g., fleeing the police

Usual battleground: exclusion for “bodily injury that was either “expected or intended from the standpoint of the Insured.”

“Expected” does not mean “practically certain”

A showing of disregard for safety is not enough to warrant exclusion [from insurance coverage]

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How it impacts homeowners insurance?

Tracy v. USAA Casualty Insurance Company

2012 Hawaii case

Tracy had an insurable interest in stolen marijuana plants, but...

The “shrubs” weren’t covered because it would violate federal law.



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CASE STUDY

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Hopkins v. Unemployed Insurers Fund (Mont. 2011)

Drive-through bear experience called Great Bear Adventures

Kilpatrick owns GBA; hired Hopkins to do work for him

Hopkins got high on his way to work

There was conflicting evidence:

- Whether Kilpatrick approved of weed at work, but he had smoked with Hopkins before
- Whether Kilpatrick told Hopkins NOT to feed the bears

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Hopkins v. Unemployed Insurers Fund

- Hopkins took food to the bears' pen
- "At some point while Hopkins was working, the largest bear, Red, attacked him. The bear knocked Hopkins to the ground, sat on him, and bit his leg, knee and rear-end.
- "...Hopkins escaped by crawling under one of the electrified wires surrounding the pen. Kilpatrick eventually found Hopkins, and he was transported to the hospital by helicopter. He suffered severe injuries."

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Hopkins v. Unemployed Insurers Fund

"Non-prescription drug consumption will preclude an injured employee's benefits *if consumption was the leading cause contributing to the result*, when compared to all others."

- ❖ *Marijuana use was "ill-advised to say the least and mind-bogglingly stupid to say the most."*
- ❖ *[G]rizzlies are "equal opportunity maulers," without regard to marijuana consumption.*

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