



JAMES K. RUBLE SEMINAR

Ruble Graduate Seminar

Pennsylvania

October 15-16, 2024

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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 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 courses are taught by active insurance and risk management 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 Risk & Insurance Education Alliance as your guide toward a thriving career.

Let's take the first step.

A handwritten signature in black ink, reading "William J. Hold". The signature is written in a cursive, flowing style.

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

Who's Covered? Insureds and Additional Insureds

Who's Covered? Insureds and Additional Insureds

Catherine Trischan, CIC, CRM, CPCU, ARM, AU, AAI, CRIS, MLIS, TRIP, CBIA

catherine.trischan@gmail.com

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COURSE OUTLINE

- Types of Insureds
- Commercial Property
- Business Auto
- Workers Compensation
- Commercial General Liability
- CGL Additional Insured Endorsements
- Primary and Non-Contributory

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Being an Insured

Types of Insureds

- **Named Insureds** – Usually named in the Declarations
- **Automatic Insureds** – Described as insureds in the policy form
- **Additional Insureds** – Usually added by endorsement

Why is this important?

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- Liability policies pay on behalf of insureds.
e.g. CGL – *We will pay those sums that **the insured** becomes legally obligated to pay...*
- Liability policies defend insureds.
e.g. CGL – *We will have the right and duty to defend **the insured**...*

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Building and Personal Property Coverage Form (CP 00 10 10 12)

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CP 00 10 10 12 – Named Insured

- Named Insured – “you” and “your”
- First Named Insured (Common Policy Conditions IL 00 17 11 98)
 - Authorized to cancel/change the policy
 - Receives notice of cancellation
 - Responsible for premium payment
 - Payee for return premiums
- Loss Conditions – *We will not pay you more than your financial interest in the Covered Property.*

CP 00 10 10 12 – Named Insured

Insurable interest

Black's Law Dictionary (7th edition)

A legal interest in the protection of property from injury, loss, destruction, or pecuniary damage. To take out an insurance policy, a potential insured must have an insurable interest. If a policy does not have an insurable interest as its basis, it will usually be considered a form of wagering and thus be held unenforceable.

Types of Insurable Interest

- Ownership
- Contractual
 - e.g. Tenant required to insure building
 - Lessee required to insure leased equipment
- Common law
 - e.g. Bailment
- Factual expectation

Mortgageholders (CP 00 10 10 12)

Separate rights and responsibilities – highlights

- Each mortgageholder will be named in the payment to the insured.
- If the Named Insured's claim is denied for failure to comply with policy terms, a mortgageholder can still collect.
- If the mortgageholder is paid & the insured is denied, the rights under the mortgage are transferred to the insurer.
- Mortgageholder receives notice of cancellation or non-renewal.

Loss Payable Provisions (CP 12 18 10 12)

POLICY NUMBER:	COMMERCIAL PROPERTY CP 12 18 10 12	
THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.		
LOSS PAYABLE PROVISIONS		
This endorsement modifies insurance provided under the following:		
BUILDERS' RISK COVERAGE FORM BUILDING AND PERSONAL PROPERTY COVERAGE FORM CONDOMINIUM ASSOCIATION COVERAGE FORM CONDOMINIUM COMMERCIAL UNIT-OWNERS COVERAGE FORM STANDARD PROPERTY POLICY		
SCHEDULE		
Location Number:	Building Number:	Applicable Clause (Enter C.1., C.2., C.3. or C.4.):
Description Of Property:		
Loss Payee Name:		
Loss Payee Address:		

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Loss Payable Provisions (CP 12 18 10 12)

- Loss Payable Clause (C.1)
 - Loss is adjusted with the Named Insured.
 - Payment to Named Insured and loss payee
- Lender's Loss Payable Clause (C.2)
 - Rights and duties are similar to a mortgageholder's.
 - Receives notice of cancellation/non-renewal

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Loss Payable Provisions (CP 12 18 10 12)

- Contract of Sale Clause (C.3)
 - Party to a contract for the sale of covered property
 - Loss is adjusted with the Named Insured.
 - Payment to Named Insured and loss payee
- Building Owner Loss Payable Clause (C.4)
 - Owner of the building a tenant Named Insured is insuring
 - Loss is adjusted with the loss payee and payable to the loss payee.
 - TIB claims are adjusted with the Named Insured, unless the lease provides otherwise.

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Is a tenant an implied coinsured on the building owner's policy?

1. Yes – The Sutton Rule/Doctrine

Sutton v. Jondahl, 532 P.2d 478 (Okla. 1975)

.....subrogation should not be available to the insurance carrier because the law considers the tenant as a co-insured of the landlord absent an express agreement between them to the contrary....

Basic equity and fundamental justice upon which the equitable doctrine of subrogation is established requires that when fire insurance is provided for a dwelling it protects the insurable interests of all joint owners including the possessory interests of a tenant absent an express agreement by the latter to the contrary.

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	<div data-bbox="477 262 1180 352" data-label="Section-Header"> <h2>Is a tenant an implied coinsured on the building owner's policy?</h2> </div> <div data-bbox="1380 252 1421 283" data-label="Text"> <p>15</p> </div> <div data-bbox="373 386 682 420" data-label="Section-Header"> <h3>2. No – Anti-Sutton</h3> </div> <div data-bbox="422 428 1325 703" data-label="List-Group"> <ul style="list-style-type: none"> ▪ Tenant should be responsible for its negligence. ▪ Tenant is not a coinsured unless – e.g. <ul style="list-style-type: none"> ➤ The lease requires that the landlord maintain insurance for the benefit of the tenant. <li style="padding-left: 40px;">OR ➤ The lease exculpates the tenant from loss caused by the tenant's wrongdoing. </div> <div data-bbox="373 730 638 768" data-label="Section-Header"> <h3>3. Case-by-case</h3> </div> <div data-bbox="422 772 1227 892" data-label="List-Group"> <ul style="list-style-type: none"> ▪ What does the lease say? ▪ What are the reasonable expectations of the parties? ▪ Other factors </div>
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	<div data-bbox="420 1188 1247 1245" data-label="Section-Header"> <h2>Tenant Insuring Landlord's Building</h2> </div> <div data-bbox="1386 1163 1429 1192" data-label="Text"> <p>16</p> </div> <div data-bbox="319 1346 638 1564" data-label="List-Group"> <ul style="list-style-type: none"> ▪ Good Idea? ▪ Bad Idea? </div>
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Additional Insured - Building Owner (CP 12 19 06 07)

POLICY NUMBER:

COMMERCIAL PROPERTY
CP 12 19 06 07

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

ADDITIONAL INSURED – BUILDING OWNER

This endorsement modifies insurance provided under the following:

COMMERCIAL PROPERTY COVERAGE PART
STANDARD PROPERTY POLICY

SCHEDULE

Premises Number:		Building Number:	
Building Description:			
Building Owner Name:			
Building Owner Address:			

The building owner identified in this endorsement is a Named Insured, but only with respect to the coverage provided under this Coverage Part or Policy for direct physical loss or damage to the building(s) described in the Schedule.

Business Income – Landlord as Additional Insured (Rental Value) (CP 15 03 06 07)

POLICY NUMBER:

COMMERCIAL PROPERTY
CP 15 03 06 07

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

BUSINESS INCOME – LANDLORD AS ADDITIONAL INSURED (RENTAL VALUE)

This endorsement modifies insurance provided under the following:

BUSINESS INCOME (AND EXTRA EXPENSE) COVERAGE FORM
BUSINESS INCOME (WITHOUT EXTRA EXPENSE) COVERAGE FORM

SCHEDULE

Description Of Rented Premises:			
Name Of Additional Insured:			
Mailing Address Of Additional Insured:			
Causes Of Loss Form	Applicable Business Income Coverage Form (Enter Form Number)	Limit Of Insurance	Coinsurance Percentage
		\$	%
Endorsements, If Any, Supplementing Or Restricting The Covered Causes Of Loss With Respect To The Coverage Provided Under This Endorsement:			
Information required to complete this Schedule, if not shown above, will be shown in the Declarations.			

Business Income – Landlord as Additional Insured (Rental Value) (CP 15 03 06 07)

- A.** The person or entity identified in the Schedule is insured for loss of "Rental Value", up to the Limit of Insurance shown in the Schedule. Such coverage applies in accordance with all terms of Business Income – "Rental Value" Coverage under the applicable Business Income Coverage Form, and all conditions in the Common Policy Conditions and Commercial Property Conditions, except as otherwise provided in this endorsement or other applicable endorsement.
- B.** The Causes Of Loss Form shown in the Schedule applies to the coverage provided under this endorsement. Unless shown in the Schedule, endorsements which modify the Causes Of Loss Form do not apply to the coverage provided under this endorsement.
- C.** With respect to the coverage provided under this endorsement, the definition of "Rental Value" is replaced by the following:
"Rental Value" means the:
1. Net income that would have been earned as rental income from tenant occupancy of the premises described in the Schedule, as furnished and equipped by the Additional Insured; and
 2. Amount of continuing normal operating expenses which are the legal obligation of the tenant and which would otherwise be the Additional Insured's obligations.
- In Paragraphs **C.1.** and **C.2.** above, the terms tenant and tenant occupancy refer to the Named Insured under this policy, who is a tenant of the Additional Insured.

Business Income – Landlord as Additional Insured (Rental Value) (CP 15 03 06 07)

- D.** If this endorsement provides coverage in excess of the coverage or benefits required under the terms of the lease between the Named Insured and the Additional Insured, the most we will pay is the amount determined in accordance with the terms of the lease, but not more than the Limit of Insurance shown in the Schedule.
- E.** The following applies if this policy includes Business Income coverage for the interest of the Named Insured:
The amount of any payment made to the Additional Insured under the terms of this endorsement will be deducted from the Named Insured's Business Income loss and therefore will not be payable to the Named Insured as a continuing normal operating expense.
- F.** If we cancel this policy, we will provide advance notice in writing to the Additional Insured. The notice will be mailed to the Additional Insured at the last mailing address known to us, in the applicable timeframe specified in the policy's Cancellation Condition or any amendment to that Condition.
- G.** The following do not apply to the coverage provided under this endorsement:
1. Extra Expense Coverage or Additional Coverage – Expenses To Reduce Loss;
 2. Additional Coverage – Alterations And New Buildings;
 3. Coverage Extension – Newly Acquired Locations; and
 4. Optional Coverages.

	<div data-bbox="1380 247 1421 279" data-label="Page-Header">21</div> <div data-bbox="448 275 1222 350" data-label="Section-Header"> <p align="center">Business Income – Landlord as Additional Insured (Rental Value) (CP 15 03 06 07)</p> </div> <p>When might an agent recommend this?</p> <p>Facts:</p> <ul style="list-style-type: none"> ▪ Tenant Inc. – owned 100% by Son ▪ Building Owner Inc. – owned 100% by Mom ▪ Son is concerned with Mom’s financial well-being. <p>Tenant Inc. is required by its lease with Building Owner Inc. to insure the building. Ownership is not common so your underwriter will not include both entities as Named Insured. Building Owner Inc. does not want to insure its own building on its own policy (despite your repeated suggestions.) Tenant Inc.’s policy includes Building, Business Personal Property and Business Income coverages.</p> <p>The building burns to the ground, and it takes over a year to rebuild. How will Building Owner Inc. be made whole for the loss of rents?</p>
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	<div data-bbox="1380 1161 1421 1192" data-label="Page-Header">22</div> <div data-bbox="448 1188 1222 1264" data-label="Section-Header"> <p align="center">Business Income – Landlord as Additional Insured (Rental Value) (CP 15 03 06 07)</p> </div> <p>What about Tenant Inc.’s Business Income coverage? (CP 00 30 10 12)</p> <p><i>Business Income means the:</i></p> <ol style="list-style-type: none"> a. <i>Net Income (Net Profit or Loss before income taxes) that would have been earned or incurred; and</i> b. <i>Continuing normal operating expenses incurred, including payroll.</i> <p>Is the rent a continuing normal operating expense for Tenant Inc.?</p> <ul style="list-style-type: none"> ▪ Language in the lease may state that the lease terminates if the premises are untenable following damage or destruction. ▪ The law may state that the lease cancels if the premises is destroyed. ▪ Case law in a jurisdiction may address this issue.
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	<div data-bbox="1393 254 1425 281">23</div> <div data-bbox="446 279 1222 357"> <p>Business Income – Landlord as Additional Insured (Rental Value) (CP 15 03 06 07)</p> </div> <div data-bbox="430 407 675 464"> <p>Example California Civil Code</p> </div> <div data-bbox="430 493 1273 581"> <p>1925. Hiring is a contract by which one gives to another the temporary possession and use of property, other than money, for reward, and the latter agrees to return the same to the former at a future time.</p> </div> <div data-bbox="430 606 1222 837"> <p>1933. The hiring of a thing terminates: 1. At the end of the term agreed upon; 2. By the mutual consent of the parties; 3. By the hirer acquiring a title to the thing hired superior to that of the letter; or, 4. By the destruction of the thing hired. <i>(Enacted 1872.)</i></p> </div>	
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	<div data-bbox="1393 1167 1425 1194">24</div> <div data-bbox="415 1360 1201 1484"> <p>Business Auto Coverage Form (CA 00 01 11 20)</p> </div>	
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	<div data-bbox="1393 247 1435 289">25</div> <div data-bbox="605 279 1068 352" style="text-align: center;"> Business Auto Coverage Form (CA 00 01 11 20) </div> <p>Who is an Insured?</p> <ul style="list-style-type: none"> ▪ Named Insured – for any “covered auto” ▪ Permissive users of owned, hired or borrowed autos, with exceptions ▪ Anyone liable for the conduct of an insured
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	<div data-bbox="1393 1161 1435 1203">26</div> <div data-bbox="605 1192 1068 1266" style="text-align: center;"> Business Auto Coverage Form (CA 00 01 11 20) </div> <p>Permissive user exceptions</p> <ul style="list-style-type: none"> ▪ Owners of hired or borrowed autos (unless the auto is a trailer connected to an owned covered auto) ▪ Employees, partnership partners, and LLC members if the auto is owned by them or a family member ▪ One using a covered auto in a garage business that is not the insured's ▪ Those who are loading or unloading a covered auto (Exception doesn't apply to employees, partnership partners, LLC members, or lessees or borrowers or their employees.)
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	<div data-bbox="1380 247 1425 283">27</div> <div data-bbox="561 268 1055 373"> <h2>Business Auto Select Endorsements</h2> </div> <ul style="list-style-type: none"> ▪ Lessor – Additional Insured and Loss Payee (CA 20 01 11 20) ▪ Individual Named Insured (CA 99 17 10 13) ▪ Drive Other Car Coverage – Broadened Coverage for Named Individuals (CA 99 10 10 13) ▪ Employees as Insureds (CA 99 33 10 13) ▪ Partners Or Members As Insureds (CA 05 25 11 20) ▪ Non-Ownership Liability Coverage For Volunteers (CA 05 24 11 20) ▪ Employee Hired Autos (CA 20 54 11 20) ▪ Volunteer Hired Autos (CA 04 39 11 20) ▪ Employee as Lessor (CA 99 47 10 13) ▪ Hired Autos Specified As Covered Autos You Own (CA 99 16 10 13) ▪ Designated Insured for Covered Autos Liability Coverage (CA 20 48 10 13)
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	<div data-bbox="1380 1159 1425 1194">28</div> <div data-bbox="384 1194 1250 1318"> <h2>Lessor – Additional Insured And Loss Payee (CA 20 01 11 20)</h2> </div> <div data-bbox="352 1350 1408 1717"> <ul style="list-style-type: none"> ▪ Scheduled leased autos (and substitute or replacement autos) are considered autos owned rather than autos hired or borrowed. ▪ The auto must be leased under a leasing or rental agreement that requires the Named Insured to provide direct primary insurance for the lessor. ▪ The scheduled lessor is Additional Insured and loss payee and will receive notice of cancellation. </div>
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Individual Named Insured (CA 99 17 10 13)

- Available for use when the policy covers an individual Named Insured and a private passenger auto.
- The endorsement provides coverage that, in many ways, is similar to that in a Personal Auto Policy (PAP.) – e.g. Coverage is provided for resident family members for the personal use of rented or borrowed autos.

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POLICY NUMBER: _____ COMMERCIAL AUTO
CA 99 10 10 13

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

**DRIVE OTHER CAR COVERAGE –
BROADENED COVERAGE FOR NAMED INDIVIDUALS**

This endorsement modifies insurance provided under the following:

AUTO DEALERS COVERAGE FORM
BUSINESS AUTO COVERAGE FORM
MOTOR CARRIER COVERAGE FORM

With respect to coverage provided by this endorsement, the provisions of the Coverage Form apply unless modified by the endorsement.
This endorsement changes the policy effective on the inception date of the policy unless another date is indicated below.

Named Insured: _____
Endorsement Effective Date: _____

SCHEDULE

Name Of Individual: _____		
Covered Autos Liability Coverage	Limit: \$	Premium: \$
Auto Medical Payments	Limit: \$	Premium: \$
Comprehensive	Deductible: \$	Premium: \$
Collision	Deductible: \$	Premium: \$
Uninsured Motorists	Limit: \$	Premium: \$
Underinsured Motorists	Limit: \$	Premium: \$

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

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	<div data-bbox="1380 247 1421 283" data-label="Page-Header">31</div> <div data-bbox="337 283 1307 378" data-label="Section-Header"> <h2>Drive Other Car Coverage – Broadened Coverage for Named Individuals (CA 99 10 10 13)</h2> </div> <div data-bbox="349 409 1364 903" data-label="List-Group"> <ul style="list-style-type: none"> ▪ The individual named on the endorsement and resident spouse are insureds with respect to autos not owned, hired or borrowed by the Named Insured. ▪ Family members of the named individual are covered for Medical Payments and UM/UIM if those coverages are included on the endorsement. ▪ Coverage does not apply if the auto is owned by the named individual or a household member. ▪ Available coverages include Liability, Medical Payments, Comprehensive Collision, UM, UIM. </div>
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	<div data-bbox="1380 1161 1421 1197" data-label="Page-Header">32</div> <div data-bbox="337 1197 1153 1249" data-label="Section-Header"> <h2>Employees As Insureds (CA 99 33 10 13)</h2> </div> <div data-bbox="349 1333 1291 1564" data-label="Text"> <p><i>The following is added to the Section II – Covered Autos Liability Coverage, Paragraph A.1. Who Is An Insured provision:</i></p> <p><i>Any "employee" of yours is an "insured" while using a covered "auto" you don't own, hire or borrow in your business or your personal affairs</i></p> </div> <div data-bbox="349 1617 1250 1669" data-label="Section-Header"> <h2>Partners Or Members As Insureds (CA 05 25 11 20)</h2> </div> <div data-bbox="349 1711 1242 1806" data-label="Section-Header"> <h2>Non-Ownership Liability Coverage For Volunteers (CA 05 24 11 20)</h2> </div>
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Employees As Insureds (CA 99 33 10 13)

Example: John Jones is the president of Jones Distributing. John has a PAP with liability limits of \$250k/\$500k/\$100k. Jones Distributing has an unendorsed BAP with a liability limit of \$1,000,000 CSL and symbol 1 for Covered Autos Liability Coverage. While driving to visit a customer in his personal auto, John hits a pedestrian, causing serious injuries. The pedestrian sues John and Jones Distributing.

- 1st policy to pay – John's PAP pays \$250,000, covering both John and Jones Distributing.
- 2nd policy to pay – Jones Distributing's BAP covering only Jones Distributing
- Adding CA 99 33 10 13 to the BAP provides excess coverage for John.

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Employee Hired Autos (CA 20 54 11 20)

A. Changes In Covered Autos Liability Coverage

The following is added to the Who Is An Insured provision:

An "employee" of yours is an "insured" while operating an "auto" hired or rented under a contract or agreement in an "employee's" name, with your permission, while performing duties related to the conduct of your business.

...

For Hired Auto Physical Damage Coverage, any covered "auto" hired or rented by your "employee" under a contract in an "employee's" name, with your permission, while performing duties related to the conduct of your business is deemed to be a covered "auto" you own.

Volunteer Hired Autos (CA 04 39 11 20)

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Employee Hired Autos (CA 20 54 11 20)

Example: Carol Smith, project manager for XYZ Inc., travels by air to another state for a conference. XYZ has a BAP with symbol 1 for Covered Autos Liability Coverage and symbols 2+8 for Collision and Comprehensive. Carol rents a car at the airport, with XYZ's permission. The rental company will not rent the car to XYZ; the contract is in Carol's personal name.

- **Unendorsed BAP** - Because the car was not rented by XYZ, it is not a hired auto; it is a nonowned auto. XYZ has liability coverage, but no physical damage coverage. Carol has no coverage as she is not an insured for this exposure.
- **Policy with CA 20 54 11 20** - Carol is an insured with respect to the rented vehicle while performing duties related to the conduct of XYZ business. Physical damage applies while the vehicle is being used for the conduct of XYZ business.

Employee As Lessor (CA 99 47 10 13)

- A. Any "auto" described in the Schedule will be considered a covered "auto" you own and not a covered "auto" you hire, borrow or lease.*
- B. While any covered "auto" described in the Schedule is leased to you by one of your "employees", the Who Is An Insured provision under Covered Autos Liability Coverage is changed to include that "employee" as an "insured".*

Hired Auto Specified As Covered Auto You Own (CA 99 16 10 13)

- A. Any "auto" described in the Schedule will be considered a covered "auto" you own and not a covered "auto" you hire, borrow or lease.*
- B. While any covered "auto" described in the Schedule is rented or leased to you and is being used by or for you, its owner or anyone else from whom you rent or lease it is an "insured" but only for that covered "auto".*

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Designated Insureds for Covered Autos Liability Coverage (CA 20 48 10 13)

Each person or organization shown in the Schedule is an "insured" for Covered Autos Liability Coverage, but only to the extent that person or organization qualifies as an "insured" under the Who Is An Insured provision contained in Paragraph A.1. of Section II – Covered Autos Liability Coverage in the Business Auto and Motor Carrier Coverage Forms and Paragraph D.2. of Section I – Covered Autos Coverages of the Auto Dealers Coverage Form.

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Sample Insurer Additional Insured language

*The following is added to **SECTION II, A.1. - Who Is An Insured:***

Any person or organization whom you have agreed in a written contract, written agreement or written permit 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 ownership, maintenance or use of a covered "auto". This coverage shall be primary and non-contributory with respect to the additional "insured"...

Workers Compensation

	<div data-bbox="1372 247 1421 283" data-label="Page-Header">41</div> <div data-bbox="430 273 1274 373" data-label="Section-Header"> <h2>Workers Compensation and Employers Liability Insurance Policy (WC 00 00 00 C)</h2> </div> <div data-bbox="376 447 751 489" data-label="Text"> <p>Who is an Insured?</p> </div> <div data-bbox="427 539 1274 798" data-label="List-Group"> <ul style="list-style-type: none"> ▪ Named employers ▪ Partners in a partnership (only in their capacity as employers to the partnership's workforce) </div>
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	<div data-bbox="1372 1161 1421 1197" data-label="Page-Header">42</div> <div data-bbox="448 1186 1218 1295" data-label="Section-Header"> <h2>Alternate Employer Endorsement (WC 00 03 01 A)</h2> </div> <div data-bbox="329 1304 1391 1747" data-label="List-Group"> <ul style="list-style-type: none"> ▪ Attached to the policy of the regular employer to cover employees while working for a named special employer (the alternate employer) <div data-bbox="418 1434 1372 1642" data-label="Text"> <p><i>This endorsement applies only with respect to bodily injury to your employees while in the course of special or temporary employment by the alternate employer in the state named in Item 2 of the Schedule. Part One (Workers Compensation Insurance) and Part Two (Employers Liability Insurance) will apply as though the alternate employer is insured.</i></p> </div> ▪ This endorsement states that the insurer will not ask the alternate employer's insurer to share in a loss. </div>
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	<div data-bbox="414 262 1201 919"> <div> WORKERS COMPENSATION AND EMPLOYERS LIABILITY INSURANCE POLICY WC 00 03 01 A </div> <div>(Ed. 2-89)</div> <div> ALTERNATE EMPLOYER ENDORSEMENT </div> <p>This endorsement applies only with respect to bodily injury to your employees while in the course of special or temporary employment by the alternate employer in the state named in Item 2 of the Schedule. Part One (Workers Compensation Insurance) and Part Two (Employers Liability Insurance) will apply as though the alternate employer is insured. If an entry is shown in Item 3 of the Schedule the insurance afforded by this endorsement applies only to work you perform under the contract or at the project named in the Schedule.</p> <p>Under Part One (Workers Compensation Insurance) we will reimburse the alternate employer for the benefits required by the workers compensation law if we are not permitted to pay the benefits directly to the persons entitled to them.</p> <p>The insurance afforded by this endorsement is not intended to satisfy the alternate employer's duty to secure its obligations under the workers compensation law. We will not file evidence of this insurance on behalf of the alternate employer with any government agency.</p> <p>We will not ask any other insurer of the alternate employer to share with us a loss covered by this endorsement.</p> <p>Premium will be charged for your employees while in the course of special or temporary employment by the alternate employer.</p> <p>The policy may be canceled according to its terms without sending notice to the alternate employer.</p> <p>Part Four (Your Duties If Injury Occurs) applies to you and the alternate employer. The alternate employer will recognize our right to defend under Parts One and Two and our right to inspect under Part Six.</p> <div>Schedule</div> <div> <div>1. Alternate Employer</div> <div>Address</div> </div> <div>2. State of Special or Temporary Employment</div> <div>3. Contract or Project</div> </div>	43
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	<div data-bbox="448 1188 1218 1297"> <h2>Alternate Employer Endorsement (WC 00 03 01 A)</h2> </div> <div data-bbox="404 1392 1321 1743"> <p>Example: Cathy's Software is struggling to complete a project on time. Cathy contracts with a local staffing agency that will supply five temporary workers for a three-week period. Cathy requests that the staffing agency include Cathy's Software as an Alternate Employer so that any WC claims will be covered under the policy of the staffing agency.</p> </div>	44
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	<div>45</div> <div>Commercial General Liability CG 00 01 04 13</div>
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	<div>46</div> <div>Commercial General Liability (CG 00 01 04 13)</div> <div>Named Insured</div> <div><i>Throughout this policy the words "you" and "your" refer to the Named Insured shown in the Declarations, and any other person or organization qualifying as a Named Insured under this policy. The words "we", "us" and "our" refer to the company providing this insurance.</i></div>
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46

	<div data-bbox="1372 247 1421 283">47</div> <div data-bbox="475 273 1141 384" style="text-align: center;"> <h2>Commercial General Liability (CG 00 01 04 13)</h2> </div> <div data-bbox="332 415 609 451"> <h3>Named Insured</h3> </div> <div data-bbox="332 472 1380 903"> <p>3. Any organization you newly acquire or form, other than a partnership, joint venture or limited liability company, and over which you maintain ownership or majority interest, will qualify as a Named Insured if there is no other similar insurance available to that organization. However:</p> <ul style="list-style-type: none"> a. Coverage under this provision is afforded only until the 90th day after you acquire or form the organization or the end of the policy period, whichever is earlier; b. Coverage A does not apply to "bodily injury" or "property damage" that occurred before you acquired or formed the organization; and c. Coverage B does not apply to "personal and advertising injury" arising out of an offense committed before you acquired or formed the organization. </div>
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47

	<div data-bbox="1372 1159 1421 1194">48</div> <div data-bbox="365 1190 1310 1245" style="text-align: center;"> <h2>Newly Acquired or Formed Organizations</h2> </div> <div data-bbox="332 1276 1352 1556" style="border: 1px solid black; padding: 10px;"> <p>Aaron, Barney and Charlie own 100% of ABC Inc.</p> <p>ABC Inc. forms a new entity, DEF Inc.</p> <p>Is DEF Inc. a Named Insured? YES</p> <p>What if DEF were an LLC? NO</p> </div> <div data-bbox="332 1587 1385 1824" style="border: 1px solid black; padding: 10px;"> <p>Aaron, Barney and Charlie own 100% of ABC Inc.</p> <p>Aaron, Barney and Charlie form a new entity, DEF Inc.</p> <p>Is DEF Inc. a Named Insured? NO</p> </div>
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49

COMMERCIAL GENERAL LIABILITY
 CG 24 54 12 19

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

**AUTOMATIC INSURED STATUS FOR NEWLY
ACQUIRED OR FORMED LIMITED LIABILITY COMPANIES**

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

A. Paragraph 3. under **Section II – Who Is An Insured** is replaced by the following:

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

However:

a. Coverage under this provision is afforded only until the 90th day after you acquire or form the organization or the end of the policy period, whichever is earlier;

b. Coverage **A** does not apply to "bodily injury" or "property damage" that occurred before you acquired or formed the organization; and

c. Coverage **B** does not apply to "personal and advertising injury" arising out of an offense committed before you acquired or formed the organization.

B. The last paragraph of **Section II – Who Is An Insured** is replaced by the following:

No person or organization is an insured with respect to the conduct of any current or past:

1. Partnership or joint venture; or
2. Limited liability company, unless Paragraph **A.** above applies;

that is not shown as a Named Insured in the Declarations.

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50

Commercial General Liability (CG 00 01 04 13)

FORM OF BUSINESS:

☐ INDIVIDUAL

☐ PARTNERSHIP

☐ JOINT VENTURE

☐ TRUST

☐ LIMITED LIABILITY COMPANY

☐ ORGANIZATION, INCLUDING A CORPORATION (BUT NOT INCLUDING A PARTNERSHIP, JOINT VENTURE OR LIMITED LIABILITY COMPANY)

50

51

Commercial General Liability (CG 00 01 04 13)

SECTION II – WHO IS AN INSURED

1. *If you are designated in the Declarations as:*

a. *An individual, you and your spouse are insureds, but only with respect to the conduct of a business of which you are the sole owner.*

What if there is a d/b/a name?

- Patty Painter OR
- Patty Painter d/b/a Patty's Painting Company

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52

VIEW #1

Should the d/b/a be named?

- “Where insured purchases policy in trade name, policy will be viewed as if issued in his given name.” *O’Hanlon v. Hartford Accident & Indem. Co.*, 639 F.2d 1019 (3d Cir.1981)
- “In short, it is commonly held that ‘[a]n individual who does business under several different names, and whose insurance policies are written out to the individual doing business under certain trade names, is not a separate entity in his capacity in operating each of such businesses, but rather there is only one legal entity, the individual, for the purposes of insurance coverage.’” *Providence Wash. Ins. Co. v. Valley Forge Ins. Co.*, 42 Cal. App. 4th 1194, 1201 (Cal.Ct.App.1996)

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VIEW #2

Should the d/b/a be named?

53

Masonic Temple Ass'n of Quincy, Inc. v. Patel, 489 Mass. 549, 185 N.E.3d 888 (April 27, 2022)

- Named Insured was Dipika, Inc. dba Super 8. Jay Patel is the 100% owner of Dipika, Inc. The policy was written to cover the exposure of a Super 8 Motel.
- Jay Patel had a contract to buy a Masonic Temple and planned to convert one floor into a boutique hotel. Construction activities resulted in fire damage to the project. Suit was filed against Jay Patel and Dipika, Inc.
- Court said

Here, the ordinary understanding of the phrase "doing business as Super 8" suggests that the policy covers only liability arising from Dipika's activities that it undertakes doing business as a Super 8. Even if the phrase "doing business as" does not operate to create a separate legal entity...that does not preclude it from being used in the ordinary sense, as here, to describe the ambit of a policy's coverage.

53

Should the d/b/a be named?

54

Let's go back to Patty Painter. What if Patty needs Certificates of Insurance that show the d/b/a name?

- Patty Painter OR
- Patty Painter d/b/a Patty's Painting Company

54

Commercial General Liability (CG 00 01 04 13)

SECTION II – WHO IS AN INSURED

1. If you are designated in the Declarations as:

b. A partnership or joint venture, you are an insured. Your members, your partners, and their spouses are also insureds, but only with respect to the conduct of your business.

Should the names of the partners be included?

- Patty Painter and Tommy Taper d/b/a P&T Decorating (a partnership)
- P&T Decorating (a partnership)

55

Should the partners be named?

Bryan v. Continental Cas. Co., 587 F.2d 441 (D. Ariz. 1978)

- Named Insured was K.L. Engebretson & T. Townsend d/b/a: Engebretson-Grupe Co.
- Declarations showed the forms of business as partnership and individual.
- Insurer claimed its intention was to insure exposures of the partnership and individual exposures of K.L. Engebretson.
- Insured claimed its intention was to insure exposures of the partnership and of each of the individual partners.
- Court said:
Coverage extends to Tommy Townsend as an individual.

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Commercial General Liability (CG 00 01 04 13)

SECTION II – WHO IS AN INSURED

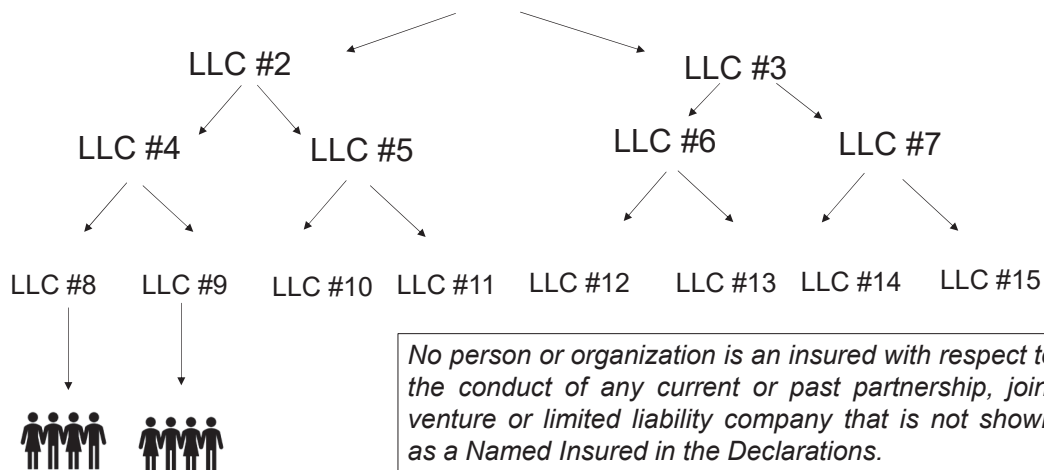
1. If you are designated in the Declarations as:

- c. A limited liability company, you are an insured. Your members are also insureds, but only with respect to the conduct of your business. Your managers are insureds, but only with respect to their duties as your managers.**

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LLCs

LLC #1 is the only Named Insured



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Commercial General Liability (CG 00 01 04 13)

SECTION II – WHO IS AN INSURED

1. If you are designated in the Declarations as:

- d. An organization other than a partnership, joint venture or limited liability company, you are an insured. Your "executive officers" and directors are insureds, but only with respect to their duties as your officers or directors. Your stockholders are also insureds, but only with respect to their liability as stockholders.*

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

Commercial General Liability (CG 00 01 04 13)

SECTION II – WHO IS AN INSURED

1. If you are designated in the Declarations as:

- e. A trust, you are an insured. Your trustees are also insureds, but only with respect to their duties as trustees.*

Commercial General Liability (CG 00 01 04 13)

SECTION II – WHO IS AN INSURED

2. Each of the following is also an insured:

- a. Your "volunteer workers" only while performing duties related to the conduct of your business, or your "employees", other than either your "executive officers" (if you are an organization other than a partnership, joint venture or limited liability company) or your managers (if you are a limited liability company), but only for acts within the scope of their employment by you or while performing duties related to the conduct of your business. However, none of these "employees" or "volunteer workers" are insureds for:

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Commercial General Liability (CG 00 01 04 13)

SECTION V – DEFINITIONS

5. "Employee" includes a "leased worker". "Employee" does not include a "temporary worker".
10. "Leased worker" means a person leased to you by a labor leasing firm under an agreement between you and the labor firm to perform duties related to the conduct of your business. "Leased worker" does not include a "temporary worker".
19. "Temporary worker" means a person who is furnished to you to substitute for a permanent "employee" on leave or to meet seasonal or short-term workload conditions.
20. "Volunteer worker" means a person who is not your "employee", and who donates his or her work and acts at the direction of and within the scope of duties determined by you, and is not paid a fee, salary or other compensation by you or anyone else for their work performed for you.

CG 00 01 04 13

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What is a temporary worker? We think we know, but.....

Nick's Brick Oven Pizza, Inc. v. Excelsior (NY – 2009)

Travis Schmidt injured Giuliana Mendola in an auto accident. At the time, Travis was delivering pizza in his personal vehicle for Nick's Pizza. Nick's Pizza submitted a claim to its GL carrier who denied coverage as the auto was owned or operated by an insured. Nick's Pizza claimed Travis was not an insured – he was a temporary worker hired to meet seasonal workload conditions during the busy summer months.

Supreme Court said the term "furnished" is ambiguous with two possible interpretations. 1) any 3rd party, including another employee, can refer a person to the insured to qualify that person as a temporary worker 2) only an employment referral agency or similar service can refer a person to qualify that person as a temporary worker.

Supreme Court also said it is unclear whether only those hired as substitutes must be furnished or whether those who meet seasonal or short-term needs must also be furnished.

Injuries to Workers and the CGL

CG 00 01 04 13 – Coverage A Exclusion

e. Employer's Liability

"Bodily injury" to:

(1) An "employee" of the insured arising out of and in the course of:

(a) Employment by the insured; or

(b) Performing duties related to the conduct of the insured's business; or

(2) The spouse, child, parent, brother or sister of that "employee" as a consequence of Paragraph (1) above.

This exclusion applies whether the insured may be liable as an employer or in any other capacity and to any obligation to share damages with or repay someone else who must pay damages because of the injury.

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

Injuries to Workers and the CGL

CG 24 04 24 10 93 Coverage for Injury to Leased Workers

With respect to the Employer's Liability exclusion (Section I) only, the definition of "employee" in the DEFINITIONS Section is replaced by the following: "Employee" does not include a "leased worker" or a "temporary worker".

Sample Endorsement

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.

Employees/Volunteers - Exceptions

However, none of these "employees" or "volunteer workers" are insureds for:

(1) "Bodily injury" or "personal and advertising injury":

(a) To you, to your partners or members (if you are a partnership or joint venture), to your members (if you are a limited liability company), to a co-"employee" while in the course of his or her employment or performing duties related to the conduct of your business, or to your other "volunteer workers" while performing duties related to the conduct of your business;

(b) To the spouse, child, parent, brother or sister of that co-"employee" or "volunteer worker" as a consequence of Paragraph (1)(a) above;

(c) For which there is any obligation to share damages with or repay someone else who must pay damages because of the injury described in Paragraph (1)(a) or (b) above; or

Employees/Volunteers - Exceptions

However, none of these "employees" or "volunteer workers" are insureds for:

(1) "Bodily injury" or "personal and advertising injury":

- d. Arising out of his or her providing or failing to provide professional health care services.*

Non-Standard Endorsement Incidental Malpractice

Subparagraph 2.a.(1)(d) under SECTION II - WHO IS AN INSURED is deleted in its entirety and replaced with the following:

(d) Arising out of his or her providing or failing to provide professional health care services.

This does not apply to nurses, emergency medical technicians or paramedics if you are not in the business or occupation of providing any such professional services.

This also does not apply to "bodily injury" caused by cardio-pulmonary resuscitation or first aid services administered by a co-"employee".

Employees/Volunteers - Exceptions

However, none of these "employees" or "volunteer workers" are insureds for:

(2) "Property damage" to property:

(a) Owned, occupied or used by;

(b) Rented to, in the care, custody or control of, or over which physical control is being exercised for any purpose by;

you, any of your "employees", "volunteer workers", any partner or member (if you are a partnership or joint venture), or any member (if you are a limited liability company).

Commercial General Liability (CG 00 01 04 13)

SECTION II – WHO IS AN INSURED

2. Each of the following is also an insured:

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

Commercial General Liability (CG 00 01 04 13)

SECTION II – WHO IS AN INSURED

2. Each of the following is also an insured:

- c. Any person or organization having proper temporary custody of your property if you die, but only:*
 - (1) With respect to liability arising out of the maintenance or use of that property; and*
 - (2) Until your legal representative has been appointed.*
- d. Your legal representative if you die, but only with respect to duties as such. That representative will have all your rights and duties under this Coverage Part.*

Commercial General Liability (CG 00 01 04 13)

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

What should you do?

Jennifer and Kimberly have operated their carpentry business for years as a partnership. They decide to incorporate and call your agency to inform you of the change. What should you do?

- a. Change the NI from the partnership to the corporation
- b. Add the corporation as a NI, leaving on the partnership

Commercial General Liability (CG 00 01 04 13)

Coverage A Insuring Agreement

This insurance applies to “bodily injury” and “property damage” only if:

- (1) The “bodily injury or property damage is caused by an “occurrence” that takes place in the “coverage territory” ;*
- (2) The “bodily injury” or “property damage” occurs during the policy period; and...*

Insuring Exposures of Entities No Longer in Operation

- Add previous entities as a Named Insured on the policy of the successor entity
- Discontinued Products/Completed Operations Coverage
 - Recommend AND Quote
- Carrier-specific solutions

75

Insuring Exposures of Entities No Longer in Operation

Non-standard endorsement

The following is added to Section II - WHO IS AN INSURED With respect to "your work", you are an insured for your liability arising out of the conduct of any partnership, joint venture or limited liability company of which you are (or were) a partner or member, even though this partnership, joint venture or limited liability company is not shown as a Named Insured in the Declarations. This coverage is excess over any available liability insurance purchased specifically to insure the partnership or joint venture. This coverage will not inure to the benefit of any other party except you.

76

Statute of Repose

- A law that extinguishes a right of action after a specified period of time has elapsed, regardless of whether the cause of action has accrued. Courts generally find that statutes of repose begin to run without interruption once the triggering event occurs.
- A statute of repose differs from a statute of limitations because a statute of limitations generally does not begin to run until the injury or damage giving rise to the cause of action occurs. Equitable principles reflected in doctrines, such as the equitable tolling and the fraudulent concealment doctrines, also generally do not toll a statute of repose because repose provisions set an outer limit independent of the plaintiff's knowledge. Both types of statutes may apply to the same claim.

THOMSON REUTERS
PRACTICAL LAW

77

Commercial General Liability (CG 00 01 04 13)

Is there coverage if one insured sues another insured?

Separation of Insureds

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

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

78

Cross Suits Exclusions

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.

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

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

This insurance does not apply to:

Cross Suits

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”.

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

This insurance does not apply to:

Cross Suits

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”.

Cross Suits Exclusions

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.

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Cross Suits Exclusions

Sample Language

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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Commercial General Liability Additional Insured Endorsements

83

CG 20 10 Example 11/85

**CG 20 10 – Additional Insured- Owners, Lessees or
Contractors (Form B)**

Arising ~~X~~ 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

84

	<div data-bbox="1372 247 1421 283" data-label="Page-Header">85</div> <div data-bbox="673 279 982 331" data-label="Section-Header"> <h2>10/93 change</h2> </div> <div data-bbox="438 409 1177 504" data-label="Section-Header"> <h3>CG 20 10 – Additional Insured- Owners, Lessees or Contractors (Form B)</h3> </div> <div data-bbox="438 571 1291 730" data-label="Text"> <p>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 ongoing operations performed for that insured.</p> </div> <div data-bbox="1006 772 1247 808" data-label="Text"> <p>CG 20 10 10 93</p> </div>
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85

	<div data-bbox="1372 1161 1421 1197" data-label="Page-Header">86</div> <div data-bbox="467 1188 1193 1245" data-label="Section-Header"> <h2>10/01 change – language added</h2> </div> <div data-bbox="349 1281 1328 1360" data-label="Text"> <p><i>This insurance does not apply to “bodily injury” or “property damage” occurring after.....</i></p> </div> <div data-bbox="349 1396 1396 1554" data-label="Text"> <p><i>(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 site of the covered operations has been completed; or</i></p> </div> <div data-bbox="349 1587 1396 1743" data-label="Text"> <p><i>(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.</i></p> </div> <div data-bbox="349 1785 581 1822" data-label="Text"> <p>CG 20 10 10 01</p> </div>
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86

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



07/04 change

From ISO Circular—General Liability LI-GL-2004-147, "Multistate Revisions to Additional Insured Endorsements," filed March 12, 2004.

Some courts have ruled that, in the absence of specific language limiting coverage, the current additional insured endorsements do respond to injury or damage arising from the additional insured's sole negligence.

*Because the phrase "arising out of" has been interpreted broadly by some courts, we are revising several of the additional insured endorsements to add specific language to **provide an additional insured with coverage for their vicarious or contributory negligence only.** The additional insured will only have coverage for bodily injury, property damage or personal and advertising injury that is caused in whole or in part by the acts or omissions of either the Named Insured or those acting on behalf of the Named Insured. **A major effect of that wording will be to prevent any alleged coverage for the additional insured's sole negligence.***

What does the 07/04 language mean?

We are still figuring this out – Various views:

- There must be a causal connection between the Named Insured's acts or omissions and the loss.
- Acts or omissions of Named Insured must be the proximate cause of the loss.
- Named insured must be negligent or otherwise at fault.
- This is vicarious liability only coverage.

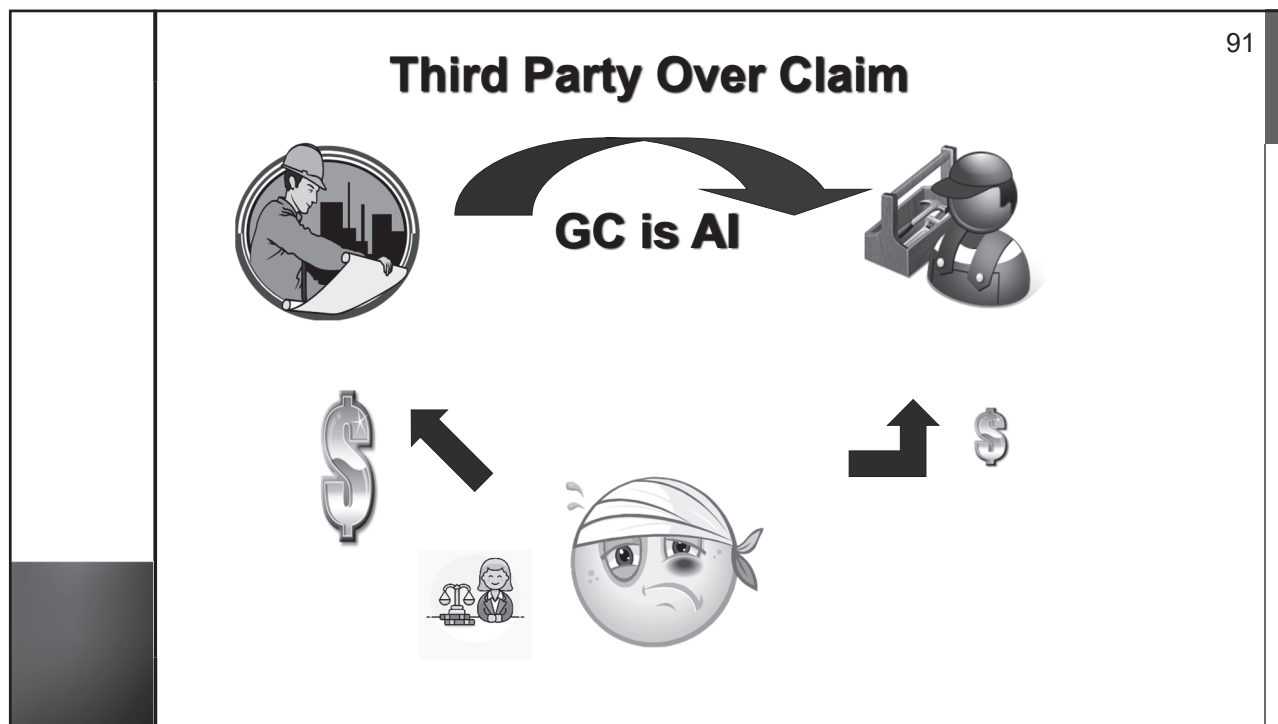
07/04 ≠ Vicarious Liability Only

First Mercury Ins. Co. v. Shawmut Woodworking & Supply, Inc., 3:12CV1096 JBA, 2014 WL 5519831, at *1 (D. Conn. Oct. 31, 2014)

- If "the parties had intended coverage to be limited to vicarious liability, language clearly embodying that intention was available."

American Guarantee & Liab. Ins. Co. v. Norfolk S. Ry. Co., 278 F. Supp. 3d 1025, 1042 (E.D. Tenn. 2017)

- ...use of the words 'caused ... in part' can only suggest that coverage extends beyond mere vicarious liability arising out of the Named Insured's acts or omissions. Instead, the language covers the Additional Insured for its own negligence so long as the Named Insured was also a contributing cause of the injury or damage giving rise to liability.




91

92

What Do You Think?

Named Insured subcontractor includes general contractor as Additional Insured. An employee of the subcontractor is injured and sues the general contractor. There is no allegation of wrongdoing against the subcontractor due to the exclusive remedy of workers compensation. Is there coverage for the general contractor under the CG 20 10 07 04 and later forms?



4/8 Corners or Extrinsic Evidence

92

Four Corners Exception

Even in a four corners state, there may be exceptions. In this case, the Named Insured's injured employee did not name the employer in its suit. The suit named the project owner/Additional Insured.

The four corners rule—even under Pennsylvania's strict construction—does not permit an insurer to make its coverage decision with blinders on, disclaiming any knowledge of coverage-triggering facts. Quite the opposite, knowledge that an injured employee has a claim under the Workers' Compensation Act must be factored into a determination of whether his allegations in an underlying tort complaint potentially trigger an obligation on an insurer to provide coverage for a defendant in the underlying case.

If an insurer fails to account for the Workers' Compensation Act, it may construe the factual allegations of an underlying complaint too narrowly, and the insurer who refuses to defend at the outset does so at its own peril.

Ramara, Inc. v. Westfield Ins. Co., 69 F. Supp. 3d 490 (E.D. Pa. 2014)

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04/13 Changes

- The insurance afforded the AI applies only to the extent permitted by law.

N.M. Stat. § 56-7-1 (2023)

*A provision in a construction contract that requires one party to the contract to indemnify, hold harmless, **insure** or defend the other party to the contract, including the other party's employees or agents, against liability, claims, damages, losses or expenses, including attorney fees, arising out of bodily injury to persons or damage to property caused by or resulting from, in whole or in part, the negligence, act or omission of the indemnitee, its officers, employees or agents, is void, unenforceable and against the public policy of the state.*

94

04/13 Changes

- If coverage is required by contract or agreement, the insurance afforded the AI will be no broader than the contract or agreement requires.
- If coverage is required by contract or agreement, the limits available to the AI will be no higher than the contract or agreement requires.

How clear is the contract?

95

2013 Changes – Concern?

The contract

The Contractor shall cause the commercial liability coverage required by the Contract Documents to include: (1) 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 operations; and (2) 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. [Emphasis added.]

The AI endorsement

Additional insured coverage applies "only with respect to liability for [injury] caused in whole or in part by [the Contractor's] acts or omissions or the acts or omissions of those acting on [the Contractor's] behalf."

Charter Oak Fire Ins. Co. v. Zurich Am. Ins. Co., No. 19-cv-4212 (LJL), 2020 U.S. Dist. LEXIS 74002 (S.D.N.Y. Apr. 27, 2020)

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Sample Contract Language

Notwithstanding any contrary provisions contained in this Exhibit, Contractor and Subcontractor agree that the limits of coverage provided in this Exhibit are minimum coverages and shall not be construed to limit the coverage available to any additional insured to an amount less than the full limits of the policies required pursuant to this Exhibit.

Is this a problem?

Sample Contract Language

Contract requires that subcontractor carry \$1m CGL + \$5 m Umbrella and include general contractor as Additional Insured on both. Sub carries \$2m CGL + \$4m Umbrella. Additional insured coverage applies on both per standard current ISO language.

04/13 Changes

4th change in some forms

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 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

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

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

1. Required by the contract or agreement; or
2. Available under the applicable Limits of Insurance ~~shown in the Declarations;~~ whichever is less. ~~This endorsement shall not increase the applicable Limits of Insurance shown in the Declarations.~~

Who Wants What and Why?

- **CG 20 10 11 85** – May defend/pay claims involving the sole negligence of the Additional Insured + covers ongoing and completed operations
- **CG 20 10 10 01** – May defend/pay claims involving the sole negligence of the Additional Insured
- **CG 20 10 07 04** – Named insured's acts or omissions (or the acts or omissions of one acting on the Named Insured's behalf) must have caused the loss, at least in part. Coverage is not limited to what a contract requires.
- **CG 20 10 04 13** – If there is a contract, coverage is limited to the breadth of coverage and the amount of coverage required in the contract.

CG 20 10 11 85 or its equivalent

101

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.

102

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*

103

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.

104

	<div data-bbox="1377 247 1425 279" data-label="Page-Header">105</div> <div data-bbox="527 279 1127 321" data-label="Section-Header"> <h2>Additional Insured – Vendors</h2> </div> <div data-bbox="389 472 698 514" data-label="Section-Header"> <h3>CG 20 15 12 19</h3> </div> <div data-bbox="427 573 1276 772" data-label="List-Group"> <ul style="list-style-type: none"> ▪ Scheduled vendors ▪ Scheduled products ▪ Products must be distributed or sold in the regular course of the vendor's business </div>
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105

	<div data-bbox="1377 1161 1425 1192" data-label="Page-Header">106</div> <div data-bbox="527 1192 1127 1234" data-label="Section-Header"> <h2>Additional Insured – Vendors</h2> </div> <div data-bbox="362 1293 1094 1333" data-label="Section-Header"> <h3>CG 20 44/CG 20 15 12 19 (additional exclusions)</h3> </div> <div data-bbox="409 1333 1261 1791" data-label="List-Group"> <ul style="list-style-type: none"> ▪ 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 </div>
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106

Additional Insured Lessors

107

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.

108

	<div data-bbox="1377 247 1425 279" data-label="Page-Header">109</div> <div data-bbox="386 279 1279 373" data-label="Section-Header"> <h2>Additional Insured - Managers or Lessors of Premises</h2> </div> <div data-bbox="394 390 638 426" data-label="Text"> <p>CG 20 11 12 19</p> </div> <div data-bbox="394 485 1295 873" data-label="Text"> <p><i>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.....</i></p> </div>
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109

	<div data-bbox="1377 1161 1425 1192" data-label="Page-Header">110</div> <div data-bbox="386 1192 1279 1287" data-label="Section-Header"> <h2>Additional Insured - Managers or Lessors of Premises</h2> </div> <div data-bbox="394 1325 638 1360" data-label="Text"> <p>CG 20 11 12 19</p> </div> <div data-bbox="394 1419 941 1455" data-label="Text"> <p><i>This insurance does not apply to:</i></p> </div> <div data-bbox="394 1461 1299 1724" data-label="List-Group"> <ol style="list-style-type: none"> <i>1. Any "occurrence" which takes place after you cease to be a tenant in that premises.</i> <i>2. Structural alterations, new construction or demolition operations performed by or on behalf of the person(s) or organization(s) shown in the Schedule.</i> </div>
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110

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.

	<div data-bbox="1377 254 1422 279" data-label="Page-Header">113</div> <div data-bbox="381 279 1279 373" data-label="Section-Header"> <h2>Additional Insured - Owners or Other Interests from Whom Land Has Been Leased</h2> </div> <div data-bbox="394 415 636 449" data-label="Text"> <p>CG 20 24 12 19</p> </div> <div data-bbox="394 506 940 546" data-label="Text"> <p><i>This insurance does not apply to:</i></p> </div> <div data-bbox="394 550 1299 810" data-label="List-Group"> <ol style="list-style-type: none"> <i>1. Any "occurrence" which takes place after you cease to lease that land;</i> <i>2. Structural alterations, new construction or demolition operations performed by or on behalf of the person(s) or organization(s) shown in the Schedule.</i> </div>
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113

	<div data-bbox="1377 1167 1422 1192" data-label="Page-Header">114</div> <div data-bbox="444 1192 1214 1287" data-label="Section-Header"> <h2>Additional Insured - Lessor of Leased Equipment</h2> </div> <div data-bbox="394 1350 1201 1390" data-label="Text"> <p>Additional Insured - Lessor of Leased Equipment</p> </div> <div data-bbox="537 1394 837 1432" data-label="List-Group"> <ul style="list-style-type: none"> ▪ CG 20 28 12 19 </div> <div data-bbox="394 1484 1287 1608" data-label="Text"> <p>Additional Insured - Lessor of Leased Equipment – Automatic Status When Required in Lease Agreement With You</p> </div> <div data-bbox="537 1617 837 1654" data-label="List-Group"> <ul style="list-style-type: none"> ▪ CG 20 34 12 19 </div>
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114

Additional Insured - Lessor of Leased Equipment

- *...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.*

115

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.

116

	<div data-bbox="1369 247 1424 279" data-label="Page-Header">117</div> <div data-bbox="446 277 1213 331" data-label="Section-Header"> <h2>Mortgagee, Assignee or Receiver</h2> </div> <div data-bbox="334 369 570 405" data-label="Text"> <p>CG 20 18 12 19</p> </div> <div data-bbox="334 449 1382 667" data-label="Text"> <p><i>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.</i></p> </div> <div data-bbox="334 722 1383 854" data-label="Text"> <p><i>B. This insurance does not apply to structural alterations, new construction and demolition operations performed by or for that person or organization.</i></p> </div>
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117

	<div data-bbox="1369 1161 1424 1192" data-label="Page-Header">118</div> <div data-bbox="435 1421 1182 1533" data-label="Section-Header"> <h2>Owners, Lessees or Contractors (Contracting Risks)</h2> </div>
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118

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****A. Ongoing Operations****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; and
- 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:

- 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.

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

B. Completed Operations**Section II – Who Is An Insured** is amended to include as an additional insured:

- Any person or organization when you and such person or organization have agreed in a written contract or written agreement that such person or organization be added as an additional insured on your policy; and
- 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 but 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 under the written contract or written agreement and included in the "products-completed operations hazard".



Carrier Specific Form (cont'd)

C. Conform to Contract Provisions

With respect to the insurance afforded to any additional insured under this endorsement, the following applies:

1. Ongoing Operations

When an additional insured under Paragraph A.1. of this endorsement requires in the written contract or written agreement between you and that additional insured that additional insured coverage is to be the equivalent of that provided by:

- a. Additional Insured – Owners, Lessees Or Contractors – Scheduled Person Or Organization CG 20 10 10 01 or CG 20 10 03 97; or
- b. Additional Insured -- Owners, Lessees Or Contractors (Form B) – CG 20 10 10 93 or CG 20 10 11 85;

or if such written agreement requires you to provide additional insured coverage *arising out of* your ongoing operations, then the phrase *caused, in whole or in part by* in Paragraph A. of this endorsement is replaced by the phrase *arising out of*.

2. Completed Operations

When an additional insured under Paragraph B.1. of this endorsement requires in the written contract or written agreement that additional insured coverage is to be the equivalent of that provided by:

- a. Additional Insured – Owners, Lessees Or Contractors – Completed Operations – CG 20 37 10 01;
- b. Additional Insured -- Owners, Lessees Or Contractors (Form B) – CG 20 10 11 85;

or if such written agreement requires you to provide additional insured coverage *arising out of* "your work", then the phrase *caused, in whole or part by* in Paragraph B. of this endorsement is replaced by the phrase *arising out of*.

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121

Carrier Specific Form (cont'd)

E. Conditions and Limitations

1. Coverage under Paragraph B. **Completed Operations** and Paragraph 2. **Completed Operations** under Paragraph C. **Conform to Contract Provisions** does not apply unless the written contract or written agreement described in Paragraph B.1. of this endorsement requires you to provide coverage for completed operations.
2. Coverage afforded to an additional insured under this endorsement applies only to the extent permitted by law and will not be broader than that required by the written contract or written agreement described in Paragraph A.1. or B.1. of this endorsement between you and such additional insured.
3. With respect to the insurance afforded to an additional insured under this endorsement, the following is added to **Section III – Limits of Insurance**:

The most we will pay on behalf of an additional insured afforded coverage under this endorsement is the amount of insurance:

- a. Required by the written contract or written agreement described in Paragraph A.1. or B.1. of this endorsement; or
- b. Available under the applicable Limits of Insurance shown in the Declarations;

whichever is less.

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

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122

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 included.

	<div data-bbox="1377 254 1422 279" data-label="Page-Header">125</div> <div data-bbox="402 279 1260 363" data-label="Section-Header"> <p align="center">Additional Insured - Owners, Lessees or Contractors – Scheduled Person or Organization</p> </div> <div data-bbox="342 401 566 434" data-label="Text"> <p>CG 20 10 12 19</p> </div> <div data-bbox="342 478 1380 552" data-label="Text"> <p><i>This insurance does not apply to "bodily injury" or "property damage" occurring after:</i></p> </div> <div data-bbox="342 556 1380 896" data-label="List-Group"> <ol style="list-style-type: none"> <i>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</i> <i>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.</i> </div>
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125

	<div data-bbox="1377 1167 1422 1192" data-label="Page-Header">126</div> <div data-bbox="386 1192 1276 1304" data-label="Section-Header"> <p align="center">Additional Insured - Owners, Lessees or Contractors – Automatic Status When Required in a Written Construction Agreement With You</p> </div> <div data-bbox="355 1346 618 1381" data-label="Text"> <p>CG 20 33 12 19</p> </div> <div data-bbox="355 1436 1393 1692" data-label="Text"> <p><i>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.</i></p> </div>
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126

	<div data-bbox="1377 247 1425 279" data-label="Page-Header">127</div> <div data-bbox="483 279 1179 321" data-label="Section-Header"> <h3>CG 20 33 – Privity of Contract Required</h3> </div> <div data-bbox="394 394 1273 558" data-label="Text"> <p>In <i>Westfield Ins. Co. v. FCL Builders, Inc.</i>, 407 Ill. App. 3d 730 (Ill. App. Ct. 1st Dist. 2011), the Court found that a “blanket additional insured” applies only if there is a direct written agreement between parties. “Flow down” provisions would not trigger additional insured coverage:</p> </div> <div data-bbox="427 594 1289 846" data-label="Text"> <p>“Notably, the provision does not refer to <u>any</u> person or organization. By repeatedly using the terms “such” instead of “any,” the provision necessarily requires that, in order to qualify as an additional insured, an entity must enter into a direct written agreement with JAK [the sub-subcontractor] listing them as additional insured.” <i>Westfield Ins. Co. v. FCL Builders, Inc.</i>, 407 Ill. App. 3d 730 (Ill. App. Ct. 1st Dist. 2011) [Emphasis added]</p> </div>
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127

	<div data-bbox="1377 1161 1425 1192" data-label="Page-Header">128</div> <div data-bbox="448 1192 1214 1234" data-label="Section-Header"> <h3>CG 20 33 – Privity of Contract Not Required</h3> </div> <div data-bbox="407 1350 1292 1654" data-label="Text"> <p>In <i>First Mercury Ins. Co. v. Shawmut Woodworking & Supply, Inc.</i>, 48 F. Supp. 3d 158, 160-175 (D. Conn. 2014), the court held that the agreement to provide additional insured coverage can be memorialized in separate contracts without direct contractual privity. The court noted that nothing in the endorsement's language required direct contractual privity, and the court declined to read in additional terms, such as “direct” contract or have agreed “with each other.”</p> </div>
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128

	<div data-bbox="1377 254 1422 279" data-label="Page-Header">129</div> <div data-bbox="386 279 1276 390" data-label="Section-Header"> <p>Additional Insured - Owners, Lessees or Contractors – Automatic Status When Required in a Written Construction Agreement With You</p> </div> <div data-bbox="355 434 618 472" data-label="Section-Header"> <p>CG 20 33 12 19</p> </div> <div data-bbox="355 516 1370 879" data-label="List-Group"> <ul style="list-style-type: none"> ▪ Named Insured must be performing operations for the Additional Insured. ▪ Contract must be between Named Insured and Additional Insured. (privity of contract issue) <ul style="list-style-type: none"> - Note: This has been interpreted differently in different jurisdictions ▪ Ongoing operations coverage only ▪ Professional Liability exclusion applies. ▪ 07/04 and 04/13 language is included. </div>
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129

	<div data-bbox="1377 1167 1422 1192" data-label="Page-Header">130</div> <div data-bbox="386 1192 1276 1304" data-label="Section-Header"> <p>Additional Insured - Owners, Lessees or Contractors – Automatic Status When Required in a Written Construction Agreement With You</p> </div> <div data-bbox="355 1348 618 1386" data-label="Section-Header"> <p>CG 20 33 12 19</p> </div> <div data-bbox="355 1430 824 1463" data-label="Text"> <p><i>This insurance does not apply to:</i></p> </div> <div data-bbox="355 1467 1395 1799" data-label="List-Group"> <ol style="list-style-type: none"> 1. <i>"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:</i> <ol style="list-style-type: none"> a. <i>The preparing, approving, or failing to prepare or approve, maps, shop drawings, opinions, reports, surveys, field orders, change orders or drawings and specifications; or</i> b. <i>Supervisory, inspection, architectural or engineering activities.</i> </div>
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130

	<div data-bbox="1377 247 1425 279" data-label="Page-Header">131</div> <div data-bbox="386 279 1279 394" data-label="Section-Header"> <p>Additional Insured - Owners, Lessees or Contractors – Automatic Status When Required in a Written Construction Agreement With You</p> </div> <div data-bbox="354 436 620 478" data-label="Section-Header"> <p>CG 20 33 12 19</p> </div> <div data-bbox="354 520 1383 804" data-label="Text"> <p><i>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</i></p> </div>
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131

	<div data-bbox="1377 1161 1425 1192" data-label="Page-Header">132</div> <div data-bbox="410 1192 1253 1308" data-label="Section-Header"> <p>Additional Insured - Owners, Lessees or Contractors – Automatic Status For Other Parties When Required in a Written Construction Agreement</p> </div> <div data-bbox="354 1350 922 1392" data-label="Section-Header"> <p>CG 20 38 12 19 (A better choice)</p> </div> <div data-bbox="354 1434 812 1476" data-label="Text"> <p>(paragraph 1) CG 20 33 12 19 +</p> </div> <div data-bbox="354 1518 1360 1654" data-label="Text"> <p><i>(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....</i></p> </div> <div data-bbox="354 1707 1369 1791" data-label="Text"> <p><i>In the performance of your ongoing operations for the additional insured described in Paragraph 1. or 2.</i></p> </div>
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132

	<div data-bbox="1365 247 1424 279" data-label="Page-Header">133</div> <div data-bbox="406 275 1250 388" data-label="Section-Header"> <h2 style="text-align: center;">Additional Insured - Owners, Lessees or Contractors – Automatic Status For Other Parties When Required in a Written Construction Agreement</h2> </div> <div data-bbox="345 478 514 512" data-label="Text"> <p>04/13 form</p> </div> <div data-bbox="557 403 1037 449" data-label="Text"> <p>A. Section II – Who Is An Insured is amended to include as an additional insured:</p> </div> <div data-bbox="587 455 1037 680" data-label="List-Group"> <ol style="list-style-type: none"> 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. </div> <div data-bbox="584 684 1037 777" data-label="Text"> <p>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:</p> </div> <div data-bbox="617 779 1037 854" data-label="List-Group"> <ol style="list-style-type: none"> a. Your acts or omissions; or b. The acts or omissions of those acting on your behalf; </div> <div data-bbox="584 858 1037 905" data-label="Text"> <p style="border: 1px solid black; border-radius: 50%; padding: 5px; display: inline-block;">in the performance of your ongoing operations for the additional insured.</p> </div>
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133

	<div data-bbox="1365 1161 1424 1192" data-label="Page-Header">134</div> <div data-bbox="406 1188 1250 1302" data-label="Section-Header"> <h2 style="text-align: center;">Additional Insured - Owners, Lessees or Contractors – Automatic Status For Other Parties When Required in a Written Construction Agreement</h2> </div> <div data-bbox="345 1392 514 1425" data-label="Text"> <p>12/19 form</p> </div> <div data-bbox="584 1327 1037 1371" data-label="Text"> <p>A. Section II – Who Is An Insured is amended to include as an additional insured:</p> </div> <div data-bbox="613 1375 1037 1589" data-label="List-Group"> <ol style="list-style-type: none"> 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. </div> <div data-bbox="610 1593 1037 1680" data-label="Text"> <p>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:</p> </div> <div data-bbox="641 1682 1037 1755" data-label="List-Group"> <ol style="list-style-type: none"> a. Your acts or omissions; or b. The acts or omissions of those acting on your behalf; </div> <div data-bbox="610 1757 1037 1820" data-label="Text"> <p style="border: 1px solid black; border-radius: 50%; padding: 5px; display: inline-block;">in the performance of your ongoing operations for the additional insured described in Paragraph 1. or 2. above.</p> </div>
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134

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.
- 07/04 and 04/13 language is included.
- 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.”

135

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.

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	<div data-bbox="1377 247 1425 279" data-label="Page-Header">137</div> <div data-bbox="466 279 1190 363" data-label="Section-Header"> <p>Additional Insured - Owners, Lessees or Contractors – Completed Operations</p> </div> <div data-bbox="334 401 607 441" data-label="Section-Header"> <p>CG 20 37 12 19</p> </div> <div data-bbox="334 489 1385 800" data-label="Text"> <p><i>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".....</i></p> </div> <div data-bbox="334 844 797 888" data-label="Text"> <p>04/13 language is included.</p> </div>
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137

	<div data-bbox="1377 1161 1425 1192" data-label="Page-Header">138</div> <div data-bbox="376 1188 1281 1304" data-label="Section-Header"> <p>Additional Insured - Owners, Lessees or Contractors – Automatic Status When Required in a Written Construction Agreement With You (Completed Operations)</p> </div> <div data-bbox="349 1344 621 1383" data-label="Section-Header"> <p>CG 20 39 12 19</p> </div> <div data-bbox="349 1428 1401 1684" data-label="Text"> <p><i>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.</i></p> </div> <div data-bbox="349 1728 1239 1772" data-label="Text"> <p>Completed Operations version of the CG 20 33 12 19</p> </div>
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138

	<div data-bbox="1377 247 1425 279" data-label="Page-Header">139</div> <div data-bbox="386 279 1279 394" data-label="Section-Header"> <p>Additional Insured - Owners, Lessees or Contractors – Automatic Status When Required in a Written Construction Agreement With You (Completed Operations)</p> </div> <div data-bbox="354 447 621 489" data-label="Section-Header"> <p>CG 20 39 12 19</p> </div> <div data-bbox="354 525 1360 871" data-label="List-Group"> <ul style="list-style-type: none"> ▪ 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. ▪ 07/04 and 04/13 language is included. </div>
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139

	<div data-bbox="1377 1161 1425 1192" data-label="Page-Header">140</div> <div data-bbox="394 1192 1263 1308" data-label="Section-Header"> <p>Additional Insured - Owners, Lessees or Contractors – Automatic Status For Other Parties When Required in a Written Construction Agreement (Completed Operations)</p> </div> <div data-bbox="354 1350 922 1392" data-label="Section-Header"> <p>CG 20 40 12 19 (A better choice)</p> </div> <div data-bbox="354 1423 1360 1581" data-label="Text"> <p>(paragraph 1) CG 20 3912 19 + (paragraph 2) <i>Any other person or organization you are required to add as an additional insured under the contract or agreement described in Paragraph 1. above....</i></p> </div> <div data-bbox="354 1623 1393 1749" data-label="Text"> <p><i>....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”.</i></p> </div> <div data-bbox="354 1785 1055 1822" data-label="Text"> <p>Completed Operations version of the CG 20 38 12 19.</p> </div>
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140

	<div data-bbox="1377 254 1421 279" data-label="Page-Header">141</div> <div data-bbox="399 279 1261 426" data-label="Section-Header"> <p align="center">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</p> </div> <div data-bbox="542 443 1068 913" data-label="Text"> <p>A. Section II – Who Is An Insured is amended to include as an additional insured:</p> <ol style="list-style-type: none"> 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. <p>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".</p> </div>
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141

	<div data-bbox="1377 1167 1421 1192" data-label="Page-Header">142</div> <div data-bbox="375 1192 1286 1314" data-label="Section-Header"> <p align="center">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</p> </div> <div data-bbox="357 1350 618 1386" data-label="Section-Header"> <p>CG 20 40 12 19</p> </div> <div data-bbox="357 1428 1339 1675" data-label="List-Group"> <ul style="list-style-type: none"> ▪ Named Insured must have performed operations for any Additional Insured. ▪ Completed operations coverage only ▪ Professional Liability exclusion applies. ▪ 07/04 and 04/13 language is included. </div>
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142

	<div data-bbox="1365 247 1425 279" data-label="Page-Header">143</div> <div data-bbox="617 275 1086 319" data-label="Section-Header"> <h2>Plus Sign/Dagger Classes</h2> </div> <div data-bbox="371 384 953 417" data-label="Section-Header"> <h3>From ISO's Commercial Lines Manual</h3> </div> <div data-bbox="371 459 1359 875" data-label="Text"> <p>For classifications with a plus (+) symbol (as shown in the Premium Base column under General Liability insurance in the Classification Table, and the Declarations or policy Schedule states "Products-completed operations are subject to the General Aggregate Limit") to be added as an additional insured as an owner, lessee or contractor on a policy covering a contractor or subcontractor, with respect to liability arising out of the Named Insured's ongoing operations and completed operations performed for that additional insured, use Additional Insured – Owners, Lessees Or Contractors – Completed Operations Subject To The General Aggregate Endorsement CG 20 41.</p> </div>
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143

	<div data-bbox="1365 1161 1425 1190" data-label="Page-Header">144</div> <div data-bbox="617 1186 1086 1232" data-label="Section-Header"> <h2>Plus Sign/Dagger Classes</h2> </div> <div data-bbox="449 1329 839 1365" data-label="Section-Header"> <h3>CG 00 01 04 13 Definition</h3> </div> <div data-bbox="449 1413 1185 1453" data-label="Section-Header"> <h4>"Products-completed operations hazard":.....</h4> </div> <div data-bbox="449 1453 1242 1528" data-label="Text"> <p>b. Does not include "bodily injury" or "property damage" arising out of:</p> </div> <div data-bbox="506 1528 1253 1703" data-label="List-Group"> <ul style="list-style-type: none"> (3) Products or operations for which the classification, listed in the Declarations or in a policy Schedule, states that products-completed operations are subject to the General Aggregate Limit. </div>
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144

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.

145

**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).

...

**Ongoing
operations!**

**Completed
operations!**

146

Other Additional Insured Endorsements

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.

	<div data-bbox="1377 254 1422 279" data-label="Page-Header">149</div> <div data-bbox="418 279 1243 390" data-label="Section-Header"> <p>Additional Insured – State or Governmental Agency or Subdivision or Political Subdivision – Permits or Authorizations</p> </div> <div data-bbox="355 426 618 464" data-label="Text"> <p>CG 20 12 12 19</p> </div> <div data-bbox="355 506 1331 680" data-label="Text"> <p><i>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:</i></p> </div> <div data-bbox="402 728 1370 903" data-label="Text"> <p><i>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.</i></p> </div>
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149

	<div data-bbox="1377 1167 1422 1192" data-label="Page-Header">150</div> <div data-bbox="418 1192 1243 1304" data-label="Section-Header"> <p>Additional Insured – State or Governmental Agency or Subdivision or Political Subdivision – Permits or Authorizations</p> </div> <div data-bbox="355 1339 618 1377" data-label="Text"> <p>CG 20 12 12 19</p> </div> <div data-bbox="355 1419 1370 1728" data-label="Text"> <p><i>2. This insurance does not apply to:</i></p> <ul style="list-style-type: none"> <i>a. "Bodily injury", "property damage" or "personal and advertising injury" arising out of operations performed for the federal government, state or municipality; or</i> <i>b. "Bodily injury" or "property damage" included within the "products-completed operations hazard".</i> </div>
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150

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 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.***Note:** Professional liability exclusion applies.

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.

153

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.

154

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 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.

Insurer Proprietary Forms

159

Automatic AI - Considerations

Who is covered? Possibilities:

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

160

Automatic AI - Considerations

What is the scope/breadth of coverage? Possibilities:

- Does “arising out” language apply if required? (usually in a written contract or agreement)
- Must the loss be caused in whole or in part from the Named Insured’s acts or omissions?
- Is negligence of the Named Insured required?
- Is the breadth of coverage limited to what the contract requires?
- Is an Additional Insured covered only for its vicarious liability?
- Something else

161

Vicarious Liability Only

Who is an Insured is amended to include as an insured the person or organization shown in the schedule, but only with respect to your liability which may be imputed to that person or organization....

162

Vicarious Liability Only

We have no duty to defend or indemnify an additional insured under this endorsement:

- a. For any liability due to the negligence attributable to any person or entity other than the Named Insured, the Named Insured's employees or subcontractors.*

163

Vicarious Liability Only

*That person or organization is an additional insured **solely for liability due to your negligence** specifically resulting from 'your work' for the additional insured which is the subject of the written contract or written agreement.*

164

Case Upholding Vicarious Liability Only Coverage

“Travelers contends that, because the policy specifically excludes coverage for liability arising from independent acts or omissions of the additional insured, the language of the “Who is an Insured” paragraph effectively limits coverage to *coverage for vicarious liability, i.e., liability imposed upon the general contractor as a result of the subcontractor’s acts and not as a result of the general contractor’s own acts or failure to act.*in any event, vicarious liability of general contractors is not recognized in North Carolina. ***St. Paul Fire & Marine Ins. Co. v. Hanover Ins. Co.***, 187 F. Supp. 2d 584 (E.D.N.C. 2000)

165

Case Rejecting Vicarious Liability Only Coverage

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

Marathon Ashland Oil Pipe Line LLC v. Md. Cas. Co., 243 F.3d 1232 (10th Cir. 2001) (applying Wyoming law)

166

Automatic AI - Considerations

What triggers coverage? Possibilities:

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

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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.***

168

Automatic AI - Considerations

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

169

What about a self-insured retention?

“If this policy includes a self-insured retention, such endorsement *will apply* individually and separately *to each person or entity* who qualifies as an insured....”

170

What about a self-insured retention?

“...it is a condition precedent to our liability that **you make actual** payment of all damages and 'defense costs' for each 'occurrence' or offense, until you have paid 'self-insured retention' amounts and 'defense costs' equal to the [p]er [o]ccurrence amount shown in the Schedule, subject to the provisions of A. 3. below, if applicable.

Payments by others, including but not limited to **additional insureds** or insurers, do not serve to satisfy the self-insured retention.”



171

What about a self-insured retention?

“A self-insured retention (SIR) provision in subcontractors' general liability insurance policies was not ambiguous. It plainly provided that the **named insured** had to pay the SIR. *The insurer was not required to further clarify that only the named insured could pay.* The reasonable expectations of developers who were additional insureds were irrelevant because the SIR endorsement was not ambiguous. Consequently, the insurer was not required to defend the developers in construction defect suits that did not name the subcontractors as defendants.” *Forecast Homes, Inc. v. Steadfast Ins. Co.*, 181 Cal. App. 4th 1466; 105 Cal. Rptr. 3d 200 (2010)

172

Exclusions in AI endorsements

No coverage is provided to an additional insured for damages because of bodily injury to an employee of the Named Insured...

Any insurance provided to the additional insured shall only apply with respect to a claim made or a "suit" brought for damages for which you are provided coverage.

173

Exclusions in AI endorsements

With respect to the insurance afforded by this endorsement, exclusion I. Damage to Your Work.....is relaced by the following

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".

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#1

175

Primary/Noncontributory

175

176

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

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Primary and Noncontributory

General contractor is Additional Insured on subcontractor's policy. If both parties have coverage using ISO forms, and if the Additional Insured endorsement is ISO, the subcontractor's CGL is primary for the general contractor. The general contractor's CGL makes itself excess over the subcontractor's CGL.

What if non-ISO forms are being used, though? Could the result be different?

177

Insurer Forms and PNC

Possibilities:

- The endorsement might include primary and noncontributory wording.
- Coverage may be excess unless the contract requires that it be primary.
- Coverage may be primary if the contract requires that it be primary.
- Coverage is usually still excess over coverage the Additional Insured has under another's policy.
- Coverage may always be excess.

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CG 20 01 12 19 Endorsement

COMMERCIAL GENERAL LIABILITY
CG 20 01 12 19

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

PRIMARY AND NONCONTRIBUTORY – OTHER INSURANCE CONDITION

This endorsement modifies insurance provided under the following:

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

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

Primary And Noncontributory Insurance

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

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

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

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.*

CG 24 56 12 23 Endorsement

COMMERCIAL GENERAL LIABILITY
CG 24 56 12 23

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

**EXCESS INSURANCE PROVISION –
ORDER OF RESPONSE – WHEN YOU ARE AN
ADDITIONAL INSURED ON OTHER INSURANCE**

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

Paragraph b.(1)(b) of Paragraph 4, Other Insurance
of Section IV – Commercial General Liability
Conditions is replaced by the following:

4. Other Insurance

b. Excess Insurance

(1) This insurance is excess over:

(b) Any other insurance available to you,
whether primary, excess, contingent or
on any other basis, 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.

What About the Excess/Umbrella?

Myth - Excess Umbrella is Follow Form

Reality - CU 00 01 04 13

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.

Common Problem

- Subcontractor agrees to provide “primary and non-contributory” coverage for the general contractor under a \$2m CGL.
- Subcontractor purchases \$1 million CGL and \$1 million Umbrella.
- The subcontractor’s CGL pays first, but which policy pays next?

183

Horizontal Exhaustion of Limits

- 1st – Subcontractor CGL
- 2nd – General contractor CGL
- 3rd – The excess/umbrella policies

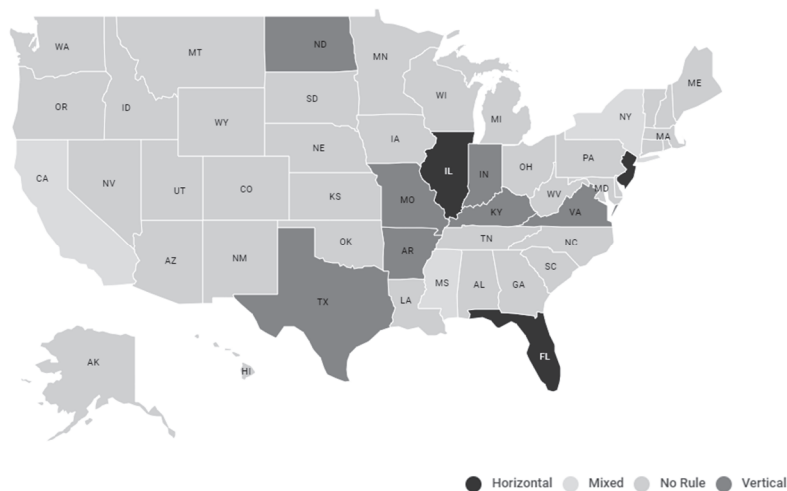
Vertical Exhaustion of Limits

- 1st – Subcontractor CGL
- 2nd – Subcontractor excess/umbrella
- 3rd – General contractor’s policies

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Excess/Umbrella – PNC Insurer Positions

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Possibilities:

- Some insurers include the language in the coverage form.
- Some insurers have automatic endorsements to add the language.
- Some insurers have scheduled endorsements to add the language.
- Some insurers will not add the language.

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Excess/Umbrella – Sample Language

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.

POLICY NUMBER: COMMERCIAL LIABILITY UMBRELLA
CU 24 77 12 23

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

NONCONTRIBUTORY AND ORDER OF RESPONSE – OTHER INSURANCE CONDITION

This endorsement modifies insurance provided under the following:

COMMERCIAL LIABILITY UMBRELLA 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.

Paragraph 5. of Section IV – Conditions is replaced by the following:

5. Other Insurance

a. This insurance is excess over, and shall not contribute with any of the other insurance, whether primary, excess, contingent or on any other basis. However:

(1) This condition will not apply to other insurance specifically written as excess over this Coverage Part.

(2) The insurance provided under this Coverage Part will apply before any other insurance available to the additional insured shown in the Schedule, whether such other insurance is primary, excess, contingent or on any other basis, and will not seek contribution from such other insurance available to that additional insured, provided that:

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

(b) You have agreed in writing in a contract or agreement that this insurance would:

(i) Apply before any other insurance available to the additional insured; and

(ii) Not seek contribution from any other insurance available to the additional insured.

When this insurance is excess, we will have no duty under Coverages A or B to defend the insured against any "suit" if any other insurer has a duty to defend the insured against that "suit". If no other insurer defends, we will undertake to do so, but we will be entitled to the insured's rights against all those other insurers.

b. When this insurance is excess over other insurance, we will pay only our share of the "ultimate net loss" that exceeds the sum of:

(1) The total amount that all such other insurance would pay for the loss in the absence of the insurance provided under this Coverage Part; and

(2) The total of all deductible and self-insured amounts under all that other insurance.

c. If the provisions of Paragraph 5.a.(2) of this endorsement conflict with the provisions of other insurance available to the additional insured who is a Named Insured under such other insurance, we will contribute by limits. Under this method, each insurer's share is based on the ratio of its applicable limit of insurance to the total applicable limits of insurance of all insurers.

CX 24 32 12 23
Excess Liability
version



Thank You For Attending This Program!

Catherine Trischan, CIC, CRM, CPCU, ARM, AU, AAI, CRIS, MLIS, TRIP, CBIA

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James K. Ruble Seminar

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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, CBIA
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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

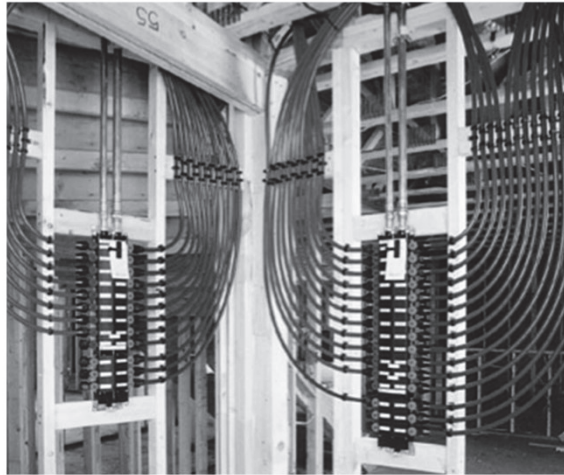
"Bodily injury" or "property damage" arising out of the ownership, maintenance, use or entrustment to others of any aircraft, "auto" or watercraft owned or operated by or rented or loaned to any insured. Use includes operation and "loading or unloading".

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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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 realty. Soil conditions include contraction, expansion, freezing, thawing, erosion, improperly compacted soil and the action of water under the ground surface.

16

Cannabis Exclusion CG 40 14 12 20

17

"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.

18

COMMERCIAL GENERAL LIABILITY
CG 40 14 12 20

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)

19

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)

20

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

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)

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) ²⁹

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) ³⁰

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.

What About Additional Insureds?

- Exclusion – Designated Operations Covered by a Controlled (Wrap-up) Insurance Program – Limited Exception for Additional Insureds - **CG 40 07 12 19**
- Limited Exclusion – Designated Operations Covered by a Controlled (Wrap-up) Insurance Program – Limited Exceptions for Additional Insureds - **CG 40 08 12 19**

However, this exclusion does not apply to any person or organization added as an additional insured by attachment of an endorsement to this Coverage Part who is not enrolled in a "controlled (wrap-up) insurance program" 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.

Wrap-Ups – DIC/Excess a better option

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.....*

Wrap-Ups What About This?

Sample Language

Exclusion - Wrap-up Insurance Programs

"Bodily injury" or "property damage" arising out of any project that is or was subject to a "wrap-up insurance program". This exclusion does not apply to:

(1) "Bodily injury" or "property damage" arising out of your ongoing operations that:

(a) Are being performed at any location owned by, or rented to, you that is outside the project site for that project and is not covered by the "wrap-up insurance program" for that project; or

(b) Are punch list or warranty work, if coverage was available to the insured under the "wrap-up insurance program" for "bodily injury" and "property damage" arising out of your ongoing operations and the "bodily injury" or "property damage" occurs after the expiration of all such coverage.

The above exceptions in this exclusion do not apply to "bodily injury" or "property damage" included in the "products-completed operations hazard" even if you are required to provide such coverage for an additional insured by a written contract or agreement; or

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.*

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

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

This insurance does not apply to:

Cross Suits

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".

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

This insurance does not apply to:

Cross Suits

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".

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)

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.***

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 n obligation 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.

Indemnification/Hold Harmless

- One party (the indemnitor) assumes financial responsibility for the liability of another party (the indemnitee.)
- Pay on behalf (hold harmless) vs. reimburse (indemnification)
 - Many contracts include both terms.
- Liability is not transferred; only the financial responsibility is transferred.
- Duty to defend is often included and may be a separate obligation.

Railroad Endorsements

CG 24 17 10 01 Contractual Liability – Railroads

- Railroad and job site are scheduled on the endorsement.
- Railroad language in easement/license agreements is removed.
- Railroad indemnity language in f. is removed.

CG 24 27 04 13 Limited Contractual Liability – Railroads

- Same as CG 24 17 BUT
- Incorporates the language of the CG 24 26 into f. which eliminates coverage for a broad form indemnification agreement

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

Contractual Liability Exclusion (continued)

Solely for the purposes of liability assumed in an "insured contract", reasonable attorneys' fees and necessary litigation expenses incurred by or for a party other than an insured are deemed to be damages because of "bodily injury" or "property damage", provided:

(a) Liability to such party for, or for the cost of, that party's defense has also been assumed in the same "insured contract"; and

(b) Such attorneys' fees and litigation expenses are for defense of that party against a civil or alternative dispute resolution proceeding in which damages to which this insurance applies are alleged.

INDEMNITEES ARE NOT INSUREDS!!

Defense of Indemnitees

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 or pay defense
- No existing or potential conflicts
- Indemnitee and insured concur in the request for defense
- Agree to be 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.

Anti-Indemnity Statutes

- Most states allow a party to be indemnified for its own negligence if the language in the contract is clear and unequivocal.
- Construction contracts, though, are different. Intermediate and/or broad form agreements are often not permitted.
- In many states, additional insured coverage can be used to circumvent the intent of anti-indemnity statutes. In some states, though, this is considered against public policy.

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?

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

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

73

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

74

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

75

"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

76

"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.....

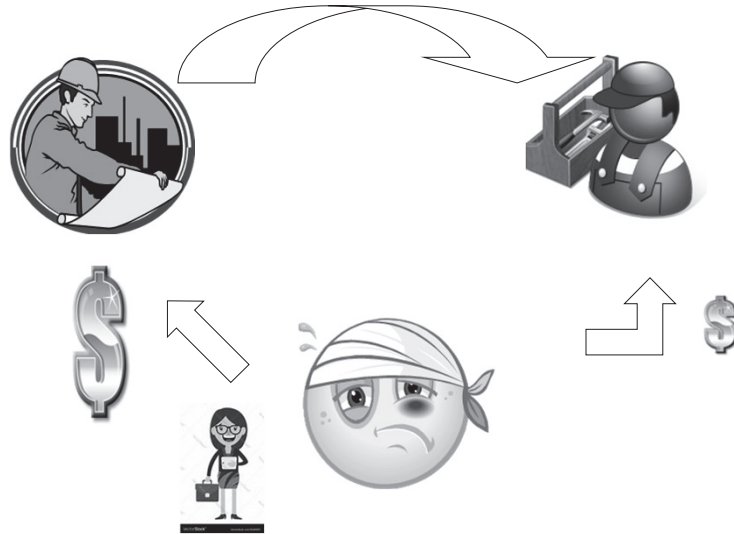
Excluding the acts of contractors and subcontractors

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*

**COMPANY SPECIFIC
ADDITIONAL INSURED ENDORSEMENTS
Action Over Exclusion**

In one insurer's Additional Insured endorsement

Any insurance provided to the additional insured shall only apply with respect to a claim made or a "suit" brought for damages for which you are provided coverage.

90

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**

107

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)**

108

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 -**

109

- 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**

110

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
- **CG 21 96 03 05** - Silica or Silica-Related Dust Exclusion
- Specific Insurer Exclusions for Asbestos, Lead and Other Pollutants

Fungi or Bacteria Exclusion **CG 21 67 12 04**

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

119

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.

Pollution Endorsements

120

Pesticide or Herbicide Applicator – Limited Pollution Coverage - CG 22 64 04 13

- Coverage applies if the operations meet all standards or any requirements applying to the operation.

Lawn Care Services – Limited Pollution Coverage – CG 22 93 04 13

- Coverage applies when herbicides or pesticides are applied.

Pollution Exclusion – Limited Exception for a Short-Term Pollution Event - CG 04 29 12 04

- Provides coverage for a release of pollutants from the contractor's premises or job site (including pollutants brought to a job site by the contractor) that occurs entirely during the policy period and over a period of time of 48 hours or less. The exception does not apply to a release of pollutants from underground pipes or storage tanks.

Consider stand-alone pollution policies!

Damage To Your Work

Damage to Your Work Exclusion CG 00 01 04 13

This insurance does not apply to:

"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.

"Your Work"

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.*

Occurrence

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

Is Construction Defect an Occurrence?

It Depends

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 PD for which the insured is legally liable, and the PD occurred during the policy period.

	<u>Damaged Work</u>	<u>Damage Done By</u>
Covered	insured's self-performed	sub's work
Covered	sub's	sub's work
Covered	sub's	insured's s.p. work
Excluded	insured's s.p.	insured's s.p. work

Damage to Your Work Exclusion

Assumption: The loss is an occurrence of PD for which the insured is legally liable, and the PD occurred during the policy period.

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 PD for which the insured is legally liable, and the PD occurred during the policy period.

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

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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

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**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**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.

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- 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.

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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.

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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.

150

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

151

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

When the Unthinkable Happens...Will the Insurance Values Be Adequate?

WHEN THE UNTHINKABLE HAPPENS....

WILL THE INSURANCE VALUES BE ADEQUATE?

**Steven D. Lyon, CIC, CRM, CPCU, AAI, ARM, AIS, CRIS
Lyon Consulting Services, LLC**

DISCLAIMER

**PLEASE BE ADVISED THAT THE CONTRACT
LANGUAGE PROVIDED AND ANY DISCUSSION
THEREOF, IS FOR INFORMATION PURPOSES ONLY.**

**I AM NOT AN ATTORNEY AND CANNOT OFFER
LEGAL ADVICE, OR ADVICE ON THE POSSIBLE
SUCCESS OR FAILURE OF THE LANGUAGE OR
DISCUSSIONS PROVIDED.**

**MOREOVER, THIS LANGUAGE AND DISCUSSION
MAY NOT WORK IN ALL SITUATIONS OR ALL
JURISDICTIONS. SOME JURISDICTIONS INTERPRET
CONTRACTS DIFFERENTLY, AND SOME STATES
RESTRICT INDEMNITY AGREEMENTS. YOU
SHOULD ALWAYS CONSULT AN ATTORNEY
BEFORE DECIDING WHETHER TO MAKE USE OF
ANY LANGUAGE PROVIDED OR DISCUSSED**

2

Definitions- What do these Words Mean ?

- What is an “Occurrence” ?
- What is “Bodily Injury” ?
- What is “Property Damage” ?

3

Multiple Occurrences— One Loss or Two or More?

- WTC - 9/11/01
- Hurricanes
- Wildfires
- Food Poisoning
- Sexual Molestation
- Mass Shootings
- Mis-delivery of Fuel
- Social Media

4

How Many Occurrences ?

- Two schools located several blocks apart, but part of the same insured school district
- Fires occurred at each school on the same day, but at different hours
- The School District argues there is evidence to suggest a single arsonist was responsible for both fires
- The carrier paid for all damage, except it applied the \$100,000 deductible to each location

5

How Many Occurrences ?

- The School District argued that only one deductible should apply because the losses arose out of the acts of one arsonist
- The carrier argued otherwise --two separate buildings, and the fire was at different times.
- The court agreed with the carrier and said, two separate deductibles apply -- because there were two separate fires, separated in space and in time, the loss must be attributed to two separate causal factors.

6

BAP Deductible

- Applies to EACH covered auto
 - Negotiate Aggregate/Occurrence Deductible
 - All Autos in same garage / lot / geographic area
- Not applicable to Fire or Lightning (ISO)



7

Question

- While in your store, a large display collapses causing serious injuries to a young child. Is that Bodily Injury?
- The child's mother was standing right next to the child, but escaped any injury. However the mother has filed a lawsuit for shock, emotional distress, mental anguish and trauma. Is that Bodily Injury ?

8

Definitions

4. Bodily Injury- means bodily injury, sickness, or disease sustained by a person including death resulting from any of these.
- What about allegations of mental anguish, emotional distress, shock, and trauma ?

Property Damage Claims

- While working on a jobsite, Bob the Builder drops materials off the side of a building which cause \$3700 damage to an auto parked nearby. Is this PD?
- The damaged auto will be in the shop for 5 days to repair, and the owner is looking to be reimbursed the \$175 for a rental. Is this PD?
- While working on the jobsite, Bob causes the electric power to be knocked out for the retail stores across the street. There is no damage to the stores themselves, but each store is looking for \$1500 lost sales, for the time they were shut down due to loss of power. Is this PD ?
- While Bob is repairing the roof on your building, he stacks too much material in one place, and the roof collapses into your Data Center, damaging the computer, operating systems, software, hard drive and data. Is this PD ?
- While digging with his backhoe, Bob damages an underground fiber optic cable, which causes damage to the data on your hard drive. Is this PD ?

In the Event of a Total Loss -- Are you Getting Policy Limits ?



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ISO - CP 00 10 (1012)

4. Loss Payment

- a. In the event of loss or damage covered by this Coverage Form, at our option, we will either:
 - (1) Pay the value of lost or damaged property;
 - (2) Pay the cost of repairing or replacing the lost or damaged property, subject to **b.** below;
 - (3) Take all or any part of the property at an agreed or appraised value; or
 - (4) Repair, rebuild or replace the property with other property of like kind and quality, subject to **b.** below.

Valued Policy Law States

IIABA- Virtual University
12/22/17

State	Statute	Property Protected	Causes of Loss
Arkansas	23-88-101	All Real Property	Fire and natural disasters (excluding flood and quake)
California	2052, 53, 54, 55, 56, 58 and 75	Buildings	All perils covered by the property policy
Florida	627.702	Any building (including mobile and manufactured homes)	All perils covered by the property policy
Georgia	33-32-5	1 or 2 family residential bldgs.	Fire
Kansas	40-905	All improvements on real property	Fire, tornado, wind, lightning
Louisiana	22:1318	Inanimate / immovable property	Fire
Minnesota	65A.08	All property	All perils covered by the policy
Mississippi	83-13-5	Buildings	Fire
Missouri	379.140; 145	All property	Fire
Montana	33-24-102 and 103	Improvements to Real Property	All perils covered by the property policy
Nebraska	44-501.02	Real property	Fire, tornado, wind, lightning, explosion
New Hampshire	407:11	Buildings	Fire and lightning
North Dakota	26.1-39-05	Real property	All perils covered by the property policy
Ohio	3929.25	Any building	Fire and lightning
South Carolina	38-75-20	All real property	Fire
South Dakota	58-10-10	Real property	Fire, lightning, and tornado
Tennessee	56-7-801 to 803	Any building	Fire
Texas	862.053	All real property	Fire
West Virginia	33-17-9	Real property	All perils covered by the property policy
Wisconsin	632.05(2)	Owner-occupied dwellings	All perils covered by the property policy

Valuation

- Based upon Principle of Indemnity
- Replacement Cost
- Functional Replacement Cost
- Actual Cash Value
- Market Value
- Broad Evidence Rule
- Selling Price
- Agreed Amount
- Valued Policy Law States
- Diminution of Value

15

Marshall & Swift / Boeckh

- 75% of businesses in the United States are underinsured by 40% or more
- 50% of American homeowners do not have a clear understanding of their home insurance coverage.
- Two thirds of American's underinsure their homes

16

Coverage “A”

- Dwelling on the residence premises, including structures attached;
- Materials and supplies located on or next to the residence premises used to construct, alter, or repair the dwelling or other structures on the residence premises
- We do not cover land

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Additional Limits of Liability for Coverages A,B,C and D

HOMEOWNERS
HO 04 11 05 11

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

ADDITIONAL LIMITS OF LIABILITY FOR COVERAGES A, B, C AND D

To the extent that coverage is provided, we agree to amend the present limits of liability in accordance with the following provisions:

A. If you have:

1. Allowed us to adjust the Coverage A limit of liability and the premium in accordance with:
 - a. The property evaluations we make; and
 - b. Any increases in inflation; and
2. Notified us, within 30 days of completion, of any improvements, alterations or additions to the building insured under Coverage A which increase the replacement cost of the building by 5% or more;

4. For the purpose of settling that loss only, **Section I – Condition D. Loss Settlement**, Paragraph 2. is replaced by Paragraphs 2., 3. and 4. as follows:

2. Buildings covered under Coverage A or B at replacement cost without deduction for depreciation. We will pay no more than the smallest of the following amounts:
 - a. The replacement cost of that part of the building damaged with material of like kind and quality and for like use;
 - b. The necessary amount actually spent to repair or replace the damaged building; or

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Endorsement Requirements

To the extent that coverage is provided, we agree to amend the present limits of liability in accordance with the following provisions:

A. If you have:

1. Allowed us to adjust the Coverage **A** limit of liability and the premium in accordance with:
 - a. The property evaluations we make; and
 - b. Any increases in inflation; and
2. Notified us, within 30 days of completion, of any improvements, alterations or additions to the building insured under Coverage **A** which increase the replacement cost of the building by 5% or more;

The provisions of this endorsement will apply after a loss, provided you elect to repair or replace the damaged building.

19

What is an “Other Structure” ?

- Detached Garage
- Sheds
- Greenhouses
- Boat houses
- Outhouses
- Pool cabanas
- Flag poles
- Fences
- Drive/Walkways – pavers
- Patios
- Playgrounds
- Retaining walls
- Piers, wharves, docks
- Inground Pool + Filters
- Satellite Dishes
- Waterfalls, Rock Garden
- Koi Ponds
- Detached Decks
- BARNS
- Tennis Courts
- Basketball Courts
- Tree House

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Coverage B – Other Structures

1. We cover other structures on the "residence premises" set apart from the dwelling by clear space. This includes structures connected to the dwelling by only a fence, utility line, or similar connection. (Boat dock down the street= NO)

2. We do not cover:

- a. Land, including land on which the other structures are located;
- b. Other structures rented or held for rental to any person not a tenant of the dwelling, unless used solely as a private garage;
- c. Other structures from which any "business" is conducted; or
- d. Other structures used to store "business" property.

However, we do cover a structure that contains "business" property solely owned by an "insured" or a tenant of the dwelling provided that "business" property does not include gaseous or liquid fuel, other than fuel in a permanently installed fuel tank of a vehicle or craft parked or stored in the structure.

21

Coinsurance on a HO Policy ?

b. If, at the time of loss, the amount of insurance in this policy on the damaged building is less than 80% of the full replacement cost of the building immediately before the loss, we will pay the greater of the following amounts, but not more than the limit of liability under this policy that applies to the building:

- (1) The actual cash value of that part of the building damaged; or
- (2) That proportion of the cost to repair or replace, without deduction for depreciation, that part of the building damaged, which the total amount of insurance in this policy on the damaged building bears to 80% of the replacement cost of the building.

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Coinsurance on a HO Policy ?

2. Buildings covered under Coverage **A** or **B** at replacement cost without deduction for depreciation, subject to the following:
- a. If, at the time of loss, the amount of insurance in this policy on the damaged building is 80% or more of the full replacement cost of the building immediately before the loss, we will pay the cost to repair or replace, without deduction for depreciation, but not more than the least of the following amounts:
- (1) The limit of liability under this policy that applies to the building;
 - (2) The replacement cost of that part of the building damaged with material of like kind and quality and for like use; or
 - (3) The necessary amount actually spent to repair or replace the damaged building.

23

Replacement Cost

- How do you get RC on contents ?
 - Endorsement
- How do you get RC on Coverage “A” and “B” ?
 - Endorsement
 - Being 80% insured to value at time of loss
- Does that give your client RC on all property ?

24

ISO HO 00 03 (0511)

D. Loss Settlement

Covered property losses are settled as follows:

1. Property of the following types:
 - a. **Personal property:**
 - b. Awnings, carpeting, household appliances, outdoor antennas and outdoor equipment, whether or not attached to buildings;
 - c. **Structures that are not buildings; and**
 - d. Grave markers, including mausoleums;

at actual cash value at the time of loss but not more than the amount required to repair or replace.
2. **Buildings** covered under Coverage A or B **at replacement cost without deduction for depreciation**, subject to the following:
 - a. If, at the time of loss, the amount of insurance in this policy on the damaged building is 80% or more of the full replacement cost of the building immediately before the loss, we will pay the cost to repair or replace, without deduction for depreciation, but not more than the least of the following amounts:
 - (1) The limit of liability under this policy that applies to the building;
 - (2) The replacement cost of that part of the building damaged with material of like kind and quality and for like use; or
 - (3) The necessary amount actually spent to repair or replace the damaged building.

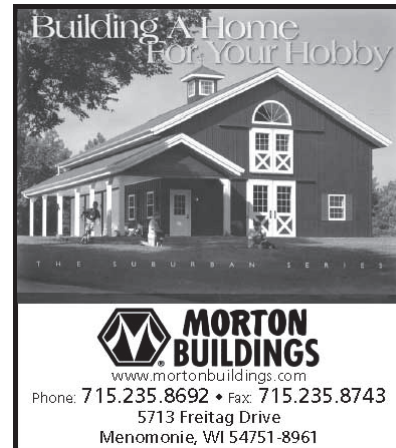
25

REVISED ENDORSEMENT

The **replacement cost loss settlement for certain non-building structures on the residence premises (HO 04 43)** endorsement is broadened to provide replacement cost loss valuation (previously on an actual cash value basis) for **in-ground pools, hot tubs, and therapeutic baths, etc.**

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Functional Replacement Cost



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Functional valuation

Q. At an E&O seminar I attended, the instructor mentioned the "functional replacement cost" endorsement. Could you explain the use of this endorsement?

A. You would use the Functional Building Valuation Endorsement (CP 04 38) to endorse an ISO Commercial Property Policy. There also is a functional Personal Property Valuation Other Than Stock endorsement (CP 04 39). In these forms, a functional replacement valuation replaces the actual-cash-value basis of valuation in the event of damage to the property.

This endorsement should be viewed merely as a means to save your client premium. The policyholder may not require the quality of construction, the size or costly features now present in the property to be insured. When a building or personal property can be replaced at lower cost, while still providing the functional needs of the insured, it is worth proposing this endorsement to achieve lower premium, so long as the insured understands its limitations.

Assuming the limit purchased is adequate, the endorsement will pay "the cost to replace the damaged building on the same site ... with a less costly building that is functionally equivalent to the damaged building." The policy's coinsurance condition is not applicable to this endorsement. In the event of a partial loss, repairs will be made to the damaged portion of the property using less costly materials (if available), but in the architectural style that existed prior to the loss. Ordinance or law coverage is automatically included in the coverage of this endorsement, but these costs must be anticipated in the selection of the limit of insurance purchased.

Professional Insurance Agents Association- Dan Corbin 2018

Broad Evidence Rule

- Rule that stipulates how to calculate the [Actual Cash Value](#) of property that has been damaged, destroyed, or stolen. The thesis of this rule is that whatever evidence that can be produced of the true value of the property is admissible; the factual insurable value of the property can be ascertained by whatever measures provide the most accurate picture of that property's real value. This method is becoming more widely accepted as a means of measuring actual cash value.

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Broad Evidence Rule

- Market Value immediately preceding the loss
- Economic Conditions
- Manner of Acquisition
- Physical Deterioration
- Functional Obsolescence

30

Diminution of Value

When property of any kind is damaged and repaired, the resale value of the property can easily be diminished because of the stigma carried by the repair. An automobile is likely to suffer this type of diminution in value after it is damaged in an accident and repaired. The resale value most likely will be less than that for a comparable automobile that has not been damaged. In other words, the damage results in a reduction—or "diminution"—in the resale value of the automobile.

Barry Zalma

31

Ways to Value Property

(correctly and incorrectly)

- Cost Estimators
 - Room Unit
 - Square Footage
- Computer Programs
 - Company mandated
 - Agency chosen
- Mortgage Amount
 - Bank Requirements
 - NJ Statute
- Tax Appraisals
- Real Estate Value
- Picture
- Drive-By Inspection
- Accounting / Book Value
- Local Professional Contractor
- **Appraisal**



32

E& O TIP

- Document the SOURCE of building values
 - Company Estimator
 - Limit on current/previous policy
 - Insured's Request
 - Professional Appraisal
 - Website Estimators
 - Agent determination



33

Building-What's Included?

- The Structure
 - If not scheduled, not covered
- Completed additions
- Fixtures including outdoor furniture
 - Flagpoles, lighting, parking bumpers, Swimming pools, sprinkler systems, PA system/intercom, drapery h/w
- Permanently installed machinery/equipment
 - Refrigeration units (grocery, florist)
 - Production Equipment
 - Overhead cranes / Drive on Scales
 - Service Station Lifts / UST's /AST's

34

1. Covered Property

Covered Property, as used in this Coverage Part, means the type of property described in this section, **A.1.**, and limited in **A.2.** Property Not Covered, if a Limit Of Insurance is shown in the Declarations for that type of property.

a. Building, meaning the building or structure described in the Declarations, including:

- (1) Completed additions;
- (2) Fixtures, including outdoor fixtures;
- (3) Permanently installed:
 - (a) Machinery; and
 - (b) Equipment;

35

Building- What's included?

- Certain personal property used to maintain or service the building
 - Fire extinguishing equipment
 - Outdoor furniture
 - Floor coverings
 - Appliances for refrigerating, ventilating, cooking, dishwashing and laundering
 - Tractors, snow blowers, ladders, tools, supplies
- If not already covered by other Insurance
 - Additions under construction (not new building)
 - Building materials within 100 feet of premises (no theft)
 - Not Excess Insurance

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Building Value

• Structure	\$450,000
• Flagpole	\$ 5,000
• Lighting	\$ 10,000
• Machinery / Equipment	\$400,000*
• Overhead Crane	\$100,000
• Floor Coverings	\$ 20,000
• Appliances	\$ 15,000
• Fire Extinguishers	\$ 2,500
• Tractor	\$ 30,000
• Snowblower	\$ 5,000
• Outdoor Furniture	\$ 2,500
• Janitorial Supplies	\$ 3,000

Total Building Limits \$1,043,000

(potential Coinsurance and .
Underinsurance problem) 37

Property Not Covered

ISO CP 00 10 (1012)

TYPE OF PROPERTY NOT COVERED	HOW TO BUY COVERAGE BACK	NOT INSURABLE
Accounts, bills, currency, food stamps or other evidences of debt, money, notes or securities.	Commercial Crime Coverage Forms	
Animals, unless "boarded" or "your stock"	CP 1410 Additional Covered Property, or Inland Marine Coverage Forms	
Autos held for sale	Garage Forms	
Bridges, roadways, walks, patios or other paved surfaces	CP 1410 Additional Covered Property, or Inland Marine Coverage Forms	
Contraband, illegal transportation/trade	N/A	XXXXXXX
Excavations, grading, backfilling or filling	CP 1410 Additional Covered Property	
Foundations of buildings, structures, machinery	CP 1410 Additional Covered Property	
Land, water, growing crops or lawns	Crops or lawns – Inland Marine Coverage Forms	
Airborne or waterborne personal property	Inland Marine Coverage Forms, or Ocean Marine Coverage Forms	
Bulkheads, pilings, piers, wharves or docks	CP 1410 Additional Covered Property, or Inland Marine Coverage Forms	
Property covered elsewhere	BPP Form pays excess	
Retaining walls	CP 1410 Additional Covered Property	
Underground pipes flues or drains	CP 1410 Additional Covered Property	
Electronic data	CP 0430 E-Commerce or Inland Marine Coverage Forms	
Research, replace, restore information on valuable papers and records	Valuable Papers & Records CP Form, or Inland Marine Coverage Forms	
Vehicles or self propelled machines...	CP 1410 Additional Covered Property	
Certain outdoor property	Fences – CP 1410 Additional Covered Property Signs – CP 1440 Outside Signs Antennas – CP 1450 Radio or TV Antennas Trees – CP 1430 Outdoor Trees, Shrubs and Plants – Inland Marine Coverage Forms	

Business Personal Property

- **Your Business Personal Property** consists of the following property located in or on the building or structure described in the Declarations or in the open (or in a vehicle) within 100 feet of the building or structure or within 100 feet of the premises described in the Declarations, whichever distance is greater:
 - Furniture and fixtures
 - Machinery and Equipment
 - "Stock"
 - All other personal property owned and used by you
 - Labor, materials and services furnished by you on PPO
 - Your use interest in Tenants Improvements & Betterments
 - Leased personal property which you must contractually insure

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Labor, Materials, Services Furnish by You on PPO

- I leave 5000 cotton shirts at your silk screen printing shop
- You charge me \$12,500 to print a picture and saying on every shirt
- The night before I pick up the shirts, there's an explosion at your shop, and all the shirts are destroyed
- I refuse to pay you, despite the \$12,500 of labor and materials you already expended
- The \$12,500 is included in your BPP coverage
- Times 12 client's property you were working on = 41
\$150,000

Leased Property Which you Must Contractually Insure

Equipment Lease

14. Loss And Damage. Lessee shall bear the entire risk of loss, theft, damage or destruction of the equipment from any cause whatsoever, and no loss, theft, damage or destruction of the equipment *shall relieve Lessee of the obligation to pay rent or of any other obligation under this lease.*

In the event of damage to any item of equipment, Lessee shall immediately place the same in good repair. *The Lessee furthermore agrees to continue to pay rent after the expiration of this lease until any item of equipment is placed in good repair.*

If Lessor determines that any item of equipment is lost, stolen, destroyed or damaged beyond repair, Lessee at the option of Lessor shall:

(a) replace the same with like equipment in good repair and continue to pay rent after the expiration of this lease until replacement is concluded; or
(b) pay Lessor in cash all of the following:

(i) all amounts then owed by Lessee to Lessor under this lease,
(ii) an amount equal to ten percent (10%) of the actual cost of said item,
AND

(iii) the unpaid balance of the total rent for the initial term of this lease attributable to said item. Upon Lessor's receipt of such payment, Lessee shall be entitled to whatever interest Lessor may have in said item, in its then condition and location, without warranty express or implied.

The parties hereto agree that the sum of the amounts numbered (ii) and (iii) will equal the fair value of said item on the date of such, loss, theft, damage or destruction, and the remaining rent payable here under shall be reduced by such amount as is paid under item

(iii) above prorated over the remaining term hereof.

Leased Property Which you Must Contractually Insure

10. Insurance.

Lessee shall procure and continuously maintain and pay for:

A. All risk insurance against loss of and damage to the Equipment for not less than the full replacement value of the Equipment, naming Lessor as loss payee, and;

B. Combined public liability and property damage insurance with limits as approved by Lessor, naming Lessor as additionally named insured and a loss payee.

The insurance shall be in such form and with such company or companies as shall be reasonably acceptable to Lessor, shall provide at least thirty (30) days advance written notice to Lessor of any cancellation, change or modification, and shall provide primary coverage for the protection of Lessee and Lessor without regard to any other coverage carried by Lessee or Lessor protecting against similar risks.

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CP 14 60–Leased Property

- Leased property in the insured's care, custody or control is considered part of business personal property coverage if the insured is contractually required to insure it. This endorsement modifies coverage to allow the insured to schedule such leased personal property of others under a written lease, even if the lease does not require the insured to be contractually obligated for the coverage. The endorsement includes an agreed value option. A premium charge is not normally made when this endorsement is used. However, the business personal property limit must be reviewed carefully to be certain it is adequate when this property is included for coverage

44

CP 14 60 07 88

LEASED PROPERTY

This endorsement modifies insurance provided under the following:

BUILDING AND PERSONAL PROPERTY COVERAGE FORM
CONDOMINIUM ASSOCIATION COVERAGE FORM
CONDOMINIUM COMMERCIAL UNIT-OWNERS COVERAGE FORM
STANDARD PROPERTY POLICY

SCHEDULE



Premises No.	Bldg. No.	Description of Property	Agreed Value (Optional)
--------------	-----------	----------------------------	----------------------------

A. When this endorsement is attached to the STANDARD PROPERTY POLICY CP 00 99 the term Coverage Part in this endorsement is replaced by the term Policy.

B. Your Business Personal Property is revised to include personal property of others in your care, custody or control under written leases, as described in the Schedule or in the Declarations.

C. If an agreed value is entered for property in the Schedule or in the Declarations, this amount will be considered to be the value of the described property at the time of loss or damage. But this does not otherwise alter the application of the Coinsurance condition.

D. Property described in the Schedule or in the Declarations is not included under any Personal Property of Others coverage in this Coverage Part.

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Tenants Improvements & Betterments (TIB's)

- Before



- After



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(6) Your use interest as tenant in improvements and betterments. Improvements and betterments are fixtures, alterations, installations or additions:

(a) Made a part of the building or structure you occupy but do not own; and

(b) You acquired or made at your expense but cannot legally remove;

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- Permanently installed TIB's become:
 - Part of the Building
 - Property of the Landlord
 - Cannot legally be removed
- Tenant can have "Use Interest"
- Lease will determine who is responsible for insuring the TIB's
- CP 1420 – Additional Property not Covered
- CP 1910 –BPP Separation of Coverage-Rate as Bldg.
- CP 1415 – Additional Building Property
- CP 04 26 – Ordinance & Law Tenant's Interest –TIB's
- Manuscript wording to clarify intent -"The sole interest of the named insured in all improvements and betterments at premises covered under this policy is hereby recognized, without regard to any terms of a lease". [Intent is to make certain insured recovery will be ACV/RC 48 regardless of whether property is rebuilt or not.

Valuation- TIB's

e. Tenants' Improvements and Betterments at:

- (1)** Actual cash value of the lost or damaged property if you make repairs promptly.
- (2)** A proportion of your original cost if you do not make repairs promptly. We will determine the proportionate value as follows:
 - (a)** Multiply the original cost by the number of days from the loss or damage to the expiration of the lease; and
 - (b)** Divide the amount determined in **(a)** above by the number of days from the installation of improvements to the expiration of the lease.
- (3)** Nothing if others pay for repairs or replacement.

If your lease contains a renewal option, the expiration of the renewal option period will replace the expiration of the lease in this procedure.

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Contents Value

- Furniture / Fixtures \$ 50,000
- Leased Equipment \$140,000
- Stock / Inventory \$300,000
- Floor Coverings \$ 10,000
- Labor & Materials PPO \$150,000 *
- Tenant I & B \$250,000 *

Total BPP Limit: \$900,000* vs. \$500,000

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INSURANCE TO VALUE

- How do you Determine Value?
- Should you Determine Value ?
- Always Insure for Worst Case
- 100% Replacement Cost
- Architect/Engineer Fees
- Demolition / Debris Removal
- Ordinance and Law
- Market Fluctuations



What's the REAL Replacement Cost of a 3000 Sq Ft Structure ?

100% Structure.....	\$450,000 (\$150/sf)
Demolition **.....	\$ 10,000 (2.2%)
Debris Removal**.....	\$ 30,000 (6.5%)
Architects/Engineer...	\$ 40,000 (9%)
ICC (Increased Cost of Construction).....	\$ 60,000 (13%)
Market Conditions....	\$ 80,000 (18%)
Other *.....	\$ 80,000 (17%)

REAL R.C.

\$750,000 (\$250/sf)



Demolition and Debris Removal

- We handle the insurance for a large number of mid-rise and high-rise condo associations in major cities where there is no ability to dynamite.
- A \$60,000,000, 10 year old high-rise apartment building was recently torn down in Seattle floor by floor over more than a one year period due to its proximity to other high-rises.
- It cost a whopping \$11,300,000. That's close to 19% of value! As a consequence some local appraisal firms are factoring in premiums for high-rise demolition costs based on the number of stories, location, and square footage.

Debris Removal

- Can be Complicated -- Need to Increase Coverage
- Remove debris of Covered Property damaged from Covered Cause of Loss
- No Pollution – land or water
- Notify company within 180 days
- 25% of the Loss + Deductible and
Sum of Loss Payable + Debris Removal < Limit
- Subject to Limit of Coverage
- \$25,000 extra if you exceed limit
- CP1415 to increase coverage

Debris Removal Example

- Limit of Insurance \$90,000
 - Deductible \$ 500
 - Loss \$50,000
 - Loss Payable \$49,500

 - Debris Removal Expense \$20,000
 - Debris Removal Paid \$20,000
- 1. Max payable is 25% of Loss + Deductible
($\$49,500 \times .25 = \$12,375 + 500 = \$12,875$) OK!
 - 2. Loss Payable + Debris Removal < Policy Limits
($\$49,500 + \$20,000 < \$90,000$) OK!

Debris Removal Example

- Limit of Insurance \$90,000
 - Deductible \$ 500
 - Loss \$80,000
 - Loss Payable \$79,500

 - Debris Removal Expense \$30,000
 - Debris Removal Paid \$10,500 + \$25,000 add'l
- 1. Max payable is 25% of Loss + Deductible
($\$80,000 \times .25 = \$20,000 + 500 = \$20,500$) Problem !
 - 2. Loss Payable + Debris Removal < Policy Limits
($\$79,500 + \$30,000 < \$90,000$) Problem!

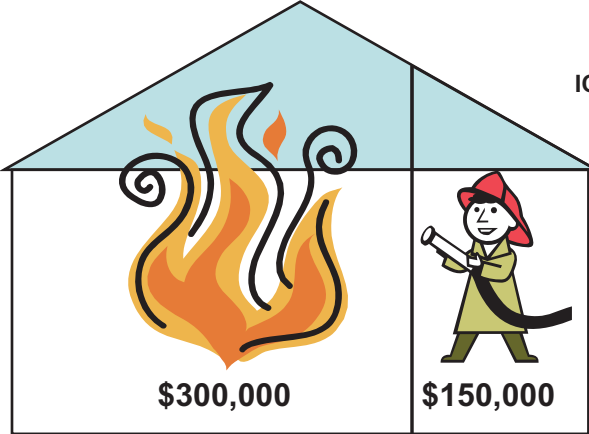
BUILDING ORDINANCE and LAW COVERAGE

- When more than 50% of a building is damaged, it is deemed structurally unsafe to rebuild and must be torn down.
(Uniform Construction Code-most every town adopts)

BUILDING ORDINANCE and LAW COVERAGE

- 100% Building Replacement Cost
- Coverage for Loss to the Undamaged Portion of the Building (A)
 - Demolition Costs Coverage (B)
 - Increased Cost of Construction Coverage (C)
 - Current Building Code
 - Americans with Disabilities Act
 - National Flood Insurance Program
 - Undersized Lot
 - Grandfathered Occupancy / Zoning

\$450,000 Building Coverage



Damaged Part Paid

Structure-\$300,000

Demolition-\$5,000

Debris Removal-\$15,000

ICC-\$10,000* (*5% add'l ins only if RC option)

Total Paid \$330,000

Undamaged Part-NOT Paid

Structure- \$150,000

Demolition-\$5,000

Debris Removal-\$15,000

ICC-\$20,000

Out of Pocket- \$190,000

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POLICY NUMBER:

COMMERCIAL PROPERTY
CP 04 05 09 17

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

ORDINANCE OR LAW COVERAGE

This endorsement modifies insurance provided under the following:

BUILDING AND PERSONAL PROPERTY COVERAGE FORM
CONDOMINIUM ASSOCIATION COVERAGE FORM
STANDARD PROPERTY POLICY

SCHEDULE

Building Number/ Premises Number	Coverage A	Coverage B Limit Of Insurance	Coverage C Limit Of Insurance	Coverages B And C Combined Limit Of Insurance
/	<input type="checkbox"/>	\$	\$	\$ *
/	<input type="checkbox"/>	\$	\$	\$ *
/	<input type="checkbox"/>	\$	\$	\$ *

→
 Post-Loss Ordinance Or Law Option: Yes ☐ No ☐

*Do not enter a Combined Limit of Insurance if individual Limits of Insurance are selected for Coverages B and C, or if one of these Coverages is not applicable.

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

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POLICY NUMBER:	COMMERCIAL PROPERTY CP 15 31 09 17
THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.	
ORDINANCE OR LAW – INCREASED PERIOD OF RESTORATION	
This endorsement modifies insurance provided under the following:	
BUSINESS INCOME (AND EXTRA EXPENSE) COVERAGE FORM BUSINESS INCOME (WITHOUT EXTRA EXPENSE) COVERAGE FORM EXTRA EXPENSE COVERAGE FORM	
SCHEDULE	
Described Premises:	
Post-Loss Ordinance Or Law Option: Yes <input type="checkbox"/> No <input type="checkbox"/>	
Information required to complete this Schedule, if not shown above, will be shown in the Declarations.	

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Leasehold Interest- CP 00 60

- This endorsement is not just for favorable leases
 - You are a tenant in a building on the 10th Floor
 - Fire causes severe damage to floors 1-4
 - There is no direct damage to your floor
 - What if enforcement of an ordinance caused the building to be razed, but your TIB's were not damaged ?
 - TIB's are BPP, but require damage by a covered peril
 - CP 04 26 applies only if TIB's are damaged (fully or in part) by a covered cause of loss
- 62

True Building Value

• Structure	\$750,000	
• Flagpole	\$ 5,000 *	
• Lighting	\$ 10,000 *	
• Machinery / Equipment	\$400,000 *	
• Overhead Crane	\$100,000 *	
• Floor Coverings	\$ 20,000 *	
• Appliances	\$ 15,000 *	
• Fire Extinguishers	\$ 2,500 *	
• Tractor	\$ 30,000 *	
• Snowblowers	\$ 5,000 *	
• Outdoor Furniture	\$ 2,500 *	
• Janitorial Supplies	\$ 3,000 *	
<hr/>		
Total Building Limits	<u>\$1,343,000</u>	vs. \$750,000 vs. \$450,000

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True Contents Value

• Furniture / Fixtures	\$ 50,000	
• Leased Equipment	\$160,000	(contractual gap)
• Stock / Inventory	\$600,000	(selling price)
• Floor Covering	\$ 10,000	
• Labor & Materials PPO	\$150,000 *	
• Tenant I & B	\$250,000 *	
<hr/>		
Total Contents Limits	\$1,220,000	vs. \$750,000 vs. \$500,000

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Total Blanket Value with Agreed Amount

- Building \$1,333,000
- BPP \$1,220,000
-
- Blanket Bldg
and BPP \$2,553,000 vs. \$1,500,000 vs. 950,000
- Coinsurance Suspended

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Blanket Insurance

- Blanket Insurance Benefits
 - 90% Coinsurance applies
 - BLDG, BPP, PPO, BI w/EE, etc.
 - Entire limit applies to any one location - \$3,000,000
 - 5-10% more premium
 - Agreed Amount Endorsement- SOV required



Location 1
\$1,000,000



Location 2
\$1,000,000



Location 3
\$1,000,000

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Sample Margin Clause

Limitation on Loss Settlement CP 1232

Insurance applies on a Blanket basis only to a coverage for which a Limit of Insurance is shown below. The most the Company will pay for loss or damage in any one occurrence at any one premises is 125% * of the value(s) for each Building or Structure.....

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OLLE

- Occurrence Limit of Liability Endorsement
- Loss payment is limited to:
 - Actual adjusted amount of loss
 - 100% of the individually stated values for each scheduled item
 - Limit of Liability

.....whichever is less.

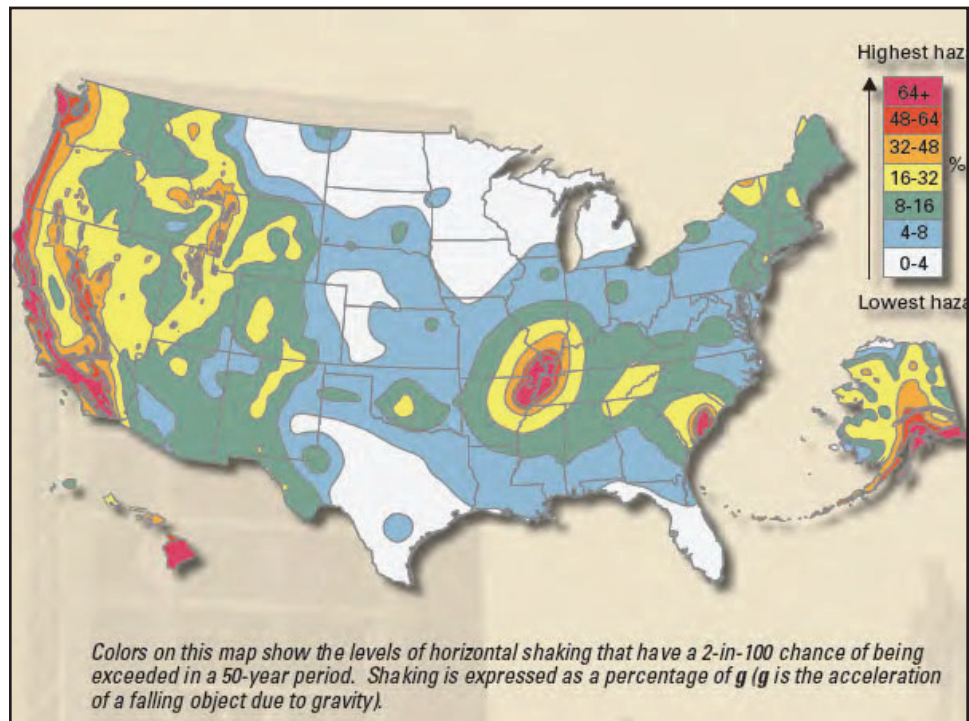
68

Building Items Coverage for Tenants

- Commercial tenants often are contractually required by lease to insure or be responsible for building property such as HVAC equipment, building fixtures, permanently installed machinery equipment and building glass.
- ISO addressed the building glass issue more than 10 years ago with the CP 14 70 (Building Glass – Tenant's Policy), but until this filing, there was no available endorsement to cover other landlord-owned real property. To garner the needed protection, the insured tenant had to rely on the concept of insurable interest (created by contract) and attempt to extend coverage to the landlord's property through the commercial property policy.

Building Items Coverage for Tenants

- Two new ISO commercial property endorsements more appropriately and specifically address this tenant exposure:
- **CP 14 01 09 17 Scheduled Building Property Tenant's Policy:** The tenant's policy is modified by this endorsement to include certain landlord-owned building property as insured property; but only if the insured specifically schedules the property and provides a limit. When this endorsement is used, the definition of building property includes building glass; or
- **CP 14 02 09 17 Unscheduled Building Property Tenant's Policy:** Like the CP 14 01, this endorsement modifies the tenant's policy to include certain landlord-owned building property as insured property; but unlike the CP 14 01, this endorsement does not require the insured to specifically schedule the property. All property, other than building glass is included within the limit selected. Thus, the insured chooses a separate limit for **Building Glass** and **Building Property Other Than Glass**.



- The New Madrid Fault, which runs through Arkansas, Kentucky, Missouri and Tennessee, also has insurers worried. According to the [Insurance Information Institute](#), there's a 40 to 63 percent chance the region will suffer an earthquake with a 6.0 magnitude in the next 15 years.
- The availability of earthquake coverage has become an issue in some regions of those states. For those who don't remember, which would include anyone not alive in 1811, an earthquake struck the New Madrid area with enough force to change the course of the Mississippi river and ring church bells on the east coast.

- Earthquakes have occurred in 39 states since 1900, and about 90% of Americans live in areas considered seismically active. Yet only a small percentage of people purchase earthquake insurance.

CP 10 40 10 12

EARTHQUAKE AND VOLCANIC ERUPTION ENDORSEMENT

This endorsement modifies insurance provided under the following:

COMMERCIAL PROPERTY COVERAGE PART
STANDARD PROPERTY POLICY

A. When this endorsement is attached to the Standard Property Policy, the terms Coverage Part and Coverage Form in this endorsement are replaced by the term Policy.

B. This endorsement applies to the Covered Property and Coverages for which an Earthquake – Volcanic Eruption Limit Of Insurance is shown in the Declarations.

C. Additional Covered Causes Of Loss

1. The following are added to the Covered Causes Of Loss:

a. Earthquake.

b. Volcanic Eruption, meaning the eruption, explosion or effusion of a volcano.

All Earthquake shocks or Volcanic Eruptions that occur within any 168-hour period will constitute a single Earthquake or Volcanic Eruption. The expiration of this policy will not reduce the 168-hour period.

2. If the Declarations indicate that this endorsement covers Earthquake – Sprinkler Leakage Only, then the Covered Causes of Loss in Paragraph **C.1.** of this endorsement do not apply, and the following apply instead:

a. Sprinkler Leakage resulting from Earthquake.

b. Sprinkler Leakage resulting from Volcanic Eruption. Volcanic Eruption means the eruption, explosion or effusion of a volcano.

All Earthquake shocks or Volcanic Eruptions that occur within any 168-hour period will constitute a single Earthquake or Volcanic Eruption. The expiration of this policy will not reduce the 168-hour period.

Don't forget to add CP 1410- Additional Property Covered

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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.

a). Ordinance or Law; b). Government Action, c). Nuclear Hazard, d). Utility Services, e). War or Military Action

2. We will not pay for loss or damage caused by or resulting from:

- a. Artificially generated electrical current, including electric arcing, that disturbs electrical devices, appliances or wires.
- b. Fire, explosion (other than volcanic explosion), landslide, mine subsidence, tidal wave, flood, mudslide or mudflow, even if attributable to an Earthquake or Volcanic Eruption.
- c. Any Earthquake or Volcanic Eruption that begins before the inception of this insurance.

EQ Deductible

2. **The Deductible, if any, in this Coverage Part is replaced by the following with respect to Earthquake and Volcanic Eruption:**

- a. **All Policies**

(1) A Deductible is calculated separately for, and applies separately to:

(a) Each building, if two or more buildings sustain loss or damage;

(b) The building and to personal property in that building, if both sustain loss or damage;

(c) Personal property at each building, if personal property at two or more buildings sustains loss or damage;

(d) Personal property in the open.

Earthquake Deductible

- **Example #1 – Specific Insurance (D.2.b.(1))**
- The amount of loss to the damaged building is \$60,000.
- The value of the damaged building at time of loss is \$100,000. The Coinsurance percentage shown in the Declarations is 80%; the minimum Limit of Insurance needed to meet the coinsurance requirement is \$80,000 (80% of \$100,000)

- The **actual Limit of Insurance on the damaged building** is \$70,000.
- The Deductible is 5%.

Step (1): $\$70,000 \div \$80,000 = .875$

Step (2): $\$60,000 \times .875 = \$52,500$

Step (3): $\$70,000 \times 5\% = \$3,500$

Step (4): $\$52,500 - \$3,500 = \$49,000$

- The most we will pay is \$49,000. The remainder of the loss, \$11,000, is not covered due to the Coinsurance penalty for inadequate insurance (steps (1) and (2)) and the application of the Deductible (steps (3) and (4)).

EQ Deductible

- **Example #3 – Blanket Insurance (D.2.c.(1))**

- Building #1 (\$500,000),
- Building #2 (\$500,000),
- Building #3 (\$1,000,000),
- The most recent Statement of Values on file with us, is \$2,000,000.
- The Coinsurance percentage is 90%,
- The minimum Blanket Limit of Insurance needed to meet the coinsurance requirement is \$1,800,000 (90% of \$2,000,000).
- The EQ deductible is 5%

- The **actual Blanket Limit of Insurance covering** Buildings #1, #2, and #3, shown in the Declarations, is \$1,800,000 (therefore no Coinsurance penalty).
- Buildings #1 and #2 have sustained damage; the amounts of loss to these buildings are \$40,000 (Building #1) and \$60,000 (Building #2)

Building #1

Step (1): $\$500,000 \times 5\% = \$25,000$

Step (2): $\$40,000 - \$25,000 = \$15,000$

Building #2

Step (1): $\$500,000 \times 5\% = \$25,000$

Step (2): $\$60,000 - \$25,000 = \$35,000$

- The most we will pay is \$50,000. That portion of the total loss not covered due to application of the Deductible is \$50,000.

Earthquake: Is an Injury Arising From an Act of Nature Compensable?

- An act of nature is, in essence, a natural disaster such as flooding, landslides, lightning, freezing, tsunamis and earthquakes. These types of events are considered “force majeure,” or causes outside the parties’ control that could not be avoided by exercising due care. Generally, an injury arising from an act of nature is a non-compensable injury. If the employee can prove exposure to a risk greater than that of a member of the general public, however, the injury may be found to be compensable.
- As an example, if a large earthquake caused buildings in the area to topple and ceilings to collapse, an employee at a school district might be injured. Some employees might suffer heart attacks or post-traumatic stress. These types of injuries would not be proximately caused by employment. But if the school district building was the only building that collapsed during an earthquake, or it was found that the building was defective, the claim would be compensable.

ClaimsJournal.com Angela Hatley 12/31/09

Estimated Insured Losses For The Top Ten Historical Earthquakes Based On Current Exposures (1) (\$ Bill)

Rank	Date	Location	Magnitude	Insured loss (current exposures)
1	Feb. 7, 1812	New Madrid, MO	7.7	\$100
2	Apr. 18, 1906	San Francisco, CA	7.8	96
3	Aug. 31, 1886	Charleston, SC	7.3	37
4	Jun. 1, 1838	San Francisco, CA	7.4	27
5	Jan. 17, 1994	Northridge, CA	6.7	21
6	Oct. 21, 1868	Hayward, CA	7.0	21
7	Jan. 9, 1857	Fort Tejon, CA	7.9	8
8	Oct. 17, 1989	Loma Prieta, CA	6.3	6
9	Mar. 10, 1933	Long Beach, CA	6.4	5
10	Jul. 1, 1911	Calaveras, CA	6.4	4

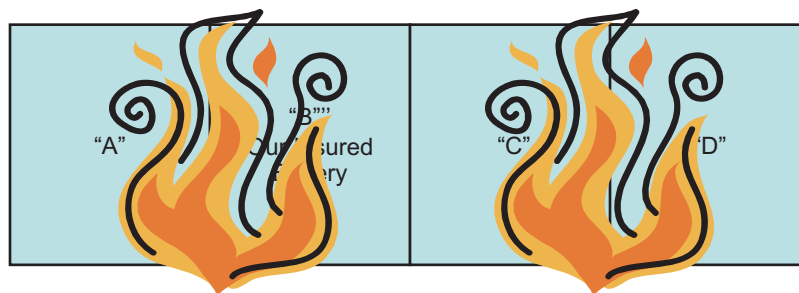
(1) Modeled loss to property, contents, and business interruption and additional living expenses for residential, mobile home, commercial and auto exposures as of December 31, 2008. Losses include demand surge and fire following earthquake. Policy conditions and earthquake insurance take up rates are based on estimates by state insurance departments and client claims data.

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Source: AIR Worldwide Corporation.

Damage to Premises Rented a/k/a Fire Legal Liability

Landlord: \$1,000,000 PROPERTY ---\$250,000 each store

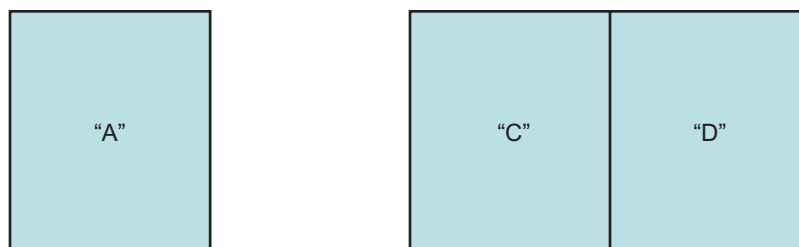


Tenant "B": BOP/CPP \$50,000 BPP and \$1,000,000 CGL and \$50,000 DPR

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Damage to Premises Rented a/k/a Fire Legal Liability

Landlord: \$1,000,000 PROPERTY ---\$250,000 each store



Tenant "B": BOP/CPP \$50,000 BPP and \$1,000,000 CGL and \$50,000 DPR

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j. Damage to Property Exclusion

[Remember we are talking about a Liability Policy]

1) Excludes property you own, rent, or occupy [can't be liable to yourself] and the expenses to repair or maintain such property even if to prevent an injury or damage.

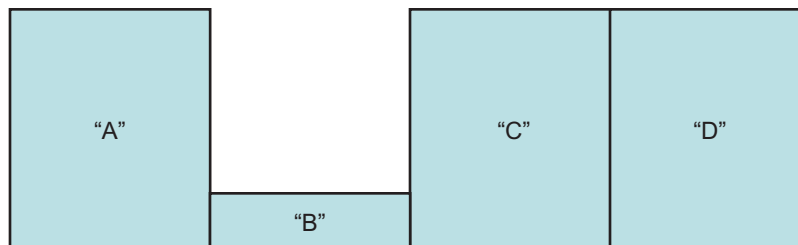
***Not for profit rents space in a local building for a fundraiser. Several rowdy guests damage the building and the building owner would like the not for profit to pay for the damage. Declined due to j(1)**

Thought lease was insured contract ? It is, but exclusions still apply.

Solution: Buy property Insurance

Damage to Premises Rented a/k/a Fire Legal Liability

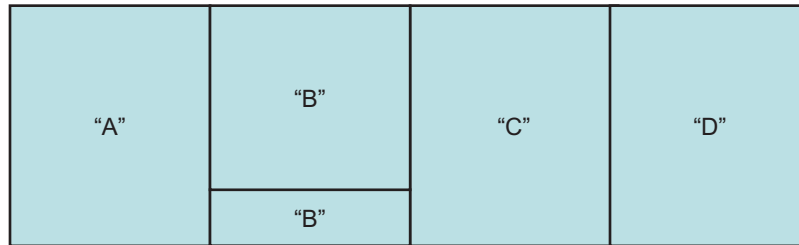
Landlord: \$1,000,000 PROPERTY ---\$250,000 each store



Tenant "B": BOP/CPP \$50,000 BPP and \$1,000,000 CGL and \$50,000 DPR

Damage to Premises Rented a/k/a Fire Legal Liability

Landlord: \$1,000,000 PROPERTY ---\$250,000 each store



Tenant "B": BOP/CPP \$50,000 BPP and \$1,000,000 CGL and \$250,000 DPR

Damage to Premises Rented a/k/a Fire Legal Liability

PROBLEMS and SOLUTIONS:

- Limited Coverage under CGL
- One Peril Only – FIRE !
- Need Legal Liability Coverage – CP 00 40
- Can my Commercial Umbrella help ?
- Mutual Waiver of Subrogation

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Damage to Premises Rented

Exhibit - Damage to Premises Rented To You (Named Insured)			
Cause of Damage	Property	7 days or less	More than 7 days
Fire, if negligent	Premises only while rented to OR temporarily occupied by the named insured	Covered	Covered
Other than fire	Premises & contents <u>rented</u> to the named insured	Covered	Not covered

Other Property Endorsements

POLICY NUMBER:

COMMERCIAL PROPERTY
CP 04 09 10 12

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

**INCREASE IN REBUILDING EXPENSES FOLLOWING
DISASTER (ADDITIONAL EXPENSE COVERAGE ON
ANNUAL AGGREGATE BASIS)**

This endorsement modifies insurance provided under the following:

BUILDING AND PERSONAL PROPERTY COVERAGE FORM
CONDOMINIUM ASSOCIATION COVERAGE FORM

SCHEDULE

Premises Number	Building Number	Additional Expense Coverage Percentage
		%
		%
		%
Information required to complete this Schedule, if not shown above, will be shown in the Declarations.		

- A. This endorsement applies with respect to a covered loss to a building identified in the Schedule.
Coverage for the loss is determined in accordance with all applicable policy provisions except as otherwise provided in this endorsement.
- B. The Covered Causes of Loss (including related endorsements, if any) otherwise applicable to a building listed in the Schedule will apply to the
2. Expenses for labor and/or building materials for repair or replacement of the damaged property increase as a result of the disaster and the total cost of repair or replacement exceeds the applicable Limit of Insurance due to such increase in expenses;
3. You elect to repair or replace the damaged building; and
4. You notified us, within 30 days of completion,

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POLICY NUMBER:

COMMERCIAL PROPERTY
CP 15 06 02 14

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

**OFF-PREMISES INTERRUPTION OF BUSINESS –
VEHICLES AND MOBILE EQUIPMENT**

This endorsement modifies insurance provided under the following:

BUSINESS INCOME (AND EXTRA EXPENSE) COVERAGE FORM
BUSINESS INCOME (WITHOUT EXTRA EXPENSE) COVERAGE FORM
EXTRA EXPENSE COVERAGE FORM

SCHEDULE

Described Premises:	
Description Of Business Activities Dependent On Scheduled Property:	
Option A	
Description Of Scheduled Property	Off-premises Limit Of Insurance
1.	\$
2.	\$
3.	\$

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POLICY NUMBER:

COMMERCIAL AUTO
CA 99 05 02 14

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

BUSINESS INTERRUPTION COVERAGE

This endorsement modifies insurance provided under the following:

AUTO DEALERS COVERAGE FORM
BUSINESS AUTO COVERAGE FORM
MOTOR CARRIER COVERAGE FORM

With respect to coverage provided by this endorsement, the provisions of the Coverage Form to which this endorsement is attached apply, unless modified by the endorsement.

SCHEDULE

Description Of Business Activities Dependent On Scheduled Property:	
Applicable Coverage(s) (select one): <input type="checkbox"/> Business Income (Without Extra Expense) <input type="checkbox"/> Business Income And Extra Expense	
Option A	
Description Of Scheduled Property	Limit Of Insurance
1.	\$
2.	\$

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POLICY NUMBER:

[Click to increase the magnification of the entire page](#)

COMMERCIAL PROPERTY
CP 10 36 10 12

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

LIMITATIONS ON COVERAGE FOR ROOF SURFACING

This endorsement modifies insurance provided under the following:

BUILDERS RISK COVERAGE FORM
BUILDING AND PERSONAL PROPERTY COVERAGE FORM
CONDOMINIUM ASSOCIATION COVERAGE FORM
CONDOMINIUM COMMERCIAL UNIT-OWNERS COVERAGE FORM
STANDARD PROPERTY POLICY

SCHEDULE

Premises Number	Building Number	Indicate Applicability (Paragraph A. and/or Paragraph B.)

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

- A. The following applies with respect to loss or damage by a Covered Cause of Loss (including wind and hail if covered) to a building or
- C. For the purpose of this endorsement, roof surfacing refers to the shingles, tiles, cladding, metal or synthetic sheeting or similar materials

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How do the CGL Occurrence and Aggregate Limits Work ?

How much Limit do you Need ?



Insurance to Value -2010
Lyon Consulting Services, LLC

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Liability Forms

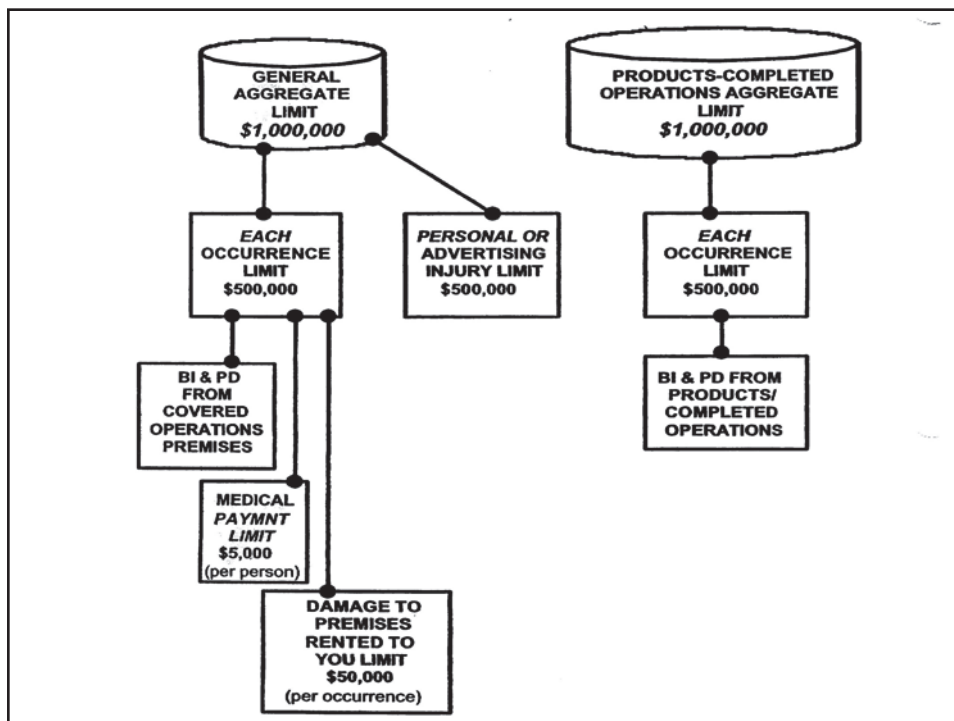
- **Occurrence:** means an accident, including continuous or repeated exposure to substantially the same general harmful conditions. (Not expected or intended from the point of the insured.)

Insurance to Value -2010
Lyon Consulting Services, LLC

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"Occurrence" is a much-used insurance term, and no one is quite sure what it means. One famous policyholder attorney, Eugene Anderson, described the word as a marshmallow, in that anyone can squeeze it and get the result that he/she wanted.

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Claims Examples

\$ 500,000	Each Occurrence
\$1,000,000	General Aggregate
\$1,000,000	Prods/Coops Aggregate
\$ 500,000	Personal /Advertising Injury
\$ 50,000	Damage to Premises Rented
\$ 5,000	Medical Payments (per person)

CLAIM # 1	\$ 900,000	A customer Slips and Falls
CLAIM #2	\$ 200,000	A competitor sues for Slander
CLAIM #3	\$1,500,000	Collapsing Display injures client
CLAIM #4	\$ 300,000	Holiday lights catch house on fire
CLAIM #5	\$ 10,000	Med Pay arising out of Claim #4

Claims Examples

\$ 500,000	Each Occurrence
\$1,000,000	General Aggregate
\$1,000,000	Prods/Coops Aggregate
\$ 500,000	Personal /Advertising Injury
\$ 50,000	Damage to Premises Rented
\$ 5,000	Medical Payments (per person)

CLAIM # 1	\$ 400,000	Customer #1 injured in hotel fire 1/1/19
CLAIM #2	\$ 200,000	Customer #2 injured in hotel fire 1/1/19
CLAIM #3	\$ 500,000	Customer #3 injured in hotel fire 1/1/19
CLAIM #4	\$ 2,500	Pedestrian will settle for \$2500 Med bills from falling debris of 1/1/19 fire

Claims Examples

\$ 500,000	Each Occurrence
\$1,000,000	General Aggregate
\$1,000,000	Prods/Coops Aggregate
\$ 500,000	Personal /Advertising Injury
\$ 50,000	Damage to Premises Rented
\$ 5,000	Medical Payments (per person)

CLAIM # 1 An overhead walkway collapses, injuring 60 people. Each person has \$10,000 of medical bills. How much does the policy pay?

CLAIM #2 A year later, 10 people file suit for \$50,000 each for permanent injuries from the same claim. How much can we pay?

OCCURRENCE FORM ISSUES

- Changing Named Insured's Sole Prop to LLC
- Contractors / Business Retire / Cancel Policy
- Mergers / Acquisitions – Where is Coverage?
 - ABC, Inc is acquired in an Asset Sale by XYZ, Inc on 2/1/19. One 4/1/19 ABC, Inc is sued for product they made in 2018.
 - Asset Sale, seller retains liabilities no coverage if policy canceled / buy Discontinued Prods/Coops
 - Asset and Liability sale, previous entity should be named on XYZ's policy forever
- Joint Ventures
- Newly Formed or Acquired Entities

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Changing Named Insured

- CGL: Steve Lyon T/A Lyon Contracting
- January 1, 2000 to April 12, 2018
- CGL: Lyon Consulting Contracting, LLC
- Effective April 13, 2018
- What happened to my coverage for the sole proprietorship ?
- Do not delete named insureds from CGL or UMB policies

Occurrence definition Quiz #1

- Bob Smith, a longtime client is very cost conscious. You have moved his account from company to company over the past 22 years. On August 2, 2009 Bob came into your office with a lawsuit alleging negligence on a project he completed in 2007, which caused an injury to the claimant in July 2008. Which Insurance Company should you report the claim to?
 - 96-99 Podunck Mutual \$300,000
 - 00-04 Lloyds of Lubbock \$500,000
 - 05-08 Browntree Ins Co \$500,000
 - 09-18 Everly Ins Group \$1,000,000

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Occurrence definition Quiz #2

- Bob Smith, a longtime client decided to retire in December 2018, and canceled all his policies. You have moved his account from company to company over the past 22 years. On August 2, 2019 Bob came into your office with a lawsuit alleging negligence on a project he completed in 2014, which caused an injury to the claimant in July 2019. Which Insurance Company should you report the claim to?
 - 96-99 Podunck Mutual \$300,000
 - 00-04 Lloyds of Lubbock \$500,000
 - 05-08 Browntree Ins Co \$500,000
 - 09-18 Everly Ins Group \$1,000,000

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WATCH OUT FOR POTENTIAL BAP E&O CLAIM

- Vehicles not titled, registered, leased to the named insured shown on Dec Page !
- No coverage !
- Verify ownership on phone and follow up with confirmation letter.

Who's an Insured ?

- Steve Lyon owns 100% of ABC, Inc.
- During the policy period, Steve forms and owns 100% of XYZ, Inc.
- Is XYZ, Inc. an insured ?
- NO !
- Why not ?
- New Entity not formed by "YOU"
- Employees are not "you's"
- Common Interest, but not formed by ABC, Inc
- ABC, Inc. would have had to form XYZ in order to trigger coverage [Watch carrier broadening endorsements]

ISO CG 00 01 (0413)

3. Any organization you newly acquire or form, other than a partnership, joint venture or limited liability company, and over which you maintain ownership or majority interest, will qualify as a Named Insured if there is no other similar insurance available to that organization. However:
- a. Coverage under this provision is afforded only until the 90th day after you acquire or form the organization or the end of the policy period, whichever is earlier;
 - b. Coverage **A** does not apply to "bodily injury" or "property damage" that occurred before you acquired or formed the organization; and
 - c. Coverage **B** does not apply to "personal and advertising injury" arising out of an offense committed before you acquired or formed the organization.

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

Multiple Occurrences— One Loss or Two or More?

- WTC - 9/11/01
- Hurricanes
- Wildfires
- Food Borne Illness
- Sexual Molestation
- Mass Shootings
- Mis-delivery of Fuel
- Social Media

109

Billy Bob's BBQ

- BB's prepared food for itself and for a private catering event.
- E-Coli contaminated food causes 50 of people to get sick and 2 die.
- The Bodily Injury is covered under BB's CGL policy.
- BB's has CGL limits of \$1mil / \$2mil, and an \$4mil excess policy.
- The question is how many occurrences are there ?

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Billy Bob's BBQ

- Was each person who became sick or died an occurrence ? (\$6mil)
- Since there were two locations (Billy Bob's and the private catering), is that two occurrences ? (\$2mil)
- Or is it all one occurrence, since all the BI arose out of one bad batch of food ? (\$1mil)₁₁₁

Gas Station Claim

- Your client's station is open from 6am-12:00am
- At 2:00am, the the driver of the re-fueling truck puts the wrong fuel in the wrong tanks
- When your client open the next morning, he unknowingly pumps diesel fuel into unleaded vehicles
- 24 vehicles filled with the wrong fuel break down, necessitating \$900 of repairs each.
- The stations garage policy has a \$1000 per occurrence PD deductible ?
- Does the station pay one deductible and the carrier pay the rest of the damages; or does the deductible apply to each car, and the station has no claim ?₁₁₂

Effect or Cause Approach ?

- In general, courts nationally have adopted two approaches for determining number of occurrences.
 - Under the "effect" test, number of occurrences is determined by examining the effect that an event had, i.e., how many individual claims or injuries resulted from it.
 - Conversely, under the "cause" test, number of occurrences is determined by examining the cause or causes of the damage.
- *The "cause" test is the majority rule nationwide.* ¹¹³

Using 'Cause Test,' Circuit Finds One Occurrence Where Hundreds of Surgical Instruments Were Washed with Hydraulic Fluid

FC&S Insurance Coverage Law
Report

Mitsui Sumitomo Ins Co v. Duke University Health System, Inc

- The U.S. Court of Appeals for the Fourth Circuit has decided that there was one occurrence where hydraulic fluid was used to wash hundreds of surgical instruments.
- *The Case*
- Duke University Health System, Inc., hired Automatic Elevator Company to renovate two elevators in a hospital's parking deck. After Automatic Elevator completed its work, it placed barrels full of used hydraulic fluid in its designated storage area at the hospital. Duke employees saw the barrels, mistakenly thought they contained surgical detergents and lubricants, and ultimately used the hydraulic fluid to wash hundreds of surgical instruments. Approximately 127 patients who may have come into contact with the tainted instruments sued Duke, which settled the claims for over \$6 million. Duke then sued Automatic Elevator.
- Mitsui Sumitomo Insurance Company of America, which had issued two policies to Automatic Elevator, argued that the hydraulic fluid mistake constituted one "occurrence," obligating it to pay \$1 million under the policies, which it had already paid to settle the surgical patients' claims against Automatic Elevator. Duke countered that each instance of a waste-laden medical instrument being used to operate on an unsuspecting patient gave rise to a separate "occurrence." A federal district court agreed with the insurer.

Who? What? When? "Ware" — An Illinois Appellate Court Addresses the "Number of Occurrences" Issue

FC&S Legal Bulletin
April 2013

Ware, et al. v. First Specialty Ins. Corp

- A party was held at the second and third floor units of a three floor apartment building in Chicago, Illinois. While several individuals were standing on the second or third floor back porches, the third floor porch suddenly collapsed onto the second floor porch which immediately collapsed onto the first floor porch. As a result of the porch collapse, 13 people died and at least 29 more were injured that night and in the days or weeks after the collapse.
- The owner of the property and others were identified as named insureds on a Bodily Injury and Property Damage Liability insurance policy issued by First Specialty Insurance Corporation. The policy covered the subject apartment building and had limits of \$1 million per occurrence and \$2 million in the aggregate, subject to a \$5,000 deductible.
- The injured and the decedents' estates sued the property owner and the other named insureds in the Circuit Court of Cook County, Illinois, claiming, among other things, that the insureds' failure to inspect the porch and maintain it in a reasonably safe manner was the cause of the injuries and deaths of the plaintiffs. The parties ultimately agreed to resolve their differences, with one of the arrangements being First Specialty's agreement to contribute its \$1 million per occurrence limit.

Ware, et al. v. First Specialty Ins. Corp

- Following the First Specialty agreement and pursuant to an assignment of rights, the plaintiffs filed a declaratory judgment action as to whether there was more than one occurrence and thus whether First Specialty must pay the policy's aggregate limit of \$2 million.
- The parties agreed for purposes of the lawsuit that there were "no intervening acts or circumstances which could have or did in fact contribute to and/or cause" the deaths or injuries suffered. The parties cross-moved for summary judgment on the issue of the number of occurrences. The trial court denied the plaintiffs' motion and granted First Specialty's, concluding that the injuries resulted from one occurrence.
- The plaintiffs appealed. They argued that because the several injuries and deaths did not all occur at the same time, First Specialty could not establish that the injuries constituted a single occurrence under the Policy. First Specialty contended that the injuries and deaths were the result of one thing, the porch collapse, and thus the injuries arose out of a single occurrence.

Ware, et al. v. First Specialty Ins. Corp

- **The Appellate Ruling**
- In its recent decision, the Illinois appellate court sided with First Specialty, relying on the language of the policy that defined “bodily injury” to mean “injury, sickness or disease sustained by a person, including death resulting from any of these at any time.” Based on this language, the appellate court rejected the plaintiffs’ argument that there were separate occurrences and determined the policy’s definition of “bodily injury” to mean that the phrase “deaths . . . at any time” controlled. When the deaths or injuries actually occurred was irrelevant to the appellate court’s determination that there was a single occurrence.
- The appellate court then discussed Illinois Supreme Court precedent on the “number of occurrences” issue. The appellate court first considered the Illinois Supreme Court’s decision in *Nicor, Inc. v. Associated Electric & Gas Ins. Services*,^[2] which said that the “cause theory” obligates the court to determine the source of the claims or injuries arising out of the event in order to determine the number of occurrences. Using the *Nicor* ruling as a guide here, the appellate court determined that the parties agreed there were no intervening acts or circumstances which could have caused the injuries and that the porch collapse was the single cause of the injuries. As the appellate court noted, “the time at which injuries manifest is irrelevant.” Rather, there was one cause and, thus, only one occurrence.

Ware, et al. v. First Specialty Ins. Corp

- The plaintiffs also asked the appellate court to consider the “time and space test” discussed in the Illinois Supreme Court’s decision in *Addison Insurance Co. v. Fay*.^[3] The “time and space test” limits the *Nicor* “cause theory” and if “cause and result are simultaneous or so closely linked in time and space as to be considered by the average person as one event,” then the court must conclude that the injuries arise from a single occurrence. The *Addison* court used the “time and space test” to say that the deaths of two boys who were found on private property constituted two occurrences because, even though there was an “ongoing omission” by the property owner in securing the land, there was insufficient evidence to determine how or when the boys died.
- The appellate court determined that the “time and space test” was not useful in this instance because the porch collapse was a distinct incident and not an “ongoing omission” as in *Addison*. Further, the appellate court stated that even under the “time and space test,” a single occurrence determination is warranted because the evidence made it so overwhelmingly clear that the cause of the injuries was “so closely linked in time and space as to be considered by the average person as one event. . . All of the Plaintiffs’ deaths and injuries can be directly traced to one cause: the porch collapse.”

Ware, et al. v. First Specialty Ins. Corp

Considerations

- The *Ware* decision spotlights some of the issues and tensions emerging from the two different “number of occurrences” analyses provided by the Illinois Supreme Court in its *Nicor* and *Addison* opinions. Both insurers and policyholders will need to analyze the relevant policy language and the specific facts of a situation in order to assess the possible outcomes when applying the growing body of Illinois law on the “number of occurrences” issue.

Other Interesting Cases

- *Evanston Ins. Co. v. Hous. Auth. of Somerset*, 867 F.3d 653 (6th Cir. 2017)
 - Two boys killed by falling tree, died for different reasons – one occurrence
- *Cincinnati Ins. Co. v. Devon International, Inc.*, No. 11-5930 (E.D. Pa.)
 - All imported Chinese Drywall – one occurrence
- *Secura Ins. v. Lyme St. Croix Forest Co., LLC*, 918 N.W. 2d 885 (WI. Oct. 30, 2018).
 - Although fires damages numerous properties -- one occurrence

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“Cause” Variations by State

- Arose out of the same proximate cause

- In *Washoe Cty.*, each act of molestation arose from the same proximate cause, the County's alleged negligence. Applying that rationale to *Donegal*, the Pennsylvania Supreme Court held that "coverage is predicated on Parents' inaction, and the resulting injuries stem from that one cause," so that Parents' negligence constituted one occurrence. See *Donegal* at 295.

- Time and Space

- Thus, when the insured is sued for negligent failure to provide security, "occurrence" is defined by the immediate injury-producing act and not by the underlying tortious omission. Here, the immediate causes of the injury were the intervening intruder's gunshots. The court rejected Travelers' argument that there should be one occurrence due to the close proximity in time and space of the shots fired and instead concluded that "using the number of shots fired as the basis for the number of occurrences is appropriate because each individual shooting is distinguishable in time and space." *Koikos* at 272.

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“Cause” Variations by State

- Immediate injury producing Act

- Therefore, the court concluded that Baumhammers' independent acts of shooting each of his victims constituted the immediate injury-producing act and that the alleged negligence of Parents resulted in six distinct attacks on six individuals. We disagree with the application of the cause approach adopted by the Superior Court in the instant case and the Florida court in *Koikos*, and conclude instead that to determine the number of "occurrences" for which an insurance company is to provide coverage, the more appropriate application of the cause approach is to focus on the act of the insured that gave rise to their liability.

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What is an “Occurrence” ?

- International Flavors vs. Royal Insurance
- New York Supreme Court Appellate Div
- 30 employees of MLC (a microwave popcorn packaging plant) file suit against IF alleging butter flavoring contained VOC's causing respiratory injuries
- 18 shipments of butter from 1992 to 1996
- AIG insures IF with \$100,000 SIR per any one Occurrence regardless of the number of persons injured
- Definition of Occurrence- accident or cont. or repeated harmful exposure
- **Court says while policy is clear that SIR is to be applied without regard to the number of persons injured, the definition of occurrence does not require the conclusion that the exposure of multiple individuals to the same harmful conditions constitutes a single event for the purposes of applying the SIR**
- There was no one single incident that could be identified as the event that resulted in injuries to multiple employees. SIR applies to each claim.
- Both parties were sophisticated buyers. If they wanted to combine all claims resulting from exposure they could have changed the definition of occurrence or inserted a specific aggregate.

The Batch Clause

Life Lines- Willis
Life Sciences

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Occurrence or Occurrences

- What is an Occurrence ?
 - One injured party is exposed to multiple exposures over time
 - Multiple injured parties are exposed to the same condition
 - Multiple claims arise out of a similar course of conduct

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Pharmaceutical Claim

- A drug company manufactures three drugs that have a common action, but are prescribed for three different diseases.
- Users of all three experience a similar adverse reaction and sue.
- Does this constitute one occurrence for all claimants?
- Does this constitute three occurrences (one for each disease group) ?
- Does this constitute an individual occurrence for each claimant ?

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Batch and Non-Cumulative Clauses

- Batch Clause
 - Aggregates the losses that arise from a “related incident” into a single claim covered by one policy period and one policy limit.
 - The insured pays one deductible for all claims arising from the “batch”, and all claims fall into one policy year –usually the year of the earliest known claim.

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Batch and Non-Cumulative Clauses

- Non-Cumulative Clause
 - Typically states that regardless of the number of insured persons, injured persons, claims, or claimants or policies involved, our total liability for damages covering one loss will not exceed the limit of liability shown on the Declarations Page of this policy.
 - The intent is to prevent stacking of policy limits when claims are caused by a single negligent act are made in different policy years.

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Claim Example

- You are a small Life Science Company with one product on the market
- You buy a \$5mil products liability policy with a \$10,000 deductible
- Over a period of time, you receive notice that individuals using your product are experiencing an unexpected adverse reaction.
- Letters from attorneys begin arriving on your desk
- You notify your insurer
- The injuries are not serious and it looks like you could settle each loss for \$5000
- You receive 30 claims before you pull the product from the market

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Individual Claims

- If these losses are determined to be individual claims you company would be responsible to pay each loss under your per-claim deductible.
- Your company pays $30 \times \$5,000 = \$150,000$ and your insurer pays nothing

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Batch Claims

- If these claims are batched and treated as one loss, your firm pays one deductible (\$10,000) and your insurer pays the balance of the claims (\$140,000).
- In this example batching the claims looks like a good deal for your company.

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New Claim Circumstances

- Your company buys a \$10mil policy, with a \$1mil self insured retention (SIR)
- The claims look like they are going to average \$500,000 to settle
- Again, 30 claims are presented (30 X \$500,000 = \$15mil)
- The losses straddled two policy periods.

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Individual Claims

- If the claims are considered individual losses, your firm is going to pay your SIR for each of two policy periods (\$2mil) and your insurer has two policy limits exposed; resulting in payments of \$13mil.

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Batch Claims

- If the claims are batched, you pay one SIR (\$1mil) and your insurer pays one policy limit (\$10mil).
- However the claims equal a total to \$15mil and the payment of your SIR and the insurer's policy limit equals \$11mil.
- You are short \$4mil, which you must pay out of pocket

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Considerations / Negotiations

- Negotiate an annual aggregate limit of the SIR and/or deductible. In the event that the losses are considered individual losses, the insured's out of pocket for each policy year would be capped.
- A proper limit of liability that anticipates the insured's potential exposure to a mass tort claim if it is treated as a single loss.
- Clearly written and completely understood batch language (or absence of batch language) that is compatible with the insured's risk financing philosophy.

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Mass Shootings – Number of Occurrences ?

- Mixed results for victims
- Virginia Tech campus shooting
 - Not liable
- Aurora Colorado movie theater shooting
- Not liable
- Neither of the above were held liable for injuries sustained during mass shootings, as the shootings were determined to be unforeseeable

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- **Parkland School Shooting**

- Applicability of Florida's school districts sovereign immunity statute
- Lawsuits charge school district with negligence
- The TPA for the districts Self insurance program said, "this unfortunate and tragic incident involves multiple parties and is being handled as a multiple party claim under one occurrence".
- If that theory holds up in court, the school district will be liable for \$200,000 per victim, but only up to \$300,000 overall, per Florida statute. The \$300,000 would have to be divided by the 40 victims.
- This theory is being challenged by saying each gun shot is a separate occurrence.

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Active Shooter Statistics

- Active Shooter definition – one or more individuals actively engaged in killing or attempting to kill people in a populated area
- 250 Active Shooter incidents in the U.S. between 2000-2017, according to FBI.
- An average of 14.7 annually or one every 3.5 weeks

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Policy Problem Issues

- CGL pays only if legally liable
- Does CGL policy cover shootings ?
- Professional policy – failure to protect ?
- Work Comp – must arise out of, during, and in the scope of employment
- CGL policy often falls short on needed protection
- New exposures created
- New coverages / policies needed

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Active Shooter Assailant Coverages

- Covers any weapon (not just guns/shooters)
- Covers any specific threat to inflict: BI or damage, destroy or contaminate property
- Primary Legal Liability for Victim lawsuits, damages, and claims expenses
- Physical Damage to or destruction of insured property: Building / Contents repairs or replacement, Sprinkler systems set off, etc.
- Demolition of Buildings where incidents occur
- Business Income / Extra Expenses – physical damage or denial or access
- Legal Fees / Defense Costs
- Medical Expenses
- Trauma Counseling / Psychiatric Care
- Crisis Management / Media Consultants
- Temporary Staffing
- Accidental Death Benefit for an insured person
- Service Dogs are covered
- Repatriation of remains to country of origin
- Accountants to handle charitable donations
- Training / Risk Management / Real Life Exercises

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Incident Response Services

- Accounting for all personnel
- Establishing employee/family re-unification area
- Family engagement team to assist with loss notifications
- Psychological and emotional support and first aid
- Crisis communications and media management
- Liaison with hospital and care teams
- Coordination of crime scene management including preservation of evidence and crime scene clean-up

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REVISED ENDORSEMENT

- HO 24 82 Personal Injury Coverage
- The definition of PI has been expanded to include an oral or written publication in any manner.
- This change is intended to address Internet exposures
- Also introduced is HO 24 10 Personal Injury AGGREGATE LIMIT, which will reduce coverage substantially if included.

The Lowest Bidder

It is unwise to pay too much, but it is worse to pay too little. When you pay too much, you lose a little money—that is all. When you pay too little, you sometimes lose everything, because the thing you bought is incapable of doing what it was bought to do. The common law of business balance prohibits paying a little and getting a lot—it can't be done. If you deal with the lowest bidder, it is well to add something extra for the risk you run. And if you do that, you will have enough to pay for something better”

John Ruskin (1819-1900)



James K. Ruble Seminar

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

Section 4

Commercial Lines Troubles and Solutions

JAMES K. RUBLE SEMINAR



COMMERCIAL LINES TROUBLES and SOLUTIONS

August 2024

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ISSUE # 1

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CREDIT CARD RISK and VIRTUAL CURRENCY EXPOSURES



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Credit Card Fraud

- Your insured accepted order over the Internet for product
- Initial credit card verification received
- Product is shipped
- Several days later, the credit card service advises that the credit card was stolen, and rescinds the payment from your insured
- Your insured already shipped the product and now is without product or income
- Any insurance coverage ?
- NO! Not Insurable

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VIRTUAL CURRENCY / BITCOIN

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Bitcoin Info

- Started in 2009, bitcoin is a digital currency created and exchanged independent of banks or governments.
- It resides in a virtual wallet on your computer or smart phone, and is accepted by many retailers, and some local governments
- Only 21 million can be produced, making the currency inflation-proof.
- About 19.5 million bitcoin are in circulation.
- By 2140 all bitcoin will be mined

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Do I need to be a computer geek to get bitcoin ?

- No, consumers can obtain bitcoin using dollars, through bitcoin exchanges such as Coinbase or Bitstamp, which also store the currency.
- About 19 million bitcoins currently exist.
 - About 30% of those bitcoin may be lost forever, due to hard drive crashes, lost keys, etc .

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Who regulates Bitcoin ?

- It doesn't have any of the consumer protections available with debit and credit cards, and there isn't the equivalent of FDIC.
- There's no remedy from a third party (such as a credit card issuer) in the event of fraudulent transactions.
- The Consumer Financial Protection Bureau has warned consumers about the risks of Bitcoin transactions and investments, and there is proposed regulatory regulations in several states.

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What's happening to the value of Bitcoin ?

- Relative to the US Dollar, bitcoin fell in value by 57% in 2014. At the beginning of last year, one bitcoin was worth more than \$700. By February it was worth \$236 !
- Bitcoin was designed to make consumer financial transactions fast and frictionless. At a bank it can take days for a check to clear. With bitcoin its instant.

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How much will Bitcoin be worth in the Future ?

Shervin Pishevar – \$100,000 (by 2022)



@shervin

Shervin Pishevar is a venture capitalist and angel investor who co-founded Hyperloop One and Sherpa Capital. He has also made investments in several companies including big names such as Airbnb and Uber.

Pishevar has called for Bitcoin to reach \$100,000 by the end of 2021 [via Twitter](#). The prediction came not long after a December 2020 meeting with MicroStrategy CEO Michael Saylor, whose company invested more than \$1 billion in Bitcoin during 2020.

Given his meeting with Saylor and his [previous predictions](#) of a decline in the US economy, it's no surprise that Pishevar has become bullish on Bitcoin.

Thomas Fitzpatrick – \$318,000 (by 2022)



Thomas Fitzpatrick

Citibank's Thomas Fitzpatrick is the global head of their market insights product, CitiFX Technicals. He made headlines for his Bitcoin prediction of \$318,000 by 2022, which surfaced after his report was leaked onto the internet in late 2020.

His analysis drew similarities between the gold market of the 1970s and Bitcoin's price action, in particular gold's \$20 to \$35 range before its surge in 1971. He also cited the acceleration in money-printing by central banks since the emergence of COVID-19, which may fuel the Bitcoin run.

Winklevoss Twins – \$500,000 (by 2030)

Winklevoss twins – the famous Bitcoin billionaires have said Bitcoin has the potential to [reach a price of \\$500,000 by 2030](#), which would put its market cap on par with that of gold (around \$9 trillion).

Tyler Winklevoss said, "Our thesis is that bitcoin is gold 2.0, that it will disrupt gold, and if it does that, it has to have a market cap of 9 trillion, so we think it could price one day at \$US500,000 of bitcoin."



@tylerwinklevoss

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Other Popular Virtual Currency

Related search

Bitcoin like currency



Litecoin



Bitcoin
Cash



Monero



Dash



Bitcoin Gold



Zcash

Related search

Top crypto coins



Bitcoin



Ethereum



Ripple



Dogecoin



Litecoin

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New ISO Crime Endorsements

- CR 24 45 (0622) Include Virtual Currency as Money
- *Can be added to Employee Theft, Computer and Fund Transfer coverages*
(what about Social Engineering /Fraudulent Impersonation ?)
- Value determined by The Exchange at the close of business day of loss
- A growing number of retail merchants, Fortune 500 companies, and States and Local Governments accept Bitcoin

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D. Exclusions

1. This insurance does not cover:

k. Virtual Currency

Loss involving virtual currency of any kind, by whatever name known, whether actual or fictitious including, but not limited to, digital currency, crypto currency or any other type of electronic currency.

CR 25 45- Include Virtual Currency as Money

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POLICY NUMBER:
Embedded PDF

CRIME AND FIDELITY
CR 25 45 06 22

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

INCLUDE VIRTUAL CURRENCY AS MONEY

This endorsement modifies insurance provided under the following:

COMMERCIAL CRIME COVERAGE FORM
COMMERCIAL CRIME POLICY
GOVERNMENT CRIME COVERAGE FORM
GOVERNMENT CRIME POLICY

and applies to the Insuring Agreement(s) designated in the Schedule.


SCHEDULE

Insuring Agreement	Virtual Currency Limit Of Insurance
<input type="checkbox"/> Employee Theft	\$
<input type="checkbox"/> Computer And Funds Transfer Fraud	\$
Virtual Currency	
Name:	
Exchange:	

PHISHING EXPEDITIONS

- Friday afternoon email received by CFO, from her Bank, directly to her (bank logo and everything)
- Message indicated that there had been too many unsuccessful log-in attempts to their online banking account
- Asked her to reply with her account # and p/w
- Needed this info to verify that she was actually from the firm and not someone else
- Bank would then change the p/w her know the new one
- Monday morning \$650,000 missing corporate account !

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POLICY NUMBER:

CRIME AND FIDELITY
CR DS 01 06 22**CRIME AND FIDELITY COVERAGE PART
DECLARATIONS (COMMERCIAL ENTITIES)**

The Crime And Fidelity Coverage Part (Commercial Entities) consists of this Declarations form and the Commercial Crime Coverage Form.

Named Insured:

Coverage is provided only if an amount is shown opposite an Insuring Agreement. If the amount is left blank or "Not Covered" is inserted, such Insuring Agreement and any other reference thereto in this Coverage Part will be deemed to be deleted therefrom.

Insuring Agreements		Limit Of Insurance Per Occurrence	Deductible Amount Per Occurrence
1.	Fidelity		
a.	Employee Theft	\$	\$
b.	ERISA Plan Official Dishonesty	\$	N/A
c.	Employee Theft Of Clients' Property	\$	\$
2.	Forgery Or Alteration		
a.	Forgery Of Negotiable Instruments	\$	\$
b.	Forgery Of Payment Card Instruments	\$	N/A
3.	Inside The Premises – Theft Of Money And Securities	\$	\$
4.	Inside The Premises – Robbery Or Safe Burglary Of Other Property	\$	\$
5.	Outside The Premises	\$	\$
6.	Computer And Funds Transfer Fraud	\$	\$
7.	Fraudulent Impersonation	\$	\$
8.	Money Orders And Counterfeit Money	\$	\$

If Added By Endorsement:

Insuring Agreement(s) Or Coverage(s)	Limit Of Insurance Per Occurrence	Deductible Amount Per Occurrence
	\$	\$
	\$	\$
	\$	\$
	\$	\$
Percentage Of Deductible Amount Over Which Losses Must Be Reported:		%
Percentage Of Total Assets Applicable To Subsidiary Acquisitions:		%

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New ISO Crime Endorsements

ISO CR 04 17 11 15 – Fraudulent Impersonation. This endorsement covers fraudulent impersonation scams where the insured is tricked into transferring money, securities or other property by someone impersonating an employee, customer or vendor of the insured.

- **Fraudulent Impersonation of Employees**

According to ISO, under this part, coverage is provided for loss resulting directly from the insured, in good faith, transferring money, securities or other property in reliance on a transfer instruction purportedly issued by an employee of the named insured, partners, members, managers, officers, directors, or trustees, but which actually was issued by an imposter without the knowledge or consent of a person listed above.

- **Fraudulent Impersonation of Customers and Vendors**

This coverage is similar to that for fraudulent impersonation of an employee except that it applies to customers or vendors with whom the insured has a *written* contract.

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Requirements

- Coverage is triggered by the boxes checked
 - Fraudulent Impersonation of an employee
 - Fraudulent Impersonation of a customer / vendor
- In order to trigger coverage, there must be a “written contract” with the customer or vendor
- There are levels of verification
 - All transfers
 - Transfers above a certain dollar amount
 - No verification is required

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Other Issues

- The insured outsources their bookkeeping
- Bookkeeper is added to the Crime Policy using the Designated Agent endorsement
- A third poster imposter instructs the bookkeeper to transfer funds to their personal account
- No coverage for this claim even with Fraudulent Impersonation and Designated Agent endorsements
- Designated Agent endt. only applies to Employee Theft coverage, not Fraudulent Impersonation/

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Other Issues – Cont'd.

- Where is coverage provided when an insurance agent/broker is tricked by email into transferring monies from their Trust Account ?
- There is no coverage. The Fraudulent Impersonation endorsement only covers the insured's money, not the insured's clients money, in the insured's care.
- There would also not be any coverage under ISO's Client's Property endorsement, as that only covers the Client's money if the Agent was stealing it.

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POLICY NUMBER:	CRIME AND FIDELITY CR 04 16 06 22		
THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.			
TOLL CHARGE FRAUD			
This endorsement modifies insurance provided under the following: COMMERCIAL CRIME COVERAGE FORM COMMERCIAL CRIME POLICY GOVERNMENT CRIME COVERAGE FORM GOVERNMENT CRIME POLICY			
SCHEDULE			
<table border="1" style="width: 100%; border-collapse: collapse;"><tr><td style="padding: 2px;">Number Of Days:</td></tr><tr><td style="padding: 2px;">Information required to complete this Schedule, if not shown above, will be shown in the Declarations.</td></tr></table>		Number Of Days:	Information required to complete this Schedule, if not shown above, will be shown in the Declarations.
Number Of Days:			
Information required to complete this Schedule, if not shown above, will be shown in the Declarations.			
<p>With regard to this Toll Charge Fraud endorsement, the provisions of the Coverage Form or Policy to which this endorsement is attached apply, unless modified by this endorsement.</p> <p>A. The following is added to Section A. Insuring Agreements:</p> <p>Toll Charge Fraud We will pay for loss from long-distance telephone toll call charges incurred by you resulting directly from fraudulent use or fraudulent manipulation of an "account code" or "system password" required to gain access to your "voice computer system", provided that such loss did not result from the failure to:</p> <ol style="list-style-type: none">1. Install and maintain in operating condition a call disconnect feature to terminate a caller's access after three unsuccessful attempts to enter an "account code"; or2. Incorporate a "system password"; or3. Change a "system password" within the number of days shown in the Schedule. <p>B. Limit Of Insurance The most we will pay for all loss resulting directly from an "occurrence" is the applicable Limit Of Insurance shown in the Declarations.</p> <p>C. Deductible We will not pay for loss resulting directly from an "occurrence", unless the amount of loss exceeds the Deductible Amount shown in the Declarations. We will then pay the amount of loss in excess of the Deductible Amount, up to the Limit of Insurance.</p> <p>D. In Section F. Definitions:</p> <ol style="list-style-type: none">1. The following is added to the definition of "occurrence": All toll call charges made on telephone lines directly controlled by one "voice computer system" occurring for a period of not more than 30 days inclusive of the date on which the first such toll call charges were made.			

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BOP vs. Crime Policy

- An employee stole \$250,000 over a 3 year period
- The Businessowner was insured under a BOP with an Employee Dishonesty limit of \$100,000
- The BOP carrier paid the limit of \$100,000
- After some investigation, the carrier catches the dishonest employee and recovers \$75,000 of the money stolen
- The businessowner expects to receive the \$75,000 since the \$100,000 limit did not adequately cover the \$250,000 theft.
- The insured is frustrated to find out that the carrier has the first right of recovery, and is entitled to keep the money.

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Commercial Crime Coverage forms and Employee Theft and Forgery Policies allow for recovery as follows:

- Recoveries

(1) Any recoveries, whether effected before or after any payment under this insurance, whether made by us or you, shall be applied net of the expense of such recovery:

- (a) First, to you (meaning the insured) in satisfaction of your covered loss in excess of the amount paid under this insurance;
- (b) Second, to us in satisfaction of the amounts paid in settlement of your claim;
- (c) Third, to you in satisfaction of any Deductible Amount; and
- (d) Fourth, to you in satisfaction of any loss not covered under this insurance

This indicates that after recovery expenses are paid, the insured gets first right of recovery for the uninsured loss. Then right of recovery shifts to the insurance company, allowing it to be made whole. Thereafter, if any assets remain, right of recovery shifts back to the insured for recovery of their deductible. Finally, it says any recovery remaining after that can be used by the insured to satisfy losses that weren't covered under this insurance policy form.

BOPs allow for recovery as follows:

Transfer Of Right Of Recovery Against Other To Us (under Common Policy Conditions)

1) Applicable to Business Property Coverage:

If any person or organization to or for whom we make payment under this policy has right to recover damages from another, those rights are transferred to us to the extent of our payment. That person or organization must do everything necessary to secure our rights and must do nothing after a loss to impair them.

Recovered Property (under Property Loss Conditions)

If either you or we (insurance carrier) recover any property after the loss settlement, that party must give the other prompt notice. At your option, you may retain the property. But then you must return to us the amount we paid you for the property. We will pay recovery expenses and the expenses to repair the recovered property, subject to the Limits of Insurance of Section I - Property

Simply said, the insurance carrier gets first right of recovery until it is repaid for the loss it paid. Once the insurance carrier is made whole, the insured is in line for recovery. (However, the carrier might not work for recovery once it is made whole.) The policy goes so far as to say under Recovered Property that if the insured recovers any property, it must give prompt notice to the carrier. The insured has the right to keep the recovered property but must pay the carrier back the amount they paid.

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ISSUE # 2

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EARTHQUAKE



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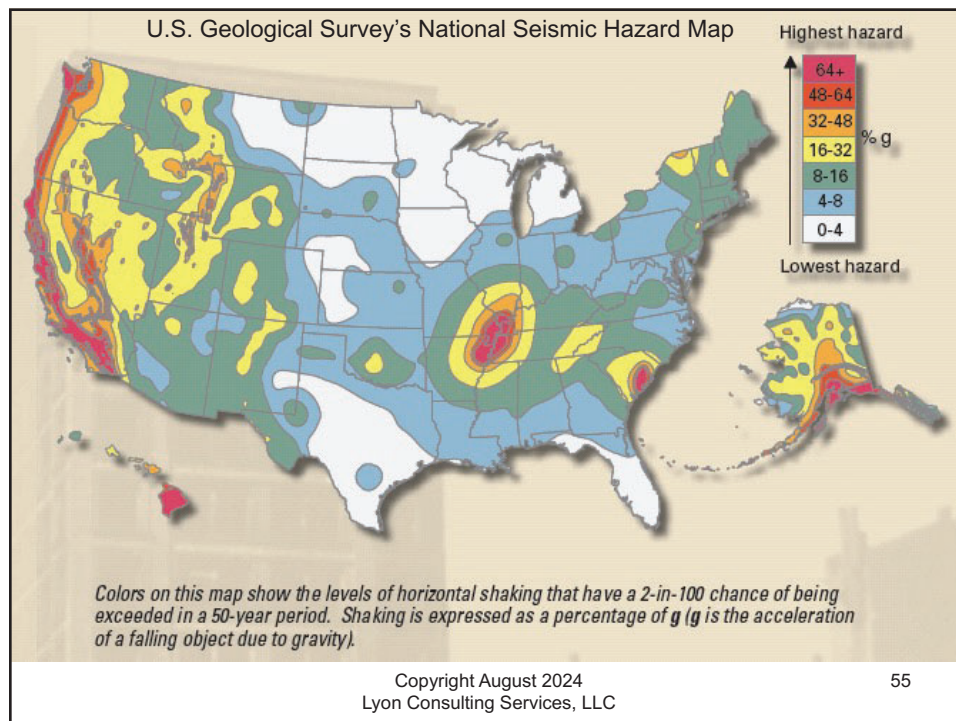
Earthquake

An earthquake ¹ is an abrupt and rapid shaking of the earth, arising from the shifting and breaking of rocks from beneath the earth's surface. This shaking can cause landslides, avalanches, floods, and fires. One way the magnitude of an earthquake is measured is via the Richter scale. This scale, developed in the 1930s, measures the size of the earthquake waves. Below is a diagram developed by the United States Geological Survey's (USGS's) National Earthquake Information Center (NEIC), tracking the number of annual earthquakes by magnitude and frequency in the United States.

Frequency of Occurrences of U.S. Earthquakes Since 1900		
Descriptor	Magnitude—Richter Scale	Average Annually
Great	8 and higher	1 (Based on observations since 1900)
Major	7–7.9	17 (Based on observations since 1990)
Strong	6–6.9	134 (Based on observations since 1990)
Moderate	5–5.9	1,319 (Based on observations since 1990)
Light	4–4.9	13,000 (estimated)
Minor	3–3.9	130,000 (estimated)
Very Minor	< 3.0	Magnitude 2–3: about 1,000 per day Magnitude 1–2: about 8,000 per day

Visit the [NEIC](#) website for more details.

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- The New Madrid Fault, which runs through Arkansas, Kentucky, Missouri and Tennessee, also has insurers worried. According to the [Insurance Information Institute](#), there's a 40 to 63 percent chance the region will suffer an earthquake with a 6.0 magnitude in the next 15 years.
- In 1811, an earthquake struck the New Madrid area with enough force to change the course of the Mississippi river and ring church bells in Boston, Mass.

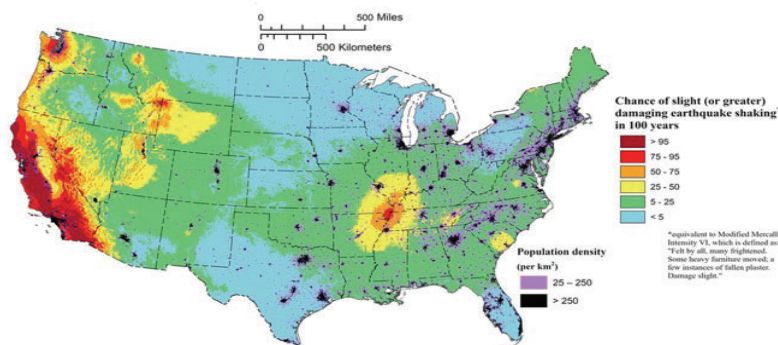
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WHEN AN EARTHQUAKE CAUSED THE MISSISSIPPI RIVER TO FLOW BACKWARD

The National Seismic Hazard Model was used to create a color-coded map of the 50 states. The USGS said this is the first time the model simultaneously includes all states.



The contiguous U.S.
(USGS / FOX Weather)

With this visual, several key findings were determined. For example, nearly 75% of the nation may experience intense ground shaking and damage from earthquakes, according to the USGS.

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MODERATE RISK	HIGH RISK	VERY HIGH RISK
<ul style="list-style-type: none"> • Alabama • Colorado • Connecticut • Delaware • Georgia • Maine • Maryland • Massachusetts • Mississippi • New Hampshire • New Jersey • New York • North Carolina • Ohio • Oklahoma • Pennsylvania • Rhode Island • Texas • Vermont • Virginia • West Virginia 	<ul style="list-style-type: none"> • American Samoa • Arizona • Arkansas • Illinois • Indiana • Kentucky • Missouri • New Mexico • Puerto Rico • South Carolina • Tennessee • Utah 	<ul style="list-style-type: none"> • Alaska • California • Commonwealth of Northern Mariana Islands • Guam • Hawaii • Idaho • Montana • Nevada • Oregon • Virgin Islands • Washington • Wyoming
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New York-New Jersey Area Shaken by 4.8 Earthquake

April 5, 2024

A 4.8 magnitude earthquake shook the New Jersey-New York area this morning at about 10:23 am, according to the [United States Geological Survey](#).

The earthquake's epicenter was near Whitehouse Station, New Jersey. People [reported feeling the shaking](#) in Manhattan, Philadelphia and Boston.

No injuries or damages have been reported.

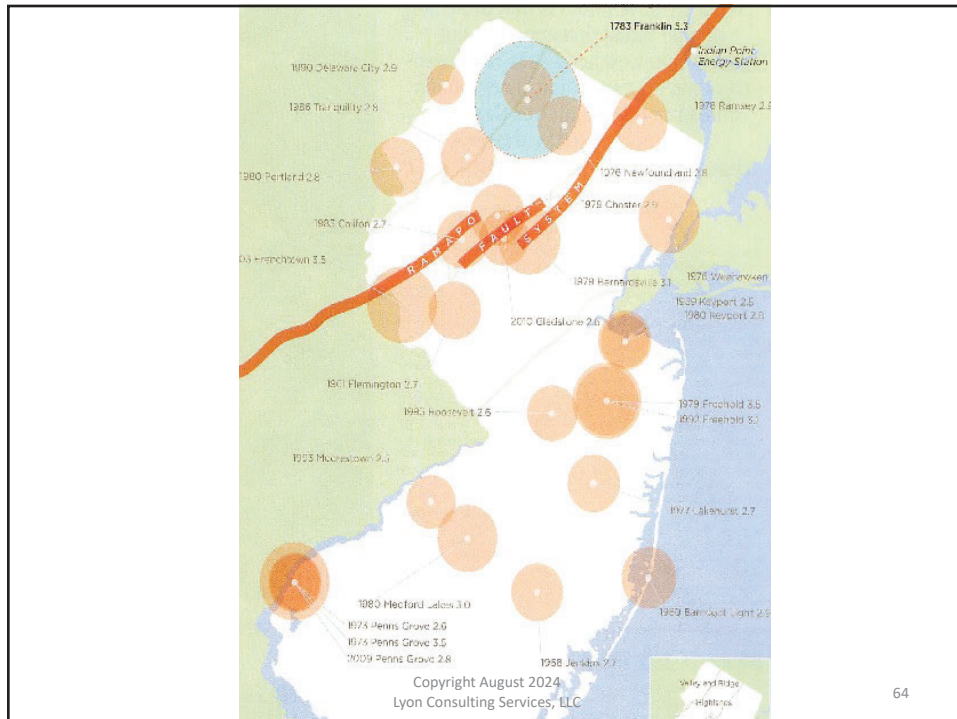
The governors in the affected states said they are assessing the situation.

In January, USGS reported on a 1.7 earthquake near Astoria, Queens.

In February, a USGS report said that nearly [75% of the U.S.](#) could experience damaging earthquake shaking. A new model showed the possibility of more damaging earthquakes along the central and northeastern Atlantic Coastal corridor, including Washington D.C., Philadelphia, New York and Boston.

The same report noted that 37 states have experienced earthquakes exceeding magnitude 5 during the last 200 years.

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Earthquake: Is an Injury Arising From an Act of Nature Compensable?

- An act of nature is, in essence, a natural disaster such as flooding, landslides, lightning, freezing, tsunamis and earthquakes. These types of events are considered “force majeure,” or causes outside the parties’ control that could not be avoided by exercising due care. Generally, an injury arising from an act of nature is a non-compensable injury. If the employee can prove exposure to a risk greater than that of a member of the general public, however, the injury may be found to be compensable.
- As an example, if a large earthquake caused buildings in the area to topple and ceilings to collapse, an employee at a school district might be injured. Some employees might suffer heart attacks or post-traumatic stress. These types of injuries would not be proximately caused by employment. But if the school district building was the only building that collapsed during an earthquake, or it was found that the building was defective, the claim would be compensable.

Claimsjournal.com Angela Hatley 12/31/09

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Estimated Insured Losses For The Top Ten Historical Earthquakes Based On Current Exposures (1) (\$ Bill)

Rank	Date	Location	Magnitude	Insured loss (current exposures)
1	Feb. 7, 1812	New Madrid, MO	7.7	\$100
2	Apr. 18, 1906	San Francisco, CA	7.8	96
3	Aug. 31, 1886	Charleston, SC	7.3	37
4	Jun. 1, 1838	San Francisco, CA	7.4	27
5	Jan. 17, 1994	Northridge, CA	6.7	21
6	Oct. 21, 1868	Hayward, CA	7.0	21
7	Jan. 9, 1857	Fort Tejon, CA	7.9	8
8	Oct. 17, 1989	Loma Prieta, CA	6.3	6
9	Mar. 10, 1933	Long Beach, CA	6.4	5
10	Jul. 1, 1911	Calaveras, CA	6.4	4

(1) Modeled loss to property, contents, and business interruption and additional living expenses for residential, mobile home, commercial and auto exposures as of December 31, 2008. Losses include demand surge and fire following earthquake. Policy conditions and earthquake insurance take up rates are based on estimates by state insurance departments and client claims data.

Source: AIR Worldwide Corporation.
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The situation at San Francisco's sinking skyscraper is so dire, residents are selling their condos at a loss of millions

- [Melia Robinson](#)
- Dec. 22, 2017, 12:40 PM
- 29,325



(left) rises 58 stories above San Francisco's Financial District. Vanguard Properties

- Millennium Tower, a luxury residential building in San Francisco, has sunk 17 inches and tilted 14 inches since it was completed in 2008.
- Residents say they're selling multimillion-dollar condos at a loss.
- A two-bedroom, three-bath unit at Millennium Tower sold in December 2017 for 30% less than what it sold for in 2013.

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Earth Movement EXCLUSION

CP 1030 – Special Cause of Loss Form

- (1) **Earthquake, including 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;
- (4) **Earth sinking (other than sinkhole collapse),** rising or shifting including soil conditions which cause settling, cracking or other disarrangement of foundations or other parts of realty. Soil conditions include contraction, expansion, freezing, thawing, erosion, improperly compacted soil and the action of water under the ground surface.

But if Earth Movement, as described in b.(1) through (4) above, results in fire or explosion, we will pay for the loss or damage caused by that fire or explosion.

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Earth Movement EXCLUSION

CP 1030 – Special Cause of Loss Form

- (5) **Volcanic eruption, explosion or effusion.** *But if volcanic eruption, explosion or effusion results in fire, building glass breakage or Volcanic Action, we will pay for the loss or damage caused by that fire, building glass breakage or Volcanic Action.* **Volcanic action** means direct loss or damage resulting from the eruption of a volcano when the loss or damage is caused by:
 - (a) **Airborne volcanic blast or airborne** shock waves;
 - (b) **Ash, dust or particulate matter; or**
 - (c) **Lava flow.**

All volcanic eruptions that occur within any 168 hour period will constitute a single occurrence. Volcanic action does not include the cost to remove ash, dust or particulate matter that does not cause direct physical loss or damage to the described property.

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CP 1040 Earthquake and Volcanic Eruption Endorsement

A. COVERED CAUSES OF LOSS

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

1. Earthquake.

2. Volcanic Eruption, meaning the eruption,
explosion or effusion of a volcano. All
Earthquake shocks or Volcanic Eruptions that
occur within any 168-hour period will constitute
a single Earthquake or Volcanic Eruption. The
expiration of this policy will not reduce the 168-
hour period.

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CP 1040 Earthquake and Volcanic Eruption Endorsement

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

- Ordinance or Law
- Governmental Action
- Nuclear
- Utility Services
- War or Military Action
- Exterior Masonry Veneer

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CP 1040 Earthquake and Volcanic Eruption Endorsement

2. We will not pay for loss or damage caused by or resulting from:

- a. **Artificially generated electrical current**, including electric arcing, that disturbs electrical devices, appliances or wires.
- b. **Fire, explosion (other than volcanic explosion), landslide, mine subsidence, tidal wave, flood, mudslide or mudflow, even if attributable to an Earthquake or Volcanic Eruption.**
- c. **Any Earthquake or Volcanic Eruption that begins before the inception of this insurance.**

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EQ Deductible

2. The Deductible, if any, in this Coverage Part is replaced by the following with respect to Earthquake and Volcanic Eruption:

a. All Policies

(1) A Deductible is calculated separately for, and applies separately to:

- (a) Each building, if two or more buildings sustain loss or damage;
- (b) The building and to personal property in that building, if both sustain loss or damage;
- (c) Personal property at each building, if personal property at two or more buildings sustains loss or damage;
- (d) Personal property in the open.

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POLICY NUMBER:

COMMERCIAL PROPERTY
CP DS 06 02 19

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

EARTHQUAKE – VOLCANIC ERUPTION COVERAGE SCHEDULE (SUB-LIMIT FORM)

PAGE ___ OF ___

This endorsement provides supplementary information to be used with the following:

EARTHQUAKE AND VOLCANIC ERUPTION COVERAGE (SUB-LIMIT FORM WITH FLAT-DOLLAR DEDUCTIBLE)
EARTHQUAKE AND VOLCANIC ERUPTION COVERAGE (SUB-LIMIT FORM WITH PERCENTAGE DEDUCTIBLE)

Description Of Premises Or Location(s):

"Including Masonry Veneer" Option: ☐ Yes ☐ No

Property Damage Deductible:

Flat-dollar Deductible \$

OR

Percentage Deductible %

Earthquake – Sprinkler Leakage Only ☒

← Fire deductible applies- not EQ !

Earthquake – Volcanic Eruption Limit(s) Of Insurance The Limit(s) Of Insurance shown in Section A and/or B of this Schedule is an annual aggregate limit(s). For an explanation, refer to the Limit Of Insurance provisions in the applicable Earthquake And Volcanic Eruption Coverage (Sub-limit Form).

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A. Blanket Limit: \$

(The Blanket Limit applies to all Premises and Locations listed on this page of the Schedule. If a separate Blanket Limit(s) applies at other Premises or Locations, then a separate page(s) of this Schedule will be used to enter the Blanket Limit(s) for such Premises or Locations.)

Check applicable Covered Property/Coverage(s) for Blanket Limit:

☐ Bldg. ☐ BI (CP 00 32)
☐ BPP ☐ EE (CP 00 50)
☐ BI (CP 00 30) ☐ Other: _____

The Blanket Limit does not apply separately to the Premises, Locations, Covered Property or Coverages listed. The Blanket Limit is the most we will pay for all loss or damage to the indicated Covered Property/Coverages at the Premises and Locations listed, subject to all other applicable provisions of the Limit of Insurance section in the applicable Earthquake And Volcanic Eruption Coverage (Sub-limit Form).

B. Separate Limits (If a separate Limit of Insurance is entered in this section of the Schedule, B., for a particular Covered Property/Coverage, that Covered Property/Coverage should NOT be included under a Blanket Limit.)

<u>Premises #1</u>		<u>Premises #2</u>		<u>Premises #3</u>	
Bldg.	\$ _____	Bldg.	\$ _____	Bldg.	\$ _____
BPP	\$ _____	BPP	\$ _____	BPP	\$ _____
BI (CP 00 30)	\$ _____	BI (CP 00 30)	\$ _____	BI (CP 00 30)	\$ _____
BI (CP 00 32)	\$ _____	BI (CP 00 32)	\$ _____	BI (CP 00 32)	\$ _____
EE (CP 00 50)	\$ _____	EE (CP 00 50)	\$ _____	EE (CP 00 50)	\$ _____
Other:	\$ _____	Other:	\$ _____	Other:	\$ _____

Increased Annual Aggregate Limit Option: ☐ Yes ☐ No

Bldg. = Building; BPP = Business Personal Property; BI = Business Income Coverage Form; EE = Extra Expense Coverage Form

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Earthquake Deductible

- **Example #1 – Specific Insurance**

- The amount of loss to the damaged building is \$60,000.
- The value of the damaged building at time of loss is \$100,000. The Coinsurance percentage shown in the Declarations is 80%; the minimum Limit of Insurance needed to meet the coinsurance requirement is \$80,000 (80% of \$100,000)

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- The **actual Limit of Insurance on the damaged building** is \$70,000.
- The Deductible is 5%.

Step (1): $\$70,000 \div \$80,000 = .875$

Step (2): $\$60,000 \times .875 = \$52,500$

Step (3): $\$70,000 \times 5\% = \$3,500$

Step (4): $\$52,500 - \$3,500 = \$49,000$

- The most we will pay is \$49,000. The remainder of the loss, \$11,000, is not covered due to the Coinsurance penalty for inadequate insurance (steps (1) and (2)) and the application of the Deductible (steps (3) and (4)).

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EQ Deductible

- **Example #2 – Blanket Insurance**

- Building #1 (\$500,000),
- Building #2 (\$500,000),
- Building #3 (\$1,000,000),
- The most recent Statement of Values on file with us, is \$2,000,000.
- The Coinsurance percentage is 90%,
- The minimum Blanket Limit of Insurance needed to meet the coinsurance requirement is \$1,800,000 (90% of \$2,000,000).
- The EQ deductible is 5%

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- The **actual Blanket Limit of Insurance covering** Buildings #1, #2, and #3, shown in the Declarations, is \$1,800,000 (therefore no Coinsurance penalty).
- Buildings #1 and #2 have sustained damage; the amounts of loss to these buildings are \$40,000 (Building #1) and \$60,000 (Building #2)

Building #1

Step (1): $\$500,000 \times 5\% = \$25,000$

Step (2): $\$40,000 - \$25,000 = \$15,000$

Building #2

Step (1): $\$500,000 \times 5\% = \$25,000$

Step (2): $\$60,000 - \$25,000 = \$35,000$

- The most we will pay is \$50,000. That portion of the total loss not covered due to application of the Deductible is \$50,000.

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Coverage

- Earthquake Form
 - Commercial
 - Personal
- Flood Insurance
 - NFIP
 - Private
 - Excess
 - Other
- Difference in Conditions Policy (DIC)

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Earthquake Forms

- CP 10 40 – Earthquake and Volcanic Eruption Coverage with percentage deductible
- CP 10 45 – Earthquake and Volcanic Eruption Coverage – Sublimit with percentage deductible
- CP 10 28 - Earthquake and Volcanic Eruption Coverage with flat dollar deductible
- CP 10 29 – Earthquake and Volcanic Eruption Coverage – Sublimit with flat dollar deductible
- BP 10 03 – Earthquake
- BP 10 11 – Earthquake and Volcanic Eruption- Sublimit
- **HO 04 54 – Earthquake Coverage**
- **HO 04 36 – Loss Assessment Coverage for Earthquake**

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Embedded PDF

POLICY NUMBER:

HOMEOWNERS
HO 04 36 03 22

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

LOSS ASSESSMENT COVERAGE FOR EARTHQUAKE

SCHEDULE

Location Of The Unit	Limit Of Liability	Earthquake Loss Assessment Deductible As A Percentage Amount	Earthquake Loss Assessment Deductible As A Dollar Amount
	\$	% Of Limit	\$
	\$	% Of Limit	\$
	\$	% Of Limit	\$

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

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ISSUE # 3

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WHAT'S IN A NAME ?



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Named Insured

- Get all names / entities correct
- Change of Entity / New Entity(s) formed?
- Old Entities not shown- do you want to insure them?
- Entities deleted / Locations Deleted
- Joint Ventures- past and future
- Who is an Insured- Depends on Entity Shown on Dec Page
- Automatic Insureds
- Wholly Owned subsidiaries / Common Ownership necessary ?
- Pension Plans
- Broad Named Insured Wording End'ts
- First Named Insured has ALL the rights
- Change info on one policy, but not on others- communication

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Changing Named Insured

- CGL: Steve Lyon T/A Lyon Contracting
- January 1, 2019 to April 12, 2023
- CGL: Lyon Contracting Services, LLC
- Effective April 12, 2023
- Avoid deleting entities from CGL and UMB policies

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Quick Quiz

- ABC Manufacturing, Inc. sold their assets (Asset Only Sale) to XYZ, Inc. effective 1/1/19. A claim was filed against ABC 6/1/19 for injuries arising out of a product they manufactured in 2017. Where's the coverage?
- Asset Only Sale- The Seller retains liability, needs Discontinued products /completed operations coverage.

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Quick Quiz

- ABC Manufacturing, Inc. sold their business to XYZ, Inc. (Asset & Liabilities). A claim was filed against ABC on 6/1/19 for injuries arising out of a product they manufactured in 2017. Where's the coverage?
- Previous entity should be named on current CGL policy "forever".

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Successor Liability Coverage

• **Types of Corporate Acquisitions**

– A company can be acquired in one of three ways.

- Statutory mergers
- Stock purchases
- Asset purchases

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Successor Liability Coverage

- Company A was acquired by Company B.
- Company A owned a dry cleaning business for many years
- Both companies were unaware that pollution had been occurring in the soil and aquifer.
- When the pollution is discovered, Company B is the owner of the property and is held responsible for the cleanup
- Can Company B seek coverage under Company A's pre-acquisition insurance policies?

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Depends...

- **Statutory Merger** – Company B acquires Company A. Company A ceases to exist.
- Most state statutes say that all of the “long-tail” liabilities and contractual rights of Company A– including it rights under occurrence based insurance policies--- are automatically transferred to Company B by law.

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Depends.....

- **Stock Purchase** – Company B purchases all of the stock of Company A. Company B becomes the new owner. Company A continues to exist as a separate entity.
- Company A's "long tail" liabilities and insurance coverage remain in place, and Company A can still demand coverage under its pre-acquisition insurance policies.

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Depends....

- **Asset Purchase** - Company B acquires all of the assets Company A. Company A continues to exist as an empty shell.
- Neither the "long-tail" liabilities for IBNR nor the insurance policies are transferred to Company B by operation of the law.
- However, there may be some exceptions to this.

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Asset Purchase....Exceptions

- If Company B agrees to contractually assume the “long-tail” liabilities of Company A, and
- Company A agrees to assign their insurance policies to Company B under the asset purchase agreement
- Insurance companies DO NOT permit the assignment of policies, without the carriers consent. (except for death of an individual named insured)

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Asset Purchase...Exceptions

- Some courts have allowed the unapproved assignment of insurance policies to the acquiring entity, without the carriers permission.
- They do so under the theory that the loss has already occurred. Company A's policies have already been triggered under an occurrence based policy, when the actual PD occurred. These are simply IBNR claims, which can be assigned to the new owner.
- Other courts feel the claim does not arise until it is actually reported or a lawsuit is filed.

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Gopher Oil Co. v. American Hardware Mut. Ins. Co.

588 N.W.2d 756 (Minn. Ct. App. 1999),

- This case exemplifies the thought process of pro-policyholder courts. In that case, the policyholder deposited oil sludge at four disposal sites, and environmental contamination took place from 1954 to 1966. In 1973, the policyholder sold its assets to an acquiring company, which took the policyholder's corporate name. The CGL insurer that issued preacquisition policies was not advised of the transaction, and so it did not give its consent. In 1991, environmental claims were made, and the acquiring company was held liable for cleanup costs.
- The acquiring company sought coverage under the preacquisition insurance policies issued to the policyholder. The court held that the "no assignment" clause did not bar coverage here.
- The purpose of a non-assignment clause is to protect the insurer from an increase to the risk it has agreed to insure. But when events giving rise to an insurer's liability have already occurred, the insurer's risk is not increased by a change in the insured's identity.

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Fragrance firm entitled to coverage on environmental claims

Posted On: Aug. 13, 2015 2:27 PM CST

Judy Greenwald
Business Insurance

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In a case that involves some \$500 million in insurance coverage, a New Jersey state court has held that a fragrance company has the right to seek coverage for various environmental claims, because the transfer of insurance policies to it from a related unit did not require insurers' prior approval.

The ruling by the Superior Court of New Jersey, appellate division, in Trenton, New Jersey, in the complex litigation, *Givaudan Fragrances Corp. v. Aetna Casualty & Surety Co. et al.* reverses a lower court ruling.

A three-judge panel of the appellate court unanimously reversed that ruling. “Defendants refused to recognize the assignment on the ground their respective policies prohibited policy assignments without the insurers' consent, and none of the insurers had consented to the assignment.” said the ruling. “Defendants also contended that fragrances was not included within the definition of insured in any of the policies.”

However, said the ruling by a unanimous three-judge panel, “Flavors did not require the insurers' consent to assign its rights under the policies.” **The ruling states also that “the assignment of the rights to policies specified in the assigning document could not have increased the risk to any defendant insurer because all losses occurred before the assignment.”**

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Automatic Insureds

C. Automatic Insureds - Includes Others:

6. **Newly Acquired or newly Formed organizations:**

- a. If no other similar insurance
- b. Until the end of the policy period or 90th day
- c. Excludes prior injury or damage

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

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THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

AUTOMATIC INSURED STATUS FOR NEWLY ACQUIRED OR FORMED LIMITED LIABILITY COMPANIES

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

A. Paragraph 3. under **Section II – Who Is An Insured** is replaced by the following:

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

However:

a. Coverage under this provision is afforded only until the 90th day after you acquire or form the organization or the end of the policy period, whichever is earlier;

b. Coverage A does not apply to "bodily injury" or "property damage" that occurred before you acquired or formed the organization; and

c. Coverage B does not apply to "personal and advertising injury" arising out of an offense committed before you acquired or formed the organization.

B. The last paragraph of **Section II – Who Is An Insured** is replaced by the following:

No person or organization is an insured with respect to the conduct of any current or past:

1. Partnership or joint venture; or
2. Limited liability company, unless Paragraph A. above applies;

that is not shown as a Named Insured in the Declarations.

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Who's an Insured ?

- ABC, Inc. is the named insured on a CGL policy
- Jennifer owns 100% of ABC, Inc.
- Jennifer forms and owns 100% of XYZ, Inc.
- Is XYZ, Inc. an insured ?
- NO !
- Why not ?
- New Entity not formed by "YOU"
- Employees are not "you's"
- Common Interest, but not formed by ABC, Inc
- ABC, Inc. would have had to form XYZ in order to trigger coverage [Watch carrier broadening endorsements]

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ISO CG 00 01 (0413)

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

- a. Coverage under this provision is afforded only until the 90th day after you acquire or form the organization or the end of the policy period, whichever is earlier;
- b. Coverage **A** does not apply to "bodily injury" or "property damage" that occurred before you acquired or formed the organization; and
- c. Coverage **B** does not apply to "personal and advertising injury" arising out of an offense committed before you acquired or formed the organization.

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

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WHAT'S IN A NAME ?

- What is a D/B/A ? What is a T/A
 - Fictitious entities filed with the Secretary of State
 - Not legal entities, cannot be sued or become liable
 - 24 Andrews Place, LLC T/A Steve's Ice Cream Shoppe is a good example.
 - The legal name of the entity is 24 Andrews Place, LLC
 - Steve's Ice Cream Shoppe is a trade name

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Should you list T/A or D/B/A on the CGL Policy

- Steven D Lyon, a sole proprietor
- Steven D. Lyon D/B/A Lyon Landscaping
- A recent Massachusetts SJC ruling states that showing the d/b/a or t/a AFTER a legal entity, limits coverage to those operations ONLY
- That means the automatic coverage provided by the CGL policy is defeated !

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ISSUE # 4

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CGL POLICY TRIGGER



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CG 00 01 (0413)

COVERAGE A – BODILY INJURY AND PROPERTY DAMAGE LIABILITY

1. Insuring Agreement

- This insurance applies to "bodily injury" and "property damage" only if:
 - (1) The "bodily injury" or "property damage" is caused by an "occurrence" that takes place in the "coverage territory";
 - (2) The "bodily injury" or "property damage" occurs during the policy period;

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Claims Reporting Occurrence

Bob Smith, a long time client is very cost conscious. You have moved his account from company to company over the past 22 years. On January 20, 2023 Bob came into your office with a lawsuit alleging negligence on a project he completed in 2019 which caused an injury to the claimant in 2022. Which insurance Company should you report the claim to?

- | | | |
|--------|-------------|-------------|
| •01-06 | Company "A" | \$300,000 |
| •07-17 | Company "B" | \$500,000 |
| •18-21 | Company "C" | \$500,000 |
| •22-23 | Company "D" | \$1,000,000 |

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Claims Reporting Occurrence

Bob Smith, a long time client has decided to retire on 12/31/23 after 25 years in the Construction business and cancels all his policy. During the past years, Bob has had coverage with the following carriers, shown below. On June 10, 2024 there is a fire in a home which was built by Bob in 2022, where a young girl is badly injured. On December 1, 2024 a lawsuit is filed against Bob for negligence and faulty construction. Which carrier will respond to this claim ?

- | | | |
|---------|-------------|-------------|
| • 98-11 | Company "A" | \$300,000 |
| • 12-14 | Company "B" | \$500,000 |
| • 15-20 | Company "C" | \$500,000 |
| • 21-23 | Company "D" | \$1,000,000 |

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Occurrence Policies.....

- **DO NOT HAVE “TAILS”**
- **DO NOT HAVE “EXTENDED REPORTING PERIODS”**
- THESE ARE “CLAIMS MADE” TERMS

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Discontinued Products and Completed Operations Coverage

- Continue CGL policy in force if possible
 - Must justify there is a need
- Buy a separate policy for this coverage
 - Standard vs. Excess Market
- Not just for Occurrence Policies- Applies to Claims Made Policies too !
- How long does this exposure last ?
 - Statute of Repose

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Statute of Repose

AL=7	AK=10	AZ=8	AR=4	CA=10	CO=6	CT=7	DE=6
DC=10	FL=10	GA=8	HI=10	ID=6	IL=10	IN=10*	IA=10*
KA=10	KY=7	LA=5	ME=6	MD=10	MA=6	MI=6	MN=10
MS=6	MO=10	NE=10	NV=10	NH=8	NJ=10	NM=10	NY=na
NC=6	ND=10	OH=10	OK=10	OR=10	PA=12	RI=10	SC=8
SD=10	TN=4	TX=10	UT=9	VT=na	VA=5	WA=6	WV=10
WI=7	WY=10						

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Misunderstanding...

- **Every person is personally liable for their own torts**, even if the torts are business torts committed while acting solely on behalf of a corporation, this protection is extraordinarily important to owners of small corporations. An all too common misunderstanding of business owners is that the “corporate veil” shields the owner from all tort liability.

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Can I Set Up An LLC To Avoid Personal Liability In A Lawsuit?

by [Max Kennerly, Esq.](#)

- Among the many creative “legal” ideas floating around on the internet is:
- If you set up an LLC for yourself and conduct all your business through it, the LLC will be liable in a lawsuit but you won’t.
- Last week, I was asked if this “asset protection strategy” worked. No, it doesn’t. Conducting your personal business through an LLC provides no protection against a tort verdict, the type of liability that most people are worried about. The use of corporate forms — like LLCs, S-Corporations, or Incorporation — has many important purposes, but avoiding personal tort liability for your own conduct is not one of them.

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- If Warren Buffet defrauded Mom and Pop’s Ice Cream Stand wholly for the benefit of Berkshire Hathaway, he would *personally* be on the hook for the damage just the same as Berkshire.
- Let’s go back to your personal LLC. Assume you hit a pedestrian with a car, defame someone in a blog post, or cause a building fire. It doesn’t matter if you were “employed” by your LLC when you did it — you will still be *personally* liable, as will the LLC that “employed” you.
- Thus, in order to “protect your assets,” you need to put enough money into the LLC that it can completely pay any tort judgment against you, or else the injured person can go for your assets long after it has bankrupted the LLC.
- That just defeats the nominal purpose of the LLC (to avoid liability), since you’ll have to pay the same amount anyway, just through the LLC. Again, there are plenty of reasons for setting up an LLC, such as protecting investors, limiting *contractual* liability, limiting liability arising from *employee’s* conduct, and a host of business and tax uses, but avoiding personal liability for your own conduct isn’t one of them.

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ISSUE # 5

117

MARGIN CLAUSES

- Blanket Insurance Benefits
 - 90% Coinsurance
 - Agreed Amount Endorsement
 - Entire limit applies to any one location - \$3,000,000
 - 5-10% more premium



Location 1
\$1,000,000



Location 2
\$1,000,000



Location 3
\$1,000,000

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

Insurance applies on a Blanket basis only to a coverage for which a Limit of Insurance is shown below. The most the Company will pay for loss or damage in any one occurrence at any one premises is 120% * of the value(s) for each Building or Structure.....

* (105%, 110%, 120%, 130% can be used)

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

B. Margin Clause

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

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EXAMPLE #1

Buildings #1 through #3 are covered under a Blanket Limit of Insurance of \$4,500,000. The combined value of these three buildings at the time of loss is \$5,000,000. There is a Coinsurance requirement of 90% ($.90 \times \$5,000,000 = \$4,500,000$); therefore no Coinsurance penalty.

The value stated for Building #1 is \$1,000,000. The Margin Clause percentage is 120%. The maximum loss payable for Building #1 is \$1,200,000 ($\$1,000,000 \times 1.20$).

Building #1 sustains a loss of \$1,200,000.

The Deductible is \$10,000.

Step (1): Amount of loss minus Deductible ($\$1,200,000 - \$10,000 = \$1,190,000$)

Step (2): Since \$1,190,000 is not more than the maximum loss payable, we will pay \$1,190,000.

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EXAMPLE #2

Buildings #1 through #3 are covered under a Blanket Limit of Insurance of \$4,000,000. The combined value of these three buildings at the time of loss is \$5,000,000. There is a Coinsurance requirement of 90% ($.90 \times \$5,000,000 = \$4,500,000$); therefore the Blanket is underinsured and there will be a Coinsurance penalty.

The value stated for Building #1 is \$1,000,000. The Margin Clause percentage is 120%. The maximum loss payable for Building #1 is \$1,200,000 ($\$1,000,000 \times 1.20$).

Building #1 sustains a loss of \$1,200,000.

The Deductible is \$10,000.

Step (1): Amount of Blanket Limit divided by Coinsurance requirement ($\$4,000,000 \div \$4,500,000 = .889$)

Step (2): Amount of loss times Coinsurance penalty factor ($\$1,200,000 \times .889 = \$1,066,800$) is the adjusted amount of loss

Step (3): Adjusted amount of loss minus Deductible ($\$1,066,800 - \$10,000 = \$1,056,800$)

Step (4): We will pay \$1,056,800 (less than the maximum loss payable). The remainder of the loss, \$143,200, is not covered due to application of the Coinsurance penalty and Deductible.

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EXAMPLE #3

- Buildings #1 through #3 are covered under a Blanket Limit of Insurance of \$4,000,000. The combined value of these three buildings at the time of loss is \$5,000,000. There is a Coinsurance requirement of 90% ($.90 \times \$5,000,000 = \$4,500,000$); therefore the Blanket is underinsured and there will be a Coinsurance penalty.
- The value stated for Building #1 is \$800,000. The Margin Clause percentage is 120%. The maximum loss payable for Building #1 is \$960,000 ($\$800,000 \times 1.20$).
- Building #1 sustains a loss of \$1,200,000.
- The Deductible is \$10,000.
- Step (1): Amount of Blanket Limit divided by Coinsurance requirement ($\$4,000,000 \div \$4,500,000 = .889$)
- Step (2): Amount of loss times Coinsurance penalty factor ($\$1,200,000 \times .889 = \$1,066,800$) is the adjusted amount of loss
- Step (3): Adjusted amount of loss minus Deductible ($\$1,066,800 - \$10,000 = \$1,056,800$)
- Step (4): We will pay \$960,000. The remainder of the loss, \$240,000, is not covered due to application of the Coinsurance penalty, Deductible, and Margin Clause.

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Blanket Business Income Benefits

- The coinsurance condition in the business income coverage form does not contain a special provision for blanket limits. (A blanket limit is a single limit of insurance that applies to two or more locations or types of property or both.) In the building and personal property coverage form, when a blanket limit applies to damaged property, the coinsurance clause applies, not to the value of the damaged property only, but to the total value of all of the property covered by the blanket limit. If the blanket limit of insurance is not equal to the stipulated percentage of the total value of all the property covered by the blanket limit, a coinsurance penalty will apply. The significance of this provision is that, under the building and personal property coverage form, a blanket limit offers little protection against a coinsurance penalty. However, since there is nothing comparable in the business income coverage form, a blanket limit can afford excellent protection against a coinsurance penalty. This is because a blanket limit will, in nearly every case, be more than adequate to meet coinsurance requirements for any single loss location or situation.

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ISSUE # 6

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DON'T GET CAUGHT UNDERWATER

NFIP POTENTIAL PROBLEM AREAS



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Definitions

- Flood
 - “A general and temporary condition of partial or complete inundation of ***two or more acres*** of normally dry land areas or of ***two or more properties*** from:
 - (1) overflow of inland or tidal waters;
 - (2) unusual and rapid accumulation or runoff of **surface waters** from any source;
 - (3) mudflows caused by flooding.
 - (4) Collapse or subsidence of land along the shore or lake as a result of erosion or undermining caused by waves or currents of water exceeding anticipated cyclical levels that result in a flood”

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NFIP Exclusion

- D. We do not insure for direct physical loss caused directly or indirectly by any of the following:
 - 7. water or waterborne material that:
 - a. backs up through sewers or drains;
 - b. discharges or overflows from a sump, sump pump, or related equipment; or
 - c. seeps or leaks on or through the covered property;

UNLESS... there is a flood and the flood is the proximate cause.

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POLICY NUMBER:

COMMERCIAL PROPERTY
CP 10 38 10 12

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

DISCHARGE FROM SEWER, DRAIN OR SUMP
(NOT FLOOD-RELATED)

This endorsement modifies insurance provided under the following:

BUILDING AND PERSONAL PROPERTY COVERAGE FORM
BUSINESS INCOME (AND EXTRA EXPENSE) COVERAGE FORM
BUSINESS INCOME (WITHOUT EXTRA EXPENSE) COVERAGE FORM
CONDOMINIUM ASSOCIATION COVERAGE FORM
CONDOMINIUM COMMERCIAL UNIT-OWNERS COVERAGE FORM
EXTRA EXPENSE COVERAGE FORM
TOBACCO SALES WAREHOUSES COVERAGE FORM

SCHEDULE

Premises Number	Building Number	Discharge Limit (Property Damage)	Discharge Limit (Business Interruption)	Annual Aggregate Limitation Applies
		\$	\$	<input type="checkbox"/>
		\$	\$	<input type="checkbox"/>
		\$	\$	<input type="checkbox"/>

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

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“Flood” ?

• Sewer / Drain Back Up ?

• Discharge or Overflow of Sump Pump

• Seepage or Leakage

• Neighbors above ground pool collapses

• Water Tank rupture

• Broken Water Main

• Hydrostatic Pressure

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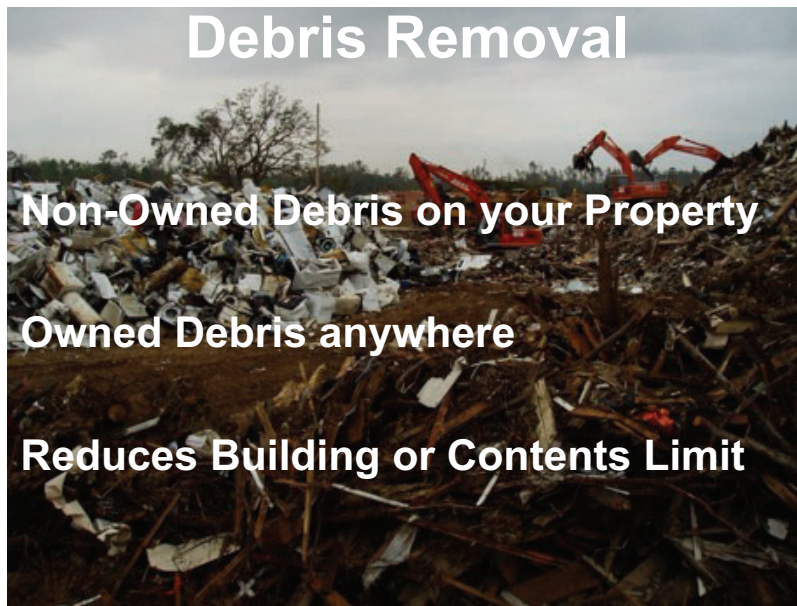
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Debris Removal
Non-Owned Debris on your Property
Owned Debris anywhere
Reduces Building or Contents Limit

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Debris Removal

Coverage C- Other Coverages

- 1- Debris Removal
 - We will pay the expense to remove non-owned debris on or in insured property and owned debris anywhere [must be insured property]
 - If you or a member of your household perform the removal work, the value of your work will be based on the Federal Minimum Wage
 - The coverage does not increase Coverage A or Coverage B limit of liability

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Loss Avoidance / Pollution

- A flood insurance policy also reimburses you for actions you take to prevent flood damage. For example, costs for moving insured contents, in imminent danger of flooding, to a safe location are reimbursed up to \$1,000 with no deductible. [reduces limits – 45 days]
- Other costs, such as for sandbags, plastic sheeting and lumber, pumps, fill for temporary levees, and wood to save the building can be reimbursed up to a limit of \$1,000 with no deductible. [reduces limits]
- \$10,000 Pollution limit for damage to covered property caused by Flood [General Property Form]. No coverage for Testing / Monitoring unless required by law. [reduces limits]

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NFIP and Pollutants

- Under The General Property Form damage by pollutant's is limited to \$10,000.
- In the Dwelling Form and RCBAP form damage by pollutants to the building or contents is covered up to policy limits.
- Damage to ground, soil, or land caused by flood, oil, or flood water mixed with oil is NOT covered
- The cost of complying with any local or state ordinance including one that requires special removal methods for oil is specifically excluded
- All three forms exclude coverage for testing or for monitoring of pollutants unless there is a law or ordinance requiring such.

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Strip Mall – 8 stores



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B. Single Building

To qualify as a single building structure and be subject to the single building limits of coverage, a building must be separated from other buildings by intervening clear space or solid, vertical, loadbearing division walls.

A building separated into divisions by solid, vertical, load-bearing walls from its lowest level to its highest ceiling may have each division insured as a separate building. A solid load-bearing interior wall cannot have any openings and must not provide access from one building or room into another (partial walls).

However, if access is available through a doorway or opening, then the structure must be insured as one building unless the building is self contained; it is a separately titled building contiguous to

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Costly NFIP Mistake

Following Hurricane Katrina, there were numerous errors and omissions lawsuits brought against insurance agencies involving flood insurance and the single building concept. In not understanding the single building definition, agencies wrote one \$250,000 policy on townhome complexes with multiple individual owners, as opposed to writing one policy per owner. In one specific case, there was a homeowners' association composed of eight buildings with eight separate units per building, each unit being separated by loadbearing, vertical, division walls. The agency wrote only eight policies, failing to realize that there were in fact 64 separate "single buildings" as defined by the NFIP manual.

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Three Types of Buildings

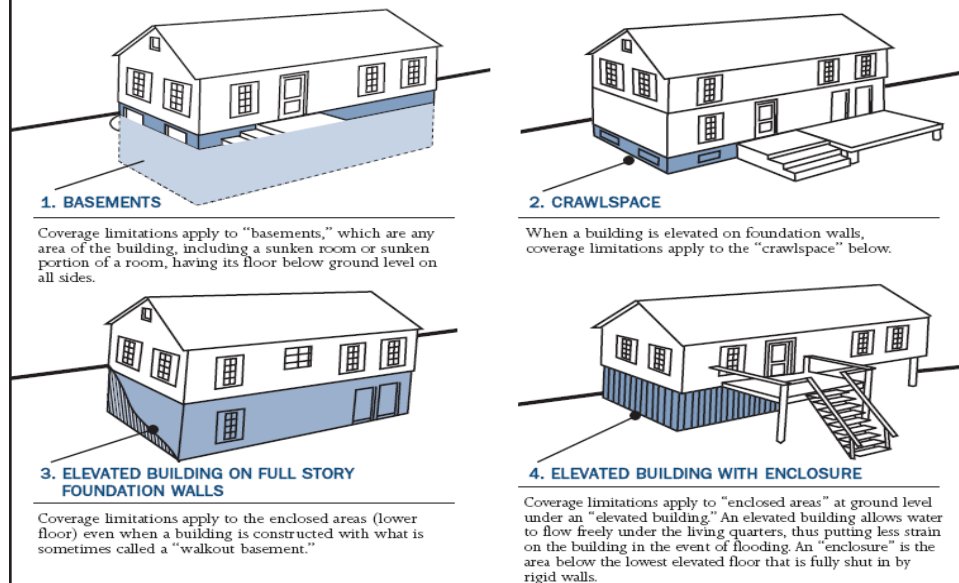
- Slab on Grade
- Basement — Any area of the building having its floor below ground level (subgrade) on all sides.
- Elevated — A building that has no basement and that has its lowest elevated floor raised above ground level by foundation walls, shear walls, posts, pilings, or columns.

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National Flood Insurance Program



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Cost to Repair Commercial Bldgs.

- The NFIP reports that 1 foot of water in a 1 story building causes damage averaging 22% of the cost to replace the building.
- At 2 feet, the average cost is 32%.
- When flood waters are 6-8 feet deep, the average repair bill is 58-68%, respectively.

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Flood Insurance Notice/Rejection Acord 60

ACORD FLOOD INSURANCE SELECTION / REJECTION

AGENCY CUSTOMER NO. _____ DATE (MM/DD/YYYY) _____

AGENCY _____ CARRIER _____

POLICY NUMBER _____ EFFECTIVE DATE _____ APPLICANT / NAMED INSURED(S) _____

IMPORTANT NOTICE

Flood insurance is available under the National Flood Insurance Program (NFIP) in thousands of communities nationwide. It provides coverage for residential and non-residential buildings and their contents, in both high risk as well as low risk areas. Historically, about one quarter of all losses under the NFIP are in low risk areas.

Flooding is the largest single cause of natural disaster loss and damage in our country. The standard homeowners, dwelling or commercial property insurance policy typically excludes or does not otherwise provide coverage for flood damage. Purchasing separate flood insurance coverage will allow covered flood losses to be adjusted in a similar manner as losses from other perils in other property policies.

The Federal Emergency Management Agency (FEMA) advises that although federal disaster relief assistance is sometimes available after a flood, such financial assistance is typically in the form of a loan and must be repaid to the Government in addition to any other outstanding loans.

To the extent that NFIP and/or alternative market flood insurance is available for the property, as your insurance representative, we strongly recommend that you purchase flood insurance.

SELECTION / REJECTION OF FLOOD INSURANCE COVERAGE

I understand that flood insurance coverage, either with NFIP or an alternative market, may be available for the property located at the address below. I understand that not all properties are eligible for NFIP coverage (non-participating community properties or coastal barrier resources system properties) and Loss of Income and/or Additional Living Expense coverage is not currently available from the NFIP. I select or reject coverage as indicated below.

I also understand that my selection / rejection of this coverage will apply to all future renewals, continuations and changes unless I notify you otherwise in writing.

TYPE OF COVERAGE	ACCEPT	REJECT
NFIP Building Coverage	<input type="checkbox"/>	<input type="checkbox"/>
NFIP Contents / Personal Property	<input type="checkbox"/>	<input type="checkbox"/>
Excess Building Coverage	<input type="checkbox"/>	<input type="checkbox"/>
Excess Contents / Personal Property	<input type="checkbox"/>	<input type="checkbox"/>
Alternative Market Primary Building Coverage	<input type="checkbox"/>	<input type="checkbox"/>
Alternative Market Primary Contents Coverage	<input type="checkbox"/>	<input type="checkbox"/>
Alternative Market Loss of Income or Additional Living Expense	<input type="checkbox"/>	<input type="checkbox"/>

Applicant's Signature _____ Date _____

Address of Property _____

Producer _____ Date _____

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ACORD FLOOD INSURANCE SELECTION / REJECTION

AGENCY CUSTOMER NO. _____ DATE (MM/DD/YYYY) _____

AGENCY _____ CARRIER _____

POLICY NUMBER _____ EFFECTIVE DATE _____ APPLICANT / NAMED INSURED(S) _____

IMPORTANT NOTICE

Flood insurance is available under the National Flood Insurance Program (NFIP) in thousands of communities nationwide. It provides coverage for residential and non-residential buildings and their contents, in both high risk as well as low risk areas. Historically, about one quarter of all losses under the NFIP are in low risk areas.

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To the extent that NFIP and/or alternative market flood insurance is available for the property, as your insurance representative, we strongly recommend that you purchase flood insurance.

SELECTION / REJECTION OF FLOOD INSURANCE COVERAGE

I understand that flood insurance coverage, either with NFIP or an alternative market, may be available for the property located at the address below. I understand that not all properties are eligible for NFIP coverage (non-participating community properties or coastal barrier resources system properties) and Loss of Income and/or Additional Living Expense coverage is not currently available from the NFIP. I select or reject coverage as indicated below.

I also understand that my selection / rejection of this coverage will apply to all future renewals, continuations and changes unless I notify you otherwise in writing.

TYPE OF COVERAGE	ACCEPT	REJECT
NFIP Building Coverage	<input type="checkbox"/>	<input type="checkbox"/>
NFIP Contents / Personal Property	<input type="checkbox"/>	<input type="checkbox"/>
Excess Building Coverage	<input type="checkbox"/>	<input type="checkbox"/>
Excess Contents / Personal Property	<input type="checkbox"/>	<input type="checkbox"/>
Alternative Market Primary Building Coverage	<input type="checkbox"/>	<input type="checkbox"/>
Alternative Market Primary Contents Coverage	<input type="checkbox"/>	<input type="checkbox"/>
Alternative Market Loss of Income or Additional Living Expense	<input type="checkbox"/>	<input type="checkbox"/>

Applicant's Signature _____ Date _____

Address of Property _____

Producer _____ Date _____

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ISO Commercial Property Forms and Endorsements: Flood Coverage Endorsement (CP 10 65)

- The flood coverage endorsement was introduced with the 2000 commercial property portfolio revisions. It is a detailed four-page form that is designed to "wrap around" a National Flood Insurance Program (NFIP) policy but can also be used when there is no underlying NFIP policy. Prior to the introduction of the Insurance Services Office, Inc. (ISO), commercial flood policy program in 2018, this was the only ISO flood coverage form.
- All of the causes of loss forms contain the same water exclusion, which eliminates coverage for loss from flood and several other types of water damage. The text of the exclusion, which is discussed under the "Water Exclusion in the ISO Basic and Broad Causes of Loss Forms" and the "Special Causes of Loss Form: Water Exclusion" sections, is shown below.

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Rosa Pen, Inc. v Selective Way Ins. Co.

NJ Appellate Division Feb 21, 2017

- Insured bought an investment rental property and secured insurance from Selective
- The property was inundated with 3' of water from hurricane Irene
- The insured had purchased \$50,000 of coverage for Water Back-up and Sump Overflow
- The adjuster determined the damage was caused by two causes:
 - Water that backed up through the sump pit; and
 - Hydrostatic Pressure- water beneath the surface of the ground that seeped or leaked through the foundation

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Exclusions- ACC Language

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. These exclusions apply whether or not the loss event results in widespread damage or affects a substantial area.

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g. Water

- (1) Flood, surface water, waves (including tidal wave and tsunami), tides, tidal water, overflow of any body of water, or spray from any of these, all whether or not driven by wind (including storm surge);
- (2) Mudslide or mudflow;
- (3) Water that backs up or overflows or is otherwise discharged from a sewer, drain, sump, sump pump or related equipment;
- (4) Water under the ground surface pressing on, or flowing or seeping through:
 - (a) Foundations, walls, floors or paved surfaces;
 - (b) Basements, whether paved or not; or
 - (c) Doors, windows or other openings; or
- (5) Waterborne material carried or otherwise moved by any of the water referred to in Paragraph (1), (3) or (4), or material carried or otherwise moved by mudslide or mudflow.

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THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

WATER BACK-UP AND SUMP OVERFLOW

This endorsement modifies insurance provided under the following:

BUSINESSOWNERS COVERAGE FORM

SCHEDULE

Premises Number	Covered Property Annual Aggregate Limit Of Insurance	Business Income And Extra Expense Annual Aggregate Limit Of Insurance
1-1	\$ 50,000	\$ 999,999
	\$	\$
	\$	\$

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

A. We will pay for direct physical loss or damage to Covered Property, covered under Section I – Property, caused by or resulting from:

1. Water or waterborne material which backs up through or overflows or is otherwise discharged from a sewer or drain; or
2. Water or waterborne material which overflows or is otherwise discharged from a sump, sump pump or related equipment, even if the overflow or discharge results from mechanical breakdown of a sump pump or its related equipment.

However, with respect to Paragraph A.2., we will not pay the cost of repairing or replacing a sump pump or its related equipment in the event of mechanical breakdown.

B. The coverage described in Paragraph A., of this endorsement does not apply to loss or damage resulting from an insured's failure to:

1. Keep a sump pump or its related equipment in proper working condition; or
2. Perform the routine maintenance or repair necessary to keep a sewer or drain free from obstructions.

C. The most we will pay for the coverage provided under this endorsement for all direct physical loss or damage to Covered Property is the Covered Property Annual Aggregate Limit of Insurance. That limit is \$5,000 per location, unless a different Covered Property Annual Aggregate Limit of Insurance is indicated in the Schedule of this endorsement.

The applicable Covered Property Annual Aggregate Limit of Insurance is the most we will pay under this endorsement for the total of all direct physical loss or damage sustained in any one policy year, regardless of the number of occurrences that cause or result in loss or damage to Covered Property. If loss payment for the first such occurrence does not exhaust the applicable Limit of Insurance, then the balance of that Limit is available for subsequent loss or damage sustained in, but not after, that policy year. With respect to an occurrence which begins in one policy year and continues or results in additional loss or damage in a subsequent policy year(s), all loss or damage is deemed to be sustained in the policy year in which the occurrence began.

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E. With respect to the coverage provided under this endorsement, the **Water Exclusion in Section I – Property** is replaced by the following exclusion:

Water

1. Flood, surface water, waves (including tidal wave and tsunami), tides, tidal water, overflow of any body of water, or spray from any of these, all whether or not driven by wind (including storm surge);
2. Mudslide or mudflow; or
3. Water under the ground surface pressing on, or flowing or seeping through:
 - a. Foundations, walls, floors or paved surfaces;
 - b. Basements, whether paved or not; or
 - c. Doors, windows or other openings; or
4. Waterborne material carried or otherwise moved by any of the water referred to in Paragraph 1. or 3., or material carried or otherwise moved by mudslide or mudflow.

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The Court's Decision

- When one covered peril and one excluded peril act concurrently (at the same time); or in any sequence-- THERE IS NO COVERAGE !
- ACC Language can be troublesome
- ACC language is upheld in most every state; except CA, ND, WA, WV

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LEXOLOGY

New York court holds coverage for excavation damage precluded by earth movement exclusion

[Blog](#) The Property Insurance Law Observer

Cozen O'Connor

USA | May 4 2022

According to a recent ruling by a New York appellate court, coverage for excavation damage is precluded by the policy's earth movement exclusion. In *3502 Partners LLC v. Great American Insurance Co. of New York*, Case No. 2021-03449 (N.Y. App. 1st Dep't Apr. 21, 2022), an insured sued its insurer under a first-party policy, alleging in its complaint that its property sustained damage as a direct result of excavation work at an adjacent lot.

Based on the allegations in the complaint, the insurer filed a motion to dismiss, asserting that coverage was precluded by the policy's earth movement exclusion. The exclusion precluded coverage for "earth movement," including "earth sinking (other than sinkhole collapse), rising or shifting including soil conditions which cause settling, cracking or other disarrangement of foundations or other parts of realty," and applied "regardless of whether [the earth movement] is caused by an act of nature, man-made or is otherwise caused." In response to the insurer's motion to dismiss, the insured filed an affidavit asserting that the property damage was also caused by "the vibrations caused by the construction work," a covered cause of loss.

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The court held that the insured's allegations placed the damage to its property within the earth movement exclusion. In doing so, the court rejected the insured's contention that the complaint had to use the words "earth movement" for the exclusion to apply, reasoning that an excavation, by definition, is "the intentional removal of earth by humans." The court further held that, even if vibrations caused the damage, the excavation was still a contributing cause of the damage, and the policy stated that there would be no coverage for loss or damage caused by earth movement "regardless of any other cause or

https://www.lexology.com/library/detail.aspx?g=a7d911ea-c879-4d70...ily+feed&utm_content=Lexology+Daily.

New York court holds coverage for excavation damage precluded by earth movement exclusion - Lexology

event that contributes concurrently or in any sequence to the loss." Given the broad language of the earth movement exclusion, the court held it unambiguously encompassed property damage caused by excavation work.

Based on the court's holding in *3502 Partners*, property damage caused by excavation work is precluded from coverage by the earth movement exclusion. If the exclusion also contains an anti-concurrent causation clause, coverage is precluded, even if a covered cause contributed to the loss.

Cozen O'Connor - Alycen A. Moss and Elliot Kerzner

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New York Federal Court Upholds Earth Movement Exclusion Where Soil Settlement Contributes to Collapse

Coney Island Auto Parts Unlimited, Inc. v. Charter Oak Fire Ins. Co., 13-CV-1570 ARR VVP, 2014 WL 3958080 (E.D.N.Y. Aug. 13, 2014).

Merlin Law Firm
September 21, 2014

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Many insurance policies specifically exclude earth movement and if the facts permit, the insurance company may raise this exclusion when a claim is asserted. This issue is currently being litigated in Superstorm Sandy cases in both New York and New Jersey. A [recent Eastern District of New York federal court decision](#) discussed the earth movement exclusion in a case involving an auto parts company warehouse in New York which sustained significant damage when a portion of the concrete floor collapsed.¹ The auto parts company had stored steel racks with auto parts that weighed about 2 to 3 tons. Therefore, when the loss occurred, the policyholder asserted that the loss was covered under the policy provision which covered damage from a collapse caused by the “weight of people or personal property.”

The insurer disagreed and denied the claim relying on the policy’s earth movement exclusion:

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**

b. Earth Movement

(1) Any earth movement (other than “sinkhole collapse”) whether natural or man made, including but not limited to earthquake, mine subsidence, landslide, or earth sinking, rising or shifting. But if earth movement results in fire, or explosion, we will pay for the loss or damage caused by that fire or explosion.

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The policy also provided that loss or damage due to earth movement was not covered:

[R]egardless of any other cause or event that contributes concurrently or in any sequence to the loss.

The insurer determined that the earth movement exclusion barred coverage because the insurer’s structural engineer retained to investigate the claim stated that he observed that one of the concrete floor slabs in the front half of the building had collapsed and dropped approximately 10 to 14 inches. In his report, the engineer stated the building had “pre-existing construction flaws and settlement” dating back to its original construction in 1987:

The front section of this building was constructed over the foundation of a previous building. The foundation had been filled with soil and the concrete filled sonotube extends down to a stable and/or an undisturbed base. Over time the uncompacted soil settled and created a void under the concrete slab. The poured concrete slab was installed without reinforcing throughout and was unable to resist the stress developed as an unsupported concrete slab.

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- On a summary judgment motion, the Eastern District of New York federal court ruled in favor of the insurer, stating the earth movement exclusion “clearly and unmistakably” barred coverage for the insured’s claimed losses :
- The provision states that the Policy does not cover loss or damage resulting from “[a]ny earth movement ... whether natural or man made, including but not limited to earthquake, mine subsidence, landslide, or earth sinking, rising or shifting.” Gill Decl., Ex. A, at ECF 28. All of the engineers who investigated the collapse at the Pitkin Avenue Premises found that the concrete floor was built over improperly compacted soil that settled over time. McEvoy, who initially investigated the claim for defendant, stated in his report that the “uncompacted soil settled and created a void under the concrete slab.” Gill Decl., Ex. D, at ECF 3. Defendant's expert found that the soil underneath the concrete slab subsided over time, likely “because it was not properly compacted,” and the concrete “failed because it lost the soil support from below.” Gill Decl., Ex. O, at 6, ECF 8. Plaintiff's own expert, Alauddin, found that “unsuitable, fine uncontrolled soil fill with debris” was “poorly compacted in place,” then moisture and sub-surface water pressure “reduced soil density and created voids and pockets below the slab underside surface.” Grossman Decl., Ex. I, at 4. ***While the experts use different terminology, they all agree that the soil settled and created “voids” under the concrete floor. Since soil settlement is a type of “sinking, rising or shifting” of the earth, it falls within the unambiguous terms of the exclusion. See Alamia v. Nationwide Mut. Fire Ins. Co., 495 F.Supp.2d 362, 367 (S.D.N.Y.2007) (finding that soil erosion or settlement “indisputably involves the ‘movement,’ or more precisely, the ‘shifting’ or ‘sinking’ of the earth”).***

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The Court also pointed out that because the policy contained an anti-concurrent clause, the insurer only had to show that soil settlement was at least a contributing cause of the damage and if so, this would bar coverage for the insured. Here, both the insured and insurer’s experts agreed that soil settlement was a contributing factor to the loss.

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ISSUE # 7

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INSURANCE TO VALUE



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What's the REAL Reconstruction Cost of a 3500 Sq Ft Structure ?

100% Structure.....	\$400,000 (\$120/sf)
Demolition.....	\$ 10,000 (2.5%)
Debris Removal.....	\$ 30,000 (7.5%)
Architects/Engineer.	\$ 40,000 (10%)
ICC <small>(increased cost of construction)</small>	\$ 60,000 (15%)
Market Conditions..	\$ 80,000 (20%)
Other *	<u>\$ 80,000 (20%)</u>

REAL R.C.

\$700,000 (\$200/sf)

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BUILDING ORDINANCE and LAW COVERAGE

- When more than 50% of a building is damaged, it is deemed structurally unsafe to rebuild and must be torn down.
(Uniform Construction Code-most every town adopts)

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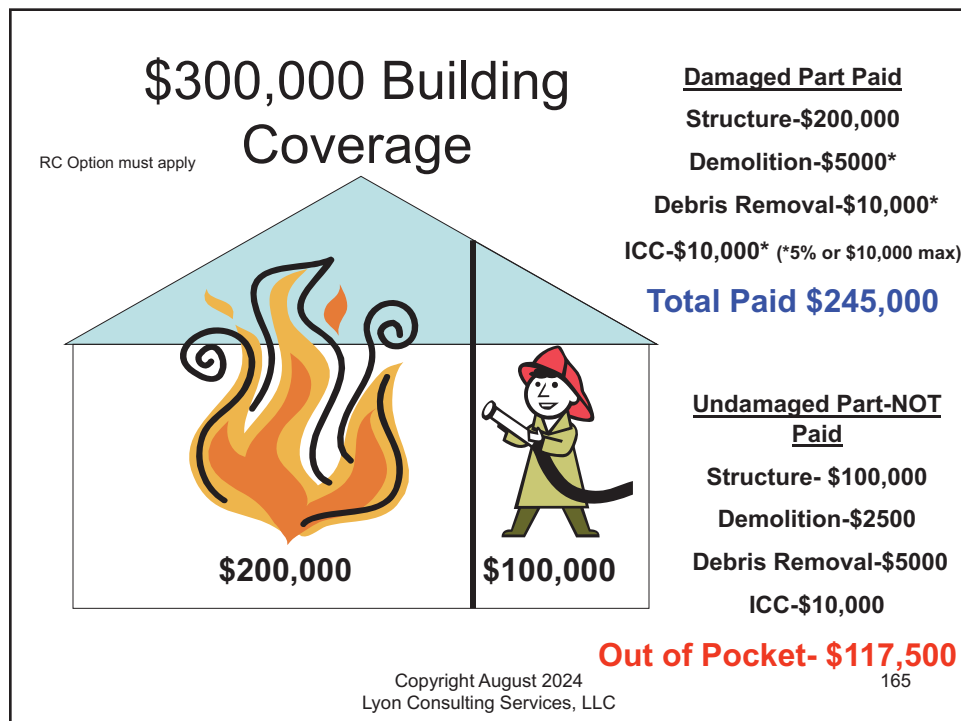
BUILDING ORDINANCE and LAW COVERAGE

100% Building Replacement Cost

- Coverage for Loss to the Undamaged Portion of the Building (A)
- Demolition Costs Coverage (B)
- Increased Cost of Construction Coverage (C)
 - Current Building Code
 - Americans with Disabilities Act
 - National Flood Insurance Program
 - Undersized Lot
 - Grandfathered Occupancy / Zoning

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POLICY NUMBER:	COMMERCIAL PROPERTY CP 04 05 09 17			
THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.				
ORDINANCE OR LAW COVERAGE				
This endorsement modifies insurance provided under the following:				
BUILDING AND PERSONAL PROPERTY COVERAGE FORM CONDOMINIUM ASSOCIATION COVERAGE FORM STANDARD PROPERTY POLICY				
SCHEDULE				
Building Number/ Premises Number	Coverage A	Coverage B Limit Of Insurance	Coverage C Limit Of Insurance	Coverages B And C Combined Limit Of Insurance
/	<input type="checkbox"/>	\$	\$	\$ *
/	<input type="checkbox"/>	\$	\$	\$ *
/	<input type="checkbox"/>	\$	\$	\$ *
Post-Loss Ordinance Or Law Option: Yes <input type="checkbox"/> No <input type="checkbox"/>				
<small>*Do not enter a Combined Limit of Insurance if individual Limits of Insurance are selected for Coverages B and C, or if one of these Coverages is not applicable.</small>				
<small>Information required to complete this Schedule, if not shown above, will be shown in the Declarations.</small>				

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Ordinance or Law- Extended Period of Restoration- CP 1531

POLICY NUMBER:	COMMERCIAL PROPERTY CP 15 31 09 17
THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.	
ORDINANCE OR LAW – INCREASED PERIOD OF RESTORATION	
This endorsement modifies insurance provided under the following:	
BUSINESS INCOME (AND EXTRA EXPENSE) COVERAGE FORM BUSINESS INCOME (WITHOUT EXTRA EXPENSE) COVERAGE FORM EXTRA EXPENSE COVERAGE FORM	
SCHEDULE	
Described Premises:	
Post-Loss Ordinance Or Law Option: Yes <input type="checkbox"/> No <input type="checkbox"/>	
<small>Information required to complete this Schedule, if not shown above, will be shown in the Declarations.</small>	

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THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

INCREASE IN REBUILDING EXPENSES FOLLOWING
DISASTER (ADDITIONAL EXPENSE COVERAGE ON
ANNUAL AGGREGATE BASIS)

This endorsement modifies insurance provided under the following:

BUILDING AND PERSONAL PROPERTY COVERAGE FORM
CONDOMINIUM ASSOCIATION COVERAGE FORM

SCHEDULE

Premises Number	Building Number	Additional Expense Coverage Percentage
		%
		%
		%
Information required to complete this Schedule, if not shown above, will be shown in the Declarations.		

- A. This endorsement applies with respect to a covered loss to a building identified in the Schedule.

Coverage for the loss is determined in accordance with all applicable policy provisions except as otherwise provided in this endorsement.

B. The Covered Causes of Loss (including related endorsements, if any) otherwise applicable to a building listed in the Schedule will apply to the
2. Expenses for labor and/or building materials for repair or replacement of the damaged property increase as a result of the disaster and the total cost of repair or replacement exceeds the applicable Limit of Insurance due to such increase in expenses;

3. You elect to repair or replace the damaged building; and

4. You notified us, within 30 days of completion,

ISSUE # 8

WHY PERSONAL LINES AND COMMERCIAL LINES HAVE TO TALK TO EACH OTHER !



Personal Auto and Business Auto Exposures Intersect

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ISO PAP 00 01 (0918)

EXCLUSIONS

B. We do not provide Liability Coverage for the ownership, maintenance or use of:

Any vehicle, other than "your covered auto",
which is:

- a. Owned by you; or
- b. **Furnished or available for your regular use.**

Any vehicle, other than "your covered auto", which is:

Owned by any "family member"; or

Furnished or available for the regular use of any "family member".

However, this exclusion (B.3.) does not apply to you while you are maintaining or
"occupying" any vehicle which is:

- (1) Owned by a "family member"; or
- (2) Furnished or available for the regular
use of a "family member".

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Furnished or Available....

- 1) The words “furnished” or “available” are often litigated
- 2) Company Car furnished/available from your employer
- 3) Long Term Rental while in Florida for the winter
- 4) Co-Habitants, each with their own auto policy
- 5) Four College roommates in an off campus apartment

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POLICY NUMBER:		PERSONAL AUTO PP 03 06 09 18
THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.		
EXTENDED NON-OWNED COVERAGE – VEHICLES FURNISHED OR AVAILABLE FOR REGULAR USE		
SCHEDULE		
Unless otherwise indicated below or in the Declarations, Extended Non-owned Coverage is applicable only to the individual named in the Schedule or in the Declarations.		
Name Of Individual:		
If indicated below or in the Declarations, Extended Non-owned Coverage applies to:		
<input type="checkbox"/> Named Individual and "Family Members" (including Named Individual's Spouse)		
Coverage is provided where a premium is shown for the coverage.		
Extended Non-owned Coverage		Premium
Liability	\$	
Medical Payments	\$	
Total Premium	\$	
Information required to complete this Schedule, if not shown above, will be shown in the Declarations.		
With respect to the individual(s) and coverages indicated in the Schedule or in the Declarations, the provisions of the Policy apply unless modified by this endorsement.		
I. Extended Non-owned Coverage		
The Extended Non-owned Coverage provided by this endorsement does not afford coverage under Part A and Part B of the Policy for any accident involving:		
A. A vehicle owned by an individual named in the Schedule or in the Declarations;		
B. A vehicle owned by a "family member"; or		
C. A temporary substitute vehicle for such owned vehicle described in A. or B. above.		
II. Part A – Liability Coverage		
Part A is amended as follows with respect to the individual(s) shown as applicable in the Schedule or in the Declarations:		
A. Exclusion B.2.b. does not apply to the coverages provided by this endorsement.		
B. We will provide Liability Coverage for any vehicle, other than "your covered auto", which is furnished or available for the regular use of the named individual.		
III. Part B – Medical Payments Coverage		
Part B is amended as follows, if a premium is shown in the Schedule or in the Declarations for Medical Payments Coverage, with respect to the individual(s) shown as applicable in the Schedule or in the Declarations:		
A. Exclusion 5.b. does not apply to the coverages provided by this endorsement.		
B. We will provide Medical Payments Coverage for "bodily injury" sustained while "occupying", or when struck by, any vehicle (other than "your covered auto") which is furnished or available for the regular use of the named individual.		
PP 03 06 09 18 © Insurance Services Office, Inc., 2017 Page 1 of 1		

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Recap- Auto

- Mom and Dad are named insureds = You
- Son is resident + relative = Family member
- All insured under the same PAP
- Mom is furnished a company car
 - No coverage under mom + dad's PAP- furnished to a you
- Son is furnished a company car
 - No coverage under mom + dad's PAP- furnished to a family member
- Dad is driving son's company car
 - Coverage under mom + dad's- as dad is a YOU

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Recap- Auto

- Mom and Dad are named insureds under PAP = You
- Son has his own PAP = you
- All reside in the same household
- Mom is furnished a company car
 - No coverage under mom + dad's PAP- furnished to a you
 - No coverage under son's policy – furnished to a family member
- Son is furnished a company car
 - No coverage under son's policy – furnished to a you
 - No coverage under mom + dad's PAP- furnished to a family member
- Dad is driving son's company car
 - No coverage under son's policy- furnished to a family member
 - Coverage under mom + dad's- as dad is a YOU

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Fellow-employee suits

- Another important consideration in the application of this endorsement is the protection against fellow employee suits.
- Business auto policies and commercial general liability policies exclude liability for suits of employees against fellow employees.
- The personal auto policy does not have such an exclusion.

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- Liz is a good producer, but not such a good driver. She decides to take her assistant, Steve, to visit a client one day in her company car. On the way, Liz is texting, and gets into an accident. Steve is injured and taken to the hospital for treatment.
- Workers' compensation will provide Steve with benefits for Medical, Wage, Rehabilitation and Death. Steve is not satisfied with Work Comp benefits, and decides to sue Liz for pain, suffering and loss of consortium.
- **When Liz tenders the claim to her employers Business Auto Policy, the adjuster cites the "Fellow Employee" exclusion and declines to provide coverage.**
- **Although Liz's personal auto policy does not exclude fellow-employee suits, that carrier also declines coverage. The adjusters denial under Liz's Personal Auto is because of the "furnished or available for your regular use" exclusion.**
- Without the Extended Non-owned Coverage For Named Individual endorsement, Liz would have no coverage.
- If Liz has a personal umbrella policy, additional limits likely will be available, since the umbrella often follows form with the underlying policy or can be endorsed.

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Fellow Employee Exclusion

- Contained in both CGL and BAP
- CGL has a give back for “executive officers”
- BAP does not
- At very least, we should equate the two policies to have coverage for “executive officers” by adding CA 20 56 for designated positions/persons or CA 20 55 to delete the exclusion in its entirety.

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ISSUE # 9

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WHAT TYPE OF UMBRELLA / EXCESS LIABILITY POLICY ARE YOU SELLING ?



TRUE UMBRELLA ?
HYBRID / BI-FURCATED ?
STAND ALONE ?
FOLLOW FORM ?

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Important Basic Policy Definitions:

- **Excess Policy** – A catastrophe policy that provides additional limits of liability.
- **Umbrella** - A catastrophe policy that provides additional limits of liability, broader coverage than the underlying policies, and will drop down over exhausted primary aggregate limits.
- **Coverage A/B policies** – A policy that provides some of the features of an Umbrella and some of an Excess policy.
- **Following Form** –An Umbrella / Excess policy which incorporates the policy terms, conditions and exclusions of the underlying policies.
- **Stand Alone Form*** – An Umbrella / Excess policy which has its own insuring agreement, policy terms, conditions, and exclusions.

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Umbrella Form – Excess Form - Following Form - Stand Alone Form



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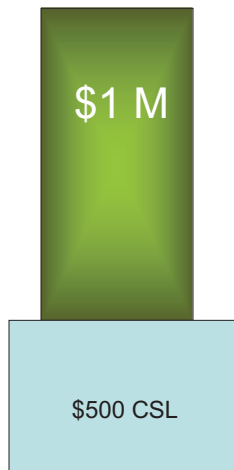
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Umbrella Form – Excess Form - Following Form - Stand Alone Form

FOLLOWING FORM

(Differs in Terms and Conditions.
Some Pollution in U/L CGL, absolute
Pollution exclusion in excess)



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Umbrella Form – Excess Form - Following Form - Stand Alone Form

STAND ALONE FORM

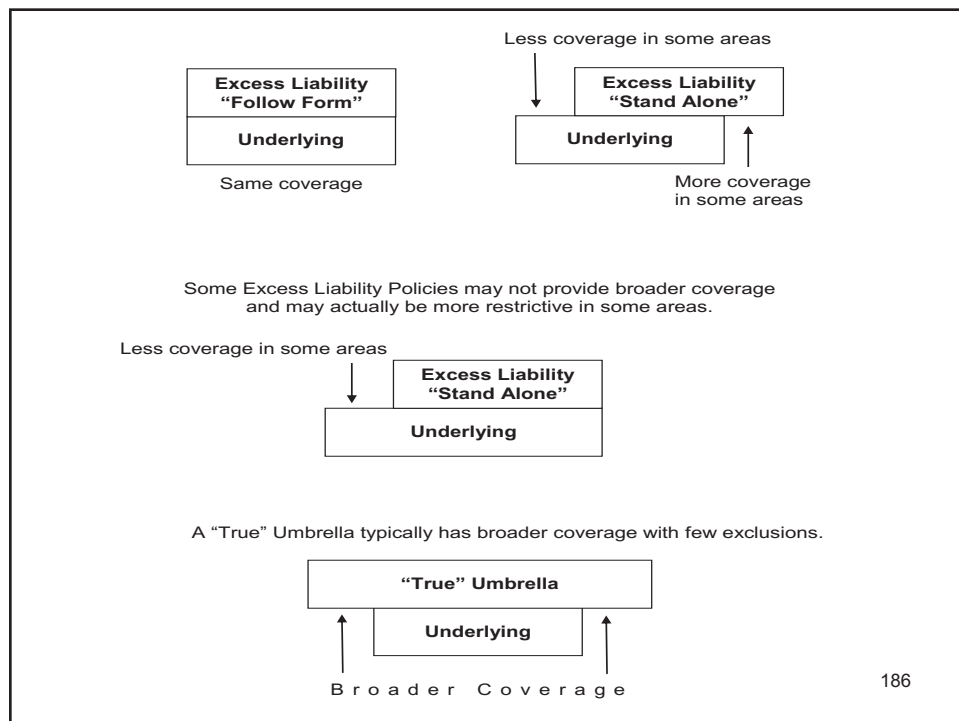
(sometimes equal,
sometimes broader,
sometimes more restrictive)



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Understanding Concurrency

- A. Underlying policy limits must be unimpaired as of the Umbrella/Excess policy renewal date
- 1 Insured promises the Insurer that all underlying limits are in full force and effect as of the Umbrella/Excess policy renewal date
 - 2 The inception and expiration dates of most all underlying policies must be identical to those of the Umbrella/Excess policy dates
 - 3 Business Auto policies and other coverages without aggregate limits may be an exception to this rule
- B Several reasons an Insured may not want concurrent policies
- 1 All policies come up for renewal at same time
 - 2 Large deposit premium
 - 3 Seasonal business
- C Problems of Non-Concurrency
- 1 Impaired Aggregate Limits
 - 2 Continuous or Repeated exposure losses
 - 3 Policy language differences between Underlying and Excess

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CU 00 01 (0413)

- If there is "underlying insurance" with a policy period that is nonconcurrent with the policy period of this Commercial Liability Umbrella Coverage Part, the "retained limit(s)" will only be reduced or exhausted by payments for:
 - "Bodily injury" or "property damage" which occurs during the policy period of **this** Coverage Part; or
 - "Personal and advertising injury" for offenses that are committed during the policy period of **this** Coverage Part.
- However, if any "underlying insurance" is written on a claims-made basis, the "retained limit(s)" will only be reduced or exhausted by claims for that insurance that are made during the policy period, or any Extended Reporting Period, of **this** Coverage Part.

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Concurrency Example #1

Example #1:

- Underlying CGL policy period 1/1/14 to 1/1/15
- Required Limits of \$500,000 occurrence / \$500,000 aggregate
- Umbrella policy period 6/1/14 to 6/1/15
- Limits of \$1,000,000 occurrence / \$1,000,000 aggregate

Policies

CGL POLICY 1/1/14– 1/1/15		UMBRELLA POLICY 6/1/14 – 6/1/15	
1/1/14 CGL Renewal	4/3/14 - Products \$50,000 Claim	6/1/14 Umbrella Renewal	10/1/14 – Products \$900,000 Claim

Claim Payments

CGL	\$50,000 Paid		\$450,000 Paid
INSURED			\$ 50,000
UMBRELLA			\$400,000

In the example shown above, the 4/3/14 Products claim reduces the underlying CGL aggregate to \$450,000. When the Umbrella policy renews on 6/1/14, the insured promises all underlying limits are unimpaired. On 10/1/14 the insured suffers a \$900,000 products claim which is reported to the underlying CGL and Umbrella carriers. The CGL carrier pays \$450,000 (the balance of its aggregate), the Insured would then have to pay \$50,000 out of pocket (it promised umbrella carrier unimpaired aggregates on renewal), only then would the Umbrella carrier would pay the remaining \$400,000.

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Concurrency - Example #2

- Underlying policy period 1/1/14 to 1/1/15
- Limits of \$1,000,000 occurrence / \$1,000,000 aggregate
- Umbrella policy period 6/1/14 to 6/1/15
- Limits of \$5,000,000 occurrence / \$5,000,000 aggregate

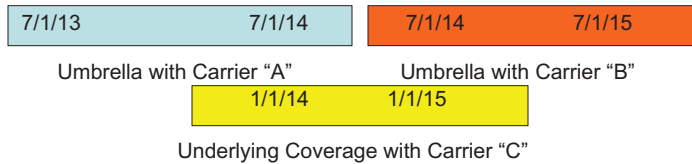
Date of Loss	Amount of Loss	Underlying Aggregate Available after payment	Umbrella Retained Limit	Umbrella Payment
2/1/14	\$ 50,000	\$950,000	N/A	None
3/1/14	\$100,000	\$850,000	N/A	None
4/1/14	\$200,000	\$650,000	N/A	None
5/1/14	\$ 50,000	\$600,000	N/A	None
6/1/14	\$100,000	\$500,000	\$100,000	None
7/1/14	\$200,000	\$300,000	\$300,000	None
8/1/14	\$300,000	\$ -0-	\$600,000	None
9/1/14	\$200,000	\$ -0-	\$800,000	None
10/1/14	\$300,000	\$ -0-	\$1,000,000	\$100,000

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Concurrency Example # 3

- **Example #3**



- OCCURRENCE LOSS
- Another gap may arise where an "occurrence" takes place over a period of time which overlaps the umbrella anniversary date, but not that of the underlying policy.
- If, in the above illustration, the occurrence loss exceeds the underlying limit, Umbrella carrier "A" may view it as occurring partially in the time frame of Umbrella carrier "B"; whereas carrier "B" may take the same position toward Umbrella carrier "A". If each umbrella carrier view the loss as occurring partially in the other's policy period, and therefore not exceeding the primary limit, there would be a void not filled by either policy. This situation creates an even stronger argument for having the primary and umbrella policies concurrent as to effective and expiration dates, and for like policy terms.

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D. Possible Solutions

1. Cancel / Rewrite specific underlying policy(ies) short-term to match umbrella policy dates
2. Cancel / Rewrite umbrella short-term to match underlying
3. Non-Concurrency endorsement
4. Amend underlying aggregate requirements of umbrella, if possible
5. Obtain a Buffer policy
6. Request underlying carrier to reinstate Aggregate
7. Self-Fund

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Umbrella's Do Not Follow Form

- It makes no difference that all underlying coverages are with the same carrier
- Most all Umbrella's have their own terms, conditions, limitations, exclusions and definitions
- **Most Umbrella's contain follow form wording with an exception....."except to the extent that the terms, conditions, limitations and exclusions DIFFER, then this policy controls"**
- Absolute Pollution Exclusion vs. Total Pollution Exclusion
- Most umbrellas do not drop down over Sub-limits – Damage To Premises Rented
- The Umbrella shows one Aggregate on the Dec page – BAP has none, CGL has two]
- Additional Insured Wording may not follow form

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Umbrella's Do Not Follow Form

- Primary Non-Contributory and the Other Insurance Clause
 - If an umbrella followed the underlying CGL form – it would be primary coverage !
 - Many Umbrella endorsements. only specify "Non-Contributory" which does not effect the order of the policies
- Per job-site / Location Aggregate Endorsements usually do not follow into Umbrella
- Umbrella Defense
 - No Duty, No Duty but Right to Associate, No Duty but Right to Assume Defense, Duty to Defend (limited)
- Claims may not reduce the Underlying Aggregate Limits
 - Only reduces underlying aggregate, if covered by the Umbrella
 - DTPR \$100,000 paid under primary CGL, not recognized under umbrella policy because of the Real Property CCC Exclusion

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Endorsements to be Added

- CU 04 00 – Coverage for Injury to Leased Workers
- CU 04 02 – Loss of Electronic Data Liability Resulting from Physical Injury to Tangible Property Liability Coverage – Subject to Cyber Incident Exclusion
- CU 04 03 – Employee Benefits Liability Coverage
- CU 24 01 – Waiver of Transfer of Rights of Recovery Against Others to Us (Waiver of Subrogation)
- CU 24 09 – Contractual Liability Railroads
- CU 24 36 – Products-Completed Operations Aggregate Limit of Insurance
- CU 24 78 – Non-Contributory – Other Insurance Condition

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COMMERCIAL GENERAL LIABILITY
CG 20 01 12 19

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

PRIMARY AND NONCONTRIBUTORY – OTHER INSURANCE CONDITION

This endorsement modifies insurance provided under the following:

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

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

Primary And Noncontributory Insurance

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

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

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

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POLICY NUMBER: COMMERCIAL LIABILITY UMBRELLA
CU 24 78 11 16

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

**NONCONTRIBUTORY – OTHER INSURANCE
CONDITION**

This endorsement modifies insurance provided under the following:

COMMERCIAL LIABILITY UMBRELLA 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.

Paragraph 5. of Section IV – Conditions is replaced by the following:

5. Other Insurance

a. This insurance is excess over, and shall not contribute with any of the other insurance, whether primary, excess, contingent or on any other basis. However:

(1) This condition will not apply to other insurance specifically written as excess over this Coverage Part.

(2) The insurance provided under this Coverage Part will not seek contribution from any other insurance available to an additional insured, provided that:

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

(b) The additional insured is shown in the Schedule; and

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

When this insurance is excess, we will have no duty under Coverages A or B to defend the insured against any "suit" if any other insurer has a duty to defend the insured against that "suit". If no other insurer defends, we will undertake to do so, but we will be entitled to the insured's rights against all those other insurers.

b. When this insurance is excess over other insurance, we will pay only our share of the "ultimate net loss" that exceeds the sum of:

(1) The total amount that all such other insurance would pay for the loss in the absence of the insurance provided under this Coverage Part; and

(2) The total of all deductible and self-insured amounts under all that other insurance.

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No Effect on Order of Coverage

- The ISO's "Noncontributory—Other Insurance Condition" endorsements have no apparent effect on the order of coverage.
- As above in the failure to comply illustration, the CGL purchased by the landlord in its own name (as a named insured) will still be required to respond *before* the umbrella insurance purchased by the tenant for the benefit of the landlord as an additional insured.
- As this is not the order of coverage generally understood as "primary and noncontributory," the ISO noncontributory endorsement does not appear to bring about compliance with the promise to include an umbrella policy as "primary and noncontributory."

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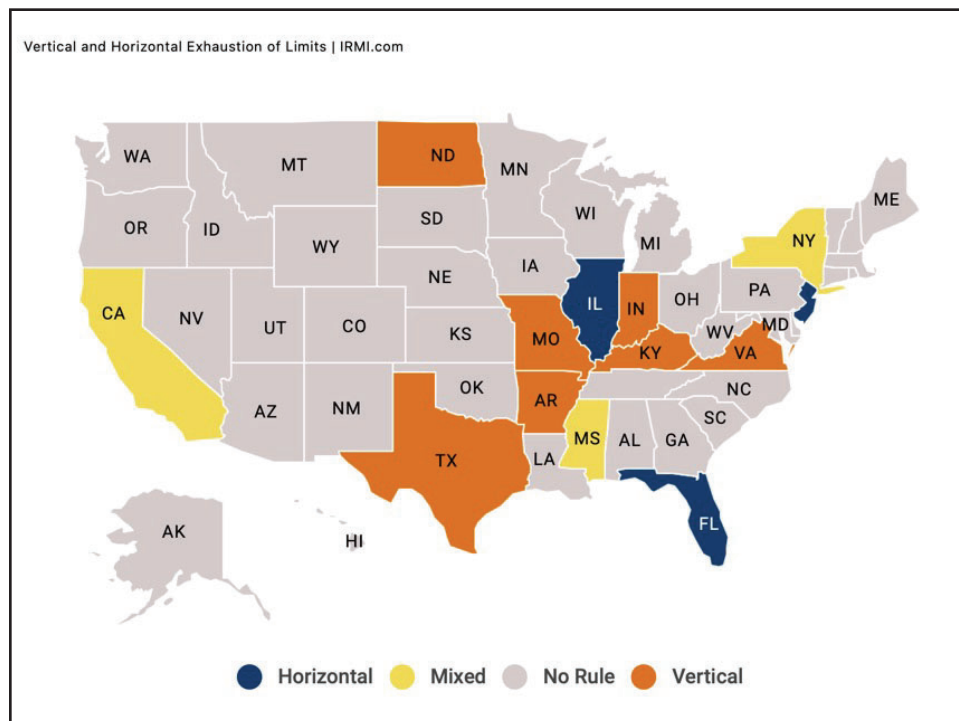
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Vertical and Horizontal Exhaustion: A Jurisdictional Survey

IRMI 7/10/22

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Problematic Insurance Requirements

- All policies shall exhaust vertically, and not share horizontally with any of the additional insured's insurance notwithstanding any case law to the contrary.

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Proposed Solutions to the Horizontal Exhaustion Problem

Source: Craig F. Stanovich and Jeffrey J. Vita, "Problematic Additional Insured Endorsements" (session handout, IRMI Construction Risk Conference, Indianapolis, IN, November 7, 2017).

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ENDORSEMENT—EXCESS LIABILITY POLICY PRIORITY OF COVERAGE

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

Any entity qualifying as an additional insured on the insurance stated in the Schedule of Underlying Insurance shall be an additional insured on this policy.

This insurance shall apply immediately upon exhaustion of the insurance stated in the Schedule of Underlying Insurance as respects the coverage afforded to any additional insured. This insurance shall apply before any other insurance available to the additional insured, on which the additional insured is a named insured, whether such other insurance is primary, excess, contingent, or on any other basis, and we will not seek contribution from such insurance for defense or indemnity.

Where an entity qualifies as an additional insured on insurance stated in the Schedule of Underlying Insurance based on a written agreement to provide liability insurance, the limits of insurance provided by this policy shall not exceed the limits of insurance required by such written agreement.

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“Sneak Preview”

Brand New ISO Endorsements
Effective 12/1/23
(May not being used yet by many carriers)

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THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

**EXCESS INSURANCE PROVISION –
ORDER OF RESPONSE – WHEN YOU ARE AN
ADDITIONAL INSURED ON OTHER INSURANCE**

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

Paragraph b.(1)(b) of Paragraph 4. Other Insurance
of Section IV – Commercial General Liability
Conditions is replaced by the following:

4. Other Insurance

b. Excess Insurance

(1) This insurance is excess over:

- (b) Any other insurance available to you, whether primary, excess, contingent or on any other basis, 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.

Added to Upper Tier's Policy –
ie, G.C.

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POLICY NUMBER:

COMMERCIAL LIABILITY UMBRELLA
CU 24 77 12 23

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

**NONCONTRIBUTORY AND ORDER OF RESPONSE –
OTHER INSURANCE CONDITION**

This endorsement modifies insurance provided under the following:

COMMERCIAL LIABILITY UMBRELLA 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.

Paragraph 5. of Section IV – Conditions is replaced by the following:

5. Other Insurance

a. This insurance is excess over, and shall not contribute with any of the other insurance, whether primary, excess, contingent or on any other basis. However:

(1) This condition will not apply to other insurance specifically written as excess over this Coverage Part.

(2) The insurance provided under this Coverage Part will apply before any other insurance available to the additional insured shown in the Schedule, whether such other insurance is primary, excess, contingent or on any other basis, and will not seek contribution from such other insurance available to that additional insured, provided that:

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

(b) You have agreed in writing in a contract or agreement that this insurance would:

(i) Apply before any other insurance available to the additional insured; and

(ii) Not seek contribution from any other

When this insurance is excess, we will have no duty under Coverages A or B to defend the insured against any "suit" if any other insurer has a duty to defend the insured against that "suit". If no other insurer defends, we will undertake to do so, but we will be entitled to the insured's rights against all those other insurers.

b. When this insurance is excess over other insurance, we will pay only our share of the "ultimate net loss" that exceeds the sum of:

(1) The total amount that all such other insurance would pay for the loss in the absence of the insurance provided under this Coverage Part; and

(2) The total of all deductible and self-insured amounts under all that other insurance.

c. If the provisions of Paragraph 5.a.(2) of this endorsement conflict with the provisions of other insurance available to the additional insured who is a Named Insured under such other insurance, we will contribute by limits. Under this method, each insurer's share is based on the ratio of its applicable limit of insurance to the total applicable limits of insurance of all insurers.

Added to Lower Tier's Policy –
ie, Sub

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POLICY NUMBER:	COMMERCIAL EXCESS LIABILITY CX 24 32 12 23
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THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

**NONCONTRIBUTORY AND ORDER OF RESPONSE –
OTHER INSURANCE CONDITION**

This endorsement modifies insurance provided under the following:

COMMERCIAL EXCESS 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.

Paragraph 8, of Section III – Conditions is replaced by the following:

8. Other Insurance

a. This insurance is excess over, and shall not contribute with any of the other insurance, whether primary, excess, contingent or on any other basis. However:

(1) This condition will not apply to other insurance specifically written as excess over this Coverage Part.

(2) The insurance provided under this Coverage Part will apply before any other insurance available to the additional insured shown in the Schedule, whether such other insurance is primary, excess, contingent or on any other basis, and will not seek contribution from such other insurance available to that additional insured, provided that:

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

(b) You have agreed in writing in a contract or agreement that this insurance would:

(i) Apply before any other insurance available to the additional insured; and

(ii) Not seek contribution from any other insurance available to the additional insured.

When this insurance is excess, if no other insurer defends, we will undertake to do so, but we will be entitled to the insured's rights against all those other insurers.

b. When this insurance is excess over other insurance, we will pay only our share of the "ultimate net loss" that exceeds the sum of:

(1) The total amount that all such other insurance would pay for the loss in the absence of the insurance provided under this Coverage Part; and

(2) The total of all deductible and self-insured amounts under all that other insurance.

c. If the provisions of Paragraph 8.a.(2) of this endorsement conflict with the provisions of other insurance available to the additional insured who is a Named Insured under such other insurance, we will contribute by limits. Under this method, each insurer's share is based on the ratio of its applicable limit of insurance to the total applicable limits of insurance of all insurers.

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Endorsement to Watch Out For

CU 21 89—Public or Livery Passenger Conveyance Exclusion

- When this endorsement is attached to the policy, insurance provided under any applicable bodily injury and property damage liability and excess uninsured and/or underinsured motorists coverage is excluded while any covered auto is being used as a public or livery conveyance for passengers. This includes, but is not limited to, any period of time a covered auto is being used by an insured who is logged into a "transportation network platform" as a driver, whether or not a passenger is occupying the covered auto.

CU 21 90—Public or Livery Passenger Conveyance and On-Demand Delivery Services Exclusion

- When this endorsement is attached to the policy, insurance provided under any applicable bodily injury and property damage liability and excess uninsured and/or underinsured motorists coverage is excluded while any covered auto is being used as a public or livery conveyance for passengers. This includes, but is not limited to, any period of time a covered auto is being used by an insured who is logged into a "transportation network platform" as a driver, whether or not a passenger is occupying the covered auto, or by an insured who is logged into a "transportation network platform" or "delivery network platform" as a driver to provide delivery services, which includes courier services, whether or not the goods, items, or products to be delivered are in the covered auto.

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Mixed Programs- Occur and CM

A. ISO Umbrella Policy is an OCCURRENCE based policy (as are most)

B. Problems

1. Occurrence over claims made
2. Claims made over occurrence

C. Solutions

1. Avoidance
2. If it cannot be avoided:
 - a. Try to confine "claims made" policies to upper layers
 - b. If umbrella is "claims made", buy the highest limits you can in the underlying
 - c. Keep all policies in a layer identical when a quota share arrangement exists
 - d. Try to keep retro dates consistent through all layers
 - e. Try to negotiate the guaranteed availability of a "supplemental extended reporting period" in the event of non-renewal.
 - f. Document in writing for all parties

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Mixed Programs- Occur and CM

CU 27 00 – Underlying Claims-Made Coverage

- Revises parts of the Umbrella form BI,PD,AI and PI insuring agreements, to clarify claims trigger and adds an Extended Reporting Period (CU 27 03)

D. Potential Causes of Claims Made Gaps

1. Retroactive Date Advancement
2. Cancellation by Insured or Insurer
3. Attachment of a "Laser" exclusions
4. Replacement with an Occurrence Policy

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OFTEN MISUNDERSTOOD

- Existing.....
- Per Project Aggregate Endorsement (incorrect)
- Designation Construction Project(s) – General Aggregate Limit CG 25 03 (correct)
- Per Location Aggregate Endorsement (incorrect)
- Designated Locations – General Aggregate Limit – CG 25 04 (correct)
- Introducing.....
- Designated Project(s) – Completed Operations Aggregate Endt.- CG 25 45
- Designated Location(s) – Completed Operations Aggregate Endt.- CG 25 46

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POLICY NUMBER:

COMMERCIAL GENERAL LIABILITY
CG 25 03 05 09

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

DESIGNATED CONSTRUCTION PROJECT(S) GENERAL AGGREGATE LIMIT

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

SCHEDULE

Designated Construction Project(s):

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

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POLICY NUMBER:

COMMERCIAL GENERAL LIABILITY
CG 25 04 05 09

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

DESIGNATED LOCATION(S)
GENERAL AGGREGATE LIMIT

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

SCHEDULE

Designated Location(s):

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

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POLICY NUMBER:

COMMERCIAL GENERAL LIABILITY
CG 25 45 12 19

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

DESIGNATED PROJECT(S)
PRODUCTS-COMPLETED OPERATIONS
AGGREGATE LIMIT

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

SCHEDULE

Designated Project(s):

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

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POLICY NUMBER:

COMMERCIAL GENERAL LIABILITY
CG 25 46 12 19

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

**DESIGNATED LOCATION(S)
PRODUCTS-COMPLETED OPERATIONS
AGGREGATE LIMIT**

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

SCHEDULE

Designated Location(s):

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

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ISSUE # 10

223

ACV VALUATION FOR ROOFING SURFACES and COSMETIC DAMAGE

CP 10 36 (1012)

224

POLICY NUMBER: [Click to increase the magnification of the entire page](#) COMMERCIAL PROPERTY
CP 10 36 10 12

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

LIMITATIONS ON COVERAGE FOR ROOF SURFACING

This endorsement modifies insurance provided under the following:

BUILDERS RISK COVERAGE FORM
BUILDING AND PERSONAL PROPERTY COVERAGE FORM
CONDOMINIUM ASSOCIATION COVERAGE FORM
CONDOMINIUM COMMERCIAL UNIT-OWNERS COVERAGE FORM
STANDARD PROPERTY POLICY

SCHEDULE

Premises Number	Building Number	Indicate Applicability (Paragraph A. and/or Paragraph B.)

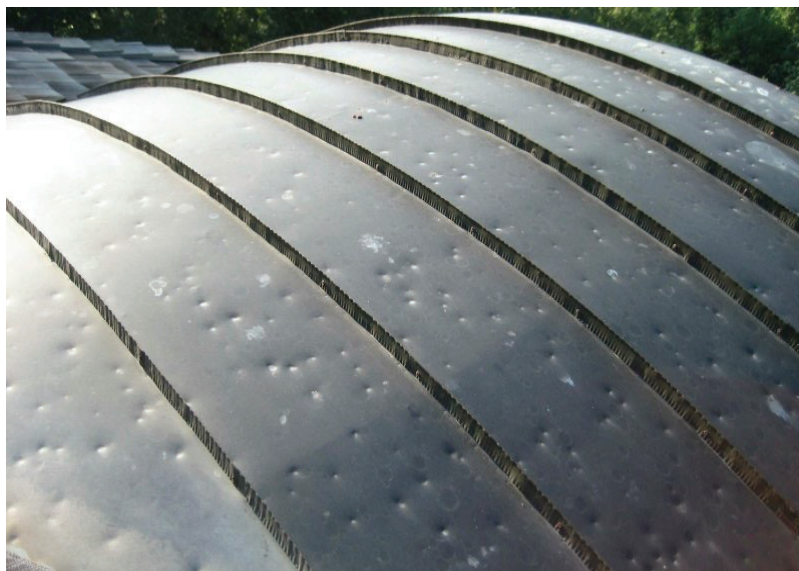
Information required to complete this Schedule, if not shown above, will be shown in the Declarations.

- A. The following applies with respect to loss or damage by a **Covered Cause of Loss** (including wind and hail if covered by a building or
- C. For the purpose of this endorsement, roof surfacing refers to the shingles, tiles, cladding, metal or synthetic sheeting or similar materials

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How Is Depreciation Calculated for a Roof Payment Schedule?

Roof claims for wind or hail damage are paid out on a depreciated value based on the roof's materials and age. The depreciated value is calculated by subtracting the roof's depreciation from its replacement cost.

This is the depreciation schedule:

- Metal reaches maximum depreciation of 30 percent at 30 years (1 percent a year).
- Tile reaches maximum depreciation of 60 percent at 30 years (2 percent a year).
- Shingle reaches maximum depreciation of 75 percent at 19 years (4 percent a year).
- Between 0 years and the years listed above, it depreciates linearly annually.

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ISSUE # 11

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POLICY NUMBER:

COMMERCIAL PROPERTY
CP 04 11 09 17

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

PROTECTIVE SAFEGUARDS

This endorsement modifies insurance provided under the following:

COMMERCIAL PROPERTY COVERAGE PART
STANDARD PROPERTY POLICY

SCHEDULE

Premises Number	Building Number	Protective Safeguards Symbols Applicable
Describe Any "P-9":		
Information required to complete this Schedule, if not shown above, will be shown in the Declarations.		

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

Protective Safeguards

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

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

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

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

Causes Of Loss – Basic Form

Causes Of Loss – Broad Form

Causes Of Loss – Special Form

Mortgageholders Errors And Omissions Coverage Form

Standard Property Policy

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

- C.** The protective safeguards to which this endorsement applies are identified by the following symbols:

"P-1" Automatic Sprinkler System, including related supervisory services.

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Automatic Sprinkler System means:

- a.** Any automatic fire protective or extinguishing system, including connected:

- (1) Sprinklers and discharge nozzles;
- (2) Ducts, pipes, valves and fittings;
- (3) Tanks, their component parts and supports; and
- (4) Pumps and private fire protection mains.

- b.** When supplied from an automatic fire protective system:

- (1) Non-automatic fire protective systems; and
- (2) Hydrants, standpipes and outlets.

"P-2" Automatic Fire Alarm, protecting the entire building, that is:

- a.** Connected to a central station; or
- b.** Reporting to a public or private fire alarm station.

"P-3" Security Service, with a recording system or watch clock, making hourly rounds covering the entire building, when the premises are not in actual operation.

"P-4" Service Contract with a privately owned fire department providing fire protection service to the described premises.

"P-5" Automatic Commercial Cooking Exhaust And Extinguishing System installed on cooking appliances and having the following components:

- a.** Hood;
- b.** Grease removal device;
- c.** Duct system; and
- d.** Wet chemical fire extinguishing equipment.

"P-9", the protective system described in the Schedule.

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Protective Safeguard Endorsement- Builder's Risk Policy

- Perimeter Fencing – 6' anchored chain link
- Lighting – sunset to sunrise
- Detection Systems - Burglar, Smoke, Fire
- Sprinkler System
- Fire Hydrants
- Video Surveillance
- Security Services
- Monitored Activities – welding, cutting, soldering
- Other – Storage, Locks, Brush Clearance

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Reminder to Policyholders:
Verify Application Information
Provided to Insurer

Merlin Law Firm
Law Blog

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Reminder to Policyholders: Verify Application Information Provided to Insurer

- In *American Way Cellular Inc. v. Travelers Property Casualty Company of America*,¹ a California appellate court held an insurer does not need to pay for fire damage because the policyholder's property lacked the automatic sprinkler system required by the policy.
- In *American Way*, the policyholder, through its insurance broker, submitted a commercial insurance application to Travelers. In the box entitled "FIRE PROTECTION (Sprinklers, Standpipes, CQ/Halon Systems)," the application indicated the policyholder had "SMOKE DETECTORS/FIRE EXTING./SPRINKLERS." The application was prepared by the broker based on information obtained from one of American Way's principals. The owner claimed he was never asked if his business had sprinklers. The policy contained a "Protective Safeguards Endorsement," which required the policyholder to maintain an automatic sprinkler system on the premises as a condition for coverage.
- Following a fire loss and after an advance payment had been made to the policyholder, the insurer learned the premises did not have an automatic sprinkler system, and Travelers subsequently issued a denial letter. At the trial court level, Travelers successfully brought a summary judgment motion and obtained a judgment which included reimbursement of the advance payment.

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Reminder to Policyholders: Verify Application Information Provided to Insurer

- The appellate court, affirming the trial court's ruling, was not concerned how the incorrect information was conveyed to the insurer. The policyholder argued Traveler's had a duty to investigate and verify the information provided in the application. The court, however, held "an insurer does not have a duty to investigate statements made in the application and to verify the accuracy of the representations." Rather, it is the "insured's duty to divulge fully all he or she knows."²
- The bottom line is that in California and in most other jurisdictions, the policyholder -- not the insurance company -- is responsible for the accuracy of the insurance application. Whether or not an insurance broker assists with procuring the policy, the policyholder needs to make sure the content of the application is accurate. As illustrated in the above, failure to do so can have unfortunate consequences.
- ¹ *American Way Cellular Inc. v. Travelers Property Casualty Co. of America*, --- Cal. App. 4th ---, 2013 WL 2358673 (Cal. App. 2 Dist. May 30, 2013)
² Citing *Mitchell v. United National Ins. Co.* (2005) 127 Cal. App. 4th, 476.

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Imputing Maintenance Employee's Knowledge to Employer, that Sprinkler System had been Turned Off

FC&S Legal
August 8, 2013
Steven A. Meyerowitz, Esq.

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- The U.S. Court of Appeals for the Eleventh Circuit has ruled that a policy's "Protective Safeguard Exclusion" barred coverage where the insured's maintenance employee knew that the building's sprinkler system had been turned off.

The Case

- Insurers filed a declaratory judgment action in a federal district court after Norman W. Paschall Company, Inc., submitted an insurance claim for a fire loss. The parties filed cross-motions for summary judgment. The district court ruled in favor of the insurers, and Paschall appealed.

The Policy

- The policy's "Protective Safeguard Exclusion" excluded from coverage:
- loss or damage caused by or resulting from fire if, prior to the fire [Paschall]:
- 1. Knew of any suspension or impairment in [the Automatic Sprinkler System] and failed to notify [Insurers] of that fact; or
- 2. Failed to maintain [the Automatic Sprinkler System], over which [Paschall] had control, in complete working order.

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The Circuit Court's Decision

- The circuit court affirmed.
- In its decision, it found that coverage was barred by the exclusion that applied where Paschall failed to maintain its automatic sprinkler system, over which it had control, in complete working order, because Paschall's maintenance employee had turned off an entire system of the automatic sprinkler system.
- Additionally, it found that the exclusion applied that precluded coverage where Paschall failed to inform the insurers of a known suspension or impairment in its automatic sprinkler system.
- Significantly, the circuit court upheld the district court's application of general Georgia agency law when it found that the maintenance employee's knowledge that the sprinkler system had been turned off should be imputed to Paschall. Because a portion of a sprinkler system being "off" constituted a suspension and/or impairment, and because Paschall failed to inform the insurers about this suspension and/or impairment, the circuit court concluded that the district court properly had found there was no coverage.

- The case is *Chaucer Corporate Capital (No. 2) Limited v. Norman W. Paschall Co., Inc.*, No. 12-10933 (11th Cir. Aug. 2, 2013). Attorneys involved include: Paul Lindsey Fields, Jr., Gregory L. Mast, Fields Howell Athans & McLaughlin, LLP, Atlanta, GA, for Plaintiffs-Counter Defendants-Appellees; Jeffrey Dale Diamond, Diamond Law Office, Atlanta, GA, for Defendant-Counter Claimant-Appellant

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ISSUE # 12

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WHAT IS MY BUSINESS PERSONAL PROPERTY?

HOW DO I INSURE IT PROPERLY ?



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Business Personal Property

- **Your Business Personal Property** consists of the following property located in or on the building or structure described in the Declarations or in the open (or in a vehicle) within 100 feet of the building or structure or within 100 feet of the premises described in the Declarations, whichever distance is greater:
 - Furniture and fixtures
 - Machinery and Equipment
 - “Stock”
 - All other personal property owned and used by you
 - Labor, materials and services furnished by you on PPO
 - Your use interest in Tenants Improvements & Betterments
 - Leased personal property which you must contractually insure

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Labor, Materials, Services Furnish by You on PPO

- I leave 5000 cotton shirts at your silk screen printing shop
- You charge me \$12,500 to print a picture and saying on every shirt
- The night before I pick up the shirts, there's an explosion at your shop, and all the shirts are destroyed
- I refuse to pay you, despite the \$12,500 of labor and materials you already expended
- The \$12,500 is included in your BPP coverage
- Times 12 client's property you were working on = \$150,000

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Leased Property Which you Must Contractually Insure

Equipment Lease

14. Loss And Damage. Lessee shall bear the entire risk of loss, theft, damage or destruction of the equipment from any cause whatsoever, and no loss, theft, damage or destruction of the equipment *shall relieve Lessee of the obligation to pay rent or of any other obligation under this lease.*

In the event of damage to any item of equipment, Lessee shall immediately place the same in good repair. *The Lessee furthermore agrees to continue to pay rent after the expiration of this lease until any item of equipment is placed in good repair.*

If Lessor determines that any item of equipment is lost, stolen, destroyed or damaged beyond repair, Lessee at the option of Lessor shall:

(a) replace the same with like equipment in good repair and continue to pay rent after the expiration of this lease until replacement is concluded; or
(b) pay Lessor in cash all of the following:

(i) all amounts then owed by Lessee to Lessor under this lease,
(ii) an amount equal to ten percent (10%) of the actual cost of said item,
AND

(iii) the unpaid balance of the total rent for the initial term of this lease attributable to said item. Upon Lessor's receipt of such payment, Lessee shall be entitled to whatever interest Lessor may have in said item, in its then condition and location, without warranty express or implied.

The parties hereto agree that the sum of the amounts numbered (ii) and (iii) will equal the fair value of said item on the date of such, loss, theft, damage or destruction, and the remaining rent payable here under shall be reduced by such amount as is paid under item

(iii) above prorated over the remaining term hereof.

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Leased Property Which you Must Contractually Insure

10. Insurance.

Lessee shall procure and continuously maintain and pay for:

A. All risk insurance against loss of and damage to the Equipment for not less than the full replacement value of the Equipment, naming Lessor as loss payee, and;

B. Combined public liability and property damage insurance with limits as approved by Lessor, naming Lessor as additionally named insured and a loss payee.

The insurance shall be in such form and with such company or companies as shall be reasonably acceptable to Lessor, shall provide at least thirty (30) days advance written notice to Lessor of any cancellation, change or modification, and shall provide primary coverage for the protection of Lessee and Lessor without regard to any other coverage carried by Lessee or Lessor protecting against similar risks.

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CP 14 60–Leased Property

- Leased property in the insured's care, custody or control is considered part of business personal property coverage if the insured is contractually required to insure it. This endorsement modifies coverage to allow the insured to schedule such leased personal property of others under a written lease, even if the lease does not require the insured to be contractually obligated for the coverage. The endorsement includes an agreed value option. A premium charge is not normally made when this endorsement is used. However, the business personal property limit must be reviewed carefully to be certain it is adequate when this property is included for coverage

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CP 14 60 07 88

LEASED PROPERTY

This endorsement modifies insurance provided under the following:

BUILDING AND PERSONAL PROPERTY COVERAGE FORM
CONDOMINIUM ASSOCIATION COVERAGE FORM
CONDOMINIUM COMMERCIAL UNIT-OWNERS COVERAGE FORM
STANDARD PROPERTY POLICY

SCHEDULE



Premises No.	Bldg. No.	Description of Property	Agreed Value (Optional)
--------------	-----------	----------------------------	----------------------------

A. When this endorsement is attached to the STANDARD PROPERTY POLICY CP 00 99 the term Coverage Part in this endorsement is replaced by the term Policy.

B. Your Business Personal Property is revised to include personal property of others in your care, custody or control under written leases, as described in the Schedule or in the Declarations.

C. If an agreed value is entered for property in the Schedule or in the Declarations, this amount will be considered to be the value of the described property at the time of loss or damage. But this does not otherwise alter the application of the Coinsurance condition.

D. Property described in the Schedule or in the Declarations is not included under any Personal Property of Others coverage in this Coverage Part.

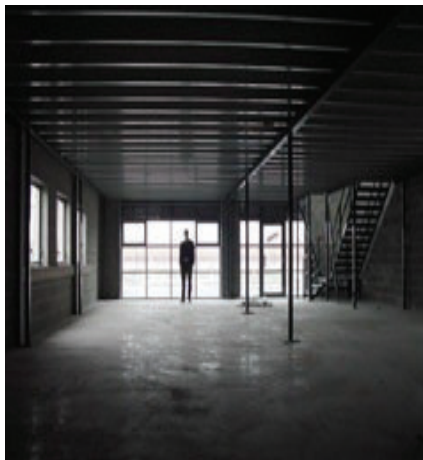
Copyright, ISO Commercial Risk Services, Inc., 1984, 1987

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Tenants Improvements & Betterments (TIB's)

• Before



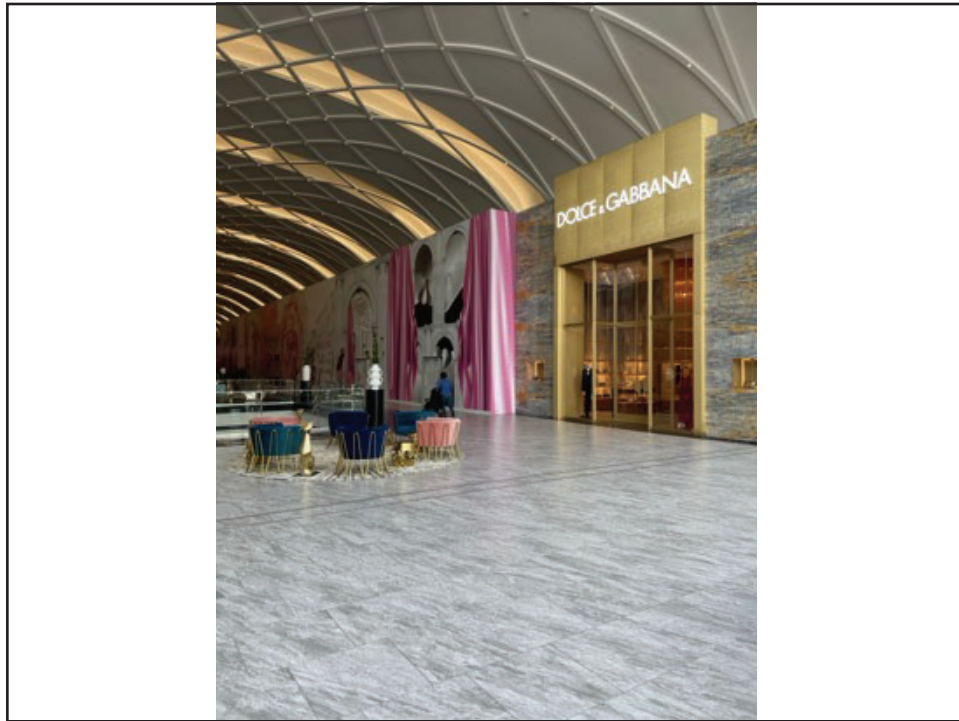
• After



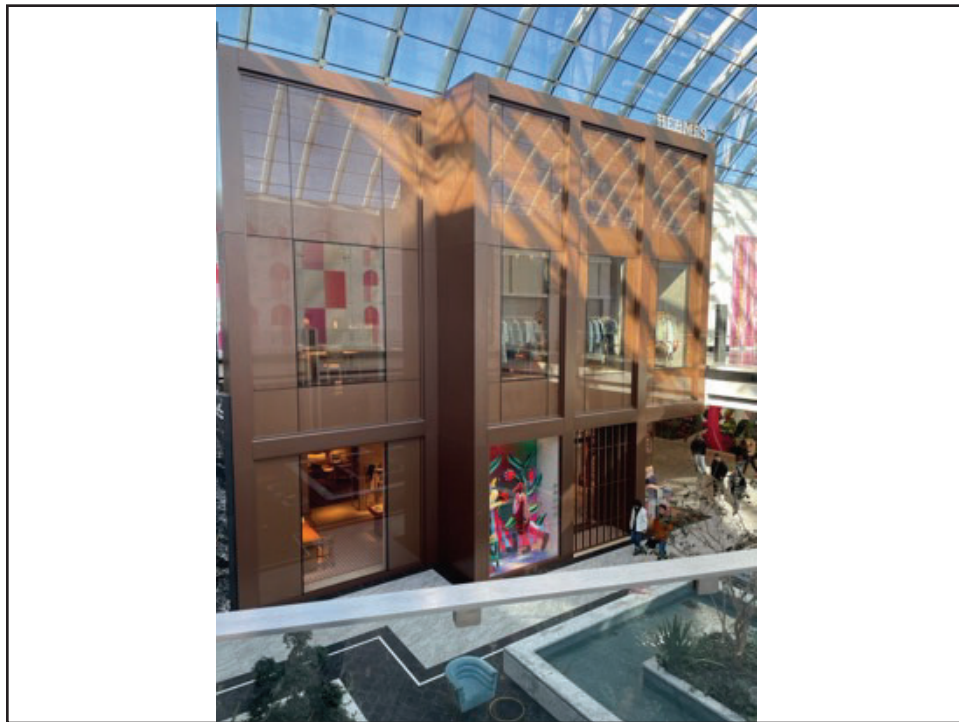
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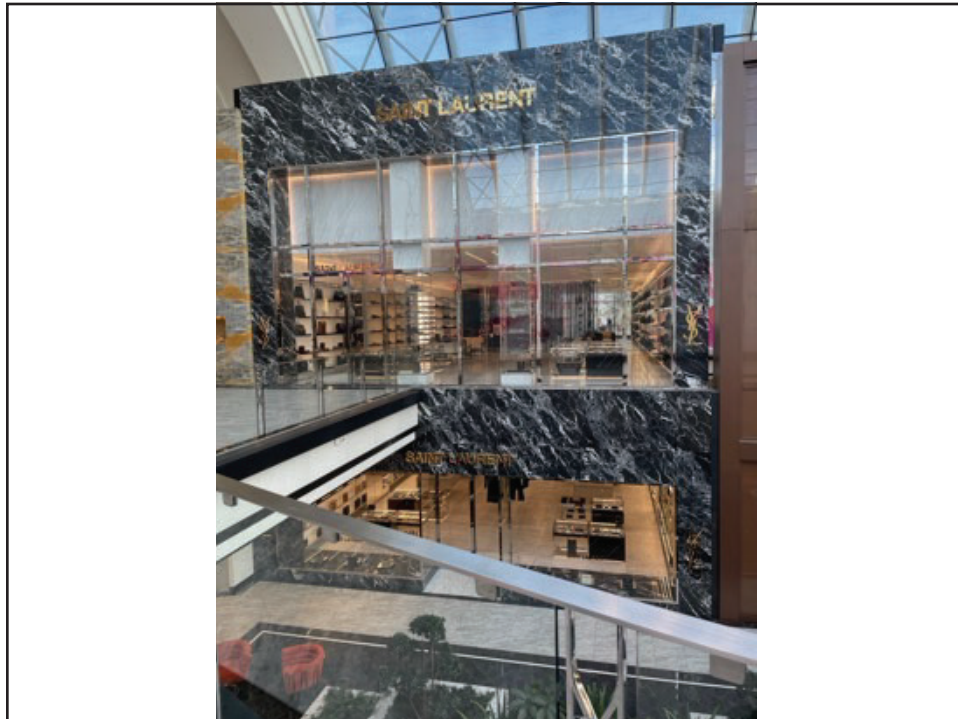
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Tenants Improvements and Betterments

- Made a part of the Building you do not own
- **Made or acquired** at your expense (previously installed-problem)
- Cannot legally remove when you leave

Settlement: "USE INTEREST ONLY"

- If others pay for repair/replace = nothing
- If you repair/replace promptly = ACV
- If you don't repair/replace promptly = proportionate value to lease (ACV only)
 - 5 years lease with 5 year option to renew
 - \$100,000 Tenants Improvements
 - Loss happens halfway through the lease = \$50,000

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(6) Your use interest as tenant in improvements and betterments. Improvements and betterments are fixtures, alterations, installations or additions:

(a) Made a part of the building or structure you occupy but do not own; and

(b) You acquired or made at your expense but cannot legally remove;

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Valuation- TIB's

e. Tenants' Improvements and Betterments at:

(1) Actual cash value of the lost or damaged property if you make repairs promptly.

(2) A proportion of your original cost if you do not make repairs promptly. We will determine the proportionate value as follows:

(a) Multiply the original cost by the number of days from the loss or damage to the expiration of the lease; and

(b) Divide the amount determined in **(a)** above by the number of days from the installation of improvements to the expiration of the lease.

If your lease contains a renewal option, the expiration of the renewal option period will replace the expiration of the lease in this procedure.

(3) Nothing if others pay for repairs or replacement.

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- Permanently installed TIB's become:
 - Part of the Building
 - Property of the Landlord
 - Cannot legally be removed
- Tenant can have "Use Interest"
- Lease will determine who is responsible for insuring the TIB's
- CP 1420 – Additional Property not Covered
- CP 1910 –BPP Separation of Coverage-Rate as Bldg.
- CP 1415 – Additional Building Property
- CP 04 26 – Ordinance or Law Coverage for Tenant's Interest in Improvements and Betterments (Tenants Policy)
- Manuscript wording to clarify intent -"The sole interest of the named insured in all improvements and betterments at premises covered under this policy is hereby recognized, without regard to any terms of a lease". [Intent is to make certain insured recovery will be ACV/RC²⁵⁵ regardless of whether property is rebuilt or not.

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ISSUE # 13

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CGL EXCLUSIONS:

- Damage to your Work
- Aircraft, Auto, Watercraft



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Coverage A Exclusions

- Damage to “Your Work”
 - Applies to liabilities arising from the “products-completed operations hazard”
 - CGL not meant to perform like a warranty
 - Insured is hired to build a wall around a home. Two months later it falls down due to poor construction, no coverage under CGL
 - **Exception to exclusion**
 - Retains coverage for damage to contractor’s work caused by a subcontractor’s negligence

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Exclusions

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.

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Example

- GC builds a warehouse
- Subs out 50% of the work
- A year later warehouse burns due to faulty electrical work
- Warehouse owner brings suit against GC for damage
- Any coverage under GC's policy?

- If electrical work was performed by a sub, the exclusion does not apply and GC's policy pays the claim up to its limits
- If GC did electrical work, the policy will exclude coverage for damage to the GC's work (50% of loss), but will cover the damage to the work by the subs.

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Exception leaves coverage for...

(Paper GC-subs out all work)

- PD to the insureds work that results from the work of the the insured's subcontractor;
- PD to the work of the insured's subcontractor that results from that subcontractors work
- PD to the work of the insured's subcontractor that results from the insured's work
- PD to the work of the insured's subcontractor that results from the work of another contractors or subcontractor
- Not covered: PD to Insured's work caused by Insured

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BEWARE THE CG 2294

Exclusion- Damage to Your Work Performed by Subcontractors on Your Behalf

- Nasty Exclusion
- Changes Your Work coverage
- Removes PD coverage for work done on your behalf by sub contractors



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CGL Exclusions

Aircraft, **Auto** Or Watercraft

- **"Bodily injury" or "property damage" arising out of the ownership, maintenance, use or entrustment to others of any aircraft, "auto" or watercraft owned or operated by or rented or loaned to any insured. Use includes operation and "loading or unloading".**
- This exclusion applies even if the claims against any insured allege negligence or other wrongdoing in the supervision, hiring, employment, training or monitoring of others by that insured, if the "occurrence" which caused the "bodily injury" or "property damage" involved the ownership, maintenance, use or entrustment to others of any aircraft, "auto" or watercraft that is owned or operated by or rented or loaned to any insured.
- What's left ?
- *Coverage for Independent Contractors use of an auto--- since we do not own, operate, rent, or loan it.*

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Snowplowing- Completed Operations

- Where is coverage afforded ?
 - CGL
 - Business Auto
- Business Auto Exclusion
(10) BI or PD arising out of your work after that work has been completed or abandoned.
- CGL Exclusion
(g) "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".
(excludes operation and loading/unloading-- coops?)

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Introducing CG 2292

- For use with 2007+ CGL forms
- Adds completed operations for Snowplowing to CGL policy
- Why have an endorsement if it is included?
- Need for an endorsement if not excluded ?
- Assures client of coverage for Completed Operations

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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 ap-
ply to any "auto" used for snow plow operations.

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Nick's Brick Oven Pizza, Inc. v. Excelsior Insurance Company, et al., No. 2008-03856 (Sup. Ct. N.Y. App. Div. 2009).

- Both the pizza business and the person delivering pizzas were sued following an accident that injured another motorist. Claim was denied by the CGL carrier because of (1) the auto exclusion in the CGL policy and (2) the driver, as an employee, was an insured.
- The pizza company, however, maintained that the delivery person was a temporary employee because he was hired to meet seasonal or short-term workload conditions during the busy summer months prior to his return to college. Since the delivery person was not an insured, coverage applied.

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Automatic Insureds

C. Automatic Insureds - Includes Others:

1. **"Employees"** – while acting within the scope of their employment. [why? Coop]

a. Employee Definition

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

b. Leased Employee Definition

"Leased worker" means a person leased to you by a labor leasing firm under an agreement between you and the labor leasing firm, to perform duties related to the conduct of your business. "Leased worker" does not include a "temporary worker".

c. Temporary Workers Definition

"Temporary worker" means a person who is furnished to you to substitute for a permanent "employee" on leave or to meet seasonal or short-term workload conditions.

d. Limitations or Exceptions to Coverage- except for BI/PI/AI to the Named insured, partners or members or other employees and for professional health care services.

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THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

ABSOLUTE AUTO, AIRCRAFT AND WATERCRAFT EXCLUSION

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

- A. **SECTION I – COVERAGES, COVERAGE A BODILY INJURY AND PROPERTY DAMAGE LIABILITY, 2. Exclusions**, paragraph **g.** is deleted and replaced with the following:

g. Aircraft, Auto Or Watercraft

"Bodily injury" or "property damage" arising directly or indirectly out of the ownership, maintenance, use or entrustment to others of any aircraft, "auto" or watercraft. Use includes operation and "loading or unloading".

This exclusion applies even if the claims against any insured allege negligence or other wrongdoing in the supervision, hiring, employment, training or monitoring of others by that insured, if the "occurrence" which caused the "bodily injury" or "property damage" involved the ownership, maintenance, use or entrustment to others of any aircraft, "auto" or watercraft.

- B. The following is deleted under **SECTION IV – COMMERCIAL GENERAL LIABILITY CONDITIONS, 4. Other Insurance**, paragraph **b. Excess Insurance**:

If the loss arises out of the maintenance or use of aircraft, "autos" or watercraft to the extent not subject to Exclusion **g.** of Section **I – Coverage A – Bodily Injury and Property Damage Liability**.

ALL OTHER TERMS AND CONDITIONS OF THE POLICY REMAIN UNCHANGED.

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James River Ins. Co. v. Fortress Systems, LLC, No. 13-10564 (11th Cir. June 24, 2014)

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COMMERCIAL GENERAL LIABILITY
CG 40 11 12 19

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

EXCLUSION – HIRED AUTO LIABILITY

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

With respect to "hired autos", the following provisions supersede any provisions to the contrary:

- A. The following exclusion is added to Paragraph **g. Aircraft, Auto Or Watercraft**, Paragraph **2. Exclusions of Section I – Coverages, Coverage A – Bodily Injury And Property Damage Liability**:

This insurance does not apply to:

g. Aircraft, Auto Or Watercraft

"Bodily injury" or "property damage" arising out of the maintenance, use or entrustment to others of any "hired auto".

Use includes operation and "loading or unloading".

This exclusion applies even if the claims against any insured allege negligence or other wrongdoing in the supervision, hiring, employment, training or monitoring of others by that insured, if the "occurrence" which caused the "bodily injury" or "property damage" involved the maintenance, use or entrustment to others of any "hired auto".

- B. For the purposes of this endorsement, the following definition is added:

"Hired auto" means any "auto":

1. Leased to, for or by any insured; or
2. Hired or borrowed for or by any insured.

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ISSUE # 14

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Reimbursement of Legal Fees



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Reimbursement of Defense Costs

- The Duty to Defend is broader than the Duty to Indemnify
- If after spending \$100,000 to defend an insured, can the carrier get its money back when it successfully denies the claim because coverage does not apply.
- What does the policy say?

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CGL Insuring Agreement- CG 00 01

We will pay those sums that the insured becomes legally obligated to pay as damages because of "bodily injury" or "property damage" to which this insurance applies. We will have the right and duty to defend the insured against any "suit" seeking those damages. However, we will have no duty to defend the insured against any "suit" seeking damages for "bodily injury" or "property damage" to which this insurance does not apply. We may, at our discretion, investigate any "occurrence" and settle any claim or "suit" that may result.

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Jurisdictional

- Buss v. Superior Court of LA County
 - 27 count complaint was filed against insured
 - Only one count was potentially covered
 - Carrier defends under ROR, including the right to deny all coverage, and be reimbursed for defense costs for non-covered causes of action
 - Suit settles for \$8.5 mil and carrier incurs \$1.0 mil in defense costs. The Carrier retains an expert who apportions defense costs to be about \$55,000 for the one covered count

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Buss v. Superior Court of LA County

- The Court held that the carrier did not have a duty to defend for claims that were not potentially covered, since it was not paid a premium to defend non-covered claims.
- Relying on the law of restitution, the court held that the carrier had a right to reimbursement because the insured would have been unjustly enriched if the carrier incurred the expense of defending against non-covered claims

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Terra Nova Ins Co v. 900 Bar, Inc - PA

- Opposite outcome of Buss
- Third Circuit court held that permitting such recovery would be inconsistent with the carriers offer to defend under a ROR letter.
- When an insurer offers to defend under a ROR it is uncertain whether it will have a duty to indemnify.
- By defending the insured, the carrier avoids the risk that the insured's defense will be lackadaisical. If it is, the carrier's exposure could be greater if it is determined that coverage is owed. Thus a defense under a ROR benefits both the insured and the insurer, and the carrier cannot recoup defense costs.

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American Foreign Ins Co v. Jerry's Sport Center, Inc 2008- PA

- Court reviews Buss and Terra Nova and sides with Terra Nova, forbidding an insurer to reimbursement of defense costs absent policy language that explicitly permitted such right.

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Different Schools of Thought

- No – violates the broad duty to defend clause of the policy, can't let insurance company come back at the end and ask for its money back, when it had a duty to defend. Can't do at the end of the case, what it is not permitted to do at the beginning.
- Yes – The insured did not pay for defense of uncovered claims, this was not bargained for in the contract
- Depends – Depending on the outcome of the case, and whether or not the insurer has timely and expressly reserved those rights in a properly executed a Reservation of Rights Letter. Recovery may also depend on any expressly stated policy language.

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Jurisdictional

- Florida – yes, relied on “Buss” decision
- Illinois – no
- Texas – only with unequivocal insured consent
- New Jersey - yes
- New York - yes
- Pennsylvania –no Jerry’s Sport, unless end’t.
- Connecticut – no ruling to date, but likes the “Buss” decision in California
- Minnesota – no, Westchester Fire Ins Co. v. Wallerich (8th Circuit 2009)- company cannot amend the policy by a ROR letter

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Jurisdictional

- California - yes
- Arizona – no decisions
- Iowa – no decisions, but predicted would follow Minnesota
- Kansas – no decisions
- Montana – yes
- South Dakota – no decisions
- Wisconsin – unresolved, but insurers claim for reimbursement of defense costs was not frivolous

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Interesting....

- Under a standard market, ISO CGL policy; is there ever a time when defense costs go inside policy limits and reduce the insured's limits ?
- Or, are defense costs always supplementary payments and in addition to policy limits ?

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Defense of Indemnatee

- The second exception to the Contractual Liability exclusion says:

“For purposes of liability assumed under an insured contract, reasonable attorney fees and necessary litigation expenses incurred by the indemnitee are deemed to be damages for BI or PD.”

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Defense of Indemnitee

Contractual liability defense expense:

- 1) The Supplementary Payments section further discusses "damages" to include Attorney's Fees and clarifies if within or outside the limits of the policy.
- 2) Those defense expenses meeting all policy requirements – paid as supplemental expense
- 3) Those defense expenses not meeting all policy requirements – paid within limits

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b. Contractual Liability

"Bodily injury" or "property damage" for which the insured is obligated to pay damages by reason of the assumption of liability in a contract or agreement. **This exclusion does not apply to** liability for damages:

- (1) That the insured would have in the absence of the contract or agreement; or
- (2) Assumed in a contract or agreement that is an "insured contract", provided the "bodily injury" or "property damage" occurs subsequent to the execution of the contract or agreement. **Solely for the purposes of liability assumed in an "insured contract", reasonable attorney fees and necessary litigation expenses incurred by or for a party other than an insured are deemed to be damages because of "bodily injury" or "property damage", provided:**
 - (a) Liability to such party for, or for the cost of, that party's defense has also been assumed in the same "insured contract"; and

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Other Requirements for Direct Defense under Supplemental Payments

- Both Named in Lawsuit
 - Problem with Third Party Over– Insured (employer) is not named - exclusive remedy doctrine
- No Conflict
 - No dispute of fact as to who did what to whom
- Request to Defend
 - Indemnitor and Indemnitee must both request indemnitors insurance carrier to conduct and control the defense, and both parties agree to the same legal counsel. [not right to chose your own counsel]
- Duty to Cooperate
 - Similar to those imposed on insured
 - **** Must notify insurer if any other coverage is available to indemnitee, and cooperate in coordinating the other insurance (trouble)**
- Continuing Duty
 - These are ongoing continuous obligations
 - If they stop, so does the defense
 - Duty to defend ends when limits have been exhausted by payment

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Defense of Indemnitee

So long as the above conditions are met, attorneys' fees incurred by us in the defense of that indemnitee, necessary litigation expenses incurred by us and necessary litigation expenses incurred by the indemnitee at our request **will be paid as Supplementary Payments**.

Notwithstanding the provisions of Paragraph **2.b.(2)** of Section **I – Coverage A – Bodily Injury And Property Damage Liability**, **such payments** will not be deemed to be damages for "bodily injury" and "property damage" and **will not reduce the limits of insurance**.

Our obligation to defend an insured's indemnitee and to pay for attorneys' fees and necessary litigation expenses as Supplementary Payments ends when:

- a. We have used up the applicable limit of insurance in the payment of judgments or settlements; or
- b. The conditions set forth above, or the terms of the agreement described in Paragraph ²⁹¹ f. above, are no longer met.

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THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

**EXCLUSION – ALL HAZARDS IN CONNECTION WITH AN
ELECTRONIC SMOKING DEVICE, ITS VAPOR,
COMPONENT PARTS, EQUIPMENT AND ACCESSORIES**

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:

Electronic Smoking Device

"Bodily injury", "property damage" or "personal and advertising injury" arising out of the following:

1. The design, manufacture, distribution, sale, maintenance, use or repair of:

a. An "electronic smoking device"; or

b. Any component part of, or equipment or accessory designed for use with an "electronic smoking device", including, but not limited to, a mouthpiece, tube, tank, connector, atomizer, cartomizer, clearomizer, coil, battery, charger, cartridge, liquid, flavoring, solutions of any kind, or ingredients therein;

2. The actual, alleged, threatened or suspected inhalation of, contact with, exposure to, existence of, or presence of, vapor delivered from an "electronic smoking device"; or

3. Any component part of, or equipment or accessory designed for use with an "electronic smoking device", including, but not limited to those items listed in Paragraph A.1.b. of this endorsement, and in connection with the actual, alleged, threatened or suspected inhalation of, contact with, exposure to, existence of, or presence of, vapor delivered from an "electronic smoking device".

B. The following definition is added:

"Electronic smoking device" means a battery-powered device that delivers a vaporized inhalable substance through a mouthpiece. "Electronic smoking devices" include, but are not limited to, battery-powered:

1. Cigarettes;
2. Pipes;
3. Cigars;
4. Hookahs; and
5. Vaporizers, other than steam or mist inhalers.

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THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

**EXCLUSION – HEALTH HAZARDS, ELECTRONIC
SMOKING DEVICE VAPOR**

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:

Electronic Smoking Device Vapor

"Bodily injury" arising out of the following:

1. The actual, alleged, threatened or suspected inhalation of, contact with, exposure to, existence of, or presence of, vapor delivered from an "electronic smoking device"; or

2. Any component part of, or equipment or accessory designed for use with, an "electronic smoking device", including, but not limited to, a mouthpiece, tube, tank, connector, atomizer, cartomizer, clearomizer, coil, battery, charger, cartridge, liquid, flavoring, solutions of any kind, or ingredients therein, in connection with the actual, alleged, threatened or suspected inhalation of, contact with, exposure to, existence of, or presence of, vapor delivered from an "electronic smoking device".

However, this exclusion does not apply to "bodily injury" arising out of the explosion, bursting, or rupturing, of an "electronic smoking device" or any component part, equipment or accessory, designed for use with an "electronic smoking device", for any reason.

B. The following definition is added:

"Electronic smoking device" means a battery-powered device that delivers a vaporized inhalable substance through a mouthpiece. "Electronic smoking devices" include, but are not limited to, battery-powered:

1. Cigarettes;
2. Pipes;
3. Cigars;
4. Hookahs; and
5. Vaporizers, other than steam or mist inhalers.

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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 or 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, byproduct, 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.

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THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

CANNABIS EXCLUSION WITH HEMP EXCEPTION

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:

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.

However, Paragraphs B.1. and B.2. above do not apply to the extent any such goods or products are prohibited under an applicable state or local statute, regulation or ordinance in the state wherein:

(1) The "bodily injury" or "property damage" occurs;

(2) The "occurrence" which caused the "bodily injury" or "property damage" takes place; or

(3) The offense which caused the "personal and advertising injury" was committed;

3. "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.

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**Do all the good you can,
by all the means you can,
in all the ways you can,
in all the places you can,
at all the times you can,
to all the people you can,
as long as ever you can.**

Thank
You!

