



James K. Ruble Seminar

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Section 1

Commercial Liability Endorsements To Watch Out For

Commercial Liability Endorsements to Watch Out For

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

Covered Operations and Locations

Covered Operations and Locations

CGL Conditions (CG 00 01 04 13)

6. Representations

By accepting this policy, you agree:

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

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

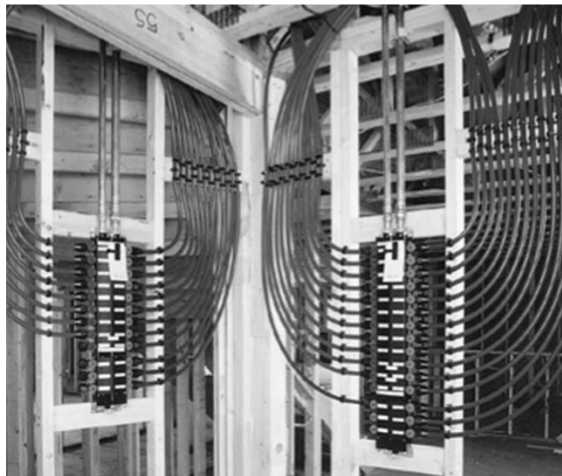
"Bodily injury" or "property damage" arising out of the ownership, maintenance, use or entrustment to others of any aircraft, "auto" or watercraft owned or operated by or rented or loaned to any insured. Use includes operation and "loading or unloading".

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.*



FUND RAISING EVENTS ENDORSEMENT

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

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

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

COMMERCIAL GENERAL LIABILITY
CG 40 04 12 19

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

EXCLUSION – EARTH MOVEMENT

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

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

This insurance does not apply to "bodily injury" or "property damage" arising out of "earth movement" that is:

1. Caused by or alleged to have been caused by, in whole or in part; or
2. Aggravated by or alleged to have been aggravated by, "your work".

B. The following definition is added to the Definitions section:

"Earth movement" means:

1. Earthquake, including tremors and aftershocks and any earth sinking, rising or shifting related to such event;

2. Landslide, including any earth sinking, rising or shifting related to such event;

3. Mine subsidence, meaning subsidence of a man-made mine whether or not mining activity has ceased; or

4. Earth sinking, rising or shifting including soil conditions which cause settling, cracking or other disarrangement of foundations or other parts of realty. Soil conditions include contraction, expansion, freezing, thawing, erosion, improperly compacted soil and the action of water under the ground surface.

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)

25

- 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)

26

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)

27

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)

28

SCHEDULE

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

ALL

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

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

1. This insurance does not apply to "bodily injury" or "property damage":
 - a. Arising out of your ongoing operations; or
 - b. Included in the "products-completed operations hazard";
 at the location(s) described in the Schedule of this endorsement, but only if you are enrolled in a "controlled (wrap-up) insurance program" with respect to the "bodily injury" or "property damage" described in Paragraphs 1.a. and 1.b. above at such location(s).

2. This exclusion applies whether or not the "controlled (wrap-up) insurance program":
 - a. Provides coverage identical to that provided by this Coverage Part; or
 - b. Has limits adequate to cover all claims.

3. However, this exclusion does not apply if the "controlled (wrap-up) insurance program" in which you are enrolled with respect to the "bodily injury" or "property damage" described in Paragraph A.1. above at the location(s) described in the Schedule of this endorsement has been cancelled, nonrenewed or otherwise no longer applies for reasons other than the exhaustion of all available limits, whether such limits are available on a primary, excess or on any other basis. You must advise us of such cancellation, nonrenewal or termination as soon as practicable.

Wrap-Ups – DIC/Excess a better option

Sample Language

It is hereby agreed and understood:

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

Residential Exclusions

How is residential defined? Does it include?

- Single family houses
- Multi-family houses
- Residential condos
- Residential cooperatives
- Condominium or cooperative hotels
- Townhouses/townhomes
- Projects over a certain number of units
- Mixed-use buildings
- Apartment buildings



Residential Exclusions

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

Conversion to Habitational Endorsement

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

2. Exclusions

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

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

2. Exclusions

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

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

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

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

Cross Liability/Cross Suits

CG 00 01 04 13 - Separation of Insureds

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

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

Cross Suits Exclusion

Named Insured vs. Named Insured

Sample Language

This insurance does not apply to:

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

Cross Suits Exclusion

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

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

Why? Intercompany sales are not charged for.

Cross Suits Exclusion

Any Insured vs. Any Insured

Sample Language

This insurance does not apply to:

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

Cross Suits Exclusion (something in between)

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

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

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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".

Contractual Liability

Contractual Liability Exclusion **CG 00 01 04 13**

"Bodily injury" or "property damage" for which the insured is obligated to pay damages by reason of the assumption of liability in a contract or agreement. This exclusion does not apply to liability for damages:

- 1) That the insured would have in the absence of the contract or agreement; or*
- 2) Assumed in a contract or agreement that is an "insured contract", provided the "bodily injury" or "property damage" occurs subsequent to the execution of the contract or agreement.....*

Insured Contract – CG 00 01 04 13

9. "Insured contract" means:

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

Insured Contracts

L ease

E asement

A greement to Indemnify a
Municipality

S idetrack

E levator Maintenance Agreement

Insured Contract – CG 00 01 04 13

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

Agreements

- Hold Harmless
- Indemnification
- Three Parties
 1. Indemnitor (the protector)
 2. Indemnatee (the one protected)
 3. Injured party

Indemnify

Black's Law Dictionary

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

Indemnification Agreement

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

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

Hold Harmless Agreement

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

Insured Contract - Exception

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

(1) That indemnifies a railroad for "bodily injury" or "property damage" arising out of construction or demolition operations, within 50 feet of any railroad property and affecting any railroad bridge or trestle, tracks, road-beds, tunnel, underpass or crossing;

Railroads - Coverage Enhancing Endorsements

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

Insured Contract – Exception CG 00 01 04 13

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

(2) That indemnifies an architect, engineer or surveyor for injury or damage arising out of:

(a) Preparing, approving, or failing to prepare or approve, maps, shop drawings, opinions, reports, surveys, field orders, change orders or drawings and specifications; or

(b) Giving directions or instructions, or failing to give them, if that is the primary cause of the injury or damage; or

(3) Under which the insured, if an architect, engineer or surveyor, assumes liability for an injury or damage arising out of the insured's rendering or failure to render professional services, including those listed in (2) above and supervisory, inspection, architectural or engineering activities.

Defense of Indemnitees

CG 00 01 04 13

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

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

Endorsements Affecting Contractual Liability

COMMERCIAL GENERAL LIABILITY
CG 21 39 10 93

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

CONTRACTUAL LIABILITY LIMITATION

This endorsement modifies insurance provided under the following:

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

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

"Insured contract" means:

- | | |
|---|---|
| <p>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";</p> | <p>b. A sidetrack agreement;</p> <p>c. Any easement or license agreement, except in connection with construction or demolition operations on or within 50 feet of a railroad;</p> <p>d. An obligation, as required by ordinance, to indemnify a municipality, except in connection with work for a municipality;</p> <p>e. An elevator maintenance agreement.</p> |
|---|---|

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 negligence (% of negligence of each party does not matter)
- The indemnitor assumes all liabilities of the indemnitee, except where the injury or damage is caused solely by the indemnitee or a third party.
- Not permitted in some states in certain kinds of contracts

Indemnification Agreements

Broad Form

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

AIA 201 3.18.1

§ 3.18 Indemnification

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

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AIA 201 3.18.1**§ 3.18 Indemnification**

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

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Amendment of Insured Contract Definition Endorsement

CG 24 26 04 13

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

What About Breach of Contract?

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

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

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

What About Breach of Contract?

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

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

Breach of Contract Exclusion

Sample Language

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

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

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

What About Coverage B?

CG 00 01 04 13

Coverage B – Personal and Advertising Injury Liability

Exclusions:

This insurance does not apply to:

e. Contractual Liability

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

There is no "insured contract" exception.

What About Coverage B?

CG 22 74 10 01

Limited Contractual Liability Coverage for Personal and Advertising Injury Endorsement

- False arrest
- Detention
- Imprisonment

Adds coverage for scheduled contracts

What About Coverage B?

Sample Language

CONTRACTUAL LIABILITY AMENDMENT — (PERSONAL AND ADVERTISING INJURY)

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

e. Contractual Liability

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

What About Coverage B?

CG 00 01 04 13

Coverage B – Personal and Advertising Injury Liability

Exclusions:

This insurance does not apply to:

f. Breach of Contract

"Personal and advertising injury" arising out of a breach of contract, except an implied contract to use another's advertising idea in your "advertisement."

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

Inadequately Insured Subcontractor

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

Inadequately Insured Subcontractor

What are the requirements?

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

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

Inadequately Insured Subcontractor

What are the requirements?

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

Subcontractor Warranty/Conditions Sample Language I

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.....

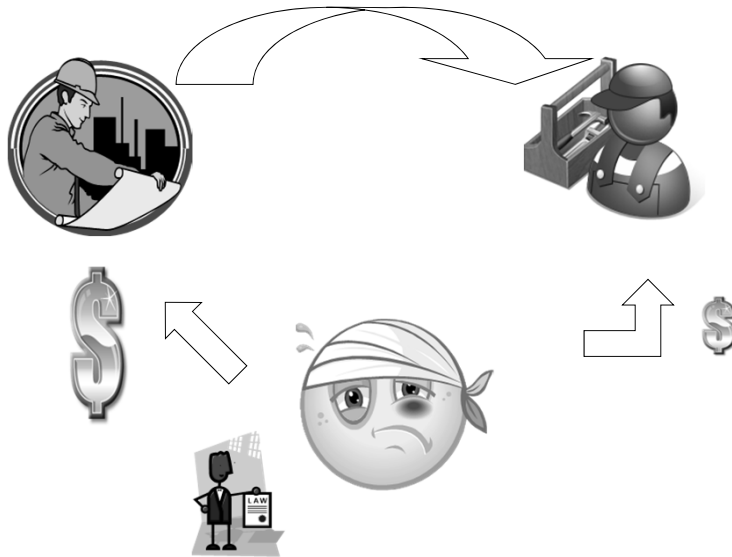
Excluding the acts of contractors and subcontractors

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"

Third Party Over Scenarios

Scenario 1 – There is no contract between the general contractor and the subcontractor, and the general contractor is not an AI on the sub's CGL.

CGL's Employers' Liability exclusion applies. If this type of suit is permitted in the jurisdiction, the EL section of the WC policy would respond.

Third Party Over Scenarios

Scenario 2 – The subcontractor agreed in an "insured contract" to hold harmless the general contractor for all claims resulting from performance of the work.

Subcontractor's CGL responds.

Third Party Over Scenarios

Scenario 3 – There is no indemnification or hold harmless agreement between the parties, but the general contractor is included as additional insured on the subcontractor's policy, using ISO endorsement CG 20 10.

Subcontractor's CGL responds.

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

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

.....

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

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

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

Known Loss or Damage

Insuring Agreement CG 00 01 04 13

Coverage A - Bodily Injury or Property Damage

Historically:

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

Something else is now important!

The Way It Was

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

Additional Question added

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

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

Insuring Agreement CG 00 01 04 13

Prior to the policy period, no insured listed under Paragraph 1. of Section II – Who Is An Insured and no "employee" authorized by you to give or receive notice of an "occurrence" or claim, knew that the "bodily injury" or "property damage" had occurred, in whole or in part. If such a listed insured or authorized "employee" knew, prior to the policy period, that the "bodily injury" or "property damage" occurred, then any continuation, change or resumption of such "bodily injury" or "property damage" during or after the policy period will be deemed to have been known prior to the policy period.

Who Must Know?

Depending on the form of business:

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

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

Insuring Agreement CG 00 01 04 13

"Bodily injury" or "property damage" which occurs during the policy period and was not, prior to the policy period, known to have occurred by any insured listed under Paragraph 1. of Section II – Who Is An Insured or any "employee" authorized by you to give or receive notice of an "occurrence" or claim, includes any continuation, change or resumption of that "bodily injury" or "property damage" after the end of the policy period.

Insuring Agreement CG 00 01 04 13

Bodily injury" or "property damage" will be deemed to have been known to have occurred at the earliest time when any insured listed under Paragraph 1. of Section II – Who Is An Insured or any "employee" authorized by you to give or receive notice of an "occurrence" or claim:

- (1) Reports all, or any part, of the "bodily injury" or "property damage" to us or any other insurer;*
- (2) Receives a written or verbal demand or claim for damages because of the "bodily injury" or "property damage"; or*
- (3) Becomes aware by any other means that "bodily injury" or "property damage" has occurred or has begun to occur.*

The Problem

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

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

The Problem

Policy Intent

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

Policy A should be responsible for all damages.

BUT

CG 00 01 04 13

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

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

The Problem

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

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

What about Policy C? It is a known loss.

Modifying the Language

Sample Language

Prior to the policy period, no one knew that the "bodily injury" or "property damage" had occurred, in whole or in part. If anyone knew, prior to the policy period, that the "bodily injury" or "property damage" occurred, then any continuation, change or resumption of such "bodily injury" or "property damage" during or after the policy period will be deemed to have been known prior to the policy period.

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

Pre-Existing Damage or Injury Exclusion

EXCLUSION - PRE-EXISTING DAMAGE OR INJURY

The following exclusion is added to the policy:

This insurance does not apply to:

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

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

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

Pollution

Pollution Exclusion

What is a pollutant?

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

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

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

Pollution Exclusion (premises) CG 00 01 04 13

109

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

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

Exceptions To Pollution Liability Exclusion (premises)

110

Pollution Liability Coverage provided for:

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

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

111

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

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

112

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

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

Exceptions To Pollution Liability Exclusion (operations)

Coverage provided for:

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





Pollution Liability Inferred Exceptions CG 00 01 04 13

Coverage provided for:

- Off - premises operations when the insured does not bring the pollutant
- Most products – completed operations exposures

Pollution Exclusion

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

COMMERCIAL GENERAL LIABILITY
CG 21 49 09 99

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

TOTAL POLLUTION EXCLUSION ENDORSEMENT

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

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

This insurance does not apply to:

f. Pollution

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

- (2) Any loss, cost or expense arising out of any:

- (a) Request, demand, order or statutory or regulatory requirement that any insured or others test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to, or assess the effects of "pollutants"; or
- (b) Claim or suit by or on behalf of a governmental authority for damages because of testing for, monitoring, cleaning up, removing, containing, treating, detoxifying or neutralizing, or in any way responding to, or assessing the effects of, "pollutants".

Pollution Endorsements

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

Pollution Endorsements

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

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

Fungi or Bacteria Exclusion

CG 21 67 12 04

121

This insurance does not apply to:

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

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

122

Damage To Your Work

CG 00 01 04 13

This insurance does not apply to:

I. Damage to Your Work

"Property damage" to "your work" arising out of it or any part of it and included in the "products-completed operations hazard".

This exclusion does not apply if the damaged work or the work out of which the damage arises was performed on your behalf by a subcontractor.

CG 00 01 04 13

"Property Damage" means:

a. Physical injury to tangible property, including all resulting loss of use of that property. All such loss of use shall be deemed to occur at the time of the physical injury that caused it; or

b. Loss of use of tangible property that is not physically injured. All such loss of use shall be deemed to occur at the time of the "occurrence" that caused it.

For the purposes of this insurance, electronic data is not tangible property.

CG 00 01 04 13

"Your work"

a. Means:

- (1) Work or operations performed by you or on your behalf; and*
- (2) Materials, parts or equipment furnished in connection with such work or operations.*

b. Includes:

- (1) Warranties or representations made at any time with respect to the fitness, quality, durability, performance or use of "your work"; and*
- (2) The providing of or failure to provide warnings or instructions.*

Before We Proceed

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

Before We Proceed

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

Sample Carrier (Coverage Enhancing) Endorsement

Resulting Damage to Your Work Endorsement

This endorsement modifies insurance provided under the:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

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

13. "Occurrence" means an accident, including continuous or repeated exposure to substantially the same general harmful conditions and includes:
- a. "Property damage" to property that is not "your work" but is caused by "your work"; and
 - b. "Your work" if the damaged work or the work out of which the damage arises was performed on your behalf by a subcontractor and the "property damage" to "your work" is included in the "products-completed operations hazard."

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

Damage to Your Work Exclusion

Assumption: The loss is an occurrence of property damage.

	<u>Damaged Work</u>	<u>Damage Done By</u>
Covered	insured's	sub's work
Covered	sub's	sub's work
Covered	sub's	insured's work
Excluded	insured's	insured's work

Damage to Your Work Exclusion

Assumption: The loss is an occurrence of property damage.

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

What's covered under the builder's CGL?

Everything

Damage to Your Work Exclusion

Assumption: The loss is an occurrence of property damage.

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

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

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

CG 22 95 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

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.

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

CG 40 09 12 19 (NEW!)

c. Liquor Liability

"Bodily injury" or "property damage" for which any insured may be held liable by reason of:

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

This exclusion applies only if you:

(1) Manufacture, sell or distribute alcoholic beverages;

(2) Serve or furnish alcoholic beverages for a charge whether or not such activity:

(a) Requires a license;

(b) Is for the purpose of financial gain or livelihood;

(3) Serve or furnish alcoholic beverages without a charge, if a license is required for such activity; or

~~(4) Permit any person to bring any alcoholic beverages on your premises, for consumption on your premises.~~

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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.

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

Note the Difference The HO approach

HO 00 03 (10 00/05 11)

Expected or Intended Injury Exclusion

"Bodily injury" or "property damage" which is expected or intended by an "insured" even if the resulting "bodily injury" or "property damage":

- a. Is of a different kind, quality or degree than initially expected or intended; or*
- b. Is sustained by a different person, entity, real or personal property, than initially expected or intended.*

However, this Exclusion E.1. does not apply to "bodily injury" resulting from the use of reasonable force by an "insured" to protect persons or property;

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Separation of Insureds

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

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

Problem Endorsement

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(Modified) Expected or Intended Injury Exclusion

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

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 of 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.

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

David Cohne v. Navigators Specialty Insurance Co.

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Issue #1 – Was David Cohne 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 Cohne 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.

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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 1. above.

\$250,000 any one claim or suit

\$250,000 aggregate for the policy period

A Related Issue Firearms Exclusion

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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.

Commercial Liability Endorsements to Watch Out For

Thank You for Being Here