

**Commercial General
Liability, *Skim***
&
**Business Exposures,
*Light***

Presented By

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This course has been approved by the Florida Department of Insurance for insurance continuing education credit – 3 hours

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Policy forms, clauses, rules, court decisions and statutes constantly change and vary from company to company and state to state.

This material is intended as a general guideline and may not apply to a specific situation.

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Unauthorized Entities

CAUTION

On behalf of Florida Department of Insurance and in accordance with that institution's requirement to include this warning – note that writing business with non-admitted carriers (unauthorized entities) can be risky business. They may be less likely to be committed to writing business in the state of Florida, so could be a flight risk. Further, there is no standardization in their forms used. Your insureds could be paying more for less.

Commercial General Liability, Skim and Business Exposures, Light

Learning Objectives

- 1. To provide an overview of the Commercial General Liability coverage form highlights, part by part.**
- 2. To identify liability exposures that apply to virtually every business operation.**
- 3. To review exposures that apply primarily to hospitality risks.**
- 4. To be able to identify potential hazards that would likely trigger CGL coverage**

Introduction

Purpose of ISO's CGL

- Financial
 - Judgments
 - Defense costs
 - Society in general
 - Geographic legislative/legal environments
- Responsibility to public
- Goodwill
- Fulfilling contractual obligations

CGL parts

- Coverages – The “We will”
- Exclusions – The “Unless”
- Conditions – The “As long as”
- Definitions – The “Meanings that matter for this contract”

GL Quick Tip – Liability coverages provided by CG 0001 may be diminished by exclusionary endorsements, but are not necessarily reduced by the mere absence of a classification that should be included, nor by unintended misclassification.

Commercial General Liability Form (CG 0001 12-04) Intro

Disclaimer

Various provisions in this policy restrict coverage. Read the entire policy carefully to determine rights, duties and what is and is not covered.

Think of the CGL as you would any other contract—you can't use provisions out of context.

Pronouns

- “You” and “Your”
- “We,” “Us” and “Our”

The word “insured” and other “”

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.

The word “insured” means any person or organization qualifying as such under Section II Who Is An Insured. Other words and phrases that appear in quotation marks have special meaning. Refer to Section V Definitions.

Do not assume that the meaning of even two-letter words is intuitively obvious. ISO has developed carefully crafted definitions through years of trial by fire in the court system.

Coverages

- “Bodily injury” and “property damage”
 - Provisions
 - What the carrier will pay

a, We will pay those sums that the insured becomes legally obligated to pay as damages because of “bodily injury” or “property damage” to which this insurance applies. We will have the right and duty to defend the insured against any “suit” seeking those damages. However, we will have no duty to defend the insured against any “suit” seeking damages for “bodily injury” or “property damage” to which this insurance does not apply. We may, at our discretion, investigate any “occurrence” and settle any claim or “suit” that may result.

- Coverage has to be triggered before the carrier is obligated;
- No duty exists for defense when no coverage exists;
- The carrier doesn’t have to get the insured’s permission to settle.

Do not confuse what you think is right with what the terms of the contract dictate. Establishing liability is critical, as is confirmation of a covered loss.

- Parameters

But:

(1) The amount we will pay for damages is limited as described in Section III Limits Of Insurance; and

- **The judgment levied by the court may be significantly more than the limits purchased by the insured. The carrier will be unmoved by the insured’s predicament.**

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

- (1)** The “bodily injury” or “property damage” is caused by an “occurrence” that takes place in the “coverage territory”;
- (2)** The “bodily injury” or “property damage” occurs during the policy period; and
- (3)** Prior to the policy period, no insured listed under Paragraph 1. of Section II Who Is An Insured and no employee authorized by you to give or receive notice of an “occurrence” or claim, knew that the “bodily injury” or “property damage” had occurred, in whole or in part. If such a listed insured or authorized employee knew, prior to the policy period, that the “bodily injury” or “property damage” occurred, then any continuation, change or resumption of such “bodily injury” or “property damage” during or after the policy period will be deemed to have been known prior to the policy period.

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

- Location matters;
- Timing is everything;
- “Old” claims that resurrect themselves will be the prior carrier’s problem.
- If the “occurrence” began during the policy period, the carrier will see it through, even if BI/PD resumes or continues after the policy terminates.

Notes:

- When the carrier's obligation is over

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

No other obligation or liability to pay sums or perform acts or services is covered unless explicitly provided for under Supplementary Payments Coverages **A** and **B**.

- The carrier will not defend beyond the point that assessed judgments have been paid or settlements have been accepted.
- The only other obligations to pay are found in the Supplementary Payments section.

AND, FOR PURPOSES OF CLARIFYING WHEN AN "OCCURRENCE" TOOK PLACE:

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

(1) Reports all, or any part, of the "bodily injury" or "property damage" to us or any other insurer;

(2) Receives a written or verbal demand or claim for damages because of the "bodily injury" or "property damage"; or

(3) Becomes aware by any other means that "bodily injury" or "property damage" has occurred or has begun to occur.

e. Damages because of "bodily injury" include damages claimed by any person or organization for care, loss of services or death resulting at any time from the "bodily injury".

It all begins when ...

- Any insured reports anything about BI or PD to ANY insurer;
- Written or verbal demands are received because of injury or property damage;
- The insured becomes aware of BI or PD by any other means – MSNBC, CNN, USA TODAY or any other media or method.

- Exclusion highlights

- Contractual

“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

(b) Such attorney 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.

- Many people think that the CGL has Contractual provisions when it actually has a Contractual *exclusion*, but gives back based on *exceptions*.
- The exclusions do not apply if the insured would have been obligated anyway – due to civil law, for example.
- Another exception is BI or PD that occurs *after* the execution of the contract.
- Fees and expenses will be considered damages assuming the liability for the other party to the contract has been assumed in that contract and that the damages are relevant to the balance of this contract (CGL).

Notes:

▪ Liquor

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

- (1) Causing or contributing to the intoxication of any person;
- (2) The furnishing of alcoholic beverages to a person under the legal drinking age or under the influence of alcohol; or
- (3) Any statute, ordinance or regulation relating to the sale, gift, distribution or use of alcoholic beverages.

This exclusion applies only if you are in the business of manufacturing, distributing, selling, serving or furnishing alcoholic beverages.

- Exclusion applies when *any* insured is liable for even contributing to the overindulgence of *any* person; or
- Just furnishing alcoholic beverages to someone underage or already over-served—even if self-served; or
- If any law renders the insured liable, however;
- This exclusion does not apply if the insured is not in an alcoholic beverage-related business – hence, Host Liquor coverage.

Liquor is excluded as it is better covered by another form when there’s a significant exposure – this is the reason for a number of CGL exclusions.

Notes:

Aircraft, Auto or Watercraft

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

This exclusion applies even if the claims against any insured allege negligence or other wrongdoing in the supervision, hiring, employment, training or monitoring of others by that insured, if the “occurrence” which caused the “bodily injury” or “property damage” involved the ownership, maintenance, use or entrustment to others of any aircraft, auto or watercraft that is owned or operated by or rented or loaned to any insured.

This exclusion does not apply to:

- (1)** A watercraft while ashore on premises you own or rent;
- (2)** A watercraft you do not own that is:
 - (a)** Less than 26 feet long; and
 - (b)** Not being used to carry persons or property for a charge;
- (3)** Parking an auto on, or on the ways next to, premises you own or rent, provided the auto is not owned by or rented or loaned to you or the insured;
- (4)** Liability assumed under any insured contract for the ownership, maintenance or use of aircraft or watercraft; or
- (5)** “Bodily injury” or “property damage” arising out of:
 - (a)** the operation of machinery or equipment that is attached to, or part of, a land vehicle that would qualify under the definition of “mobile equipment” if it were not subject to a compulsory or financial responsibility law or other motor vehicle insurance law in the state where it is licensed or principally garaged; or
 - (b)** the operation of any of the machinery or equipment listed in Paragraph **f.(2)** or **f.(3)** of the definition of “mobile equipment” .

- Intent is to avoid motorized conveyance exposures—except “mobile equipment” and other specified situations;
- CGL applies to dry-docked boats and some smaller watercraft even when on the water; as well as
- Valet parking in many cases;
- Contractual; and
- Machinery/Equipment that would be considered “mobile equipment” except for financial responsibility laws.

All other

- Expected or Intended Injury
- Workers' Compensation and Similar Laws
- Employer's Liability
- Pollution
- "Mobile equipment"
- War
- Damage to ...
 - Property
 - Your Product
 - Your Work
 - Impaired Property or Property not Physically Injured
 - Recall of Products, Work or Impaired Property
- "Personal and advertising injury"
- Electronic Data

All of the exclusions exist because either ...

- Coverage exists elsewhere in the CGL; or
- Coverage is better granted via a specialized form;
- It violates public policy to provide coverage; or
- The exposure is virtually uninsurable.

GL Quick Tip - Contrary to popular belief among insureds, each and every one of their activities are not necessarily insured or even insurable. Simply signing a contract doesn't automatically amend the coverage provided by the general liability carrier.

- Fire legal give back

Exclusions **c.** through **n.** do not apply to damage by fire to premises while rented to you or temporarily occupied by you with permission of the owner. A separate limit of insurance applies to this coverage as described in Section **III** Limits Of Insurance.

- Put another way, you get voluntary PD for the described premises (if damaged by fire) unless the Expected/Intended, Contractual or Electronic Data exclusions get in the way.
- The limit available will be reflected on the declarations page – the same way the Per Occurrence and Aggregate Limits are displayed.

Notes:

“Personal and advertising injury” Coverage

- Provisions – verbiage equivalent to BI/PD

a. We will pay those sums that the insured becomes legally obligated to pay as damages because of “personal and advertising injury” to which this insurance applies. We will have the right and duty to defend the insured against any “suit” seeking those damages. However, we will have no duty to defend the insured against any “suit” seeking damages for “personal and advertising injury” to which this insurance does not apply. We may, at our discretion, investigate any offense and settle any claim or “suit” that may result. But:

(1) The amount we will pay for damages is limited as described in Section III Limits Of Insurance; and

(2) Our right and duty to defend end when we have used up the applicable limit of insurance in the payment of judgments or settlements under Coverages **A** or **B** or medical expenses under Coverage **C**. No other obligation or liability to pay sums or perform acts or services is covered unless explicitly provided for under Supplementary Payments Coverages **A** and **B**.

b. This insurance applies to “personal and advertising injury” caused by an offense arising out of your business but only if the offense was committed in the “coverage territory” during the policy period.

- Wording is almost identical to Coverage A provisions.
- Differences are limited to use of BI/PD phraseology in lieu of “personal and advertising injury” and offense in lieu of “occurrence,” and
- The provisions stop with b. as shown above – abbreviated provisions.

- Exclusion highlights
 - Knowing Violations

“Personal and advertising injury” caused by or at the direction of the insured with the knowledge that the act would violate the rights of another and would inflict “personal and advertising injury.”.

Note similarity to Intentional Acts exclusion in Coverage A.

- Infringement of Copyright, Patent, Trademark or Trade Secret

“Personal and advertising injury” arising out of the infringement of copyright, patent, trademark, trade secret or other intellectual property rights. However, this exclusion does not apply to infringement, in your advertisement, of copyright, trade dress or slogan.

Differences in first and second sentences:

- Exception to exclusion applies to material in your advertisement; and
- Does not apply to infringement of patent, trademark, trade secret or other (unnamed) intellectual property rights.

- Pollution

“Personal and advertising injury” arising out of the actual, alleged or threatened discharge, dispersal, seepage, migration, release or escape of pollutants at any time.

AND

- Pollution-related

Any loss, cost or expense arising out of any:

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

Seems hard to imagine—a loss from P&AI that’s pollution related. This exclusion was not always in the CGL. It was added in 1996 after a pollution claim was made using the trespass provision.

- All other
 - Material Published with knowledge of falsity
 - Material Published prior to Policy Period
 - Criminal Acts
 - Contractual Liability
 - Breach of Contract
 - Quality or Performance of Goods Failure to Conform to Statements
 - Wrong Description of Prices
 - Insureds in Media and Internet Type Businesses
 - Electronic Chatrooms or Bulletin Boards
 - Unauthorized Use of Another's Name or Product
 - War

Same as with Coverage A - all of these exclusions exist because either ...

- Coverage exists elsewhere in the CGL; or
- Coverage is better granted via a specialized form; or
- Public policy would be violated if coverage was provided; or
- The exposure is virtually uninsurable.

Notes:

Medical Payments

- Provisions – scope and limitations

a. We will pay medical expenses as described below for “bodily injury” caused by an accident:

- (1) On premises you own or rent;
- (2) On ways next to premises you own or rent; or
- (3) Because of your operations; provided that:
 - (1) The accident takes place in the “coverage territory” and during the policy period;
 - (2) The expenses are incurred and reported to us within one year of the date of the accident; and
 - (3) The injured person submits to examination, at our expense, by physicians of our choice as often as we reasonably require.

b. We will make these payments regardless of fault. These payments will not exceed the applicable limit of insurance. We will pay reasonable expenses for:

- (1) First aid administered at the time of an accident;
- (2) Necessary medical, surgical, x-ray and dental services, including prosthetic devices; and
- (3) Necessary ambulance, hospital, professional nursing and funeral services.

- Injury has to be accidental;
- Loss has to occur because of your operations.
- Location and timing matter.
- Carrier is entitled to select physician for examination.
- Fault is irrelevant.
- The limit is what it is, but includes most imaginable charges.

- Exclusions

- Insured (except volunteers) and Hired Persons

We will not pay expenses for “bodily injury”:

a. Any Insured
To any insured, except volunteer workers.

b. Hired Person
To a person hired to do work for or on behalf of any insured or a tenant of any insured.

- An insured cannot sue itself, nor can it collect on its own med pay.
- Hired workers not entitled to med pay—confirmation of WC is a good idea.

- Normally Occupied premises

c. Injury On Normally Occupied Premises

To a person injured on that part of premises you own or rent that the person normally occupies.

- You can't collect med pay for falling down on premises where you should be fully aware of any conditions that could give rise to an accident.

- WC, Products, and Coverage A exclusions

d. Workers Compensation And Similar Laws

To a person, whether or not an employee of any insured, if benefits for the "bodily injury" are payable or must be provided under a workers compensation or disability benefits laws or a similar law.

f. Products-Completed Operations Hazard

Included within the products-completed operations hazard .

g. Coverage A Exclusions

Excluded Under Coverage A.

- There's a better, more specialized vehicle for covering WC injuries.
- Products completed ops are covered elsewhere in the CGL.
- If it's excluded in Coverage A, it isn't going to be provided here, either.

- Athletic activities

e. Athletics Activities

To a person injured while practicing, instructing or participating in any physical exercises or games, sports, or athletic tests.

- Insurance is about risk-taking—not sure-fire losses.

Supplementary Payments – Coverages A and B

- What will be paid without conditions

1. We will pay, with respect to any claim we investigate or settle, or any “suit” against an insured we defend:

- a.** All expenses we incur.
- b.** Up to \$250 for cost of bail bonds required because of accidents or traffic law violations arising out of the use of any vehicle to which the “bodily injury” Liability Coverage applies. We do not have to furnish these bonds.
- c.** The cost of bonds to release attachments, but only for bond amounts within the applicable limit of insurance. We do not have to furnish these bonds.
- d.** All reasonable expenses incurred by the insured at our request to assist us in the investigation or defense of the claim or “suit”, including actual loss of earnings up to \$250 a day because of time off from work.
- e.** All costs taxed against the insured in the “suit”.
- f.** Prejudgment interest awarded against the insured on that part of the judgment we pay. If we make an offer to pay the applicable limit of insurance, we will not pay any prejudgment interest based on that period of time after the offer.
- g.** All interest on the full amount of any judgment that accrues after entry of the judgment and before we have paid, offered to pay, or deposited in court the part of the judgment that is within the applicable limit of insurance. These payments will not reduce the limits of insurance.

- The carrier is on its own for any expenses it creates.
- Bail bond expenses - up to \$250 in limited instances.
- Bonds for release of attachments—within limits.
- If the insured incurs expenses at the carrier’s request, those are covered, as is up to \$250 for lost wages.
- Refers to court costs.
- After an at-limits offer is made, the rules change.
- Interest after the judgment is entered is outside limits.

GL Quick Tip – Med pay can get a bad rep because the insured thinks it isn’t owed—no one was to blame. While that may be true, if an injured party has to sue to get satisfaction, it ups the ante. If the insured goes to court “for the principal of the thing,” someone has to pay for it. Often the cost of attaining that worthy goal is much more than the cost would have been to give the claimant all he really wanted—the feeling that someone cared.

- And then there are defense costs
 - Inside limits or outside

2. If we defend an insured against a “suit” and an indemnitee of the insured is also named as a party to the “suit”, we will defend that indemnitee if all of the following conditions are met:

- a.** The “suit” against the indemnitee seeks damages for which the insured has assumed the liability of the indemnitee in a contract or agreement that is an insured contract;
- b.** This insurance applies to such liability assumed by the insured;
- c.** The obligation to defend, or the cost of the defense of, that indemnitee, has also been assumed by the insured in the same insured contract;
- d.** The allegations in the “suit” and the information we know about the “occurrence” are such that no conflict appears to exist between the interests of the insured and the interests of the indemnitee;
- e.** The indemnitee and the insured ask us to conduct and control the defense of that indemnitee against such “suit” and agree that we can assign the same counsel to defend the insured and the indemnitee; and
- f.** The indemnitee:
 - (1)** Agrees in writing to:
 - (a)** Cooperate with us in the investigation, settlement or defense of the “suit”;
 - (b)** Immediately send us copies of any demands, notices, summonses or legal papers received in connection with the “suit”;
 - (c)** Notify any other insurer whose coverage is available to the indemnitee; and
 - (d)** Cooperate with us with respect to coordinating other applicable insurance available to the indemnitee; and
 - (2)** Provides us with written authorization to:
 - (a)** Obtain records and other information related to the “suit”; and
 - (b)** Conduct and control the defense of the indemnitee in such “suit”.

So long as the above conditions are met, attorneys’ fees incurred by us in the defense of that indemnitee, necessary litigation expenses incurred by us and necessary litigation expenses incurred by the indemnitee at our request will be paid as Supplementary Payments. Notwithstanding the provisions of Paragraph **2.b.(2)** of Section **I Coverage A** “bodily injury” and “property damage” Liability, such payments will not be deemed to be damages for “bodily injury” and “property damage” and will not reduce the limits of insurance.

- Insured contract (per CG 0001 definition) assumes liability;
- Coverage applies to loss;
- Obligation to defend has been assumed in same insured contract;
- If defending the AI is detrimental to the insured, the AI doesn’t get defense.
- Company controls defense for both
- Indemnitee cooperates fully and,
- Facilitates carrier’s ability to investigate

- Obligation cessation

Our obligation to defend an insured's indemnitee and to pay for attorney's 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 **f.** above, are no longer met.

- The money's gone, or
- Prescribed conditions are no longer met.

Notes:

Who is an Insured

- Declarations page implications

1. If you are designated in the Declarations as:

➤ As an agent completes the Acord 125, so goes the coverage ...

- Individual

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

- The spouse is covered, whether named or not, but
- Neither is covered for businesses not solely owned.

- Partnership or joint venture

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.

- Spouses are not partners, per se, when designating legal entity;
- If there is no contractual agreement, individuals are simply doing business together.

Notes:

Limited Liability Company

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.

➤ Scope of covered operations is shrinking.

- Organization other than the above

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.

➤ Refers primarily to corporations.

- A Trust

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

➤ Note the automatic inclusions of parties that would ordinarily be affiliated with certain types of entities.

Notes:

- And also ...
 - Volunteer workers,

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

(1) “Bodily injury” or “personal and advertising injury”:

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

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

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

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

(2) “Property damage” to property:

(a) Owned, occupied or used by,

(b) Rented to, in the care, custody or control of, or over which physical control is being exercised for any purpose by you, any of your employees, volunteer workers, any partner or member (if you are a partnership or joint venture), or any member (if you are a limited liability company).

- Employees/volunteers are not considered insureds for BI or P&AI to other similar AIs or their families (consequential injury), or
- Situations where subrogation is sought by the employers’ liability carrier.
- For professional health care activities.
- Same for PD that the insured controls.

○ Designated entities

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

- Similar inclusion such as seen with trustees;
- Real estate managers do not need to be added;
- Nor does the temporary administrator of the insured's estate, but
- Not only do the insured's rights pass to the representative, so do the obligations.

○ Newly acquired organizations

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

- Sounds like a corporation – if it's bought or formed subsequent to policy inception, coverage is automatic when it isn't insured otherwise.

Notes:

- Caveat

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.

- Extension is brief and
- Limited

Notes:

Limits of Insurance

- Dec limits – impact of multiple ...
 - Insureds;
 - Claims made and “suits” brought;
 - Persons or organizations making claims and bringing “suits”

1. The Limits of Insurance shown in the Declarations and the rules below fix the most we will pay regardless of the number of:

- a. Insureds;
- b. Claims made or “suits” brought; or
- c. Persons or organizations making claims or bringing “suits”.

➤ Impact = Zero

- General Aggregate – included in total:
 - Medical payments
 - Damages under Coverage A.
 - Damages under Coverage B.

2. The General Aggregate Limit is the most we will pay for the sum of:

- a. Medical expenses under Coverage **C**;
- b. Damages under Coverage **A**, except damages because of bodily injury or property damage included in the products/completed operations hazard; and
- c. Damages under Coverage **B**.

➤ General aggregate tent does not include Products/Completed Ops

- Products Completed Operations Aggregate

3. The Products-Completed Operations Aggregate Limit is the most we will pay under Coverage **A** for damages because of “bodily injury” and “property damage” included in the “products/completed operations hazard.”

➤ Take care that the definition of this term is well-understood.

- “Personal and advertising injury” Limit

4. Subject to 2. above, the “Personal and Advertising Injury” Limit is the most we will pay under Coverage **B** for the sum of all damages because of all “personal and advertising injury” sustained by any one person or organization.

➤ It is interesting to note that this aggregate is limited in a different way than any other aggregate.

- Each “Occurrence” Limit

5. Subject to 2. or 3. above, whichever applies, the Each “Occurrence” Limit is the most we will pay for the sum of:
a. Damages under Coverage **A**; and
b. Medical expenses under Coverage **C** because of all “bodily injury” and “property damage” arising out of any one “occurrence”.

➤ If the aggregate is depleted below the “occurrence” limit, less is available for subsequent “occurrences.”

*GL Quick Tip – Selection of the appropriate classification for an operation facilitates coverage commensurate with the rates ISO has promulgated. Classification footnotes dictate **enhancing** as well as **limiting** endorsements, and misclassification results in loss data attributed to a perfectly innocent class—or profit attributed to a completely miserable one ...*

Damages to Premises Rented to You

6. Subject to 5. above, the Damage To Premises Rented To You Limit is the most we will pay under Coverage A for damages because of “property damage” to any one premises, while rented to you, or in the case of damage by fire, while rented to you or temporarily occupied by you with permission of the owner.

➤ Yet another way to define the limits – by premises.

- Medical Payments

7. Subject to 5. above, the Medical Expense Limit is the most we will pay under Coverage C for all medical expenses because of “bodily injury” sustained by any one person.

➤ And by a person ...

LASTLY

The Limits of Insurance of this Coverage Part apply separately to each consecutive annual period and to any remaining period of less than 12 months, starting with the beginning of the policy period shown in the Declarations, unless the policy period is extended after issuance for an additional period of less than 12 months. In that case, the additional period will be deemed part of the last preceding period for purposes of determining the Limits of Insurance.

➤ The ultimate parentheses – the policy period has bookends.

Notes:

Conditions

- How the carrier is obligated
 - Bankruptcy

Bankruptcy or insolvency of the insured or of the insured's estate will not relieve us of our obligations under this Coverage Part.

- While many insureds purchase liability to protect themselves from financial ruin, liability insurance also serves to protect those that are injured due to negligence.
- The public is not served if there are neither assets to compensate loss, nor a carrier to resolve claims.

- Legal Action

A person or organization may sue us to recover on an agreed settlement or on a final judgment against an insured; but we will not be liable for damages that are not payable under the terms of this Coverage Part or that are in excess of the applicable limit of insurance. An agreed settlement means a settlement and release of liability signed by us, the insured and the claimant or the claimant's legal representative.

- This provision is an attempt to avoid a basis for direct third-party actions against the insurer.
- In actual practice, the rights of third-party claimants are largely a function of case law in the involved jurisdiction.

GL Quick Tip – Fine dining restaurants frequently provide valet parking. This exposure is covered by the CGL, and savvy insureds will take care to put commensurate controls in place. Driver standards are critical to protecting the insured's CGL limits. When the valet service is outsourced, certs should reflect a financially stable carrier, as well as limits at least equal to those carried by the insured.

- Sharing

If all of the other insurance permits contribution by equal shares, we will follow this method also. Under this approach each insurer contributes equal amounts until it has paid its applicable limit of insurance or none of the loss remains, whichever comes first. If any of the other insurance does not permit contribution by equal shares, we will contribute by limits. Under this method, each insurer's share is based on the ratio of its applicable limit of insurance to the total applicable limits of insurance of all insurers.

- This can come into play based on differences in policy language, but could also be due to the court's discretion.

- Non-renewal

If we decide not to renew this Coverage Part, we will mail or deliver to the first Named Insured shown in the Declarations written notice of the non-renewal not less than 30 days before the expiration date. If notice is mailed, proof of mailing will be sufficient proof of notice.

- Days required vary by state.

- How the insured is obligated

- Notification

2. Duties In The Event Of "occurrence", Offense, Claim Or "Suit"

a. You must see to it that we are notified as soon as practicable of an "occurrence" or an offense which may result in a claim. To the extent possible, notice should include:

- (1) How, when and where the "occurrence" or offense took place;
- (2) The names and addresses of any injured persons and witnesses; and
- (3) The nature and location of any injury or damage arising out of the "occurrence" or offense.

b. If a claim is made or "suit" is brought against any insured, you must:

- (1) Immediately record the specifics of the claim or "suit" and the date received; and
- (2) Notify us as soon as practicable. You must see to it that we receive written notice of the claim or "suit" as soon as practicable.

- Immediate and comprehensive notification—as soon as the insured is aware of injury or damage—sets the stage for the quickest and cleanest settlement.

- Cooperation

c. You and any other involved insured must:

- (1)** Immediately send us copies of any demands, notices, summonses or legal papers received in connection with the claim or “suit”;
- (2)** Authorize us to obtain records and other information;
- (3)** Cooperate with us in the investigation or settlement of the claim or defense against the “suit”; and
- (4)** Assist us, upon our request, in the enforcement of any right against any person or organization which may be liable to the insured because of injury or damage to which this insurance may also apply.

- The insured should remember and behave as though the carrier is on his side.

- Refrain from involvement w/o carrier consent

d. No insured will, except at that insured’s own cost, voluntarily make a payment, assume any obligation, or incur any expense, other than for first aid, without our consent.

3. Legal Action Against Us

No person or organization has a right under this Coverage part:

- a.** To join us as a party or otherwise bring us into a “suit” asking for damages from an insured; or
- b.** To sue us on this Coverage Part unless all of its items have been fully complied with.

- If the insured makes an offer to settle, he may be playing with his own money.
- The insured can’t force the company into a suit, or
- Sue the carrier until it has reneged.

- 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.

- Whether or not the insured actually reads the policy before a claim does not impact its obligation to make sure the policy is correct.

Other/Excess Insurance

This insurance is excess over:

- (1)** Any of the other insurance, whether primary, excess, contingent or on any other basis:
 - (a)** That is Fire, Extended Coverage, Builder's Risk, Installation Risk or similar coverage for your work;
 - b.** That is Fire insurance for premises rented to you or temporarily occupied by you with permission of the owner;
 - c.** That is insurance purchased by you to cover your liability as a tenant for "property damage" to premises rented to you or temporarily occupied by you with permission of the owner; or
 - d.** If the loss arises out of the maintenance or use of aircraft, autos or watercraft to the extent not subject to Exclusions **g.** of Section **I** Coverage **A** "bodily injury" and "property damage" Liability.

(2) Any other primary insurance available to you covering liability for damages arising out of the premises or operations, or the products and completed operations, for which you have been added as an additional insured by attachment of an endorsement. 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. When this insurance is excess over other insurance, we will pay only our share of the amount of the loss, if any, that exceeds the sum of:

- (1)** The total amount that all such other insurance would pay for the loss in the absence of this insurance; and
- (2)** The total of all deductible and self-insured amounts under all that other insurance.

We will share the remaining loss, if any, with any other insurance that is not described in this Excess Insurance provision and was not bought specifically to apply in excess of the Limits of Insurance shown in the Declarations of this Coverage Part.

- Provisions that make the CGL excess in some ways mirror the exclusions, in that they exist because there's a better vehicle for the coverage;
- The inclusion of situations where the named insured has AI status reinforces any hold harmless agreements.
- It is important to note that it applies to *endorsed* AI status.
- This provision does not impact the priority of coverage for *additional insureds*.

- Miscellaneous – but critical – issues
 - Separation of Insured

Except with respect to the Limits of Insurance, and any rights or duties specifically assigned in this Coverage Part for 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.

- Previously known as severability of interests;
- Without this provision, policies with multiple named insureds would not provide equal coverage to each named insured.
- Limits are shared between the insureds, which presents an argument against the practice of stuffing the named insured box.

- Transfer of Rights of Recovery

If the insured has rights to recover all or part of any payment we have made under this Coverage Part, those rights are transferred to us. The insured must do nothing after loss to impair them. At our request, the insured will bring “suit” or transfer those rights to us and help us enforce them.

- Supports the principle of public policy which promotes placing the economic burden on the at-fault party.
- Discourages an insured from profiting from his loss via double recovery.

Notes:

Definition highlights

- “Bodily injury”

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

- The lack of quotation marks in the second *bodily injury* phrase means that the common definition can be applied.
- Sickness or disease is also common usage, but note that mental pain and anguish are not mentioned.

- “Occurrence”

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

- Seems simple enough, but what about when the action is intended, but the result isn’t?
- Note that an “occurrence” doesn’t have to begin and end immediately to meet the definition.

Notes:

- Personal & Advertising Injury

“Personal and advertising injury” means injury, including consequential “bodily injury”, arising out of one or more of the following offenses:

- a. False arrest, detention or imprisonment;
- b. Malicious prosecution;
- c. The wrongful eviction from, wrongful entry into, or invasion of the right of private occupancy of a room, dwelling or premises that a person occupies, committed by or on behalf of its owner, landlord or lessor;
- d. Oral or written publication, in any manner, of material that slanders or libels a person or organization or disparages a person’s or organization’s goods, products or services;
- e. Oral or written publication, in any manner, of material that violates a person’s right of privacy;
- f. The use of another’s advertising idea in your advertisement; or
- g. Infringing upon another’s copyright, trade dress or slogan in your advertisement.

- Keeping someone against his will qualifies – doesn’t have to be a jail cell setting;
- Suing without reason the charges can be sustained;
- Unjust eviction, whether physical or constructive—reducing the level of enjoyment to a degree that the tenant abandons the premises;
- Spoken/written untruths;
- Spoken/written untruths that violate someone’s right to be left alone;
- Advertising ideas have to be your own, or at least used with permission;
- Copyright often refers to a name and everyone understands slogan. Trade dress is the impression a product leaves.

Notes:

Products-completed operations hazard

“Products-completed operations hazard”:

a. Includes all “bodily injury” and “property damage” occurring away from premises you own or rent and arising out of your product or your work except:

(1) Products that are still in your physical possession; or

(2) Work that has not yet been completed or abandoned. However, your work will be deemed completed at the earliest of the following times:

(a) When all of the work called for in your contract has been completed.

(b) When all of the work to be done at the job site has been completed if your contract calls for work at more than one job site.

(c) When that part of the work done at a job site has been put to its intended use by any person or organization other than another contractor or subcontractor working on the same project.

Work that may need service, maintenance, correction repair or replacement, but which is otherwise complete, will be treated as completed.

b. Does not include “bodily injury” or “property damage” arising out of:

(1) The transportation of property, unless the injury or damage arises out of a condition in or on a vehicle not owned or operated by you, and that condition was created by the loading or unloading of that vehicle by any insured;

(2) The existence of tools, uninstalled equipment or abandoned or unused materials; or

(3) Products or operations for which the classification, listed in the Declarations or in a policy schedule, states that products-completed operations are subject to the General Aggregate Limit.

- Products exposures and completed operations exposures are combined for definition, but are not treated the same by all exclusions.
- Location of BI/PD is an issue;
- As does control and
- Whether terms of the contract have been met or
- The part of the work that’s been completed has been put to use.
- BI/PD arising out of loading/unloading is excluded unless the vehicle used was not owned/operated by the insured, as is
- Uninstalled/abandoned items or tools or
- For products/completed ops considered *included* as indicated by the ISO classification.

- “Property damage”

““Property damage”” means:

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

b. Loss of use of tangible property that is not physically injured. All such loss of use shall be deemed to occur at the time of the “occurrence” that caused it. For the purposes of this insurance, electronic data is not tangible property. As used in this definition, electronic data means information, facts or programs stored as or on, created or used on, or transmitted to or from computer software, including systems and applications software, hard or floppy disks, CD-ROMS, tapes, drives, cells, data processing devices or any other media which are used with electronically controlled equipment.

- *Physical* injury as opposed to imaginary or constructive;
- Loss of use would include claims made as a result of business shutdown even though no property damage to its building or BPP;
- Electronic data is not considered *tangible* property.
- Note definition of this phrase within the “property damage” definition.

GL Quick Tip – Multiple named insureds can be included on one policy when combinable. This practice may simplify billing, but could also force sharing limits. An example might be when one “occurrence” can be attributed to more than one insured so that all are sued. Additionally, if both (or all) named insureds operate out of the same address, the Aggregate Limits per Location endorsement will not be helpful.

Hazard/Exposure Medley

- Generic premises exposures
 - Maintenance
 - Owned premises
 - Job sites/clients' property
 - Security
 - Walking surfaces
 - Guest access
 - Business invitee controls
 - Demonstrations

Notes:

Hospitality risks

- Security
 - Parking lot lighting
 - Surveillance cameras
 - Self-locking doors, aside from front entry
- Fire protection
 - Number of stories
 - Placement of sleeping rooms
 - Maintenance of fire prevention/detection systems
 - General ease of egress
- Layout
 - Number of stories
 - Placement of restrooms/sleeping rooms
 - Steps
- Employee training
 - Food preparers/servers
 - Hotel desk/housekeeping
- Entertainment
 - Type
 - Frequency
 - Crowd control

Notes:

CGL MYTHS

Sometimes myths are true – but not always ...

- ⊗ If the carrier doesn't make a charge for an exposure, there is no coverage.
- ⊗ Every related insured should be named on every policy purchased by the insured.
- ⊗ Trustees must be named to have coverage under the trust's policy.
- ⊗ Once the premiums are paid, the insured has no further obligations to ensure coverage.
- ⊗ If a manufacturing operation does not create component parts, but merely assembles, exposures are reduced to a negligible level.
- ⊗ Premises losses have to occur "at the premises" in order to be covered.
- ⊗ Products losses have to occur "away from the premises" in order to be covered.
- ⊗ There is no pollution coverage in the CGL.
- ⊗ Defense costs are always outside limits.
- ⊗ Injuries intended by the insured are always excluded.
- ⊗ When WC is the sole remedy in a state, there is no gl exposure for any entity.