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Understanding the Commercial General Liability Policy

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Speaker

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Commercial General Liability vs. Professional Liability

- *Commercial General Liability*: affords coverage for risks inherent in the operation of the commercial business
- *Professional Liability*: affords coverage for regulated professional activity

CGL Policy: Grants of Coverage

- Coverage A (Bodily Injury & Property Damage)
- Coverage B (Personal & Advertising Injury)
- Coverage C (Medical Expenses)
- Supplementary Payments

CGL: Historical Development

- Rating Bureaus
- National Bureaus
- Creation of the Insurance Services Office (ISO)
- The Birth of the Commercial General Liability Policy

Standard/ISO CGL Policy Coverage Form

Sections of the Occurrence Form

- **Section I – Coverages**
 - Insuring Agreements
 - Exclusions
 - Supplementary Payments
- **Section II – Who is an Insured?**
- **Section III – Limits of insurance**
- **Section IV – CGL Conditions**
- **Section V – Definitions**

Side Bar: The Form Matters!

- Numbering Scheme
- Date of Form
- Role of Regulators and Approval of Forms

Coverage A: Bodily Injury & Property Damage

- **Bodily Injury and Property Damage Liability Insuring Agreement**
 - Damages “because of” BI/PD
 - Legally obligated to pay
 - BI/PD must take place during policy period
 - BI/PD must be caused by an “occurrence”
- **Duty to Defend:**
 - Must be a Suit
 - No Suit: Investigate at the Insurer’s Sole Discretion
- **Coverage Territory**

Threshold Requirements

- Bodily Injury/Property Damage
 - Emotional Distress
- During the Policy Period
 - Trigger of Coverage
 - So-Called Trigger Theories
- Caused by an Occurrence
 - What is the Occurrence
 - Number of Occurrences

Which So-Called Trigger Applies?

Trigger Theories	Which Policy Responds	
Exposure	At the time of <i>first exposure</i>	
Manifestation	When the injury or damage is first discovered	
Injury/ Damage-in-Fact	All times when the injury or damage actually occurs even if not diagnosed or visible	
Triple Trigger or Continuous	At the time of <i>initial</i> exposure, during <i>continuous</i> exposure, and when the injury or damage becomes evident or is diagnosed	
Critical Issues	Date of loss? Notice?	Allocation?

Coverage A Exclusions

This Insurance Does not Apply to

- | | |
|---|--|
| <ul style="list-style-type: none">a. Expected or Intended Injuryb. Contractual Liabilityc. Liquor Liabilityd. Workers' Compensation and similar Lawse. Employers Liabilityf. Pollutiong. Aircraft, Auto, Watercrafth. Mobile Equipmenti. War | <ul style="list-style-type: none">j. Damage to Propertyk. Damage to Your Productl. Damage to Your Workm. Damage to Impaired Property or Property Not Physically Injuredn. Recall of Products, Work or Impaired Propertyo. Personal and Advertising Injuryp. Electronic dataq. Recording and distribution of material or information in violation of law |
|---|--|

Expected or Intended Injury Exclusion

There is no coverage for BI/PD “expected or intended from the standpoint of the insured”

- Exception: BI resulting from the use of reasonable force to protect persons or property
- Objective vs. Subjective Standard

Contractual Liability Exclusion

There is no coverage for BI/PD for which the insured is obligated to pay damages by reason of the assumption of liability in a contract or agreement ... but

- The exclusion does not apply to liability for damages that the insured would have in the absence of the contract
- Insured Contract

Recording and Distribution of Material or Information in Violation of Law Exclusion

There is no coverage for BI/PD arising out of the following:

- TCPA
- CAN-SPAM
- FCRA/FACTA
- Any federal, state or local statute that addresses, prohibits, or limits the printing, dissemination, disposal collecting, recording, sending, transmitting, communicating or distribution of material or information

Recent endorsements to address privacy laws

Coverage B – Personal and Advertising Injury Liability

- **The Insuring Agreement**
 - Damages “because of” PAI
 - Legally obligated to pay
 - Caused by an offense arising out of your business
- **Duty to Defend:**
 - Must be a Suit
 - No Suit: Investigate at the Insurer’s Sole Discretion
- **Coverage Territory**

Personal and Advertising Injury

Personal & Advertising Injury means injury, including consequential bodily injury, arising out of any 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 occupancy of a room, dwelling or premises ...
- d. Oral or written publication, in any manner, of material that slanders or libels a person or organization or disparages a person's organization's goods, products 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"

Coverage B Exclusions

This Insurance Does not Apply

- | | |
|---|--|
| <ul style="list-style-type: none">a. Knowing violation of rights of anotherb. Materials published with knowledge of falsityc. Material published prior to policy periodd. Criminal actse. Contractual liabilityf. Breach of contractg. Quality or performance of goods – failure to conform to statementsh. Wrong description of prices | <ul style="list-style-type: none">i. Infringement of copyright, patent, trademark or trade secretj. Insured in media and Internet type businessk. Electronic Chatrooms or Bulletin Boardsl. Unauthorized use of another’s name or productm. Pollutionn. Pollution-relatedo. Warp. Recording and distribution |
|---|--|

Coverage C – Medical Payments

- “Reasonable & necessary” medical expenses related to BI caused by an accident *regardless of fault*
 - (1) On premises you own or rent
 - (2) On ways next to premises you own or rent
 - (3) Because of your operations
- Exclusions
 - a. Any insured
 - b. Hired person
 - c. Injury on normally occupied premises
 - d. Workers compensation
 - e. Athletic activities
 - f. Products-completed operations hazard
 - g. Coverage A Exclusions

Supplementary Payments

- Insurer will pay, with respect to any claim investigated or settled, or any suit defended...
 - a. All **expenses** we incur
 - b. Up to \$250 cost of **bail bonds**
 - c. Cost of **bonds to release attachments**
 - d. Reasonable **expenses incurred** by the insured at our request
 - e. All **costs taxed against Insured** in suit; does not include attorneys' fees or attorneys' expenses taxed against the insured
 - f. **Prejudgment interest** – but if we offer to pay the applicable limit of insurance ...
 - g. **Interest on full amount of judgment**
- These payments are *in addition to and will not reduce* the limits of insurance

Section II – Who is an Insured

1. If you are designated in the Declarations as:
 - a. Sole Owner; An **individual (+ spouse)**
 - b. Partnership or joint venture (JV); **members, partners, spouses...**
 - a. Limited liability company (LLC); **members, managers...**
 - b. Other organizations: **executive officers and directors**
 - c. A trust; **trustees...**
2. Other categories:
Volunteers; Real Estate Managers; Legal representatives
3. **Newly acquired or formed** organizations (if majority interest, 90 days)
Excludes Partnerships, Joint Ventures, or LLCs

Section III – Limits of Insurance

1. Limits & rules 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”
2. General Aggregate – overall limit
3. Products-Completed Operations – separate products aggregate limit
4. Personal and Advertising Injury Limit (subject to 2.)
5. Each Occurrence Limit (subject to 2. or 3., whichever applies)
6. Damage to Premises Rented To You Limit (subject to 5.)
7. Medical Expense Limit (subject to 5.)

(Note: Numbers 2 through 7 contain Coverage A, B & C restrictions – see policy)

Section IV – CGL Conditions

Establish duties of Insurer/Insured; interpretation & application of policy

1. Bankruptcy or insolvency of insured...
2. **Duties in the event of occurrence, offense, claim or suit**
 - **Notice provision**
 - **Voluntary payments**
3. Legal action against us...
4. Other insurance...
5. Premium audit...
6. Representations...
7. Separation of insureds...
8. Transfer of rights of recovery against others to us...
9. When we do not renew...

Section V - Definitions

- Precise definitions – critical to understanding coverage provided

- | | |
|----------------------------------|--|
| 1. “Advertisement”... | 12. “Mobile equipment”... |
| 2. “Auto”... | 13. “Occurrence” ... |
| 3. “Bodily injury” | 14. “Personal and advertising injury” ... |
| 4. “Coverage territory”... | 15. “Pollutants”... |
| 5. “Employee”... | 16. “Products-completed operations hazard”... |
| 6. “Executive officer”... | 17. “Property damage”... |
| 7. “Hostile fire”... | 18. “Suit” ... |
| 8. “Impaired property”... | 19. “Temporary worker”... |
| 9. “Insured contract” ... | 20. “Voluntary worker”... |
| 10. “Leased worker”... | 21. “Your product”... |
| 11. “Loading and unloading”... | 22. “Your work”... |

Note: Definitions are quite specific and need to be read carefully to identify covered exposures

CGL Endorsements

- Amend the policy to meet specific needs of the Insured or Insurer (Add/Delete; Correct/Change; State Required)
- Any change to a policy, including amendments, exclusions, or additions must be endorsed to the policy (it's a contract)
- Rating organizations (e.g., ISO) have developed standard language for endorsements used most frequently, but
- **Manuscript** (nonstandard) endorsements may be used to customize a policy

Common Endorsements

ISO Standard Endorsement Categories*

- CG 03 – Deductibles
- CG 04 – Additional coverage
- CG 20 – Additional Insureds
- CG 21 – Exclusionary (examples)
 - **Designated Professional Services**
 - **Employment-related practices**
- CG 22 – Certain types of risks (examples)
 - **Engineers, Architects, or Surveyors Professional Liability**
 - **Contractors PL – Construction Means and Methods**
- CG 24 – Coverage amendments
- CG 25 – Amendment of limits
- CG 27 – Claims-made endorsements
- CG 99 – Miscellaneous endorsements

Claims Made Coverage Trigger

- CGL may also be written on a *claims-made* basis
- Claims made forms are triggered by:
 - A claim made during the policy period
 - Based on conduct after the retroactive date
 - Reported to the insurer during the policy period or within the ERM
- ERP – extended reporting period
 - Basic
 - Supplemental
- A Horror Movie ...

Introduction to Excess and Umbrella Liability Insurance

Excess vs. Umbrella

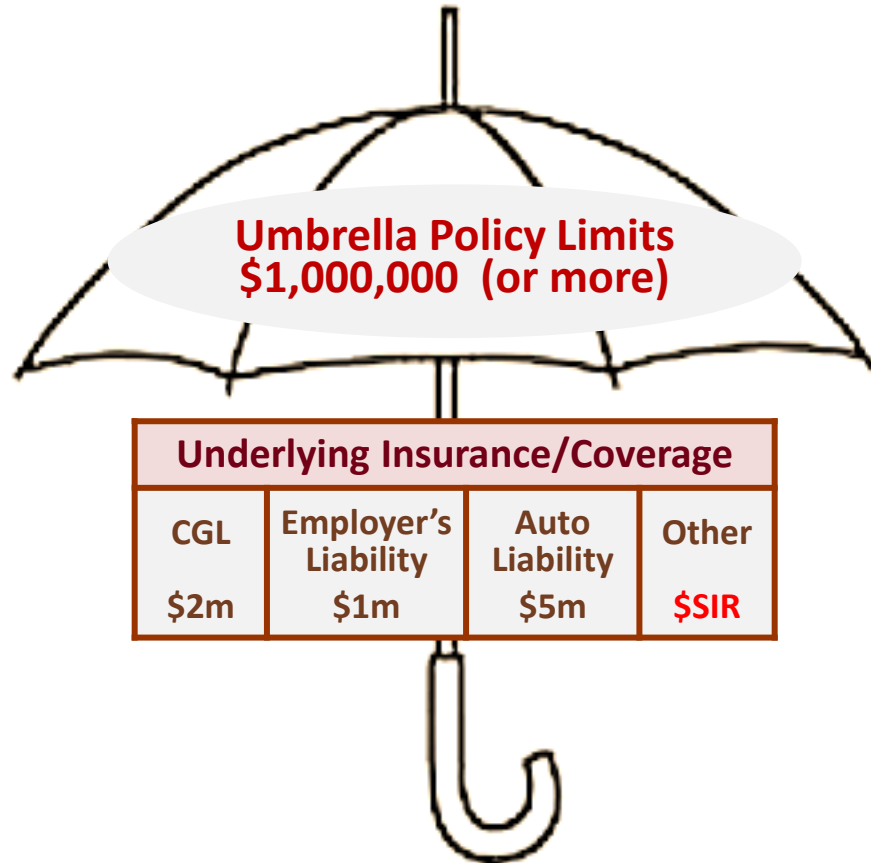
- **Excess**
 - Additional coverage above primary policy limits
 - **One class or line of coverage** involved
- **Umbrella**
 - Additional coverage above primary policy limits
 - Multiple primary policies provide underlying limits
 - Potential to insure exposures at dollar one

Excess Liability Coverage



- Insurers may issue one or more “layers” as
 1. Self-contained policies
 2. “Follow form” excess
 3. Combination
- Excess coverage may be written above a CGL or other types of underlying liability policy (e.g., Auto, PLI, Employer’s Liability)

Umbrella Liability Coverage



Special Features/Functions

- Retained Limit
 - Umbrella
 - Excess
- Broad coverage
- “Drop down” features

Questions?



Thank you!