

Commercial General Liability Insurance— How to Read the Policy

By Jared W. Heald, Esq.

If you retain nothing else from this article, please remember this: the CGL policy is a contract. When there is an issue regarding the coverage provided under the CGL policy, the interpretation of the CGL policy is governed by state law, and the court will use the same rules regarding contract interpretation as are employed in other contractual disputes to reach its determination. As state law governs the interpretation of the CGL policy, it should not surprise you to know that many states interpret the same standard policy language differently, sometimes with significant consequences. For example, the law in some states is that “occurrence” (a defined term under the policy) includes situations where the insured unintentionally performs defective work, while other states’ law is that defective work cannot constitute an “occurrence.”

However, going into detail on such intricate topics is beyond the scope of this article; instead, this article is intended to focus your attention on the best advice for any contractual matter—**before entering into a contract, you should read and understand it.** Before purchasing your CGL insurance policy, and paying thousands of dollars or more in premiums, you should understand what you are receiving in return. Providing an explanation of the structure and working of the CGL policy will help with that task.

THE FRAMEWORK OF THE CGL POLICY

Comprehension of the CGL policy begins with an understanding of its structure and form. The CGL policy is a complex document with numerous sections, many interrelated clauses and alternative provisions, the applicability of which hinge upon numerous variables and facts. To many, it appears drafted with the intent to create an indecipherable puzzle. Do not let this discourage you. When the CGL policy is broken down into its parts, and those parts are studied and reviewed, it becomes easier to understand and you will be able to take control of this issue. *Please note, this article discusses the standard CGL*

policy, the ISO (Insurance Services Office, Inc.) occurrence based CGL policy form—the CG 00 01.

The CGL policy consists of five sections:

- Coverages
- Who is an Insured?
- Limits of Insurance
- Commercial General Liability Conditions
- Definitions

COVERAGES

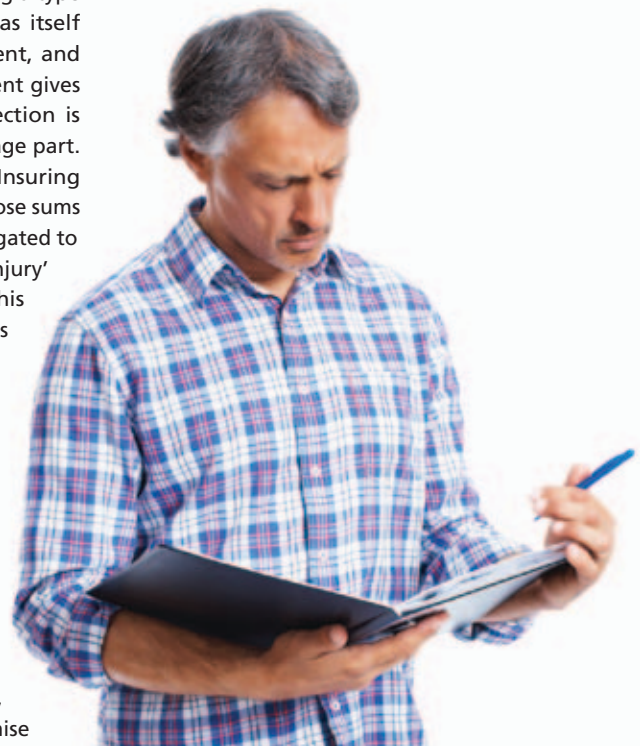
This section details what insurance, or protection, is provided under the CGL policy and is divided into four parts:

- Coverage A—Bodily Injury and Property Damage Liability
- Coverage B—Personal and Advertising Injury Liability
- Coverage C—Medical Payments
- Supplementary Payments—Coverages A and B

Each of the three parts identifying a type of coverage, parts A through C, has itself two subparts: (1) Insuring Agreement, and (2) Exclusions. The Insuring Agreement gives a broad promise as to what protection is provided under the particular coverage part. For example, for Coverage A, the Insuring Agreement provides “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.” It further provides “This insurance applies to ‘bodily injury’ and ‘property damage’ . . . caused by an ‘occurrence’ that takes place in the ‘coverage territory’ . . . [that] occurs during the policy period” This is the main coverage provided by the CGL policy, and it is often summed up as a protection against claims for injury to person or property caused by an accident.

The second subpart, Exclusions, restricts and narrows the broad promise

contained in the Insuring Agreement by removing certain types of damages from coverage. For example, Coverage A has 17 categories of exclusions limiting the type of “bodily injury” or “property damage” that is covered under Coverage A. For contractors, some of the more important exclusions to Coverage A include: the contractual liability exclusion; pollution exclusion; aircraft, auto or watercraft exclusion; mobile equipment exclusion; damage to property exclusion (eliminating certain types of ‘property damages’ from coverage) and damage to your work exclusion. It is also important to note that particular exclusions contain their own limiting exceptions, meaning that in some instances the exclusions do not apply to remove a damage from the broader coverage promise. For example, the damage to your work exclusion mentioned above has an exception that applies (meaning that insurance coverage could be available) if the damaged



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work, or the work out of which the damage arises, was performed by a subcontractor.

Thus, when determining what coverage is provided by the CGL policy, the starting place is evaluating the broad promise contained within the Insuring Agreement as limited by the Exclusions. This evaluation process is generally the same for all coverage parts, A through C. Note, while broken out separately, the fourth part of this section (Supplementary Payments) does not actually provide a type of coverage but, instead, details additional payments which the insurance company is willing to make under Coverage A and Coverage B, provided particular conditions are satisfied. It adds an additional layer of protection to the CGL policy by expanding the costs which may be paid under the other coverages.

WHO IS AN INSURED?

This section is an extensive and detailed definition/explanation as to what persons or entities are afforded coverage under the CGL policy, and is broken down into several parts and subparts. The various parts and subparts modify who qualifies as an insured based upon particular variables such as type of loss incurred and relationship to the person or entity designated in the CGL policy's declarations as the insured. Please note, "insured" is not separately defined under the CGL policy, see the Definitions section below.

LIMITS OF INSURANCE

This section explains the maximum amount of money the insurance company is obligated to pay under the different Coverages provided. The CGL policy may have multiple limits of insurance that may reduce the insurance company's payment obligations in particular circumstances. The more common limits are the: General Aggregate Limit, Products-Completed Operations Aggregate Limit, Personal and Advertising Injury Limit and Each Occurrence Limit. Any limit of insurance applicable to the CGL policy should be clearly listed in the CGL policy's declarations. If any limit is listed as zero, that means there is no coverage for that corresponding category. For example, sometimes CGL policies will have a zero dollar limit for its Products-Completed Operations Aggregate Limit, which effectively operates to exclude from coverage all claims resulting from completed operations.

COMMERCIAL GENERAL LIABILITY CONDITIONS

This section has multiple parts and generally outlines the practical operation of the policy. For contractors, it is comparable to the general conditions section of construction contracts—it details how the parties to the insurance contract, you and the insurance company, are to interact with one another. The topics covered are varied, ranging from what happens if the insured goes bankrupt to the insured's duties to maintain records for premium audits. One of the more important parts of this section is Part 2, "Duties In the Event of Occurrence, Offense, Claim or Suit," which details what an insured is required to do under particular circumstances (such as when and how to notify the insurance company if you have been sued) so as to be able to maintain coverage under the policy. In many states, failing to comply with this condition is a basis for the insurance company to deny an otherwise covered claim.

DEFINITIONS

This section contains the definitions for particular words used throughout the other sections of the CGL policy. When reviewing the previous four sections of the policy, you know a word is a defined term when it is contained within quotation marks. For example, in the above discussion "property damage", "bodily injury" and "occurrence" were all contained within quotation marks, indicating the use of defined terms under the policy. Often the definition of a word will contain multiple parts, some of which may apply only under certain circumstances. Also, some definitions are broadly stated and then limited by further parts and subparts. When dealing with a defined term under the CGL policy, it is often best to revisit the definitions to refresh yourself of the meaning under the policy.

MODIFICATIONS TO THE STANDARD LANGUAGE

Sometimes the standard language of the CGL policy does not work for your particular insurance needs. In such a case, the standard CGL policy can be modified and tailored to your needs through the use of endorsements. Endorsements are amendments to the insurance contract and change the CGL policy terms, sometimes significantly. Perhaps the most common endorsement for contractors is the additional insured endorsement, of which there are many varieties, used to add other persons (such as a general contractor or owner)

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as an insured under the insurance policy. Whenever reviewing your CGL policy, it is important to review any policy endorsements to see how the standard language has been modified.

PUTTING IT ALL TOGETHER

With this working knowledge of the CGL policy, you should be able to begin exploration of the CGL policy. For analysis of any particular issue, the evaluation of the CGL policy requires determination of the following, which generally may be considered in any particular order:

- Who is protected against the identified risk?
- Is the risk covered? Remember to review exclusions and exceptions.
- Are there any policy limits that impact the available coverage?
- What, if anything, needs to be done to preserve the protections afforded under the policy?

When conducting a review, remember that you must incorporate the definitions contained within the Definitions section and consult the information contained in the policy's declarations. Do not forget to check for any endorsements.

The CGL policy is a complex contractual agreement. Analysis of it, and what protections it provides to your business as an insured, is a matter of state law and often varies significantly from state to state. When faced with an important insurance issue, it is best to seek the counsel and advice of an experienced insurance professional or an attorney with experience in the insurance field.

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