

# A High-Level View of the CGL Policy

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**Very often, we start in the middle, generally by necessity. After all, there were quite a few people already here when we were born. Since everyone else had a head start, we had to jump in where we could. Learning tends to track this pattern—we simply do not have the luxury of starting where we want.**

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Not that this is always bad; many of us would not be employed if we had to start at the absolute beginning. There are, however, certain costs to starting in the middle. One potential cost is that we may have failed to lay a proper foundation for what we have learned. Because this can result in gaps in our ability to fully understand, it is beneficial to take a step away from the trees and look at the forest—the oft-mentioned bigger picture.

## A Complex Policy

That the commercial general liability (CGL) policy is a complex insurance policy is not seriously disputed. Rather than digging deeper into such complexities, this article takes the opposite approach: a high-level view intended for insurance and risk management personnel or insurance buyers who seek a grasp of the basics, either to just get started or to help solidify a foundation for what they have already learned. Certainly, such simple explanations should never be the sole source for interpreting coverage. Nonetheless, a general understanding of the fundamental workings of the CGL policy has substantial practical value. Therefore, the purpose of this article is to be a primer of sorts and is intended to provide a plain, straightforward explanation of certain portions of the CGL policy.

## Coverage A—The Promise

As most CGL claims, disputes, and questions fall within Coverage A—Bodily Injury or Property Damage, this article will focus on the Coverage A insuring agreement and its exclusions. The Insurance Services Offices, Inc. (ISO), December 2007 edition of the "occurrence" (CG 00 01 12 07) CGL policy starts with a broad promise.

## Legal Obligation To Pay Damages for Bodily Injury or Property Damage

The broad promise, which is the insuring agreement, is a pledge by the insurer to pay if an insured is legally liable for damages because of bodily injury or property damage. Bodily injury and property damage are defined terms. Bodily injury usually means physical harm (including sickness or disease) and property damage means physical injury to *tangible* property as well as damages for the loss of use of the *tangible* property that has been physically injured.

Property damage also includes loss of use of *tangible* property that has *not been* physically injured. Electronic data (information stored electronically) is not considered tangible property (more on this later).

### **Coverage Trigger**

For the policy to respond (the trigger), the bodily injury or property damage must be *caused* by an occurrence (it does not matter *when* the occurrence takes place) **and** the bodily injury or property damage *must occur during* the policy period (remember, this is an "occurrence" policy).<sup>1</sup>

### **Defense**

Sometimes referred to by courts as "defense insurance," the insuring agreement also includes a *separate promise* by the insurer to defend suits against an insured which demand damages potentially covered by the insuring agreement.<sup>2</sup>

### **Foreshadowing Exclusions**

Because the Coverage A insuring agreement is so broad, the CGL policy is defined to a great extent by its numerous exclusions. The series of exclusions that follows is foreshadowed by the phrase found in the insuring agreement "... to which this insurance applies." In other words, the CGL policy does not apply to all bodily injury or property damage. This may come as a shock to those businesses that advertise as "fully insured."

While there is undoubtedly a great deal more to the insuring agreement than noted above, keep in mind our focus is on the basics.

### **Coverage A—Exclusions**

The Coverage A exclusions are intended to restrict or narrow the insurers' obligations to pay claims which may have been promised within the Coverage A insuring agreement. Put another way, the purpose of the exclusions is to eliminate what might otherwise be covered.

The reasons for exclusions to any policy, including the CGL policy, are varied. For example, an exclusion may take away coverage because the coverage is provided by another policy (workers compensation or commercial automobile), or require purchase of another policy (liquor, pollution, etc.). Other exclusions are added because the claims are considered uninsurable (business risks) or might be against public policy (intentional injury). Of course, the insurer is free to add, by endorsement, exclusions to the CGL policy because the insurer may just not want to provide some types of coverage.

Here are the exclusions to Coverage A that are included or "built into" a CGL policy. Additional exclusions may be, and often are, added by endorsement.

### a. Expected or Intended

In most cases, if an insured intentionally causes property damage or bodily injury, that insured is not covered.

**Example:** An employee argues with and punches a customer. If the employee is sued by the customer, the employee is not covered.<sup>3</sup>

### b. Contractual Liability

There is no bodily injury or property damage coverage for an insured held liable for damages by virtue of *assuming the liability of another* in a contract or agreement.

**Example:** If an insured agreed to assume the liability of a railroad in a construction agreement with the railroad, the insured's obligation to indemnify the railroad for the *railroad's liability to others* is not covered.

There are two major exceptions to this exclusion: there *is coverage* if the insured would be liable anyway (meaning the insured would be liable under the law even if the agreement or contract did not exist) **or** the insured has assumed the liability of another person or organization as part of an "insured contract." To understand this exclusion, it is highly recommended that the defined term "insured contract" be examined.<sup>4</sup>

### c. Liquor Liability

If the named insured is *in the business* of making, selling, serving, or furnishing alcohol, the CGL excludes any liability the insured may have because of bodily injury or property damage resulting from the alcohol.

**Example:** The local tavern does not have coverage in its CGL for a claim against the tavern brought by a pedestrian who was struck by a patron while the patron was driving away from the tavern after the patron was "overserved" by the tavern.

CAVEAT: Many (if not most) insurers add an exclusionary endorsement to the CGL policy that *substantially expands* the reach of the liquor exclusion. The liquor exclusionary endorsement eliminates coverage for not only those "in the business" but also anyone who *sells alcohol for a charge* or if the serving of alcohol *requires a license*, even if no charge is made. A not-for-profit sponsoring a fund raiser in which the cost of dinner includes two drink tickets may well be considered to have sold alcohol for a charge and thus have no coverage under its CGL for the serving of liquor.<sup>5</sup>

### d. Workers Compensation

Statutory workers compensation benefits required to be paid by any insured are not covered by the CGL.

**Example:** If an insured employer failed to purchase workers compensation coverage, the CGL policy would not pay on behalf of the insured employer statutory workers compensation benefits due an injured employee.

#### **e. Employers Liability**

If an employee is injured while working for the insured employer, any suit against the insured employer brought by the employee, brought by the employee's family, or brought by an unrelated party claiming the insured employer must share in payment of damages for the employee's injuries, is not covered. The exclusion applies even if the insured employer is characterized in the suit as having a capacity in addition to that of an employer—the employee may allege it is suing its employer as a product manufacturer and not as an employer.

**Example:** An employee of the insured employer suffers a work-related injury when using a machine that the insured employer modified by removing some of its safety devices. The employee may bring a suit against the machine manufacturer that, in turn, brings claim against the insured employer, alleging the employer was negligent in removing the safety device that resulted in the injury to the employee. The suit by the machine manufacturer against the insured employer, which demands the insured employer share in payment of damages to the injured employee, is not covered by the insured employer's CGL policy.

This exclusion does not apply if the insured employer is obligated to *indemnify* another for damages resulting from work related injuries to the insured employer's *own employees*, provided the obligation of the insured employer to provide indemnity is due to *liability assumed* in an "insured contract."

#### **f. Pollution**

If bodily injury or property damage is caused by the release or discharge of pollutants from the premises (including a *former* premises) of an insured, the CGL excludes coverage. It does not matter whether the release of pollutants was *sudden or gradual*—coverage is excluded. In addition, coverage for bodily injury or property damage resulting from the release of *waste* is completely excluded, *regardless of where the release occurs*.

**Example:** The local high school has an underground heating tank that ruptures and releases almost 10,000 gallons of petroleum into the neighbor's soil, well, and basement. The damages claimed against the school by the neighbor are not covered by the high school's CGL policy.

There are some limited exceptions to the premises pollution portion of the exclusion. For instance, if the heating system malfunctions, releasing fumes within the building which cause sickness to others, the exclusion does not apply.

Bodily injury or property damage caused by the release or discharge of a pollutant is also excluded at any site at which the insured (or the insured's subcontractor) is working *if the pollutants are brought to the site* by the insured **or** the insured was at the site performing environmental work, such as testing for pollutants in the groundwater.

**Example:** A building cleaning contractor brings chemicals to clean the outside of a customer's building. While setting up to start the job, one of the workers knocks over a drum of the cleaning chemicals, which splashes on and burns a patron attempting to enter the building. As the insured brought the pollutants to the site, the contractor has no coverage for bodily injury to the patron.

As with premises pollution, there are some limited exceptions to the exclusion applicable when pollutants are brought to the site. For instance, if the adhesive used by a carpet installer to put carpets in an office building releases toxic fumes within the building that make some of the building's tenants ill, the carpet contractor is covered for this bodily injury because of the exception to the exclusion.

Finally, the cost of the cleanup of pollutants is excluded. The cleanup exclusion *does not apply* if the costs are considered property damage **and** the insured would have been liable *in the absence of* cleanup demands of an environmental authority or liable because of an environmental regulation or law applicable to the cleanup.<sup>6</sup>

#### **g. Aircraft, Autos, and Watercraft**

Bodily injury or property damage that may result from the use of aircraft, watercraft, or autos that are owned, operated, or rented or loaned to any insured is excluded.

**Example:** While using a truck the insured borrowed from a friend, the insured backs into a ladder, causing the employee of *another contractor* to fall and suffer injury. The claim by the employee of the other contractor against the insured is not covered by the CGL—the bodily injury was caused by the use of an auto loaned to the insured.

There are numerous exceptions to this exclusion. For instance, even though a truck-mounted cherry picker (a bucket truck) is considered an auto, and the bucket truck is owned and operated by the insured, the CGL provides coverage, by exception to this exclusion, for bodily injury or property damage that takes place while *operating the equipment* on the bucket truck.

**Exception Example:** While up in the bucket of the cherry picker, an employee trimming trees loses control of a large branch, which falls on a passing motorist, damaging the motorist's auto and injuring the motorist. Even though the cherry picker is an auto, this bodily injury and property damage is covered by the CGL because of the exception to the exclusion.

CAVEAT: The CGL policy has been changed (starting with the December 2004 edition) to redefine an "auto" to include what would otherwise be mobile equipment (such as a backhoe) **if** the mobile equipment is subject to compulsory insurance or financial responsibility.

Put another way, if mobile equipment is deemed to be an "auto," because the vehicle was found to be subject to compulsory insurance law, automobile liability coverage needs to be arranged to avoid a gap in coverage, as the CGL will not cover bodily injury or property damage resulting from an accident that takes place while the backhoe is being operated as an "auto."<sup>7</sup>

#### **h. Mobile Equipment**

While the use of mobile equipment (subject to the change noted above) is understood to be covered by the CGL, any bodily injury or property damage that results when the mobile equipment is being transported or while the mobile equipment is being used in a prearranged speed or stunting activity is excluded.

**Example:** If a bulldozer that is being transported on a flatbed trailer rolls off because the driver of the truck pulling the trailer took the corner too sharply, any bodily injury or property damage that may result, such as the bulldozer damaging several cars parked along the road, would be excluded by the CGL.

#### **j. Damage to Property**

There is no coverage for property damage to the following types of property:

- Property owned, rented to, or occupied by the named insured.

**Example:** A tenant allows water to damage the portion of the landlord's building occupied by the tenant for the past 3 years. The CGL excludes coverage for property damage to property occupied by the tenant, who is the named insured in this example.

Important exceptions to this exclusion should be noted—the exclusion for property damage to premises occupied or rented to the insured does not apply to *damage by fire*. Further, if the premises are rented to the named insured for *7 or fewer consecutive days* (such as renting a hotel room), this exclusion does not apply to the premises and the contents of the premises. In both cases, a sublimit (Damage to Premises Rented to You) applies.<sup>8</sup>

Premises sold, given away, or abandoned by the named insured *if* the property damage is caused by a condition of the premises.

**Example:** After a distributor sells a warehouse, it burns down. The fire marshal determines that the cause of the fire was faulty wiring installed several months before the sale by the distributor/seller. The claim made against the distributor/seller by the buyer is not covered by the CGL of the distributor/seller.

- Property loaned to the named insured.

**Example:** A contractor negligently damages scaffolding that was borrowed from the general contractor. The CGL policy will not pay the contractor's liability for property damage to the general contractor's scaffolding as it is property loaned to the named insured.

- Personal property in the care, custody, or control of the insured.

**Example:** An auto repair shop has a fire that was caused by an employee's careless smoking, destroying 10 customers' cars being held by the shop pending repair work. As the customers' cars are in the care, custody, or control of auto repair shop, the CGL provides no coverage to the repair shop for its liability for property damage to the customers' cars.<sup>9</sup>

- That *particular part of real* property if the property damage takes place while the named insured (or a subcontractor of the named insured) is in the process of *performing* work on the part of the property that is damaged.

**Example:** A masonry contractor is engaged to perform some minor repairs to the chimney of a commercial building. While using a scissor lift, the contractor accidentally extends the lift too fast, colliding with and knocking down the chimney. The property damage to the chimney is not covered by the masonry contractor's CGL as that particular part of real property (the chimney) was damaged while performing work on the chimney.

- That *particular part of any property* (real or personal) that must be fixed because the named insured's work (or the work of the named insured's subcontractor) was incorrectly performed on the property. If the job is finished when the property damage takes place, this exclusion does not apply.

**Example:** Halfway through the job of replacing a floor, the contractor discovers that the new wooden floor panels have been installed upside down, requiring tearing out and replacing the floor panels with new panels. The cost of repair, including the property damage to the wooden floor tiles that have to be ripped out as well damage to the subflooring caused by the improper installation, is not covered by the flooring contractor's CGL.

#### **k. Damage to Your Product**

If the named insured's product damages itself, the property damage to the named insured's product is excluded.

**Example:** A defect causes several billboard video displays to completely fail due to a short circuit, resulting in total loss to the billboard. The billboard manufacturer does not have coverage in its CGL for the property damage to the billboards (the named insured's product) that are damaged by the short circuit.

#### **l. Damage to Your Work**

If the named insured's *completed* work damages itself, the property damage to the *completed work* is excluded. However, this exclusion does not apply if the named insured subcontractor's completed work suffered property damage or if the completed work that suffers property damage is the result of the named insured subcontractor's completed work.

**Example:** A general contractor completed the construction of a 10-story office building for the owner. After the building is occupied, the building experiences an abrupt settling, resulting in a virtual total loss to the building. The building inspector determines that the iron and steel work, performed by the general contractor's employees, was deficient and buckled when several defective welds gave away. The owner's suit against the general contractor for the property damage to the building (the general contractor's work) is not covered by the CGL as the property damage arose out of the general contractor's completed work—the defective welds.

**Exception Example:** If in the example above, the general contractor engaged a *subcontractor* to perform the iron and steel work, then the exclusion would *not apply* to the owner's suit against the general contractor for property damage to the building. Even though the building is still the general contractor's completed work, the property damage arose out of the *completed work of a subcontractor*. Thus, the property damage to your completed work exclusion does not apply to the general contractor.

### **m. Damage to Impaired Property or Property Not Physically Injured**

This exclusion applies to property damage to property that has *not* suffered actual physical injury or to property that is considered impaired property. Impaired property is a defined term, and generally means the *property of another* that *cannot be used* (or its use is limited) because of *a problem* with the named insured's product or work that was made a part of the impaired property **or** if the named insured did not complete the job on time.

Remember, the definition of "property damage" includes the loss of use of tangible property that has *not* been physically injured. Taking into account this portion of the "property damage" definition helps to explain the purpose of this exclusion—to restrict coverage for *specific types of loss of use* claims that may result even if *no physical injury* to the property of another has taken place.

The *specific types of loss of use* claims excluded are either those caused by incorporating the named insured's *defective* product or *faulty* work into the property of another **or** those loss of use claims caused by the named insured failure to finish a job on time.

This exclusion does not apply if the loss of use is caused by sudden and accidental physical injury to the named insured's property or work, and then only if the physical injury takes place after the product or work has been put to its intended use.

**Example:** A heating, ventilation, and air-conditioning (HVAC) contractor is hired by a hotel to replace the cooling system before July 1. After installation, it is found that new cooling system is defective as it does not properly cool the hotel. The hotel is forced to cancel a large convention scheduled for July 4, resulting in a substantial loss of revenue to the hotel. The hotel brings a claim against the HVAC contractor alleging the hotel cannot be used (loss of use) due to the defective cooling system installed by the HVAC contractor (the named insured's work). The HVAC contractor is not covered by its CGL for the loss of use claim by the hotel (the hotel is impaired property and was not physically injured) as the loss of use was caused by the defective work incorporated into the hotel by the HVAC contractor.<sup>10</sup>

#### **n. Recall of Products, Work, or Impaired Property**

Any costs or damages claimed against an insured for recalling known or suspected defective products or known or suspected defective work are not covered. Excluded costs include, but are not limited to, the costs of inspecting, adjusting, or removal of the defective products or work.

**Example:** A defect causes several billboard video displays to completely fail due to a short circuit, resulting in a total loss to the billboard. If the billboard manufacturer suspects that other video billboards might have the same defect, any costs to recall or withdraw from use any of its billboards, such as inspecting, adjusting, or removing the defective billboards, are excluded by the manufacturer's CGL.

#### **o. Personal and Advertising Injury**

If bodily injury is caused by a personal injury offense, such bodily injury is excluded by Coverage A.

**Example:** A patron sues a major retailer after the retailer pressed criminal theft charges against the patron (the personal injury offense alleged in this instance is malicious prosecution). Subsequently, the patron suffers a heart attack which is found to have been the direct result of the criminal prosecution. While the retailer would likely have coverage for the malicious prosecution claimed against it by the patron under Coverage B—Personal and Advertising Injury, any claim by the patron for damages resulting from the heart attack (bodily injury) are excluded under Coverage A.

#### **p. Electronic Data**

The CGL does not provide coverage for loss of electronic data as such data is not tangible property and thus not considered property damage. This exclusion buttresses the Coverage A insuring agreement by excluding any damages arising out of the loss of, loss of use of, damage to, corruption of, or inability to access or manipulate electronic data.

**Example:** A tenant in a mall overloads the electrical circuits with its advertising display, causing a power surge that corrupts the customer information stored electronically by several other retailers located in the mall. The claim by the other retailers to restore the corrupted customer information is not covered by the CGL policy of the tenant that caused the power surge.

#### **q. Distribution of Material in Violation of Statutes**

If an insured violates certain statutes, the CGL provides no coverage for damages that may result from such claims.

**Example:** After being told repeatedly not to fax advertising material to prospective customers, an accounting firm is sued by several recipients of fax advertising, alleging loss of use of its fax machines (the fax machines were clogged with advertising faxes) and the violation of the state's "do not call" statute. The accounting

firm is not covered for the property damage claimed against it by recipients of the advertising faxes because the acts of the accounting firm were in violation of a statute prohibiting such fax transmissions.

## Conclusion

Simplifying complex coverage issues does carry with it the risk that an appreciation of the full complexity of coverage might be lost. However, provided that such distilled explanations are viewed as a way to better understand the *basics* of coverage, straightforward descriptions of the Coverage A insuring agreement and its exclusions have substantial value as a starting point for learning or to fill in the foundations upon which further learning can be more solidly based.

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<sup>1</sup>See also [Trigger Theories and the CGL](#) (December 2008) as well as [Known Injury or Damage](#) (October 2003).

<sup>2</sup>See also [Duty To Defend in the CGL Policy](#) (August 2002).

<sup>3</sup>See also [I Did Not Expect That! The CGL Exclusion for Expected or Intended Injury](#) (March 2008).

<sup>4</sup>See also [Contractual Liability and the CGL Policy](#) (May 2002) as well as [In Defense of Insured Contracts](#) (July 2007) and [Contractual Confusion—Assuming the Liability of Others](#) (July 2009).

<sup>5</sup>See also [Raising the Bar—The Liquor Liability Exclusion in the CGL](#) (January 2008).

<sup>6</sup>See also [The CGL Pollution Exclusion](#) (March 2003).

<sup>7</sup>See also [Auto versus Mobile Equipment in the 2004 CGL—An Update](#) (October 2005).

<sup>8</sup>See also [CGL—Fire Legal](#) (April 2005).

<sup>9</sup>See also [Care, Custody, or Control Exclusion in the CGL](#) (October 2008).

<sup>10</sup>See also [Faulty Work and the CGL](#) (July 2005).

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