Chapter Two – Liability Coverage

How Does a Business Become “Liable” for Injuries to Others?

When we say a business is “liable” for injuries to others, we mean that they are legally responsible for them. It is important to understand how our laws work to assign responsibility for these injuries.

Our civil law gives persons (including businesses) the right to sue others for their grievances. The complaining party, the plaintiff, must demonstrate to the courts that the other party, the defendant, is guilty of one or more civil wrongs known as “torts” in order to gain compensation from the defendant. Since this course focuses on Commercial General Liability, we will be dealing principally with the tort of “negligence”.

Negligence is generally defined as the failure to do what a reasonable and prudent person/business would do under a given set of circumstances. Civil law imposes responsibility on the negligent party for the resulting injuries or damages to others.

If one party sues another for alleged negligence, it is the plaintiff who has the burden to prove negligence. To do so, the plaintiff must be able to demonstrate four distinct elements of a defendant’s actions (or failure to act). They are:

1. The defendant had a legal duty of care in the given circumstance. That is, the defendant was responsible to do or not to do something in order to reasonably protect persons or property.

2. The defendant breached or failed to uphold that legal duty of care.

3. The defendant’s breach of its legal duty of care caused injury or property damage to the plaintiff.

4. The defendant’s breach of duty was the proximate cause of the plaintiff’s injury of property damage. Proximate cause is a term indicating directness – that there was no intervening action or cause between the defendant’s actions (or failure to act) and the plaintiff’s injury or damage.

If a party suffers a loss that it feels is the responsibility of others, it can choose several ways to collect from the other party. It may simply call the other party and ask for money. More commonly, the suffering party will hire legal counsel to contact the allegedly responsible party. This contract can be accomplished by sending a letter to the other party asking for compensation. This contact, by letter or other means, may threaten legal action. The most formal and perhaps the most formidable way to collect from the responsible party is to sue that party in civil court.
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In any case, when a business is faced with a request for money (commonly referred to as damages), the business must respond in some way to the complaining party. Regardless of the response, the business will incur some costs. CGL insurance is designed to cover the costs of this response and to cover the ultimate damages, whether voluntarily settled upon or awarded in court, to the complaining party for certain types of complaints.

The Difficulty in Devising Liability Policies

The challenge for insurance companies is to describe in its policies exactly which liability exposures are to be insured, and to precisely explain how the coverage would operate if a claim is made against the insured business. As mentioned earlier, when there is a provision in the policy that can be interpreted in more than one way, the interpretation that is most favorable to the policyholder will govern.

Up until the mid-80s, the standard commercial general liability form was called the Comprehensive General Liability coverage. The word “comprehensive” turned out to be a problem because the policyholders claimed the term indicated “broad” or “full” coverage. Various courts of law, agreeing that this term was less than crystal clear, sided with the policyholders and held the insurance companies to cover many claims which were not intended to be included in the policy. Thus, around 1984 the standard policy form was renamed to Commercial General Liability coverage.

CGL policies come in many variations, but by far the most widely used form is the one created and maintained by the Insurance Services Office, or ISO*. ISO’s CGL policy has changed many times since it was first introduced in the early 1940’s due to changes in our society, in our laws, and in the insurance marketplace.

To introduce you to the CGL policy authored by ISO, we will first look at the documents that make up a complete policy, and briefly examine each.

**IMPORTANT POINT:** Like most insurance policies, a CGL policy contains five main parts – Declarations, Insuring Agreements, Conditions, Exclusions, and Definitions. Use the acronym “DICED” to remember them.

**Declarations** are the specifications of coverage: the named insured, policy period, insuring company, premium, limits of coverage, etc.

**Insuring Agreements** are broad statements of coverage under the policy.

**Conditions** describe the rights of both the insured and the insuring company as well as the rules by which the coverage will be granted.

**Exclusions** are specific statements which take away coverage falling within the broad insuring agreements, or which eliminate coverage for claims outside the scope of the insuring agreements.
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Definitions give specific meanings to certain words (shown in bold, italics, or quotations) within policy.

An ISO CGL policy contains at least the following forms, which will include all parts of “DICED”:

- A common policy declarations form
- A common policy conditions form;
- A Commercial General Liability Declarations page;
- A Commercial General Liability Coverage form containing the insuring agreements, conditions, exclusions, and definitions specific to CGL coverage.

Two or more other documents are often made part of a CGL policy:

- There is often a form called the “schedule of covered operations and/or locations.”
- And in most cases, there are also one or more endorsements which modify or clarify the wording of the other forms.

ISO developed the Common Declarations and Common Conditions forms to simplify the makeup of “package policies” which contain at least one property and one liability coverage. The Common forms apply to all coverage forms (property coverage forms and liability coverage forms) in the policy.

The CGL Declarations page specifies the limits of coverage purchased, the policy period, and premium information. It may also contain rate and classification information and a listing of other forms which make up the complete CGL policy. The CGL coverage form is the heart and soul of the CGL policy. It is discussed first in an overview format, and then in a detailed analysis of each provision in the form.

The CGL Policy In Operation

How does the CGL policy provide protection to its insureds? First, a covered hazard must cause an accident (an unintended event which was not readily foreseeable) that provokes someone to make a demand for money as compensation for their injuries which were allegedly caused by that accident. Second, the demand must maintain that the policyholder is responsible for the accident.

When this demand for money is made and presented (usually in writing) to the policyholder alleging bodily injuries, damage to property, or other injuries included within the Personal or Advertising Injury hazards, we now have a “claim” to which the policy may respond. The CGL will cover the claim by responding in one of two ways:
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1. The insurance company will settle the matter with the claimant for an agreed upon amount of money not exceeding the “limit of liability” shown on the policy. Or,

2. The insurance company will NOT pay automatically, but instead will defend the policyholder until a court of law finds that the policyholder is indeed legally responsible. At that time, the insurance company will pay the amount of the judgment up to the stated policy limit. Note that the costs for defense, including attorney’s fees and other costs of investigation, will be paid by the insurance company WITHOUT LIMIT, and that these defense costs WILL NOT come out of the policy’s limit of liability.
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1. How might a CGL policy respond when a claim for damages is made against an insured?  
   I. The insurer will deny the claim  
   II. The insurer will settle the claim on behalf of the insured  
   III. The insurer will defend the insured, and not make any payments to the claimant until a court finds that the insured is responsible for the damages  

   A. I only  
   B. I and III  
   C. III only  
   D. II or III  

2. What is a tort?  

   A. A crime committed by more than one person  
   B. A traffic violation  
   C. A cream-filled pastry  
   D. A civil wrong  

3. What elements must be shown to prove a party was negligent and therefore legally responsible for an accident?  

   A. Accident/ Resulting Injury/ Violation of Legal Code  
   B. Duty of Care/ Breach of Duty/ Accident/ Violation  
   C. Duty of Care/ Breach of Duty/ Resulting Injury/ Proximate Cause  
   D. Injury/ Carelessness/ Lack of Response  

4. How are unclear or ambiguous terms in an insurance policy resolved?  

   A. The ambiguous provision will be interpreted in the way most favorable to the insured  
   B. The ambiguous provision will be interpreted in the way most favorable to the insurer  
   C. The insurer and insured will negotiate the matter  
   D. Depends of who hires the best attorney  

5. Which of the following is NOT a main part of the CGL policy?  

   A. Insuring Agreements  
   B. Inclusions  
   C. Conditions  
   D. Exclusions
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1. D
2. D
3. C
4. A
5. B