Chapter Four -- In-Depth Policy Analysis

The format we will use to review the policy forms is as follows: a partial section of the policy form will be highlighted in the text, followed by a brief, plain-language discussion of that section. Once an entire section of the policy form has been completed, you will have the opportunity to answer some questions on the material just presented.

The CGL policy has at its core, the CGL Coverage Form. There are two different coverage forms. They are similar in almost every respect except for the coverage trigger. Each form contains the insuring agreements, exclusions, definitions, and many of the conditions regarding the CGL coverage.

CGL Declarations

The declarations state the basic specifications of the coverage. Declarations the specific dates, limits, entities, etc, including the policyholder's mailing address, a listing of forms which make up the policy, the agent's name, the type of business being insured, and other items.

CGL Coverage Form

The CGL Coverage form is divided into five sections:

- Section I contains three coverages: Coverage A Bodily Injury and Property Damage Liability; coverage B Personal and Advertising Injury Liability”; and coverage C Medical Payments.

- Section II is Who Is An Insured.

- Section III is Limits of Insurance.

- Section IV is Commercial General Liability Conditions.

- Section V is "Definitions”.

The coverage form begins with a few explanatory paragraphs. Read the first few paragraphs on page 1:

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

From the very beginning, the policy authors take a careful approach to make the terms as clear as possible. This paragraph notes that there are exclusions and limitations, and that the insured has a responsibility to read the whole policy.
The next two paragraphs define six terms that are not included in the Definitions section.

Focus on the Form
Throughout this policy the words “you” and “yours” 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.

The six words appearing in quotes here are rather basic and so frequently used, they will not appear in quotes later in the form.

You will note that the term “Named Insured” is used twice but is not defined. In most cases, the Named Insured is simply the person and/or the business entity listed on the Declarations under the heading “Named Insured.”

The form notes that the Named Insured could be someone or some business entity other than the one shown on the Declarations - extending Named Insured status to “any other person or organization qualifying as a Named Insured”. This is because sometimes, the Named Insured on the Declarations might be written as “ABC Corporation and its successors.” The successors in that case are not named, but they would qualify as Named Insured even if they are not specifically named on the Declarations.

SECTION I - COVERAGES

Each of the three coverages has its own insuring agreements and exclusions.

Coverage A Bodily Injury and Property Damage Liability

1. Insuring Agreement

Read the first two sentences of part 1.a. Insuring Agreement. These sentences contain the two fundamental “promises” made by the carrier for coverage A.

Focus on the Form
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.

The two promises contained in these sentences are: the “we will pay” promise” and the “we will... defend” promise. The first promise states that the if and when the insured is found to be legally liable for covered bodily injury or property damage to a third party, the insurance company will pay the third party directly, on behalf of the insured. By “third party” we mean a person or entity other than the insured or the insurance company.
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The second promise gives the insurance company the responsibility and the right to defend the insured against lawsuits from third parties seeking payment for bodily injury or property damage to which the coverage applies.

There are three terms in quotes contained in these two sentences of the coverage form. They are given meaning under “Section V – Definitions” beginning on page 10:

**Focus on the Form**

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

Injury or damage to animals would not meet this definition. And injuries other than bodily injury, such as embarrassment or harassment, would likely not meet the definition.

**Focus on the Form**

“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.

When property of another is damaged, it is often made unusable. In that case, the third party’s loss is twofold: the damage to the property itself and the lost income normally gained from using that property. The form clarifies in this definition that the loss-of-use portion is also part of “property damage”.

In other cases, an insured’s negligence may not actually damage another’s property, but the resulting accident may make that property less usable or fully unusable. The lost income associated with this unusable property is also considered “property damage.” You will learn later that loss-of-use claims arising from undamaged (though impaired) property is excluded from CGL coverage.

**Focus on the Form**

“Suit” means a civil proceeding in which damages because of “bodily injury”, “property damage” or “personal and advertising injury” to which this insurance applies are alleged. “Suit” includes:

a. An arbitration proceeding in which such damages are claimed and to which the insured must submit or dies submit with our consent; or

b. Any other alternative dispute resolution proceeding in which such damages are claimed and to which the insured submits with our consent.

The second promise in coverage A is “we will…defend the insured against any ‘suit’”. In the definition, The form clarifies that a “suit” would include a formal lawsuit, an arbitration proceeding (a claim settlement procedure with a degree of legal formality), and an alternative dispute resolution.
(another claim settlement procedure handled outside the courtroom). Note that we will deal with “Personal and Advertising Injury” (quoted in the definition of “suit”) during the review of Coverage B.

The remainder of part 1. places limitations on these two promises. Read the rest of paragraph 1.a.

**Focus on the Form**

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. But:

1. The amount we 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.

Another term appears in quotes in the preceding section. “Occurrence” is defined on page 12 of the form as:

**Focus on the Form**

An accident, including continuous or repeated exposure to substantially the same general harmful conditions.

Here, the coverage form is clarifying that an “occurrence” need not happen all at once. For example, damage done to a neighboring business by an insured’s smokestack might take a long time to be noticed or to really create a problem. In that case, the damage from smoke could be considered as one “occurrence.”

We can also see that an “occurrence” does not have to result in a demand for damages. If an accident occurs at an insured place, the insurance company has the right to investigate the circumstances surrounding the accident, if possible before any claims are made.

Now read part sub-part (1) of 1.a. Insuring Agreement. The carrier limits the amount it will pay for damages to the applicable limit stated on the Declarations page.

In sub-part (2), the carrier puts an ending date on how long it must defend the insured (defense is the second promise). The form states that when the carrier has actually paid the applicable limit for the damages in question, the carrier has no further duty, nor the right to defend the insured.

After sub-parts (1) and (2), the form includes a statement designed to clarify that no further obligations are owed to the insured beyond those previously stated – unless they are obligations specifically described
in the Supplementary Payments provisions of Section 1, found on page 6 of your form. These supplementary payments will be discussed in more detail later.

Now look at part 1.b. of the coverage form. These are further limitations to what would be considered claims “to which this insurance applies.”

Focus on the Form
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”; and
   (2) The “bodily injury” or “property damage” occurs during the policy period.

Below, look at the Definitions section of the form to review the definition of “coverage territory.”

Focus on the Form
“Coverage territory” means
a. The United States of America (including its territories and possessions), Puerto Rico and Canada;
   b. International waters or airspace, provided the injury or damage does not occur in the course of travel or transportation to or from any place not included in a. above; or
   c. All parts of the world if:
      (1) The injury or damage arises out of
          (a) Goods or products made or sold by you in the territory described in a. above; or
          (b) The activities of a person whose home is the territory described in a. above but is away for a short time on your business; and
      (2) The insured’s responsibility to pay damages is determined in a “suit” on the merits, in a territory described in a. above or in a settlement we agree to.

That’s a long definition, but in certain cases, the carrier wants to limit its duties and obligations. Take for example a person using a product in Europe, made by a manufacturer from the U.S.. If this person were to suffer bodily injury from this product, and made a demand for damages against the manufacturer, would there be coverage under the form? In other words, did the occurrence take place in the “coverage territory”?

IMPORTANT POINT: Mexico is not always in the coverage territory of the CGL.
To answer these questions, look closely at part c. of the definition. Europe would satisfy the heading “all parts of the world”, but this part c. has two conditions - in this case, the injury must (1) arise out of product made in the US, Puerto Rico, or Canada and (2) the legal liability would have to be determined in a “suit” brought in the US, Puerto Rico, or Canada (or the carrier voluntarily settles with the injured person).

Now back to the Insuring Agreement, part 1.b.. There must be an “occurrence” which is the cause of the bodily injury or property damage; and which takes place in the “coverage territory. Subpart (2) states further that the bodily injury or property damage (but not necessarily the occurrence itself) must occur during the policy period. The policy period is stated on the Declarations page.

Part 1.c. of the Insuring Agreement clarifies what might be considered a broadening of coverage.

Focus on the Form

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

So it’s not just the injured person who can claim damages. Often, those people close to or performing services for the injured person suffer loss, too. Claims for caregiving, loss of services, or death expenses are covered assuming they result from the covered bodily injury.

This marks the end of the Insuring Agreement for Coverage A. Under this coverage, the policy “covers” claims by responding to them in one of two ways - either by settling claims directly, or by defending the insured against such claims until a court of law determines that the insured is liable. The policy can also respond under coverage A by investigating certain occurrences reported to the carrier by the insured, which have not yet resulted in a claim for damages.

Note that the defense and investigation expenses of the insurer, as well as other “supplementary payments” which we will review later, are all paid in addition, and not part of, the limit of liability.

In order for the coverage to respond in any of the ways described above, the claim being brought or the occurrence being reported must be regarding BI or PD occurring during the policy period and caused by an occurrence taking place in the coverage territory. Several important terms used in coverage A’s insuring agreement appear in quotations. Their meanings are given in Section V - Definitions.

Coverage A Exclusions

Our discussion of coverage A will continue with the exclusions which begin on page 1 of your form. There are fifteen main exclusions to Coverage A, lettered a - o.

Focus on the Form

a. Expected Or Intended Injury
(This insurance does not apply to) “Bodily injury” or “property damage” expected or intended from the standpoint of the insured. This exclusion does not apply to “bodily injury” resulting from the use of reasonable force to protect persons or property.
We know from the review of the insuring agreement that coverage A responds to certain accidents. Therefore, there is no coverage when the insured intended something to result in BI or PD to others. Note that this exclusion has an exception (and therefore coverage would apply) for one particular scenario when the insured may intend to cause BI. That exception is when the insured, in an attempt to protect people or property, uses “reasonable force” caused the alleged BI. The true meaning of “reasonable force” would depend on the circumstances.

**Focus on the Form**

*a. Contractual Liability*

(This insurance does not apply to) “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 portion of the exclusion refers to any contract, written or not, in which the insured assumed the liability of another party. Take a simple construction contract for example. Owner O wants contractor C to build a structure on O’s land. In order to win this job, the contractor agrees to assume the liability of the landowner in the event somebody should suffer BI or PD on O’s land. Thus if a passerby sustained BI on this property and made a claim against O, contractor C would have “take” O’s responsibility, and would have to deal with the injured party - even if the BI was due to the fault of owner O! Under a CGL policy, there may be no protection under coverage A for the contractor, as discussed below.

There are two exceptions to exclusion b.:

**Focus on the Form**

...This exclusion does not apply to damages:

(1) That the insured would have in the absence of the contract of agreement; or...

In other words, using the above example, if the contractor were held to be liable for the BI to the passerby (this would represent liability the contractor had, with or without the contract with owner O), coverage A would respond.

The other exception to exclusion b. is:

**Focus on the Form**

(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.

This exception refers to agreements made before the accident occurred, and only for certain agreements defined on page 11 of the form as “insured contracts”. In simplified language, “insured contracts” include:

1. Contracts for lease of premises;
2. Sidetrack agreements (for sidings or spurs of rail off main rail lines);
3. Easement or license agreements;
4. Obligations required by local ordinance to indemnify a municipality (except in connection with actual work done for that municipality);
5. Elevator maintenance agreements; and,
6. Other contracts pertaining to the insured’s business under which the insured assumes liability (of another) that would be imposed by law in absence of the contract.

Note that the definition of an “insured contract” specifically excludes certain parts of contracts that might otherwise be insured:

1. Contract provisions which indemnify (that it, assumes the liability for) a railroad for BI or PD that arises out of construction or demolition operations that affect railroad bridges, trestles, tracks, tunnels, underpasses, crossings or road-beds if those operations are within 50 feet of any railroad property; and
2. Contract provisions which indemnify architects, engineers, or surveyors for any injury or damage arising out of their professional work; or
3. If the insured itself is an architect, engineer, or surveyor, contract provisions in which the insured assumes liability for any injury or damage arising out of the insured’s rendering or failure to render professional services.

There are special liability policies available that provide liability protection when railroads are involved, and other liability policies to cover professional exposures.

Let’s go back to exclusion b. contractual liability, under part 2. Read the second sentence including the two sub-parts:

Focus on the Form
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” (and therefore would qualify as coverage “to which the insurance applies”) 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.

This second sentence of part (2) of exclusion b. contractual liability is a very technical one. It broadens coverage for the party whose liability the insured assumed in the “insured contract” by providing defense expenses, directly for the other party, as long as the conditions in sub-parts (a) and (b) are met.

We’ll move on to exclusion c. Liquor Liability:
Focus on the Form
(This insurance does not apply to) “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;

The exclusion continues with a very important condition:

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

Those insureds who are in the alcohol business have no coverage for claims for BI or PD due to parts (1), (2), or (3) above under the CGL. To cover this exposure, they can apply for a separate “Liquor Liability” policy.

The next two exclusions pertain to claims brought by employees. Read exclusion d. Workers’ Compensation and Similar Laws:

Focus on the Form
(This insurance does not apply to) Any obligation of the insured under a Workers’ Compensation, disability benefits or unemployment compensation law or any similar law.

The reason for this exclusion is quite simple: employers are usually required to arrange for worker’s compensation insurance for their employees. Claims made by employees for at-work injuries are more properly handled by worker’s compensation policies. The exclusion also applies to claims for which the employee can collect under a disability or unemployment compensation policy.

Read exclusion e. Employer’s Liability. sub-parts (1) and (2):

Focus on the Form
(This insurance does not apply to) “Bodily injury” to:

(1) An “employee” of the insured arising out of and in the course of:

(a) Employment by the insured; or

(b) Performing duties related to the conduct of the insured’s business; or
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(1) The spouse, child, parent, brother or sister of that “employee” as a consequence of Paragraph (1) above.

Refer to the Section V of your policy and read the definition of “employee”.

§ Focus on the Form
5. “Employee” includes a “leased worker”. “Employee” does not include a “temporary worker”.

Review the definitions of the two quoted terms in the “employee” definition:

§ Focus on the Form
10. “Leased worker” means a person leased to you by a labor leasing firm under an agreement between you and the labor leasing firm, to perform duties related to the conduct of your business. “Leased worker” does not include a “temporary worker”.

19. “Temporary worker” means a person who is furnished to you to substitute for a permanent “employee” on leave or to meet seasonal of short-term workload conditions.

The rationale for including “leased workers” as but not “temporary workers” as “employees” is that when employees are leased from a leasing company, it is often for a longer period, using workers who are more skilled. In contrast, workers brought on as “temporary workers” are usually done so on an “as needed” basis without the formalities of a leasing arrangement.

IMPORTANT POINT: Under this wording of the exclusion, claims brought by “temporary workers” under the CGL for BI would not be excluded, but those brought by “leased workers” would be excluded.

Exclusion e. is similar to exclusion d. in that it refers specifically to claims by employees for at-work injuries. Since some claims by employees for at-work injuries are brought outside the given worker’s compensation laws (and sometimes by members of the employee’s family), the CGL broadened the employee-type exclusions.

Note that claims by for at-work injuries brought by employees outside worker’s compensation laws (such as those lawsuits by employees seeking large awards under common law) are more properly handled by available “Employer’s Liability” coverage.

Now read the latter portion of exclusion e. Employer’s Liability:

§ Focus on the Form
This exclusion applies:

(1) Whether the insured may be liable as an employer or in any other capacity; and
(2) To any obligation to share damages with or repay someone else who must pay damages because of the injury.

This exclusion does not apply to liability assumed by the insured under an “insured contract”.

This is language intended to clarify and hence broaden the exclusion for employee-type claims. With the exception of obligations to share in the payment of damages with another party under an “insured contract” (discussed earlier), the CGL will exclude BI claims brought by employees for at-work injuries, regardless of how or in what capacity the insured is alleged to be liable.

The next exclusion, f. Pollution is the longest exclusion in the policy. It is also the reason for many updates in the CGL over the years. As the CGL has evolved, it has attempted exclude practically any claims for alleged pollution by an insured. The term “pollution” is never defined. But under sub-part (1), it can be inferred that “pollution” refers to:

**© Focus on the Form**

“Bodily injury” or “property damage” arising out of the actual, alleged or threatened discharge, dispersal, seepage, migration, release or escape of “pollutant”...

In the Definitions section, “pollutants” means:

**© Focus on the Form**

... any solid, liquid, gaseous or thermal irritant or contaminant, including smoke, vapor, soot, fumes, acids, alkalis, chemical and waste. Waste includes materials to be recycled, reconditioned or reclaimed.

Without going further into the wording of the pollution exclusion, it is already clear that the CGL intends to exclude virtually all types of environmental pollution. The reason for this exclusion is the same as for other exclusions – coverage is more properly handled by more specific liability policies. These policies are often known broadly as “environmental liability” forms.

A few exceptions to the pollution exclusion (and therefore the insurance applies) are worth noting:

1. BI or PD that arises from the non-intentional escape of fluids (“pollutants” or otherwise) which make certain machinery operable is not excluded.

2. BI or PD in a building, caused by the release of gases, fumes or vapors from jobsite-related building materials are not excluded.

3. BI or PD caused by heat, smoke, or fumes from a fire.

The next exclusion, g. Aircraft, Auto or Watercraft is quite direct. The intent is to shift coverage to more specific aircraft liability, automobile liability, or watercraft liability policies.
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Focus on the Form
(This insurance does not apply to) “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 to or loaned to any insured. Use includes operation and “loading or unloading”.

Evidently, the terms “aircraft” and “watercraft” are self-explanatory. The term “auto” is more ambiguous. Referring to the Definitions section, “auto” means:

Focus on the Form
... a land motor vehicle, trailer or semi trailer designed for travel on public roads, including any attached machinery or equipment. But “auto” does not include “mobile equipment”.

The definition of “mobile equipment” will be discussed in the next exclusion. In the Overview at the beginning of this course, “mobile equipment” was noted as including vehicles such as bulldozers and cranes.

Exclusion g. excludes operation and “loading and unloading” of autos, aircraft, or watercraft. This term “loading and unloading” is defined as:

Focus on the Form
... the handling of property:

a. After it is moved from the place where it is accepted for movement into or onto an aircraft, watercraft or “auto”;

b. While it is in or on an aircraft, watercraft, or “auto”; or

c. While it is being moved from an aircraft, watercraft, or “auto” to the place where it is finally delivered;

but “loading and unloading” does not include the movement of property by means of a mechanical device, other than a hand truck, that is not attached to the aircraft, watercraft or “auto”.

Coverage for BI or PD during these excluded times is more properly covered under an automobile, watercraft, or aircraft liability policy. Coverage under these policies can usually be extended to when property is being loaded or unloaded from these vehicles.

Note that under the CGL policy, coverage does apply prior to the movement of property, and after the property has been delivered and finally set. There is also coverage when property is being moved by any mechanical device other than a dolly or hand truck, such as a forklift.
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Please read the five exceptions to exclusion g. You will note that BI or PD arising out of watercraft is covered as long as (1) while ashore on insured-owned or rented premises, or (2) it is not owned by the insured, is less than 26 feet long, and is not being used as a cargo vessel or ferry.

There are also limited exceptions to the exclusion of autos. BI or PD arising out of autos is covered when being parked on or next to insured-owned or rented premises, as long as those autos aren’t owned, rented to, or loaned to the insured.

The next exclusion is h. Mobile Equipment, and due to its wording, can be confusing:

**Focus on the Form**
(This insurance does not apply to) “Bodily injury” or “property damage” arising out of:

(1) The transportation of “mobile equipment” by an “auto” owned or operated by or rented or loaned to any insured; or

(2) The use of “mobile equipment” in, or while in practice for, or while being prepared for, any prearranged racing, speed, demolition, or stunting activity.

At a glance, it might appear that this exclusion takes away CGL coverage for mobile equipment itself. But note that coverage is excluded only when mobile equipment is being transported by an auto or when being readied for or engaging racing or similar activities. BI or PD arising out of mobile equipment is covered at all other times.

The next exclusion is i. War. The exclusion expands upon what constitutes a “war”. Importantly, the exclusion applies only to contractual, that is assumed liability (whether or not the contract was an “insured contract”).

**Focus on the Form**
(This insurance does not apply to) “Bodily injury” or “property damage” due to war, whether or not declared, or any act of condition incident to war. War includes civil war, insurrection, rebellion or revolution. This exclusion applies only to liability assumed under a contract or agreement.

The next three exclusions deal only with property damage. They are intended either to shift the risk to a property insurance policy, or to encourage insureds to use care in their work or in their product design.

Exclusion j. Damage to Property has six sub-parts, with exceptions to each. First read the six sub-parts:

**Focus on the Form**
(This insurance does not apply to) “Property damage” to:

(1) Property you own, rent, or occupy;
30

(2) Premises you sell, give away or abandon, if the “property damage” arises out of any part of those premises;

(3) Property loaned to you;

(4) Personal property in the care, custody or control of the insured;

(5) That particular part of real property on which you or any contractors or subcontractors working directly or indirectly on your behalf are performing operations, if the “property damage” arises out of those operations; or

(6) That particular part of any property that must be restored, repaired or replace because “your work” was incorrectly performed on it.

Notice especially in the first four sub-parts that property insurance coverage could be arranged for any of the items for which PD is being excluded. For example, the property noted in sub-part (1) could be covered by building or contents coverage; in sub-part (2), the new owner of the property (in the case of property sold or given away by the insured) could arrange for property insurance; in sub-parts (3) and (4), the actual owner may have property coverage on the property loaned to or in the custody of the insured.

Parts (5) is intended to motivate insureds to use utmost care in their work. For example, imagine a contractor who is installing kitchen cabinets above a countertop. The “particular part of real property” on which the insured is “performing operations” would be the homeowner’s kitchen walls. If the partially-installed cabinets were to come off the wall while the insured (or its hired contractor) was still there working, there would be no coverage for the damage to the wall.

Part (6) is similar to (5), although it extends the “particular part” exclusion to any property, not just real property. For example, if a plumber were working on a kitchen sink faucet, and damaged it in the process, there would be no coverage for the faucet.

In addition, sub-part (6) introduces the term “your work” which is defined as:

*Focus on the Form*

“Your work” means:

a. Work or operations performed by you or on your behalf; and

b. Materials, parts or equipment furnished in connection with such work or operations;

“Your work” includes:

a. Warranties or representations made at any time with respect to the fitness, quality, durability, performance or use of “your work”; and

b. The providing of or failure to provide warnings or instructions.
Now move on to exclusion k. Damage To Your Product:

**Focus on the Form**
(This exclusion does not apply to) “Property damage” to “your product” arising out of it or any part of it.

For example, an insured sells ironing boards. A customer bought one, set it up at home, and began to use it. A moment later, the board collapsed because of a failed latch, damaging the board and the iron. The customer made a claim against the seller for the ironing board and the iron. Whereas there may be coverage for the damage to the iron (assuming it was not a product sold by the insured), the damage to the ironing board would be excluded because of k.

In the definitions section, you will note that “your product” includes goods or services made, sold, handled, distributed, or disposed by the insured and others trading under its name. As in the definition of “your work”, “your product” includes warranties and warnings.

Exclusion l. Damage to Your Work is similar to k., but it applies to insureds who do “work” as opposed to selling or making “product”:

**Focus on the Form**
(This insurance does not apply to) “Property damage” to “your work” arising out of it or any part of it and included within the “products-completed operations hazard”.

This exclusion does not apply if the damaged work or the work out of which the damage arises was performed on your behalf by a sub-contractor.

The definition for “products-completed operations hazard” is given on page 12 of your sample policy. The purpose is to distinguish current, ongoing, or present operations from those that are finished. Note that things still in the possession of the insured are not part of the “products-completed operations hazard”.

Think back to the insured installing the kitchen cabinets. The installation project would be considered the insured’s “work”. And once the project was completed (that is, all of the work in the contract was finished), the project would be fall under the “products-completed operations hazard”. Therefore, if the cabinets fell off the wall a week later, there would be no PD coverage for the damage to the cabinets. However, the damage to the kitchen wall would be covered in this instance, due to the exception to sub-part (6) of exclusion j.:

**Focus on the Form**
Paragraph (6) of this exclusion does not apply to “property damage” included in the “products-completed operations hazard”.

The next exclusion concerns “impaired property” which is defined as:
Focus on the Form

... tangible property, other than “your product” or “your work”, that cannot be used or is less useful because:

a. It incorporates “your product” or “your work” that is known or thought to be defective, deficient, inadequate or dangerous; or

b. You have failed to fulfill the terms of a contract or agreement;

if such property can be restored to use by:

a. The repair, replacement, adjustment or removal of “your product” or “your work”; or

b. Your fulfilling the terms of the contract or agreement.

The exclusion is m. Damage To Impaired Property Or Property Not Physically Injured:

Focus on the Form

(This insurance does not apply to) “Property damage” to “impaired property” or property that has not been physically injured, arising out of:

(1) A defect, deficiency, inadequacy, or dangerous condition in “your product” or “your work”; or

(2) A delay or failure by you or anyone acting on your behalf to perform a contract or agreement in accordance with its terms.

This exclusion does not apply to the loss of use of other property arising out of sudden and accidental physical injury to “your product” or “your work” after it has been put to its intended use.

For example, imagine an assembly line consisting of ten machines, numbered 1 through 10. The goods being manufactured must go through each machine in order. A repair firm with CGL coverage is hired to come in to repair machine 6.

If the repair firm performed faulty work, or failed to complete the repair when it said it would, the entire assembly line would be inoperable. Machines 1 through 5 and 7 through 10 would be considered “impaired property” since they have not been damaged at all, but due to the faulty or slow work by the insured, they cannot be used. The manufacturer will suffer a financial loss because of the downtime of the entire assembly line. Exclusion m. would specifically exclude a claim for this loss filed against the repair firm.
The next exclusion also concerns property which is not actually damaged. It is exclusion n. Recall Of Products, Work Or Impaired Property:

**Focus on the Form**
(This insurance does not apply to) Damages claimed for any loss, cost or expense incurred by you or others for the loss of use, withdrawal, recall, inspection, repair, replacement, adjustment, removal or disposal of:

1. “Your product”;
2. “Your work”; or
3. “Impaired property”;

if such product, work, or property is withdrawn or recalled from the market or from use by any person or organization because of a known or suspected defect, deficiency, inadequacy or dangerous condition in it.

We've all heard of automobile makers recalling certain models for defects or safety concerns. And several years ago, a large drug company recalled all bottles of a particular brand because of suspected tampering in a case that gained national attention. Exclusion n. takes away coverage for the expenses incurred to conduct these recalls.

The last exclusion purposely shifts coverage for “personal and advertising injury” to coverage B. which will be discussed next.

One final paragraph appears in coverage A without any heading. It is an exception to all but the first two exclusions, in regards to premises rented to or temporarily occupied by the insured:

**Focus on the Form**
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.

Look on the declarations page of your sample policy under “Damage to Premises Rented To You” to see the special limit given for this exception.

This concludes the discussion of exclusions to coverage A. You may be wondering what is left that IS covered! Remember that the insuring agreements (to defend and to indemnify the insured... against claims for damages because of BI or PD... to which this insurance applies) are quite broad. As a result, specific situations which are not insurable or which are better insured elsewhere must be individually, and hopefully clearly, spelled out in the exclusions.

**Coverage B Personal and Advertising Injury Liability**

**Insuring Agreement**
Paragraph 1a. of the insuring agreement is written exactly like that of coverage A, except that the term “personal and advertising injury” is now substituted for “bodily injury and property damage”:

¶ Focus on the Form
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.

This coverage B contains the same two promises as coverage A – namely, the insurer’s promise “to pay those sums that the insured becomes liable to pay…” (that is, to indemnify the insured) and “to defend the insured against any suit” for damages because of “personal and advertising injury” (P and AI).

Referring to Section V Definitions, “personal and advertising injury” means:

¶ Focus on the Form
… 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 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 of material that violates a person’s right of privacy;

f. The use of another’s advertising idea in your “advertisement”; or
In previous editions of the CGL coverage form, “personal injury” (PI) was separated from “advertising injury” (AI). For simplification, the two were combined for the current edition. Notice that parts a, b, and c. of the definition above seem to be more PI-related; whereas parts d through g are more AI-related.

There are two references in the definition of PI and AI to “advertisement”. This term is defined as:

¶ Focus on the Form
... a notice that is broadcast or published to the general public or specific market segments about your goods, products or services for the purpose of attracting customers or supporters.

Under the sub-parts of paragraph 1.a., the Limits of Insurance section will again state the maximum amount the insurer will pay for damages. And as in coverage A, the insurer’s duty to defend the insured will end when they have actually paid the maximum amount for judgments or settlements.

Paragraph 1.b. places time and geographic limitations on the insuring agreement:

¶ Focus on the Form
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.

Coverage B Exclusions

There are twelve in all, with the last three dealing with “pollutants”.

¶ Focus on the Form
(1) 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”.

This is an intentional-acts exclusion. Losses of this type would not be accidental and therefore would be uninsurable.

¶ Focus on the Form
(2) Arising out of oral or written publication of material, if done by or at the direction of the insured with knowledge of its falsity.

This is another intentional-acts exclusion, relating mainly to part d. of the P and AI definition. Since libel (a false statement bringing discredit to a person or thing) and slander (a malicious, false utterance the damage’s a person’s reputation) are covered offenses, there would be no coverage if the insured knew that its oral or written publications were false.

Exclusion a.(3) is in regards to when an offense occurs:
Focus on the Form
(3) Arising out of oral or written publication of material whose first publication took place before the beginning of the policy period.

Similar to coverage A, the intent of coverage B is to respond to events which occur during the policy period. In this case, the “first publication of material” represents the time the event occurs. An event which qualifies as P and AI must occur during the policy period to trigger coverage.

Focus on the Form
(4) Arising out of a criminal act committed by or at the direction of the insured.

Criminal acts are rarely if ever insurable. This exclusion is clear and unambiguous.

The next exclusion is for contractual liability, which was also excluded by coverage A. However, coverage A made an exception to the exclusion (thereby granting coverage) for “insured contracts”. Coverage B makes no such exception:

Focus on the Form
(5) For which the insured has assumed liability in a contract or agreement. This exclusion does not apply to liability for damages that the insured would have in the absence of the contract or agreement.

Exclusion (6) relates to breaches on contract, except for breaches of implied contracts to use advertising ideas of others:

Focus on the Form
(6) Arising out of a breach of contract, except an implied contract to use another’s advertising idea in your “advertisement”.

Let’s look at an example of an event that would be covered under the exception noted above. A retail store agrees with a clothing supplier that it will get prior approval from the supplier before doing any advertising of those goods, and that those ads will maintain the high-class image developed by the supplier. Soon afterward, a new employee in the retail store’s marketing department hastily puts together an ad calling this line of clothing “deeply discounted.” The ad is placed in the local newspaper without asking for approval from the supplier.

If the supplier were to bring legal action against the retail store alleging breach of (an implied) contract, and the damages claimed met the overall definition of P and AI, there would be coverage under B.

Exclusions (7) and (8) clarify the definition of AI:

Focus on the Form
(7) Arising out of the failure of good, products or services to conform with any statement of quality or performance made in your “advertisement”;

Focus on the Form
(8) Arising out of the publication of material which infringes on the copyright of another (copyright infringement).
(8) Arising out of the wrong description of the price of goods, products or services stated in your “advertisement”.

The next exclusion is similar in some respects to the Liquor Liability exclusion in coverage A. It takes away the AI portion of the coverage for insureds who are in the advertising business. Coverage remains for advertising businesses, however for the PI-type offenses:

apeutic Focus on the Form
(9) Committed by an insured whose business is advertising, broadcasting, publishing or telecasting. However, this exclusion does not apply to Paragraphs 14.a.,b. and c. of “personal and advertising injury” under the Definitions Section.

The last three exclusions of coverage B regard pollution exposures.

*IMPORTANT POINT:* The CGL intends to exclude virtually all types of pollution. Businesses that have such exposures should consider applying for more specific pollution liability coverage.

Focus on the Form
(10) Arising out of the actual, alleged or threatened discharge, dispersal, seepage, migration, release of escape of “pollutants” at any time.

(This insurance does not apply to) b. Any loss, cost or expense arising out of any:

(1) Request, demand or order 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”.

Those three exclusions certainly seem sufficiently clear, don’t they? Even though the definition of P and AI would not seem to offer anything suggestive of pollution coverage, the authors wanted to leave no room for ambiguity.

Coverage C Medical Payments

Sometimes referred to as Medpay, this coverage is designed to minimize the cost of responding to accidents causing BI by paying for emergency-medical expenses to certain people injured on or next to the insured’s premises, whether or not the insured is (or is alleged to be) at fault.

Insuring Agreement

There is basically just one promise made in the insuring agreement. Read all portions of part 1.a:
Focus on the Form

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.

These points are relatively straightforward. Note the control that the insurer retains under the second part (3) above. This provision is to cut down on fraudulent claims.

Next read part b. of the insuring agreement, which adds more detail to the promise made in part a. and describes the types of medical and related expenses payable under Medical Payments:

Focus on the Form

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.

The fundamental difference between Medical Payments coverage and Coverages A and B is that neither fault, responsibility, nor legal liability are considered under Medical Payments. It is intended to be an immediate response coverage, allowing the insured to promptly react to slips, falls, and similar accidents on its premises.

Now look at the first three exclusions:
Focus on the Form

We will not pay expenses for “bodily injury”:

a. To any insured

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

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

Coverage is not provided to the insured or any of its employees, or to a tenant or boarder, or for anyone working on the premises that was hired by the insured. Medical Payments coverage is intended for third parties – guests, customers, friends, and the like.

Read the next two exclusions:

Focus on the Form

d. 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 law or similar law.

e. To a person injured while taking part in athletics.

Under exclusion d., virtually any worker who is on the premises, whether hired by the insured or not, would be excluded from coverage, as most people are legally entitled to workers’ compensation coverage from their employer. Thus a salesperson on a sales call to the insured would most likely be ineligible for Medical Payments coverage if they hurt themselves on the insured’s premises.

Medical Payments coverage is not intended to be a sports injury coverage. Athletic participants are broadly excluded from coverage. There is some ambiguity in this exclusion: if a person wanders onto the insured’s property kicking a soccer ball around, would this be considered “taking part in athletics?”

There are three more exclusions under Medical Payments coverage:

Focus on the Form

f. Included within the “products-completed operations hazard”.

g. Excluded under Coverage A.

h. Due to war, whether or not declared, or any act or condition incident to war. War included civil war, insurrection, rebellion or revolution.

By excluding Medical Payments under the products-completed operations hazard, persons injured by the insured’s products or work would have to demonstrate legal liability of the insured for that injury, and attempt to collect under Coverage A.
Excluding coverage for any claims under Coverage A is a simple way for the policy to define the parameters of Medical payments coverage in general – that is, to agree with the overall insuring agreement of Coverage A. No coverage will apply to things like auto accidents, intentional injuries, etc.

Finally, no coverage is provided under Medical Payments when caused by war. War hazards are considered uninsurable, due to the catastrophic potential for massive claims under those conditions. Rarely will insurance policies cover the “war risk.”

Supplementary Payments - Coverages A and B

This section of the policy describes payments the insurer will make in addition to the limits of liability shown on the declarations. These payments arise when a claim is made against an insured are divided into two sections: the first section applies to expenses incurred when defending the insured; the second section is for expenses to defend a party whom the insured is required to defend, because of some contract the insured had with that other party.

When claims are made against an insured, they will usually involve a lawsuit. Sometimes disputes are handled outside of the courts, in forms known as arbitration or other “alternative dispute resolutions.”

Since such actions trigger the need for Supplementary Payments, let’s review the policy definition for “suit”:

*Focus on the Form*
“Suit” means a civil proceeding in which damages because of “bodily injury”, “property damage” of “personal and advertising injury” to which this insurance applies are alleged. “Suit” includes:

a. An arbitration proceeding in which such damages are claimed and to which the insured must submit or does submit with our consent; or

b. Any other alternative dispute resolution proceeding in which such damages are claimed and to which the insured submits with our consent.

Now read the first heading and the first three paragraphs of Supplementary Payments:

*Focus on the Form*

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.
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c. The cost of bonds to release attachments, but only for bond amounts within the applicable limits of insurance. We do not have to furnish these bonds.

Paragraph A. makes it clear that all investigation and legal expenses, including those costs to settle a claim voluntarily (outside of the settlement amount itself) will be borne by the carrier, without limitation.

Part B refers to bonds to bail out an insured who may be put in jail as a result of an accident involving mobile equipment, which you will recall is covered under CGL. The policy will pay up to $250 for the bond premium, but there is no obligation for the carrier to actually arrange for the bond.

Paragraph C is relevant when an asset of the insured has been “attached” by a court of law as a result of a legal proceeding. Bonds can be purchased to release such attachments. In this case, the bond premium would be paid by the insurer, but only for bond amounts up to the limit of liability stated in the declarations. Once again, it would be up to the insured to arrange for the bond.

Now move on to the next two parts of Supplementary Payments:

*Focus on the Form*

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”.

It is the obligation of the insurer to take over a claim or suit made against the insured. Often the carrier will request the assistance of the insured to proceed. In these cases, the insured will likely incur some expenses for travel, meals, etc. These expenses will be reimbursed by the insurer, plus an additional $250 per day for lost work time.

The last two paragraphs of part 1. of Supplementary Payments regard interest that may accrue from the time a court renders a verdict until the amount is actually paid to the plaintiff. Delays can be caused by appeals on the verdict, or by counteroffers of settlement made by the carrier before of during an actual court proceeding. Under most conditions, this interest will be paid by the insurer. Read paragraphs f. and g.:

*Focus on the Form*

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.

The final sentence of this part 1. clarifies that Supplementary Payments are made in addition to limits of liability stated in the declarations:

41
Part 2 of Supplementary Payments regards persons other than the insured, known as “indemnitees.” Indemnitees are parties that the insured has agreed in a business contract to protect (that is, to assume that other party’s liability). Under certain conditions, the insurance company will take on the insured’s contractual responsibility to protect these other parties, in the event of a suit that first involves the named insured.

These are highly specific and technical situations. Rather than trying to interpret each paragraph of this Part 2, a general description of this protection will be given to the reader.

The carrier will defend, at its own cost, an indemnitee of the insured if:
- there is a contract in which the insured assumed the liability of the indemnitee;
- that assumed liability is the type covered under Coverage A or B;
- the contract containing the assumption of liability also obligates the insured to defend to indemnitee;
- there isn’t a conflict in the claim at hand between the insured and the indemnitee;
- both the indemnitee and the insured allow the insurance company to control the defense of the suit using the same lawyers for both parties; AND
- the indemnitee cooperates fully with the insurance company before and during the legal proceedings.

SECTION II – WHO IS AN INSURED

This section of the policy clarifies which parties will receive protection granted by the insuring agreements of coverages A, B, and C. The legal type of business (sole proprietorship, partnership, corporations, etc) will largely determine who is covered. Employees under most conditions will also be insured.

Read part 1. of Section II and note that certain individuals will be covered for claims made against them, depending on the form of business that is designated, or checked, on the CGL declarations page:

- For sole proprietorships (individuals in business), the person named on the declarations and their spouse are covered – but only for their business activities;

- For partnerships and joint ventures, the partnership, it members, partners, and their spouses are covered – but again only for their business activities;

- In limited liability companies (LLC’s), the LLC itself and the “members” (owners) are covered, as well as managers in the LLC for their management responsibilities;

- For all other types of organizations (corporations, whether for-profit or non-profit), the company itself is covered, as well as executive officers, directors, and stockholders within their corporate capacities.
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The second part of Section II Who Is An Insured adds employees as insureds within the scope of their employment, real estate managers of the insured, and legal heirs to the insured’s property in the case of the insured dying.

Regarding employees as insureds, there are several important limitations. One set takes away coverage for employees when certain others are injured (allegedly due to the negligence of the employee):

♀ Focus on the Form

... None of these “employees is an insured for:

(I) “Bodily injury” of “personal and advertising injury”:

  a. to you, to your partners, or members... or to a co-“employee” while that co-
     “employee” is either in the course of his or her employment...

  b. to the spouse, child, parent, brother of sister of that co-“employee” as a
     consequence of
     (I) 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 (a) or (b) above; or

  d. arising out of his or her providing or failing to provide professional health care
     services.

The second set of limitations excludes employees as insureds for property damage to the insureds or any employee’s own property, and for property damage property in the insured’s or any employee’s control.

♀ Focus on the Form

(No one of these “employees“ is an insured for):

(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”, or any partner or
     member.

The Who Is An Insured section continues by adding coverage for anyone driving the insured’s mobile equipment along a highway with the insured’s permission, for BI or PD which may occur to others.

Lastly, new sole proprietorships and corporations created by the insured, or those existing companies in which the insured buys at least a majority interest of, are automatically covered as Named Insureds if there is no other existing CGL insurance. This coverage lasts only 90 days from the date of creation or
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There is NO coverage for accidents or offenses occurring before the date the insured acquired or formed the new company.

SECTION III - LIMITS OF INSURANCE

This section clarifies how the limits of liability shown on the CGL declarations will operate. You will note that there are six different limits:

- the Each Occurrence Limit is the most that will be paid (for judgments and settlements) for any one accident (regardless of the number of plaintiffs) under Coverage A;
- the Medical Expense Limit is the most that will be paid for all medical expenses to any one person because of BI;
- the Damage to Premises Rented to You Limit represents the maximum amount payable for all PD under Coverage A to any one premises while rented to the insured, OR for fire damage to any one premises temporarily occupied by the insured with permission of the owner;
- the Personal and Advertising Injury Limit is the most the insurer will pay for Coverage B damages claimed by any one person or organization (regardless of the number of offenses);
- the General Aggregate Limit is the maximum payable in any one policy period (or 12 month period, whichever is less) for the all of above claims;
- the Products-Completed Operations Aggregate Limit is the maximum payable in any one policy period (or 12 month period, whichever is less) for all BI and PD (regardless of the number of accidents) included within the “products-completed operations hazard”. Note that the Each Occurrence Limit will still operate here for any one accident within this hazard.

The two Aggregate Limits serve to limit the maximum dollar exposure the insurance carrier would face in any one policy term of 12 months or less. Each paid claim will reduce one of the Aggregate Limits by the amount paid. If the aggregate limits are exhausted, the insurer will have no further obligations (for either defense or indemnity) under the policy.

SECTION IV - CGL CONDITIONS

Insurance conditions specify the rights and obligations of both the insured and the insurance company in providing the protection under the policy.

Provisions are made for circumstances which commonly arise in claim situations. There are nine separate conditions listed in the CGL coverage form.

Focus on the Form

1. Bankruptcy

Bankruptcy of insolvency of the insured or of the insured’s estate will not relieve us of our obligations under this Coverage Part.
This condition is self-explanatory.

The next condition is perhaps the most important from the insured’s standpoint. Failure of the insured to comply with this condition could jeopardize coverage:

**Focus on the Form**

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 of damage arising out of the “occurrence” of offense.

Under this condition, the insured must use its judgment to report to the insurance company any accident which might result in a covered claim. The insured is not supposed to just sit back and wait for a lawsuit to appear after an accident. This condition will give the insurance carrier a chance to investigate the accident while memories are fresh – and may indeed reduce the amount needed to resolve the BI or PD resulting from the accident.

**Focus on the Form**

b. If a claim is made or “suit” is brought against and 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.

Here, the insured has received an express complaint from a party alleging the insured’s negligence or other covered offense.

Part C. of this condition 2 goes on to stipulate the insured must cooperate with the carrier in the defense and investigation of any claim of suit, and send copies of all relevant documents to the carrier.

Now read part D.
Focus on the Form
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.

The logic here is since the carrier has the obligation to provide defense and indemnity for covered claims, it wants full control over the process. If any insured admits liability or volunteers a payment in settlement of a claim, the carrier will have lost that control. Such admission or settlement by the insured is therefore prohibited under the policy.

The next condition concerns legal actions against the insurance company:

Focus on the Form
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 the Coverage Part unless all of its terms have been fully complied with.

As stated earlier, the insurer wants to retain control over legal proceedings regarding the policy. Other parties wanting to go after the insured are on their own. And any party, including the insured itself, must fully comply with all conditions and other terms of the policy before suing the insurance company.

What about times when there is more than one policy potentially covering a claim made against the insured? Like most insurance coverages, the CGL contains an “Other Insurance” clause to address these situations. The clause in the CGL Coverage Part basically states any other insurance that is available to the insured will be the primary coverage, and the CGL coverage will act as excess coverage over the other policies. In some instances, both policies will be written as the “primary” coverage. When that occurs, each policy will pay its proportionate share of the claim costs.

Read condition 4, Other Insurance.

Condition 5, Premium Audit, gives the insurer the right to conduct an audit of accounting items deemed relevant to the premium charges on the policy. Premiums for many CGL insured are based upon sales, payroll, contract costs, and other figures. In these cases, an insured usually pays a “deposit” premium based upon their estimate sales or payroll, etc. At the end of the policy term, the carrier will ascertain the actual figures for the term, and will adjust the premium accordingly.

This condition also requires the Named Insured to keep records of the information which is needed for premium computation, and to send to the insurer this information upon request.

The sixth condition is a declaration of good faith to be accepted and agreed upon by the insured:

Focus on the Form
5. 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
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We have issued this policy in reliance upon your representations.

Wording the condition in this manner would potentially give the insurance company legal standing to void coverage if it is discovered that there was some misrepresentation on the part of the insured.

The next condition clarifies that any insured under the policy (the Named Insured or other parties that qualify as insureds) has full rights under the policy, and the insurer has the responsibility to protect each insured as if they were the only insured. However, the previously discussed limits of liability (especially the aggregate limits) are not given separately to each insured.

Focus on the Form

6. Separation Of Insureds

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

Condition 8 is commonly referred to as the “subrogation” condition. The idea is that since the insurer took the insured’s risk of being blamed or accused of certain injuries, damage, and offenses to others, it also should take the insured’s right to go after, or collect from, parties who may be ultimately liable for these sums.

For example, take two firms, A and B, which participated in making a product that caused injury to someone. Company A had CGL coverage and it was the only party sued by the injured person. If the CGL insurer paid for the injuries (on behalf of company A), it would have the right to go after company B. Note that if company A never had CGL coverage, and it paid for the injuries itself, company A would have the right to try to collect from company B. To the extent B was actually liable for the injuries, the insurer could collect from B the amount it originally paid the injured person on behalf of its insured, company A.

Focus on the Form

7. Transfer Of Rights Of Recovery Against Others To Us

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.

The final condition requires the insurer to give adequate notice to the insured if they would be unwilling to renew the policy at the expiration date:

Focus on the Form

8. When We Do Not Renew
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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 nonrenewal not less than 30 days before the expiration date.

If notice is mailed, proof of mailing will be sufficient proof of notice.

How do businesses protect themselves financially from these unforeseen and potentially very expensive demands? One method, using a risk management technique known as risk transfer, is to purchase Commercial General Liability coverage. The Commercial General Liability (CGL) policy developed by the Insurance Service Office is designed to cover the costs of responding to demands made by certain parties as compensation for their alleged bodily injuries or property damage.
Chapter Four – Review Questions

1. Covered damages in Coverage A include (allegations of) all of the following EXCEPT:
   A. bodily injury
   B. property damage
   C. patent infringement
   D. loss of services because of bodily injury

2. Which of the following is the truest statement about pollution liability coverage under the CGL?
   A. almost all pollution liability claims would be covered.
   B. the coverage is very broad and is intended for the worst polluters.
   C. if the claimant can prove the insured’s negligence in causing the pollution, the claim will be covered.
   D. the CGL intends to exclude virtually all types of pollution.

3. There is an exception to the exclusion regarding autos, and therefore there is coverage under the CGL when:
   A. the autos are used exclusively by employees, with permission
   B. the autos are not owned by the insured
   C. the autos are driven by executives
   D. the autos are being parked on or next to insured-owned premises

4. Why does Coverage A of the CGL exclude Personal and Advertising injury?
   A. because these risks are the subject of more specific liability policies
   B. because these risks are the subject of Coverage B
   C. because personal injuries result in larger damage awards
   D. because personal and advertising injury claims are rampant

5. If the CGL Declarations designate you as a corporation, who would not have coverage?
   A. stockholders
   B. directors and officers
   C. outside consultants
   D. employees
Chapter Four - In-Depth Policy Analysis

Review Answers

1. C
2. D
3. D
4. B
5. C