

# Commercial Insurance Update

## Topics Affecting Buyers of Commercial Insurance

MSP C 02/00 – “Coverage Simplified: Commercial General Liability Insurance”

February, 2000

# Coverage Simplified: Commercial General Liability Insurance

Probably less than 5% of our clients (if that) actually read their insurance policies, and with good reason. Historically, insurance policies have been written in very small type (the fine print), and have been drafted in language that challenges even the most experienced insurance professional. About the only time most people ever pull out their insurance policy is when they have a claim.

Fortunately, insurance policies have become easier to read in recent years. But even if you don't dissect the contract word by word, it is a good idea to have a basic understanding of how your coverage works.

The purpose of this article is to simplify and clarify the commercial general liability policy. This is a coverage that almost every business needs, and it is generally a company's first line of defense against liability arising out of its operations.

The most current general liability policy form is the Commercial General Liability (CGL) Policy Form CG 00 01 (07/98) published by the Insurance Services Office (ISO). Although most companies still tend to use the 1996 version, the differences between the two policy forms are minimal.

The basic policy contains the following elements:

- I. Policy Declarations
- II. Commercial General Liability Coverage Form
  - Section I – Coverages
    - Coverage A – Bodily Injury and Property Damage Liability
      1. Insuring Agreement
      2. Exclusions

Coverage B – Personal & Advertising Injury Liability

Coverage C – Medical Payments

Supplementary Payments – Coverages A and B

Section II – Who Is An Insured?

Section III – Limits of Insurance

Section IV – CGL Conditions

Section V – CGL Policy Definitions

## I. Policy Declarations

The policy declarations or “dec” page identifies the entity or entities for whom coverage is being written, the nature of the insured operations, the limits of insurance that will apply, and a number of other features of CGL coverage that can be central to questions of what is and is not covered under the policy.

*(Continued on page 2)*

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*(Continued from page 1)*

## II. Commercial General Liability Coverage Form

### Section I – Coverages

#### Coverage A – Bodily Injury and Property Damage Liability

##### 1. Insuring Agreement

Commercial general liability insurance is written on an “all risk” coverage form. In other words, everything is covered except what is specifically excluded, subject to the terms and conditions of the policy.

The insuring agreement of the CGL policy spells out specifically what the policy covers. Basically, it protects the named insured from its legal liability arising out of bodily injury and tangible property damage attributable to the insured’s operations.

Coverage can be written on either an occurrence or a claims-made form, but the occurrence form is preferred and used most of the time. In order for coverage to apply, there must be bodily injury or tangible property damage arising out of an occurrence. An occurrence is defined as an “accident” which includes continuous or repeated exposure to the same general harmful condition.

In addition to covering “those sums that the insured becomes legally obligated to pay as damages,” the policy also provides the insured with a defense against any “suit” seeking those damages. Defense is usually, but not always, provided in addition to the limit of liability.

##### 2. Exclusions

There are three basic reasons for exclusions:

1. The coverage should be provided under a different type of insurance (i.e., automobile-related claims are excluded under a general liability policy because they are intended to be covered under the business auto policy).
2. They are considered uninsurable (intentional damage, for example, as well as damages which may be against public policy to insure, i.e., fraud).
3. They represent an increased exposure for which

you can generally buy coverage for an additional premium but for which many insureds would not be willing to pay an additional premium (pollution liability is a good example).

The basic exclusions in the CG 00 01 are outlined below. It should be pointed out that often insurance companies will add additional exclusions or conditions to the policy. These “endorsements” should be reviewed carefully.

1. Expected or Intended Injury – Bodily injury or property damage expected or intended from the standpoint of the insured is not covered. This exclusion does not apply if the damage is caused from the use of reasonable force to protect people or property.
2. Contractual Liability – The CGL policy provides broad form contractual liability as an exception to a contractual liability exclusion. In other words, contractual liability is provided for those situations that qualify as an “insured contract.” An insured contract includes such things as premises leases and elevator maintenance agreements, but most importantly, it allows you to assume the “tort liability” or negligence of a third party.
3. Liquor Liability – The liquor liability exclusion precludes coverage for bodily injury or property damage arising out of the furnishing of alcoholic beverages. The exclusion only applies if the named insured is in the business of manufacturing, distributing, selling, serving or furnishing alcoholic beverages. Therefore, by exception, the CGL policy provides what has traditionally been called “host liquor liability” coverage.
4. Workers Compensation and similar laws – These types of injuries are intended to be covered by a workers compensation policy.
5. Employers Liability – Like Exclusion 4, these exposures are intended to be covered by a workers compensation policy.
6. Pollution Liability – The pollution liability exclusion precludes coverage for bodily injury, property damage and cleanup costs arising from most types of pollution releases. Al-

*(Continued on page 3)*

# Commercial Insurance Pricing Trends

The insurance industry, like many businesses, is cyclical in nature. Historically, premiums have fluctuated up or down in fairly predictable three-year cycles. The three years of downward pricing has been termed the "soft" market, and the three years of upward pricing the "hard" market. Currently, we are in the twelfth year of a three-year soft market cycle. However, it appears as though the soft market cycle may have ended.

Depending on who you talk to, the last hard market peaked sometime around 1988. Since then, prices for most lines of insurance coverage have been declining. Workers compensation, for example, has declined, on average, 40% to 50% on a rate per payroll basis (the decline in workers compensation pricing was exacerbated by the conversion from a minimum rate law to an open rate law in 1995). Professional liability insurance rates for architects, engineers and attorneys in some cases is down by 75%, and commercial insurance in general is down significantly as well.

The downward soft market trend appears to be at an end. Workers compensation pricing in California has been unprofitable for several years. In 1998, it is estimated that for every dollar of premium taken in, the industry paid out \$1.41 in losses and expenses. These terrible un-

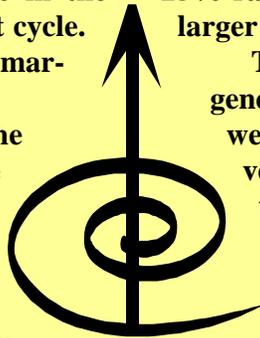
derwriting results caused the Insurance Commissioner of California to recommend an 18.4% rate increase. Although insurance companies are not required to take this increase, many have. We are projecting average workers compensation increases for 2000 in the 10% to 25% range, although some accounts could face larger increases.

The commercial insurance market in general is also starting to show signs of wear. Most insurance stocks are doing very poorly. Excess capacity is beginning to get tight, and some major insurance companies are not even writing new commercial business, but are trying to re-underwrite their existing book of business to make it profitable.

## What does this mean to you?

Basically, underwriters still like good risks. They like firms that take a proactive approach to both loss prevention and risk management. As such, it is imperative that you continue to focus on these areas. You also need to work with a proactive insurance broker that has access to a broad range of markets, and who can effectively market your account on your behalf.

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though a limited amount of coverage remains in the policy because of exceptions to the exclusion, it should be reviewed carefully. In addition, many insurance companies will often add their own more restrictive (less broad) specific pollution exclusion.

7. Aircraft, Auto or Watercraft – Liability arising out of the use of an aircraft, auto or water-

craft should be insured specifically under a policy designed to cover those types of exposures. By exception to the exclusion, coverage is provided for any aircraft, auto or watercraft liability of the insured that arises from the insured's independent contractors.

8. Mobile Equipment – To coordinate with the coverage provided by the business auto policy,

*(Continued on page 4)*

(Continued from page 3)

this exclusion eliminates coverage for injury or damage arising out of the transportation of mobile equipment by an automobile. It also excludes liability arising out of the use of mobile equipment for racing and other contests. In general, liability arising out of the operation of mobile equipment is covered by the CGL policy.

9. War – This exclusion precludes coverage for bodily injury or property damage due to war. The reason for this exclusion is to avoid catastrophic losses to the insurer.
10. Damage to Property – This exclusion eliminates coverage for property damage to property owned by the insured (because the insured cannot be legally liable to itself), property for which other insurance is specifically designed (e.g., bailee exposures), premises the insured has sold, and faulty workmanship.
11. Damage to Your Product – This provision eliminates coverage for damage to the named insured’s product arising out of the product or any part of it. The exclusion is intended to apply only to manufacturers and other entities that produce “products” rather than service companies, such as general contractors.
12. Damage to Your Work – This provision precludes coverage for property damage to the named insured’s work after it has been completed, arising out of the work or any part of it. By specific exception, the exclusion does not apply if the work that is damaged or that causes the damage was done on behalf of the named insured by a subcontractor.
13. Damage to Impaired Property or Property Not Physically Injured – This exclusion, commonly known as the “business risk” exclusion, is designed to preclude “loss of use” coverage for business risks arising from the insured’s failure to perform contractual obligations or to perform work in a workman-like manner.
14. Recall of Products, Work or Impaired Property – This provision eliminates coverage

for damages caused by the recall, repair, replacement and loss of use of the named insured’s products. This exclusion is commonly referred to as the “sistership” or “products recall” exclusion.

15. Personal and Advertising Injury – This exclusion removes from Coverage A any bodily injury that arises out of personal and advertising injury as the term is defined. These types of losses would be covered under Coverage B.

## Coverage B – Personal & Advertising Injury Liability

Advertising injury pertains to offenses attributable to the insured’s advertising activities arising out of oral or written publication of material that slanders or libels a person or organization, or disparages persons or organizations, goods, products or services. It also includes violations of a person’s right to privacy, misappropriation of advertising ideas, and infringement of copyright, title or slogan. Advertising injury coverage does *not* apply to those companies in the business of advertising; a separate stand-alone policy must be purchased for this exposure.

Personal injury pertains to false arrest, detention or imprisonment. Other items covered under this section include:

- Malicious prosecution
- Wrongful eviction
- Oral or written publication of material that slanders or libels a person or organization
- Oral or written publication of material that violates a person’s right to privacy

As with each coverage part, there are specific exclusions (unfortunately, this newsletter does not allow us to elaborate on each exclusion, but we encourage you to review them and call us with any questions).

## Coverage C – Medical Payments

Medical payments provide a nominal amount of coverage (\$5,000 or \$10,000) that an insured can

(Continued on page 5)

*(Continued from page 4)*

use regardless of fault. For example, if a friend slipped and fell on your premises, they in all likelihood wouldn't bring suit against you (if they did, Coverage A, bodily injury and property damage liability would be triggered). In this situation, the insured can apply up to the medical payments limit to compensate the individual for their medical expenses. In other words, coverage applies on a "no-fault" basis.

## Supplementary Payments – Coverages A and B

The supplementary payments section of the policy sets out the types and amounts of expenses, costs and interest the insurer will pay with respect to any claim or suit it defends, such as:

1. All expenses the insurance company incurs.
2. The cost of bail bonds (up to \$250) required to be furnished because of motor vehicle accidents or violations.
3. The cost of bonds to release attachments for bond amounts up to the applicable limit of insurance.
4. Reasonable expenses incurred by the insured at the insurer's request to help in the investigation or defense of any claim or suit. This includes up to \$250 a day for loss of earnings if the insured is required to take time off from work to assist the insurer in investigating and defending the claim.
5. Any costs taxed against the insured.
6. Interest judgment against the insured.

These payments do not reduce the limits of insurance.

## Section II – Who Is An Insured?

The "Who Is An Insured" section of the CGL coverage form lists each person or organization that qualifies automatically as an insured under the policy. The purpose of this section is to outline who, other than the named insured listed in the policy

declarations, may qualify for coverage under the policy. Some of the most important of these automatic insureds are partners and spouses of individual named insureds, employees, and persons driving the insured's mobile equipment. Newly acquired or formed organizations are automatically insured for 90 days.

It is important to note that partnerships and joint ventures are *not* insureds unless specifically scheduled as such under the policy. Additional insureds are commonly added to the policy by endorsement.

## Section III – Limits of Insurance

The "Limits of Insurance" section of the policy sets forth the rules regarding the most the insurance company will pay with respect to a specific claim or the sum of all claims covered by the policy.

## Section IV – CGL Conditions

The "conditions" section of the policy outlines different parameters of coverage.

1. Bankruptcy – States that the bankruptcy or insolvency of the insured does not relieve the insurance company from its obligations.
2. Duties in the Event of Occurrence, Offense, Claim or Suit – Spells out what insureds must do in the event a claim is made against them.
3. Legal Action Against Us – Outlines what the insured must do prior to taking legal action against the insurance company.
4. Other Insurance – Spells out how the insurance will be allocated in the event that more than one insurance policy pertains to a given loss.
5. Premium Audit – Recognizes the insurer's right to conduct an audit of the insured's books and the requirements for the insured to keep appropriate records.
6. Representations – Confirms that the insur-

*(Continued on page 6)*

(Continued from page 5)

ance has been issued based on the representations made by the insured in the application.

7. Separation of Insureds (aka "Cross Liability") – Sets out the rights of all insureds to protection under the policy as if each had a separate policy.
8. Transfer of Rights of Recovery Against Others to Us – This gives the insurance company the right of subrogation if it makes payment under the policy. The insured is obligated to protect this right, and do nothing *after* loss to impair it.
9. When We Do Not Renew – Requires the insurance company to provide a 30 day notice of cancellation of its intent not to renew coverage.

## Section V – CGL Policy Definitions

The final portion of the policy provides definitions for words that have been used throughout the policy form.

## Summary

It is important to understand the insurance coverage that you have purchased. Although the commercial general liability policy provides broad coverage for your legal liability arising out of your operations, there are exclusions as well as terms and conditions that limit the coverage. If you have any questions regarding your coverage, don't hesitate to contact your insurance broker. \*

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***Disclaimer:** This article is written from an insurance perspective and is meant to be used for informational purposes only. It is not the intent of this article to provide legal advice, or advice for any specific fact, situation or circumstance. Contact legal counsel for specific advice.*

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# Other Commercial Liability Coverages to Consider

## Additional Insureds

- Automatic
- Blanket
- Contractors
- Landlord
- Vendor
- Volunteer

## Amendment of Aggregate Limits

- Per Location
- Per Project

## Asbestos Liability

## Bodily Injury – Amended Definition

## CGL Gap Insurance

- Products Recall/Offsite Products Modification Expense
- Property Damage for Damage to Your Product
- Property Damage for Damage to Your Work
- Property Damage to Impaired Property/Property Not Physically Injured

## Directors & Officers Liability

## Employee Benefits Liability

## Employees as Insureds

## Other Commercial Liability

## Coverages to Consider (continued)

(Continued on page 7)

(Continued from page 6)

Employment Practices Liability  
Fiduciary Liability  
Foreign Liability  
Joint Venture Coverage  
Legal Liability (Fire Legal)  
Liquor Liability  
Management Employees as Insureds  
Non-Owned / Owned Aircraft  
Non-Owned / Owned Watercraft  
Owner-Controlled Insurance Program (OCIP)  
Owners and Contractors Protective Liability  
Patent Enforcement  
Patent Infringement Liability  
Pollution Liability  
Primary Insurance  
Product Recall / Sistership  
Products / Completed Operations Liability  
Professional Liability  
Railroad Protective Liability  
Representations & Warranties Liability Insurance  
Stop Gap (Workers Compensation) Liability  
Subsidence  
Waiver of Transfer of Rights of Recovery  
Wrap-Ups (see OCIP) \*



## Winter Weather Loss Prevention

*by Brad Hatzold*

*Courtesy of Chubb Insurance Group*

Winter months in Southern California are mild compared to the severe weather conditions experienced in other parts of the country. Even so, our winter storms can still produce freezing cold temperatures, high winds and heavy rains.

Each year, local businesses suffer damage to structures and property, as well as business down time due directly to weather-related causes. In many cases, these losses could have been prevented through routine inspection and maintenance procedures.

With that in mind, we've outlined some prevention tips based on years of industry data about

*(Continued on page 8)*

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## Winter Weather Loss Prevention (continued)

(Continued from page 7)

property losses caused by winter weather. We hope you find the following tips helpful:

- Roof structures and roof coverings should be checked regularly to assure they are in good condition. Any sign of defects or water leaks should be repaired as soon as possible.
- Roof drains should be inspected often to assure they are clear and will allow a free flow of water.
- All storm drains should be clear and sump pumps functional to permit full flow of runoff.
- In areas subjected to possible freezing, portions of your property that have water pipes or fire sprinkler systems, including attics, hallways, stairways and areas above ceilings, should be heated to at least 40 degrees Fahrenheit.
- Be sure all temporary heating devices (if used) are listed or approved by Underwriters Laboratories and that they are properly installed to avoid injury or property damage.
- Check backup power equipment to make sure it's in proper working order.
- Since many weather-related losses occur during weekends and seasonal plant closures, be certain that any appropriate alarms function properly and that emergency plans cover plant closure situations. \*



## You've Got Mail

### E-Mail can open your business to liability

Today, one of the most common ways to communicate in the workplace is through e-mail. It's fast, it's easy and you can get around to answering it when you have a free minute instead of interrupting people when they are doing something else.

But not all messages sent from workstations are in the line of business. Nor are they private. E-mail can be a visible and dangerous communication medium.

"The use of e-mail has grown very rapidly," explained Scott Hames, staff counsel at the Insurance Brokers and Agents of the West (IBA West). "The laws we have now don't always address the situations that can arise from the sending or receiving of inappropriate e-mail."

In some cases, Hames explained, employees have accused each other of sending inappropriate e-

mail, and the e-mails have been used as evidence to demonstrate a hostile workplace. E-mail can be used to demonstrate discrimination or harassment. It is becoming increasingly important for companies to develop and enforce policies on the use of e-mail before problems occur.

One thing companies can do is develop a written e-mail policy to inform employees whether or not they intend to monitor corporate e-mail.

Also, the policy must be enforced, and the employees reminded of what is contained in the policy.

"Sometimes deleted mail may still be retrieved," Hames explained. "Companies should make an effort to define employee privacy rights, and employees must be informed about what is and isn't appropriate regarding e-mail transactions." \*