



CGL ISSUES AND DEVELOPMENTS

CGL UNDER CONSTRUCTION

Presented by


Ray Beane

**Vice President, Construction
Liberty Mutual Ins. Group**


**Rick J. Shamis Jr., CPCU,
Director—National Accounts
Willis Construction**

The commercial general liability policy is a cornerstone of a contractor's insurance program. It is in reference to this policy that the majority of construction insurance disputes are litigated. Because of the complexity of construction claims and the constantly evolving case law relating to the CGL policy, those on both sides of the fence (insurer and insured) often misunderstand even some of the basic coverages. Coverage disputes are the inevitable result. This session will provide an overview of case law on the scope of key CGL coverages for construction risks, including contractual liability coverage, coverage for construction defects, and coverage for additional insureds. A construction broker and underwriter will offer strategies for avoiding coverage gaps and modifying problematic provisions in a way that maximizes the value of the insurance to the contractor.

Monday, November 13, 9:00 a.m.–5:00 p.m.



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Ray Beane
Vice President, Construction
Liberty Mutual Ins. Group

Mr. Beane is one of the presenters for Monday's all-day seminar, "CGL Issues and Developments." He is vice president and manager of Liberty Mutual's National Accounts Construction and Wrap-Up Group. Based in Boston, Mr. Beane is responsible for the underwriting, marketing, sales, and management of Liberty's large construction accounts and major construction projects, including wrap-ups. Prior to joining Liberty Mutual, Mr. Beane worked for Aetna Life and Casualty. Mr. Beane has 27 years of underwriting experience with a strong emphasis on construction underwriting. He has been an active member of the Associated General Contractors of America Risk Management committee for the past 7 years and is currently vice chairman of the committee.

Rick J. Shamis Jr., CPCU,
Director—National Accounts
Willis Construction

Mr. Shamis is one of the presenters for Monday's all-day seminar, "CGL Issues and Developments." He joined the national team of Willis Construction as senior vice president, director of National Accounts, after serving as vice president and National Construction Marketing director for A&A/Aon Risk Services. His area of expertise is casualty plan design and coverage enhancement. He maintains relationships with the senior home office underwriting staff of insurance and reinsurance companies that specialize in the construction industry. His innovative and creative approach to casualty marketing has been used successfully over the past 21 years he has been in the industry. Mr. Shamis has held various positions with Willis in Chicago, Charlotte, and Dallas. He has taught many in-house casualty coverage and Chartered Property Casualty Underwriter (CPCU) courses, has been a panel member or speaker for different construction groups across the country such as AGC and CFMA, and is a veteran Construction Insurance Conference speaker.

Notes

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CGL UNDER CONSTRUCTION

***Ray Beane
Liberty Mutual Insurance Group***

***Rick J. Shamis Jr., CPCU,
Willis Construction***

I. Discussion of Key Coverage Provisions for Contractors in the 1998 Commercial General Liability (CGL) Coverage Form

- A. General liability coverage becomes excess when named as an additional insured
- B. Pollution exclusion provides some broader coverage
 - 1. For named insured if performing operations for an additional insured site
 - 2. Exception for release of gas, fumes, or vapors from material brought into buildings

II. Discussion of Potential Coverage Modifications/Enhancements by Endorsement

- A. Coverage for past joint ventures or partnerships
- B. Blanket additional insured coverage as required by contract
- C. Wrap-around coverage
- D. Alienated premise coverage
- E. Coverage for bodily injury and property damage from error or omission if caused by an occurrence
- F. Contractors rework/rip and tear coverage
- G. Limited pollution coverage
- H. Coverage for leased employees
- I. Per project/per location
- J. Blanket waiver or subrogation where required by contract
- K. Fellow employee exclusion deleted for supervisory personnel
- L. Broad Form Named Insured endorsement
- M. Watercraft coverage extension
- N. Employment practices coverage
- O. Unintentional errors and omissions
- P. Notice of occurrence
- Q. Knowledge of occurrence

Notes

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Willis Construction*

Changes for Contractors in 1998 General Liability Coverage Form

1. GL becomes excess when named as Additional Insured on another entity's liability policy
2. Two exceptions added to Pollution Exclusion, providing coverage for:
 - ↓ Pollutants brought into building during contractor's operations
 - ↓ Named Insured if performing operations for Additional Insured

Blanket Additional Insured Coverage

- ◆ Limits the scope of coverage to whom the Named Insured has agreed to by written contract but does not exceed policy limits
- ◆ Restricts limits of liability to the amount of insurance required by written contract
- ◆ Provides coverage on a primary basis if the contractor agreed to do so by written contract

Coverage for Past Joint Ventures

- ◆ 1998 GL policy excludes all JVs
- ◆ Coverage for active JV provided by separate policy
- ◆ Coverage for past JV provided by endorsement to Named Insured's GL policy
 - ↓ Blanket Completed Operations coverage
 - ↓ Benefits only Named Insured contractor

Wrap Around Coverage

- ◆ Wrap-up "sponsor" provides WC & GL coverage for all contractors enrolled
- ◆ Participating contractors often exclude wrap-up from GL policy
- ◆ Wrap-up insurance may be less broad
- ◆ Solution - endorse GL policy to make coverage excess
- ◆ Can fill potential gaps in coverage

Alienated Premises Coverage

- ◆ GL Policy excludes property damage coverage to premises a contractor sells, gives away, or abandons, if the property damage arises from those premises
- ◆ Exclusion does not apply if the premises are the contractor's work and never occupied, rented, or held for rental by the contractor
- ◆ Potential gap in coverage for any contractor that might occupy premises they constructed
- ◆ Modifying the GL policy can fix this coverage gap by:
 - ↓ Eliminating the alienated premises exclusion;
 - or
 - ↓ Tailoring the exclusion to cover the exposure

Coverage for BI/PD From an Error or Omission

- ◆ GL policy: no absolute professional liability exclusions
- ◆ Coverage for BI/PD from error or omission if caused by occurrence
- ◆ When there is professional exposure, one of three endorsements can be used

CG 22 43 - Exclusion - Engineers, Architects or Surveyors Professional Liability

- ◆ Excludes coverage for "professional services"

CG 22 79 - Exclusion - Contractors Professional Liability

- ◆ Same as CG 22 43 except
- ◆ Does not exclude "means, methods, techniques... in your capacity as a...contractor"

CG 22 80 - Limited Exclusion - Contractors - Professional

- ◆ Excludes coverage for "professional services" when not done "in connection with construction work performed by you..."

Contractors Rework / Rip & Tear Coverage

- ◆ The standard GL policy covers losses arising out of the insured's negligence, that result in a Bodily Injury or Property Damage claim
- ◆ Exclusion n. in the GL policy precludes coverage for "faulty workmanship" or "faulty product" type claims
- ◆ Endorsement provides coverage for the repair, replacement, alteration or removal of "your work" or "your product" that:
 - ↓ is structurally unsound
 - ↓ cannot be put to its intended use even if the Insured is not legally required to do so; or
 - ↓ is installed or sold subsequent to the Insured's work under separate contract, that must be removed in order to replace "your work" or "your product"
 - ↓ including any resulting loss of use caused by such work
- ◆ Endorsement excludes coverage for:
 - ↓ a cosmetic defect
 - ↓ the failure or delay in fulfilling the terms of a contract or agreement
 - ↓ damages or loss that is covered by an all risk (special form) property insurance policy including builders risk or installation floater
- ◆ Limit of Liability usually applies on both a per occurrence and annual aggregate basis
- ◆ Separate per occurrence deductible usually applies

Limited Pollution Coverage

GL policy excludes coverage for:

- ◆ BI & PD arising out of release of pollutants, subject to exceptions
- ◆ Cleanup costs

For most contracting exposures, GL policy provides coverage for:

- ◆ Smoke, fumes, or vapor from heating equipment
- ◆ Heat, smoke, or fumes from a hostile fire
- ◆ Operating fluids which escape from mobile equipment
- ◆ Pollutants brought into building during contractor's operations
- ◆ Named Insured if performing operations for Additional Insured

Three coverage extensions can be used:

- ◆ CG 04 28: Pollution Exclusion - Named Peril Limited Exception for a Short-Term Pollution Event
 - ↓ Coverage for "short-term pollution events" caused by a "Named Peril"

CG 04 29: Pollution Exclusion - Limited Exception for a Short-Term Pollution Event

- ◆ Same coverage as CG 04 28 ("short-term pollution event") without Named Peril requirement

CG 04 30: Pollution Exclusion - Limited Exception for Designated Pollutants

- ◆ Provides coverage for Insured's use of specified hazardous substances
 - ↓ off-premises operations
 - ↓ Insured's own premises (stored or in use)

Coverage for Leased Employees

- ◆ “Leased worker” is included in the definition of an “employee”
- ◆ Exclusion e. in the GL policy excludes coverage for the Insured in cases where an “employee” is injured due to the fault of the insured
- ◆ CG 04 24 - COVERAGE FOR INJURY TO LEASED WORKERS - modifies the definition of “employee” to not exclude injury to leased and temporary workers

Fellow Employee Exclusion

- ◆ The GL policy covers employees as insureds only for acts within the scope of their employment
- ◆ Employees are not Insureds for Bodily Injury or Personal Injury to another employee
- ◆ INJURY TO A FELLOW EMPLOYEE - provides coverage for specific employees or classes of employees, such as supervisory personnel

Per Project/Per Location Aggregate

- ◆ GL policy contains Gen. Agg. and Prod/Comp. Ops Agg.
- ◆ CG 25 03 modifies Gen. Agg. to apply per project/per location (doesn't modify Prod/Comp. Ops Agg.)
- ◆ Catastrophic loss doesn't erode limits for remaining operations
- ◆ Assures owners/contractors that projects have adequate limits

Broad Form Named Insured

- ◆ GL policy covers newly acquired/formed organizations for 90 days
- ◆ Endorsement extends coverage without time limitation for:
 - ↓ U.S. company where
 - ↓ Ownership is greater than 50%

Blanket Waiver of Subrogation

- ◆ Subrogation Clause entitles the insurer to exercise the Insured's right of recovery against a third party
- ◆ Waiver of Subrogation prevents a first party's insurer from pursuing subrogation

Watercraft Coverage Extension

- ◆ Exclusion g. excludes coverage for a watercraft owned or operated by or rented or loaned to an Insured
- ◆ This exclusion does not apply to a watercraft that you do not own that is:
 - ↓ Less than 26 feet long; and
 - ↓ Not being used to carry persons or property for a charge
- ◆ The watercraft coverage extension increases the length of the non-owned watercraft that is covered

Employment Practices Coverage

- ◆ Employment Practices coverage not specifically excluded from GL policy
- ◆ Many insurers add exclusions
- ◆ Separate policy provides coverage
- ◆ Various coverage options:
 - ↓ All forms of employment-related injury
 - ↓ Specific types of claims
 - ↓ Defense only

Notice of Occurrence

- ◆ GL policy states duties in event of Occurrence - Section IV Condition 2.
- ◆ States that insured must notify insurance company... “as soon as practicable”
- ◆ Endorsement restates policy’s requirement
- ◆ Further states “failure of agent, servant, or employee...other than the risk manager...to notify...shall not invalidate coverage.”

Unintentional Errors & Omissions

- ◆ GL policy Section IV Condition 6 addresses “Representations”
- ◆ Intent is that if Named Insured made material misrepresentation, insurer has grounds to void policy’s coverage
- ◆ Endorsement further qualifies coverage will apply if Named Insured makes an unintentional error or omission in disclosing information to the insurer

Knowledge of Occurrence

- ◆ GL policy states duties in event of occurrence - Section IV Condition 2
- ◆ Endorsement restates policy’s intent
- ◆ Provides further detail of what constitutes “knowledge of occurrence” and who needs to know about the occurrence