

GENERAL LIABILITY INSURANCE OVERVIEW

Presented by

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General liability insurance is a cornerstone in any contractor's insurance program. This session provides a basic overview of the coverage provided under the standard commercial general liability (CGL) policy and how it is being affected by recent market developments, including the availability of desirable coverage modifications, the impact of recent changes in the standard form, and the introduction of new restrictive endorsements. Attendees will gain a better understanding of the protection contractors and owners do and don't have under the CGL policy, to enable them to more effectively negotiate renewal terms and adjust contract insurance requirements to reflect the realities of the insurance marketplace.

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Mr. Segall is presenting Miniseminar I, "General Liability Insurance Overview." He serves as senior vice president at Willis in Nashville. His primary responsibilities within the Construction Risk Management Group of Willis are to provide marketing and account servicing assistance to Willis offices. As such, he functions as a national coordinator for claims, safety management, statistical analysis, and service support between local, regional, and national offices. He is also part of Willis's national research team developing programs, writing articles, and delivering speeches on insurance topics relative to the construction industry.

Mr. Segall graduated from the University of Texas in El Paso with a B.B.A. degree in December 1975. Immediately following graduation, he went to work for the St. Paul Insurance Company in their Kansas City office as an ACE (auto, casualty, and excess) underwriter. He joined Willis in the Tampa office in October 1989 and has been a part of the National Construction Practice Group in Nashville since 1994. During his time with Willis, his industry experience has been specific to the needs of the contractor. His designations include AU (Associate in Underwriting), ARM (Associate in Risk Management), CIC (Certified Insurance Counselor), and CPCU (Chartered Property Casualty Underwriter), along with the CPD (Continuing Professional Development) program award, and CRM (Certified Risk Manager).

Notes

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GENERAL LIABILITY INSURANCE OVERVIEW

*Jeffrey A Segall, AU, ARM, CIC, CPCU, CRM
Willis*

Overview

- What is Liability
- General Liability Policies Forms
 - 900 nationwide & 1000 state specific
- What is Covered and what's not
- Exceptions and Misconceptions
- Supplemental Policies
- Emerging Issues

Miniseminar I

Legally Liable

- Negligence
 - Duty of care
 - Violate that duty
 - Injury or damages because of a breach
- Reservation of Rights

Forms

- An Evolutionary Form
 - Standard ISO Versions
 - 1940, 1955 “Caused by Accident”
 - 1966 “Occurrence”, PD includes loss of use
 - 1973 “Continuous or repeated”, Eliminated /person limit
 - 1984,6 Claims Made trigger, Easy to read, x-G222, x-Auto contractual, comprehensive Aggregate limits, x-past JV’s & partnerships, x-S&A pollution, Contractual w/i 50’ of RR in

Forms (cont.)

- 1988,90 Contractual w/I 50’ of RR out, PI to claims made, Less pollution cover, ADR is a suit, Loss of use of damaged property is at time of physical injury, Loss of use of undamaged property at time of occurrence
- 1993 Leased employees are insureds, Contractual w/i 50’ of RR in except for RR, Executive Officer defined—Fellow Employee exclusion
- 1996 Defense for additional insureds is only available if Insured also sued, mobile equip fuel or lube leaks covered, no PI pollution, LLC’s recognized—no automatic coverage,

Forms (cont.)

- 2001 Known Loss CG 00 57 now incorporated into form
 - Prior to the policy period, no insured listed and no “employee” authorized by you to give or receive notice of an “occurrence” or claim, knew that the “bodily injury” or “property damage” had occurred
 - “Bodily injury” or “property damage” which occurs during the policy period and was not, prior to the policy period, known to have occurred by any insured
 - will be deemed to have been known to have occurred at the earliest time
 - Reports a claim
 - Receives a written or oral demand or claim
 - Becomes aware that BI or PD has begun
- Carrier Specific

General Liability Insurance

- Pays for injuries and damages to third parties and their property for which you are legally liable
 - Your Ongoing Operations and Premises
 - Your Work (completed operations)
 - Contractual Obligations
- Pays for Legal Defense of the above
Standardized wording (Based on ISO) but many carriers specializing in Construction risks have their own forms

Key Terms

- Bodily Injury
 - bodily injury, sickness, or disease sustained by a person, including death resulting from any of these at any time.
- Property Damage
 - 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.

Key Terms

- Occurrence
 - an *accident*, including continuous or repeated exposure to substantially the same general harmful conditions.
- Limits
 - Designated Construction Projects General Aggregate Limit CG 25 03
 - 2 versions, 1997 allows you to designate the project

General Liability Exclusions

- BI & PD that was expected or intended
 - Except for BI resulting from force to protect persons or property
- Worker's Compensation and Employer's Liability
- Ownership or use of Aircraft, Autos or Watercraft
 - Use of Non-Owned H2Ocraft under 26' is OK
 - *New for 2001* applies even if the claims against any insured allege negligence or other wrongdoing in the supervision, hiring, employment, training or monitoring of others
- Transportation or racing of Mobile Equipment

What is Mobile Equipment

Land vehicles, including any attached machinery or equipment:

- a. Bulldozers, farm machinery, forklifts and other vehicles designed for use principally off public roads;
- b. Vehicles maintained for use solely on or next to premises you own or rent;
- c. Vehicles that travel on crawler treads;

What are Mobile Equipment (cont.)

- d. Vehicles, whether self-propelled or not, maintained primarily to provide mobility to permanently mounted: (1) Power cranes, shovels, loaders, diggers or drills; or (2) Road construction or resurfacing equipment such as graders, scrapers or rollers;

What are Mobile Equipment (cont.)

- e. Vehicles not described in a., b., c. or d. above that are not self-propelled and are maintained primarily to provide mobility to permanently attached equipment of the following types: (1) Air compressors, pumps and generators, including spraying, welding, building cleaning, geophysical exploration, lighting and well servicing equipment; or (2) Cherry pickers and similar devices used to raise or lower workers;

What are Mobile Equipment (cont.)

- f. Vehicles not described in a., b., c. or d. above maintained primarily for purposes other than the transportation of persons or cargo. However, the following will be considered “autos”: (1) Equipment designed primarily for: (a) Snow removal; (b) Road maintenance, but not construction or resurfacing; or (c) Street cleaning; (2) Cherry pickers and similar devices mounted on automobile or truck chassis and used to raise or lower workers; and (3) Air compressors, pumps and generators, including spraying, welding, building cleaning, geophysical exploration, lighting and well servicing equipment.

Mobile Equipment / Motor Vehicle Laws CG 99 01

- will comply with the provisions of the motor vehicle financial responsibility law to the extent of the coverage and limits of insurance required
- will provide any liability, uninsured motorists, underinsured motorists, no-fault or other coverages required by any motor vehicle insurance law. We will provide the required limits for those coverages.

General Liability Exclusions

- Pollution from
 - an Owned or Occupied location
 - a location used for handling, storage, disposal, processing or treatment of waste
 - materials which were transported, handled, stored, treated, disposed of, or processed as waste by or for you
 - any place pollutants were brought into except for fumes from materials brought into that building in connection with operations being performed by you or on your behalf
 - a location you were to test for, monitor, neutralize, or in any way respond to pollutants

Environmental Considerations

- Operations
- Materials brought on site
- Site conditions
- Sudden and Accidental
- Clean-up issues
- Professional

General Liability Exclusions

- Liability assumed under contract except specific contracts
 - Most construction agreements are covered but there are some limitations
 - that part of any contract in which the insured agrees to indemnify design professionals for liability arising out of their professional activities
 - indemnifies a railroad, arising out of construction or demolition operations, within 50 feet of any railroad property
 - Only BI and PD are covered

“Insured contract” means:

- f. That part of any other contract or agreement pertaining to your business (including an indemnification of a municipality in connection with work performed for a municipality) under which you assume the tort liability of another party to pay for “bodily injury” or “property damage” to a third person or organization. Tort liability means a liability that would be imposed by law in the absence of any contract or agreement.

Amendment of Contractual Liability

- CG 22 74 Gives Contractual coverage for Personal Injury and Advertisers liability
 - specific perils only

General Liability Exclusions

- Damage to property
 - you own, owned, occupy or control
 - *Property Insurance*
 - *Alienated Premises*
 - *Care, Custody or Control*
 - *Bailee Floater, Hook Coverage*
 - that particular part of real property on which you or any subcontractors working on your behalf are performing operations, if the “property damage” arises out of those operations

New for 2001 version

Property Damage to your property (cont.)

- any costs or expenses incurred by you, or any other person, organization or entity, for repair, replacement, enhancement, restoration or maintenance of such property for any reason, including prevention of injury to a person or damage to another's property.

Fire Legal Liability

- Lease agreements
- Limits
- Perils Insured

General Liability Exclusions

- Damage to property
 - that particular part of any property that must be restored, repaired or replaced because “your work” was incorrectly performed on it
 - does not apply to “property damage” included in the “products-completed operations hazard”.

General Vs Sub, Insurance Company Perspective

- Subcontractor does the work and pays a rate based on the work, there is no coverage for the damage to the work
- General contractor does not do the work, the carrier does not receive premium for the work but covers losses to the work

General Liability Exclusions

- Damage to your Work arising out of it or any part of it
 - 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 subcontractor. **But CG 22 94 10 01 does “Damage to work performed by subcontractors on your behalf” and CG 22 95 for specific sites**
 - Solutions
 - » Installation Floater
 - » Builder’s Risk Policy
 - » GAP policy

General Liability Exclusions

- Damage To Property Not Physically Injured, arising out of:
 - (1) A defect, deficiency, inadequacy or dangerous condition in your work
 - (2) A delay or failure by you or anyone acting on your behalf to perform a contract 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.

Rip & Tear Coverage

- Non standard coverage designed to cover losses arising from work which can not be used for it's intended purpose
- Some forms cover ongoing and completed operations

Exceptions, Misconceptions and Gotchas!

- Who is an insured?
- What about Additional Insureds?
- Professional Liability?
- Work under Wrap-ups

Joint Ventures & Partnerships

4. Any organization you newly acquire or form, other than a partnership, joint venture or limited liability company, and over which you maintain ownership or majority interest, will qualify as a Named Insured if there is no other similar insurance available to that organization. a. **Only for 90 days** b. **does not apply** to losses that occurred **before you acquired** or formed the organization

No person or organization is an insured with respect to the conduct of any current or past partnership, joint venture or limited liability company that is not shown as a Named Insured in the Declarations.

Joint Ventures and the CGL

Who insures the Joint Venture?

- Either or all of the venturers
- Separate policy
- How long is coverage good for?
 - Until the policy expires
 - Extension for reporting claims
 - Look to individual Venture's policy if endorsed

General Liability – Additional Insureds

Most construction agreements require contractors to name the preceding tiers as additional insureds on their policy

All CG 20 forms deal with additional insureds... there are 32 different Additional Insureds endorsements

Common Additional Insured Endorsements

- CG 20 26 DESIGNATED PERSON OR ORGANIZATION
- CG 20 28 LESSOR OF LEASED EQUIPMENT—not automatic
- CG 20 34 LESSOR OF LEASED EQUIPMENT—AUTOMATIC STATUS WHEN REQUIRED IN LEASE AGREEMENT WITH YOU
- CG 20 10 OWNERS, LESSEES OR CONTRACTORS—SCHEDULED PERSON OR ORGANIZATION
- CG 20 33 OWNERS, LESSEES OR CONTRACTORS—AUTOMATIC STATUS WHEN REQUIRED IN CONSTRUCTION AGREEMENT WITH YOU
- CG 20 37 OWNERS, LESSEES OR CONTRACTORS—COMPLETED OPERATIONS
- CG 20 07 ENGINEERS, ARCHITECTS, OR SURVEYORS
- CG 20 31 ENGINEERS, ARCHITECTS OR SURVEYORS
- CG 20 32 ENGINEERS, ARCHITECTS OR SURVEYORS NOT ENGAGED BY THE NAMED INSURED

**OWNERS, LESSEES OR CONTRACTORS
(10 Scheduled, 33 Blanket)**

CG 20 10 11 85

Who Is An Insured (Section II) is amended to include as an insured the person or organization shown in the Schedule, but only with respect to liability arising out of your "your work" for that insured by or for you.

1993 & 1997

your ongoing operations performed for that insured.

Contractual issues & buildings for developers

2001

Added exclusions to be sure we all know that work does not include completed operations

**OWNERS, LESSEES OR
CONTRACTORS**

• **CG 20 37 10 01 Completed Operations**

Who Is An Insured is amended to include as an insured the person or organization shown in the Schedule, but only with respect to liability arising out of your "your work" at the location designated and described in the schedule of this endorsement performed for that insured and included in the "products--completed operations hazard".

- Some non-ISO forms have a time limit ie. 5 yrs

ENGINEERS, ARCHITECTS, OR SURVEYORS

- **CG 20 07 engaged by you**

A. WHO IS AN INSURED (Section II) is amended to include as an insured any architect, engineer, or surveyor engaged by you but only with respect to liability arising out of your premises or ongoing operations performed by you or on your behalf

- **CG 20 31 for O&CP**

- **CG 20 32 not engaged by you**

A. Section II—Who Is An Insured is amended to include as an insured the architects, engineers or surveyors shown in the Schedule, but only with respect to liability arising out of your ongoing operations performed by you or on your behalf. Such architects, engineers or surveyors, while not engaged by you, are contractually required to be added as an additional insured to your policy.

Also adds a new Exclusion--arising out of the rendering of or the failure to render any professional services by or for you, including: **And STILL ONLY BI & PD**

Defense of an Indemnity

- Covered in Supplementary Payments
- The insured and the indemnity must be named in the lawsuit
- the insured must have assumed the liability of the indemnitee;
- the insurance must apply to the liability assumed by the insured;
- the insured's obligation to defend the indemnitee must have been assumed in the same contract;
- there must be no apparent conflict of interest between the insured and the indemnity;
- and the insured and the indemnitee must request the defense and agree that the same counsel can be appointed to represent both.

Indemnitee Vs. Additional Insured

- Limits are shared with additional insureds
- Defense of an additional insured is simpler to obtain
- Additional insureds have access to the policy even if the insured is out of business
- Indemnification is usually broader than the terms of the CGL

Other Insurance Clause

- The policy is primary unless there is any other primary insurance
 - Contribution by equal shares
 - Contribution by limits
- The policy is excess of any other policy that has added you as an additional insured.
 - Where the policy is excess there is no duty to defend
 - If no other policy defends than this policy will defend

Wrap-Up Exclusion

- CG 21 54 DESIGNATED OPERATIONS COVERED BY A CONSOLIDATED (WRAP-UP) INSURANCE PROGRAM
- This exclusion applies whether or not the consolidated (wrap-up) insurance program: (1) Provides coverage identical to that provided by this Coverage Part; (2) Has limits adequate to cover all claims; or (3) Remains in effect.

Things to Watch for on Project Policies (Wrap-Ups)

- Watch how long the policy will continue to pay claims
- Watch deductibles
- Watch coverage and conditions as they compare to your CGL policy
- Watch wordings to preserve insured Vs insured actions
 - For example, if the owner wants to bring an action against the contractor

A&E Professional Liability Exclusion

- CG 22 43
- This insurance does not apply to “bodily injury”, “property damage”, “personal injury” or “advertising injury” arising out of the rendering of or failure to render any professional services by you or any engineer, architect or surveyor who is either employed by you or performing work on your behalf *in such capacity*.

Contractors Professional Liability Exclusion

- CG 22 79
- 1. This insurance does not apply to “bodily injury”, “property damage” or “personal and advertising injury” arising out of the rendering of or failure to render any professional *services by you or on your behalf*, but only with respect to either or both of the following operations: a. Providing engineering, architectural or surveying services to others *in your capacity as an engineer, architect or surveyor*; and b. Providing, or hiring independent professionals to provide, engineering, architectural or surveying services in connection with construction work you perform.

Contractors Professional Liability Limited Exclusion

- CG 22 80

This insurance does not apply to “bodily injury”, “property damage”, “personal injury” or “advertising injury” arising out of the rendering of or failure to render any professional *services by you*, but only with respect to your providing engineering, architectural or surveying services in your capacity as an engineer, architect or surveyor.

This exclusion does not apply to your operations in connection with construction work performed by you or on your behalf.

CONSTRUCTION MANAGEMENT E&O

- CG 22 34

does not apply to “bodily injury”, “property damage” or “personal and advertising injury” arising out of:

1. The preparing, approving, or failure to prepare or approve, maps, shop drawings, opinions, reports, surveys, field orders, change orders or drawings and specifications by any architect, engineer or surveyor performing services on a project on which you serve as construction manager; or
2. Inspection, supervision, quality control, architectural or engineering activities done by or for you on a project on which you serve as construction manager.

This exclusion does not apply to “bodily injury” or “property damage” due to construction or demolition work done by you, your “employees” or your subcontractors.

The Issues

Contractors or designers are responsible for the actions of subcontractors and/or sub-consultants.

The design/builder is responsible for the design error of their sub-consultant even if there has been no active negligence on the part of the design/builder.

Design Exposures

- Professional Liability
 - Passive Loss—the work does not perform as intended or does not meet the expectations of the owner, but no actual physical injury to the work occurs
 - Active Loss—involves actual physical property damage to the work or bodily injury
 - Contingent Loss—One party is responsible for the actions of another

Occurrence Vs Acts, Errors & Omissions

Professional Liability

- Non Design Driven
 - Construction Means and Methods
 - Construction Management
 - Cost Overruns
 - Delays

Cost overruns and delay hazards result in economic damages. If the alleged cause is negligence in covered professional services, economic damages are typically covered by professional liability policies.

Extensions or Separate Policies

- Employment Practices Liability
 - Policies cover claims from employees alleging:
 - Discrimination
 - Sexual Harassment
 - Wrongful Termination
 - Other available coverage
 - Breach of employment contract
 - Failure to grant tenure
 - Defamation of character
 - Defense is an important element of the coverage
- Watch who is covered

Employee Benefits Liability

Covers liability arising out of errors or omissions in the administration of an employee benefits program

- Once covered by carrier specific form, now available from ISO CG 04 35
- Most forms were claims made, this one has a RETRO DATE
- Watch exclusions
 - ERISA responsibilities
 - Advice to employees on participation or investments

Contractors Pollution Liability

- Sudden and gradual pollution coverage for operations performed by a contractor
- Includes a specified term of completed operations coverage
- This coverage may be combined with coverage for environmental consultants to provide complete protection for the contractor who also has a consulting exposure.
- Does not cover owned site exposures

Project Protective Policies – OCP, PMPL & RRP

- Avoids the risk of not being added to the contractor's CGL as an additional insured
- More coordinated defense to a claim against all insured parties
- Provides separate limits for the project
- Does not include Completed Operations coverage

Owner's & Contractor's Protective Liability Policy (OCP)

- Covers the owner's liability arising out of its general supervision of the contractor's operations
- Automatically a part of the CGL policy

Liability Policies – Contractual Obligations

- Railroad Protective Liability
 - A Railroad’s version of contractual liability
 - Bodily injury and property damage liability insurance, covering the railroad’s liability to others
 - Physical damage to property owned by or leased to the railroad
 - Still no contractual coverage
 - Should have waiver of subrogation in the contract

Project Management Protective Liability Insurance (PMPL)

- A provision in the 1997 edition of the American Institute of Architects (AIA) General Conditions of the Contract for Construction (A201)
- No standard form agreed to by the insurance community
- Gives the owner the option of requiring the contractor to purchase coverage for the owner’s, the architect/engineer’s, and the general contractor’s vicarious liability from the project.
 - Protects limits of contractor’s insurance
 - Removes losses from the contractor's general liability

Additional Insured on CGL Vs Project Protective Policies

- CGL = BI + PD + PI
- CGL shares limits with A/I
- A/I has access to umbrella
- A/I does not have a contractual right to notice of cancellation
- Little if any additional cost
- PPP = BI + PD
- PPP new limits
- No excess limits
- Named insured status of PPP policy obligates insurer to provide notice
- Cost paid by Owner

CGL Gap Policy

- Non Standard policy with 4 specific coverages available, all are Property Damage Liability
 - Damage to your product
 - Damage to your work
 - Damage to impaired property not physically injured (defects, rip and tear)
 - Product recall *CG 04 36 now offers Products Withdrawal Expense coverage*

Punitive Damages Wrap

- Non Admitted coverage typically part of an umbrella policy
- Reimburses the insured for punitive damage awards that state laws may prohibit CGL carrier from covering

Umbrella

- Designed to provide excess limits over underlying liability policies
 - **Typical**
 - **General Liability**
 - **Automobile Liability**
 - **Employer's Liability**
 - **Better**
 - **Pollution Liability**
 - **Professional Liability**
 - **Rip and Tear coverage**
- Many provide enhanced coverages not found in the underlying
- **Not a standard form of coverage**

Umbrella Issues

- Follow form of underlying coverages
- “Pay on behalf of” Vs “Indemnify”
- World wide territory coverage
- “Drop down” coverage once underlying insurance has been exhausted
- Defense provision in addition to policy limits
- In the case of primary insurer insolvency, the umbrella liability policy will “drop down” above the “self-insured retention” and provide excess liability

Other Hot Issues

- Claims made vs Occurrence triggers
- EIFS
- Mold
- Chromated copper arsenate
- Continuous triggers
- Terrorism
- Residential

Questions???