



IRMI[®]

Preconference Workshop 6

***GENERAL AND UMBRELLA LIABILITY
INSURANCE***

Presented by

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Executive Vice President
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Mr. Shamis is copresenting Preconference Workshop 6, "Construction Insurance and Bonding Overview," on Monday, and Workshop P, "Responding to Insurer Insolvency," on Wednesday. He joined Willis in September of 1984, and is currently co-managing director—Construction Team Leader for the Willis Construction Practice in the Chicago office. He has also worked for Willis in Dallas; Charlotte, NC; and Atlanta. Prior to accepting his position in Chicago, Mr. Shamis served as the director of National Accounts for the Willis Construction Risk Management practice. His last 17 years of experience have been in casualty marketing, servicing, and troubleshooting for the risk management departments of contractors who are involved in large construction projects.

Mr. Shamis has also been involved in the program design and insurance/reinsurance marketing of owner controlled or contractor controlled wrap-up projects such as the Hartsfield International Airport Project, North East Electrification of Amtrak Project, and the Continental Airlines Expansion project.

Mr. Shamis is responsible for coordinating the delivery of construction risk management products and services to clients in Chicago and the surrounding area. Included in those responsibilities are leading the insurance and surety sales effort of large construction projects and individual contractors; managing all aspects of the account service work for clients; and remaining up to date on "state-of-the-art" coverage enhancements and program design issues. He is a results-driven professional who motivates employees and other team members to solve complex insurance and risk management problems for clients and prospects. He leads by example in the acceleration of Willis clients' most important projects and most vexing challenges. He has developed a network of relationships with senior home office and local underwriting staff of insurance and reinsurance companies that specialize in the construction industry.

Beyond assisting Willis staff, Mr. Shamis has taught many casualty coverage courses, has made presentations to state organizations such as the AGC and CFMA, and has been a frequent IRMI Construction Risk Conference speaker—earning IRMI's 1997 "Words of Wisdom" Award.

Mr. Shamis graduated from Northern State University in Aberdeen, South Dakota, in 1977 with a bachelor of science degree in Business Administration. He earned his Chartered Property Casualty Underwriter (CPCU) designation in 1985.

GENERAL AND UMBRELLA LIABILITY INSURANCE

***Rick Shamis
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I. Commercial General Liability

- A. Overview of what the GL policy is intended to cover
 - 1. Tort liability
 - 2. Contractual liability
 - 3. Independent contractor liability
 - 4. Work in progress
 - 5. Completed operations
- B. General Liability loss history over the years
- C. New and old Coverage concerns, issues and problems
 - 1. Additional Insured issues
 - 2. Excess Coverage for OCIP/CCIP's
 - 3. Coverage for Joint Ventures and Limited Liability Companies
 - 4. Terrorism and General Liability insurance
 - 5. Allegations of "Mold" covered or not covered
 - 6. Construction Defect claims continue to haunt carriers
 - 7. Contractors Rework or lack thereof
 - 8. ISO's answer for Design Build contractors
 - 9. Increasing General Liability Deductibles
 - 10. Exterior Insulation and Finish System (EIFS)
 - 11. Damage to Your Work Exclusion
- D. Insurance Carrier Landscape – Who's still around

II. Umbrellas

- A. How Umbrella differs from General Liability
 - 1. Excess amounts of insurance
 - 2. Coverage of additional loss exposures
 - 3. Drop-down
- B. Coverage concerns about making Umbrellas track with primary policies
 - 1. Follow form
 - 2. Concurrency issues
 - 3. Coverage triggers Occurrence/Claims Made/Other
- C. New and old Coverage concerns, issues and problems
 - 1. Additional Insured issues
 - 2. Excess Coverage for OCIP/CCIP's
 - 3. Coverage for Joint Ventures and Limited Liability Companies
 - 4. Terrorism and Umbrella Liability insurance
 - 5. Allegations of "Mold" covered or not covered
 - 6. Construction Defect/EIFS
 - 7. Contractors Rework or lack thereof
 - 8. ISO's answer for Design Build contractors
 - 9. Damage to Your Work Exclusion
 - 10. Cross-suits exclusion "Insured" versus "Insured"
- D. Will the Umbrella Liability market be improving anytime soon?

GENERAL AND UMBRELLA LIABILITY INSURANCE

Commercial General Liability

Overview of what the CGL Policy is intended to Cover

- ↪ **Tort Liability**
- ↪ **Contractual Liability**
- ↪ **Independent Contractor Liability**
- ↪ **Work in Progress**
- ↪ **Completed Operations**

Commercial General Liability

Tort Liability

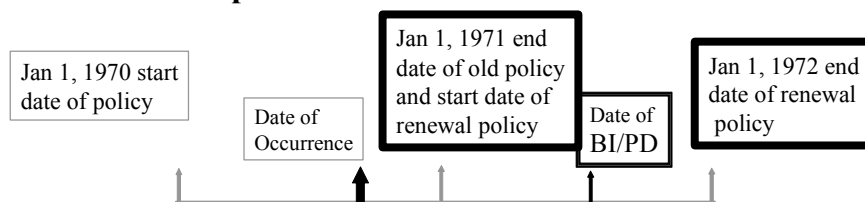
- ↪ **Tort – civil wrong, other than breach of contract, for which the law provides money damages as a possible remedy,**
- ↪ **In order for a Tort to occur, there must be an unjustified breach of a legal duty causing direct damage,**
- ↪ **Intentional and Unintentional Tort**

Commercial General Liability

↪ This insurance applies to “bodily injury”

Tort Liability, continued and “property damage” if:

- The BI/PD is caused by an “occurrence” that takes place in the “coverage territory”
- The BI/PD must occur during the policy period



The policy in force between Jan. 1, 1971/72 would be the policy that would respond to the loss

Commercial General Liability

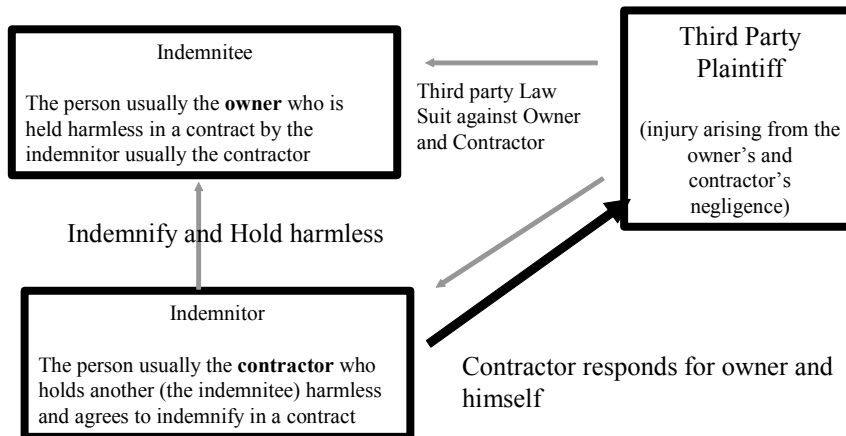
Contractual Liability

- ↪ **Contractual Liability** – one party, the indemnitor (*contractor*) agrees to indemnify another party, the indemnity (*owner*), for liability to a third party,
- ↪ “Bodily Injury” or “property damage” for which the insured (*contractor*) is obligated to pay damages by reason of the assumption of liability in a contract or agreement with the owner

Commercial General Liability

→ *Contractual Liability (continued)*

Schematic of Hold Harmless/Indemnity Clause



Commercial General Liability

→ *Contractual Liability (continued)*

3 types of hold harmless/indemnification agreements

Broad Form - the indemnitor (*contractor*) has assumed an unqualified obligation to hold the indemnitee (*owner*) harmless for any and all liabilities arising out of a project regardless of which party was at fault.

- This could include the sole negligence of the indemnitee,
- Many states have enacted statutes (Anti-Indemnity Statutes) that limit Broad Form usage,
- These laws differ from state to state,

Commercial General Liability

→ ***Contractual Liability (continued)***

Intermediate Form - the indemnitor (*contractor*) assumes all the liabilities of the indemnitee (*owner*) EXCEPT where the injury or damage is caused by the indemnitee's sole negligence.

Limited Form - the indemnitor (*contractor*) agrees to hold harmless the indemnitee (*owner*) from any and all claims but only to the extent caused by the negligence of the indemnitor.

Commercial General Liability

Independent Contractor Liability

- ↪ A loss exposure faced by virtually every organization at one time or another is liability arising out of the actions of *independent contractors* hired by that organization,
- ↪ An owner that has hired a general contractor, a general contractor that has hired a subcontractor, a subcontractor that has hired a sub-subcontractor, etc.

Commercial General Liability

Work in Progress Liability

- ↪ Liability arising during the contractors course of construction.

Completed Operations Liability

- ↪ Liability arising out of the contractors completed work.

Commercial General Liability

General Liability Loss History

- ↪ Loss History overall in this line of coverage has been historically poor,
- ↪ High expenses, long payout, long tail development,
- ↪ Asbestos and other Environmental Liability claims,
- ↪ Construction Defect claims,
- ↪ Contractors Rework or similar type coverage claims

Commercial General Liability

Additional Insured Issues

- ↵ CG 20 10 11-85
 - “completed operations”
- ↵ CG 20 10 10-93
 - “ongoing operations”
- ↵ CG 20 10 10-01
 - “ongoing operations” AND completed operations exclusion
- ↵ CG 20 26 11-85
 - liability arising out of your operations or premises
- ↵ CG 20 37 10-01
 - only completed operations claims covered, must still be used with CG 20 10 10-01

Commercial General Liability

Excess Coverage for Wrap-up Operations

- ↵ Wrap-up “sponsor” provides WC, CGL and UL coverage for all contractors enrolled plus “completed operations for a certain period of time,
- ↵ Participating contractors often exclude wrap-up from CGL policy,
- ↵ Wrap-up insurance may be less broad or in the case of Reliance National, may not be financially able to pay claims,
- ↵ Solution - endorse contractor CGL policy to make coverage excess over coverage provided by Wrap-up carrier, can fill potential gaps in coverage

Commercial General Liability

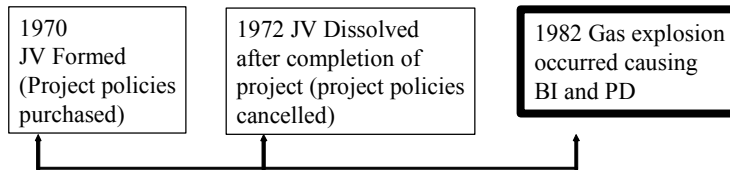
Coverage for Joint Ventures and Limited Liability Companies

- ↪ The 2001 CGL policy excludes all Joint Ventures, Partnerships or Limited Liability Companies, unless named on policy,
- ↪ Coverage for active JV/PS/LLC probably provided by separate policy during course of construction,
- ↪ Coverage for past JV/PS/LLC provided by endorsement to Contractors CGL policy,
 - Blanket Completed Operations coverage
 - Coverage is excess over any other policy covering JV/PS/LLC
 - Benefits only Named Insured contractor

Commercial General Liability

SECTION II - WHO IS AN INSURED

Past or completed Joint Ventures, Partnerships and Limited Liability Companies. The following is a dateline of a potential claim problem involving an “unendorsed” CGL policy:



Commercial General Liability

Terrorism and Commercial General Liability

- ↳ Terrorism Risk Insurance Act (TRIA),
- ↳ CG 21 69 01-02 (ISO Terrorism Exclusion),
- ↳ Some carriers will give insured choice to reject coverage other carriers will not

Commercial General Liability

Allegations of Mold (Fungi or Bacteria) covered or not covered by CGL

- ↳ Some carriers have used the pollution exclusion in an attempt to exclude “mold” claims,
- ↳ CG 21 67 04-02 Fungi or Bacteria Exclusion,
- ↳ CG 24 25 04-02 ***Limited*** Fungi or Bacteria Exclusion,
 - Excludes all "personal and advertising injury" coverage (Coverage B),
 - Provides coverage for “bodily injury” and “property damage” liability (Coverage B) ***subject to a separate aggregate limit***

Commercial General Liability

Allegations of Mold (Fungi or Bacteria) covered or not covered by CGL, continued

↳ Contractor's Pollution Liability Policy

- Intended to protect contractor from pollution releases,
- Can include Coverage for Mold (Microbial Matter),
- Expand Definition of "Pollution Conditions",
- Typically Claims-Made Form with Mold Coverage,
- Occurrence available for Project Specific Policies,
- Defense Costs - within the limit of liability,
- Require contractor to initiate "Mold Mitigation Prevention"

Commercial General Liability

Construction Defect claims continue to haunt carriers

- ↳ "Construction Defect" litigation over the past 10+ years as punched, pounded and battered the construction industry,
- ↳ Design Professionals, General Contractors, Developers, various Subcontractors, and Suppliers,
- ↳ Traditional solutions no longer effective,
- ↳ What are the solutions?

Commercial General Liability

Contractors Rework/Rip and Tear Coverage or lack thereof

- ↪ No Standard Endorsements,
- ↪ Construction insurance markets use their own non-standard endorsement,
- ↪ Contractor Rework – preserves coverage for both the cost of tearing out bad work and replacing it with good work,
- ↪ Rip Tear – covers the cost of tearing out bad work, but not the cost of replacing it

Commercial General Liability

ISO's answer for Design Build contractors

- ↪ CG 22 43 07-98 - Exclusion - Engineers, Architects or Surveyors Professional Liability
 - Excludes coverage for “professional services”,
- ↪ CG 22 79 07-98 - Exclusion - Contractors Professional Liability
 - Same as CG 22 43 except
 - Does not exclude “means, methods, techniques... in your capacity as a...contractor”

Commercial General Liability

ISO's answer for Design Build contractors, continued

- ↳ CG 22 80 07-98 - Limited Exclusion - Contractors – Professional,
 - Excludes coverage for “professional services”,
 - however, this exclusion does not apply to your operations in connection with construction work performed by you or on your

Commercial General Liability

Increasing CGL Deductibles

- ↳ Since September 11th, 2001, CGL rates have risen anywhere from 50% to 100%+,
- ↳ Per Occurrence deductibles have also risen from \$1,000 - \$5,000 Property damage only deductibles prior to 9-11-2001, to substantially large deductibles: \$50,000, \$100,000, \$250,000+,
- ↳ Per “occurrence” versus Per “claim”,
- ↳ Allocated Loss Adjustment Expense (ALAE) to be included and limited to the deductible, however, NOT included within the limit of liability

Commercial General Liability

Exterior Insulation and Finish Systems (EIFS)

- ↳ Multilayered exterior wall systems that are designed to provide high energy efficiency,
- ↳ EIFS gained attention when claims began to arise alleging damages caused by moisture,
- ↳ Significant amount of Construction Defect Litigation,
- ↳ EIFS exclusions are in non-standard form and are in widespread use for both residential and commercial construction contractors

Commercial General Liability

Damage to Your Work Exclusion

- ↳ **Exclusion I. Damage to Your Work**
- ↳ **"Property damage" to "your work" arising out of it or any part of it and included in 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 subcontractor.***

Commercial General Liability

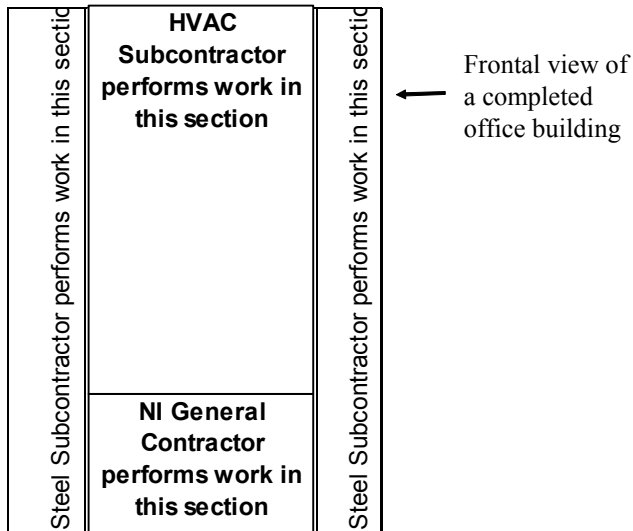
Damage to Your Work Exclusion, continued

Examples of covered claims in the CGL:

- ↳ Property damage to work performed by the insured when the damage results from the work of the insured's subcontractor,
- ↳ Property damage to work performed by the insured's subcontractor when the damage results from that subcontractor's work,
- ↳ Property damage to work performed by the insured's subcontractor when the damage results from work performed by the insured,
- ↳ Property damage to work performed by the insured's subcontractor when the damage results from the work of another contractor or subcontractor

Commercial General Liability

Damage to Your Work Exclusion, continued



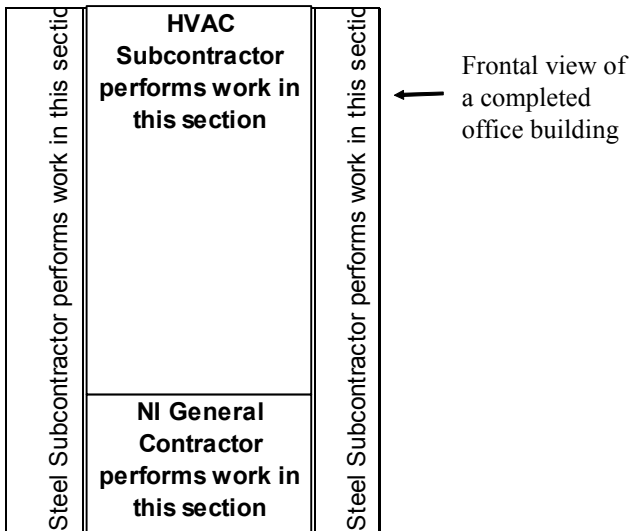
Commercial General Liability

Damage to Your Work Exclusion, continued

- ↳ CG 22 94 10-01 Exclusion – Damage to work Performed by subcontractors on your behalf,
- ↳ Removes the “**subcontractor**” exception from the “damage to your work” exclusion,
- ↳ A General Contractor has no coverage for damage to its work if the work was performed by a subcontractor or if the subcontractor’s work causes damage to other subcontractors or the NI general contractor’s work,
- ↳ CG 22 95 10-01 Exclusion – Damage to work Performed by subcontractors on your behalf
 - Only excludes the sites or operations listed in the endorsement

Commercial General Liability

Damage to Your Work Exclusion, continued



Commercial General Liability

Insurance Carrier Landscape – Who is still around?

↳ **Abandoned underwriting discipline in favor of market share in the soft market left many construction carriers either insolvent, downgraded by AM Best, or forced to shed non-core business segments such as construction**

Umbrella Liability

How Umbrella Liability Policies differ from General Liability Policies

- ↳ **Excess amounts of coverage**
- ↳ **Coverage for additional loss exposures**
- ↳ **Drop-down coverage when the primary CGL limit of liability has been exhausted**

Umbrella Liability

Coverage concerns when Umbrella Liability does not track with General Liability policy

- ↪ Follow Form language
- ↪ Concurrency issues
- ↪ Coverage Triggers Occurrence/Claims Made

Umbrella Liability

- | | |
|--|--|
| ↪ Additional Insured Issues | ↪ Contractors Rework/Rip and Tear Coverage |
| ↪ Excess Coverage for Wrap-up Operations | ↪ Professional Liability |
| ↪ Coverage for JV/PS/LLC | ↪ Damage to Your Work Exclusion |
| ↪ Terrorism | ↪ Cross Suits exclusions |
| ↪ Mold | ↪ “Insured” versus “Insured” |
| ↪ Construction Defect/EIFS | |

Umbrella Liability

Will the Umbrella market be improving anytime soon?