

## **Preconference Workshop 5**

***Monday, November 7, 9:00 a.m.–4:30 p.m.***

# ***GENERAL LIABILITY INSURANCE***

**Presented by**

**Rick Shamis  
Managing Director, Aon  
Construction Services Group**



A popular introductory course, this workshop provides an overview of construction bond and insurance programs. The day starts with an overview of contract bonds that are commonly used in construction, including when each type of bond is appropriate and what they do and do not cover. Subsequently, experts in general and umbrella liability, builders risk, and workers compensation insurance will examine the coverage provided by these policies. Designed primarily for those who are new to construction insurance, this session provides a foundation for understanding more advanced concepts that will be examined in other Conference workshops. This workshop will review the common types and uses of construction contract bonds; examine the coverage provided by contractors' core insurance policies; identify coverage challenges and make recommendations for filling gaps or modifying problematic policy language; and provide a basis for understanding higher-level concepts presented during the remainder of the Conference.

THE CONSTRUCTION EXPERTS®

*"The close partnership between Suffolk and Aon has been a huge asset for us because of the risk protection and guidance Aon provides."*

John F. Fish  
President and CEO  
Suffolk Construction Company, Inc.

Built by Suffolk Construction Company, Inc.  
Protected by Aon Construction Services Group.

built by Suffolk Construction Company, Inc.

MANULIFE FINANCIAL BUILDING

Protect Your Business From the Ground Up.



For more information contact  
Aon Construction Services Group  
at 888.678.7310 or [www.aon.com/construction](http://www.aon.com/construction).

protected by

**AON**  
Construction Services Group

**Rick Shamis**  
**Managing Director**  
**Aon—Construction Services Group**

Mr. Shamis is one of the presenters for Preconference Workshop 5, "Introduction to Construction Bonds and Insurance," on Monday. He joined Aon in December of 2003 and currently holds the title of Managing Director—Property/Casualty Operations for the Central Region. Prior to joining Aon, Mr. Shamis worked for Willis in Dallas; Charlotte, North Carolina; Atlanta; and Chicago. His last 22 years of construction insurance experience has been as team leader, property/casualty marketing, servicing, and troubleshooting for the risk management and finance departments of contractors who are involved in large or complex construction projects.

Mr. Shamis is responsible for coordinating the delivery of construction risk management products and services to clients and prospects in the Central Region. Included in those responsibilities are leading the insurance 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 Aon clients' most important projects and 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 Aon staff, Mr. Shamis has taught many casualty coverage courses; has made presentations to state organizations such as the AGC and CFMA; and has spoken at the IRMI Construction Risk Conference for more than 10 years. He was the recipient of IRMI's 1997 "Words of Wisdom" Award for his academic leadership in the advancement of insurance education.

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.

## ***Notes***

This file is set up for duplexed printing. Therefore, there are pages that are intentionally left blank. If you print this file, we suggest that you set your printer to duplex.

# **GENERAL LIABILITY INSURANCE**

---

***Rick Shamis***  
***Aon—Construction Services Group***

## **I. CGL**

- A. Quick introduction and brief history of the coverage
- B. 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
- C. How the industry has used GL to fill indemnity commitments under contracts
  - 1. Contractual liability/defense
  - 2. Additional insured status
- D. How the coverage has evolved from specific covers to broad endorsements and now back to narrower definitions
- E. The recent impacts of the changing market on GL including reinsurance market drivers
- F. The relationship with construction and bonding.
- G. New coverage concerns
  - 1. Mold
  - 2. Construction defects
  - 3. EIFS
- H. Coverage challenges and recommendations for filling gaps or modifying problematic language

## **II. Umbrellas**

- A. Original intent of coverage and reason it was invented
- B. How umbrella differs from GL
  - 1. Excess amounts of insurance
  - 2. Coverage of additional loss exposures
  - 3. Drop-down
- C. Coverage concerns about making umbrellas track with primary policies
  - 1. Follow form
  - 2. Concurrency issues
  - 3. Coverage triggers
- D. Coverage changes including pollution, professional, mold, construction defect, and EIFS concerns
- E. Coverage challenges and recommendations for filling gaps or modifying problematic language

# Introduction to Construction Bonds and Insurance

## **General and Umbrella Liability**

Presented by  
Rick Shamis CPCU  
Aon – Construction Services Group, Managing Director

1

### 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**

2

## 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**

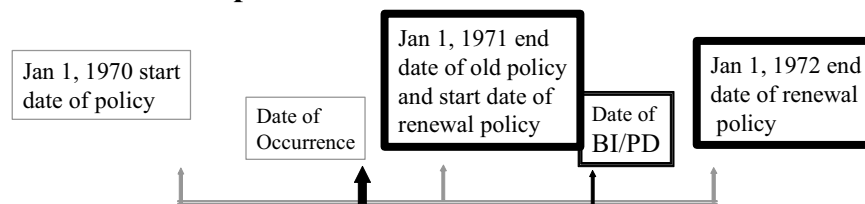
3

## 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**

4

## Commercial General Liability

### ***Contractual Liability***

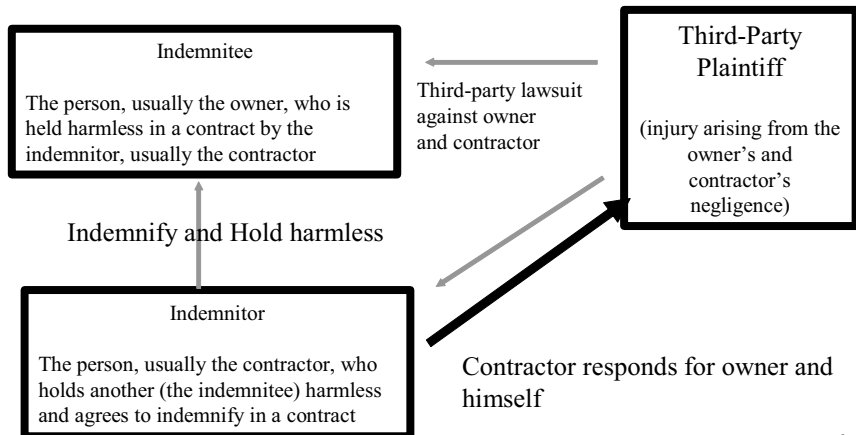
- ↪ Contractual liability – one party, the indemnitor (contractor) agrees to indemnify another party, the indemnity (owner), for liability to a third party,
- ↪ “Bodily injury” or “property damage” for which the insured (contractor) is obligated to pay damages by reason of the assumption of liability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

5

## Commercial General Liability

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

#### Schematic of Hold Harmless/Indemnity Clause



6

## 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,

7

## 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.

8

## 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 contractor's course of construction.

### ***Completed Operations Liability***

- ↪ Liability arising out of the contractor's completed work.

## Commercial General Liability

### ***Additional Insured Issues***

- ↵ **CG 20 10 11-85**
  - **“completed operations”**
- ↵ **CG 20 10 10-01**
  - **“ongoing operations” AND completed operations exclusion**
- ↵ **CG 20 37 10-01**
  - **only completed operations claims covered, must still be used with CG 20 10 10-01**

11

## Commercial General Liability

### ***Additional Insured Issues, continued***

- ↵ **In July of 2004, ISO implemented revised versions of several AI endorsements that are used in construction and related fields**
- ↵ **These new endorsements eliminate liability “arising out of” the named insured’s operations**
- ↵ **They provided coverage to the AI only when injury or damage is caused “in whole or in part” by the named insured**
- ↵ **These revised endorsements eliminate “sole negligence” claims, coverage that did exist under previous endorsement**

12

## Commercial General Liability

### ***Additional Insured Issues, continued***

#### **Endorsements Affected by ISO:**

##### **Contractors and Project Owners**

- ⌘ **CG 2010 10 01 ADDITIONAL INSURED - OWNERS, LESSEES OR CONTRACTORS - SCHEDULED PERSON OR ORGANIZATION**
- ⌘ **CG 2033 10 01 ADDITIONAL INSURED - OWNERS, LESSEES OR CONTRACTORS - AUTOMATIC STATUS WHEN REQUIRED IN CONSTRUCTION AGREEMENT WITH YOU**
- ⌘ **CG 2037 10-01 ADDITIONAL INSURED - OWNERS, LESSEES OR CONTRACTORS - COMPLETED OPERATIONS**

## Commercial General Liability

### ***Additional Insured Issues, continued***

#### **Endorsements Affected by ISO:**

##### **Architects and Engineers**

- ⌘ **CG 2007 07 98 ADDITIONAL INSURED ENGINEERS, ARCHITECTS, OR SURVEYORS**
- ⌘ **CG 2032 07 98 ADDITIONAL INSURED - ENGINEERS, ARCHITECTS OR SURVEYORS NOT ENGAGED BY THE NAMED INSURED**

## Commercial General Liability

### ***Additional Insured Issues, continued***

#### **Endorsements Affected by ISO:**

#### **Vendors, Equipment Lessors, Miscellaneous**

- ⌘ CG 2015 11 88 ADDITIONAL INSURED - VENDORS
- ⌘ CG 2026 11 85 ADDITIONAL INSURED - DESIGNATED PERSON OR ORGANIZATION
- ⌘ CG 2028 11 85 ADDITIONAL INSURED - LESSOR OF LEASED EQUIPMENT
- ⌘ CG 2034 03 97 ADDITIONAL INSURED - LESSOR OF LEASED EQUIPMENT - AUTOMATIC STATUS WHEN REQUIRED IN LEASE AGREEMENT WITH YOU

15

## Commercial General Liability

### ***Additional Insured Issues, continued***

#### **CG 2010 07 04 ADDITIONAL INSURED - OWNERS, LESSEES OR CONTRACTORS - SCHEDULED PERSON OR ORGANIZATION**

PRE 2004 CG 2010

..... but only with respect to liability *arising out of your* ongoing operations performed for that insured.

2004 CG 2010

..... but only with respect to liability for "bodily injury", "property damage" or "personal and advertising injury" *caused, in whole or in part, by:*

1. *Your acts or omissions; or*
2. *The acts or omissions of those acting on your behalf;*

in the performance of your ongoing operations for the additional insured(s) at the location(s) designated above.

16

## Commercial General Liability

### ***Additional Insured Issues, continued***

#### **CG 2010 07 04 ADDITIONAL INSURED - OWNERS, LESSEES OR CONTRACTORS - SCHEDULED PERSON OR ORGANIZATION**

- ⌘ Pre 2004: “Arising out of” – Courts applied language to ultimately mean coverage could exist for the additional insureds’ “sole negligence”
- ⌘ 2004: “caused, in whole or in part, by” ... , the ultimate effect is that the new language does two things:
  - Elimination of coverage for additional insureds’ sole negligence, and
  - Named insured must be at least a partial cause of injury or damage
- ⌘ Contractual requirements

## Commercial General Liability

### ***Contractual Liability Issues***

#### **CG 2426 07 04 AMENDMENT OF INSURED CONTRACT DEFINITION**

##### PRE and CURRENT 2004 Policy Definition

That part of any other contract or agreement ... 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.

##### 2004 CG 2426 ENDORSEMENT

That part of any other contract or agreement ... under which you assume the tort liability of another party to pay for "bodily injury" or "property damage" to a third person or organization, *provided the "bodily injury" or "property damage" is caused, in whole or in part, by you or by those acting on your behalf.* Tort liability means a liability that would be imposed by law in the absence of any contract or agreement.

## Commercial General Liability

### ***Contractual Liability Issues***

#### **CG 2426 07 04 AMENDMENT OF INSURED CONTRACT DEFINITION**

- ↻ The endorsement eliminates coverage for a CGL insured's assumption of liability arising out of the other party's "sole negligence"
- ↻ States that allow broad form indemnification:
  - The indemnitor could be assuming the "sole negligence" of another, by contract, and not have coverage,
  - The indemnitee will not be able to perfect a contractual liability claim against the indemnitor's policy
- ↻ Contractual requirements

19

## 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 their CGL policy:
  - CG 2154 01 96 EXCLUSION—DESIGNATED OPERATIONS COVERED BY A CONSOLIDATED (WRAP-UP) INSURANCE PROGRAM
  - Exclusion applies to ongoing operations and products/completed operations
  - Once the wrap-up tail or products/completed operations extension coverage has expired, the insured contractor would not have any coverage for claims that arise out of work done in wrap-up.

20

## Commercial General Liability

### ***Excess Coverage for Wrap-up Operations, continued***

- ↳ 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

21

## Commercial General Liability

### ***Coverage for Joint Ventures and Limited Liability Companies***

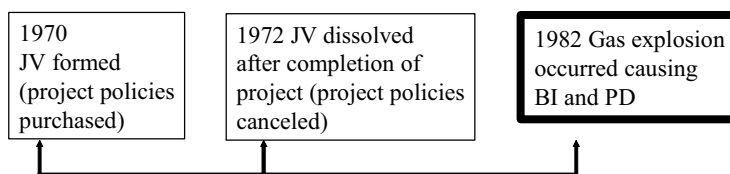
- ↳ The 2004 CGL policy excludes all joint ventures, partnerships or limited liability companies, unless named on policy,
- ↳ Coverage for active JV/PS/LLC probably provided by separate policy during course of construction,
- ↳ Coverage for past JV/PS/LLC provided by endorsement to contractors CGL policy,
  - Blanket completed operations coverage
  - Coverage is excess over any other policy covering JV/PS/LLC
  - Benefits only named insured contractor

22

## 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:



23

## 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

24

## 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 12 04 Fungi or Bacteria Exclusion,
- ↪ CG 24 25 12 04 *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 has punched, pounded and battered the construction industry,
- ↪ Design professionals, general contractors, developers, various subcontractors, and suppliers,
- ↪ Traditional solutions no longer effective, subcontractors generally tend to have:
  - “Residential Construction” - exclusions,
  - Carriers that might provide coverage may be poorly capitalized and will not be long-term answer,
  - Can’t obtain additional insured end.
- ↪ What are the solutions?

27

## Commercial General Liability

### ***Construction defect claims continue to haunt carriers, continued***

- ↪ The most effective way: contractor controlled insurance program (CCIP) general contractor to insure the owner and any and all subcontractors,
- ↪ Contractor negotiates the coverage needed in lieu of accepting coverage from owner
- ↪ Contractor can manage policy over the term

28

## Commercial General Liability

### **Definition of AUTO and MOBILE EQUIPMENT Issues**

#### AUTO - PRE 2004 Policy Definition

"Auto" means a land motor vehicle, trailer or semitrailer designed for travel on public roads, including any attached machinery or equipment.

But "auto" does not include "mobile equipment".

#### AUTO - 2004 Policy Definition

"Auto" means:

- a. A land motor vehicle, trailer or semitrailer designed for travel on public roads, including any attached machinery or equipment; or
- b. Any other land vehicle that is subject to a compulsory or financial responsibility law or other motor vehicle insurance law in the state where it is licensed or principally garaged.

However, "auto" does not include "mobile equipment." 29

## Commercial General Liability

### **Definition of AUTO and MOBILE EQUIPMENT Issues, continued**

#### MOBILE EQUIPMENT - PRE 2004 Policy Definition

Old definition reads the same as new with the exception of the last two sentences included in the 2004 definition.

#### MOBILE EQUIPMENT - 2004 Policy Definition

... However, "mobile equipment" does not include any land vehicles that are subject to a compulsory or financial responsibility law or other motor vehicle insurance law in the state where it is licensed or principally garaged. Land vehicles subject to a compulsory or financial responsibility law or other motor vehicle insurance law are considered "autos".

## Commercial General Liability

### ***Definition of AUTO and MOBILE EQUIPMENT***

#### ***Issues, continued***

- ↻ Vehicles subject to state motor vehicle insurance laws, even if they would otherwise meet the policy definition of “mobile equipment,” are “autos” and their operation and use falls under the CGL “aircraft, auto or watercraft” exclusion.
- ↻ Certain vehicles, “maintained for use solely on or next to premises you own or rent” (i.e., jeeps, flatbed trailers)
- ↻ Automobile and general liability should be insured with same carrier

31

## 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”

32

## 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 property

33

## Commercial General Liability

### ***Damage to Your Work Exclusion***

- ↪ Exclusion 1. 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.*

34

## 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

35

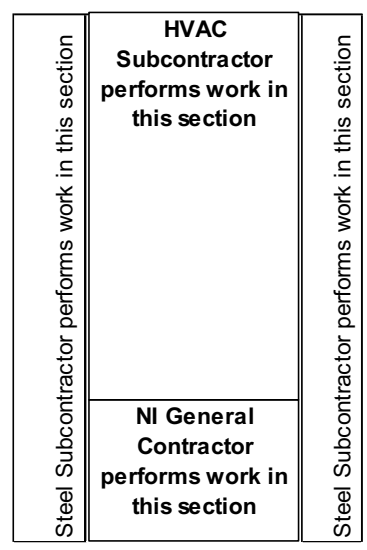
## Commercial General Liability

### ***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**



← Frontal view of a completed office building

37

## 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

38

## Umbrella Liability

### ***Coverage concerns when umbrella liability does not track with general liability policy***

- ↪ Follow form language
- ↪ Concurrency issues
- ↪ Coverage triggers occurrence/claims made

39

## Umbrella Liability

### **Additional Coverage Concerns**

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

40