

CGL Insurance Policies and Coverage

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APRIL 29, 2010
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What is a CGL Policy?



- CGL stands for: Comprehensive General Liability Insurance Policy
- CGL Policies are usually purchased by businesses to protect them in the event of a claim or lawsuit against the individual owner(s) and/or the business.
- Generally, under such policies, the insurance company promises to defend and indemnify the insured if the insured is sued.

Duty to Defend and Indemnify



- Discrete obligations under an insurance policy
- A duty to indemnify arises only when the policy terms actually cover a judgment or settlement against an insured, while
- A duty to defend arises when the underlying complaint against the insured alleges facts that might arguably fall within the terms of the policy.

Greystone Const., Inc. v. Nat. Fire & Marine Ins. Co., 649 F.Supp.2d 1213 (D.Colo. 2009).

Parts of the CGL Policy (R.P.S.)



- Declarations
- Insuring Agreement
- Definitions
- Exclusions
- Endorsements
- Conditions

Dec Page

- Usually the first page of the policy
- Summarizes key information specific to the policy
 - Name and Address Insured and Insurer
 - Policy Period
 - Coverages
 - Limits
 - Premiums
- If the policy is on a claims-made liability form, the dec page will identify it as such, and will show the retroactive date

POLICY PERIOD: Policy covers FROM 1/23/2008 12:01 am TO 01/23/2009

COVERAGE

COMMERCIAL GENERAL LIABILITY COVERAGE (SEE SCHEDULE FORM M-3776)

OTHER COVERAGE (DESCRIBE)

721 PS003803
RENEWAL OF NUMBER

NATIONAL FIRE & MARINE INSURANCE COMPANY
OMAHA, NEBRASKA

GA Code: N05007

LIMITS OF INSURANCE

EACH OCCURRENCE LIMIT	\$	1,000,000
DAMAGE TO PREMISES RENTED	\$	100,000
MEDICAL EXPENSE LIMIT	\$	5,000
PERSONAL & ADVERTISING INJURY LIMIT	\$	1,000,000
GENERAL AGGREGATE LIMIT (OTHER THAN PRODUCT-COMPLETED OPERATIONS)	\$	2,000,000
PRODUCTS-COMPLETED OPERATIONS AGGREGATE LIMIT	\$	2,000,000

ADVANCE PREMIUM

\$ 75,344

\$

TOTAL ADVANCE PREMIUM \$ 75,344

Insuring Agreement



- This is the portion of the policy that defines and confers coverage.
- Initial grant of coverage is broad
- Policies can have more than one coverage (Coverage A – Bodily Injury and Property Damage; Coverage B – Personal and Advertising Injury; Coverage C – Medical Payments)
- Cross-references Definitions

SECTION I - COVERAGES

COVERAGE A BODILY INJURY AND PROPERTY DAMAGE LIABILITY

1. Insuring Agreement

- a. We will pay those sums that the insured becomes legally obligated to pay as damages because of "bodily injury" or "property damage" to which this insurance applies. We will have the right and duty to defend the insured against any "suit" seeking those damages. However, we will have no duty to defend the insured against any "suit" seeking damages for "bodily injury" or "property damage" to which this insurance does not apply. We may, at our discretion, investigate any "occurrence" and settle any claim or "suit" that may result. But:

- (1) The amount we will pay for damages is limited as described in Section III - Limits Of Insurance; and
- (2) Our right and duty to defend ends when we have used up the applicable limit of insurance in the payment of judgments or settlements under Coverages A or B or medical expenses under Coverage C.

No other obligation or liability to pay sums or perform acts or services is covered unless explicitly provided for under Supplementary Payments - Coverages A and B.

Insuring Agreement Covers?

- Legally Obligated to Pay
- As Damages
- Bodily Injury/Property Damage
- Occurrence

We will pay those sums that the insured becomes legally obligated to pay as damages

because of "bodily injury" or "property damage" to which this insurance applies. We will have the

COMMERCIAL GENERAL LIABILITY
CG 00 01 10 01

Throughout this policy the words "you" and "your" refer to the Named Insured shown in the Declarations, and any other person or organization qualifying as a Named Insured under this policy. The words "we", "us" and "our" refer to the company providing this insurance.

The word "insured" means any person or organization qualifying as such under Section II - Who Is An Insured.

Other words and phrases that appear in quotation marks have special meaning. Refer to Section V - Definitions.

SECTION I - COVERAGES

COVERAGE A BODILY INJURY AND PROPERTY DAMAGE LIABILITY

1. Insuring Agreement

a. We will pay those sums that the insured becomes legally obligated to pay as damages because of "bodily injury" or "property damage" to which this insurance applies. We will have the right and duty to defend the insured against any "suit" seeking those damages. However, we will have no duty to defend the insured against any "suit" seeking damages for "bodily injury" or "property damage" to which this insurance does not apply. We may, at our discretion, investigate any "occurrence" and settle any claim or "suit" that may result. But:

(1) The amount we will pay for damages is limited as described in Section III - Limits Of Insurance; and

(2) Our right and duty to defend ends when we have used up the applicable limit of insurance in the payment of judgments or settlements under Coverages A or B or medical expenses under Coverage C.

No other obligation or liability to pay sums or perform acts or services is covered unless explicitly provided for under Supplementary Payments - Coverages A and B.

in the "coverage territory":

(2) The "bodily injury" or "property damage" occurs during the policy period; and

(3) Prior to the policy period, no insured listed under Paragraph 1. of Section II - Who Is An Insured 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, in whole or in part. If such a listed insured or authorized "employee" knew, prior to the policy period, that the "bodily injury" or "property damage" occurred, then any continuation, change or resumption of such "bodily injury" or "property damage" during or after the policy period will be deemed to have been known prior to the policy period.

c. "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 listed under Paragraph 1. of Section II - Who Is An Insured or any "employee" authorized by you to give or receive notice of an "occurrence" or claim, includes any continuation, change or resumption of that "bodily injury" or "property damage" after the end of the policy period.

d. "Bodily injury" or "property damage" will be deemed to have been known to have occurred at the earliest time when any insured listed under Paragraph 1. of Section II - Who Is An Insured or any "employee" authorized by you to give or receive notice of an "occurrence" or claim:

(1) Reports to, or any part, of the "bodily injury" or "property damage" to us or any other insurer;

(2) Receives a written or verbal demand or claim for damages because of the "bodily injury" or "property damage"; or

(3) Becomes aware by any other means that "bodily injury" or "property damage" has occurred or has begun to occur.

CG 00 01 10 01 © ISO Properties, Inc., 2000 Page 1 of 16 □



Definitions

- Explains certain the “special” meaning of terms contained in the Policy
- If terms are not specifically defined the should be given their plain meaning
- Construing Definitions has been a significant factor in recent coverage decisions

SECTION V - DEFINITIONS

1. "Advertisement" means a notice that is broadcast or published to the general public or specific market segments about your goods, products or services for the purpose of attracting customers or supporters. For the purposes of this definition:
 - a. Notices that are published include material placed on the Internet or on similar electronic means of communication; and
 - b. Regarding web-sites, only that part of a website that is about your goods, products or services for the purposes of attracting customers or supporters is considered an advertisement.
2. "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".

and well servicing equipment.

13. "Occurrence" means an accident, including continuous or repeated exposure to substantially the same general harmful conditions.

to the General Aggregate Limit.

17. "Property damage" means:
 - 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

Exclusions



- Policy provisions that seek to eliminate coverage for specified losses.
- CGL Policies have provisions that are entitled "Exclusions" but they can be found in other places in the policy, including the Endorsements
- Section follows Insuring Agreement

Example:

2. **Exclusions**

This insurance does not apply to:

j. **Damage To Property**

"Property damage" to:

(1) Property you own, rent, or occupy, including any costs or expenses incurred by you, or

(6) That particular part of any property that must be restored, repaired or replaced because "your work" was incorrectly performed on it.

Conditions



- Things that must happen or coverage that existed could otherwise be lost.
 - Premium Payment
 - Notice of Loss to Carrier
 - Cooperation
 - Notice of other insurance that may be available for loss

Endorsements

Policy Forms that modify the main coverage form



What you thought you had:

What the Endorsement took away:

SECTION I - COVERAGES

COVERAGE A BODILY INJURY AND PROPERTY DAMAGE LIABILITY

1. Insuring Agreement

- a. We will pay those sums that the insured becomes legally obligated to pay as damages because of "bodily injury" or "property damage"

A. This insurance does not apply to "bodily injury", "property damage", or "personal and advertising injury" arising out of:

- (1) ongoing operations; or
- (2) operations included within the "products-completed operations hazard";

in connection with any project, premises, jobsite, or location which is or has been subject to a "consolidated (wrap-up) insurance program" through which the insured is or has been insured.

M-6222 (0

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

EXCLUSION - CONSOLIDATED (WRAP-UP) INSURANCE PROGRAMS

The following exclusion is added to the policy:

A. This insurance does not apply to "bodily injury", "property damage", or "personal and advertising injury" arising out of:

- (1) ongoing operations; or

"suit" that may result. But:

General Rules of Policy Interpretation



- CGL interpretation for court.
- Plain and unambiguous policy language is given its plain meaning.
McGowan v. State Farm Fire & Casualty Co., 100 P.3d 521, 522 (Colo.App.2004)
- Ambiguities are construed in favor of insured. *Worsham v. Reliance Ins. Co.*, 687 P.2d 988 (Colo.App. 1984)
- Specific clauses prevail over general
Trujillo v. State Mut. Life Assur. Co. of Worcester, Mass. 511 P.2d 534, 536 (Colo.App. 1973)
- Read insurance policy as a whole, rather than provisions in isolation.
General Sec. Indem. Co. of Ariz. V. Mtn. States Mut. Cas. Co., 205 P.3d 529 (Colo.App. 2009)

Coverage Interpretation Flows One Way



Downstream

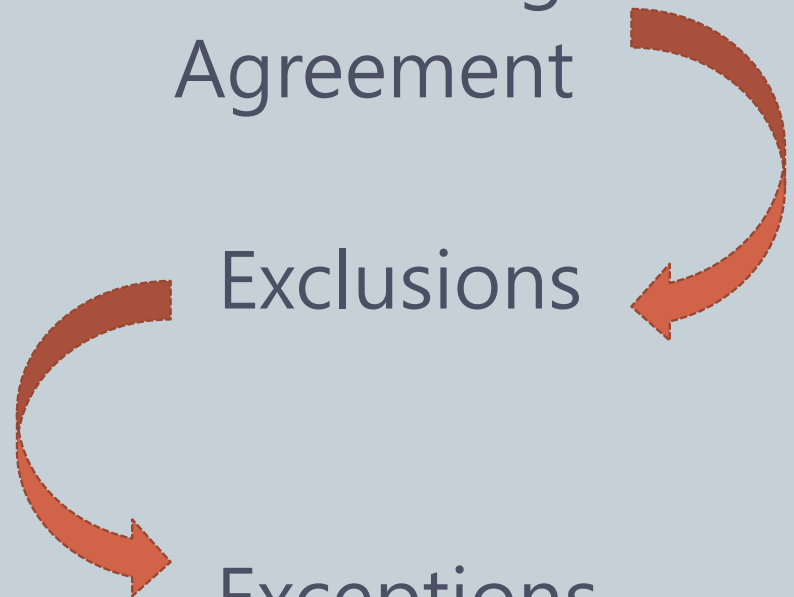


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Insuring
Agreement

Exclusions

Exceptions



Insuring Agreement - Occurrence



COMMERCIAL GENERAL LIABILITY
CG 00 01 10 01

COMMERCIAL GENERAL LIABILITY COVERAGE FORM

Various provisions in this policy restrict coverage. Read the entire policy carefully to determine rights, duties and what is and is not covered.

Throughout this policy the words "you" and "your" refer to the Named Insured shown in the Declarations, and any other person or organization qualifying as a Named Insured under this policy. The words "we", "us" and "our" refer to the company providing this insurance.

- b. This insurance applies to "bodily injury" and "property damage" only if:
- (1) The "bodily injury" or "property damage" is caused by an "occurrence" that takes place in the "coverage territory";
 - (2) The "bodily injury" or "property damage" occurs during the policy period; and
 - (3) Prior to the policy period, no insured listed under Paragraph 1. of Section II - Who Is

- b. This insurance applies to "bodily injury" and "property damage" only if:
- (1) The "bodily injury" or "property damage" is caused by an "occurrence" that takes place in the "coverage territory";

not apply. We may, at our discretion, investigate any "occurrence" and settle any claim or "suit" that may result. But:

- (1) The amount we will pay for damages is limited as described in Section III - Limits Of Insurance; and
- (2) Our right and duty to defend ends when we have used up the applicable limit of insurance in the payment of judgments or settlements under Coverages A or B or medical expenses under Coverage C.

No other obligation or liability to pay sums or perform acts or services is covered unless explicitly provided for under Supplementary Payments - Coverages A and B.

end of the policy period.

- d. "Bodily injury" or "property damage" will be deemed to have been known to have occurred at the earliest time when any insured listed under Paragraph 1. of Section II - Who Is An Insured or any "employee" authorized by you to give or receive notice of an "occurrence" or claim:
- (1) Reports all, or any part, of the "bodily injury" or "property damage" to us or any other insurer;
 - (2) Receives a written or verbal demand or claim for damages because of the "bodily injury" or "property damage"; or
 - (3) Becomes aware by any other means that "bodily injury" or "property damage" has occurred or has begun to occur.

Okay, what is an Occurrence?

SECTION V - DEFINITIONS

1. "Advertisement" means a notice that is or published to the general public or segments about your goods, products

When this insurance insurance, we will p amount of the loss, sum of:
(1) The total amount insurance would absence of this absence of this
(2) The total of all- amount
We will share the re any other insurance Excess insurance pl bought specifically Limits of Insurance of this Coverage Pa
c. Method Of Sharing If all of the other ins by equal shares, we also. Under this app contributes equal an Apportioning limit of it remains, which
If any of the other in contribution by equa by limits. Under this share is based on th of insurance to the i insurance of all insu

10. "Leased worker" means a person leased to you by a labor leasing firm under an agreement between you and the labor leasing firm, to perform duties related to the conduct of your business. "Leased worker" does not include a "temporary worker".
11. "Loading or unloading" means the handling of property:
 - a. After it is moved from the place where it is accepted for movement into or onto an aircraft, watercraft or "auto";
 - b. While it is in or on an aircraft, watercraft or "auto"; or
 - c. While it is being moved from an aircraft, watercraft or "auto" to the place where it is finally delivered; but "loading or unloading" does not include the movement of property by means of a mechanical device, other than a hand truck, that is not attached to the aircraft, watercraft or "auto".
12. "Mobile equipment" means any of the following types of land vehicles, including any attached machinery or equipment:
 - a. Bulldozers, farm machinery, forklifts and other vehicles designed for use primarily on public roads;
 - b. Vehicles maintained for use solely on or next to premises you own or rent;
 - c. Vehicles that travel on crawler treads;
 - 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;
 - 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;
 - f. Vehicles not described in a., b., c. or d. above maintained primarily for purposes other than the transportation of persons or cargo. However, self-propelled vehicles with the following types of permanently attached equipment are not "mobile equipment" but 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 chasses 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.
13. "Occurrence" means an accident, including continuous or repeated exposure to substantially the same general harmful conditions.
14. "Personal and advertising injury" means injury, including consequential "bodily injury", arising out of one or more of the following offenses:
 - a. False arrest, detention or imprisonment;
 - b. Malicious prosecution;
 - c. The wrongful eviction from, wrongful entry into, or invasion of the right of private occupancy of a room, dwelling or premises that a person occupies, committed by or on behalf of its owner, landlord or lessor;
 - d. Oral or written publication, in any manner, of material that slanders or libels a person or organization or disparages a person's or organization's goods, products or services;
 - e. Oral or written publication, in any manner, of material that violates a person's right of privacy;
 - f. The use of another's advertising idea in your "advertisement"; or
 - g. Infringing upon another's copyright, trade dress or slogan in your "advertisement".

13. "Occurrence" means an accident, including continuous or repeated exposure to substantially the same general harmful conditions.

Case Law Interpretation of Occurrence




Colorado Court of Appeals,
Div. I.
GENERAL SECURITY INDEMNITY
COMPANY OF ARIZONA, f/k/a Fulcrum
Insurance Company,
an Arizona corporation, Plaintiff-Appellant,
v.
MOUNTAIN STATES MUTUAL CASUALTY
COMPANY, a New Mexico corporation;
American
Family Mutual Insurance Company, a
Wisconsin corporation; Colony National
Insurance Company, a Virginia
corporation; Farmers Alliance Mutual
Insurance
Company, a Kansas corporation; Hartford
Insurance Company; and Western
Heritage Insurance Company, Defendants-
Appellees.
Nos. 07CA2291, 07CA2292.
Feb. 19, 2009.

Background: Framing subcontractor's insurer brought contribution and indemnification action against sub-subcontractors' commercial general liability (CGL) insurers, seeking relief for such insurers failure or refusal to share the costs in the defense of framing subcontractor against third-party complaint filed by general contractor in construction defect action. The Boulder County District Court, Morris W. Sandstead, J., granted sub- subcontractors'

insurers summary judgment, and subcontractor's insurer appealed.

Holding: The Court of Appeals, Taubman, J., held that as a matter of first impression, complaints in construction defect action that only alleged poor workmanship did not allege an occurrence that triggered a duty to defend in the CGL policies issued to the sub-subcontractors.

Affirmed.
West Headnotes

[1]  KeyCite Citing References for this Headnote

◦217 Insurance
◦217XVII Coverage--Liability Insurance
◦217XVII(A) In General
◦217k2273 Risks and Losses
◦217k2275 k. Accident, Occurrence
or Event. Most Cited Cases

In construction defect action, complaint filed against general contractor by homeowners' association and third-party complaint filed by general contractor against framing subcontractor did not allege an "occurrence" that triggered a duty to defend, in commercial general liability (CGL) insurance policies issued to framing subcontractor's sub-subcontractors; CGL policies defined

General Security

Rule: A claim of defective workmanship, standing alone, does not allege an occurrence.

General Sec. Indem. Co. of Ariz. V. Mtn. States Mut. Cas. Co., 205 P.3d 529 (Colo.App. 2009)

Battle of Interpretations



What insurers argue:

- Faulty workmanship is not an "occurrence" because "property damage" requires that there be damage to something beyond the contractor's work itself in order to constitute an "occurrence."

What policy holders argue:

- Poor workmanship that results in "property damage" constitutes an "occurrence" when the damage was not expected or intended from the perspective of the insured.

Travelers Indem. Co. of Am. v. Moore & Ass., Inc., Slip Copy, 2005 WL 2293009 (Tenn. Ct. App. 2005).

Legislative Change



Two main points of the new Legislation:

- (1) Clarify that *General Security* is not the correct interpretation of "occurrence"; and
- (2) Get rid of "super-Montrose" provisions

Second Regular Session
Sixty-seventh General Assembly
STATE OF COLORADO

INTRODUCED

LLS NO. 10-1006.01 Jerry Payne HOUSE BILL 10-1394

HOUSE SPONSORSHIP

Rice,

SENATE SPONSORSHIP

Scheffel,

House Committees Senate Committees
Business Affairs and Labor

A BILL FOR AN ACT

101 **CONCERNING PROFESSIONAL LIABILITY INSURANCE POLICIES ISSUED**
102 **TO CONSTRUCTION PROFESSIONALS.**

Bill Summary

(Note: This summary applies to this bill as introduced and does not reflect any amendments that may be subsequently adopted. If this bill passes third reading in the house of introduction, a bill summary that applies to the reengrossed version of this bill will be available at <http://www.leg.state.co.us/bills/summaries/>.)

In *General Security Indemnity Company of Arizona v. Mountain States Mutual Casualty Company*, 205 P.3d 529 (Colo. App. 2009), the court excluded claims for certain construction defects claims and imposed no obligation to defend in a contractor's professional liability insurance policy. **Section 1** of the bill imposes the following rules of contract

Shading denotes HOUSE amendments. Double underlining denotes SENATE amendments.
Capital letters indicate new material to be added to existing statute.
Dashes through the words indicate deletions from existing statute.

Duty to Defend – Does the Insured *Need* to be Sued?

1. Insuring Agreement

a. We will pay those sums that the insured becomes legally obligated to pay as damages because of "bodily injury" or "property damage" to which this insurance applies. We will have the right and duty to defend the insured against any "suit" seeking those damages. However, we will have no duty to defend the insured against any "suit" seeking damages for "bodily injury" or "property damage" to which this insurance does not apply. We may, at our discretion, investigate any "occurrence" and settle any claim or "suit" that may result. But:

18. "Suit" means a civil proceeding in which damages because of "bodily injury", "property damage" or "personal and advertising injury" to which this insurance applies are alleged. "Suit" includes:

- An arbitration proceeding in which such damages are claimed and to which the insured must submit or does submit with our consent; or
- Any other alternative dispute resolution proceeding in which such damages are claimed and to which the insured submits with our consent.

- "Suit" seeking damages
- ADR okay
- "Complaint Rule"
- Framing of alleged damages critically important
- *Nutmeg*

Nutmeg's Tweaking of the Complaint Rule



General Rule: a duty to defend arises when the underlying^{*1193} complaint "alleges any facts that might fall within the coverage of the policy." *Hecla Mining Co. v. N.H. Ins. Co.*, 811 P.2d 1083, 1089 (Colo.1991). The duty is based on "allegations in the complaint, which if sustained, would impose a liability covered by the policy." *Id.*

Nutmeg's Change: insurer cannot disregard knowledge of facts (in parallel complaints) that would otherwise impose the duty to defend.

**Court notes: "The complaint rule was never meant to be used by insurers as a shield in order to avoid a legitimate duty to defend."