



BOLENDER & ASSOCIATES

A Professional Law Corporation

**A PRACTICAL GUIDE TO
READING & UNDERSTANDING
LIABILITY INSURANCE POLICIES**

— JEFFREY S. BOLENDER —

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INTRODUCTION: A CAPSULE SUMMARY OF THE FIVE STEP ANALYSIS

This book is designed to provide an introduction on how to read and analyze an insurance policy.

Many types of insurance products are sold to individuals and businesses in the United States. The specific example used in this book is commercial general liability insurance. This is very common form of insurance that is purchased by large and small business organizations, including public entities. Most insurance products providing commercial general liability insurance employ a standard pre-printed form entitled, Commercial General Liability Coverage Form. An exemplar form is included in this book's Exhibit section. The form is commonly referred to as a "CGL form," and an insurance policy that uses this form is often referred to as a "CGL policy."

USEFUL SKILL

Understanding the basics and reviewing and analyzing a CGL policy is a useful skill for many



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"The process of analysis described in this book is a means of organizing the analysis based upon five issue groups."

lawyers—both plaintiff and defense—involved in civil litigation. Countless lawsuits are filed each day in which the defendant will qualify as an insured under a CGL policy. If a lawsuit presents a potential for coverage, the insured person (or insured entity) will be entitled to a legal defense from the insurance carrier. If the lawsuit results in a judgment against the insured person, the insurance carrier must indemnify the insured person by paying the judgment, unless the judgment (i) exceeds the limits of insurance; or (ii) embraces damages that are not within the scope of the CGL policy's liability insurance coverage.

COVERAGE DISPUTES

The need to review and analyze a liability insurance policy may arise in situations where the defendant's insurance carrier declines coverage, or agrees to provide a legal defense under a reservation of rights. Insurance carriers often dispute coverage where a lawsuit involves multiple claims, some of which are not within the intended scope of liability coverage. In such instances, insurance carriers often agree to provide the insured person with a legal defense while reserving their rights to ultimately reject any demand to pay a judgment outside the scope of coverage. An insurance carrier's reservation of rights is therefore problematic for the insured person, whose liability may not be covered, and is likewise problematic for the plaintiff, whose judgments may be worthless if the insurance carrier defends the lawsuit and thereafter refuses to pay the judgment.

FIVE ISSUE GROUPS

The process of analysis described in this book is a means of organizing the analysis based upon five issue groups. Those issue groups follow the natural sequence of analyzing a liability claim for coverage

under a liability insurance policy. Such analysis is typically performed by claims professionals — such as those employed by an insurance carrier’s claims department. Therefore, the five step process is designed from a claims professional’s point of view. Those steps involve answering the following questions:

1. *Does the person (or entity) tendering the claim for insurance, hereinafter “tendering party,” qualify as an insured person under the insurance policy?*
2. *Do the claims against the tendering party fall within the scope of the insurance policy’s insuring agreement?*
3. *Do any of the claims within the insuring agreement fall within the scope of any exclusionary provisions, and if so, do any exceptions apply to the exclusionary effect of those policy provisions?*
4. *Did the tendering party satisfy the policy’s conditions, and if not, does the failure to satisfy those conditions excuse the insurance carrier’s contractual obligations?*
5. *How must the insurance carrier respond to the claim for insurance benefits or otherwise perform those contractual obligations set forth in the insurance policy, as well as the covenants implied by law in all insurance policies?*

Steps 1 through 4 largely deal with ascertaining the mutual intent of the insurance policy’s language based upon the plain meaning of the policy language.

In Step 5, the analysis of the intent of the contract must be focused not only on the contractual language in the insurance policy, but also various legal rules that supplement, clarify, or otherwise modify

the literal expression of the risks within the scope of insurance protection.

Accordingly, the following paragraphs briefly describe in general terms how insurance law impacts the analysis of liability insurance policies.

CONTRACT LAW

Interpreting insurance policies is largely a function of the law of contracts. And the central goal of contract law is to ascertain and enforce the lawful, mutual intent of the parties at the time they entered into their written agreement.

Historically, the fundamental principle of the law of contracts is that individuals and entities are free to govern their economic relationships with “private law” as expressed within written or oral agreements. Freedom of contract still animates much of contract law in the United States, but legislatures and courts have created many rules that function to place real limits upon pure freedom of contract. Such laws often arise from public policy concerns about the unequal playing field in certain types of relationships (such as landlord and tenants, insurance carrier and policyholder, etc.)

STATE LAW

In the United States, the regulation of the insurance industry is primarily based upon state law, including the rules that govern the interpretation and enforcement of policy language. Although federal law broadly governs certain classes of insurance law, such as medical insurance, the regulation of the insurance industry is still largely a matter of state law throughout the United States.

INSURANCE LAW

The various laws and legal principles are generally referred to as “insurance law.” Insurance law includes the law of contracts, as well as other statutes, common law rules, and regulations. Some laws govern the interpretation of insurance policies. For example, insuring agreements must be interpreted broadly; exclusions and other limiting provisions must be interpreted narrowly; and policy provisions that are unclear or ambiguous must often be interpreted against the insurance carrier and in favor of coverage.

Other laws set forth standards that must be applied to enforce limitations on coverage. For example, if an insured person breaches a policy condition, the laws of many states require that the insurance carrier prove resulting prejudice in order to excuse its contractual obligations.

“In the United States, the regulation of the insurance industry is primarily based upon state law, including the rules that govern the interpretation and enforcement of policy language.”



Many states have statutory rules that supersede policy language. For example, some states have enacted legislation requiring that an insurance carrier strictly comply with cancellation procedures, even if those are more stringent than the procedures set forth in the insurance policy.

Finally, most states impose certain legal, or extra-contractual duties, such as the duty to treat an insured person fairly and in good faith when evaluating pre-trial settlement demands. Many of these laws seek to regulate the handling of claims against the insurance policy by the insurance carrier.

HOW TO USE THIS BOOK

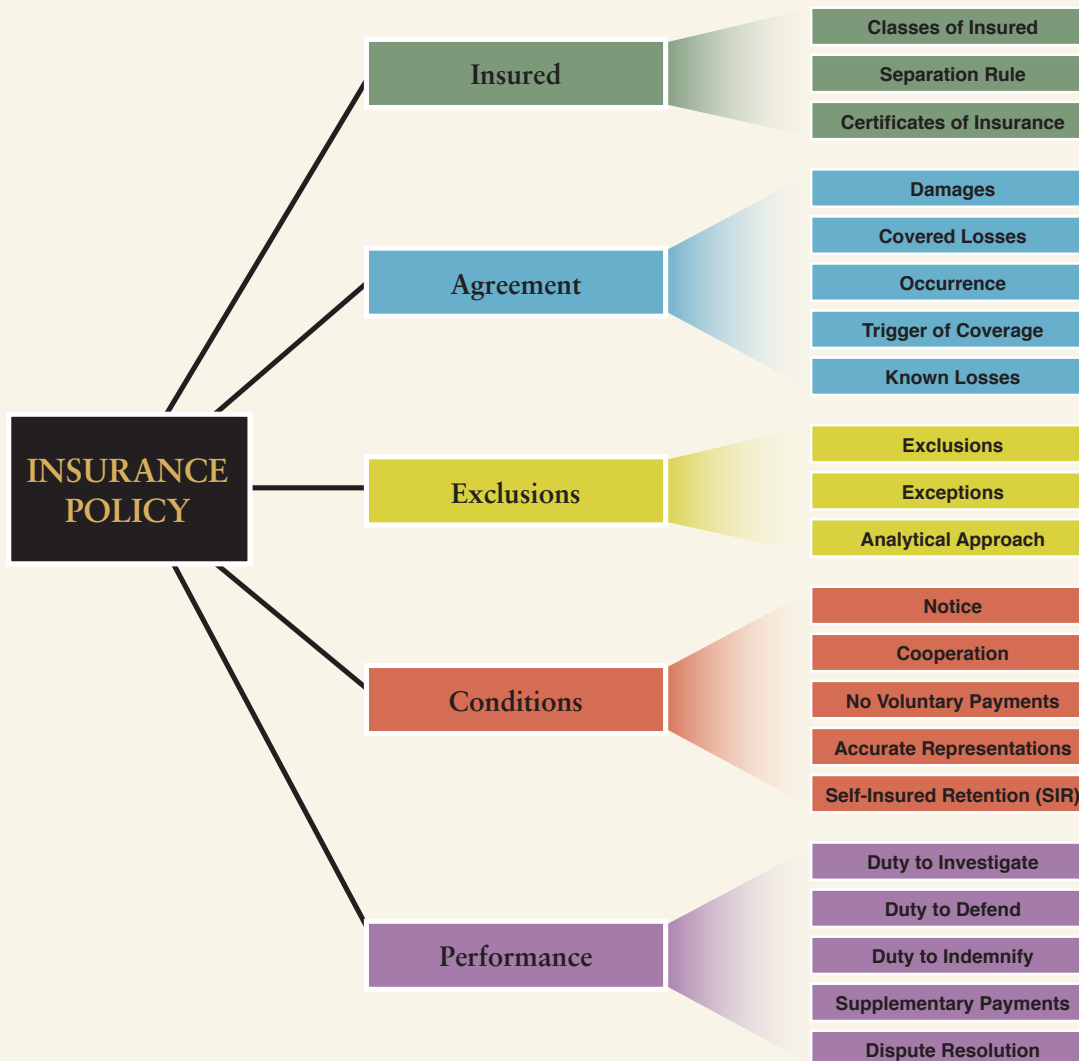
This book is intended for a live or recorded presentation. It can also be used for self-study. The method of instruction involves a slip-and-fall injury at a strip mall; a graphical illustration of the five-step method of insurance policy analysis; a series of questions and multiple choice answers; and an answer key to the questions. The answer key is not included in this book. If you are attending a live or recorded presentation, or if you are using this book for self-study, you should first review the Mayberry Mall Hypothetical and the Analytical Flow Chart in Chapter One. The next step is to answer the questions set forth in the Coverage Issue Check List in Chapter One. For those attending the live or recorded presentation, an answer key will be provided at the presentation. Selected issues will be discussed. For those using this book for self-study, an answer key will be provided upon request by contacting Jeff Bolender at jbolender@bolender-firm.com. ♦

CHAPTER ONE: MATERIALS FOR LIVE OR RECORDED PRESENTATION

A. Chapter Introduction

This chapter is intended for the live or recorded presentation of “*A Practical Guide to Analyzing Liability Insurance Policies.*” Subchapter B. is an Analytical Flow Chart illustrating the five steps of the analysis. Subchapter C. sets forth the Mayberry Mall Hypothetical. Subchapter D. outlines a Coverage Issue Check List of issues arising from the hypothetical. An answer key to some of the issues in the list will be provided at the presentation. If you have time before the presentation, please review the Mayberry Mall Hypothetical and glance at the Analytical Flow Chart.

B. Analytical Flow Chart



C. Mayberry Mall Hypothetical

THE INCIDENT

After shopping at Mayberry Mall, Barney slipped on a puddle of paint solvent in the parking lot. It had spilled from a nearby container. He fell and injured his left knee. Goober, the onsite handyman, tried to assist Barney to his feet. Due to a pain spasm, Barney screamed “STOP!” Goober laughed and let go, causing Barney to lose his balance and fall a second time injuring his right hip. Barney sought medical care at a nearby emergency room for both injuries. Upon leaving the hospital, he discovered his Rolex wristwatch was missing. He also overheard Goober telling a paramedic that Barney was probably faking his injuries.



THE CLAIM

Barney filed a lawsuit against Mayberry Mall (a Rhode Island corporation) and Goober (a California resident) in the Superior Court of Los Angeles County. He properly served both defendants the same day. As against Mayberry Mall, his complaint alleges premises liability and vicarious liability with respect to his injuries. As against Goober, the complaint asserts tort liability arising from his alleged negligence, battery, conversion, and making a false statement. The complaint seeks general, special, and punitive damages. Barney also seeks a court order creating a constructive trust for return of the Rolex. Mayberry Mall hired a lawyer, Andy, who filed an answer to Barney’s complaint on behalf of Mayberry Mall. After Goober failed to timely file a response to the complaint, Barney successfully requested the court clerk to enter a default against Goober.

NOTICE OF CLAIM

After four months, Andy mailed Barney’s complaint to Mayberry Mall’s insurance broker, Thelma Lou, along with his firm’s legal invoices. One month after Thelma Lou received notice, Goober mailed written notice of the lawsuit directly to Mayberry Mall’s liability insurance carrier, Small Town Insurance. That letter, which was Small Town’s first notice of Barney’s injuries and his civil lawsuit, attaches a Certificate of Liability Insurance. Goober claims in the letter that he is insured under an insurance policy issued by Small Town to Mayberry Mall that provides liability coverage via a Commercial General Liability Coverage Form (“CGL policy”).

C. Coverage Issue List:

The following questions and multiple choice answers are designed to focus the analysis upon key principles, exceptions, and nuances in analyzing the coverage issues arising from the Mayberry Mall Hypothetical. Analysis of insurance policy language is not an exact science, and the relevant legal authorities remain unsettled on many issues. Consequently, the possible responses primarily seek the best answer, not necessarily the correct or perfect answer. Some of the questions provide additional facts, as well as references to the CGL form in Chapter Two.

1. Select the name of each tendering party by identifying each person or entity who is claiming entitlement to the insurance protection afforded under the liability insurance policy issued by Small Town Insurance to Mayberry Mall.
 - A. Barney
 - B. Goober
 - C. Thelma Lou
 - D. Andy
 - E. Mayberry Mall

2. As to all of the tendering parties identified in response to Coverage Issue No. 1, select one of the following that best describes the effective date of tender:
 - A. On the day that Andy answered the complaint.
 - B. On the day that Andy mailed notice of Barney's complaint to Thelma Lou.
 - C. On the day that Small Town Insurance received notice of Barney's complaint from Goober.
 - D. On the day Thelma Lou received notice of Barney's complaint from Andy.
 - E. On the day that Small Town Insurance received notice of Barney's complaint from Goober, but only as to Goober.

The word "tender" is used often in the insurance industry. It is generally used to signify when someone notifies an insurance carrier of a claim. Such notice is usually coupled with an express or implied request for the insurance protection afforded by the insurance carrier who receives the notice. The term "tending party" generally refers to the person who is seeking the insurance policy's benefits.

3. What state law governs the interpretation of the insurance policy issued by Small Town Insurance to Mayberry Mall?

Select the best answer only:

- A. The laws of Rhode Island but only if the laws of Rhode Island and California conflict on a significant issue concerning interpretation.
- B. The laws of California but only if the laws of California and Rhode Island conflict on a significant issue concerning interpretation.
- C. The laws of California and Rhode Island so long as the laws of both states do not conflict on a significant issue concerning interpretation.
- D. A. or B. depending on a variety of factors, including which state's choice-of-law rules would be applied to resolve the conflict of laws.

For purposes of this question only, assume that the laws of California govern the tort claims against Mayberry Mall and Goober; that Small Town Insurance issued the insurance policy to Mayberry Mall at its Rhode Island based headquarters; and that the insurance policy is specifically scheduled to provide liability insurance for its strip mall operations in Rhode Islands, California, and several other states.

4. Is the Certificate of Liability Insurance alone sufficient to qualify Goober as an insured person, even if the actual insurance policy issued by Small Town Insurance to Mayberry Mall contains no amendment or additional insured endorsement scheduling Goober as an additional insured?

Select each false statement:

- A. Yes, because the Certificate of Liability Insurance evidences an intent on the part of Small Town Insurance to insure Goober under the liability insurance policy issued to Mayberry Mall.
- B. No, unless Thelma Lou had actual or ostensible authority on behalf of Small Town Insurance to amend the insurance policy issued to Mayberry Mall.
- C. No, because the Certificate of Liability Insurance by its express terms does not form a component of the contract of liability insurance.
- D. No, because the actual policy issued by Small Town Insurance to Mayberry Mall was not amended to state that Goober qualifies as an insured.

For purposes of this question only, refer to the exemplar Certificate of Liability Insurance on page 34 and assume that the certificate issued to Goober reflects the following information:

- (1) *the identity of Thelma Lou as the producer;*
- (2) *the identity of Mayberry Mall as the Named Insured;*
- (3) *the identity of Small Town Insurance as the insurance carrier;*
- (4) *the unique alphanumeric designation of the insurance policy issued by Small Town Insurance;*
- (5) *the identity of Goober as an additional insured; and*
- (6) *the identity of Goober as the certificate holder.*

5. Does Goober automatically qualify as an insured “employee” or an insured real estate manager under Section II of the CGL policy?

Select the best answer only:

- A. Yes, Goober qualifies only as an insured “employee”.
- B. Yes, Goober qualifies only as an insured real estate manager.
- C. Yes, Goober qualifies as an insured employee and an insured real estate manager, but only if Mayberry Mall intended that the insurance policy issued by Small Town Insurance provide coverage for him in one of those two capacities.
- D. A. or B. if the facts at the date of tender raise the potential that Goober was an employee or real estate manager of Mayberry Mall, even if neither Goober nor Mayberry Mall subjectively believed that he was an employee or real estate manager.

Exhibit C., Section II.2.a., and d. at pages 26 and 27, and Section V.5 at page 30.

6. Do any of the causes of action in the complaint against Mayberry Mall and Goober seek judicial relief that does not constitute damages?

Select the best answer only:

- A. Yes, because a court order creating a constructive trust for return of the Rolex to Barney is not a monetary, compensatory award.
- B. No, because a court order creating a constructive trust for return of the Rolex to Barney is legally equivalent to a monetary, compensatory award insofar as Barney is concerned.

7. Do Barney’s claims for injuries sustained by his two falls constitute damages because of “bodily injury”?

Select the best answer only:

- A. Yes, all of Barney’s injuries constitute “bodily injury”, because his mental illness stems from the physical injuries to his leg and hip.
- B. Yes, but only Barney’s physical injuries because emotional distress and related mental illness do not constitute a physical injury to the body as a matter of law.

Exhibit C., Section V.3. at page 30.

For purposes of this question only, assume that Barney’s injuries were both minor, but that due to an extreme sensitivity to physical pain, he developed a rare form of schizophrenia, thereby requiring his hospitalization for three months and a corresponding loss of income.

8. If Barney’s claim for conversion seeks a monetary award to compensate him for the value of his Rolex, does that claim seek damages because of “property damage”?

Select the best answer only:

- A. Yes, because converted property is equivalent to damaged or destroyed property.
- B. Yes, because the missing Rolex constitutes loss of use of tangible property that has not been physically injured.
- C. No, because the missing Rolex does not constitute loss of use of tangible property that has not been physically injured.
- D. No, because the facts do not show who is responsible for the missing Rolex.

Exhibit C., Section V.17. at page 32.

9. Is the injury to Barney’s right hip the result of an “occurrence”?

Select the best answer only:

- A. Yes, the injured right hip results from an “occurrence”, but only insofar as Mayberry Mall is concerned.
- B. Yes, the injured right hip results from an “occurrence”, but only insofar as Barney is concerned.
- C. Yes, the injured right hip results from an “occurrence”, but only insofar as Goober is concerned, because Goober did not intend to harm Barney and Mayberry Mall did not cause that injury.
- D. No, the injured right hip did not result from an “occurrence”, because Goober deliberately let go of Barney under circumstances showing that Goober should have expected him to fall and injure himself.

Exhibit C., Section V.13 at page 31.

10. Do any of Barney’s claims fall within the Insuring Agreement for Coverage B—Personal and Advertising Injury liability?

Select the best answer only:

- A. No, Barney’s claims do not fall within the Insuring Agreement of Coverage B, because his complaint does not contain any allegations of actionable loss, such as defamatory injury, resulting from Goober’s alleged false statement to the paramedic.
- B. No, Barney’s claims do not fall within the Insuring Agreement of Coverage B, because his complaint does not contain a cause of action for libel, slander, or other defamatory tort.
- C. Yes, Barney’s claims fall within the Insuring Agreement of Coverage B, so long as Barney potentially sustained an injury to his reputation during the policy period as a result of Goober’s alleged false statement to the paramedic.

(continued on page 11)

- D. Yes, Goober's alleged false statement creates a potential for coverage under the Insuring Agreement of Coverage B, so long as he potentially made the false statement during the policy period, even if any resulting loss sustained by Barney undisputedly happened after the policy period.

Exhibit C., Section I.B.1. at page 23, and Section V.14.d. at page 31.

- 11. Does Barney qualify as an insured person, and if not, does he possess any rights under the policy that would afford him legal standing to sue Small Town Insurance?

Select each answer that is correct:

- A. No, a third party claimant such as Barney does not qualify as an insured person, so he has no legal standing to sue Small Town Insurance under any circumstances.
- B. No, Barney does not qualify as an insured person, but if he obtains a final judgment against Goober or Mayberry Mall, he will then have legal standing to sue Small Town Insurance in his capacity as a judgment creditor.
- C. No, Barney does not qualify as an insured, but he is a third party beneficiary to the extent he has reimbursable medical expenses under Coverage C.
- D. Yes, Barney qualifies as an insured so long as he has reimbursable medical expenses under Coverage C.

Exhibit C., Section I.C.1. at page 24.

- 12. Does the exclusion for expected or intended injury apply to liability resulting from the injury to Barney's right hip, and if so, does the exclusion apply to the defense benefit and the indemnity benefit of the policy?

Select the best answer only.

- A. Yes, the exclusion applies to the defense and indemnity benefit of the policy as to Goober and Mayberry Mall, so long as Barney's complaint alleges that Goober intentionally injured Barney's right hip.
- B. Yes, the exclusion applies only to the indemnity benefit of the policy as to both Goober and Mayberry Mall, so long as the facts at trial prove that Goober intentionally injured Barney's right hip.
- C. No, the exclusion does not apply to the defense benefit but it may apply to the indemnity benefit as to Goober only if it is proven at trial that he intentionally injured Barney's right hip.
- D. No, the exclusion does not apply because Goober was merely reckless and did not necessarily intend to injure Barney's right hip.

Exhibit C., Section I.A.2.a. at page 19.

13. Does the exclusion for damage to personal property in the care, custody, or control of the insured function to eliminate the potential for coverage, if any, with respect to the claims arising from the missing Rolex?

Select the best answer only:

- A. No, the exclusion is irrelevant because claims arising from the missing Rolex do not fall within the Insuring Agreement of Coverage A.
- B. No, the exclusion does not apply because neither Goober nor Mayberry Mall is responsible for the missing Rolex.
- C. Yes, the exclusion applies but only if Goober or Mayberry Mall is responsible for the missing Rolex.
- D. Yes, the exclusion applies but only to the particular defendant, Goober or Mayberry Mall, who is ultimately proven at trial to be responsible for the missing Rolex.

Exhibit C., Section I.A.2.j.(4) at page 21.

14. Does the pollution exclusion apply to either of Barney's injuries?

Select the best answer only:

- A. Yes, the pollution exclusion applies to Barney's left knee injury, because the injury arose from the discharge or escape of a substance that satisfies the definition of a "pollutant".
- B. Yes, the pollution exclusion applies to both of Barney's injuries, because the chain of causation of both injuries stems from the discharge or escape of a substance that satisfies the definition of a "pollutant".
- C. No, the pollution exclusion does not apply to preclude coverage for either injury, even if the spilled paint solvent is deemed a "pollutant" that discharged from the premises of Mayberry Mall.
- D. No, the pollution exclusion does not apply to preclude coverage for either injury, because the spilled paint solvent was too small to constitute a significant threat of environmental pollution.

Exhibit C., Section I.A.2.f. at page 20, and Section V.15. at page 32.

The mutual intention of the contracting parties governs interpretation. If possible, a court should infer such intent solely from the contract's language. The clear and explicit meaning of that language, interpreted in its ordinary and popular sense, controls judicial interpretation. If an insurance policy is ambiguous, a court must construe the provisions in the way the insurance carrier believed the insured person understood them at the time of issuance. If an ambiguity still exist, the court must construe the ambiguous language against the insurance carrier.

State law differs on many insurance law issues. For example, states do not uniformly apply the same trigger of coverage in cases involving continuous or progressively deteriorating property damage and bodily injury. The nuances from one state to another can be very significant, especially policy conditions. With respect to a policyholder's breach of certain conditions, such as the notice clause, a minority of states do not require that an insurance carrier prove prejudice in order to excuse the performance of its contractual duties.

15. Do the circumstances surrounding the notice and tender of Barney's lawsuit constitute a breach of the notice condition as to Mayberry Mall or Goober, and if so, does the breach or breaches excuse Small Town Insurance from performing any of its contractual obligations?

Select each correct answer:

- A. Yes, the lack of prompt notice constitutes a breach of the notice condition as to Goober only, thereby excusing Small Town Insurance from performing its contractual obligations to Goober.
- B. Yes, the lack of prompt notice constitutes a breach of the notice condition as to Mayberry Mall and Goober, thereby excusing Small Town Insurance from performing its contractual obligations to Mayberry Mall and Goober.
- C. Yes, the lack of prompt notice constitutes a technical breach of the notice condition as to Mayberry Mall and Goober, but the lack of strict compliance does not excuse the obligations of Small Town Insurance to perform its contractual obligations as to either.
- D. No, the lack of prompt notice does not constitute a material, actionable breach of the notice condition as to either Mayberry Mall or Goober, unless Small Town Insurance proves that it sustained substantial prejudice as a result of late notice.

Exhibit C., Section IV.2. at page 27.

16. If Small Town Insurance denies a request by Mayberry Mall to reimburse it for the first four months of legal fees charged by Andy, would its refusal to reimburse be a proper withholding of policy benefits?

Select each correct answer:

- A. Yes, because pre-tender fees are never reimbursable as a matter of law.
- B. Yes, because the pre-tender payment of defense costs, which would otherwise be within the scope of insurance coverage, is a breach of the "no voluntary payment" condition.
- C. Yes, because the duty to defend does not arise unless and until a qualifying insured tenders a potentially-covered complaint to the insurance carrier.
- D. No, so long as Mayberry Mall's pre-tender expenses are considered involuntary.

Exhibit C., Section IV.2.d. at page 28.

17. Are there any claims in Barney’s lawsuit that do not create a potential for coverage, and if so, does Small Town Insurance owe a duty to defend those claims?

Select the best answer only:

- A. No, Small Town Insurance does not owe a duty to defend claims that are not potentially covered even though it owes a contractual duty to defend potentially covered claims.
- B. Yes, Small Town Insurance owes a contractual duty to defend the potentially covered claims and a legal duty to concurrently defend those claims that do not create a potential for coverage, subject to the implied quasi-contractual right of Small Town Insurance to subsequently seek partial reimbursement to avoid unjust enrichment by either defendant.
- C. Yes, at least one claim does not create the potential for coverage, but Small Town Insurance owes a contractual duty to defend all claims because Barney’s complaint contains a mix of potentially covered claims and claims that are not potentially covered.
- D. Yes, at least one claim does not create the potential for coverage, but Small Town Insurance owes a legal duty to defend all claims because Barney’s complaint contains a mix of potentially covered claims and claims that are not potentially covered.

18. If Small Town Insurance agrees to defend Goober under a reservation of rights, would Goober have a strong basis to demand entitlement to independent counsel?

Select the best answer only:

- A. Yes, because an insurance carrier’s reservation of rights necessarily creates a divergence of interests between the carrier and the policyholder, thereby creating a disqualifying conflict of interests on the part of the carrier’s selected panel counsel.
- B. Yes, Goober will be entitled to select his own independent counsel, but only if Small Town Insurance declines to waive its reservation of the right to deny the policy’s indemnity benefit if it is ultimately proven that Goober intentionally injured Goober’s right hip.
- C. No, Goober will not be entitled to independent counsel even if Small Town Insurance reserves its right to deny the policy’s indemnity benefit, so long as Small Town Insurance instructs its appointed counsel to defend Goober without regard to coverage issues.
- D. No, Goober will not be entitled to independent counsel even if Small Town Insurance reserves its right to deny the policy’s indemnity benefit, because the law does not permit Goober to assume that Small Town Insurance’s selected defense counsel will breach his or her ethical responsibilities to Goober.

For purposes of this question only, assume that Small Town Insurance agreed to defend in writing; selected defense counsel on its regular panel to defend Goober; and reserved its rights to deny coverage for punitive damages, intentionally caused injuries, and the amount of any judgment or settlement in excess of the applicable limit of insurance.

Exhibit C., Section I.A.1.a. at page 18.

19. How much insurance funds are available with respect to any potential liability of the defendants in Barney's complaint?

Select each correct answer:

- A. \$300,000, if Barney's injuries are the result of one "occurrence".
- B. \$500,000, if Barney's injuries are the result of two "occurrences".
- C. \$600,000, if Barney's injuries are the result of two "occurrences".
- D. \$800,000, because Barney's injuries exceed \$3.5 million.

For purposes of this question only, assume that Barney can prove 100 percent liability and medical bills exceeding \$3.5 million; that the Each Occurrence Limit is \$300,000; that the Products and Completed Operations Limit is \$800,000; and that the General Aggregate Limit is \$500,000.

Exhibit C., Section III.2., 3., and 5 at page 27.

20. Does Small Town Insurance expose itself to extracontractual liability by proceeding to trial where it receives no final settlement demand from Barney, but the evidence demonstrates a high probability of a jury verdict in the range of \$700,000.00 to \$900,000.00 in damages because of "bodily injury"?

Select the best answer only:

- A. No, Small Town Insurance will not be exposed to extracontractual liability for a verdict in excess of the limits of insurance, because it received no formal settlement demand, and therefore it did not tortuously fail to settle within the limits of insurance before trial.
- B. No, Small Town Insurance will not be exposed to extracontractual liability for a verdict in excess of the limits of insurance, because the verdict will likely be \$700,000.00 to \$900,000.00.
- C. Yes, Small Town Insurance will be exposed to extracontractual liability for a verdict in excess of \$1 million even though it received no settlement demand, but only if the evidence and relevant circumstances before trial show a significant risk of a verdict in excess of \$1 million.
- D. Yes, Small Town Insurance will be exposed to extracontractual liability for a verdict in excess of \$1 million even if it received no pre-trial settlement demand, because the likely range of damages gives rise to the possibility of a verdict higher than \$900,000.00.

For purposes of this question only, assume that the applicable limit of insurance is \$1 million.

Not all "policy limits" are the same. Some types of limits of insurance constitute a separate source of insurance funds, whereas other types of limits function solely to cap the total amount of limits available for losses stemming from one "occurrence."

CHAPTER TWO: EXHIBITS AND FORMS

A. Chapter Introduction

This chapter is intended as a resource for the reader. Subchapter B. is a “CGL Road Map” that outlines a guide to specific provisions in the CGL Form. Subchapter C. is an exemplar CGL Coverage Form. Subchapter D. is an exemplar Certificate of Liability Insurance. Subchapter E. consists of a M.C.L.E. Certificate of Attendance and Activity Evaluation Form.

B. CGL Road Map

Common Name	Page Number	Section of CGL	Analytical Step	Related Definitions
“Advertisement”	29	V.1.	3	
Alienated Premises Exclusion	21	I.A.2.j.(2)	3	“property damage”
Auto Exclusion	21	I.A.2.g.	3	“bodily injury” “property damage” “auto” “occurrence” “insured contract” “mobile equipment”
“Bodily Injury”	30	V.3.	2	
Care, Custody, or Control Exclusion	21	I.A.2.j.(4)	3	
Conditions	27-29	IV.	4	“occurrence” “suit” “your work” “property damage” “autos”
Contractual Liability Exclusion	19	I.A.2.b., I.B.2.e.	3	“bodily injury” “property damage” “insured contract” “personal and advertising injury”
Cooperation Condition	28	IV.2.c.(3)	4	“suit”
Coverage A Insuring Agreement	18	I.A.1.	2	“bodily injury” “property damage” “suit” “occurrence” “coverage territory”
Coverage B Insuring Agreement	23	I.B.1.	2	“personal and advertising injury” “suit” “coverage territory”
Each Occurrence Limit	27	III.5.	2	“bodily injury” “property damage” “occurrence”
Employer’s Liability Exclusion	19	I.A.2.e.	3	“bodily injury” “employee” “insured contract”
General Aggregate Limit	27	III.2.	5	“bodily injury” “property damage” “products-completed operations hazard”
Impaired Property Exclusion	22	I.A.2.m.	3	“property damage” “impaired property” “your product” “your work”
“insured”	18	Introductory Paragraphs	1	“volunteer workers” “employees”, “executive officers” “bodily injury”, “personal and advertising injury” “property damage”

Common Name	Page Number	Section of CGL	Analytical Step	Related Definitions
Intellectual Property Exclusion	23	I.B.2.i.	3	"advertisement" "personal and advertising injury"
Intentional Act Exclusion	19	I.A.2.a.	3	"bodily injury" "property damage"
Known Loss Provisions	18	I.A.1.b.(3), I.A.1.c., I.A.1.d.	2	"bodily injury" "property damage" "employee" "occurrence"
Limits of Insurance	27	III.	5	"bodily injury", "property damage"
Named Insured	18	Introductory Paragraphs	1	"you" "your" "we" "us" "our" "insured"
No Voluntary Payment Condition	28	IV.2.d.	4	
Notice Condition	27	IV.2.a.	4	"occurrence" "suit"
"Occurrence"	31	V.13.	2	
Owned Property Exclusion	21	I.A.2.j.(1)	3	"property damage"
Other Insurance Clauses	28	IV.4.	4	"your work" "property damage" "autos" "suit"
"Personal and Advertising Injury"	31	V.14.	2	"bodily injury" "advertisement"
Pollution Exclusion	20	I.A.2.f.	3	"bodily injury" "property damage" "pollutants" "hostile fire"
Prior Publication Exclusion	23	I.B.2.c.	3	"personal and advertising injury"
"Products-Completed Operations Hazard"	32	V.16.	3	"bodily injury" "property damage" "your product" "your work" "loading or unloading"
Product Exclusion	22	I.A.2.k.	3	"property damage" "your product"
Products-Completed Operations Limit	27	III.3.	5	"bodily injury" "property damage" "products-completed operations hazard"
"Property Damage"	32	V.17.	2	"occurrence"
Severability Clause	32	IV.7.	1-5	
Supplementary Payments	25-26	I.	5	"suit" "insured contract" "occurrence" "bodily injury" "property damage"
Work Exclusions	22	I.A.2.l.	3	"property damage" "your work"
"you" and "your"	18	Introductory Paragraphs	1	

C. Commercial General Liability Coverage Form

COMMERCIAL GENERAL LIABILITY
CG 00 01 12 07

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.

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.

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 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 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.

- e. Damages because of "bodily injury" include damages claimed by any person or organization for care, loss of services or death resulting at any time from the "bodily injury".

2. Exclusions

This insurance does not apply to:

a. Expected Or Intended Injury

"Bodily injury" or "property damage" expected or intended from the standpoint of the insured. This exclusion does not apply to "bodily injury" resulting from the use of reasonable force to protect persons or property.

b. Contractual Liability

"Bodily injury" or "property damage" for which the insured is obligated to pay damages by reason of the assumption of liability in a contract or agreement. This exclusion does not apply to liability for damages:

- (1) That the insured would have in the absence of the contract or agreement; or
- (2) Assumed in a contract or agreement that is an "insured contract", provided the "bodily injury" or "property damage" occurs subsequent to the execution of the contract or agreement. Solely for the purposes of liability assumed in an "insured contract", reasonable attorney fees and necessary litigation expenses incurred by or for a party other than an insured are deemed to be damages because of "bodily injury" or "property damage", provided:
 - (a) Liability to such party for, or for the cost of, that party's defense has also been assumed in the same "insured contract"; and
 - (b) Such attorney fees and litigation expenses are for defense of that party against a civil or alternative dispute resolution proceeding in which damages to which this insurance applies are alleged.

c. Liquor Liability

"Bodily injury" or "property damage" for which any insured may be held liable by reason of:

- (1) Causing or contributing to the intoxication of any person;
- (2) The furnishing of alcoholic beverages to a person under the legal drinking age or under the influence of alcohol; or
- (3) Any statute, ordinance or regulation relating to the sale, gift, distribution or use of alcoholic beverages.

This exclusion applies only if you are in the business of manufacturing, distributing, selling, serving or furnishing alcoholic beverages.

d. Workers' Compensation And Similar Laws

Any obligation of the insured under a workers' compensation, disability benefits or unemployment compensation law or any similar law.

e. Employer's Liability

"Bodily injury" to:

- (1) An "employee" of the insured arising out of and in the course of:
 - (a) Employment by the insured; or
 - (b) Performing duties related to the conduct of the insured's business; or
- (2) The spouse, child, parent, brother or sister of that "employee" as a consequence of Paragraph (1) above.

This exclusion applies whether the insured may be liable as an employer or in any other capacity and to any obligation to share damages with or repay someone else who must pay damages because of the injury.

This exclusion does not apply to liability assumed by the insured under an "insured contract".

f. Pollution

- (1)** "Bodily injury" or "property damage" arising out of the actual, alleged or threatened discharge, dispersal, seepage, migration, release or escape of "pollutants":
 - (a)** At or from any premises, site or location which is or was at any time owned or occupied by, or rented or loaned to, any insured. However, this subparagraph does not apply to:
 - (i)** "Bodily injury" if sustained within a building and caused by smoke, fumes, vapor or soot produced by or originating from equipment that is used to heat, cool or dehumidify the building, or equipment that is used to heat water for personal use, by the building's occupants or their guests;
 - (ii)** "Bodily injury" or "property damage" for which you may be held liable, if you are a contractor and the owner or lessee of such premises, site or location has been added to your policy as an additional insured with respect to your ongoing operations performed for that additional insured at that premises, site or location and such premises, site or location is not and never was owned or occupied by, or rented or loaned to, any insured, other than that additional insured; or
 - (iii)** "Bodily injury" or "property damage" arising out of heat, smoke or fumes from a "hostile fire";
 - (b)** At or from any premises, site or location which is or was at any time used by or for any insured or others for the handling, storage, disposal, processing or treatment of waste;
 - (c)** Which are or were at any time transported, handled, stored, treated, disposed of, or processed as waste by or for:
 - (i)** Any insured; or
 - (ii)** Any person or organization for whom you may be legally responsible; or
 - (d)** At or from any premises, site or location on which any insured or any contractors or subcontractors working directly or indirectly on any insured's behalf are performing operations if the "pollutants" are brought on or to the premises, site or location in connection with such operations by such insured, contractor or subcontractor. However, this subparagraph does not apply to:
 - (i)** "Bodily injury" or "property damage" arising out of the escape of fuels, lubricants or other operating fluids which are needed to perform the normal electrical, hydraulic or mechanical functions necessary for the operation of "mobile equipment" or its parts, if such fuels, lubricants or other operating fluids escape from a vehicle part designed to hold, store or receive them. This exception does not apply if the "bodily injury" or "property damage" arises out of the intentional discharge, dispersal or release of the fuels, lubricants or other operating fluids, or if such fuels, lubricants or other operating fluids are brought on or to the premises, site or location with the intent that they be discharged, dispersed or released as part of the operations being performed by such insured, contractor or subcontractor;
 - (ii)** "Bodily injury" or "property damage" sustained within a building and caused by the release of gases, fumes or vapors from materials brought into that building in connection with operations being performed by you or on your behalf by a contractor or subcontractor; or
 - (iii)** "Bodily injury" or "property damage" arising out of heat, smoke or fumes from a "hostile fire".
 - (e)** At or from any premises, site or location on which any insured or any contractors or subcontractors working directly or indirectly on any insured's behalf are performing operations if the operations are to test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to, or assess the effects of, "pollutants".

(2) Any loss, cost or expense arising out of any:

- (a) Request, demand, order or statutory or regulatory requirement that any insured or others test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to, or assess the effects of, "pollutants"; or
- (b) Claim or "suit" by or on behalf of a governmental authority for damages because of testing for, monitoring, cleaning up, removing, containing, treating, detoxifying or neutralizing, or in any way responding to, or assessing the effects of, "pollutants".

However, this paragraph does not apply to liability for damages because of "property damage" that the insured would have in the absence of such request, demand, order or statutory or regulatory requirement, or such claim or "suit" by or on behalf of a governmental authority.

g. Aircraft, Auto Or Watercraft

"Bodily injury" or "property damage" arising out of the ownership, maintenance, use or entrustment to others of any aircraft, "auto" or watercraft owned or operated by or rented or loaned to any insured. Use includes operation and "loading or unloading".

This exclusion applies even if the claims against any insured allege negligence or other wrongdoing in the supervision, hiring, employment, training or monitoring of others by that insured, if the "occurrence" which caused the "bodily injury" or "property damage" involved the ownership, maintenance, use or entrustment to others of any aircraft, "auto" or watercraft that is owned or operated by or rented or loaned to any insured.

This exclusion does not apply to:

- (1) A watercraft while ashore on premises you own or rent;
- (2) A watercraft you do not own that is:
 - (a) Less than 26 feet long; and
 - (b) Not being used to carry persons or property for a charge;
- (3) Parking an "auto" on, or on the ways next to, premises you own or rent, provided the "auto" is not owned by or rented or loaned to you or the insured;
- (4) Liability assumed under any "insured contract" for the ownership, maintenance or use of aircraft or watercraft; or

(5) "Bodily injury" or "property damage" arising out of:

- (a) The operation of machinery or equipment that is attached to, or part of, a land vehicle that would qualify under the definition of "mobile equipment" if it were not subject to a compulsory or financial responsibility law or other motor vehicle insurance law in the state where it is licensed or principally garaged; or
- (b) the operation of any of the machinery or equipment listed in Paragraph **f.(2)** or **f.(3)** of the definition of "mobile equipment".

h. Mobile Equipment

"Bodily injury" or "property damage" arising out of:

- (1) The transportation of "mobile equipment" by an "auto" owned or operated by or rented or loaned to any insured; or
- (2) The use of "mobile equipment" in, or while in practice for, or while being prepared for, any prearranged racing, speed, demolition, or stunting activity.

i. War

"Bodily injury" or "property damage", however caused, arising, directly or indirectly, out of:

- (1) War, including undeclared or civil war;
- (2) Warlike action by a military force, including action in hindering or defending against an actual or expected attack, by any government, sovereign or other authority using military personnel or other agents; or
- (3) Insurrection, rebellion, revolution, usurped power, or action taken by governmental authority in hindering or defending against any of these.

j. Damage To Property

"Property damage" to:

- (1) Property you own, rent, or occupy, including 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;
- (2) Premises you sell, give away or abandon, if the "property damage" arises out of any part of those premises;
- (3) Property loaned to you;
- (4) Personal property in the care, custody or control of the insured;

- (5) That particular part of real property on which you or any contractors or subcontractors working directly or indirectly on your behalf are performing operations, if the "property damage" arises out of those operations; or
- (6) That particular part of any property that must be restored, repaired or replaced because "your work" was incorrectly performed on it.

Paragraphs (1), (3) and (4) of this exclusion do not apply to "property damage" (other than damage by fire) to premises, including the contents of such premises, rented to you for a period of 7 or fewer consecutive days. A separate limit of insurance applies to Damage To Premises Rented To You as described in Section III – Limits Of Insurance.

Paragraph (2) of this exclusion does not apply if the premises are "your work" and were never occupied, rented or held for rental by you.

Paragraphs (3), (4), (5) and (6) of this exclusion do not apply to liability assumed under a sidetrack agreement.

Paragraph (6) of this exclusion does not apply to "property damage" included in the "products-completed operations hazard".

k. Damage To Your Product

"Property damage" to "your product" arising out of it or any part of it.

l. 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.

m. Damage To Impaired Property Or Property Not Physically Injured

"Property damage" to "impaired property" or property that has not been physically injured, arising out of:

- (1) A defect, deficiency, inadequacy or dangerous condition in "your product" or "your work"; or
- (2) A delay or failure by you or anyone acting on your behalf to perform a contract or agreement 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.

n. Recall Of Products, Work Or Impaired Property

Damages claimed for any loss, cost or expense incurred by you or others for the loss of use, withdrawal, recall, inspection, repair, replacement, adjustment, removal or disposal of:

- (1) "Your product";
- (2) "Your work"; or
- (3) "Impaired property";

if such product, work, or property is withdrawn or recalled from the market or from use by any person or organization because of a known or suspected defect, deficiency, inadequacy or dangerous condition in it.

o. Personal And Advertising Injury

"Bodily injury" arising out of "personal and advertising injury".

p. Electronic Data

Damages arising out of the loss of, loss of use of, damage to, corruption of, inability to access, or inability to manipulate electronic data.

As used in this exclusion, electronic data means information, facts or programs stored as or on, created or used on, or transmitted to or from computer software, including systems and applications software, hard or floppy disks, CD-ROMS, tapes, drives, cells, data processing devices or any other media which are used with electronically controlled equipment.

q. Distribution Of Material In Violation Of Statutes

"Bodily injury" or "property damage" arising directly or indirectly out of any action or omission that violates or is alleged to violate:

- (1) The Telephone Consumer Protection Act (TCPA), including any amendment of or addition to such law; or
- (2) The CAN-SPAM Act of 2003, including any amendment of or addition to such law; or
- (3) Any statute, ordinance or regulation, other than the TCPA or CAN-SPAM Act of 2003, that prohibits or limits the sending, transmitting, communicating or distribution of material or information.

Exclusions c. through n. do not apply to damage by fire to premises while rented to you or temporarily occupied by you with permission of the owner. A separate limit of insurance applies to this coverage as described in Section III – Limits Of Insurance.

COVERAGE B PERSONAL AND ADVERTISING INJURY LIABILITY

1. Insuring Agreement

a. We will pay those sums that the insured becomes legally obligated to pay as damages because of "personal and advertising injury" 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 "personal and advertising injury" to which this insurance does not apply. We may, at our discretion, investigate any offense 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 end 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.

b. This insurance applies to "personal and advertising injury" caused by an offense arising out of your business but only if the offense was committed in the "coverage territory" during the policy period.

2. Exclusions

This insurance does not apply to:

a. Knowing Violation Of Rights Of Another

"Personal and advertising injury" caused by or at the direction of the insured with the knowledge that the act would violate the rights of another and would inflict "personal and advertising injury".

b. Material Published With Knowledge Of Falsity

"Personal and advertising injury" arising out of oral or written publication of material, if done by or at the direction of the insured with knowledge of its falsity.

c. Material Published Prior To Policy Period

"Personal and advertising injury" arising out of oral or written publication of material whose first publication took place before the beginning of the policy period.

d. Criminal Acts

"Personal and advertising injury" arising out of a criminal act committed by or at the direction of the insured.

e. Contractual Liability

"Personal and advertising injury" for which the insured has assumed liability in a contract or agreement. This exclusion does not apply to liability for damages that the insured would have in the absence of the contract or agreement.

f. Breach Of Contract

"Personal and advertising injury" arising out of a breach of contract, except an implied contract to use another's advertising idea in your "advertisement".

g. Quality Or Performance Of Goods – Failure To Conform To Statements

"Personal and advertising injury" arising out of the failure of goods, products or services to conform with any statement of quality or performance made in your "advertisement".

h. Wrong Description Of Prices

"Personal and advertising injury" arising out of the wrong description of the price of goods, products or services stated in your "advertisement".

i. Infringement Of Copyright, Patent, Trademark Or Trade Secret

"Personal and advertising injury" arising out of the infringement of copyright, patent, trademark, trade secret or other intellectual property rights. Under this exclusion, such other intellectual property rights do not include the use of another's advertising idea in your "advertisement".

However, this exclusion does not apply to infringement, in your "advertisement", of copyright, trade dress or slogan.

j. Insureds In Media And Internet Type Businesses

"Personal and advertising injury" committed by an insured whose business is:

- (1) Advertising, broadcasting, publishing or telecasting;
- (2) Designing or determining content of websites for others; or

- (3) An Internet search, access, content or service provider.

However, this exclusion does not apply to Paragraphs 14.a., b. and c. of "personal and advertising injury" under the Definitions Section.

For the purposes of this exclusion, the placing of frames, borders or links, or advertising, for you or others anywhere on the Internet, is not by itself, considered the business of advertising, broadcasting, publishing or telecasting.

k. Electronic Chatrooms Or Bulletin Boards

"Personal and advertising injury" arising out of an electronic chatroom or bulletin board the insured hosts, owns, or over which the insured exercises control.

l. Unauthorized Use Of Another's Name Or Product

"Personal and advertising injury" arising out of the unauthorized use of another's name or product in your e-mail address, domain name or metatag, or any other similar tactics to mislead another's potential customers.

m. Pollution

"Personal and advertising injury" arising out of the actual, alleged or threatened discharge, dispersal, seepage, migration, release or escape of "pollutants" at any time.

n. Pollution-Related

Any loss, cost or expense arising out of any:

- (1) Request, demand, order or statutory or regulatory requirement that any insured or others test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to, or assess the effects of, "pollutants"; or
- (2) Claim or suit by or on behalf of a governmental authority for damages because of testing for, monitoring, cleaning up, removing, containing, treating, detoxifying or neutralizing, or in any way responding to, or assessing the effects of, "pollutants".

o. War

"Personal and advertising injury", however caused, arising, directly or indirectly, out of:

- (1) War, including undeclared or civil war;
- (2) Warlike action by a military force, including action in hindering or defending against an actual or expected attack, by any government, sovereign or other authority using military personnel or other agents; or

- (3) Insurrection, rebellion, revolution, usurped power, or action taken by governmental authority in hindering or defending against any of these.

p. Distribution Of Material In Violation Of Statutes

"Personal and advertising injury" arising directly or indirectly out of any action or omission that violates or is alleged to violate:

- (1) The Telephone Consumer Protection Act (TCPA), including any amendment of or addition to such law; or
- (2) The CAN-SPAM Act of 2003, including any amendment of or addition to such law; or
- (3) Any statute, ordinance or regulation, other than the TCPA or CAN-SPAM Act of 2003, that prohibits or limits the sending, transmitting, communicating or distribution of material or information.

COVERAGE C MEDICAL PAYMENTS

1. Insuring Agreement

- a. We will pay medical expenses as described below for "bodily injury" caused by an accident:

- (1) On premises you own or rent;
- (2) On ways next to premises you own or rent; or
- (3) Because of your operations;

provided that:

- (a) The accident takes place in the "coverage territory" and during the policy period;
- (b) The expenses are incurred and reported to us within one year of the date of the accident; and
- (c) The injured person submits to examination, at our expense, by physicians of our choice as often as we reasonably require.

- b. We will make these payments regardless of fault. These payments will not exceed the applicable limit of insurance. We will pay reasonable expenses for:

- (1) First aid administered at the time of an accident;
- (2) Necessary medical, surgical, x-ray and dental services, including prosthetic devices; and
- (3) Necessary ambulance, hospital, professional nursing and funeral services.

2. Exclusions

We will not pay expenses for "bodily injury":

a. Any Insured

To any insured, except "volunteer workers".

b. Hired Person

To a person hired to do work for or on behalf of any insured or a tenant of any insured.

c. Injury On Normally Occupied Premises

To a person injured on that part of premises you own or rent that the person normally occupies.

d. Workers Compensation And Similar Laws

To a person, whether or not an "employee" of any insured, if benefits for the "bodily injury" are payable or must be provided under a workers' compensation or disability benefits law or a similar law.

e. Athletics Activities

To a person injured while practicing, instructing or participating in any physical exercises or games, sports, or athletic contests.

f. Products-Completed Operations Hazard

Included within the "products-completed operations hazard".

g. Coverage A Exclusions

Excluded under Coverage A.

SUPPLEMENTARY PAYMENTS – COVERAGES A AND B

1. We will pay, with respect to any claim we investigate or settle, or any "suit" against an insured we defend:

- a. All expenses we incur.
- b. Up to \$250 for cost of bail bonds required because of accidents or traffic law violations arising out of the use of any vehicle to which the Bodily Injury Liability Coverage applies. We do not have to furnish these bonds.
- c. The cost of bonds to release attachments, but only for bond amounts within the applicable limit of insurance. We do not have to furnish these bonds.
- d. All reasonable expenses incurred by the insured at our request to assist us in the investigation or defense of the claim or "suit", including actual loss of earnings up to \$250 a day because of time off from work.
- e. All court costs taxed against the insured in the "suit". However, these payments do not include attorneys' fees or attorneys' expenses taxed against the insured.

f. Prejudgment interest awarded against the insured on that part of the judgment we pay. If we make an offer to pay the applicable limit of insurance, we will not pay any prejudgment interest based on that period of time after the offer.

g. All interest on the full amount of any judgment that accrues after entry of the judgment and before we have paid, offered to pay, or deposited in court the part of the judgment that is within the applicable limit of insurance.

These payments will not reduce the limits of insurance.

2. If we defend an insured against a "suit" and an indemnitee of the insured is also named as a party to the "suit", we will defend that indemnitee if all of the following conditions are met:

a. The "suit" against the indemnitee seeks damages for which the insured has assumed the liability of the indemnitee in a contract or agreement that is an "insured contract";

b. This insurance applies to such liability assumed by the insured;

c. The obligation to defend, or the cost of the defense of, that indemnitee, has also been assumed by the insured in the same "insured contract";

d. The allegations in the "suit" and the information we know about the "occurrence" are such that no conflict appears to exist between the interests of the insured and the interests of the indemnitee;

e. The indemnitee and the insured ask us to conduct and control the defense of that indemnitee against such "suit" and agree that we can assign the same counsel to defend the insured and the indemnitee; and

f. The indemnitee:

(1) Agrees in writing to:

(a) Cooperate with us in the investigation, settlement or defense of the "suit";

(b) Immediately send us copies of any demands, notices, summonses or legal papers received in connection with the "suit";

(c) Notify any other insurer whose coverage is available to the indemnitee; and

(d) Cooperate with us with respect to coordinating other applicable insurance available to the indemnitee; and

(2) Provides us with written authorization to:

(a) Obtain records and other information related to the "suit"; and

- (b) Conduct and control the defense of the indemnitee in such "suit".

So long as the above conditions are met, attorneys' fees incurred by us in the defense of that indemnitee, necessary litigation expenses incurred by us and necessary litigation expenses incurred by the indemnitee at our request will be paid as Supplementary Payments. Notwithstanding the provisions of Paragraph 2.b.(2) of Section I – Coverage A – Bodily Injury And Property Damage Liability, such payments will not be deemed to be damages for "bodily injury" and "property damage" and will not reduce the limits of insurance.

Our obligation to defend an insured's indemnitee and to pay for attorneys' fees and necessary litigation expenses as Supplementary Payments ends when we have used up the applicable limit of insurance in the payment of judgments or settlements or the conditions set forth above, or the terms of the agreement described in Paragraph f. above, are no longer met.

SECTION II – WHO IS AN INSURED

1. If you are designated in the Declarations as:

- a. An individual, you and your spouse are insureds, but only with respect to the conduct of a business of which you are the sole owner.
- b. A partnership or joint venture, you are an insured. Your members, your partners, and their spouses are also insureds, but only with respect to the conduct of your business.
- c. A limited liability company, you are an insured. Your members are also insureds, but only with respect to the conduct of your business. Your managers are insureds, but only with respect to their duties as your managers.
- d. An organization other than a partnership, joint venture or limited liability company, you are an insured. Your "executive officers" and directors are insureds, but only with respect to their duties as your officers or directors. Your stockholders are also insureds, but only with respect to their liability as stockholders.
- e. A trust, you are an insured. Your trustees are also insureds, but only with respect to their duties as trustees.

2. Each of the following is also an insured:

- a. Your "volunteer workers" only while performing duties related to the conduct of your business, or your "employees", other than either your "executive officers" (if you are an organization other than a partnership, joint venture or limited liability company) or your managers (if you are a limited liability company), but only for acts within the scope of their employment by you or while performing duties related to the conduct of your business. However, none of these "employees" or "volunteer workers" are insureds for:

- (1) "Bodily injury" or "personal and advertising injury":

- (a) To you, to your partners or members (if you are a partnership or joint venture), to your members (if you are a limited liability company), to a co-"employee" while in the course of his or her employment or performing duties related to the conduct of your business, or to your other "volunteer workers" while performing duties related to the conduct of your business;
- (b) To the spouse, child, parent, brother or sister of that co-"employee" or "volunteer worker" as a consequence of Paragraph (1)(a) above;
- (c) For which there is any obligation to share damages with or repay someone else who must pay damages because of the injury described in Paragraphs (1)(a) or (b) above; or
- (d) Arising out of his or her providing or failing to provide professional health care services.

- (2) "Property damage" to property:

- (a) Owned, occupied or used by,
- (b) Rented to, in the care, custody or control of, or over which physical control is being exercised for any purpose by you, any of your "employees", "volunteer workers", any partner or member (if you are a partnership or joint venture), or any member (if you are a limited liability company).

- b. Any person (other than your "employee" or "volunteer worker"), or any organization while acting as your real estate manager.
 - c. Any person or organization having proper temporary custody of your property if you die, but only:
 - (1) With respect to liability arising out of the maintenance or use of that property; and
 - (2) Until your legal representative has been appointed.
 - d. Your legal representative if you die, but only with respect to duties as such. That representative will have all your rights and duties under this Coverage Part.
3. 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. However:
- a. Coverage under this provision is afforded only until the 90th day after you acquire or form the organization or the end of the policy period, whichever is earlier;
 - b. Coverage **A** does not apply to "bodily injury" or "property damage" that occurred before you acquired or formed the organization; and
 - c. Coverage **B** does not apply to "personal and advertising injury" arising out of an offense committed 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.

SECTION III – LIMITS OF INSURANCE

1. The Limits of Insurance shown in the Declarations and the rules below fix the most we will pay regardless of the number of:
 - a. Insureds;
 - b. Claims made or "suits" brought; or
 - c. Persons or organizations making claims or bringing "suits".
2. The General Aggregate Limit is the most we will pay for the sum of:
 - a. Medical expenses under Coverage **C**;
 - b. Damages under Coverage **A**, except damages because of "bodily injury" or "property damage" included in the "products-completed operations hazard"; and
 - c. Damages under Coverage **B**.

3. The Products-Completed Operations Aggregate Limit is the most we will pay under Coverage **A** for damages because of "bodily injury" and "property damage" included in the "products-completed operations hazard".
4. Subject to Paragraph **2.** above, the Personal and Advertising Injury Limit is the most we will pay under Coverage **B** for the sum of all damages because of all "personal and advertising injury" sustained by any one person or organization.
5. Subject to Paragraph **2.** or **3.** above, whichever applies, the Each Occurrence Limit is the most we will pay for the sum of:
 - a. Damages under Coverage **A**; and
 - b. Medical expenses under Coverage **C** because of all "bodily injury" and "property damage" arising out of any one "occurrence".
6. Subject to Paragraph **5.** above, the Damage To Premises Rented To You Limit is the most we will pay under Coverage **A** for damages because of "property damage" to any one premises, while rented to you, or in the case of damage by fire, while rented to you or temporarily occupied by you with permission of the owner.
7. Subject to Paragraph **5.** above, the Medical Expense Limit is the most we will pay under Coverage **C** for all medical expenses because of "bodily injury" sustained by any one person.

The Limits of Insurance of this Coverage Part apply separately to each consecutive annual period and to any remaining period of less than 12 months, starting with the beginning of the policy period shown in the Declarations, unless the policy period is extended after issuance for an additional period of less than 12 months. In that case, the additional period will be deemed part of the last preceding period for purposes of determining the Limits of Insurance.

SECTION IV – COMMERCIAL GENERAL LIABILITY CONDITIONS

1. Bankruptcy

Bankruptcy or insolvency of the insured or of the insured's estate will not relieve us of our obligations under this Coverage Part.

2. Duties In The Event Of Occurrence, Offense, Claim Or Suit

- a. You must see to it that we are notified as soon as practicable of an "occurrence" or an offense which may result in a claim. To the extent possible, notice should include:
 - (1) How, when and where the "occurrence" or offense took place;
 - (2) The names and addresses of any injured persons and witnesses; and

(3) The nature and location of any injury or damage arising out of the "occurrence" or offense.

b. If a claim is made or "suit" is brought against any insured, you must:

(1) Immediately record the specifics of the claim or "suit" and the date received; and

(2) Notify us as soon as practicable.

You must see to it that we receive written notice of the claim or "suit" as soon as practicable.

c. You and any other involved insured must:

(1) Immediately send us copies of any demands, notices, summonses or legal papers received in connection with the claim or "suit";

(2) Authorize us to obtain records and other information;

(3) Cooperate with us in the investigation or settlement of the claim or defense against the "suit"; and

(4) Assist us, upon our request, in the enforcement of any right against any person or organization which may be liable to the insured because of injury or damage to which this insurance may also apply.

d. No insured will, except at that insured's own cost, voluntarily make a payment, assume any obligation, or incur any expense, other than for first aid, without our consent.

3. Legal Action Against Us

No person or organization has a right under this Coverage Part:

a. To join us as a party or otherwise bring us into a "suit" asking for damages from an insured; or

b. To sue us on this Coverage Part unless all of its terms have been fully complied with.

A person or organization may sue us to recover on an agreed settlement or on a final judgment against an insured; but we will not be liable for damages that are not payable under the terms of this Coverage Part or that are in excess of the applicable limit of insurance. An agreed settlement means a settlement and release of liability signed by us, the insured and the claimant or the claimant's legal representative.

4. Other Insurance

If other valid and collectible insurance is available to the insured for a loss we cover under Coverages **A** or **B** of this Coverage Part, our obligations are limited as follows:

a. Primary Insurance

This insurance is primary except when Paragraph **b.** below applies. If this insurance is primary, our obligations are not affected unless any of the other insurance is also primary. Then, we will share with all that other insurance by the method described in Paragraph **c.** below.

b. Excess Insurance

(1) This insurance is excess over:

(a) Any of the other insurance, whether primary, excess, contingent or on any other basis:

(i) That is Fire, Extended Coverage, Builder's Risk, Installation Risk or similar coverage for "your work";

(ii) That is Fire insurance for premises rented to you or temporarily occupied by you with permission of the owner;

(iii) That is insurance purchased by you to cover your liability as a tenant for "property damage" to premises rented to you or temporarily occupied by you with permission of the owner; or

(iv) If the loss arises out of the maintenance or use of aircraft, "autos" or watercraft to the extent not subject to Exclusion **g.** of Section **I** – Coverage **A** – Bodily Injury And Property Damage Liability.

(b) Any other primary insurance available to you covering liability for damages arising out of the premises or operations, or the products and completed operations, for which you have been added as an additional insured by attachment of an endorsement.

(2) When this insurance is excess, we will have no duty under Coverages **A** or **B** to defend the insured against any "suit" if any other insurer has a duty to defend the insured against that "suit". If no other insurer defends, we will undertake to do so, but we will be entitled to the insured's rights against all those other insurers.

(3) When this insurance is excess over other insurance, we will pay only our share of the amount of the loss, if any, that exceeds the sum of:

(a) The total amount that all such other insurance would pay for the loss in the absence of this insurance; and

(b) The total of all deductible and self-insured amounts under all that other insurance.

(4) We will share the remaining loss, if any, with any other insurance that is not described in this Excess Insurance provision and was not bought specifically to apply in excess of the Limits of Insurance shown in the Declarations of this Coverage Part.

c. Method Of Sharing

If all of the other insurance permits contribution by equal shares, we will follow this method also. Under this approach each insurer contributes equal amounts until it has paid its applicable limit of insurance or none of the loss remains, whichever comes first.

If any of the other insurance does not permit contribution by equal shares, we will contribute by limits. Under this method, each insurer's share is based on the ratio of its applicable limit of insurance to the total applicable limits of insurance of all insurers.

5. Premium Audit

a. We will compute all premiums for this Coverage Part in accordance with our rules and rates.

b. Premium shown in this Coverage Part as advance premium is a deposit premium only. At the close of each audit period we will compute the earned premium for that period and send notice to the first Named Insured. The due date for audit and retrospective premiums is the date shown as the due date on the bill. If the sum of the advance and audit premiums paid for the policy period is greater than the earned premium, we will return the excess to the first Named Insured.

c. The first Named Insured must keep records of the information we need for premium computation, and send us copies at such times as we may request.

6. Representations

By accepting this policy, you agree:

a. The statements in the Declarations are accurate and complete;

b. Those statements are based upon representations you made to us; and

c. We have issued this policy in reliance upon your representations.

7. Separation Of Insureds

Except with respect to the Limits of Insurance, and any rights or duties specifically assigned in this Coverage Part to the first Named Insured, this insurance applies:

a. As if each Named Insured were the only Named Insured; and

b. Separately to each insured against whom claim is made or "suit" is brought.

8. Transfer Of Rights Of Recovery Against Others To Us

If the insured has rights to recover all or part of any payment we have made under this Coverage Part, those rights are transferred to us. The insured must do nothing after loss to impair them. At our request, the insured will bring "suit" or transfer those rights to us and help us enforce them.

9. When We Do Not Renew

If we decide not to renew this Coverage Part, we will mail or deliver to the first Named Insured shown in the Declarations written notice of the nonrenewal not less than 30 days before the expiration date.

If notice is mailed, proof of mailing will be sufficient proof of notice.

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 web-site that is about your goods, products or services for the purposes of attracting customers or supporters is considered an advertisement.

2. "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".

3. "Bodily injury" means bodily injury, sickness or disease sustained by a person, including death resulting from any of these at any time.

4. "Coverage territory" means:

- a. The United States of America (including its territories and possessions), Puerto Rico and Canada;
- b. International waters or airspace, but only if the injury or damage occurs in the course of travel or transportation between any places included in Paragraph a. above; or
- c. All other parts of the world if the injury or damage arises out of:
 - (1) Goods or products made or sold by you in the territory described in Paragraph a. above;
 - (2) The activities of a person whose home is in the territory described in Paragraph a. above, but is away for a short time on your business; or
 - (3) "Personal and advertising injury" offenses that take place through the Internet or similar electronic means of communication

provided the insured's responsibility to pay damages is determined in a "suit" on the merits, in the territory described in Paragraph a. above or in a settlement we agree to.

5. "Employee" includes a "leased worker". "Employee" does not include a "temporary worker".

6. "Executive officer" means a person holding any of the officer positions created by your charter, constitution, by-laws or any other similar governing document.

7. "Hostile fire" means one which becomes uncontrollable or breaks out from where it was intended to be.

8. "Impaired property" means tangible property, other than "your product" or "your work", that cannot be used or is less useful because:

- a. It incorporates "your product" or "your work" that is known or thought to be defective, deficient, inadequate or dangerous; or
- b. You have failed to fulfill the terms of a contract or agreement;

if such property can be restored to use by the repair, replacement, adjustment or removal of "your product" or "your work" or your fulfilling the terms of the contract or agreement.

9. "Insured contract" means:

- a. A contract for a lease of premises. However, that portion of the contract for a lease of premises that indemnifies any person or organization for damage by fire to premises while rented to you or temporarily occupied by you with permission of the owner is not an "insured contract";
- b. A sidetrack agreement;
- c. Any easement or license agreement, except in connection with construction or demolition operations on or within 50 feet of a railroad;
- d. An obligation, as required by ordinance, to indemnify a municipality, except in connection with work for a municipality;
- e. An elevator maintenance agreement;
- 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.

Paragraph f. does not include that part of any contract or agreement:

- (1) That indemnifies a railroad for "bodily injury" or "property damage" arising out of construction or demolition operations, within 50 feet of any railroad property and affecting any railroad bridge or trestle, tracks, roadbeds, tunnel, underpass or crossing;
- (2) That indemnifies an architect, engineer or surveyor for injury or damage arising out of:
 - (a) Preparing, approving, or failing to prepare or approve, maps, shop drawings, opinions, reports, surveys, field orders, change orders or drawings and specifications; or
 - (b) Giving directions or instructions, or failing to give them, if that is the primary cause of the injury or damage; or
- (3) Under which the insured, if an architect, engineer or surveyor, assumes liability for an injury or damage arising out of the insured's rendering or failure to render professional services, including those listed in (2) above and supervisory, inspection, architectural or engineering activities.

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 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;
- 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 Paragraph **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 Paragraph **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 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.

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".

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".

15. "Pollutants" mean any solid, liquid, gaseous or thermal irritant or contaminant, including smoke, vapor, soot, fumes, acids, alkalis, chemicals and waste. Waste includes materials to be recycled, reconditioned or reclaimed.

16. "Products-completed operations hazard":

a. Includes all "bodily injury" and "property damage" occurring away from premises you own or rent and arising out of "your product" or "your work" except:

- (1) Products that are still in your physical possession; or
- (2) Work that has not yet been completed or abandoned. However, "your work" will be deemed completed at the earliest of the following times:
 - (a) When all of the work called for in your contract has been completed.
 - (b) When all of the work to be done at the job site has been completed if your contract calls for work at more than one job site.
 - (c) When that part of the work done at a job site has been put to its intended use by any person or organization other than another contractor or subcontractor working on the same project.

Work that may need service, maintenance, correction, repair or replacement, but which is otherwise complete, will be treated as completed.

b. Does not include "bodily injury" or "property damage" arising out of:

- (1) The transportation of property, unless the injury or damage arises out of a condition in or on a vehicle not owned or operated by you, and that condition was created by the "loading or unloading" of that vehicle by any insured;
- (2) The existence of tools, uninstalled equipment or abandoned or unused materials; or
- (3) Products or operations for which the classification, listed in the Declarations or in a policy schedule, states that products-completed operations are subject 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

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.

For the purposes of this insurance, electronic data is not tangible property.

As used in this definition, electronic data means information, facts or programs stored as or on, created or used on, or transmitted to or from computer software, including systems and applications software, hard or floppy disks, CD-ROMS, tapes, drives, cells, data processing devices or any other media which are used with electronically controlled equipment.

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:

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

19. "Temporary worker" means a person who is furnished to you to substitute for a permanent "employee" on leave or to meet seasonal or short-term workload conditions.

20. "Volunteer worker" means a person who is not your "employee", and who donates his or her work and acts at the direction of and within the scope of duties determined by you, and is not paid a fee, salary or other compensation by you or anyone else for their work performed for you.

21. "Your product":

a. Means:

- (1) Any goods or products, other than real property, manufactured, sold, handled, distributed or disposed of by:
 - (a) You;
 - (b) Others trading under your name; or
 - (c) A person or organization whose business or assets you have acquired; and
- (2) Containers (other than vehicles), materials, parts or equipment furnished in connection with such goods or products.

b. Includes:

- (1) Warranties or representations made at any time with respect to the fitness, quality, durability, performance or use of "your product"; and

(2) The providing of or failure to provide warnings or instructions.

c. Does not include vending machines or other property rented to or located for the use of others but not sold.

22. "Your work":

a. Means:

(1) Work or operations performed by you or on your behalf; and

(2) Materials, parts or equipment furnished in connection with such work or operations.

b. Includes:

(1) Warranties or representations made at any time with respect to the fitness, quality, durability, performance or use of "your work", and

(2) The providing of or failure to provide warnings or instructions.

D. Certificate of Liability Insurance



CERTIFICATE OF LIABILITY INSURANCE

DATE (MM/DD/YYYY)

PRODUCER 1	THIS CERTIFICATION IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW.	
	INSURERS AFFORDING COVERAGE	NAIC #
INSURED 2	NSURER A:	
	NSURER B:	3
	NSURER C:	
	NSURER D:	
	NSURER E:	

COVERAGES

THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. AGGREGATE LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR/ADD'L LTR/INSRD	TYPE OF INSURANCE	POLICY NUMBER	POLICY EFFECTIVE DATE (MM/DD/YY)	POLICY EXPIRATION DATE (MM/DD/YY)	LIMITS								
	GENERAL LIABILITY <input type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS MADE <input type="checkbox"/> OCCUR GEN'L AGGREGATE L MIT APPL ES PER: <input type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC	4			EACH OCCURRENCE \$ DAMAGE TO RENTED PREMISES (Ea occurrence) \$ MED EXP (Any one person) \$ PERSONAL & ADV INJURY \$ GENERAL AGGREGATE \$ PRODUCTS - COMP/OP AGG \$ \$								
	AUTOMOBILE LIABILITY <input type="checkbox"/> ANY AUTO <input type="checkbox"/> ALL OWNED AUTOS <input type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> HIRED AUTOS <input type="checkbox"/> NON-OWNED AUTOS				COMBINED SINGLE LIMIT (Ea accident) \$ BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$								
	GARAGE LIABILITY <input type="checkbox"/> ANY AUTO				AUTO ONLY - EA ACC DENT \$ OTHER THAN EA ACC \$ AUTO ONLY: AGG \$								
	EXCESS/UMBRELLA LIABILITY <input type="checkbox"/> OCCUR <input type="checkbox"/> CLAIMS MADE <input type="checkbox"/> DEDUCTIBLE <input type="checkbox"/> RETENTION \$				EACH OCCURRENCE \$ AGGREGATE \$ \$ \$ \$								
	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? If yes, describe under SPECIAL PROVISIONS below OTHER				<table border="1"> <tr> <td>WC STATUTORY LIMITS</td> <td>OTHER</td> </tr> <tr> <td>E.L. EACH ACC DENT</td> <td>\$</td> </tr> <tr> <td>E.L. DISEASE - EA EMPLOYEE</td> <td>\$</td> </tr> <tr> <td>E.L. DISEASE - POLICY LIMIT</td> <td>\$</td> </tr> </table>	WC STATUTORY LIMITS	OTHER	E.L. EACH ACC DENT	\$	E.L. DISEASE - EA EMPLOYEE	\$	E.L. DISEASE - POLICY LIMIT	\$
WC STATUTORY LIMITS	OTHER												
E.L. EACH ACC DENT	\$												
E.L. DISEASE - EA EMPLOYEE	\$												
E.L. DISEASE - POLICY LIMIT	\$												

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES / EXCLUSIONS ADDED BY ENDORSEMENT / SPECIAL PROVISIONS

5

CERTIFICATE HOLDER

CANCELLATION

6	SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, THE ISSUING INSURER WILL ENDEAVOR TO MAIL _____ DAYS WRITTEN NOTICE TO THE CERTIFICATE HOLDER NAMED TO THE LEFT, BUT FAILURE TO DO SO SHALL IMPOSE NO OBLIGATION OR LIABILITY OF ANY KIND UPON THE INSURER, ITS AGENTS OR REPRESENTATIVES.
	AUTHORIZED REPRESENTATIVE

ACORD 25 (2001/08)

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E. M.C.L.E. Forms

CERTIFICATE OF ATTENDANCE FOR CALIFORNIA MCLE

To Be Completed by the Provider

Provider: Bolender & Associates, A Professional Law Corporation

Provider Number: 13569

Title of Activity: A Practical Guide to Reading & Understanding Liability Insurance Policies

Date(s) of Activity: _____

Time of Activity: _____

Location of Activity (City/State): _____

TOTAL ELIGIBLE CALIFORNIA MCLE CREDIT HOURS:

Subfield Credits:

Legal Ethics: _____

Elimination of Bias in the Legal Profession: _____

Prevention, Detection and Treatment of Substance Abuse/
Mental Illness that Impairs Professional Competence: _____

To Be Completed by the Attorney after Participation in the Above-Named Activity:

By signing below, I certify that I participated in the activity described above and am entitled to claim the following California MCLE credit hours:

Total Hours: _____

(You may not claim credit for the following subfields unless the provider is granting credit in these areas above.)

Legal Ethics: _____

Elimination of Bias in the Legal Profession: _____

Prevention, Detection and Treatment of Substance Abuse/
Mental Illness that Impairs Professional Competence: _____

Print Your Name (clearly): _____

Your State Bar Number: _____

Signature: _____

ACTIVITY EVALUATION FORM FOR CALIFORNIA MCLE

Please complete and return to Provider (Please Print).

Provider: Bolender & Associates, A Professional Law Corporation Provider Number: 13569
 Provider Phone Number: _____
 Provider Address: 2601 Airport Drive, Suite 360, Torrance, CA 90505
 Title of Activity: A Practical Guide to Reading & Understanding Liability Insurance Policies
 Date(s) of Activity: _____
 Time of Activity: _____
 Location of Activity (City/State): _____

- Directions: Please mark the appropriate box to indicate your evaluation of this course.**
- | | YES | NO |
|--|-----|-----|
| 1. Did this program meet your educational objectives?
Comments: _____ | [] | [] |
| 2. Did the environment have a positive influence on your learning experience?
Comments: _____ | [] | [] |
| 3. Were you provided with substantive written materials?
Comments: _____ | [] | [] |
| 4. Did the course update or keep you informed of your legal responsibilities?
Comments: _____ | [] | [] |
| 5. Did the activity contain significant current professional content?
Comments: _____ | [] | [] |

Please rate the faculty on a scale of 1 to 5 (1 being the lowest; 5 being the highest).

	Overall Teaching Effectiveness	Effectiveness of Teaching Methods	Significant Current Knowledge of Subject
Instructor's Name: <u>Jeffrey S. Bolender</u> Subject/Topic: _____ Comments: _____	5 4 3 2 1	5 4 3 2 1	5 4 3 2 1
Instructor's Name: _____ Subject/Topic: _____ Comments: _____	5 4 3 2 1	5 4 3 2 1	5 4 3 2 1
Instructor's Name: _____ Subject/Topic: _____ Comments: _____	5 4 3 2 1	5 4 3 2 1	5 4 3 2 1
Name of Participant (optional): _____			
<i>First</i>			<i>Last</i>

PROFILE: BOLENDER & ASSOCIATES, A PROFESSIONAL LAW CORPORATION

Our Firm

Bolender & Associates is a Los Angeles-based law firm whose practice is devoted to matters concerning insurance law, including contract interpretation, policy drafting, dispute resolution, and litigation. The firm also litigates complex business disputes. Founded by Jeffrey S. Bolender in 2001, the firm has continuously provided clients with premier quality legal services and advice involving the latest law and jurisprudence of multiple jurisdictions, including California, Nevada and Hawaii.

Our Services

INSURANCE POLICY COVERAGE ANALYSIS

Our firm's primary practice area centers on the legal analysis of various types of insurance policies. When a claim for insurance benefits is disputed, we perform legal research and analysis as to whether the insurance policy's language brings the claim within or outside the scope of the insurance policy's insurance protection. We advise insurance carriers and policyholders as to their rights and obligations based upon our research and prediction of how a civil court would rule if the disputed claim for insurance benefits is litigated. Our coverage practice includes a wide variety of insurance products, including personal lines, excess and surplus lines, professional liability, errors and omissions, directors and officers, property and business interruption coverage.

INSURANCE POLICY DRAFTING

In addition to interpreting insurance policies as to particular claims for coverage, our firm has assisted national and regional underwriters in drafting and revising various types of insurance products.



“On December 21, 2012, Bolender & Associates marked its Eleventh Anniversary in the South Bay Area of Los Angeles, California.”

Underwriters seek our assistance in crafting insurance policy language that will be interpreted, applied, and enforced consistent with the underwriter's intent. We have developed techniques for identifying underwriting intent and formulating policy language that minimizes the likelihood that courts will find the language ambiguous or otherwise enforceable.

CLAIMS COUNSELING AND EDUCATION

Our firm's practice includes the education and counseling of claims professionals. We have presented numerous in-house seminars for our insurance carrier clients, including complex claims issues involving continuous losses involving multiple insurance carriers; claims for independent counsel; additional insured tenders and the interplay between additional insured coverage and insurance for indemnity agreements; preparing for mediation of large loss matters involving insurance disputes; and the nuts and bolts of analyzing liability insurance policies.



PAST AND CURRENT CLIENTS OF BOLENDER & ASSOCIATES:

Nautilus Insurance Company
Great Divide Insurance Company
Evanston Insurance Company
Fireman's Fund McGee Marine Underwriters
Markel Southwest Underwriters
Highlands Insurance Group
Certain Underwriters at Lloyd's of London
Monarch E&O Insurance Services
Bliss & Glennon
Sheedy Drayage Company
Diamond W Supply Co.
Vision InfoSoft Corporation
Tarkett Inc.
Griley Air Freight
American Reliable Insurance Co.
Elm Bay Investments, LLC
The Real Estate Consultants
American Banks Insurance Company of Florida

INSURANCE DISPUTE RESOLUTION

When disputed insurance claims cannot be resolved informally, our firm advocates on behalf of insurance carriers and policyholders via litigation; arbitration before private judges; and non-binding mediation before a neutral mediator. We have broad experience in state and federal courts, both at the trial and appellate level. The firm's principal, Mr. Bolender, is licensed in California, Hawaii, Nevada, and the District of Columbia, and he has litigated in seven different states.

INSURANCE AGENT ERRORS & OMISSIONS

A natural complement to our firm's expertise in insurance law is the defense of, and litigation against, negligent insurance agents. Occasionally, insurance agents will be sued when a policyholder's insurance carrier denies coverage or when the agent negligently binds an insurer to coverage not within the agent's binding power. Our firm has successfully defended insurance agents, as well as secured judgments against insurance agents exceeding \$1.7 million.

TRUST LITIGATION

Our firm has developed a trust litigation practice. In recent years we have assisted trust beneficiaries in collecting over \$1.3 million. We understand the emotional toll on clients, as well as the impact of relationships, when family members dispute the proceeds of an estate distribution. We recognize that our role is not only as zealous advocates, but also counselors of law who seek to address our client's legal rights within the context of their legal and non-legal interests and relationships.

NEW BUSINESS ENTITIES

Our firm assists individuals and small businesses in incorporating their businesses into the appropriate corporation to minimize exposure to personal liability. Working with accountants and consultant tax attorneys, we are able to assist and guide our clients from small start-up to corporation (or other legal entity) along with practical business advice concerning trade secret protection, financing, trademark, human resources, etc.

INTELLECTUAL PROPERTY

Our firm assists clients in submitting trademark applications, as well as prosecuting and defending lawsuits involving infringement of trademark and other intellectual property rights. Intellectual property assets are modernly some of the most critical assets that a business entity owns. Such protections can be lost if not diligently protected.

COMMERCIAL DISPUTES

Our firm litigates commercial matters including lease disputes, breach of contract lawsuits, unfair competition, commercial collections, and enforcement of judgments. We also assist clients in drafting various types of agreements, including construction contracts; commercial leases; personal service agreements; employment contracts; and settle agreements.

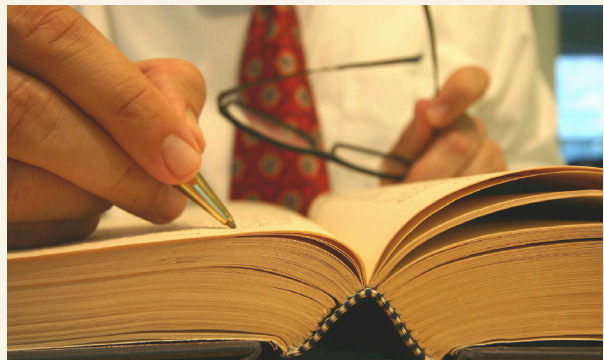
OUR PEOPLE

Mr. Jeffrey S. Bolender is an established trial and appellate attorney with over seventeen years of experience representing policyholders, insurance carriers, underwriters, and other insurance professionals in complex legal disputes.

Admitted to practice law in 1994, he is the President and Managing Shareholder of Los Angeles-based Bolender & Associates, A Professional Law Corporation. His practice focuses on commercial, business, and insurance law. He is licensed to practice law in the States of California, Hawaii, and Nevada, as well as the District of Columbia.

Mr. Bolender regularly advises and advocates on behalf of insurance professionals, providing guidance on legal principles for analyzing insurance policies and adjusting liability and property claims. He also designs and drafts insurance products, forms, and endorsements for regional and national underwriters. An approved MCLE provider and author of numerous legal articles on insurance law, Mr. Bolender speaks regularly before industry and attorney groups regarding his expertise in insurance law.

Mr. Bolender has litigated scores of complex civil lawsuits, including matters in the courts of Hawaii, California, Washington, Delaware, Florida, South Carolina, and Wyoming. He has successfully represented clients in lawsuits involving insurance



“We advise insurance carriers and policyholders as to their rights and obligations based upon our research and prediction of how a civil court would rule if the disputed claim for insurance benefits is litigated.”

ADMITTED TO PRACTICE

California State Bar (1994)
Hawaii State Bar (2006)
Nevada State Bar (2008)
Ninth Circuit Court of Appeals (2004)
United States District Courts

- District of Columbia Bar (2007)
- Central District of California (1995)
- Eastern District of California (1995)
- Northern District of California (1999)
- District of Hawaii (2006)

PROFESSIONAL ASSOCIATIONS

Los Angeles County Bar Association – *Member*
Clark County Bar Association – *Member*
South Bay Bar Association – *Member*
Defense Research Institute – *Member*
Torrance Chamber Of Commerce – *Member*
Inns of Court – Benjamin Aranda III – *Barrister*
Nevada State Bar Association

- Construction Law Section –
Founding Member
- Insurance & Health Law Section –
Founding Member

Hawaii State Bar Association

- Insurance Coverage Litigation Section –
Member



coverage, trademark rights, trust administration, insurance broker malpractice, unfair competition, commercial leases, and products liability. In addition to trial experience, Mr. Bolender appears frequently before the California Court of Appeal and the Ninth Circuit Court of Appeals.

Born and raised in Kentucky, Mr. Bolender joined the Air Force Reserves after high school, receiving an honorable discharge in 1984. He earned a Bachelor's of Arts from California State University Northridge in 1991, and a law degree from Southwestern University School of Law in 1994. He has lived in the South Bay since 1989, and he presently lives in Torrance with his wife and two children. He enjoys traveling, as well as recreational tennis along with his wife on the public courts of the South Bay. ♦

**SELECTED PRESENTATIONS &
PUBLICATIONS OF JEFF BOLENDER**

Additional Insured Seminar, Seminar at Nautilus Insurance Group, *February 2008*.

Analyzing Liability Insurance: A Five Part Process, Seminar at Nautilus Insurance Group, *June 2012*.

Brown Bag Luncheon: Insurance Products, Policy Analysis, and the Duty to Defend, Nevada State Bar – Construction Law Section, *April 2010*.

Coverage Analysis: Employee versus Independent Contractor, Seminar at Nautilus Insurance Group, *June 2004*.

Coverage B: Defamatory and Injurious Falsehood Torts, Bolender & Associates Newsletter, *February 2005*.

Demands for Independent Counsel: History, Analysis, and Strategies for Managing Disputes, Seminar at Markel Southwest Underwriters, *October 2006*.

General Liability Coverage: Professional Services Exclusions, Bolender & Associates Newsletter, *March 2005*.

Hot Topics in Construction Defect Litigation and Related Insurance Coverage Issues, Nevada State Bar Seminar, *October 2011*.

Insurance Products, Policy Analysis and the Duty to Defend, Bolender & Associates Newsletter, *April 2010*.

Insurance Coverage Q&A, Bolender & Associates Newsletter, *July 2009*.

Meeting the Challenges of Raising Insurance Issues at Mediation, Defense Research Institute, In-House Defense Quarterly, *Autumn 2011*.



Multiple Insurer Disputes: Recovering Other Insurance, Bolender & Associates Newsletter, *August 2003*.

Property Damage and the Work Exclusions, Seminar at Nautilus Insurance Group, *November 2005*.

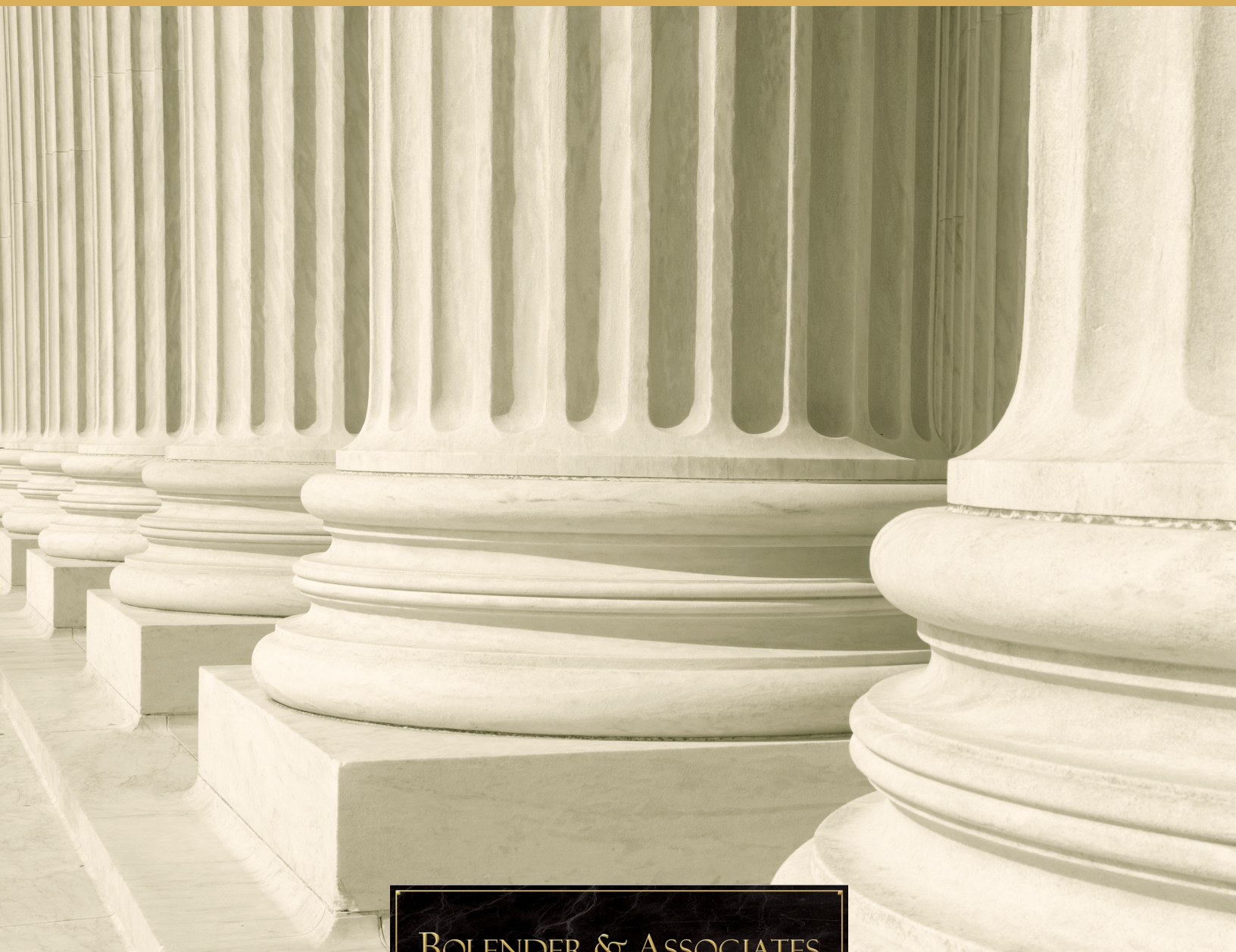
Property Damage Claims: Distinguishing Between Tangible & Intangible Property, Bolender & Associates Newsletter, *April 2004*.

Seeking Reimbursement for Non-Covered Claims, Bolender & Associates Newsletter, *August 2006*.

Social Media: Ethics In A Changing World, Panelist at Group Presentation for Inns of Court, *April 2012*.

The ABC's of Analyzing a Liability Insurance Policy, Nevada State Bar Annual Meeting, *June 2010*.

The Fun Never Ends - Key Insurance Coverage Developments from 2009 to 2010, Defense Research Institute, *September 2010*.



BOLENDER & ASSOCIATES

A Professional Law Corporation

INSURANCE LAW COUNSELORS & LITIGATORS

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