

# 6

## Commercial General Liability Insurance

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## I. Overview

**§6.1** Commercial General Liability (CGL) policies provide comprehensive coverage for businesses or other organizations with respect to liabilities that are not covered under other, more specialized types of policies, such as automobile liability or worker’s compensation policies. The standard CGL policy contains three basic parts: (1) a general grant of coverage, also called the “insuring agreement,” (2) exclusions from the grant of coverage, and (3) policy conditions

and miscellaneous provisions. The terms of the policy may also be modified by separate endorsements.

The most important coverage provided by the CGL policy is Coverage A, which obligates the insurer to pay damages that the insured becomes legally obligated to pay because of bodily injury or property damage caused by an accident. The key concept here is that the particular behavior or activity of the insured does not determine coverage. Rather, the type and cause of loss incurred by the third party controls the scope of the coverage.

A CGL policy can be written on either an occurrence or a claims-made basis. Most CGL policies are occurrence based, which means that the insurance applies only to accidental bodily injury and property damage that occurs during the policy period. Probably the single most important concept in the CGL policy, in terms of defining the kinds of risks insured, is that of an occurrence. The question of when occurrences “occur,” for purposes of activating insurance coverage, particularly where the coverage-producing events develop slowly over multiple policy years or occur by omission, is frequently litigated.

Exclusions in the standard CGL policy generally fall into three categories. Some exclusions rule out coverage for specialized risks that are the subject of other policies, such as professional or liquor liability. Other exclusions eliminate coverage for risks attributable to certain types of activities on the part of the insured, such as actions that result in intentional and expected injury, or normal business risk activities. A final type of exclusion relates to risks that are too significant or unpredictable for the insurer to underwrite, such as war, terrorism, and environmental damage.

The policy conditions set forth specific duties, obligations, and rights on the part of the insurer and the insured with respect to the initial submission and handling of the insured’s claim.

The language of a CGL coverage form may need to be modified in order to accommodate the particular requirements of the insured or the insurer, or to bring the policy into compliance with specific state mandates. These modifications or amendments are typically made through separate endorsement documents that are negotiated between the parties. Endorsements may be made a part of the policy at the inception of the policy, or they may be added at a later time during the term of the policy.

## II. What Is a CGL Policy?

### A. Scope of a CGL Policy

§6.2 CGL insurance is the most common form of liability insurance purchased by business entities. Unlike policies for specified perils, such as first-party property and specialized risk policies, the CGL policy provides coverage for a wide range of general liability claims. *Business Insurance Law and Practice Guide* §2.01 (2002). Coverage is typically granted by a broad insuring agreement, which is then narrowed by a series of exclusions. A covered claim is one that fits within the insuring clause *and* falls outside all listed exclusions.

CGL policies are designed to protect against liabilities not covered under other, more specialized types of policies, such as automobile insurance and worker's compensation insurance. "Among the kinds of liability insurance that are not usually encompassed within general liability are automobile, navigation, and aircraft risks; worker's compensation and employers liability; liquor liability, which is applicable primarily to sellers of liquor such as taverns and restaurants; directors and officers (D&O), which protects directors and officers of businesses for liability to shareholders and others for improper business decisions; and various kinds of professional liability insurance such as medical, dental, legal, and accountants liability insurance, which protects practitioners from the consequences of their professional errors and omissions." Rowland H. Long, *The Law of Liability Insurance* §10.01 (2002). "Each of these more specialized kinds of insurance is, as would be expected, separately underwritten, priced, and sold by insurance companies, sometimes by companies that specialize within a particular field." *Id.*

### **B. Parts of a CGL Policy**

§6.3 Most CGL policies follow the standard form issued by Insurance Services Office (ISO), an insurance industry group that develops insurance policy forms and submits them for review and approval by state insurance regulators. Standard policy language addressed in this chapter is taken from ISO form CG 0001 12 07, adopted in 2007.

At the beginning of every CGL policy is a declarations page, which identifies the named insured, the policy period, the description and location of the insured business, and the forms and dollar limits of coverage.

Following the declarations page are usually one or more basic insuring agreements. The most important is Coverage A, which states that the company will pay on behalf of the insured all sums which the insured becomes legally obligated to pay as damages because of bodily injury or property damage caused by an occurrence. It gives the company the right and the duty to defend any suit against the insured seeking damages for these types of claims. A key feature of this insuring agreement is that coverage is based on the nature and cause of the claim, rather than on the activity of the insured. The claim must be for bodily injury or property damage and it must be accidentally caused.

CGL policies also protect against claims for personal and advertising injury, either under a separate Coverage B or as part of the insuring clause for Coverage A. Personal injury and advertising injury both have very specific meanings in the CGL context and are defined in the insurance contract.

For each insuring clause, there is a list of exclusions, the purpose of which is to narrow the broad grant of coverage. Exclusions generally fall into one of three categories. Some eliminate claims that are covered by other specialized forms of insurance, such as auto and liquor liability insurance. Other exclusions take away coverage for certain types of activities by the insured, such as intentional acts or assumed business risks. And still other exclusions eliminate coverage for exposures that the insurer declines to underwrite, typically because they are too significant or unpredictable, such as war, terrorism, and environmental damage.

Other parts of the typical CGL policy are (1) the section describing general conditions and duties of both the insured and the insurer and (2) the section providing definitions for key words used throughout the insurance contract. Endorsements are often added to expand or narrow the coverage provided by the main policy.

### III. The CGL Insuring Agreements

#### A. What Types of Claims Are Covered?

##### 1. In General

§6.4 CGL policies typically contain two or three insuring agreements, extending coverage to a broad range of liability claims, subject to specific exclusions. *Gelman Sciences v Fidelity & Cas Co*, 456 Mich 305, 312, 572 NW2d 617 (1998), *overruled on other grounds*, *Wilkie v Auto-Owners Ins Co*, 469 Mich 41, 664 NW2d 776 (2003). Coverage is typically afforded for (1) “bodily injury” and “property damage” caused by an “occurrence,” (2) “personal injury” and “advertising injury,” and (3) medical expenses incurred as a result of an accident on the insured’s premises. An important feature of CGL insuring clauses is that coverage depends on the nature and cause of the loss rather than on the insured’s activities.

##### 2. Bodily Injury and Property Damage Claims

§6.5 The most important coverage provided by the CGL policy, often referred to as Coverage A, obligates the company to pay those sums that the insured becomes legally obligated to pay as damages because of “bodily injury” or “property damage” to which the insurance applies. *Bodily injury* is defined in the policy as “bodily injury, sickness or disease sustained by a person, including death.” Michigan courts have declined to find CGL coverage for claims of mental anguish or emotional distress unless there is some physical manifestation of the injury to satisfy the “bodily injury” requirement. *Fitch v State Farm Fire & Cas Co*, 211 Mich App 468, 536 NW2d 273 (1995); *National Ben Franklin Ins Co v Harris*, 161 Mich App 86, 89–90, 409 NW2d 733 (1987).

*Property damage* is generally defined as “physical injury to tangible property” or “loss of use of tangible property that is not physically injured.” “Property damage” does not include pure economic losses, though it does include all direct and consequential loss from the property damage. *See Dimambro-Northend v United Constr, Inc*, 154 Mich App 306, 316, 397 NW2d 547 (1986). In *Fitch*, a defamation and intentional infliction of emotional distress case, the court held that “economic loss, business loss, loss of potential business and business opportunity” was not “property damage”:

The insurance policy language under scrutiny here is concrete and specific. It is too narrow to encompass ... claimed economic and business losses under the aegis of “property damage.”

*Fitch*, 211 Mich App at 470, 474. This was also the holding in *Parameter Driven Software v Massachusetts Bay Ins Co*, 856 F Supp 314 (ED Mich 1993), *aff’d*, 25 F3d 332 (6th Cir 1994), an intellectual property case where the only damage

alleged was lost profits and attorney fees. These claims were held to be “devoid of any references to tangible property damage.” *Id.* at 318 n6.

### 3. Personal and Advertising Injury Claims

§6.6 The other main type of coverage offered by the typical CGL policy is personal and advertising injury coverage. This form of coverage was not originally included in basic CGL coverage but was available on request, by way of an endorsement. Donald S. Malecki et al, 1 *Commercial Liability Risk Management and Insurance*, 97–98, 118–124 (1978). Due to the market demand for this type of coverage, personal and advertising injury was eventually added to the standard ISO form. See *Continental Cas Co v Taco Bell Corp*, 127 F Supp 2d 864, 884 (WD Mich 2001).

“Personal injury,” as used in the CGL form, has a very specialized meaning, quite different from its ordinary and common meaning, which some might equate with bodily injury. In the CGL policy, personal injury is narrowly defined by the particular legal theories of liability asserted. *Personal injury* means

- false arrest, detention, or imprisonment;
- malicious prosecution;
- wrongful eviction or invasion of the right to occupy a premises committed by or on behalf of its owner, landlord, or lessor;
- oral or written publication of material that slanders or libels a person or organization or disparages their goods, products, or services; or
- oral or written publication of material that violates a person’s right of privacy.

The courts give effect to these contract definitions. For example, a claim for slander of title is not covered within this definition of a personal injury because the slander must be directed against a person or organization or against goods or services. *Wylm v Auto Owners Ins Co*, No 255669, 2005 Mich App LEXIS 2568 (Oct 18, 2005) (unpublished).

*Advertising injury* is narrowly defined in the CGL policy as

- oral or written publication that slanders or libels;
- oral or written invasion of a right of privacy;
- misappropriation of advertising ideas or style of doing business; or
- infringement of copyright, title, or slogan.

In *Shefman v Auto-Owners Ins Co*, 262 Mich App 631, 687 NW2d 300 (2004), the court observed that an advertising injury requires three elements: (1) an advertising injury as defined in the insurance contract, (2) a course of advertising (if required by the contract), and (3) proof of a causal relationship between the advertising and the injury. In *Shefman*, the insured was alleged to have misappropriated the claimant’s house designs and styles in developing its condominium complex. Because there was no allegation that the insured used the misappropriated designs in its course of advertising, coverage was not available. *Id.* at 638.