

COMMERCIAL GENERAL LIABILITY (CGL) INSURANCE: THE OCCURRENCE COVERAGE FORM (82-A1)

AO 1. *Note:* The information in AO 1 was omitted from the most recent edition of the text.

FOUR SOURCES OF LIABILITY LOSS EXPOSURES:

1. **PREMISES AND OPERATIONS--**

- a. A **premises exposure** exists when loss might arise from a location owned, leased, or occupied by the responsible person.
- b. An **operations exposure** exists when loss might occur off the insured's premises and a result of the insured's activities.

2. **PRODUCTS AND COMPLETED OPERATIONS--**

- a. A **products exposure** exists when off-premises injury might result from the product itself after the insured has transferred physical possession of the product.
- b. A **completed operations exposure** exists when injury might result from the insured's completed activities.

3. **CONTRACTUAL LIABILITY--A contractual liability exposure** exists when one party has transferred some of its liability to another by a contract and might then cause injury to a third party.

4. **INDEPENDENT CONTRACTORS**--The insured may be held vicariously liable for the acts of his independent contractor, even though the insured did not directly cause the injury.

AO 2. **THE THREE MOST COMMON BASES FOR LEGAL LIABILITY:**

1. **Torts**--A **tort** is a wrongful act or omission (other than breach of contract or a crime) that violates another's rights and proximately causes damages to that person or his property. [*See AO 3.*]

2. **Contracts**--Contractual liability can arise from

- a. **breach of contract**--failure to perform as promised in a contract *or*
- b. a **hold-harmless or indemnity agreement**--in which one party assumes another liability.

3. **Statutes**--Legislation can create or modify legal duties, define the standard of care, **and/or** impose strict liability. *Examples:* Workers' comp laws hold employers strictly liable for injuries to employees. A statute might require homeowners to erect fences around their swimming pools.

AO 3. **THE THREE BROAD CATEGORIES OF TORTS:**

1. **Negligence**--is the failure to use due care to protect others from unreasonable risk of harm.

Four requirements for a cause of action for negligence: [*Breached duty caused damage.*]

- a. a **legal duty**--to conform to a standard of care to protect others,
- b. a **breach of that duty**--failure to use reasonable care in performing the duty,
- c. a **causal relationship**--demonstrated by a chain of causation (**proximate causation**) running from the breach of the duty to the event that caused damage, *and*
- d. **damages**--personal injury and/or property damage directly caused by the breach.

Vicarious liability imposes liability on one party for the acts of another by virtue of their relationship (eg, principal/agent; employer/employee; parent/child).

2. **Intentional tort**--is an intentional act that causes intentional or unintentional injury.

Examples: defamation, assault, and trespass.

3. **Strict liability**--imposes legal liability regardless of intent or negligence for injuries arising from inherently dangerous activities such as blasting.

AO 5. **THE FOUR PARTS OF A COMMERCIAL GENERAL LIABILITY (CGL) POLICY:**

1. **Common Policy Declarations page**--is part of every commercial package policy (**CPP**).

The **Common Policy Declarations page** lists the named insured's name and address, the policy term, the applicable coverage parts, *and* the premiums for each coverage part.

2. **Common Policy Conditions form**--contains conditions that apply to all coverage parts. **The conditions specify** the rights and obligations of the named insured and the insurer, the cancellation and nonrenewal provisions, **and** the policy amendments.
3. **Commercial General Liability Declarations page**--supplements the common policy declarations and lists the classification codes, rates, premiums, coverage limits, and form of business.
The form of business determines who is an insured. [See AO 10.]
4. **Commercial General Liability Coverage forms**--**The two versions of the current CGL form differ only in their coverage triggers** (the events that apply policy coverage to claims):
 - a. **The occurrence form** covers events that occur during the policy period.
 - b. **The claims-made form** covers claims filed during the policy period.**Most insureds in the standard market are covered by the occurrence form.**

AO 5. **THE FIVE SECTIONS OF THE CGL OCCURRENCE COVERAGE FORM:**

1. **Section I--Coverages**--See AO 6.
2. **Section II--Who Is An Insured**--See AO 10.
3. **Section III--Limits Of Insurance**--See AO 11.
4. **Section IV--Commercial General Liability Conditions**--**There are nine CGL conditions:**
 - a. **Bankruptcy**--The insured's bankruptcy does **not** cancel the insurer's obligations.
 - b. **Duties at occurrence**--The insured must
 - 1) promptly notify the insurer of any occurrence, claim, or suit;
 - 2) cooperate with and assist the insurer; and
 - 3) **not** assume liability or make voluntary payments.
 - c. **Legal action**--No party can sue the insurer to receive damages from the insured.
No party can seek damages under the CGL unless they have complied with its conditions.
 - d. **Other insurance**--If other insurance is excess, the CGL applies first.
CGL coverage is always excess over any other direct property insurance.
If the CGL is excess, it pays only its share of any loss that exceeds the total amount of other insurance.
It shares any other loss with any other insurance not described as excess.
If all policies allow **contribution by equal shares** (each insurer contributes equally until its limit is exhausted or the loss is paid in full), that method is used.
Otherwise, losses are paid by **contribution by limits** (each insurer contributes the percentage of loss that its policy limit bears to the total of all policy limits).
Coverage C, medical payment, is always primary.
 - e. **Premium audit**--The insured must keep accurate records for premium computation and make the records available to the insurer.
 - f. **Representations**--The statements in the declarations were based on the insured's representations.
The policy was issued in reliance on those representations.
 - g. **Separation of insureds**--Except for the limits of insurance, the insurance applies separately to each insured.
 - h. **Subrogation**--Once the insurer makes any payment to or on behalf of the insured, the insured's right of recovery against any third party is transferred to the insurer.
The insured must not impair that right and must assist the insurer in seeking recovery.
 - i. **Nonrenewal**--The insurer must provide the first named insured with 30 days written notice of intent not to renew.
5. **Section V--Definitions**--Terms defined in the CGL coverage form are defined throughout the assignment as they appear.
See also definitions of the Key Words and Phrases.

AOs 6 + 8.

SECTION I--COVERAGE A: BODILY INJURY AND PROPERTY DAMAGE

LIABILITY--We'll pay your legal obligations for BI or PD caused by an occurrence in the coverage territory. We have the right and duty to defend *any* suit. That duty ends once we've paid the policy limit for damages.

The known bodily injury or property damage provision excludes coverage of BI or PD *if* you or any employee authorized to give or receive notice of occurrences or claims knew the injury or damage had occurred before the policy period. Any progressive or continuing BI or PD *is* covered under that one policy that was in force when you *first* learned of the injury or damage.

Bodily injury means BI, sickness, and death.

Property damage means **physical injury** (damage or destruction) to tangible property *and* loss of use of such property *even* if it's not damaged.

Electronic data are *not* covered under the CGL's property damage liability *unless* the policy contains

1. **The Electronic Data Liability Endorsement**--which amends the definition of property damage to include the loss of electronic data resulting from physical injury to tangible property *or*
2. **The Electronic Data Liability Coverage form**--which covers the loss of electronic data from physical injury to tangible property *and* loss of electronic data from other incidents such as negligence, errors, and omissions.

Occurrence includes *both* sudden accident *and* repeated exposure to substantially the same harmful conditions.

Coverage territory includes the US, its possessions, PR, Canada, and international airspace and waters between those places; it also includes anywhere in the world *if* the loss was caused by a product sold in those places or by a person who normally works in those places *if* suit is brought in those places.

Coverage territory extends worldwide for personal and advertising injury claims that take place through the Internet or other electronic means of communication.

Suit is any civil proceeding or **arbitration** (method of dispute resolution in which the parties agree to be bound by the decision of an impartial third party) for BI, PD, personal injury, or advertising injury.

Coverage A Exclusions: We do not cover

1. **Intentional acts**--any BI or PD you expect or intend *except* BI resulting from reasonable force used to protect persons or property.
2. **Contractual assumption of Liability**--any BI or PD you assume under contract *except* liability that would exist outside the contract *or* liability under an insured contract [*See below.*] provided the BI or PD occurs *after* the contract is executed.
3. **Liquor Liability**--any BI or PD from serving alcohol *if* you're in the business of making or selling liquor. Social occasions *are* covered.
- 4+5. **Workers' Compensation and Employer's Liability**--*if* workers compensation, unemployment compensation, or employers liability would apply.
6. **Pollution**--*except*
 - a. heat, smoke, and fumes from hostile fires;
 - b. smoke, fumes, vapor, or soot from equipment used to heat or cool the building or to heat water for an individual's personal use;
 - c. accidental escape of operating fluids from mobile equipment, *and*
 - d. gas, fumes, or vapors from materials brought into the building as part of the insured's operations.
7. **Aircraft, Auto, and Watercraft**--including loading and unloading. (**Loading and unloading** is an *auto* exposure, *not* a CGL exposure. If a customer buys a floor model refrigerator, the CGL policy covers while its on the floor, the auto policy covers from when the hand truck first moves it on the floor until, later, the hand truck sets it in place in the customer's kitchen).
But watercraft ashore on your premises or under 26' that you don't own *are* covered.
Parking of nonowned autos on your premises (valet service) *is* covered

8. **Mobile Equipment**--while being transported or while used in racing activities. Otherwise, mobile equipment *is* covered under the CGL. **Mobile equipment includes**
 - a. vehicles designed for use off public roads;
 - b. vehicles used solely on or next to property you own or rent;
 - c. vehicles mounted on crawler treads (snowmobiles, bulldozers);
 - d. vehicles used mainly to move permanently mounted equipment (cranes, loaders, road construction equipment, welders); *and*
 - e. vehicles used mainly for purposes other than transporting persons or cargo.
9. **War**--any liability arising directly or indirectly out of war.
Note: Before 2003, the war exclusion applied *only* to liability assumed under contract.
10. **Damage to Property**--to property you own, rent, or occupy; property you sell or abandon; property you borrow; personal property in your control; to that particular part of real property you or an employee are working on *if* such work caused the damage; and to that particular part of property that must be repaired or replaced due to incorrectly performed work.
Those exclusions are invitations to buy the appropriate other insurance.
This tenth exclusion does *not* apply to the products-completed operations hazard.
11. **Personal and Advertising Injury**--for consequential BI caused by personal and advertising injury offenses covered under Coverage B.

COVERAGE FOR 'AUTOS' AND 'MOBILE EQUIPMENT'--The CGL excludes liability arising from autos. **Auto** means a vehicle designed for travel on public roads and its attached equipment, *but* does *not* include mobile equipment.

The CGL specifically lists items intended as **mobile equipment**--including vehicles designed for off-road use, vehicles used solely on the premises, vehicles with crawler treads, and construction and paving equipment.

To determine if coverage is provided by the auto policy or the CGL:

1. List all items that are either autos or mobile equipment.
2. For each item, read through the list of mobile equipment in the CGL.
3. Listed items are covered by the CGL (*unless* excluded).
4. Other items are considered autos.

Note: The CGL defines ***self-propelled*** cherry pickers, air compressors, pumps, and generators as 'autos', *but* covers liability arising out of their operation. A cherry picker is covered by the auto policy while driving to and from the job site. Once it is set up at the job location, the cherry picker is covered by the CGL.

Even though the auto policy and the CGL define their terms and coordinate their exclusions and coverages, they may be issued by different insurers; they may have different limits; *or* one policy may not be written, leaving a large potential uncovered exposure.

Insured contracts--The Coverage A exclusion for assumption of liability in a contract or agreement does *not* apply to liability assumed in an insured contract *if* the BI or PD occurs *after* the contract or agreement is executed.

The definition of insured contract lists six types of insured contracts: [*Note especially #6.*]

1. **premises leases**--*but* the CGL will *not* cover landlord liability assumed by a tenant that arises solely due to the landlord's negligence;
2. **railroad sidetrack agreements**--that require firms to hold railroads harmless from losses due to the use of sidetracks installed for the firm's use;
3. **easements**--*except* for construction or demolition within 50 feet of a railroad;
4. **indemnification of a municipality required by ordinance**--*except* for work done for it (but it is included in #6 below);
5. **elevator maintenance agreements; and**
6. **assumptions of others' tort liabilities made prior to any loss**--*except* for construction or demolition within 50 feet of a railroad *and* activities of architects, engineers, or surveyors.

Fire legal liability coverage provides a separate limit for fire damage to the rented premises caused by the insured's negligence.

Section I--Coverage B: Personal And Advertising Injury Liability--We'll pay your legal obligations caused by personal and advertising injury.

Personal and advertising injury means injury, including consequential BI, arising from false arrest, detention, or imprisonment; malicious prosecution; wrongful entry or eviction; libel or slander disparaging another's goods or services; publication of material that violates another's right of privacy; misappropriation of advertising ideas or style of doing business; or infringement of copyright, title, or slogan in the insured's advertising activities.

Coverage B Exclusions--We don't cover injury from

1. knowing violation of another's rights;
2. libel or slander if you knew of its falsity or if committed before the policy period,
3. injury arising from willful violation of a law;
4. injury caused by contractual breach;
5. injury caused by failure to conform with advertised quality, performance, and/or price;
6. insureds in media-related and Internet-related businesses;
7. infringements of copyright, title, or slogan *other than* that occurring in otherwise covered advertising activities;
8. electronic chat rooms or bulletin boards that you own, host, or control;
9. unauthorized use of another's name or product in your e-mail address, Internet domain name, or **metatag** (computer code used by search engines); *and*
10. pollution and pollution-related monitoring and cleanup.

Section I--Coverage C: Medical Payments--We'll pay medical and funeral bills for up to one year for noninsureds who are hurt on your premises or as a result of your activities regardless of fault or liability.

Coverage C Exclusions--We do *not* cover bodily injury

1. to insureds, their employees, and their tenants;
2. to people injured on premises they normally occupy;
3. to people covered by workers' compensation;
4. to people injured during athletics;
5. included within the products-completed operations hazard;
6. excluded under Coverage A; *or*
7. caused by war.

Supplemental Payments--Coverages A and B: We'll pay costs we incur; limited costs of bonds; court costs; reasonable costs incurred by you at our request (including up to \$250 per day of lost earnings); *and* interest on any judgment. Payments are *in addition to* the policy limits.

AO 7. **THE EXCLUSIONS IN A CGL COVERAGE FORM** were discussed in AO 6.

THREE REASONS FOR EXCLUSIONS IN A CGL COVERAGE FORM:

1. **to eliminate coverage for exposures that require additional premium**, such as bailment, products recall, and pollution;
2. **to eliminate coverage for exposures covered elsewhere**, such as automobile, watercraft, and aircraft liability, and workers' compensation benefits; *and*
3. **to eliminate coverage for uninsurable exposures**, such as war, faulty workmanship, and intentional injury.

AO 9. **THE TERRORISM RISK INSURANCE ACT (TRIA) OF 2002** created a temporary [expires 12/31/2005] Federal program under which the federal government will reimburse insurers for losses caused by “certified acts of terrorism”. [Congress has now extended the TRIA until 12/31/2014.]

All commercial property and casualty insurers *must* provide coverage for certified acts of terrorism.

To qualify for coverage under TRIA, the terrorist event must

1. be certified by the Treasury Secretary, the Secretary of State, **and** the Attorney General;
2. result in property and casualty insurance losses in excess of \$5 million;
3. result in damage **within** the US **or** damage to an airplane, vessel, or US embassy;
4. be violent **or** be dangerous to human life, property, and/or infrastructure; **and**
5. be committed by an individual acting on behalf of a **foreign** interest with the intent to coerce the civilian population or the government of these US.

The TRIA does **not** apply to domestic terrorists **or** to terrorist acts committed during war.

“Other acts of terrorism” include violent acts that are dangerous to life or property and are intended to coerce the US government or civilian population, but are **not** certified under TRIA.

Coverage for “other acts of terrorism”--The ISO gives three possible methods for treating non-certified terrorism losses.

The insurer can

1. leave the other coverage and exclusions unchanged in the underlying policy.
2. **exclude other acts of terrorism if the act involves**
 - a. property and casualty insurance losses in excess of \$25 million,
 - b. death or serious bodily injury to 50 or more people,
 - c. the use of nuclear radiation or nuclear contamination, **and/or**
 - d. the release of poisonous biological or chemical materials.
3. exclude other acts of nuclear, biological, or chemical terrorism.

AO 10. **SECTION II--WHO IS AN INSURED:**

1. **Named insured--**

- a. **If you’re an individual**, your spouse is also covered.
- b. **If you’re a partnership or joint venture**, all partners or members and their spouses are insured.
- c. **If you’re a limited liability company**, all members and managers are insured for their business-related activities.
- d. **If you’re any other organization** (corporation, municipality), all executive officers, directors, and stockholders are insured.
- e. **If you’re a trust**, your trustees are insured for their trust-related duties.

But in all cases, coverage applies only for claims arising from your business or organizational activities.

2. **Employees and volunteer workers are covered for claims arising from their duties *except* for**

- a. injury to the employee or a co-worker,
- b. injury arising from failure to render professional health care services, **and**
- c. property damage to property owned by, loaned to, or used by any insured.

Broadening this coverage to include volunteer workers eliminates the need for an endorsement to provide coverage for nonprofits, municipalities, and other entities that rely on volunteer help.

3. **Others--Your *real estate managers* are covered.**

Your **legal representatives** after you die are covered but **only** for their care of your business.

Your **newly acquired organizations** are covered for 90 days or until the end of the policy period for occurrences **after** they are acquired **if** there is no other CGL coverage.

No partnership or joint venture is covered **unless** named in the declarations.

AO 11. **SECTION III--LIMITS OF INSURANCE**--Section III contains six separate limits.

Those limits are the most the insurer will pay regardless of the number of insureds, claims, or claimants.

1. **The general aggregate limit**--is the most payable per year for all covered losses *except* for products and completed operations losses.
The products-completed operations hazard includes BI and PD occurring *away* from your premises and arising out of your product (if *not* in your possession) or your work (if completed or put to use).
Your work includes work by you or on your behalf, materials and equipment furnished in connection with the work, and your warranties and representations.
2. **The products-completed operations aggregate limit**--is the most payable per year under Coverage A for bodily injury (**BI**) and property damage (**PD**) from this hazard.
3. **The each occurrence limit**--is the most payable per occurrence for Coverage A (BI and PD) and Coverage C (medical payments) combined.
4. **The personal and advertising injury limit**--is the most payable per claimant under Coverage B.
5. **The “damage to premises rented to you” limit**--is automatically set at \$100,000, but it may be increased as needed. It’s subject to the general aggregate limit.
6. **The medical expense limit**--is the most payable per person for medical expenses under Coverage C due to bodily injury.

AO 12. **HOW TO EVALUATE THE CGL COVERAGE PROVISIONS: Determine**

1. Who is insured?
2. What events are covered or excluded?
3. What conditions must be met?
4. How much will the insurer pay?
5. What are the insured’s duties after a loss?