



Commercial Insurance: What Every GC Should Know

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“Advocates For Policyholders in Insurance Coverage Disputes”

www.sdvlaw.com





Types of Policies

- Commercial General Liability
- Directors & Officers
- Professional Liability
- Employment Practices Liability
- Property
- Builder's Risk
- OCIP/CCIP
- Pollution



Insurance Policy

- ISO Form v. Manuscript
- Contract of Adhesion
- Contra Proferentem



First Party v. Third Party

First Party

- Homeowners
- Commercial Property
- Medical/Dental
- Builder's Risk

Third Party

- Commercial General Liability
- Directors & Officers
- Professional Liability
- Employment Practices Liability



Occurrence v. Claims Made

Occurrence-Based

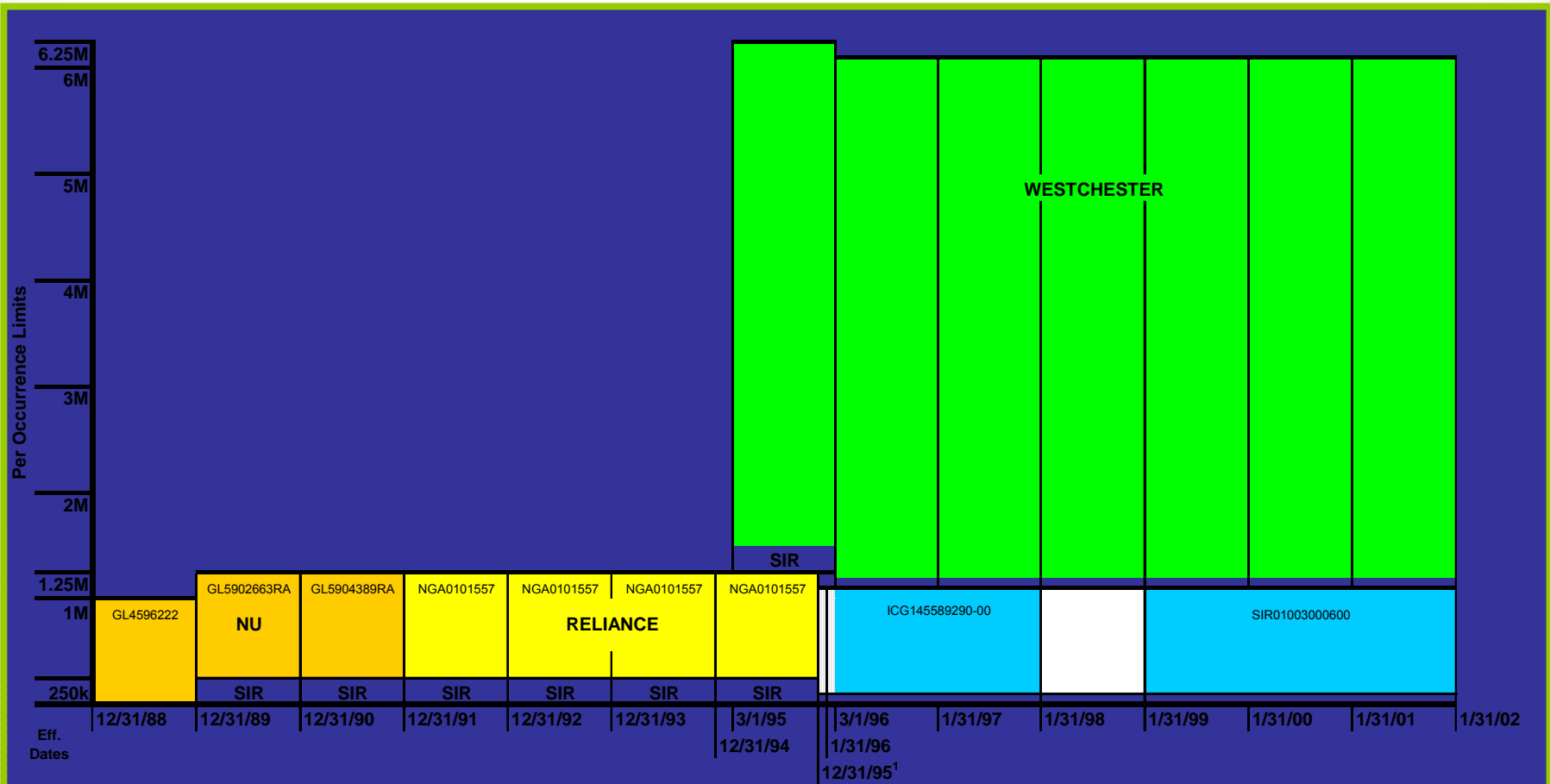
- Commercial General Liability
- Commercial Property
- Pollution

Claims Made

- Directors & Officers
- Employment Practices Liability
- Professional Liability



Primary or Excess Coverage



¹ Policy ICG145589103-00 from 12/31/95 to 1/31/96 is not listed in Westchester's Schedule of Underlying Insurance



A CGL Policy is Litigation Insurance

- Policy Declarations
- Limits of Insurance
- Notice
- Duty to Indemnify
- Duty to Defend
- Bodily Injury/Property Damage
- Occurrence
- Trigger
- Exclusions
- Allocation



Policy Declarations

- Policy number
- Named insured
- Policy period
- Limits of insurance
- Premium
- List of endorsements

		CNA Plaza Chicago, Illinois 60685		DECLARATIONS YOUR SERVICE INDUSTRY PACKAGE	
RENEWAL DECLARATION					
Policy Number	From	Policy Period	To	Coverage Is Provided By	Agency
C1 13236378	12/31/96	12/31/97		TRANSCONTINENTAL INSURANCE CO.	039550763
Named Insured And Address				Agent	
[REDACTED]				FRANK JONES INSURANCE AGENCY 1000 CENTRAL PARK, SUITE 225 SAN ANTONIO TX 78232	
COMMERCIAL GENERAL LIABILITY COVERAGE PART DECLARATIONS					
TEM					
2. POLICY PERIOD: THIS POLICY BECOMES EFFECTIVE AND EXPIRES AT 12:01 A.M. STANDARD TIME AT YOUR MAILING ADDRESS SHOWN ABOVE. IN RETURN FOR THE PAYMENT OF THE PREMIUM, AND SUBJECT TO ALL TERMS CONTAINED HEREIN, WE AGREE WITH YOU TO PROVIDE THE INSURANCE AS STATED.					
3. AUDIT PERIOD IS ANNUAL, UNLESS OTHERWISE STATED.					
4. LIMITS OF INSURANCE					
EACH OCCURRENCE LIMIT \$ 1000000					
PERSONAL AND ADVERTISING INJURY LIMIT \$ 1000000					
MEDICAL EXPENSE LIMIT \$ 5000 ANY ONE PERSON					
FIRE DAMAGE LIMIT \$ 50000 ANY ONE FIRE					
PRODUCTS-COMPLETED OPERATIONS \$ 1000000					
AGGREGATE LIMIT					
GENERAL AGGREGATE LIMIT (OTHER THAN PRODUCTS-COMPLETED OPERATIONS) \$ 2000000					
5. NAMED INSURED IS:					
<input type="checkbox"/> INDIVIDUAL <input type="checkbox"/> JOINT VENTURE <input type="checkbox"/> PARTNERSHIP					
<input checked="" type="checkbox"/> CORPORATION					
<input type="checkbox"/> OTHER					
BUSINESS DESCRIPTION: ELECTRICAL WORK W/BUILDINGS					
LOCATION OF ALL PREMISES YOU OWN, RENT OR OCCUPY:					
001 3401 N. SUGAR RD. ; PHARR , TX 78577					
002 3401D SUGAR RD. ; PHARR , TX 78577					



Limits of Insurance

- Aggregate v. per occurrence
- Defense inside/outside limits
- Deductible v. self-insured retention

4. LIMITS OF INSURANCE			
EACH OCCURRENCE LIMIT	\$	1000000	
PERSONAL AND ADVERTISING INJURY LIMIT	\$	1000000	
MEDICAL EXPENSE LIMIT	\$	5000	ANY ONE PERSON
FIRE DAMAGE LIMIT	\$	50000	ANY ONE FIRE
PRODUCTS-COMPLETED OPERATIONS AGGREGATE LIMIT	\$	1000000	
GENERAL AGGREGATE LIMIT (OTHER THAN PRODUCTS-COMPLETED OPERATIONS)	\$	2000000	



Deductible v. SIR

Deductible

- Paid and reimbursed
- Defense from first dollar

SIR

- Policyholder's responsibility
- No defense
- Choice of counsel



Notice to Insurer

- Notice of claim/suit
- Forward complaint
- Notify the insurer
- Broker



- Prejudice v. forfeiture
- Denial of defense and indemnity
- Waiver by insurer
- Loss of pre-tender defense fees



Duty to Indemnify

■ Based on known or established facts

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 WHO IS AN INSURED (SECTION II).

Other words and phrases that appear in quotation marks have special meaning. Refer to DEFINITIONS (SECTION V).

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 any "suit" seeking those damages. 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 LIMITS OF INSURANCE (SECTION III); 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"; and

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

- c. 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."

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) 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; or
- (2) That the insured would have in the absence of the contract or agreement.

c. Liquor Liability

"Bodily injury" or "property damage" caused in whole or in part by the furnishing of alcoholic beverages to any person under the legal drinking age by the influence of alcohol; or

(2) The furnishing of alcoholic beverages to any person under the legal drinking age by 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 the "employee" as a consequence of paragraph (1) above.

"We will pay those sums that the insured becomes legally obligated to pay as damages because of 'bodily injury' or 'property damage' ... [that] occurs during the policy period."



Duty to Defend

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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 any "suit" seeking those damages. 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 LIMITS OF INSURANCE (SECTION III); 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 "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"; and

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

c. 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."

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.

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(1) 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; or

(2) That the insured would have in the absence of the contract or agreement.

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 serving of alcoholic beverages to a person under the legal drinking age or under the influence of alcohol;

(3) Any statute, ordinance, regulation, or code that prohibits the sale, gift, distribution or consumption 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.

- Broader than duty to indemnify
- Insurer must defend if complaint alleges facts potentially within policy's coverage
- Consequences for breach

"We will have the right and duty to defend any 'suit' seeking those damages."



Bodily Injury

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

SECTION V – DEFINITIONS

1. "Advertising Injury" means injury arising out of one or more of the following offenses:

- a. Oral or written publication of material that slanders or libels a person or organization or disparages a person's or organization's goods, products or services;
- b. Oral or written publication of material that violates a person's right of privacy;
- c. Misappropriation of advertising ideas or style of doing business; or
- d. Infringement of copyright, title or slogan.

2. "Auto" means a land motor vehicle, trailer or semitrailer designed for travel on public roads, including any attached machinery or equipment. But "auto" does not include "mobile equipment."

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, provided the injury or damage does not occur in the course of travel or transportation to or from any place not included in a. above; or
- c. All parts of the world if:
 - (1) The injury or damage arises out of:
 - (a) Goods or products made or sold by you in the territory described in a. above; or
 - (b) The activities of a person whose home is in the territory described in a. above, but is away for a short time on your business; and
 - (2) The insured's responsibility to pay damages is determined in a "suit" on the merits, in the territory described in 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. "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:

a. The repair, replacement, adjustment or removal of "your product" or "your work"; or

b. Your fulfilling the terms of the contract or agreement.

8. "Insured contract" means:

a. A contract for 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. An elevator maintenance agreement; or

d. An obligation, as required by law, 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, road-beds, 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, drawings, opinions, reports, surveys, change orders, designs or specifications; or

(b) Giving directions or instructions, or failing to give them, if that is the primary cause of the injury or damage; or

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



Property Damage

(3) 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.

c. This hazard 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 created by the "loading or unloading" of it;

(2) The existence of tools, uninstalled equipment or abandoned or unused materials; or

(3) Products or operations for which the classification in this Coverage Part or in our manual of rules includes products or completed operations.

17. "Your product" means:

a. Any goods or products, other than real property manufactured, sold, handled, distributed or disposed of by:

(1) You;

(2) Others trading under your name; or

(3) A person or organization whose business or assets you have acquired; and

b. Containers (other than vehicles), materials, parts or equipment furnished in connection with goods or products.

"Your product" includes:

a. Warranties with

15. "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.

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

a. An arbitration proceeding in which such damages are claimed and to which you must submit or do submit with our consent; or

b. Any other alternative dispute resolution proceeding in which such damages are claimed and to which you submit with our consent.

"Your product" does not include vending machines or other property rented to or located for the use of others but not sold.

18. "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.

19. "Your work" means:

a. Work or operations performed by you or on your behalf; and

b. Materials, parts or equipment furnished in connection with such work or operations.

"Your work" includes:

a. Warranties or representations made at any time with respect to the fitness, quality, durability, performance or use of "your work"; and

b. The providing of or failure to provide warnings or instructions.

" 'Property damage' means:
(a) Physical injury to tangible property, including all resulting loss of use of that property...or
(b) Loss of use of tangible property that is not physically injured."



Occurrence

- (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 or engineering services.
9. "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."
10. "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 and 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."
11. "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 a., b., c. or d. above that are not self-propelled and are maintained primarily to provide mobility to permanently attached equipment of the following types:
 - (1) Air compressors, pumps and generators, including spraying, welding, building cleaning, geophysical exploration, lighting and well-servicing equipment; or
 - (2) Cherry pickers and similar devices used to raise or lower workers;
- f. Vehicles not described in a., b., c. or d. above maintained primarily for purposes other than the transportation of persons or cargo.
- However, self-propelled vehicles with the following types of permanently attached equipment are not "mobile equipment" but will be considered "autos":
- (1) Equipment designed primarily for:
 - (a) Snow removal;
 - (b) Road maintenance, but not construction or resurfacing; or
 - (c) Street cleaning;
 - (2) Cherry pickers and similar devices mounted on automobile or truck 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.
12. "Occurrence" means an accident, including continuous or repeated exposure to substantially the same general harmful conditions.
13. "Personal injury" means injury, other than "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 by or on behalf of its owner, landlord or lessor;
 - d. Oral or written publication of material that slanders or libels a person or organization or disparages a person's or organization's goods, products or services; or
 - e. Oral or written publication of material that violates a person's right of privacy.
14. a. "Products-completed operations hazard" 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.
- b. "Your work" will be deemed completed at the earliest of the following times:
- (1) When all of the work called for in your contract has been completed.
 - (2) When all of the work to be done at the site has been completed if your contract calls for work at more than one site.

- Accident is undefined
- Includes unintended consequences of intentional act

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

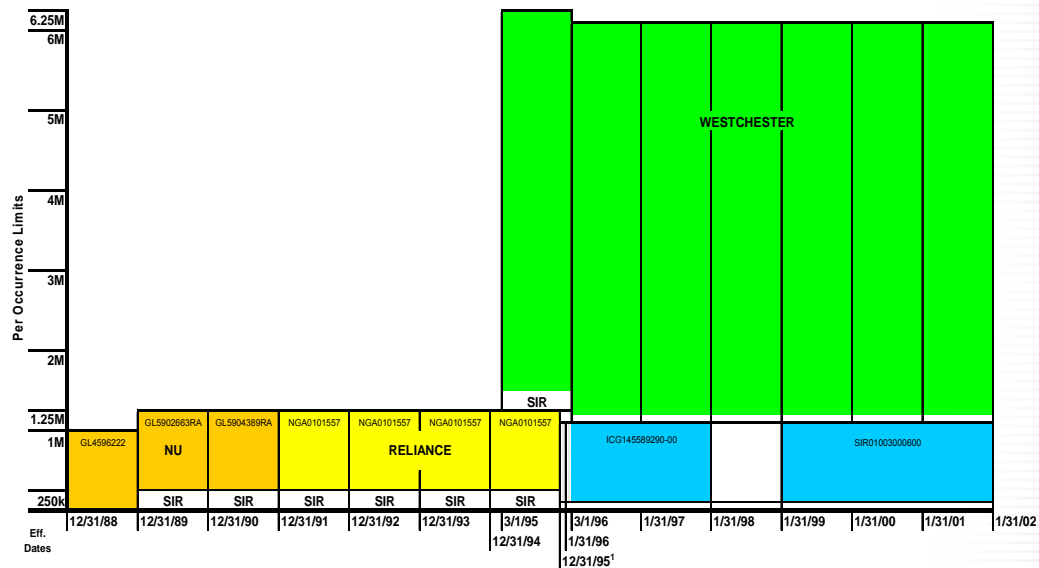


- Includes “bodily injury” and “property damage” occurring away from premises you own or rent & arising out of “your product” or “your work” except:
 - Products still in your physical possession; or
 - Work that has not yet been completed or abandoned.



Trigger of Coverage

- Exposure
- Manifestation
- Injury-in-fact
- Continuous



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Exclusions

- Construed narrowly
 - Conspicuous, plain and clear
 - Exceptions construed broadly
- Burden of proof is on insurer



- Sudden & Accidental
- Absolute
- Total
- “Traditional” pollution v. “Sick Building” cases



Typical Exclusions

- Expected or Intended Injury
- Pollution Exclusion
- War
- Contractual Liability
- Worker's Compensation Claims
- Employers Liability
- Personal and Advertising Injury
- Damage to Specified Property
- Damage to "Your Product"
- Damage to "Your Work"
- Damage to "Impaired Property" or Property not Physically Injured
- Recall of Products, Work or Impaired Property



Allocation

means a settlement and release of liability signed by us, the insured and the claimant or the claimant's legal representative.

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 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 c. below.

b. Excess Insurance

This insurance is excess over any of the other insurance, whether primary, excess, contingent or on any other basis:

- (1) That is Fire, Extended Coverage, Builder's Risk, Installation Risk or similar coverage for "your work";
- (2) That is Fire insurance for premises rented to you; or
- (3) If the loss arises out of the maintenance or use of aircraft, "autos" or watercraft to the extent not subject to Exclusion g. of Coverage A (Section I).

When this insurance is excess, we will have no duty under Coverage A or B to defend any claim or "suit" that any other insurer has a duty to defend. 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.

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:

- (1) The total amount that all such other insurance would pay for the loss in the absence of this insurance; and
- (2) The total of all deductible and self-insured amounts under all that other insurance.

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. Audit premiums are due and payable on notice to the first Named Insured. 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.

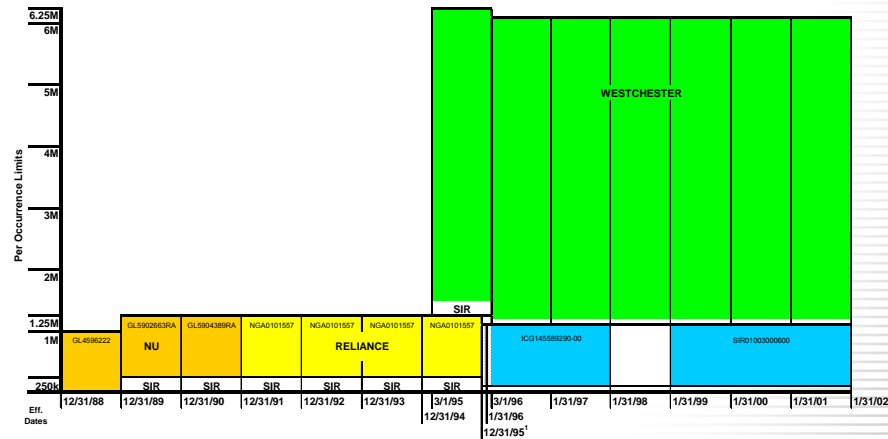
8. Transfer Of Rights Of Recovery Against Others To Us.

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.

Multiple policy years



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- Typical additional insured situations:
 - Landlord-tenant/lessor-lessee
 - Contractor-subcontractor
 - Vendor-vendee
- AI has same rights and obligations as Named Insured
- Limits are shared



Claims Made Policies

A D&O Policy Covers Wrongful Acts

- Notice of Claim
- Duty to Indemnify
- Duty to Defend
- Trigger
- Exclusions
- Who is an Insured



(CLAIMS MADE)

NONPROFIT DIRECTORS AND OFFICERS LIABILITY INSURANCE POLICY

THIS POLICY APPLIES ONLY TO CLAIMS FIRST MADE AGAINST THE INSURED AND REPORTED TO THE COMPANY DURING THE POLICY YEAR OR THE EXTENDED CLAIMS REPORTING PERIOD, IF PURCHASED. AMOUNTS PAID AS CLAIM EXPENSES SHALL REDUCE AND MAY EXHAUST THE LIMITS OF LIABILITY.

- KEY WORDS AND PHRASES APPEARING BOLDED AND IN LARGE CASE SCRIPT THROUGHOUT THIS TEXT HAVE SPECIAL MEANINGS. PLEASE REFER TO SECTION II, DEFINITIONS -

In consideration of the payment of the premium and in reliance upon statements in the application, the Insurance Company shown on the **CERTIFICATE OF INSURANCE** (hereinafter called the **COMPANY**) agrees with the **INSURED**, subject to all of the terms, exclusions and conditions of this policy as follows.

I. Insuring Agreements

A. Coverage

The **COMPANY** shall pay on behalf of an **INSURED** all **CLAIMS EXPENSES** and **DAMAGES** that the **INSURED** becomes legally obligated to pay for any **CLAIM(s)** first made against the **INSURED** for a **WRONGFUL ACT(s)** which arise solely out of the discharge of an **INDIVIDUAL INSURED'S** duties on behalf of the **ENTITY**.

B. Claims Made Provision

In order for this coverage to apply:

1. The **CLAIM** must first be made against the **INSURED** for a **WRONGFUL ACT** during the **POLICY YEAR** or if applicable during the **Extended Claims Reporting Period**.
2. The **CLAIM** must first be reported, in writing, to the **COMPANY** as soon as practicable but in no event later than 90 days after the end of the **POLICY YEAR** in which the **CLAIM** was made against the **INSURED** or, if applicable, during the **Extended Claims Reporting Period**.

C. Defense Provision

When a **CLAIM** is made against an **INSURED** and reported to the **COMPANY** in accordance with the **Claims Made Provision**, the **COMPANY** has the right and duty to defend any covered **CLAIM** against the **INSURED**, even if such **CLAIM** is groundless, false or fraudulent.

CLAIMS EXPENSES will be paid by the **COMPANY** and such payments will reduce the limit of liability. The **COMPANY** is not obligated to defend after the limit of liability has been exhausted. The **COMPANY** has the right to immediately withdraw from the defense of any **CLAIM** once the limit of liability has been exhausted.

Unless otherwise endorsed this policy is written on a "DEFENSE WITHIN THE LIMITS" basis. The limits of liability, as set forth in Item C of the **CERTIFICATE OF INSURANCE**, available to pay judgments or settlements will be reduced by amounts incurred for **CLAIM EXPENSES**.

"The CLAIM must be reported, in writing, ...as soon as practicable..."



Duty to Indemnify



(CLAIMS MADE)

NONPROFIT DIRECTORS AND OFFICERS LIABILITY INSURANCE POLICY

THIS POLICY APPLIES ONLY TO CLAIMS FIRST MADE AGAINST THE INSURED AND REPORTED TO THE COMPANY DURING THE POLICY YEAR OR THE EXTENDED CLAIMS REPORTING PERIOD, IF PURCHASED. AMOUNTS PAID AS CLAIM EXPENSES SHALL REDUCE AND MAY EXHAUST THE LIMITS OF LIABILITY.

- KEY WORDS AND PHRASES APPEARING BOLDED AND IN LARGE CASE SCRIPT THROUGHOUT THIS TEXT HAVE SPECIAL MEANINGS. PLEASE REFER TO SECTION II, DEFINITIONS -

In consideration of the payment of the premium and in reliance upon statements in the application, the Insurance Company shown on the **CERTIFICATE OF INSURANCE** (hereinafter called the **COMPANY**) agrees with the **INSURED**, subject to all of the terms, exclusions and conditions of this policy as follows.

I. Insuring Agreements

A. Coverage

The **COMPANY** shall pay on behalf of an **INSURED** all **CLAIMS EXPENSES** and **DAMAGES** that the **INSURED** becomes legally obligated to pay for any **CLAIM(s)** first made against the **INSURED** for a **WRONGFUL ACT(s)** which arise solely out of the discharge of an **INDIVIDUAL INSURED'S** duties on behalf of the **ENTITY**.

B. Claims Made Provision

In order for this coverage to apply:

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Unless otherwise endorsed this policy is written on a "DEFENSE WITHIN THE LIMITS" basis. The limits of liability, as set forth in Item C of the **CERTIFICATE OF INSURANCE**, available to pay judgments or settlements will be reduced by amounts incurred for **CLAIM EXPENSES**.

"The **COMPANY** shall pay on behalf of an **INSURED** all **CLAIMS EXPENSES** and **DAMAGES** that the **INSURED** becomes legally obligated to pay...for a **WRONGFUL ACT...**"



(CLAIMS MADE)

NONPROFIT DIRECTORS AND OFFICERS LIABILITY INSURANCE POLICY

THIS POLICY APPLIES ONLY TO CLAIMS FIRST MADE AGAINST THE INSURED AND REPORTED TO THE COMPANY DURING THE POLICY YEAR OR THE EXTENDED CLAIMS REPORTING PERIOD, IF PURCHASED. AMOUNTS PAID AS CLAIM EXPENSES SHALL REDUCE AND MAY EXHAUST THE LIMITS OF LIABILITY.

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Unless otherwise endorsed this policy is written on a "DEFENSE WITHIN THE LIMITS" basis. The limits of liability, as set forth in Item C of the **CERTIFICATE OF INSURANCE**, available to pay judgments or settlements will be reduced by amounts incurred for **CLAIM EXPENSES**.

"...[T]he **COMPANY** has the right and duty to defend any covered **CLAIM** against the **INSURED**, even if such **CLAIM** is groundless, false or fraudulent."



Trigger of Coverage

- Wrongful Act after retroactive date
- Claim during policy period
- Notice during policy period/ERP



Typical Exclusions

III. Exclusions

The **COMPANY** is not obligated to pay **DAMAGES** or **CLAIMS EXPENSES** for:

- A. Any **CLAIM** arising from any dishonest (including any **INSURED** gaining any profit or advantage to which the **INSURED** was not legally entitled), fraudulent, criminal, or malicious **WRONGFUL ACT** or any **WRONGFUL ACT** committed deliberately by any **INSURED** or at the direction of any **INSURED**.
- B. Any **CLAIM** arising out of or attributable to obligations under any employer's liability law, unemployment compensation law, workers' compensation law, disability benefits law or similar law.
- C. Any **CLAIM** which arises out of or is in any way attributable to any actual or alleged:
 - 1. Bodily injury, sickness, disease or death of any person; or
 - 2. Mental Anguish or emotional distress (except that which arises out of an **EMPLOYMENT PRACTICES CLAIM**); or
 - 3. Physical damage to or destruction of tangible property, including the loss of use thereof, or the loss of use of tangible property which has not been physically damaged or destroyed.
- D. Any **CLAIM** arising out of or attributable to any actual or alleged:
 - 1. Injury or damage which would not have occurred in whole or part but for the actual, alleged or threatened discharge, dispersal, seepage, migration, release or escape of **POLLUTANTS** at any time; or
 - 2. Request, demand or order that any **INSURED** or any other party test for monitor, clean up, remove, contain, treat, detoxify, neutralize, or in any way respond to, or assess the effects of **POLLUTANTS**, or
 - 3. Lawsuit, action, or proceeding by or on behalf of a governmental authority for **DAMAGES** because of testing for, monitoring, cleaning up, removing, containing, treating, detoxifying, neutralizing, or in any way responding to, or assessing the effects of **POLLUTANTS**.
- E. Except to the extent that coverage is provided by Extension J, any **CLAIM** arising out of any actual or alleged violation of the Employment Retirement Income Security Act of 1974 and its amendments or any regulations or order pursuant thereto, as well as any similar state law or regulation or from the **INSURED'S ADMINISTRATION** of an **EMPLOYEE BENEFIT PLAN**.
- F. Any **CLAIM** arising from any litigation, claims, demands, causes of action, legal or quasi-legal proceedings, decrees or judgments against any **INSURED**, occurring Prior to, or Pending the date stated in Item E. of the **CERTIFICATE OF INSURANCE**, of which any **INSURED** had received notice or otherwise had knowledge as of such date; or 1.) Arising from any subsequent litigation, claims, demands, causes of action, legal or quasi-legal proceedings, decrees or judgments against any **INSURED** arising from or based substantially on the same or related matters as alleged in the pleadings of such prior or pending litigation, claims, demands, causes of action, legal or quasi-legal proceedings, decrees or judgments against any **INSURED**; or 2.) Arising from any act of any **INSURED** which gave rise to such prior or pending litigation, claims, demands, causes of action, legal or quasi-legal proceedings, decrees or judgments against any **INSURED**.
- G. Any **CLAIM** based upon, arising out of, directly or indirectly resulting from or in consequence of, or in any way involving any fact, circumstance, or situation committed, or alleged to have been committed prior to the Retroactive Date stated in Item F. of the **CERTIFICATE OF INSURANCE**, including any related facts or circumstances that are logically or causally connected by reason of any common fact, circumstance, situation, transaction, casualty, event, or decision.

- Criminal Acts
- Securities
- Regulatory
- Insured v. Insured
- Prior Acts
- Prior Notice
- Employment/ERISA



Who is an Insured

I. Breach of Contract Extension

It is hereby agreed that the insurance provided by this policy shall extend to include **CLAIMS EXPENSES and DAMAGES for CLAIMS** arising from an actual or alleged breach of employment contract or agreement. However, the coverage for any **CLAIM** which alleges a breach of a nonemployment-related contract or agreement will be limited to **CLAIMS EXPENSES** only.

J. Employment Retirement Income Security Act of 1974 \$100,000 Sublimit Extension

It is hereby agreed that the insurance provided by this policy shall be extended to include a \$100,000 sublimit for **CLAIMS EXPENSES** which arise out of any **CLAIM** or **CLAIMS** alleging that an **INSURED** committed an **EMPLOYEE BENEFIT PLAN- RELATED WRONGFUL ACT**. This sublimit is a part of and not an addition to the **LIMIT OF LIABILITY** which is set forth on the Declarations Page. The amount of this sublimit is not increased by the number of **CLAIMS**. This Extension does not include any coverage for **DAMAGES**.

II. Definitions

The following terms whenever used in this policy in boldface type shall have the meaning indicated.

- A. **CLAIM** shall mean a demand for the institution of proceedings or a demand for money, including but not limited to, a service of suit, an institution of mediation or arbitration proceedings, or the institution of a charge against the **INSURED** with the United States Equal Employment Opportunity Commission (hereafter referred to as the EEOC) or a similar state or local agency which is responsible for the administration of state fair employment practices laws.
- B. **CLAIMS EXPENSES** shall mean the following but only when authorized by the **COMPANY**:
1. Fees, costs, and expenses charged by an attorney who is designated by the **COMPANY** to represent the **INSURED** in the defense of a **CLAIM**;
 2. All other fees, costs and expenses resulting from the investigation, defense and settlement of any **CLAIM**, including the administrative and investigative expenses or fees arising from EEOC proceedings (or similar state or local agencies).
 3. The interest on any part of a judgment that accrues before or after the entry of the judgment and before the **COMPANY** has paid or tendered or deposited the applicable judgment amount in court as well as any premiums for a bond amount, not exceeding the limit of liability, which is required as the result of a covered **CLAIM**, and premiums on bonds to release attachments. However, the **COMPANY** has no obligation to apply for or to furnish any such bonds;
- C. **DAMAGES** shall mean any amount that the **INSURED** becomes legally obligated to pay for any covered **CLAIM**, including judgments or settlements and the back pay and future lost earnings of **INDIVIDUAL INSURED(s)** if associated with **EMPLOYMENT PRACTICES CLAIM**. **DAMAGES** shall not include the following:
1. Sanctions, fines or penalties (except as provided in Section I. H);
 2. Any punitive or exemplary damages unless such coverage is specifically required by state law or regulation.
- D. **ENTITY** shall mean the nonprofit corporation which is named in Item A on the **CERTIFICATE OF INSURANCE** and any organization which is added by endorsement to the policy.
- E. **INSURED** shall mean the **ENTITY** or an **INDIVIDUAL INSURED**.

- Entity
 - Organizations added by endorsement
- Individual Insured
 - Directors, officers and employees



- Severability of Insureds
- Shared Limits



Basic Coverage Analysis

- Is claim within scope of insuring agreement? (Check endorsements)
- Does exclusion eliminate or restrict coverage for claim? (Check endorsements)
- Are there any exceptions/qualifications to exclusion which restore coverage?
- Have policy conditions been satisfied?
- What are the limits for the loss?
 - Are there any deductibles, SIRs, or co-pays?
 - Is insured entitled to supplementary payments, interest, etc...?



Insurance Coverage Litigation: What to Expect

- Denials/RoR
- Choice of Law/Venue issues
- Voluminous Special Defenses
- Missing Policies



- Declaratory Judgment
- Breach of Contract
- Bad Faith
- Breach of Fiduciary Duty
- UTPA/UIPA
- Misrepresentation
- Fraud
- Spoliation



In Closing...

- CGL is litigation insurance
- Give notice early and often
- Never destroy policies