



Commercial Insurance:

What Every Developer and Contractor Should Know

A CGL POLICY IS LITIGATION INSURANCE

What coverage is typically afforded under a CGL policy?

- **Duty to Indemnify:** The duty to indemnify obligates the insurer to pay for those sums the insured becomes legally obligated to pay as damages because of bodily injury or property damage.
- **Duty to Defend:** The duty to defend is broader than the duty to indemnify. The insurer must defend any suit even if the allegations of the suit are groundless, false or fraudulent. Defense fees are usually paid in addition to policy limits.

What are the typical requirements for coverage under a CGL policy?

- **Notice:** The insured is obligated to provide the insurer with written notice of the claim or suit as soon as practicable.
- **Occurrence:** The bodily injury or property damage must be caused by an accident.
- **Bodily Injury / Property Damage:** The insurer is only obligated for damages that result from bodily injury (defined as bodily injury, sickness or disease sustained by a person, including death) or property damage (defined as physical injury to tangible property, including all resulting loss of use of that property).
- **Trigger:** The bodily injury or property damage must occur during the policy period, thus “triggering” the policy.
- **Exclusions:** The insurer has the burden of proving that an exclusion applies to bar coverage.

Who is typically an insured under a CGL policy?

- **Named Insured:** Named insured can mean an individual, including his/her spouse, and organizations, partnerships, and joint ventures, including executive officers and directors so long as they are performing business-related duties.
- **Additional Insured:** Additional insureds can be added to a CGL policy through an endorsement to the policy or through an agreement in writing by the named insured to provide insurance coverage required by contract.

IMPORTANT TIPS TO REMEMBER

Immediately Provide Notice to All Insurers

- Notice is always an issue in coverage cases.
- Give notice as soon as practicable after learning of a potentially covered claim.
- Insurers routinely deny coverage by alleging late notice.
- Prejudice is an issue in many states. In some states (including New York), forfeiture of coverage is automatic if the notice is untimely.
- If the insurer does not timely disclaim coverage after late notice, it may waive its right to assert late notice as a defense of coverage.

Check All Policies For Coverage

- Coverage excluded under one policy may be granted under another (i.e. pollution, professional liability).
- Umbrella policies often “drop down” to provide primary coverage if their coverage grant is broader than that in the primary CGL policy.
- Identify any policies under which you may be entitled to coverage as an additional insured.

Never Destroy Old Occurrence Policies

- Claims can be brought long after the damage or injury which occurred during the policy period.
- Missing policies may be proven by secondary evidence, such as: correspondence, invoices or cancelled checks, certificates of insurance, and policy renewal information.
- Burden of proof is on insured to prove existence and contents of policies (including limits). Once coverage is established, burden of proof shifts to insurer re: exclusions.

INSURANCE COVERAGE EXPERIENCE AND SERVICES

SDV is one of the nation’s leading law firms focused exclusively on representing policyholders in disputes with their insurance companies. Our seasoned team of litigators represents clients in the construction, environmental, healthcare, and manufacturing industries nationwide. We provide big firm expertise, resources, and service delivered with small firm cost-effectiveness and responsiveness.

Over the past 10 years, SDV has represented large corporate policyholders, small companies, non-profit institutions, municipalities, state governments, utilities, and individuals. The firm works directly with CEOs, CFOs, in-house counsel, insurance managers, brokers, risk managers, and their staff to resolve their insurance coverage disputes. An important facet of SDV’s

attorneys’ skills is our experience in alternative dispute resolution. The firm regularly counsels clients concerning out-of-court alternatives, including arbitration, mediation, and other less formal resolution techniques.

SDV’s experienced team of trial lawyers has tried numerous insurance coverage cases in both state and federal courts nationwide. Our attorneys have the skills to prepare for trial effectively, are focused on critical issues, and are prepared to argue those issues persuasively. SDV has argued successfully in a wide variety of appellate courts including federal circuit courts of appeal and numerous state appellate courts throughout the nation.



BUILDER’S RISK POLICIES COVER LOSSES DURING CONSTRUCTION

Who should be covered?

- Project Owner/Developer
- General Contractor
- Accomplished by endorsement or by definition

Covered property includes:

- Property that you own or are liable for that is intended to become a permanent part of the building, as well as temporary structures on site, including cribbing, scaffolding and construction forms and possibly property in transit that is intended to become a permanent part of the building.

Covered property does not include:

- Machinery, tools or contractors’ equipment not intended to become a permanent part of the building or structure; or
- Property in storage which is not specifically allocated to building.

Property usually NOT covered unless endorsed

- Existing structures, scaffolding, fences, temporary structures, office trailers, underground works, sidewalks & paving, maps, plans, blueprints, trees, shrubs & plants, overhead & profit, property of others.

Typical Exposures Covered:

- Increased costs to complete, labor escalation, mobilization, sequencing inefficiency, material inflation;
- Real estate taxes, interest, and consulting, legal, accounting and advertising/marketing fees; and
- Equipment rental, overhead/extended general conditions, insurance, refinance charges, architectural & engineering.

Typical Exposures Excluded:

- Delay, loss of market
- Disappearance of inventory, criminal acts by insured
- Wear and tear
- The enforcement of any ordinance or law requiring the tearing down of any property
- Pollution
- Rain, whether driven by wind or not, to the interior of any building, unless the building or structure first sustains damage from a covered peril to its roof or walls through which the rain enters

CONSTRUCTION / DEVELOPER CLIENTS INCLUDE:

ABB Paint Finishing, Inc.

ABB Flakt, AB

Argonaut Development Group

ASEA Brown Boveri, Inc. (ABB)

Avon Contractors, Inc.

Blakeslee Prestress, Inc.

Bristol Winnelson

Current Builders

EMCOR Group, Inc.

Gateway Construction Corporation

Harbor Communities, LLC

Hunter Roberts Group

Jordan Construction Products Corporation

KTM Electrical Contractors, LLC

Neri Corporation

New London Windustrial

Oasis Environmental Contracting

Pavarini Construction Co., Inc.

Pavarini McGovern, LLC

Signlite, Inc.

Structure Tone, Inc.

Taylor Precast Corporation

Turner Construction Company, Inc.

University Mechanical and Engineering Contractors, Inc.

Wallingford Winnelson

Windustrial Corporation