



## Commercial Insurance: What Every General Counsel and Risk Manager 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 and obligates the insurer to defend any suit seeking those damage even if any of 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:** In order for coverage to be afforded under the policy, 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:** In order for coverage to be afforded, the bodily injury or property damage must occur during the policy period, thus “triggering” the policy.
- **Exclusions:** Once coverage is established under the policy, 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.

### A D&O POLICY PROVIDES PROTECTION FOR LOSSES DUE TO WRONGFUL ACTS OF OFFICERS

#### *What coverage is typically afforded under a D&O policy?*

- **Duty to Indemnify:** The duty to indemnify obligates the insurer to pay for 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.
- **Duty to Defend:** The duty to defend obligates the insurer to defend any covered claim against the insured, even if such claim is groundless, false or fraudulent. Defense fees usually erode policy limits.

#### *What are the typical requirements for coverage under a D&O policy?*

- **Notice:** The insured is obligated to provide the insurer with “prompt written notice.” Notice may be required within the policy year or during an Extended Reporting Period.
- **Claims Made Provisions:** In order for coverage to be afforded, the claim must first be made against the insured during the policy year.
- **Retroactive Date:** This condition typically requires that the event which results in a claim occur after a specific retroactive date.

## “Attorneys For Policyholders in Insurance Coverage Disputes”

### 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 state 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 to coverage.

#### Insurance Coverage Litigation: What to Expect

- Breach of contract claims
- Declaratory judgment actions
- Bad faith claims
- Unfair Trade Practices Act claims

- Choice of law issues
- Choice of venue issues
- Contra Proferentum - ambiguity issues
- Reservation of rights/disclaimer issues
- Voluminous special defenses

#### Never Destroy Old Occurrence Policies

- Claim can be brought long after the damage or injury which occurred during the policy period.

### INSURANCE COVERAGE EXPERIENCE AND SERVICES

*SDV has a national practice 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 experience, 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 CEO's, CFO's, 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.*



### WANT MORE INFORMATION? PLEASE CALL...

**Tracy Alan Saxe, Partner**  
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Tracy Alan Saxe has extensive experience in complex commercial litigation, specializing in insurance coverage issues. He has handled cases including coverage for construction defects, completed operations, product liability, property damage and bodily injury related to mold and asbestos, bodily injury related to construction, “sick building” syndrome, environmental claims, business interruption, employment disputes, patent infringement, contempt, RICO, unfair practices, breach of fiduciary duty, bad faith and professional malpractice. Mr. Saxe is well versed in issues relating to late notice, allocation, subrogation, contribution, indemnification and the duty to defend.

Mr. Saxe has successfully tried numerous jury and court trials in state and federal courts, has handled cases before the federal, state trial and appellate courts in Connecticut, New York, Pennsylvania, Texas, Florida, Delaware and Michigan and has successfully mediated and arbitrated many disputes.

Mr. Saxe has been an Adjunct Professor of Law at Quinnipiac University School of Law where he has taught courses in insurance law. He is also a frequent lecturer nationally on insurance coverage topics. He received his J.D. from Georgetown University Law Center, and his B.A. in Policy Studies, magna cum laude, Phi Beta Kappa, from Syracuse University.

**Jeffrey J. Vita, Partner**  
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Jeffrey J. Vita has broad experience in many aspects of general commercial litigation, most notably concerning insurance coverage issues. In the last several years, Mr. Vita has focused his practice on the representation of business policyholders in large, multi-state insurance coverage matters involving coverage for comprehensive general liability, directors & officers, professional liability, aircraft liability, builder's risk, subguard, first party property damage, additional insured, health care, life insurance and disability.

Mr. Vita has handled cases involving coverage for construction defects, completed operations, product liability, property damage and bodily injury related to mold and asbestos, bodily injury related to construction, “sick building syndrome, environmental unfair practices, breach of fiduciary duty, bad faith and professional malpractice.

Mr. Vita is the immediate past chairman of the Insurance Law Section of the Connecticut Bar Association and is an Adjunct Professor of Law at the University of Connecticut School of Law, where he teaches “Insurance Coverage Litigation.” Mr. Vita received his J.D. from Quinnipiac University School of Law, where he served as Managing Editor of the Law Review. He received his B.A., cum laude, from the University of Connecticut.

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