

[Commercial General Liability \(CGL\) Insurance](#)

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This practice note provides an overview of the coverage provided by the Commercial General Liability Policy (CGL). It also defines and discusses specific types of risks that are normally within the ambit of coverage and those that are typically excluded. The practice note also addresses ancillary duties and responsibilities of both the insurer and the insured. Many of them are common to liability insurance generally. These include the duty to defend the insured, circumstances when that duty does not exist or terminates, and the parties' responsibilities relative to it.

For more information, see [Commercial Property and Liability Insurance](#).

Overview of the CGL

The [Commercial General Liability](#) policy (CGL) is a "package policy" that provides protection to the [insured](#) for an array of [risks](#). We refer to the CGL as a "package" because a variety of [coverage](#) is provided within a single, essentially standardized [policy](#).

The CGL is issued to businesses and provides protection against liability [claims](#) asserted by third-parties for bodily injury and property damage. Within the broad category of property damage liability are the more closely defined categories of premises liability, operations liability, product liability, and completed operations liability. Within the broad category of personal injury liability are included bodily injury (as that term is typically used), and [advertising injury](#).

Among the most commonly used form [policy](#) is that designed by the [Insurance Services Office, Inc.](#) (ISO, now a subsidiary of Verisk). ISO provides many services for the insurance industry. It is historically best known for promulgating standardized policy forms that private [insurers](#) may adopt for the issuance of [coverage](#). Some [insurers](#) adopt the ISO form as written, some adopt it in part, and some use an entirely different form of policy. The form of policy that an insurer uses does not alter the fact that a CGL is a package policy. Instead, a non-ISO policy form may contain different policy language and for that reason may be susceptible to a different interpretation upon similar facts. Notwithstanding that, they are both "package policies" if they both cover the same or similar bundles of [risk](#).

For examples of ISO forms, see [ISO Form CG 00 02 01 96 \(Commercial General Liability Coverage Form\) \(Occurrence\)](#), [ISO Form CG 00 02 07 98 \(Commercial General Liability Coverage Form\) \(Claims-Made\)](#), and [ISO Form CG 00 65 04 13 \(Commercial General Liability - Electronic Data Liability Coverage Form\)](#).

The ISO form has changed since it was first created and continues to periodically change. It is therefore critical for the practitioner to know the version he/she is hired to interpret or that is involved in litigation or in a pending appeal. Similarly, he/she must be sure of the version of the form in conducting legal research. There must be an identity of CGL forms in authority cited to that involved in the client's dispute to ensure the legitimacy of precedential authority. Otherwise different policy language can dictate different litigation or appellate outcomes.

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For all of the standardization of CGL policies, there can be variations between policies. Some variations result from selections that the insured makes at the time of application, such as riders. Others relate to characteristics of the policy form issued by the insurer. A major distinguishing characteristic is between an [occurrence](#) policy and a [claims-made policy](#). The difference in outcome of an insurance coverage dispute that hinges upon a distinction between those policy forms cannot be overstated. The differences and distinctions between those insurance policy characteristics are described in [Occurrence-Based Policy](#) or [Claims-Made Policy](#).

For more on the general nature of CGL and policy forms, see [3 New Appleman on Insurance Law Library Edition § 16.07](#) (2018) and [3 New Appleman on Insurance Law Library Edition § 16.09](#) (2018).

What is Covered

The type of protection afforded by a CGL is, as the name suggests, liability coverage and it protects the insured and certain others for which the insured may be legally responsible from claims for money damage by third-parties. Despite the existence of CGL coverage, the third-party must still prove a negligent act or omission by the insured or another for whom the insured is legally responsible. Furthermore, that negligent act or omission must be shown to have been the proximate cause of the third-party's loss or damage. In other words, the typical rules of tort law still apply.

For more on claim requirements, see [Notice of Claim Requirements in General Liability Insurance Policies](#) and [New Appleman on Insurance Law Library Edition § 16.02](#).

Bodily Injury

Bodily injury is a defined term in Commercial General Liability (CGL) policies. The breadth of the coverage provided for bodily injury in a particular policy depends on how the term is defined.

In the insuring agreement, CGL policies typically promise to pay amounts that the insured becomes obligated to pay "as damages" because of bodily injury. Damages for bodily injury can include not only a claimant's medical expenses but also consequential financial losses. Thus, the insured may be obligated to pay damages representing the claimant's lost wages, general damages for "pain and suffering," or reduced future earning capacity resulting from bodily injury, and CGL policies typically will cover those damages to the dollar limits of the policy.

There is some potential for confusion between the terms "bodily injury" and "personal injury" as used in CGL policies. Most CGL policies contain separate definitions of "bodily injury" and "personal injury", and they define personal injury as including libel, slander. There is some potential for confusion between the terms "bodily injury" and "personal injury" as used in CGL policies. Most CGL policies contain separate definitions of "bodily injury" and "personal injury," and they define personal injury as including libel, slander, invasion of privacy and other offenses. Most CGL policies define bodily injury as "bodily injury, sickness or disease sustained by a person, including death resulting from any of these at any time." The word "these" relates to another phrase in the policy limiting coverage to the range of risks "to which this insurance applies." Taken together, the import of the phrases makes clear that the scope of coverage extends to liability to which the insurance applies, not to all conceivable risks of loss. There is conflict as to whether emotional injury falls within the ambit of this definition, so it is critical that you research how the courts have interpreted that issue in the jurisdiction where your claim or litigation is pending.

Some policies, however, include bodily injury within the definition of personal injury. In reviewing a policy's definitions section, it is important to locate where the term bodily injury is defined (i.e., whether it appears in a stand-alone definition or as part of the definition of personal injury). If it is a stand-alone definition, it is more likely that the insurer is distinguishing it from "personal injury." If the terms appear together, without separate, clear distinctions, an argument may be presented that the provision is ambiguous. In the context of insurance coverage disputes ambiguity refers to a situation where a term, when applied to given facts could result in a finding that coverage exists or that it doesn't. While the outcome is normally fact-driven and a court will not stretch interpretations beyond that which is reasonable, ambiguities are typically construed against the party that chose the

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ambiguous language. The reason for that rule of construction is that the party (in this case, the insurer) could have chosen to use policy language that more clearly expressed its intent. A further discussion of “personal injury” insurance and its distinctions from “bodily injury” coverage is found below.

For more information on bodily injury, see [New Appleman on Insurance Law Library Edition §§ 18.02\[3\], 18.03\[2\]](#).

Property Damage

CGL policies also cover amounts the insured becomes liable to pay as damages because of property damage. Property damage is usually defined as:

- 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
- Loss of use of tangible property that is not physically injured. All such loss shall be deemed to occur at the time of the “occurrence” that caused it

Under the first part of this definition, once there has been physical damage to a third party’s tangible property, all resulting damages — including damages because of loss of use of that property — are within the policy’s coverage.

For example, where fire damaged a car dealership that leased space in an insured’s building, the insured’s general liability policy covered not only the cost of repairing the fire damage, but also the dealer’s claim for loss of business or profits arising because of fire damage to the property. In another case, a third party’s lost profits were held to be covered consequential damages where the insured manufactured electric motors that turned out to be defective and that damaged the valves into which they were incorporated.

The first part of the definition makes clear that coverage applies to damage to tangible property—property that can be touched or handled. Most jurisdictions have interpreted this as meaning that coverage is not afforded to intangible property such as employment relationships, investments, copyrights, goodwill, and the like. There may be other, more specialized insurance policies to indemnify for losses such as those. Nonetheless, in either prosecuting or defending a claim that seeks intangible damages, it is critical to examine both the CGL policy itself and judicial interpretations of it to determine if a *meritorious* argument for coverage can be made. Diligence in those examinations is critical for at least two reasons:

- A well-founded argument in favor of coverage may result, at the least, in the insurer assuming the defense of the claim under a “reservation of rights”, relieving the client of the full financial burden of the defense, and at the best, relieving it of both the cost of defense and of damages were it to be found liable for the claim; and
- Diligence will determine the absence of a well-founded argument for coverage. That, in and of itself, is valuable. Many jurisdictions have attorney-fee shifting statutes that require the non-prevailing party in a coverage dispute to pay the attorney’s fees of the prevailing party. Therefore, although reasonable disagreements can exist as to coverage, only true diligence in the examination of the policy and governing law can assist counsel in shielding the client from the potential for further monetary loss.

An example of a covered loss under the second part of the definition is an event, such as a fire, a fallen tree or a collapsed building attributable to the insured’s conduct that, while not causing damage to a third party’s premises, closed off access to it, so that employees and customers could not reach the premises, resulting in losses to the business. Here again, where the third party suffers such loss of use property damages, most CGL policies cover all damages resulting from such loss of use, including lost profits or other economic damages, up to policy dollar limits.

In many cases in which the insured seeks coverage for property damage claims, the insurer will attempt to defeat coverage by invoking various exclusions, such as the “owned property,” “your product” and “your work” exclusions. The purpose of the “owned property” exclusion is to preclude an insured from recovering proceeds under third-party liability policies to reimburse it for losses to its own damaged property. The reason is that CGL insurance (as opposed to first-party property insurance) is intended only to protect the insured against legal liability to pay third

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parties sums to compensate them for damages. It is neither intended nor designed to reimburse the insured for damage it caused to its own property. Similarly, the risk that an insured may perform shoddy work or manufacture a defective product is fundamentally different from the risk that the insured's activities will cause unexpected damage to a third party. Once again, the risks of the latter are more properly within the scope of other types of risk products, such as warranties. Accordingly, CGL policies do not cover the cost of remediating an insured's own faulty workmanship in its products or work.

Personal Injury Liability

In the current ISO CGL coverage form, Coverage B, for "Personal and Advertising Injury Liability," insures against "injury, including consequential 'bodily injury' arising out of one or more of the following offenses:

- False arrest, detention or imprisonment;
- Malicious prosecution;
- 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, committed by or on behalf of its owner, landlord or lessor;
- Oral or written publication, in any manner, of material that slanders or libels a person or organization or disparages a person's or organization's goods, products or services; or
- Oral or written publication, in any manner, of material that violates a person's right of privacy;
- The use of another's advertising idea in your 'advertising'; or
- Infringing upon another's copyright, trade dress or slogan in your 'advertisement'."

Although "personal injury" and "advertising injury" share the definition above in the CGL policy form, they are generally subject to different analyses.

Under the definition, "personal injury" is distinct from "bodily injury." This is because "personal injury" is not subject to the requirement that the individual be injured physically, as is the case under the definition of "bodily injury" in most CGL policies. Rather, coverage for "personal injury" may be available whenever any injury arising from one of these specific offenses can be identified. For the same reason, "personal injury" liability coverage would also generally not be subject to any "per occurrence" limits stated in the policy for "bodily injury" claims. The significance of that is that coverage may still exist for "personal injury" liability arising from one of the listed offenses even after the policy's limits for "bodily injury" have been exhausted.

Moreover, because the grant of coverage for "personal injury" (as with "advertising injury" below) is distinct from the coverage grants for "bodily injury" and "property damage" under the CGL policy, claims for loss in the form of personal injury are not subject to coverage requirements or limitations that only apply to bodily injury or property damage claims. The most noteworthy of those limitations involves the definition of the term "occurrence." Thus, where a loss resulting from one of the enumerated offenses can be identified, coverage may exist for "personal injury" whether or not there is an "occurrence" as defined in the policy. Likewise, because coverage for "personal injury" liability coverage is not subject to the "occurrence" definition, the "expected or intended" exclusion may not apply. The net result is that coverage may be available even for liability arising from the policyholder's intentional conduct, sometimes including intentional torts. This is a somewhat unusual outcome, as insurance typically applies to only fortuitous events.

"Advertising Injury," in contrast, focuses on the types of "offenses" identified above that deal with publication of ideas or images. Coverage for advertising injury, therefore, typically requires that "advertising" or "advertising activity" be involved. Current CGL forms define "advertisement" in relevant part as "a notice that is broadcast or published to the general public or specific market segments about your goods, products or services for the purpose of attracting customers or supporters." In older forms, that do not define the term, "advertising" has been interpreted by some courts as widespread promotional activities directed to the public at large. Coverage also requires a causal

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nexus between the advertising and the alleged injury. The advertising injury, however, need not be the only cause of the alleged injury, but simply a substantial factor.

While the above definition of advertising injury may suggest that it includes a wide array of activities, most CGL policies have numerous exclusions that apply to advertising injury, including exclusions for:

- Knowing infliction of advertising injury
- Knowledge of falsity of published material
- Injury for which the insured has assumed liability in a contract or which arises out of a breach of contract
- Injury arising out of the failure of goods, products, or services to conform with any statement of quality or performance
- Inaccurate description of prices
- Infringement of copyright, patent, trademark, or trade secret
- Unauthorized use of another's name or product

For more information, see [Intellectual Property Infringement and Cyber Claims under a Commercial General Liability Policy](#).

Operations Liability

Traditionally, commercial insurance [underwriters](#) distinguished between “operations” risks and “completed operations.” “Operations” risks occur in the course of the insured’s normal business operations and are typically covered by a CGL policy. Thus, if the insured is facing claims by third parties seeking to recover damages resulting from the insured’s activities, the insured will turn to its CGL insurer for defense and indemnity coverage. One form of operations risks involves risks that arise from operations on the insured’s premises; these are referred to as “premises-operations” risks.

Products and Completed Operations Liability

In contrast to operations risks, “completed operations” risks occur after the insured’s work has been completed. For example, a general contractor insured who has built an office building may be sued three years after the building is completed for failing to properly construct the building’s foundation, which is causing the building to collapse. Where the insured is a manufacturer, distributor or seller of a product, the policy will often include coverage for the “products hazard,” which refers to the risk that a product manufactured or handled by the insured may cause an injury after the product has left the insured’s possession and control and entered the stream of commerce. The risks arising from an insured’s completed operations or its products have actuarial bases different from operations risks. For that reason, the calculation of the premium by the insurer for products coverage alone cannot take the other scope of risk (completed operations) into account. Accordingly, the completed operations risk may be excluded from the CGL. Some insurers will offer it as a rider to a CGL. If done that way, it can be priced separately in accordance with the risk that it presents and an adequate premium charged. Many CGL insurers consider the products and completed operations risks to be so similar to each other that the policy will group them together and either explicitly include or exclude coverage for the “products-completed operations hazard.”

Common Exclusions in Commercial General Liability Insurance

For a general explanation of exclusions, including a description of a few of the most common exclusions, see [Business Insurance Policies Review](#) and [Business Insurance Policies Interpretation](#). Several of the more common and prominent exclusions that an insured is likely to face in seeking coverage under a commercial general liability policy are worth addressing here.

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Expected or Intended

One of the exclusions most frequently relied upon by insurers to dispute or deny coverage for property damage or bodily injury claims is commonly referred to as the “expected or intended” exclusion. It is also sometimes referred to as the “intentional acts” exclusion, although technically, damages resulting from “intentional acts” can be covered if the consequences of that act are unintended. The expected or intended exclusion is meant to ensure that insurance coverage under a liability policy is available only for fortuitous injuries and not for the damage that the policyholder intended or knew would result from its actions. The expected or intended exclusion has long been a part of the standard CGL policy. As a general matter, it makes no difference whether the “expected or intended” language appears in a policy definition or in a policy exclusion. Wherever it is located in the CGL policy, the effect of the “expected or intended” language is that of an exclusion — i.e., to prevent an insured from recovering for damage that was intentionally caused.

The cases addressing the exclusion are split as to precisely when the exclusion applies in cases where an insured’s intentional act starts a chain of events that leads to injury. Some courts limit the exclusion to instances in which the insured intended both the act and the resulting harm or damage, although many jurisdictions also apply the exclusion when the resulting injury was substantially certain to result from the intentional act, and still other courts apply a “foreseeability” rule that excludes coverage where the resulting injury is the natural and probable result of an intentional act. This is yet another situation where the practitioner must thoroughly research the case law of the jurisdiction in which the claim or litigation is pending.

Most courts require proof of actual subjective intent to act and injure, but some courts apply a “reasonable person” standard instead. Yet another point of disparity among courts is the type of harm that must have been “intended” in order to apply the exclusion. Some courts require that the insured expect or intend the type of damage that actually resulted from the act, while other courts exclude coverage so long as the insured intended “some harm,” even when the damage intended is unlike the resulting harm.

Burden of Proof Applicable to the “Expected or Intended” Exclusion

Where the exclusion appears as part of the specific list of exclusions, as in the more recent iterations of the CGL policy, the burden of establishing the applicability of the “expected or intended” exclusion plainly rests with the insurer, as would be the case generally when the insurer invokes an exclusion to foreclose coverage. The rule adopted by most courts that have considered the questions is that the insurer bears the burden, although insurers often argue, and a few courts have held, that this is part of the insured’s burden in proving the existence of a covered occurrence in the first instance.

Contractual Liability

A second common exclusion found in most CGL policies generally bars a policyholder from recovering on a liability that the policyholder assumes by contract from another person or entity.

Not surprisingly, it is the exceptions to this exclusion that often prove the most significant. The application of the exceptions often turns on whether the contract asserted by the insurer as triggering this exclusion is an “insured contract” or not.

In interpreting this exception, courts often focus on whether the obligation in dispute arose “by reason of the assumption of liability in a contract or agreement.” On this issue, courts have split. The majority of courts that have addressed this issue hold that the contractual liability exclusion applies only where, under the contract, the policyholder agrees to assume another party’s liability.

Pollution

Commercial General Liability policies typically contain an exclusion carving out coverage for damages arising from pollution. The common absolute pollution exclusion is found at paragraph f. of the ISO CGL policy.

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Although meant to be broad in scope in its exclusion of coverage for environmental liabilities, some insurers have attempted to apply the exclusion to activities outside of the traditional environmental remediation claim, with mixed results. As a consequence, the meaning of the “absolute pollution exclusion” has repeatedly been the subject of litigation in jurisdictions around the country, and has proven to be less than “absolute” in a number of noteworthy ways. More generally, while courts in many jurisdictions have applied the exclusion in an expansive manner, other courts have interpreted it more narrowly to apply only to more traditional environmental pollution such as contamination of soil or water. In those jurisdictions, the absolute pollution exclusion has been held not to bar coverage for liabilities arising from other forms of pollution, such as liabilities resulting from exposure to fumes.

Other jurisdictions have recognized additional limitations on or exceptions to the exclusion that the insured “owned or occupied” the site where the pollution occurred, applies only if the policyholder owned or controlled the premises in question; thus, coverage would not be precluded where a contractor performs services at a property owned by another. Likewise, paragraph f(1)(d) is limited to damage arising from pollution that occurs while the contractor or subcontractors “are performing operations,” so damage arising from pollution that occurs before the operations begin or after the completion of the operations are arguably not subject to the exclusion. Notwithstanding the seemingly broad sweep of the “absolute pollution exclusion,” potential coverage for any given environmental liability should be reviewed carefully, in light of both the particular language of the standard exclusion and any applicable endorsement that may narrow the exclusion’s scope (and thus broaden coverage). Moreover, as with other coverage issues, the importance of determining which jurisdiction’s law will be applicable to a dispute over environmental liability. Likewise, the practitioner must verify the version of the CGL policy that was in force both at the time of the occurrence and at the time of the claim, as the case may be; policy language has changed in the various iterations of the exclusion. For purposes of research and reliance upon judicial authority it is vital to the outcome of disputes.

For more information on [environmental impairment liability insurance](#) and [environmental pollution liability](#), see [Transfer and Purchase of Property, Liability, and Environmental Insurance](#) and [Environmental Insurance as M&A Risk Management Tool](#).

Owned Property

As previously noted above, the purpose of a CGL policy is to insure against the risk that the insured may cause injury to third parties. For this reason, CGL policies typically exclude coverage for damage caused to the insured’s own property, an exclusion known as the “owned property” exclusion. A typical wording of the exclusion is as follows:

This insurance does not apply to:

- Property owned or occupied by or rented to the insured
- Property used by the insured
- Property in the care, custody or control of the insured or as to which the insured is for any purpose exercising physical control

The owned property exclusion is often raised as a defense to coverage in environmental contamination cases. While the exclusion may bar coverage for remediation activities limited to the insured’s property, it has typically been found not to apply to remediation activities affecting groundwater or surface water (such as lakes and rivers), as such waters are typically considered to be the property of the state. Another significant limitation on the exclusion is that it typically will not apply if the remediation activity on the insured’s property is taken to prevent an imminent and serious threat of harm to a third person’s property. Taken together, a practitioner representing a property owner who is faced with the denial of a claim for coverage for pollution remediation of his own property may decide to fashion an argument that the denial actually increases “moral hazard.” In other words, it allows the insured an incentive to not clean a waste site promptly. Instead the insured might wait for a third-party to seek to impose liability on the insured, which may then become a covered claim.

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For example, if there has been an oil spill on the insured's property, and the spill will spread to neighboring third parties' properties if not contained, the insured's actions to contain and clean up the spill will likely not be barred by the owned property exclusion because those actions were taken to prevent contamination to third parties' property.

For more on exclusions, see [3 New Appleman on Insurance Law Library Edition § 18.03](#) (2018) and [3 New Appleman on Insurance Law Library Edition § 19.03](#) (2018).

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Practice Notes

Commercial Transactions

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- [Insuring Construction Risks through Commercial General Liability Policies](#)

Annotated Forms

- [ISO Form CG 00 02 01 96 \(Commercial General Liability Coverage Form\) \(Occurrence\)](#)
- [ISO Form CG 00 02 07 98 \(Commercial General Liability Coverage Form\) \(Claims-Made\)](#)
- [ISO Form CG 00 65 04 13 \(Commercial General Liability - Electronic Data Liability Coverage Form\)](#)

Checklist

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