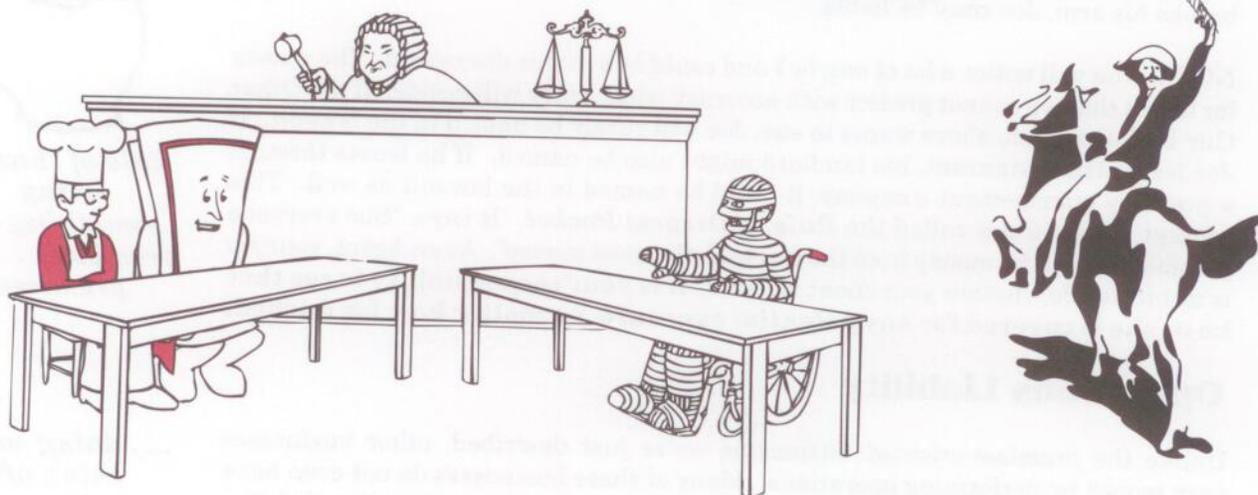


COMMERCIAL GENERAL LIABILITY

10

SOURCE:
ISO CGL-2007



- 1 The second key element of the Commercial Package Policy is the Commercial General Liability module. As with Commercial Property, it can be sold as part of the Commercial Package, or it can be sold as a monoline contract. As we look at the policy, we need to remember the basic concepts of legal liability that we discussed earlier in this text.

COMMERCIAL LIABILITY

- 2 As we begin to examine liability insurance from the Commercial Lines viewpoint, it would be helpful for you to think as a businessowner. Forget about your dog biting the neighbor – we've done that. Now, you need to think like a businessowner or a professional and about all of the ways your activities could create major liability exposures. Actually, even a partial list looks fairly ominous:

1. Premises
2. Operations
3. Products
4. Completed Operations
5. Independent Contractors
6. Contractual
7. Fire Legal
8. Personal Injury
9. Advertising Injury

LOOK

*at the Insured's
connection to
what happened*

- 1 These nine liability hazards are normally classified by the insurance industry as **General Liability exposures** and can be covered (mercifully) by one super-duper policy – the Commercial General Liability (CGL) policy. Actually, an unendorsed CGL automatically covers these exposures as well as two very important extras. Your study of the CGL will be greatly advanced if you first gain some insight into each of these exposures, the extras provided by the contract and an overview of what a plain vanilla CGL does not cover. Let's begin with the nine covered exposures.

Premises Liability

- 2 Simply owning or occupying business premises can get you into trouble. Retail stores, professional offices, public buildings . . . even ballparks fall into this category. Suppose Joe owns a restaurant. If the Other Guy trips over an extension cord and breaks his arm, Joe **may** be liable.

- 3 NOTE: You will notice a lot of *maybe's* and *could be's* in this discussion. The reason for this is that we cannot predict with accuracy what a jury will decide. If the Other Guy in the example above wants to sue, Joe will surely be named in the lawsuit. If Joe leases the restaurant, his landlord might also be named. If he leases through a property management company, it could be named in the lawsuit as well. This concept is sometimes called the **Rule of Deepest Pocket**. It says, "Sue everyone possible and get the money from the guy with the most money". As an Agent, your job is **not** to decide whether your client is liable; **it is your responsibility to see that he or she is covered for any potential exposure, no matter how far fetched.**



**Rule of thumb:
Doing
something on
premises . . . it's
premises**

Operations Liability

- 4 Unlike the *premises-oriented* businesses we've just described, other businesses earn money by performing operations. Many of these businesses do not even have premises into which the public is invited. A roofing or lawn care company performs its operations entirely off premises. If Joe caters a dinner away from his restaurant and a huge pot of soup turns over and burns several guests, that is Operations Liability. Carpenters, plumbers, demolition companies and baby-sitting services fall into this category.

- 5 NOTE: An exception to the *off premises* rule is a manufacturer. Obviously, a manufacturer performs an operation on its own premises and would need this coverage. However, 99.9% of the time, someone injured in a factory is an employee and is, therefore, excluded from coverage – making this a relatively unimportant exception to the off premises rule for you at this point.

**. . . doing some-
thing off
premises . . . it's
operations**

Products Liability

- 6 If you **manufacture, distribute or sell** a product, you have a potential Products Liability exposure. Notice that you do not have to manufacture the product to have an exposure. Anyone in the distribution chain has an exposure. The general rule is that **Products Liability begins** (and Premises Liability ends) **when the product leaves your premises and enters the stream of commerce.**

**made . . .
. . . or sold**

- 7 About the only significant exception to this rule of thumb is food consumed in a restaurant. By endorsement, the rules are changed so that food is covered by Products Liability **as soon as it is served.**

- 1 For example, suppose Joe has a gift shop in his restaurant and a customer injures himself trying out a veg-a-matic. Since the product **has not entered the stream of commerce**, Joe's Premises Liability would cover this event. If the customer bought the veg-a-matic and the **same thing happened at his home**, Joe's Products Liability would cover the accident if Joe were held to be legally responsible. Notice that the item does not have to be sold. The rule of thumb for Products Liability is *left the premises and entered the stream of commerce*. Even if Joe had given the customer the veg-a-matic as a promotional gimmick, everything would still work the same way.

... enters the stream of commerce... leaves the Insured's premises

- 2 Products Liability is actually a stricter form of liability than negligence. Essentially, the message is: *If you are going to make, distribute or sell a product, it should not injure people or damage their property*. Generally, Products Liability cases are based upon one of two types of warranties:

Strict Liability

- **Expressed Warranties** – are guarantees in writing, like “This transmission is guaranteed for 12 months or 12,000 miles,” or “These tires are guaranteed for 40,000 miles.”
- **Implied Warranties** – are guarantees that are not in writing but which the Reasonable Man would assume, like the product is fit for its intended use. Ford never said in writing that the Pinto would not explode when hit from the rear at speeds in excess of 25 m.p.h. but the Reasonable Man would not expect the car to explode under such conditions.

promises... written...

...unwritten

- 3 As you might guess, most Products Liability cases are argued on the basis of Implied Warranties. Normally, the arguments center on bad design, improper manufacture or failure to warn through proper labeling.

Completed Operations Liability

- 4 Many of the same kinds of businesses that need Operations Liability coverage need Completed Operations Liability coverage. **Operations** Liability provides protection **while** the work is being done; **Completed Operations** offers protection **after** the work is done. Keep in mind, Completed Operations offers protection for bodily injury or property damage caused by the work itself. Suppose the Other Guy is hit on the head by a hammer that a carpenter dropped while installing a chandelier. The carpenter's Operations Liability coverage would be operable. However, if the carpenter had finished his work and then the chandelier dropped on the Other Guy, the carpenter's Completed Operations Liability section would provide coverage.

work done

- 5 Completed Operations Liability coverage begins (and Operations Liability ends) when:

1. The job is completed, or
2. **The Insured's** part of the job is completed, or
3. The job is partially completed and the completed portion is being put to its intended use.

3 triggers

- 6 The first two triggers are fairly obvious, but the third requires some explanation. Imagine a strip shopping center under construction. The first space is completed and a Seven-Eleven is operating in that space while the remaining spaces are still under construction. From the contractor's viewpoint, the Seven-Eleven is covered by Completed Operations and the unfinished spaces still fall under Operations Liability.

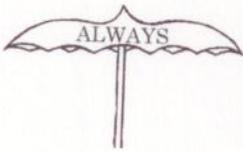
Independent Contractors Liability

- 1 Joe has coverage under his own policy for his acts and those of his employees, but what about the acts of any independent contractors Joe might engage, such as a carpenter paneling the restaurant? The independent contractor should have his or her own insurance - either a CGL to cover an ongoing business or an **Owners and Contractors Protective** to cover this one job only. Independent Contractors Liability protects Joe if he is held legally responsible for the actions of an independent contractor. Remember the Rule of Deepest Pocket.

other than employees

Contractual Liability

- 2 If you voluntarily assume someone else's liability by contract, you need this coverage. While assuming someone else's liability might seem like a dumb idea, it is often necessary in business.
- 3 The CGL recognizes five common situations where a business is almost forced to enter into a contract and assume someone else's liability. The policy provides coverage for these five situations, which have come to be known as the *insured contracts*. These five **insured contracts** are:



- L Lease
- E Easement
- A Agreement to indemnify a municipality
- S Sidetrack agreement
- E Elevator maintenance agreement



- 4 If Joe rents the building in which he operates his restaurant, the landlord might require Joe to sign a lease in which Joe assumes the liability of the landlord for situations where the landlord would be legally obligated to pay (lease). If Joe wants to hang a sign over a city sidewalk, he will need a permit. To get that permit, he must assume the city's liability for a pedestrian injured on the city sidewalk by Joe's sign (agreement to indemnify a municipality).

- 5 In addition to the CGL providing coverage for the above situations, the policy provides contractual coverage any time the Insured enters into an agreement where there would have been tort liability in the absence of a contract or agreement. For example, let's suppose Joe wins a bid with the local stadium to run the food concessions at all the home football games. The stadium requires Joe to sign a contract in which Joe assumes the liability of the stadium with respect to Joe's food and operations at the stadium. At the game, Wimpy purchases one of Joe's burgers, bites down into it, breaks a tooth and sues the stadium. As Joe has assumed the stadium's liability, Joe's CGL would pay for this loss. The key words are *where there would have been tort liability in the absence of a contract or agreement*. Even without the contract in place, Joe has responsibility for the broken tooth (tort liability). The CGL realizes that contracts are used often in business and extends the coverage to pay on behalf of others when it is the Insured's action that caused the loss.

Fire Legal Liability

- 1 Fire Legal provides coverage for negligent fire damage the Insured does to a **building he occupies as a tenant**. Suppose that Joe **rents** the first story of a commercial building to house his restaurant. The second story is occupied by his landlord. If Joe is responsible for a fire that destroys the entire building and all the contents, what will happen? Joe will file a claim for his contents under his Commercial Property policy. The landlord will file with his property carrier for his contents and for the building. The landlord's company will subrogate against Joe as he is responsible. Joe's CGL will pay for the landlord's contents and for the second story of the building.

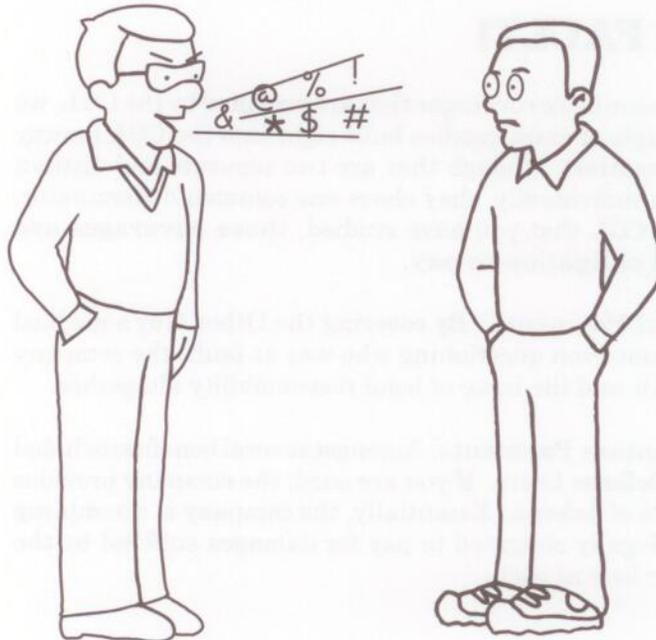
- 2 The first story of the building, however, presents a problem. As you will see in a few pages, a standard exclusion in the CGL says that we do not cover property that is in your "**care, custody or control**." (This is logical as most property in Joe's control is his and should be covered by his Property policy) The Fire Legal coverage *gives back* some of what the exclusion takes away. It will pay (up to the separately stated Fire Legal limits on the Dec Sheet) for negligent fire damage done to premises that Joe occupies as a tenant. Therefore, the Fire Legal coverage of Joe's CGL pays for the damage to the first floor.

3 C's

Care
Custody
Control

Personal Injury Liability

- 3 As you may recall from Chapter 4 in this text, Personal Injury has nothing to do with injury to a person's body (Bodily Injury). Instead, Personal Injury concerns **injury to a person's reputation or mental state**. Personal Injuries include false arrest, false imprisonment false search and seizure, malicious prosecution, libel, slander, defamation of character, violation of civil rights or right of privacy, wrongful entry or eviction or the invasion of the right of private occupancy. As you can see from the list, not one of the above listed items includes bodily injury but simply relates to mental, reputation or psychological damages to the "injured" person.



Slander :
Joe has a bad
day

Advertising Injury Liability

1 This is closely related to Personal Injury Liability except a business is harmed rather than an individual, like the banker. It provides coverage if Joe inaccurately represents the quality of a competitive restaurant in an advertisement.

*business not
person*

2 This coverage can also help Joe if he is sued for stealing another business's logo, trademark, advertising slogan or symbol of business. For instance, he would need this coverage if he erected golden arches over his restaurant and began advertising as McJoe's. Advertising Injury Liability also includes coverage for Joe if he infringes on a copyright or title belonging to another business.

3 **NOTE:** This is a good time to point out a rather important fact. You may be wondering why it is important to know all about these coverages since the CGL includes all of them anyway. One reason is that it will be necessary to know them when we get to our discussion of limits later on. As a practicing Agent, it's important because of cost. By endorsement, you can eliminate any or all of the following:

- Advertising Injury
- Advertising and Personal Injury
- Fire Legal
- Medical Payments (see below)
- Products and Completed Operations

4 In addition, you can reduce Contractual Liability from its blanket-type coverage to where it applies only to the *insured contracts*. Any elimination or reduction in coverage will, of course, save premium dollars. However, as an Agent, you must understand these coverages very well before you could risk eliminating one of them to save a client some money.

NO FAULT! NO FAULT!

5 Now that we have studied the nine basic coverages that are provided by the CGL, we can turn our attention to a couple of extra goodies built right into the CGL (or any other liability policy, for that matter). Though they are two separate and distinct benefits and will be addressed individually, they share one common denominator. Unlike everything else in the CGL that you have studied, **these coverages are not triggered by your legal obligation to pay.**

6 One of these extras is **Medical Payments**. By covering the Other Guy's medical costs following an injury without even questioning who was at fault, the company is attempting to avoid a lawsuit and the issue of legal responsibility altogether.

7 The second extra is **Supplementary Payments**. Amongst several benefits included is one of major importance – Defense Costs. If you are sued, the company provides a lawyer and assumes the costs of defense. Essentially, the company is attempting to establish that you are not legally obligated to pay for damages suffered by the Other Guy. Let's take a closer look at each.

Premises or Operations Medical Payments

1 The Medical Payments section of the policy pays without regard to fault. If the Other Guy slips and falls in Joe's restaurant, Medical Payments (Med Pay) pays. Even if the Other Guy is on roller skates and it appears that he himself is to blame, Med Pay still pays. The limits are rather low (beginning at \$5000 per person), but it would certainly pay enough to set the Other Guy's broken arm.

no fault

2 Obviously, the intent of Medical Payments is to avoid lawsuits. It's like goodwill insurance. If Joe can pay to fix the Other Guy's arm with no hassle, maybe there will be no lawsuit.

There are, however, several limitations of Med Pay. The **limits are low**, the benefits are restricted to **medical costs** (no payment for lost wages or pain and suffering) and the policy provides only **Premises or Operations** Med Pay benefits. In other words, the cause of the injury must be a Premises type of loss or an Operations type of loss. If the Other Guy slips and falls (Premises), Med Pay pays. If the Other Guy buys a bad hamburger at Joe's restaurant and gets violently ill (Products), Med Pay does NOT pay. In this latter case, the Other Guy would have to establish Joe's legal liability and then Joe's Products Liability coverage would pay.

*must be
premises /
operations*



Supplementary Payments

3 Though the word *supplementary* sounds like an optional add-on, **all liability policies have Supplementary Payments**. They come with the policy – you cannot buy the policy without this benefit.

4 While there are a half a dozen benefits that make up the category of Supplementary Payments, the biggie is **Defense Costs**. For any claim or lawsuit filed against you (to which the insurance applies), the insurance company will provide your legal defense. **These costs are paid in addition to the limits of liability of the policy.**

*expenses for
defense*

*in addition
to the face
amount*

5 Though it is certainly important that the insurance company provide you with a legal defense in situations where you may be held legally responsible, it may be even more important that a defense be provided if the Other Guy's claim is groundless. Nuisance suits are becoming more common, and it may cost up to \$150 - \$500 an hour to establish that you are not liable.

Other benefits provided by Supplementary Payments include:

- 6
- All other expenses incurred in investigating or settling the claim.
 - Reasonable expenses you incur at the company's request in assisting their defense efforts, including loss of earnings of up to \$250 per day.
 - The cost of appeal bonds and attachment bonds.
 - Any interest awards made to the Other Guy to offset the time between the occurrence or the judgment and the actual payment of damages.

NOT COVERED

Notes

- 1 As broad as the CGL is, not every liability exposure for every business is included.
- 2 The remaining hazards must be covered by the purchase of a separate policy. These include:
 - Commercial Auto Liability
 - Liquor Liability (for those in the liquor business)
 - Nuclear Energy Liability
 - Pollution Liability
 - Professional Liability
 - Employee Injury Liability
 - Employee Benefit Liability
 - Director & Officer's Liability
 - Commercial Aircraft or Watercraft Liability



NEXT STEPS

- 3 Now that you have a basic grasp of the concept of liability and a general understanding of what the CGL is designed to cover and not cover, it is time to look at the policy in detail. As with Commercial Property, the CGL requires a separate Dec Sheet in addition to the Common Dec Sheet already discussed. However, the CGL does not have a separate Conditions section like Commercial Property does. The conditions relevant to the CGL are built right into the coverage form itself.



COMMERCIAL GENERAL LIABILITY DECLARATIONS

POLICY NO. _____

COMPANY NAME AREA	PRODUCER NAME AREA
-------------------	--------------------

NAMED INSURED _____
 MAILING ADDRESS _____

POLICY PERIOD: From _____ to _____ 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 THE TERMS OF THIS POLICY, WE AGREE WITH YOU TO PROVIDE THE INSURANCE AS STATED IN THIS POLICY.

LIMITS OF INSURANCE

GENERAL AGGREGATE LIMIT (Other Than Products - Completed Operations)	\$ _____	
PRODUCTS - COMPLETED OPERATIONS AGGREGATE LIMIT	\$ _____	
PERSONAL & ADVERTISING INJURY LIMIT	\$ _____	
EACH OCCURRENCE LIMIT	\$ _____	
FIRE DAMAGE LIMIT	\$ _____	ANY ONE FIRE
MEDICAL EXPENSE LIMIT	\$ _____	ANY ONE PERSON

RETROACTIVE DATE (CG 00 02 only)

Coverage A of this insurance does not apply to "bodily injury" or "property damage" which occurs before the Retroactive Date, if any, shown below

Retroactive Date: _____
 (Enter Date or "None" if no Retroactive Date applies.)

Form of Business:

- Individual Partnership
 Joint Venture Organization (Other than Partnership or Joint Venture)

Business Description: _____

Location of All Premises You Own, Rent or Occupy:

CLASSIFICATION	CODE NO.	PREMIUM BASIS	RATE	ADVANCE PREMIUM	
				PR/CO	ALL OTHER
				\$ _____	\$ _____
TOTAL				\$ _____	\$ _____

Premium shown is payable: \$ _____ at inception.

ENDORSEMENTS ATTACHED TO THIS POLICY: IL 00 21 11 85 - Broad Form Nuclear Exclusion

COUNTERSIGNED _____ BY _____
 (Date) (Authorized Representative)

NOTE: OFFICERS' FACSIMILE SIGNATURES MAY BE INSERTED HERE, ON THE POLICY COVER OR ELSEWHERE AT THE COMPANY'S OPTION

COMMERCIAL GENERAL LIABILITY COVERAGE FORM

SECTION I – COVERAGES

1 Our next task is to plug the exposures just discussed into the four coverages of the CGL contract.

COVERAGE A
BI and PD

Premises
Operations
Products
Completed Operations
Independent Contractors
Contractual
Fire Legal

COVERAGE B

Personal Injury
Advertising Injury

COVERAGE C

Medical Payments

SUPPLEMENTARY PAYMENTS
for Coverages A&B

Supplementary Payments

2 Before we examine each of these coverages in detail, it is helpful to notice the solid logic behind the coverage arrangement outlined above. Why separate Coverage A and Coverage B? Well, Coverage A is **only** bodily injury and property damage, whereas Coverage B is **never** bodily injury or property damage. Coverage A covers only unintentional acts whereas Coverage B covers specified intentional torts. Why is Coverage C separated from the previous two coverages? Coverages A and B are triggered by your legal obligation to pay but Coverage C (Med Pay) pays regardless of who is at fault. Why do the Supplementary Payments only relate to Coverage A and B? Because Coverage C is not concerned with fault. You do not need a legal defense when it is unimportant whether legal liability is established.

COVERAGE A – Bodily Injury and Property Damage

3 The basic promises made by Coverage A are contained in the insuring agreement.

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. This insurance applies only to **“bodily injury”** and **“property damage”** **which occurs during the policy period**. The **“bodily injury”** or **“property damage”** must be **caused by an “occurrence”**. The **“occurrence”** must take place in the **“coverage territory”**. We will have the **right and duty to defend any “suit”** seeking those damages.

- 1 Let's tear the insuring clause apart in order to get a better sense of the true scope of the promise.
- 2 **"Those Sums"** - This promise is very broad. It does not list exposures such as Premises, Operations, Products, etc. Instead, it covers everything except what is excluded.
- 3 **"Legally Obligated to Pay"** - Settlement or judgment are our two choices here.
- 4 **"Bodily Injury"** - This includes bodily injury, sickness, disease or death.
- 5 **"Property Damage"** - Physical injury to tangible property, including loss of use of that property or other property that is not physically injured.
- 6 **"Policy Period"** - Shown on the Dec Sheet.
- 7 **"Caused by an Occurrence"** - The word *occurrence* includes what most of us would call an accident; however, it is broadened considerably. *Occurrence* also includes the continuous and repeated exposure to substantially the same harmful conditions. Accidents happen at a specific time; occurrences can happen over time. With few exceptions, modern liability policies are written on the broader basis.
- 8 **"Coverage Territory"** - The U.S., its possessions and territories, Puerto Rico and Canada.
- 9 **"Defend Any Suit"** - Defense costs.
- 10 As you can see, the basic promise of Coverage A is very broad. You can really only determine what is covered after seeing what is **not** covered.

Coverage A Exclusions

- **Intentional Acts**
- **Contractual Liability** assumed **after** an occurrence.
- **Liquor Liability** - is excluded for those in the business of distributing, furnishing or selling alcoholic beverages. If Joe's Restaurant sells liquor, he has no Liquor Liability Coverage under his CGL - he will have to buy a Liquor Liability Policy. On the other hand, his cousin, Moe, who owns a real estate agency has Host Liquor Liability Coverage under his CGL if he provides beer at the company picnic.
- **Employees** - Injuries to you and your employees are not covered under your CGL. Remember, the policy only pays for the Other Guy's bodily injury. You and your employees are typically better covered under a Workers Compensation policy.
- **Pollution** - The policy absolutely excludes any pollution coverage whatsoever - almost. You do have coverage if **smoke from a hostile fire** at your premises pollutes a neighboring property.

DICE

*"dram shop"
or . . . host
liquor liability*

Worker's Comp

*we won't budge
for sludge*

- **Aircraft, Autos and Watercraft** – These items are better covered under different policies: Automobile, Aircraft or Watercraft policies. For most businesses, aircraft and watercraft coverages simply are not needed. The most likely problem is the Commercial Auto exposure, which can be covered with the Commercial Auto module of the Commercial Package Policy.

better covered elsewhere

The CGL does, however, **cover mobile equipment**, like a fork lift truck. Therefore, the important issue becomes how to distinguish between commercial autos and mobile equipment. **The basic rule is that if it is designed for use on public roads, it's probably a commercial auto.** This category would include cars, trucks, semi-tractor trailers, snowplows and road maintenance (not construction) equipment.

Mobile equipment is primarily considered to be land vehicles **not designed for use on public roads**, such as farm machinery, fork lifts, bulldozers and other vehicles that travel on crawler treads.

Unfortunately, the distinction between mobile equipment (which is covered under the CGL) and commercial autos (which are not) can become a little blurred based upon usage. For instance, a pick-up truck is considered an auto. But if it is used solely on your premises, it can qualify as mobile equipment. A bulldozer is clearly mobile equipment, but if it is being transported or towed by a commercial auto, it is covered for liability as commercial auto.

...still
DICE

The other important border between the CGL and Commercial Auto policies has to do with the loading and unloading of cargo. The CGL provides liability coverage on the goods until they are removed from the loading dock to be loaded into the truck. At that point, Commercial



Auto coverage takes over. The Commercial Auto policy provides coverage until the truck is unloaded. When the goods have been placed on the recipient's loading dock, Commercial Auto coverage stops and the CGL's starts.

- **Mobile Equipment Transported by an Auto** – Though normally covered by the CGL, mobile equipment is not covered while being transported by an auto. It is also not covered if it is being used in a racing or demolition contest.
- **War, Rebellion, Civil Commotion, or Revolution**

Notes

- **Your Property** – We have made the point that the CGL covers the Other Guy's property – not yours. However, this exclusion may be even broader than it might first appear. Under this exclusion, *your property* is defined as property that you own, occupy, or rent or that is in your care, custody, or control. Whether you own or lease your copier does not matter in insurance. Either way it is considered *your property* and is insured under your Commercial Property Policy.

owned, occupied, rented, care, custody, control

- **Your Product** – The CGL is not designed to serve as a product guarantee. If you sell a faulty toaster, the policy does not pay to replace it. However, if your toaster malfunctions and electrocutes the Other Guy (BI) and burns down his house (PD), the policy will pay for that damage. However, it still will not pay for the toaster itself – that's your product, and your problem.

not a guarantee

- **Property in Your Care, Custody, Or Control** – As you saw above, the CGL does not cover your product. It also does not cover your work on the Other Guy's property. Suppose you are a plumber and you are repairing a leaky toilet bowl (real property). If you break the toilet bowl (in your control), water damage to the floor or hallway (PD) is covered. If the Other Guy slips on the water and breaks his leg (BI), that's covered. However, the toilet bowl itself is not covered.

need a bailee's policy



The same thing is true of the Other Guy's personal property in your control. If you were a TV repairman and caused the Other Guy's TV to explode in his living room, the CGL would cover damage to the Other Guy's body and all of his property **except the television**.

NOTE: Obviously, the CGL does not provide complete coverage for the plumber or repairman. Theoretically, either could purchase a Bailee's Liability policy to cover items in his care, custody or control.

- **Impaired Property** – The CGL does not cover property that has not sustained physical injury or that cannot be used or is rendered useless by your product or your work. Suppose you install a new furnace in the Other Guy's motel in June. In October when he turns it on, it doesn't work and he cannot rent rooms for a week. Since there was no physical injury to the rooms, there would not be any coverage.

There is, however, one set of circumstances in which the loss of use of the rooms would be covered. If the loss is the result of **sudden and accidental** physical injury caused by your product or work, there is coverage. If, in the above example, you installed the furnace in November and it exploded and caused the Other Guy to lose room rental, there would be coverage for the loss of use of the guest rooms. This would be true even if the guest rooms were untouched by the explosion.

- **Product Recalls** – Sometimes called the *Sistership Exclusion*, this eliminates coverage for the cost of product recalls. Suppose that Joe sells homemade salad dressing in his gift shop. Two hundred bottles in one batch were bad and have already triggered a dozen bodily injury claims. If the government orders a recall of all two hundred bottles, the CGL will not pay the recall costs. Remember, the CGL is not designed to insure the fitness or quality of your product or your work; it is designed to pay for bodily injury or property damage that is caused by your product or your work. Coverage for the cost of recalls can be purchased by endorsement.

more
DICE

no recalls

COVERAGE B – Personal and Advertising Injury Liability

- 1 The second major coverage of the CGL is Coverage B. Coverage B does for broken reputations what Coverage A did for broken arms. Coverage B never covers bodily injury or property damage. It only covers damage to the Other Guy's good name, his business reputation, the public's image of his product and his good feelings about himself. Words like libel, slander, false arrest, malicious prosecution, wrongful entry and wrongful eviction should spring to mind when you see the words *Personal Injury*.

Not Eligible

- 2 As we saw with the liquor liability exclusion for liquor stores earlier, again we have the situation where the businesses that need this coverage the most don't get it under the basic CGL. Advertising agencies, publishers, broadcasters and telecasters simply get no Coverage B under the CGL. Their exposure is considered to be so great that a more specialized (and more expensive) coverage must be purchased.

“...sure, but you could buy it back...”

- 3 The kind of exposure this coverage was designed for is a non-communications business, such as Joe's Restaurant. If Joe loudly accuses the banker of stealing from his salad bar, we have Personal Injury, and we have coverage. If Joe's Restaurant misrepresents a competitor or steals an advertising idea, that is Advertising Injury and there is coverage.

Coverage B Exclusions

- 4 The exclusions under Coverage B are few, and those that are enumerated in the policy are straight to the point.

- **Lies** – Statements made or published that the Insured knew beforehand were false.
- **Prior Statements** – Statements made or published before the policy period.
- **Willful Violation** – Statements made or published that were a willful violation of the law.
- **Contractual Liability** – Though the CGL does cover contractual liability under Coverage A (BI and PD), it does not cover liability assumed by contract in the area of Personal Injury.
- **Breach of Contract**
- **Overpromises** – Statements made or published that overpromised the value of the goods or services.
- **Price Errors**

common sense

COVERAGE C – Premises or Operations Medical Payments

- 1 As we have discussed, Med Pay covers medical expenses to an injured third party without regard to legal liability. The injury must be a Premises or Operations type of loss, and Med Pay functions like goodwill insurance.
- 2 The CGL allows for Medical Payments for expenses incurred within **one year** of the date of the accident.
- 3 As we have already noted, Med Pay does not pay for such things as loss of earnings or pain and suffering. However, the term *medical expenses* is a little broader than most people would think. *Medical expenses* include:

- First aid
- Medical, surgical, x-ray and dental services.
- Necessary ambulance, hospital, and nursing services.
- Funeral expenses



*not the same
as bodily
injury*

Medical Payments (Coverage C) Exclusions

- **Insureds** – Remember, this is for the "Other Guy"
- **Employees** – Covered by Workers Compensation – not your CGL
- **Tenants** – If you are a landlord and have a CGL on your apartment building, your Med Pay won't cover a tenant who falls down in his apartment.
- **Athletics** – Anyone injured while taking part in athletics.
- **Products or Completed Operations** types of losses are excluded. Remember, this is **Premises or Operations** Med Pay.
- **All Previous Exclusions** – All Coverage A exclusions are also excluded under Coverage C, such as Intentional Acts.
- **War**

SUPPLEMENTARY PAYMENTS (for Coverages A and B)

1 We have just discussed the first three coverages (A, B, and C) of the CGL. Now we can address the Supplementary Payments section of the CGL, which is one of the most valuable portions of any liability policy.

2 Its benefits include:

- Defense costs
- All other expenses incurred in investigating or settling the claim.
- Reasonable expenses you incur at the company's request in assisting their defense efforts – including loss of earnings of up to \$250 a day.
- The cost of appeal bonds and attachment bonds, but the company is not responsible for actually providing the bonds.
- Any interest awards made to the Other Guy to offset the time between the occurrence or the judgment and the actual payment of damages.

other stuff

*The Lawyers
of America
thank you*

3 Congratulations! You have just finished the biggest chunk of the CGL policy. We didn't tell you up front that the policy is comprised of five sections. Since you've made it this far, we know this additional information won't fry your circuits. So, here it is:

- | | |
|------|---------------------|
| I. | Coverages |
| II. | Who Is An Insured? |
| III. | Limits of Insurance |
| IV. | CGL Conditions |
| V. | Definitions |

4 Obviously, you can check off Section I from your list – we just covered it. Now, we'll turn our attention to the next four sections.

SECTION II – WHO IS AN INSURED?

1 In order for you to understand this section of the CGL, you may need a little background in how businesses can be structured. There are essentially three ways to organize a business.

2 **Sole Proprietorship** – Under this arrangement, your business is no different than any other asset you own – your house, car, or bank account. If the business fails, your creditors can attempt to take your non-business assets to pay your debts. From a liability standpoint, you and your spouse are vulnerable . . . even if your spouse has absolutely nothing to do with your business.

spouse too

3 **Partnership** – This is only an extension of the sole proprietorship, but now there are several individuals involved. From the liability standpoint, things are probably even worse. Not only are your personal assets vulnerable if you are sued for your own actions, but now you can be sued for the actions of a partner.

4 **Corporation** – The main advantage of a corporation is the separation of your business assets from your personal assets. If you own a corporation that fails, your personal assets are not fair game for the business creditors. From a liability perspective, the corporation is being sued, not you. Therefore your personal assets (and those of your spouse) are not vulnerable.

5 Since the need for liability insurance varies with the type of business structure, the CGL addresses all three in answering the question, “Who is an Insured?”

- **Sole Proprietorship** – You and your spouse.
- **Partnership, Joint Venture or Limited Liability Company** – You, your partners and your spouses.
- **Corporation** – You, your executive officers, directors and stockholders.

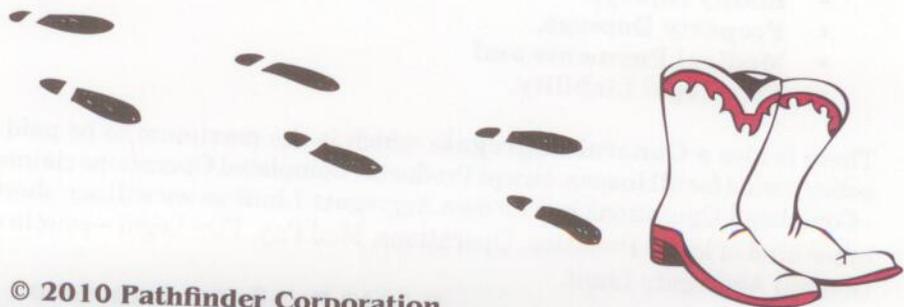
6 NOTE: In all three cases, **employees are also Insureds** for acts within the scope of their employment.

*Employees
only in the
scope of their
employment*

7 Your CGL would not cover bodily injury to you or your employees, nor would it cover damage done by an employee to your property. Remember, in liability insurance we are talking about damage you or your employees do to the Other Guy’s body and the Other Guy’s property.

Next Steps

- I. Coverages
- II. Who Is An Insured?
- III. **Limits of Insurance**
- IV. CGL Conditions
- V. Definitions



SECTION III – LIMITS OF INSURANCE

1 Section I told us **what** is covered by the CGL and Section II told us **who** is an Insured. Now, Section III is going to define how far the company will go dollar-wise in covering the damages for which the Insured is legally responsible.

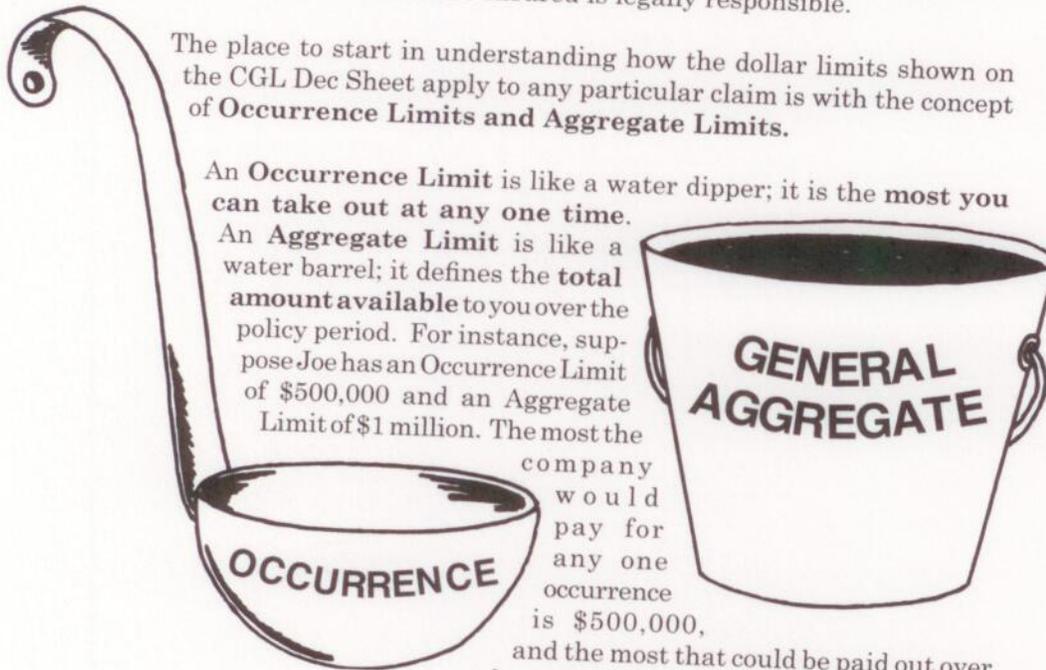
2 The place to start in understanding how the dollar limits shown on the CGL Dec Sheet apply to any particular claim is with the concept of **Occurrence Limits and Aggregate Limits**.

An **Occurrence Limit** is like a water dipper; it is the **most you can take out at any one time**.

An **Aggregate Limit** is like a water barrel; it defines the **total amount available** to you over the policy period. For instance, suppose Joe has an Occurrence Limit of \$500,000 and an Aggregate Limit of \$1 million. The most the

company would pay for any one occurrence is \$500,000,

and the most that could be paid out over the policy period is \$1 million.



*Occurrence
dipper*

*Aggregate
Bucket*

- 3 As the Agent, you have to raise two questions with Joe:
- 1) What is the greatest dollar damage that could possibly happen in any one occurrence?
 - 2) How many times during the policy period could this happen?
- 4 It is with those two answers that adequate limits can be established.

5 NOTE: The Insured may, by endorsement, select separate aggregate limits for individual locations, either owned or rented. Similarly, the Insured could also by endorsement select special aggregate limits for individual projects away from their premises.

6 In the CGL, there is an **Occurrence Limit** which limits the amount that could be paid out for any one incident for the total of:

- Bodily Injury,
- Property Damage,
- Medical Payments and
- Fire Legal Liability.

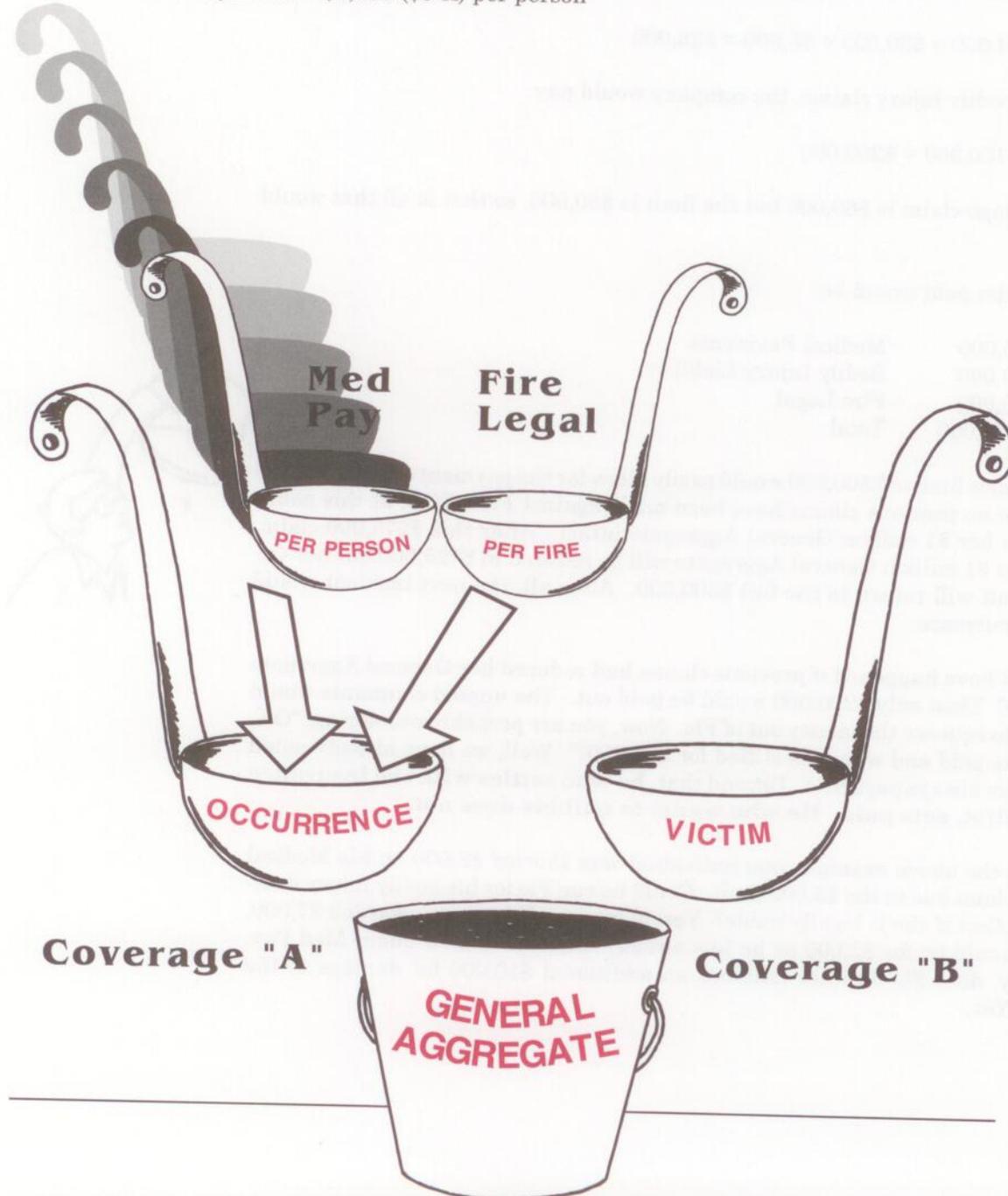
7 There is also a **General Aggregate** which is the maximum to be paid out in any policy period for **all losses**, except Products - Completed Operations claims. (Products - Completed Operations has its own Aggregate Limit as we will see shortly.) Every other kind of loss – Premises, Operations, Med Pay, Fire Legal – counts against the General Aggregate Limit.

*not products -
completed
operations*

GENERAL AGGREGATE LIMIT

1 A business with no Products - Completed Operations exposure might have limits of the following:

- General Aggregate – \$1 million (\$1 M) per policy period
- Personal and Advertising Injury – \$500,000 (\$500 K) per person or organization
- Occurrence – \$500,000 (\$500 K) per occurrence
- Fire Legal – \$50,000 (\$50 K) per fire
- Medical Payments – \$5,000 (\$5 K) per person



1 Let's suppose that Joe's sister, Flo, operates a bookstore in a rented building. She negligently starts a fire that does \$60,000 worth of damage to the building and injures eight people. Six of those eight people are slightly injured. Five present Med Pay claims in the amount of \$4,000 each. The sixth person presents a claim for \$7,000. The other two were so severely injured that they by-passed Med Pay, sued Flo and were awarded \$100,000 each.

2 How would the claim be paid? Since Med Pay pays without regard to liability, it always pays first. Therefore, let's start with Med Pay. The five people with \$4,000 claims are all under the \$5,000 per person limit. The guy with the \$7,000 claim exceeds the limit, so he would be paid only to the \$5,000 limit. For Med Pay then...

$$5 \times \$4,000 = \$20,000 + \$5,000 = \$25,000$$

3 For the two bodily injury claims, the company would pay:

$$2 \times \$100,000 = \$200,000$$

4 The fire damage claim is \$60,000 but the limit is \$50,000, so that is all that would be paid.

5 The total claim paid would be:

\$ 25,000	Medical Payments
200,000	Bodily Injury Liability
<u>50,000</u>	Fire Legal
\$275,000	Total

6 The Occurrence limit of \$500,000 would easily allow for the payment of the \$275,000 claim. Since no previous claims have been made against Flo's CGL, at this point, she still has her \$1 million General Aggregate intact. After this \$275,000 claim, however, her \$1 million General Aggregate will be reduced to \$725,000 but her Occurrence limit will return to the full \$500,000. After all, the next incident would be a new occurrence.

7 What would have happened if previous claims had reduced her General Aggregate to \$200,000? Then only \$200,000 would be paid out. The unpaid claimants would have to try to squeeze the money out of Flo. Now, you are probably wondering, "OK, but who gets paid and who gets stiffed for \$75,000?" Well, we have already noted that Med Pay always pays first. Beyond that, **he who settles with the insurance company first, gets paid. He who wants to quibble does not.**

8 **NOTE:** In the above example, one individual was *shorted* \$2,000 on his Medical Payments claim due to the \$5,000 limit. Could he sue Flo for his bodily injury damages and collect if she is legally liable? Yes, of course. If he were awarded \$7,000, his check would be for \$2,000 as he has already collected \$5,000 under Med Pay. By the way, does Flo owe her landlord an additional \$10,000 for damage to the building? Yes.



PRODUCTS - COMPLETED OPERATIONS AGGREGATE LIMIT

*has its own
dipper and
bucket*

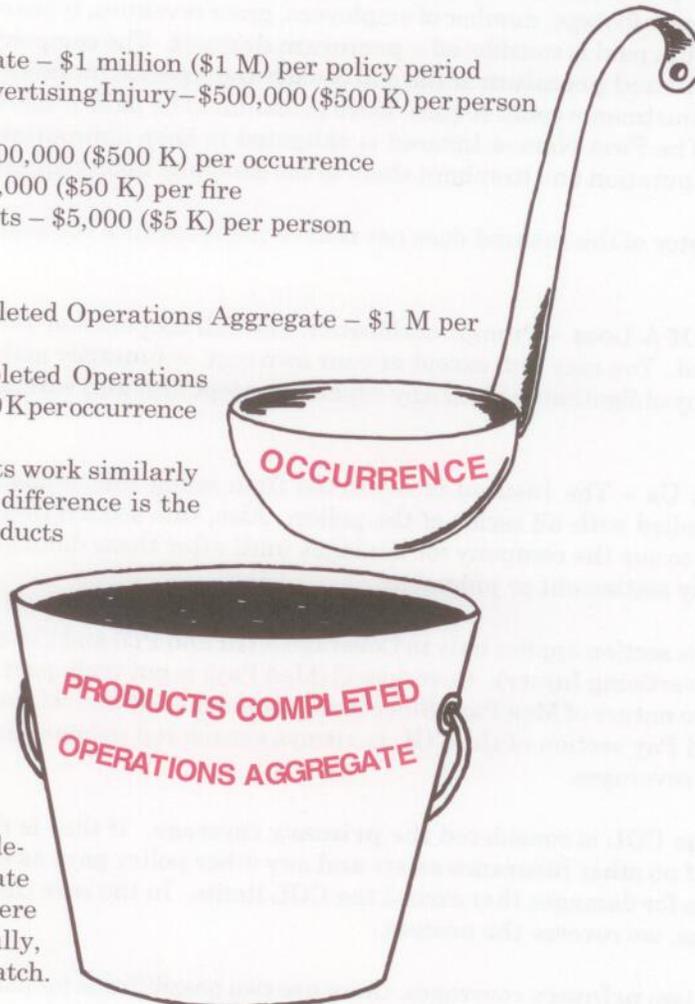
1 Now that we have seen how a business with no Products - Completed Operations exposure would establish its limits of liability, let's turn our attention to a business that does have this exposure. As a restaurant owner, Joe has a Products - Completed Operations exposure – the food he serves is a product. His limits might look like this:

- 2 Same as before:
- General Aggregate – \$1 million (\$1 M) per policy period
 - Personal and Advertising Injury – \$500,000 (\$500 K) per person or organization
 - Occurrence – \$500,000 (\$500 K) per occurrence
 - Fire Legal – \$50,000 (\$50 K) per fire
 - Medical Payments – \$5,000 (\$5 K) per person

- 3 New:
- Products - Completed Operations Aggregate – \$1 M per policy period
 - Products - Completed Operations Occurrence – \$500 K per occurrence

4 As you can see, Joe's limits work similarly to Flo's. About the only difference is the separate aggregate for Products - Completed Operations.

If a loss is a Products or Completed Operations type of loss, it is paid out of the Products - Completed Operations Aggregate subject to the Occurrence Limit. A loss under Products - Completed Operations would not deplete the General Aggregate and vice versa. While there is no absolute rule, generally, the two Aggregate limits match.



Next Steps

- I. Coverages
- II. Who Is An Insured?
- III. Limits of Insurance
- IV. **CGL Conditions**
- V. Definitions



SECTION IV – CGL CONDITIONS

- 1 As we pointed out earlier, the Conditions section of the CGL is built right into the coverage form rather than existing as a separate piece of paper as was the case with Commercial Property. These are the *do's and don't's* important to both the company and the CGL policyowner.
- 2 **Premium Audit** – As the premium for a CGL is based upon factors that may change over the policy period (square footage, number of employees, gross revenues, types of products, etc.), the premium paid is considered a **premium deposit**. The company will compute the actual **earned premium** at the end of each audit period (normally annually). Obviously, adjustments could require more premium to be paid or allow for a premium refund. The First Named Insured is obligated to keep appropriate records for premium computation and to submit them to the company upon request.
- 3 **Bankruptcy** – Bankruptcy of the Insured does not relieve the insurance company of its obligations.
- 4 **Duties In The Event Of A Loss** – Prompt notification and full cooperation with the company are required. You may not, except at your own cost, voluntarily make any payment, assume any obligation or incur any expense (except first aid) without the company's consent.
- 5 **Legal Action Against Us** – The Insured is restricted from suing the company until he or she has complied with all terms of the policy. Also, this section limits an injured party's right to sue the company for damages until after those damages have been established by settlement or judgment.
- 6 **Other Insurance** – This section applies only to Coverage A (BI and PD) and Coverage B (Personal and Advertising Injury). Coverage C (Med Pay) is not truly part of this discussion due to the nature of Med Pay. Since it pays immediately and without regard to fault, the Med Pay section of the CGL is always considered primary and is not affected by other coverages.
- 7 With few exceptions, the CGL is considered the **primary** coverage. If that is the case, the CGL pays as if no other insurance exists and any other policy pays as **excess** insurance – it pays for damages that exceed the CGL limits. In the rare cases where the CGL is excess, we reverse the process.
- 8 If, by chance, there are two **primary** coverages, there are two possibilities for sharing the claim.
- 1st Choice – Equal Shares** – Each company contributes equally to the loss regardless of its proportionate coverage.

ground rules

pull your own weight

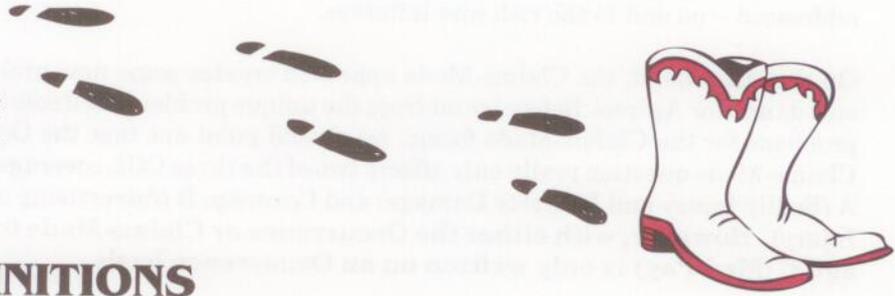
50/50

2nd Choice – Contribute by Limits (Pro Rata) – Each company pays its share based upon the ratio of its coverage limits to the total amount of insurance in force.

- 1 **Representations** – By accepting the policy, the Insured agrees that all statements made in the application are true to the best of his or her knowledge and belief.
- 2 **Separation of Insureds** – Except for the limits of insurance, CGL coverage applies as if each named Insured were the only named Insured and applies separately to each Insured against whom a claim is made.
- 3 **Transfer of Rights of Recovery** – The Insured may do nothing to impair the company's rights of subrogation.

Next Steps

- I. Coverages
- II. Who Is An Insured?
- III. Limits of Insurance
- IV. CGL Conditions
- V. **Definitions**



SECTION V – DEFINITIONS

- 4 The CGL concludes with a Definitions section. To aid in our discussion of the contract, we have already given you those definitions as we encountered the terms in the policy. In your work as an Agent, however, you may need to know that the important terms of the CGL are defined in Section V.

CGL OPTIONAL ENDORSEMENTS

- 5 There are numerous endorsements that can be added to the CGL. Many are used to eliminate coverages that are not necessary in order to lower the premium, and others are used to add coverages for exposures excluded under the basic policy.

OCCURRENCE vs. CLAIMS-MADE POLICIES

- 6 Historically, general liability policies have been written on an **Occurrence** basis. Put simply, the policy that covered the risk **when the hurt happened** paid the claim. If a policy covered your business in 1985, it paid for any 1985 "hurt" – even if a claim was not filed until 1990.

Occurrence - when was the hurt?

- 7 From the viewpoint of the insurance company, there were several drawbacks to this approach. Most importantly, **there was never really an end to the risk**. The company could not be sure that a claim against a 1985 policy might not show up in 1990. Another drawback under an Occurrence approach is a problem for *Insureds* – *inflation*. Suppose that you have been a toy manufacturer for 20 years and that you have had Products Liability coverage for the entire period. If you were sued today for injury sustained by a child in 1978, your 1978 policy would be the operable coverage. In 1978 you might have had \$100,000 of coverage (adequate at that time) and today you have \$5 million. Unfortunately, the applicable limits are the 1978 limits even though that amount might be grossly inadequate in today's legal climate.

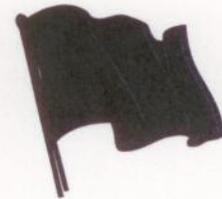
Notes
Claims made
- when was
the claim?

1 For these reasons, the **Claims-Made** approach was developed. The coverage of a Claims-Made policy is **triggered by the claim, not the occurrence**. Suppose you had Policy X in effect in 1987 and Policy Y in 1988.

1987 Policy X
 1988 Policy Y

2 Under a Claims-Made policy, if something happens in '87 which provokes a claim first filed in '88, it would be paid by Policy Y because it was in effect when the claim was made. This solves the two problems of the Occurrence approach we have just addressed – no end to the risk and inflation.

3 On the other hand, the Claims-Made approach creates some new problems for Insureds and for Agents. Before we address the unique problems and solutions to those problems for the Claims-Made forms, we should point out that the Occurrence vs. Claims-Made question really only affects two of the three CGL coverages: Coverage A (Bodily Injury and Property Damage) and Coverage B (Advertising and Personal Injury). **However, with either the Occurrence or Claims-Made form, Coverage C (Med Pay) is only written on an Occurrence basis.**



UNIQUE PROBLEMS OF CLAIMS-MADE FORMS

What Is A Claim?

4 Since the coverage of a Claims-Made form is triggered by *a claim first made against any Insured during the policy period*, we must precisely define the actions that constitute a *claim*.

5 A claim is first made when notice of the claim is received by any Insured or by the insurance company, whichever comes first. All claims for bodily injury and/or property damage to the same person are considered *first made* at the time the initial claim is made.

When Does Coverage Start?

6 In a traditional insurance policy, we have a definite start date and termination date, which outline when coverage exists. If a *hurt* happened between those dates, you had coverage. In a Claims-Made policy, however, the focus is not on when the hurt happened, but on when the claim was made. Therefore, it is quite possible for a Claims-Made policy written today to cover occurrences from last year, the year before that, or from the beginning of time for that matter. Obviously, a Claims-Made policy with no limit on how far back in time we would go would be taking on a major exposure. Assume we have a toy manufacturer who has been in business for 10 years with **no Products Liability** coverage. If we sold him a Claims-Made policy today with no time restriction, that policy would be covering a 10 year exposure. While that would be desirable from the Insured's viewpoint and possibly acceptable to the company, it would be a big exposure and rates would be established accordingly.

Retroactive Date

1 A policy device called the *Retroactive Date* allows the company and the Insured to establish exactly how far back in time the company will go to cover past hurts. **The policy will pay no claims for occurrences prior to the Retroactive Date** – even if the claim is made during the policy period. If it were desirable (as in the above case) to pick up all previous years, you could enter *None* (as the Retroactive Date) in the Declarations.

2 If the policyowner has been adequately covered in the past by an Occurrence policy, then he already has coverage for claims that are reported today for occurrences in the past. In this case, the Retroactive Date should be set as the date of the first Claims-Made policy.

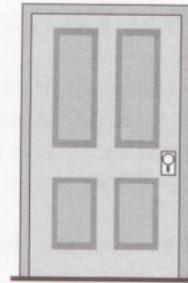
3 If, however, the policyowner had a continuum of Occurrence policies but was worried that the limits might be too low, he could still choose None as the Retroactive Date. The policy would cost more, but the new Claims-Made policy would provide excess insurance over the prior Occurrence policy limits.

4 **Normally, if a Claims-Made policy is replacing an Occurrence policy, the Retroactive Date would be the date of the new policy.** There would be no coverage gap under this arrangement. However, there would be a dangerous coverage gap if, in future years, the Retroactive Date were moved forward as the Claims-Made policy is renewed. Suppose, for example, that your first Claims-Made policy was written for the calendar year 1993 with a Retroactive Date of 1/1/93. Upon renewal, suppose the Retro Date is moved forward to 1/1/94. A claim submitted against you in 1994 for an occurrence in 1993 would not be covered by either your '93 or your '94 policy. The '93 policy won't pay because the claim wasn't made in '93, and the '94 policy won't pay because the Retro Date was moved forward and established that we would not pay for anything before 1/1/94.

5 Because of the danger involved in moving a Retroactive Date forward in Claims-Made policies, it can only be done with the written consent of the Insured and only for one of the following reasons:

- A change from one insurance company to another.
- A substantial change in the Insured's operations that increases the risk.
- The Insured fails to provide material information requested by the company.
- The Insured requests the change.

6 Why would an Agent be tempted to move a Retroactive Date forward? In a word – **price**. There is significantly reduced risk to the company in the first year of a Claims-Made policy and the premium is substantially lower. It is only after about five years that the risk has matured and requires the full premium rate. If an Agent is only concerned with underbidding the competition, he or she could move the Retro Date forward and do the client a major disservice in the process.



Retroactive date shuts the back door



Don't leave holes in coverage

What Covers Me When The Policy Ends?

1 The other significant problem with the Claims-Made policy comes at the end of the policy period. Assume that your business was covered by Claims-Made policies for the last five years that you were in business. Today, you retire and close the business. What about . . .

- A claim that is made against you two days after the policy ended?
- An incident that happened on the last day that the policy was in effect, for which you reported the loss two days after the policy expired, and for which the claim was not filed until five years later?
- A claim that comes out of nowhere eight years after the policy expired?

put a tail on it

2 With what you know to this point, all you could say is that there is no coverage. Obviously, this omission would just about eliminate Claims-Made coverage as a reasonable insurance product. A device called an **Extended Reporting Period (ERP)** has been created to solve these problems.

Basic ERP

3 The Basic ERP is an extension of the **reporting period**, not the coverage period. The occurrence must have taken place after the Retroactive Date and before the end of the policy period. The Basic ERP is provided **automatically and without additional charge**. It only provides coverage if no other insurance applies to the claim and cannot be used as excess insurance.

4 The Basic ERP offers two benefits:

Mini-Tail – Provides an additional 60 days after the policy period to report any claims.

mini - 60 days

Midi-Tail – If notice of a claim is received within 60 days of policy termination, then the claimant has up to five years to file the claim.

midi - 5 years

Supplemental ERP

5 We still have not covered the claim that came out of nowhere eight years after the policy period ended. This is the purpose of the Supplemental ERP. It **extends the reporting period forever**. It is added by endorsement and there is a charge for this coverage that may not exceed 200% of the last annual premium for the policy. It can pay as excess insurance if any other policy provides coverage. Since there is no time limit on this reporting period, it is sometimes known as **Full-Tail** or **Maxi-Tail** coverage.

*full . . .
 . . . forever*

*...IF... pur-
 chased within
 60 days*

OTHER LIABILITY POLICIES

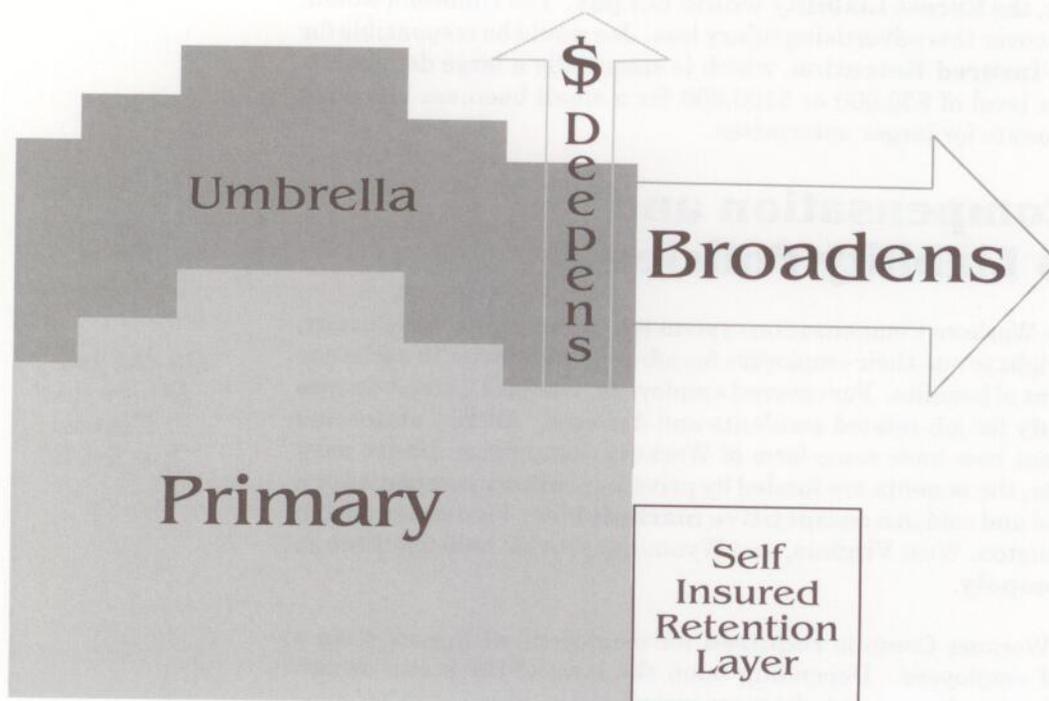
COMMERCIAL UMBRELLA POLICIES

- 1 As you recall, Umbrella policies are relatively inexpensive. This is because most claims are still small claims. The Umbrella policy gets hit hard when it does get hit, but most claims are adequately covered by the basic policies.
- 2 There are really only four basic things to remember about Commercial Umbrellas:
- Excess amounts
 - No standard form
 - Uneven at the top
 - Broadens as well as deepens
- 3 **Excess Amounts** – Umbrellas are written for excessive amounts – \$1 million, \$5 million, \$10 million and more.
- 4 **No Standard Form** – Though Umbrella coverage is readily available today, almost every company writing Umbrellas has a few unique twists in its contracts. Therefore, everything in this discussion should be taken in the most general of terms.
- 5 **Uneven At The Top** – Since the rating of Umbrella policies is dependent upon the underlying coverages absorbing most of the losses, the Umbrella carrier literally dictates which basic coverages you must have if you are to be eligible for the Umbrella.

Big Bucks

No Standard

Add primary to umbrella



1 Joe's restaurant might have the following Liability coverages:

• Liquor Liability	\$1,500,000
• General Aggregate	\$1,000,000
• Commercial Auto	\$ 750,000
• Products Aggregate	\$ 500,000

2 If he also owns a \$5 million Commercial Umbrella, then his limits become:

• Liquor Liability	\$6,500,000
• General Aggregate	\$6,000,000
• Commercial Auto	\$5,750,000
• Products Aggregate	\$5,500,000

3 Coverage is **uneven at the top** because it is **uneven at the bottom**.

4 **Broadens As Well As Deepens** – Without this final characteristic, there are actually two products that would do everything discussed so far:

- Excess Liability policy
- Umbrella liability policy

5 The difference between these two contracts is that the **Excess Liability policy will never pay unless the underlying policy pays first**.

6 Suppose that Joe finds himself doing a local cooking show on television. One Saturday morning he gets carried away and speaks disparagingly of a competitive restaurant. If he is sued by the injured party, his CGL would probably deny coverage on the grounds that Joe is now in the business of telecasting.

7 If the CGL did not pay, the **Excess Liability would not pay**. The Umbrella would, however, **broaden** to cover this advertising injury loss. Joe would be responsible for first paying the **Self-Insured Retention**, which is essentially a large deductible. This could be set at a level of \$50,000 or \$100,000 for a small business like Joe's and much higher amounts for larger enterprises.

Workers Compensation and Employers Liability Policies

8 In America today, the Workers Compensation system is a compromise. Essentially, workers give up the right to sue their employers for job-related injuries in exchange for quick sure payment of benefits. For covered employees, Workers Comp becomes the **exclusive remedy** for job-related accidents and diseases. All fifty states and the federal government now have some form of Workers Comp plan. Under most of these arrangements, the benefits are funded by private insurance companies or a competitive state fund and sold in a **competitive marketplace**. Five states (North Dakota, Ohio, Washington, West Virginia, and Wyoming) provide benefits through a state operated **monopoly**.

*On the job...
injury and
... illness...
"no fault"*

9 In all jurisdictions, Workers Comp is **required** for employers with more than a minimum number of employees. Depending upon the laws of the state, owner-employees or partners may be covered. In most jurisdictions, there are also some **exempt employments**. For example, in most states you do not have to cover domestic servants, casual workers, or certain agricultural workers.

Notes

Some more dangerous... premium upped by "Modification Factors"

- 1 You might wonder if there is anything good about Workers Comp from the employer's viewpoint. Well, yes there is. Since Workers Comp is the exclusive remedy for employment-related injuries and sicknesses, an injured employee or his family may not generally sue the employer for millions of dollars - they must simply accept the benefits of Workers Comp as set (normally) by the legislature in each state.
- 2 The Workers Comp laws provide for four types of benefits.
 - **Medical Expense** benefits - dollars to fix your body. May state inside limits, but overall medical benefits are unlimited in every state. Unlimited dollars, unlimited time.
 - **Disability Income** benefits - to replace your income subject to rather low maximums.
 - **Death** benefits - pays a small amount to bury you and then pays a specified sum to your survivors.
 - **Rehabilitation** benefits - gets you back to work.
- 3 One very real problem for employers is the hiring of handicapped employees. If an employee with two eyes loses sight in one eye, the employees becomes partially disabled. If the same accident happened to an employee with sight in one eye to begin with, the second employee becomes totally disabled. Regrettably, the handicapped employee is a higher risk in Workers Comp.
- 4 To encourage employers to hire employees with a handicap, all states have established **second injury funds** that are designed to pay all or most of the additional benefits that a second injury would require. Therefore, employers have no disincentive to hire the handicapped.
- 5 The standard Comp Policy plugs up the hole left by the injuries to employees exclusions found in the CGL. It has three coverage parts:

Frequency of claims impacts premium more than severity of claims

Part 1 - Workers Compensation

Pays those benefits due under the laws of the states listed in the declarations.

Part 2 - Employers Liability

Pays for liability imposed by law, but not covered under Part 1.

Part 3 - Other States Coverage

Pays those claims that arise under the laws of those states not named under Parts 1 and 2. However, in order to be covered under Part 3, **the state must have been listed in the Other States section of the policy declarations.**

WORKERS COMPENSATION (Part 1)

*on the job
-occupational-*

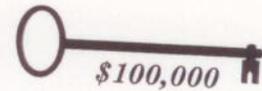
- 1 The **insuring agreement** of this section simply states that the policy will “pay all sums due the benefits required of you by the workers compensation laws.” Coverage is for **bodily injury** caused by either **accident** or **disease**.
- 2 What is bodily injury? Interestingly, the policy does not define this term. One major source of litigation at the present time is whether or not mental stress is bodily injury. The states are divided at the present time, with the majority holding that bodily injury does not include mental stress.
- 3 In order to cover injuries arising out of an accident, the accident must have occurred during the policy period. For injuries caused by disease, the disease must be caused by or aggravated by a condition of employment. The employee’s last exposure to the condition must have taken place during the policy period.
- 4 Coverage under this section is only for state workers compensation claims. **Federal claims** are only covered **by endorsement**.
- 5 Federal Workers Comp plans include:
 - Federal Employer Liability Act**- railroad workers
 - Longshore & Harbor Workers Act** - longshoreman and harbor workers
 - Jones Act**- seamen
 - Outer Continental Shelf Lands Act**- offshore oil rig workers

EMPLOYERS LIABILITY (Part 2)

- 6 This coverage is for injuries arising out of the course of employment in the states listed in the policy declarations but for some reason are not covered by Workers Compensation. Although Workers Compensation is generally considered to be an exclusive remedy, i.e., employees don’t have the choice to sue or take Comp – they must take Comp, there are cases where this coverage is valuable. For instance if an employee were injured due to the willful and wanton behavior of the employer, the courts in some states might allow the employee to waive Comp and sue the employer. If the employee’s suit was successful, Part 2 would pay.

Basic Policy Limit

- 7 The standard limit for Employers Liability Coverage is \$100,000 per accident. For disease related claims, the limit is \$100,000 per employee, with an aggregate of \$500,000. Higher limits are available.
- 8 Employers Liability exclusions include:
 - Intentional injuries
 - Workers Comp claims, both state and federal
 - Contractual liability
 - Claims arising from demotion, termination, etc.
 - Punitive damages, fines, and penalties



*Premium
based upon
payroll*

OTHER STATES COVERAGE (Part 3)

- 1 An employer in State A has employees covered under a Workers Comp contract approved by State A. Infrequently, some of the employees do work in State B and, on one of these occasions, an employee sustains an on-the-job injury. The injury is of such a nature that the State A policy does not cover it. However, State B's laws would require coverage. If, and only if, State B were listed on the Dec Sheet under Other States, Part 3 of the policy, could the claim be paid.

Other Policy Parts

- 2 While the first three parts of the policy outline the coverages, there are three remaining sections which govern the operation of the contract.

Part 4- Duties of the Insured

Notice of Injury to the Carrier
 Cooperation in Claim Investigation and Settlement
 Aid in any Third Party Recovery

Part 5- Premium

- 3 This part set out the methods of premium calculation. Workers are classified according to risk. The classifications are listed as well as the premium for each. This section also advises the Insured that the premium is estimated and that the Insured's records are subject to audit...which may result in a premium adjustment. Premiums may also be adjusted by the claims history of a particular Insured. This is called **Experience rating**.

- 4 Many states allow companies to **discount** premiums for larger Insureds to reflect the reductions in per capita administration costs. Although regulated by state law, the basic rule is *the bigger the group, the better the deal*.

Part 6- Conditions

- 5 Nothing new and different here.

Voluntary Compensation Endorsement

- 6 In most states, there are employments that do not fall under the Workers Comp laws - sole proprietors, domestics, agricultural workers. This endorsement allows the employer to pull those employees into Workers Comp coverage within the limits of that particular state. The affected employees must sign a waiver foregoing their right to sue and accepting Workers Comp as their sole remedy for on the job injury.

PROFESSIONAL LIABILITY INSURANCE ALSO KNOWN AS ERRORS AND OMISSIONS

"E&O"

- 1 Despite the breadth of coverage offered under the CGL, there is no Professional Liability coverage. Because of the high standards of performance imposed today by professional codes, regulations and statutes as well as the decisions of the courts, professionals are held more accountable for their mistakes than ever before. Professionals who are concerned about their legal liability resulting from negligence or errors and omissions in their professional service should purchase a **Professional Liability Policy**. There are as many Professional Liability Policies as there are professions. Included are Medical Professional, Lawyers Professional and Agents and Brokers (E&O). **Professional Liability policies have no standard form.**
- 2 The Professional Liability policy replaces the concept of the Reasonable Person with that of the Reasonable Professional. To establish professional liability, the question that must be answered is "What would the reasonable professional (doctor, lawyer or whatever) do under the same or similar circumstances?"
- 3 You might be surprised by some of the occupations that need Professional Liability insurance today: accountants, architects, barbers and beauticians, chiropractors, insurance Agents, engineers, lawyers, nurses, optometrists, pharmacists, physicians, surgeons, dentists, real estate Agents, and veterinarians.
- 4 Professional Liability policies never cover fraudulent, dishonest or criminal acts, and the policies are tailored to the nature of the profession insured. Many professionals (like lawyers or insurance Agents) could only damage their clients financially. Therefore, Bodily Injury and Property Damage are excluded. But an architect or engineer could make an error that does cause Bodily Injury or Property Damage, and therefore, BI and PD are covered in policies sold to professionals in the construction trades.
- 5 Because the **Claims-Made forms** solve the inflation problem so easily, almost all Professional Liability policies are written on this basis. Because a settlement could damage an Insured's professional reputation, some contracts require the company to get permission to **settle out of court**. These are known as **consent to settle** clauses.



Directors and Officers Liability Insurance

- 6 Directors and Officers coverage, commonly called D&O, became popular during the consumer revolution of the late 60's and early 70's. Unhappy stockholders began to bring claims against corporate directors and officers when investments did not grow as expected. These claims, referred to as stockholder derivative suits, allege that the corporation did not perform as expected because of mistakes made by directors and officers. D&O coverage protects not only the individuals involved, but also the corporation. **There is no standard D&O Form**

*keywords -
wrongful acts*

1 Some unique characteristics of D&O coverage:

- D&O policies are claims-made.
- D&O claims are triggered by **wrongful acts** rather than on an accident or occurrence basis. Wrongful acts include misstatements made by the directors and officers, as well as neglect and breach of duty.
- D&O policies will pay only damages that the corporation would, under the law, be required to reimburse the individual director or officer. D&O policies generally will not pay for fines, penalties, or punitive damages.

claims made

no penalties

NOTE: Punitive damages are designed to punish a wrongdoer and not to compensate an injured party.

- Unlike other liability policies, **D&O policies generally include defense costs within the policy limits.**

*dangling
slowly in the
wind*

Fiduciary Liability ‡

- 2 The Employee Retirement Income Security Act (ERISA) places rather clear duties on the trustees of Employee Benefit Plans. The Fiduciary liability policy insures the “bad acts” of plan fiduciaries, trustees. There is no standard form; however, most companies construct policies with a \$1,000 deductible and a \$1,000,000 basic limit. The law requires that if the premiums are paid by the fund, the policy must allow for subrogation against the individual trustees involved in the loss.

Pollution Liability ‡

- 3 You will remember that the CGL does not cover Pollution losses. This is a reaction to the astronomical sums which have been imposed under the pollution clean-up laws enacted in the 1980’s, such as Superfund, or CERCLA, and similar state statutes.
- 4 There are three basic approaches an Insured can take to cover pollution risks:

Pollution Liability Coverage Endorsement

- 5 Added to the CGL it will cover bodily injury and property damage arising out of pollution, **but will still not cover the cost of government ordered clean up.**

Pollution Liability Coverage Form

- 6 This endorsement is:

- Claims made
- Has limits separate from the underlying policy
- Excludes abandoned and closed dumpsites
- Excludes waste disposal and treatment operations
- Allows for clean up and prevention actions, with prior approval of the company

Pollution Liability Limited Coverage Form

- 1 Offers the same coverages as the above form except that it also only applies to Bodily Injury and Property Damage, and not clean up.

Underground Storage ‡

- 2 This policy provides BI and PD coverage for designated underground storage tanks. It does not cover the tank itself, the loss of the substance that leaked out, corrective action or fines and penalties. It is purely a Claims-Made Liability policy with a Retroactive Date which almost always coincides with the policy's start date.

Surety Bonds ‡

- 3 Surety bonds are **not** really insurance. However, because the payments are made to a third party, the Other Guy, we will discuss them in this chapter. There are three parties involved in each surety bond:

Principal- the Insured
 Obligee- the Other Guy
 Surety- the Bonding Company

- 4 Here's how Surety Bonds work. Joe (Principal) owes an obligation to Betty (Obligee). This obligation is backed by a bond written by Acme Insurance (Surety). Joe does not live up to his obligation. Betty suffers damages. Betty takes action against Joe. The bond only pays Betty if Joe cannot. **Unlike insurance, Surety Bonds only pay when the Insured's assets have been exhausted.**

Types of Surety Bonds

Judicial Bonds

- 5 These are bonds ordered by judges during the course of a lawsuit or other type of court action:

Executor and Administrator Bonds
 Guardians Bonds
 Attachment Bonds
 Replevin Bonds
 Injunction Bonds
 Appeal Bonds

*ERISA...
 Fiduciary
 contract*

Contract Bonds

- 6 These bonds are required to ensure that individuals perform their obligations under a contract:

Bid Bonds
 Labor and Material Payment Bonds
 Supply Bonds
 Completion Bonds

License and Permit Bonds

- 1 This guarantees that the principal will indemnify the governmental agency that granted him a license of permit for any liability arising out of their professional activities.

Conclusion

- Q: Can you tell me what **Commercial Liability insurance** does?
- A: It protects you if you or your stuff hurts somebody else or their stuff and you are legally obligated to pay.
- Q: If I am sued, what is the reason most often cited by the injured party as the reason for the suit?
- A: Negligence.
- Q: Can you explain?
- A: Sure. To establish negligence we must prove you had a **duty** to the injured person or property; that you breached that **duty**; that your actions were the **proximate** cause of the loss and there were **financial damages**.
- Q: If someone trips over a chair in my business what would you call that?
- A: Clumsy.
- Q: But I mean, what sort of liability exposure is that?
- A: Oh, sorry. That would be **Premises Liability**.
- Q: What if I am installing drywall in someone's house and hit them with a hammer?
- A: That is **Operations Liability**.
- Q: What if I am all done with the job and a piece of drywall falls down and hits somebody?
- A: That is called **Completed Operations Liability**.
- Q: Can you explain **Products Liability** to me?
- A: Yes, I'm sure I can.
- Q: Hello? Could you explain it to me now?
- A: You bet. Guess I zoned out for a second. If you manufacture, distribute or sell a product that hurts someone it is **Products Liability**.
- Q: Aren't there some interesting twists?
- A: Yep. Let's say you're selling a saw.
- Q: What kind of saw?
- A: It doesn't matter. So someone is looking at it in your hardware store. While they are messing with it they cut off their fingers. Your hardware store's **Premises Liability** would be liable for the claim because the person is still on the premises. If, however, they took the saw home and cut off some fingers that would be **Products Liability**.
- Q: What about food?
- A: I'm not hungry, thanks.

- Q: I mean, isn't food a little different?
- A: Yes. When food is served in a restaurant it's **Products Liability**. Even though the person is consuming it on the premises it is still a **Products Liability** claim.
- Q: What if I contract with someone to come into my business and while working in my business that person hurts one of my customers. Where would that liability exposure fall?
- A: That is **Independent Contractors Liability**.
- Q: What does **Contractual Liability** mean?
- A: That means that as a condition of doing business with you, another company or organization insists that you first assume their liability.
- Q: If I am leasing space in a building I don't own, what would I buy to protect the actual space I am occupying from fire damage stemming from my own negligence?
- A: **Fire Legal Liability**.
- Q: What is **Personal Injury Liability**?
- A: If you defame someone's character, humiliate, maliciously prosecute, falsely imprison, or wrongfully evict them or if wrongful entry is involved then that is classified as **Personal Injury**. You hurt their person, not their body.
- Q: How is that different from **Advertising Injury**?
- A: **Advertising Injury** means you hurt the reputation of a business or you steal their trademark or copyright.
- Q: How does a **Claims Made** policy differ from an **Occurrence** policy?
- A: A **Claims Made** policy requires that the company providing coverage in the year the claim is made pay the claim, even if the actual incident happened several years earlier. An **Occurrence** policy requires that the company on the risk at the time of loss pay the claim, even if the claim is made several years later.
- Q: What can you tell me about **Medical Payments**?
- A: It was a bad 60's TV show starring Chad Everett.
- Q: No, that was **Medical Center**, I'm talking about **Medical Payments**. You know, **Med Pay**?
- A: Oh, of course, easy mistake to make. **Med Pay** pays for medical bills for those who are hurt on your **premises** or in connection with your **operations**. It is no fault. You do not need to be found legally liable in order for **Med Pay** to pay.