

## GENERAL LIABILITY

Impossible amount of material to cover in a short class. Attachments are provided for some specialty classes to familiarize you with some of the coverages and classes commonly written in the Surplus Line area. Keep in mind, though, that many companies that write this same coverage may have a completely different set of conditions. Accordingly, you should pay attention to the general concepts and know the specifics are examples of what that one company does.

Remember there is no such thing as a standard form for coverage written in the surplus line market. These companies may use ISO and other standardized forms, but that is strictly because that is their choice. Even when they use the standard forms, they will endorse the policies to reflect their own-underwriting philosophies.

### **Common General Liability Policy Forms:**

*CG0001 and CG0002 (ISO Forms) or Carrier may have proprietary form*

#### **CG0001 - General Liability Occurrence Form**

Contains Five Sections

Section I – Coverages –

Coverage A – Bodily Injury and Property Damage Liability

Coverage B – Personal Advertising and Injury

Coverage C – Medical Payments

Section II – Who is an Insured

Section III – Limits of Insurance

Section IV – CGL Conditions

Section V – Definitions

We are all familiar with how the insurance coverage applies with the CG0001. However, with Surplus Lines Companies, these coverages are amended through endorsements. These endorsements may apply additional guidelines for coverage to apply or may remove coverage all together. A careful review of these endorsements is required to confirm if coverage will apply.

### **Common Endorsements that you may find in an E&S Policy**

*Punitive Damage Exclusion* – Removes payment by the insurer for damages in excess of those required to compensate the claimant for the wrong done.

*Defense Inside the Limit* – More common on Claims-Made policies

*Deductible apply to Defense Costs as well as Indemnity Payments* – Requires the Insured to pay the deductible when there is no payout for damages to a third party, only defense costs have been incurred.

*Medical Payment Exclusion* – Removes medical payments to a third party for Bodily Injury claims – ISO CG2135

*Contractual Liability is Limited* – Contractual forms limiting or removing coverage:

ISO Form CG2139 - Eliminated contractual coverage for tort liability assumed by the insured with or without a contract

ISO Form CG2426 – Eliminates coverage for sole negligence of the indemnitee for tort liability assumed by the insured with or without a contract – (*Broader than CG2139*)

ISO Form – CG2417 – Gives coverage for construction or demolition operations on or within 50 Feet of a Railroad

Absolute Contractual Liability Exclusion -Excludes coverage for liability assumed under a contract

*Coverage Limited to Designated Operations or Locations* – Limits coverage to a specific location or operation of the Insured - ISO CG2144

## **CG0002 - Claims Made General Liability Form**

Coverage trigger is date claim is made against insured. vs. occurrence form, which is date injury or damage occurred.

### **Retro date**

1. Found on most policies, though not all. Some policies, Directors and Officers and some Professional Liability policies for example, typically do not have Retro date or the policy may be considered to have Full Prior Acts Coverage. Full Prior Acts removes the date from the policy.
2. The date the insurer is covering the risk for exposures the Insured has carried insurance for continuously.
3. Split retro dates may apply if the Insured has been covered on a claims-made form but has purchased products completed operations or increased their limit at a later date. There will be two retro active dates. The first is when they first purchased General Liability coverage. The second is when they increased their limits or added coverage such as Products and Completed Operations.

Wording on how a claim is defined is important. Definition of claim can vary: written demand, any demand for money or relief, filing of suit, or lodging of a complaint with a regulatory body are all examples. Varies by coverage and company form.

### **Extended Reporting Period Endorsement – Tail Coverage**

1. Applies when claims made coverage ceases. Might be when switch to occurrence form, go bare

or close a business Sometimes when moving to a new claims made coverage that has a later retro date than the prior policy.

2. Occurrence or error still has to occur after the retro date in policy.
3. Sometimes term and pricing in policy form but not always: can be up to discretion of underwriter at time application made for extended reporting.
4. May have a free mini-tail, such as 30 days in which to report claim.
5. Usually have to pay in advance and must take place within a short time frame. Non-cancelable once effected.

When switching to an occurrence form, potential gap from something that has already occurred or error made but no claim as yet. Besides Extended Discovery coverage from claims-made carrier, occasionally the new occurrence carrier will provide "nose coverage" for this gap.

Incident or Circumstance Reporting Provisions: some carriers allow insured to report something that might lead to a claim, even though claim not yet made. This is known as reporting an incident. This provision allows the insured to report a subsequent claim under the current claims made policy.

### **Products Coverage**

Provides products coverage only

May be written on a claims-made or occurrence form

No premises coverage is provided

Normally limited by Specified Products Description by Endorsement –ISO CG 2133

### **PROFESSIONAL LIABILITY AKA Errors and Omissions Coverage**

Protects the Insured for their professional advising, consulting and service provided. Provides coverage for when the insured has been alleged negligence or failure in performing these services, and thereby defending and covering the insured and/or company for financial loss.

Metric as to if the Insured needs professional liability: higher standard duty of care

Some considerations:

- Usually cover defined professional services; adequacy of definition important.
- Often BI and PD excluded. When coverage is provided, it is for claims arising out of providing professional services: for many classes, such as accountants, real estate agents, et al, exposure covered is financial loss; medical malpractice, home inspectors, architects/engineers are examples of exceptions.
- Need to review how the policy defines "Named Insured" to understand who is covered by the policy
- Application usually becomes part of policy and: a warranty.

- Almost always claims made.
- Most coverages allow for the insured to refuse settlement, unlike other liability coverages; is to protect insured's reputation. Refusing settlement, though, means company will not pay a verdict in excess of what it could have been settled for.
- Plaintiff is usually the client.
- Limits are usually per claim ,with an annual aggregate.
- Deductibles usually per claim with multiple claims arising out of a single act, error omission considered a single claim. May have an aggregate deductible option to limit the amount paid out by the Insured for claims.

Patent Infringement provides coverage for claims against the insured by someone who alleges the insured infringed on the plaintiff's patent. There is a product for firms that want to buy coverage in case they want to bring suit to uphold their patent rights. Allows them to pay steep costs of hiring an intellectual rights attorney and have paid by the insurer.

### **DIRECTORS & OFFICERS AKA D&O Coverage**

Two parts of coverage:

1. Corporate Indemnification - where company is able to indemnify the D&O's; most all bylaws allow for such indemnification unless D&O's operated recklessly, illegally or did something else really bad
2. Cover D&O's Directly - when corporation can not indemnify, cover D&O's directly; the deductible on this part is often much less than in part 1

Private companies and Not for Profits have more claims to fall under Corporate Indemnification.

In the past, policies usually were indemnification contracts, with insured expected to arrange for defense and company would indemnify later. Changing now to pay as they go.

Common Exclusions: Usually Punitive Damages, Bodily Injury and Property Damage

Fiduciary Coverage sometimes included

- Covers ERISA-based. Suits.
- Plaintiffs include participants
- Handling of 401K, pension, profit sharing, life and medical plans all can lead to claims not Employee Benefits Coverage, which only cover claims of an administrative nature.

### **Employment Practices Liability Insurance AKA EPLI**

EPLI can help cover defense costs and damages related to employment-related claims.

Base coverages:

- Discrimination.
- Wrongful termination.
- Sexual harassment

Almost all claims made with a few exceptions at this time. Many coverage forms provide full prior acts, sometimes by listing a retro date but having it refer to known claims, not the date an incident occurred.

## **POLLUTION COVERAGE COMBINATION PACKAGE**

### Coverages

1. General Liability – May or May Not be Included
  2. Pollution – Claims Made or Occurrence
  3. Professional – Claims Made – May or May Not be Included – Can be broader than a professional policy as it is not limited to “description of services”
  4. Transportation Pollution – May or May Not be Included
- May just cover third party claims or cleanup costs or both; also may cover just off premises, on premises or a combination of both.
  - Many of the products refer to specific sites, not blanket.
  - More and more occurrence forms: "deemer" clause will limit continuous pollution to a specific time, usually when the pollution first began, so as not to trigger multiple policy years.

Professional coverage is available for people who also do testing or environmental surveys.

Companies require 51% or more of the Insured’s professional services involve a pollution exposure.

### Washington Pollution Liability Insurance Program Trust Account

To assist in providing pollution liability insurance coverage to owners and operators of underground petroleum storage tanks in accordance with rules and regulations established by the State of WA Administrator.

Coverage required by Washington State Law; RCW 70.148 for:

- Anyone with an underground tank.
- Not affect above ground tanks.
- Limits required \$500,000 to \$1,000,000 depending on volume of the tanks.
- Required coverage include BI PD, cleanup costs and must include defense by statute.
- State provides reinsurance if purchase in program they sponsor.

## **MISCELLANEOUS COVERAGES**

**Loggers Broad Form** -Provides coverage to protect the Insured from claims against property damage to timberlands the Insured is working on, damage from loading and unloading timber/logs, and fire suppression costs incurred by a third party.

- Coverage includes fire fighting expense and trespass, care custody. & control.

**Railroad Protective** – Protects a railroad from liability it incurs because of the work of the designated contractor on or near the railway.

- Policy written with the railroad as named insured
- Coverage limitation to designated contract
- Covers acts of Railroad (Employees of railroad acting in supervisory role), Contractor and Subcontractor
- Covers Care Custody and Control for property of the railroad including tracks, signals, railroad cars, etc.
- Coverage for work done within 50 feet of a railroad.
- Reason for this is the exclusion in the Contractual coverage found in the GL policy includes BI/PD as well as damage to railroad property.

**Warranty Coverage** – Protects against breach of warranty

- Cars, appliances, etc.
- When buy extended warranty for multiple years often this risk transferred to an insurance company.

**Riggers AKA On Hook**– Protects the equipment a rigger has on hook, lifting or installing.

- Alternative is to be covered on first party basis by installation floater but then lose defense and loss of use coverage.

## **UMBRELLAS AND EXCESS LIABILITY**

Excess coverage is a follow form policy that warrants the Underlying policies' conditions

- May have some additional endorsements and/or exclusions
- Includes Additional Insured's and Named Insured's

Umbrella is a separate policy with its own set of coverage conditions.

- If picking up a claim here that is not covered in underlying policy then usually a self-insured retention applies; most common figure \$10,000.
- Not always broader
- Chance of gaps in coverage
- May also include following form endorsements
- If coverage includes marine coverages – known as Bumpershoot coverage

Layer Trapping occurs when the premium for the lower limits in an excess insurance tower is less than the higher layers.