LESSON 2.4 COMMERCIAL GENERAL LIABILITY POLICY – SECTION 1, PART A

In this lesson, we will begin our journey to learn how to determine when coverage applies according to Coverage A – Bodily Injury and Property Damage Liability. So let's begin by looking at the insuring agreement, or the promise that is made to the insured.

Insuring Agreement

The insuring agreement states, "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." It is important to remember that legal obligations are ultimately determined by what a court says, as either a verdict from a jury or a judgment from the bench. Just because a third party says the insured is legally obligated, that doesn't necessarily mean that they are. In these types of claims, the insurance company tries to determine what a court "might" do if they heard the case. The vast majority of these claims are settled through negotiation.

Note that the insuring agreement uses the language "to which this insurance applies," meaning that there are things the insurance does not or will not apply to. Exclusions in the policy, as well as other limitations will outline what doesn't apply. The insuring agreement also states, "We will have the right and duty to defend the insured against any "suit" seeking those damages. However, we will have no duty to defend the insured against any "suit" seeking damages for "bodily injury" or "property damage" to which this insurance does not apply."

The next part of the insuring agreement says, "We may, at our discretion, investigate any "occurrence" and settle any claim or "suit" that may result. But, the amount we will pay for damages is limited as described in Section III – Limits Of Insurance. And our right and duty to defend ends when we have used up the applicable limit of insurance to pay the claim."

For example, assume there is a serious liability claim where several people have been injured. The injured parties file a lawsuit asking for a total amount that is well in excess of the policy limits. The insurance company will answer the lawsuit and begin preparing a defense. After their investigation, the insurance company believes that the insured is not wholly responsible for the injuries due to the insured's negligence. Given this determination, they also believe that it is possible that the insured could lose in court. The insurance company negotiates with the plaintiffs based on this understanding, but is unable to reach an agreement within the limits of the policy.

At trial, a verdict is rendered against the insured and the judgment is in excess of the policy limits. The insurance company submits a check to the court for the limit of the insurance and their obligation to defend the insured has been satisfied. As the policy states, "No other obligation or liability to pay sums or perform acts or services is covered unless explicitly provided for under Supplementary payments – Coverages A and B.

Starting with section b of the insuring agreement, the policy outlines where coverage is applicable. The first condition is that the bodily injury or property damage must occur in the coverage territory. As you remember, the coverage territory is the United States, Canada, Puerto Rico, and other U.S. territories and possessions. The second condition is straightforward – the "bodily injury" or "property damage" must occur during the policy period.

The third condition is a little more complicated. This part of the policy states that "Prior to the policy period, no insured or employee who is authorized to provide notice of an occurrence or claim knew that "bodily injury" or "property damage" had occurred, in whole or in part. If any of these individuals knew about the bodily injury or property damage prior to the policy period, then any continuation, change, or resumption of such "bodily injury" or "property damage" during or after the policy period will be deemed to have been known prior to the policy period.

The bottom line is that an insured can't expect injury or damage caused before the policy's inception to be covered – and if the insured knew about the losses prior to the policy's effective date, that would be outside of the policy period and therefore not covered.

Section e explains that damages because of "bodily injury" includes care, loss of services, or death resulting at any time from the "bodily injury."

Exclusions

The next major section of the policy deals with the exclusions for Coverage A - Bodily Injury and Property Damage Liability. There are seventeen exclusions that limit or deny coverage under the CGL, and we will discuss two of those exclusions today. As an insurance professional, you must be able to clearly explain to a client what is covered – as well as what is NOT covered by the CGL.

a. **Expected or Intended Injury**

   The first exclusion states that the policy will not provide coverage for bodily injury or property damage if it is expected or intended from the standpoint of the insured. Note that the exclusion says, "…from the standpoint of *the* insured." It's worth noting

that "the" in this exclusion takes on special meaning based upon a condition that shows up later in the policy that states that the insurance applies "separately to each insured against whom the claim is made or the suit is brought."

Let's consider this in an example that illustrates why the condition for the separation of insured's is so important. A store employee gets mad at a customer and punches him in the nose. As this act was intentional, the exclusion would apply. But, because of the Separation of Insured's condition, it would only apply to the employee who intended it. The store owner didn't intentionally hit anyone. Neither did the store manager. Both of these individuals are insureds on the policy, but the exclusion would apply only to "the" insured who punched the customer – NOT to every insured. In other words, the policy would defend and pay on behalf of the store, but not for the employee who intentionally injured the customer.

This exclusion also includes an exception where it says, "This exclusion does not apply to bodily injury resulting from the use of reasonable force to protect persons or property." This means that if a court would consider the intentional act in defense of people or property to be "reasonable," then the exclusion would not apply so coverage would be available.

b. Contractual Liability

The second exclusion, Contractual Liability, is pretty complicated, so let's keep it as simple as we can. Basically, the policy says that it excludes all types of contractual liability – but then it gives some coverage back in the exceptions to the exclusions.

Exceptions

(1) The first exception is that coverage will be provided if the insured would have been liable for the damages in the absence of the contract or agreement. Think of it this way, if the insured would have been blamed anyway, just because they assumed the liability beforehand in a contract doesn't mean they wouldn't have any coverage.

(2) The second exception is that if the contract falls into one of the six categories of "insured contracts" then it can be covered.

Since many contracts are executed in commercial environments, the concept of transferring liability by contract is very important. These types of agreements, called indemnification agreements, or hold harmless agreements, basically say, "Look, if I get sued because of something you're

doing, you're paying for it – not me." So it makes sense that this type of language is evident in many contracts.

The full extent to which one party holds another harmless or agrees to indemnify the other party varies from premises to premises – construction project to construction project – industry to industry – and so on. Most importantly, in any of these situations, to assume responsibility for the liability of another is a risk and increases a business' exposure to loss.

Indemnification under this type of arrangement is where a sum of money is paid by one party to another party by way of compensation for a particular loss. The two parties to this type of arrangement are the indemnitor and the indemnitee. The indemnitor is the one who indemnifies – or who basically says, "if this happens, I'll assume the liability." The indemnitee is the one who is indemnified, or the one on the receiving end of the agreement.

Some states hold that contractual assumptions of the sole negligence of the indemnitee to be against public policy and void – except when some form of insurance applies. Other states do not void sole negligence hold harmless provisions – so long as the contractual provisions of the indemnitee are clear and unequivocal in their intent. Still other states declare both sole negligence of the indemnitee assumptions to be void and unenforceable in specific industries.

Remember, there are two exceptions to this exclusion.

The second exception is for insured contracts, so let's see what kinds of contracts are covered as "insured contracts."

a) The first type of insured contract is a **lease of premises**. For example, think of a business that leases part of a building it owns to another business. In the lease agreement, the landlord is essentially saying, "If I get sued for what you're doing in your leased space, you're paying for it - and you're paying for my lawyers too." There is additional language that clarifies that this doesn't include damage done to the leased space itself – except as outlined in the "Damage to Premises Rented to You" section of the CGL. We'll talk about that later. For now, just remember that a contract for a lease of premises would be covered under the CGL as an insured contract.

b) The second form of "insured contract" is a **sidetrack agreement**. This is an agreement between the railroad and property owner that refers to the expanse of track running through the property owner's land. Since the sidetrack was put there to facilitate the property owner's shipments using the rail line, it is for the property owner's benefit.

c) Easements are the third type of insured contracts. An **easement** is an agreement where one party grants another party permission to cross or use the first party's land for a specific purpose. There are many types of easements, but some of the most common are easements for driveways, utility lines, and parking lots.

d) The fourth type of insured contract is **an obligation, as required by ordinance**, to indemnify a municipality, except in connection with work for a municipality. Think about an organization that wants to have a concert at a city park. The organization would typically be required to obtain a permit from the city, and the permit would contain an indemnification agreement.

e) An **elevator maintenance agreement** is the fifth type of insured contract. In order to operate an elevator in a building, it must be inspected periodically to ensure it is in safe working condition. The building owner will contract with an elevator repair and maintenance company for this service, and the contract typically includes an indemnification agreement.

f) The sixth type of insurable contract is very broadly stated. It reads: "that part of **any other contract or agreement** pertaining to your business, under which you assume the tort liability of another party to pay for "bodily injury" or "property damage" to a third person or organization." This effectively covers all of the other types of contracts that have indemnification agreements. Construction contracts, vendor contracts, equipment rental contracts, and many types of service contracts have indemnification agreements. All of these contracts are insurable under the policy language.

An easy way to remember what is covered under insurable contracts is by using LEASE Plus.
L stands for **Lease** of premises and
E is for **Easement**.
A represents the language that begins with "**an obligation as required by ordinance**.

S is for a **sidetrack agreement** with a railroad and
E stands for **Elevator** maintenance agreement.

+ And finally, the "plus" stands for all the other tort assumptions the insured has made for bodily injury or property damage.

OK, so far we have discussed two of the seventeen exclusions in the CGL policy – Part A. The first is for expected or intended injury and the second is for contractual liability. We'll look at more exclusions in the next lesson. Be sure to complete the activities associated with this lesson to help you better understand when coverage applies under Coverage A – Bodily Injury and Property Damage.