

C13 Insurance Against Liability – Part 1

Addendum December 2005

(To be used with the 2004 edition of this textbook.)

There have been some significant changes to the IBC Commercial General Liability (CGL) policy. The new CGL form IBC 2100 03-2005(r) replaces the IBC 2100-2, 4-1998 form. We expect that some version of the new form will be used by most insurers by the end of this year. Versions of the replaced form will still be in the market for some time. Some changes are in form; some changes are meant to affirm the intent of the coverage.

The rewrite of Study 8 is currently underway for this textbook. Much of the information in the textbook is still valid because both forms are now in the marketplace. We have adapted the IBC list of CGL policy wording highlights for use in this course to identify the more significant points. For examination purposes, students must be able to identify the outlined changes and how they compare to the 1998 version of the policy wording.

Again, we caution students that this new CGL wording may be modified somewhat by different insurers in the marketplace. Our examination of the CGL policy is academic and should only be used as a teaching reference. Actual policy wordings must be examined in the business environment.

Highlights of the Commercial General Liability Policy IBC 2100 03 - 2005 (r)

1. Each exclusion has a descriptive title to better identify it.
2. “Compensatory damages” are now defined to clearly exclude
 - a. punitive or exemplary damages or
 - b. the multiple portion of any multiplied damage award.
3. There is no duty to defend when the claim or action for damages is not covered by the policy.
4. Under the Insuring Agreements for Coverages A and D the following have been clarified.
 - a. Confirms the intent of the CGL to exclude coverage for known losses that occurred prior to the policy period.
 - b. The amendments explain when “bodily injury” or “property damage” is deemed to have been known.

- c. Wording has been added to overcome the trend of the Courts to consider one occurrence that continues to occur during the policy period of successive policies as claims under each successive policy.

Example

The Ontario Court of Appeal in **Alie et al vs. Bertrand et al** established a trend to trigger coverage on successive policies even though damage was sustained to some extent on a previous policy.

5. The exception for damages assumed in an “insured contract” in the Contractual Liability exclusion now provides payment of defense expenses which the Insured has assumed in an insured contract. These expenses are deemed to be compensatory and subject to the policy limit.
6. Employer’s Liability excludes coverage for members of an employee’s family as a consequence of bodily injury to that employee clarifying that the family member’s claims for consequential damage should be filed under the employer’s liability portion of the workers compensation policy.
7. Under the aircraft and watercraft exclusions, the following changes are noted:
 - a. They have been combined and exclude any aircraft, air cushion vehicle or watercraft owned or operated by or rented or loaned to any insured.
 - b. Negligent supervision, hiring, employment, training or monitoring of others is now clearly excluded.
8. Under the automobile exclusion, the following highlights are noted:
 - a. It clarifies that coverage is not provided for negligence arising out of loading or unloading an automobile to avoid any possibility that the CGL policy will be called to respond to claims recoverable under an automobile policy.
 - b. There is an exception for automobiles owned by the insured and leased to others on a long-term basis. It protects the insured against losses arising out of a defective condition or improper maintenance of an automobile that the insured leases to another on a long-term basis, but only if the lessee is contractually obligated to ensure that the automobile is insured.
9. The Damage to Property exclusion disallows any costs or expenses to maintain, repair or replace the property. The intent is not to cover repairs to property over which the insured has ownership, custody or control. Coverage is normally available for this exposure by some form of property insurance.
10. Exclusions under Coverage A – Bodily Injury and Property Damage were added as follows:
 - a. An electronic data exclusion complements the revised definition of “property damage” which now excludes electronic data as tangible property.
 - b. Personal and advertising injury is excluded, as it is only covered under Coverage B.

- c. “Bodily injury” (other than “Incidental medical malpractice injury”) or “property damage” due to the rendering of defined “professional services” is now excluded.
 - d. Abuse as defined is now excluded.
 - e. Asbestos, fungi or spores and terrorism are excluded and identified as common exclusions.
11. Coverage B expanded the Personal Injury insuring agreement to include Advertising Injury. “Personal and advertising injury” are defined.
12. Exclusions under Coverage B – Personal and Advertising Injury Liability were added as follows:
- a. Knowing violation of rights of another
 - b. Breach of contract
 - c. Quality or performance of goods – failure to conform
 - d. Wrong description of prices
 - e. Infringement of copyright, patent, trademark, or trade secret
 - f. Insureds in media and Internet type businesses
 - g. Electronic chatrooms or bulletin boards
 - h. Unauthorized use of another’s name or product
 - i. Asbestos, fungi or spores, nuclear, terrorism, and war risks are excluded and identified as common exclusions.
13. Exclusions under Coverage C – Medical Payments were added or amended as follows:
- a. Athletics activities exclusion now excludes practicing, instructing or participating in any physical exercises or games, sports, or athletic contests.
 - b. All exclusions under Coverage A now apply to Coverage C.
14. Under Coverage D – Tenant’s Legal Liability, the insuring agreement provides “broad form” coverage to premises rented or occupied by the Insured.
15. Under the Common Exclusions, asbestos, fungi or spores, and terrorism were added.
16. Under Supplementary Payments – Coverages A, B and D, the following were revised or added:
- a. The daily limit for reasonable expenses and loss of earnings incurred at the Insurer’s request to assist in the investigation or defence of a claim was increased from \$100 to \$250.

- b. Post-judgment interest is now payable only until the Insurer has paid, offered to pay, or deposited in court the part of the judgment that is within the applicable limit of insurance.
- c. The Insurer will defend and pay defense costs of qualified indemnitees named in a suit if certain conditions are met.

17. Under Section II – Who Is An Insured the following was added or revised:

- a. Limited liability partnerships, limited liability companies, and trusts were added.
- b. Volunteer workers while performing duties related to the conduct of the business were added.
- c. Suits made by relatives of an employee against a co-employee were excluded.

18. Under Section III – Limits of Insurance, the following were added or removed:

- a. A separate Products-Completed Operations Aggregate Limit was added.

Example

An Insured with a general aggregate limit of \$2 million and a products-completed operations aggregate limit of \$2 million could realize benefits up to \$4 million for claims under the Insuring Agreement A. Bodily Injury and Property Damage.

- b. Tenant’s Legal Liability has only one limit as specified on the Declarations Page.
- c. A deductible provision was added that could reduce the amount payable under either Coverages A or D by the amount specified, if any, on the Declarations Page.

19. Under Section IV - Commercial General Liability Conditions the following highlights are noted:

- a. The Insured is now obliged to immediately record the specifics of any claim or action brought against them and the date received and notify the Insurer as soon as practicable.
- b. The Inspections and Surveys condition disclaims that an inspection or survey by the Insurer constitutes an undertaking for the benefit of the Insured or others concerning the safety of any premises or operations.
- c. The time limit for commencing an action or proceeding against the Insurer was removed from the Legal Action Against Us condition because the applicable provincial limitations legislation will dictate the applicable time period.
- d. The Other Insurance condition provides that the CGL policy is excess coverage over Fire insurance for premises rented or temporarily occupied by the Insured. A person’s or organization’s own CGL policy is excess over the policy modified by endorsement to include that person or organization as an additional insured. Thus, the additional insured is covered on

a primary basis on the policy to which the additional insured endorsement is attached and on an excess basis on its own policy.

- e. The term “cancellation” was changed to “termination” to be consistent with Commercial Property wordings.

20. Under Section V – Definitions, the following were added or revised.

- a. “Abuse”, “advertisement”, “compensatory damages”, “employee”, “executive officer”, “fungi”, “hostile fire”, “incidental medical malpractice injury”, “leased worker”, “loading or unloading”, “professional services”, “spores”, “temporary worker”, “terrorism”, and “volunteer worker” were added.
- b. The definition of “action” now includes arbitration or other ADR proceedings in which compensatory damages are claimed.
- c. “Automobile” means any land motor vehicle, trailer or semi-trailer that is required by law to be insured under a contract evidenced by a motor vehicle liability policy, or any vehicle insured under such a contract.
- d. “Coverage territory” includes all parts of the world for “personal and advertising injury” offenses that take place through the Internet or similar electronic means of communication.
- e. “Insured contract” now excludes that portion of the contract for a lease of premises that indemnifies any person or organization for damage to rented or occupied premises. This exclusion ties in with the contractual liability exclusion found under Coverage A and D. The assumption of tort liability of another party was amended by inserting a proviso that the bodily injury is caused, in whole or in part, by the Insured or those acting on the Insured’s behalf. In this manner, any additional insured will only have coverage for acts or omissions to which the named insured is either totally or partially at fault, thereby negating coverage for the additional insured’s sole negligence.
- f. Contractual liability coverage for injury or damage resulting from professional errors or omissions of architects, engineers or surveyors is excluded.
- g. “Personal and advertising injury” replaces the previously defined term “personal injury”. Offenses related to use of another’s advertising, copyright, trade dress or slogans are now excluded.
- h. “Your product” and “your work” both include the providing of or failure to provide warnings or instructions.

