

September 26-29, 2024 | Sheraton Boston Hotel



09/28/2024

Ten CGL Endorsements to Watch Out For

2:30 PM - 3:30 PM

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1 CEU

Ten CGL Endorsements To Watch Out For



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Ten Endorsements

1. Exclusion - Limitation of Coverage to Designated Premises or Project (CG 21 44 04 17)
2. Designated Operations – Coverage Limitation
3. Designated Classifications – Coverage Limitation
4. Residential Exclusions
5. Conversion to Habitational Exclusions
6. Any Insured vs. Any Insured Cross Suits Exclusions
7. Subcontractor Warranty/Conditions Endorsements
8. Subcontractor Injury Exclusions
9. Modified Employers Liability/Action Over Exclusions
10. Assault and Battery Exclusions



Covered Operations and Locations

Coverage A Insuring Agreement (CG 00 01 04 13)

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.....



Premises/Project Limitation

Exclusion - Limitation of Coverage to Designated Premises or Project (CG 21 44 07 98)

This insurance applies only to "bodily injury", "property damage", "personal and advertising injury" and medical expenses arising out of:

- 1. The ownership, maintenance or use of the premises shown in the Schedule and operations necessary or incidental to those premises; or*
- 2. The project shown in the Schedule*





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Premises/Project Limitation

Exclusion - Limitation of Coverage to Designated Premises or Project (CG 21 44 04 17) BEWARE!

This insurance applies to "bodily injury" and "property damage" caused by an "occurrence" that takes place in the "coverage territory" only if:

- (1) *The "bodily injury" or "property damage":*
 - (a) *Occurs on the premises shown in the Schedule or the grounds and structures appurtenant to those premises; or*
 - (b) *Arises out of the project or operation shown in the Schedule;*



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Designated Operations – Coverage Limitation

Sample Language

The "bodily injury" or "property damage" is caused by or results from the business described in the Schedule.....This insurance applies to "personal and advertising injury" caused by an offense in the course of the business described in the Schedule.



Designated Classifications – Coverage Limitation

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Sample Language

Coverage under this contract is strictly limited to the classification(s) and code(s) listed on the policy Declarations page. No coverage is provided for any classification(s) and code(s) not specifically listed on the Declarations page of this policy.

Designated Classifications – Coverage Limitation

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91342 Carpentry (NOC)

91340 Carpentry – construction of residential property not exceeding three stories in height

91583 Contractors – subcontracted work – in connection with building construction, reconstruction, repair or erection – one or two family dwellings





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Residential Exclusions

How is residential defined? Does it include?

- Single family houses
- Multi-family houses
- Residential condos
- Residential cooperatives
- Townhouses/townhomes
- Projects over a certain number of units
- Buildings of a certain construction type
- Mixed-use buildings
- Apartment buildings

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Residential Exclusions

- Does the exclusion apply to Bodily Injury and/or Property Damage?
- Consider past, present and future work





Conversion to Habitational Exclusion

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A. The following exclusion is added to Paragraph 2. Exclusions of Section I - Coverage A - Bodily Injury and Property Damage Liability:

2. Exclusions

This insurance does not apply to: **Condominium or Townhouse Conversion** "Bodily injury" or "property damage" arising from "Your work" or "your product" related to any project or structure that is converted, by any party, into a "condominium or townhouse project".

B. The following exclusion is added to Paragraph 2. Exclusions of Section I - Coverage B - Personal and Advertising Injury Liability:

2. Exclusions

This insurance does not apply to: **Condominium or Townhouse Conversion** "Personal and advertising injury" arising from "Your work" or "your product" related to any project or structure that is converted, by any party, into a "condominium or townhouse project".

C. The following definition is added to the Definitions Section:

"Condominium or townhouse project" means a project that includes or is intended to include structure(s) with two or more habitational units and in which each unit is separately owned and titled. "Condominium or townhouse project" includes site improvements and all related common areas.

Cross Liability/Cross Suits

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CG 00 01 04 13 - Separation of Insureds

Except with respect to the Limits of Insurance, and any rights or duties specifically assigned in this Coverage Part to the first Named Insured, this insurance applies:

- a. As if each Named Insured were the only Named Insured; and*
- b. Separately to each insured against whom claim is made or "suit" is brought.*



COMMERCIAL GENERAL LIABILITY
CG 40 10 12 19

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

EXCLUSION – CROSS SUITS LIABILITY

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

- | | |
|---|--|
| <p>A. The following exclusion is added to Paragraph 2. Exclusions of Section I – Coverages – Coverage A – Bodily Injury And Property Damage Liability:</p> <p>This insurance does not apply to:</p> <p>Cross Suits</p> <p>Any claim made or "suit" brought by any Named Insured under this Policy against another Named Insured under this Policy for damages because of "bodily injury" or "property damage".</p> | <p>B. The following is added to Paragraph 2. Exclusions of Section I – Coverages – Coverage B – Personal And Advertising Injury Liability:</p> <p>This insurance does not apply to:</p> <p>Cross Suits</p> <p>Any claim made or "suit" brought by any Named Insured under this Policy against another Named Insured under this Policy for damages because of "personal and advertising injury".</p> |
|---|--|



Cross Suits Exclusion

Any Insured vs. Any Insured

Sample Language

This insurance does not apply to:

Any claim or "suit" for damages by any insured against another insured.

Cross Suits Exclusion (something in between)

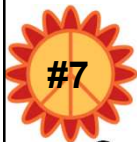
This insurance does not apply to bodily injury, property damage, personal or advertising injury arising from claims or suits brought by:

- a. One Named Insured against another Named Insured;*
- b. Any parent company, parent corporation, or holding company that owns any interest in any Named Insured, or any subsidiary company or subsidiary corporation which owns any interest in any Named Insured;*
- c. Any other company or corporation of which any interest is owned by any of the entities described in a. or b. above;*
- d. Any division or department of any of the entities described in a., b., or c. above;*
- e. Any officer, director or employee of any of the entities described in a., b., c., or d. above.*



Inadequately Insured Subcontractor

- Premium issue



- Subcontractor Warranty/Conditions

Endorsements may:

- Eliminate coverage completely
- Give coverage, but with a much lower limit
- Give coverage, but with a much higher deductible
- Include requirements for contract language, coverage features, COIs

Subcontractor Warranty/Conditions

What are the requirements?

- Certain limits on a CGL policy
- Certain coverage features on a CGL policy
- Specific additional insured endorsements
- Obtaining a COI
- Hold harmless agreement
- Others



Subcontractor Warranty/Conditions Sample Language I

Additional Conditions - Certificates of Insurance and Hold Harmless Agreements – Deductible Amount Applies if Conditions Not Met

- a. You must obtain from all subcontractors or independent contractors, prior to commencement of any work performed on your behalf by that contractor, certificates of Insurance evidencing:
 - (1) Commercial General Liability limits of insurance of \$1,000,000 for Each Occurrence, \$1,000,000 for the General Aggregate and \$1,000,000 for the Products-Completed Operations Aggregate, and
 - (2) Workers compensation insurance in compliance with the statutes of the applicable state.
- b. You must obtain written hold harmless agreements from subcontractors or independent contractors indemnifying you against all losses for the work performed for you by any and all subcontractors or independent contractors, prior to the commencement of any work performed on your behalf by that contractor; and
- c. You must be listed as an Additional Insured on all subcontractors or independent contractor's General Liability policies either by endorsement or by written contract, prior to the commencement of any work performed on your behalf by that contractor.



Subcontractor Warranty/Conditions Sample Language II

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INDEPENDENT CONTRACTORS RESTRICTION

The following Condition is added to section IV.:

1. You must see to it that:
 - a. all independent contractors have inforce, at the time they commence working for you, insurance of the type provided by this Policy and the limits for such insurance are equal to or greater than the Limits of Insurance provided by this Policy;
 - b. such independent contractors have held you harmless under contract as respects liability arising from their negligence; and
 - c. the Insured will obtain copies of a Certificate of Insurance from each independent contractor showing inforce insurance Limits of Liability as required in 1.a. above.
2. Such insurance as is afforded by this Policy will be excess over the independent contractor's insurance Limits of Liability as required in 1.a. above.
3. Your failure to comply with the terms of this endorsement will not invalidate this Policy but, in the event you fail to comply, we will be liable only to the same extent we would have been had you complied with the terms of this endorsement.



Subcontractor Warranty/Conditions Sample Language III

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Except in the State of New York, it is agreed that the following Condition is added to Section IV – Commercial General Liability Conditions

- 10 a. *It is agreed that any independent contractors or subcontractors hired by or for you shall maintain insurance of the type described in the Schedule and with limits of insurance equal to or greater than those shown in the Schedule.*
- b. *It is further agreed that you will obtain a valid certificate of insurance from independent contractors or subcontractors hired by or for you stating that you have been named as an Additional Insured on the independent contractor's or subcontractor's insurance policy.....*



Subcontractor Warranty/Conditions Sample Language IV

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"Adequate" insurance means Commercial General Liability, Workers' Compensation and Employer's Liability Insurance written by an insurance carrier with an A.M. Best rating of not less than A- VII and which:

- 1. Remains in force and effect from the dates in which the contract for work being performed for the insured or on the insured's behalf is executed until the date in which the work is completed and the insurance is not cancelled, discontinued nor does not expire during this period of time;.....*
- 5. Does not contain any conditions or provisions that preclude coverage based on requirements for hiring or contracting with subcontractors or independent contractors.....*



Employee Injuries CG 00 01 04 13

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"Employee" includes a "leased worker". "Employee" does not include a "temporary worker".



Employers' Liability Exclusion CG 00 01 04 13

This insurance does not apply to:

e. Employer's Liability

"Bodily Injury" to:

(1) An "employee" of the insured arising out of and in the course of:

- (a) Employment by the insured; or*
- (b) Performing duties related to the conduct of the insured's business; or*

.....

This exclusion does not apply to liability assumed by the insured under an "insured contract"



Subcontractor employees

What if "employee" is redefined to include employees of subcontractors?

Exclusion:

"Bodily Injury" to:

(1) An "employee" of the insured arising out of and in the course of:

- (a) Employment by the insured; or*
- (b) Performing duties related to the conduct of the insured's business; or*

.....

This exclusion does not apply to liability assumed by the insured under an "insured contract"





Subcontractor Injury - Sample Exclusion I

The following exclusion is added.....

This insurance does not apply to:

Bodily injury to any contractor hired or retained by or for any insured or to any employee of such contractor, if bodily injury arises out of and in the course of employment or retention of such contractor by or for any insured, for which any insured may become liable in any capacity.....

Subcontractor Injury - Sample Exclusion II

It is agreed that this insurance does not apply to bodily injury, property damage or personal and advertising injury to:

Any independent contractor or the employee of any independent contractor while such independent contractor or their employee is working on behalf of any insured.....



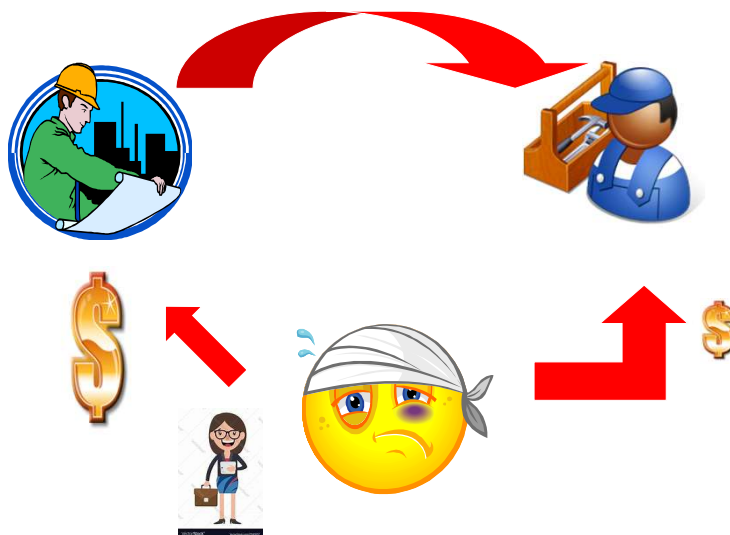
Excluding the acts of contractors and subcontractors

Sample Language

This insurance does not apply to “bodily injury”, “property damage”, “personal and advertising injury” or medical payments arising out of operations performed for you by contractors or subcontractors you hire or your acts or omissions in connection with your general supervision of such operations.



Third Party Over/Action Over Claim



**Employers' Liability Exclusion
CG 00 01 04 13**

This insurance does not apply to:

e. Employer's Liability

"Bodily Injury" to:

(1) An "employee" of the insured arising out of and in the course of:

(a) Employment by the insured; or

(b) Performing duties related to the conduct of the insured's business; or

.....

This exclusion does not apply to liability assumed by the insured under an "insured contract"



**Any Insured vs. Any Insured
Cross Liability Exclusion**

Sample Language

This insurance does not apply to:

Any claim or "suit" for damages by any insured against another insured.

.....





Modified CGL Employers' Liability Exclusion

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Sample Language

This insurance does not apply to:

"Bodily injury" to:

- (1) An "employee" or temporary worker of any insured arising out of and in the course of:
 - (a) Employment by any insured; or
 - (b) Performing duties related to the conduct of any insured's business; or.....

This exclusion applies...to any liability assumed under any contract or agreement.

Action Over Exclusion – Another Version

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ACTION OVER EXCLUSION

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

It is agreed that the following change is made to Coverage A. 2. Exclusions:

Exclusion **e. Employer's Liability** is deleted in its entirety and replaced with the following:

e. Employer's Liability

"Bodily injury" to:

- (1) An "employee" of the named insured arising out of and in the course of:
 - (a) Employment by the named insured; or
 - (b) Performing duties related to the conduct of the named insured's business; or
- (2) The spouse, child, parent, brother or sister of that "employee" as a consequence of Paragraph (1) above.

This exclusion applies:

- (1) Whether the named insured may be liable as an employer or in any other capacity; and
- (2) To any obligation to share damages with or repay someone else who must pay damages because of the injury.



What if the someone else's employee gets hurt?

Sample Language (sub's policy)

This insurance does not apply to "bodily injury" to:

.....

(3) Any person who is employed by, is leased to or contracted with any organization that:

*(a) Contracted with you or with any insured for services;
or*

*(b) Contracted with others on your behalf for services;
arising out of and in the course of employment by that
organization or performing duties related to the conduct
of that organization's business; or*



COMPANY SPECIFIC ADDITIONAL INSURED ENDORSEMENTS Action Over Exclusion

In one insurer's Additional Insured endorsement

Any insurance provided to the additional insured shall only apply with respect to a claim made or a "suit" brought for damages for which you are provided coverage.





Assault and Battery Exclusion

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Sample Language

This insurance does not apply to:

(1) Assault or Battery

“Injury” arising out of any assault, battery, fight, altercation, misconduct or similar incident or act of violence.

This exclusion applies whether the assault, battery, fight, altercation, misconduct or similar incident or act of violence was:

(a) caused by;

(b) at the instigation of; or

(c) at the direction of

you, your “employee”, your customers, patrons, guests or any other person or cause whatsoever.

Assault and Battery Exclusion

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Sample Language (Continued)

This exclusion also applies whether the insured may be liable as an employer or in any other capacity.

(2) Coverage of any kind, including but not limited to the cost of defense, for Bodily Injury and/or Property Damage arising out of, or caused in whole or in part by an assault and/or battery.

C. No Coverage is provided under this policy if the underlying operative facts constitute an assault and/or battery irrespective of whether the claim alleges negligent hiring, training, supervision and/or retention against the insured, or for any other negligent actions of the insured.



Assault and Battery Coverage

Sample Language

We will pay those sums that the insured becomes legally obligated to pay as damages for “bodily injury”, “property damage”, or “personal and advertising injury” arising from “Assault and/or Battery.”

This endorsement applies regardless of the degree of culpability or intent and without regard to:

- 1) *whether the acts are alleged to be by or at the instruction or at the direction of the insured, his officers, “employees”, agents or servants; or by any other person lawfully or otherwise on, at or near the premises owned or occupied by the insured; or by any other person;*



Assault and Battery Coverage

Sample Language (continued)

This endorsement applies regardless of the degree of culpability or intent and without regard to:

- 2) *the alleged failure of the insured or his officers, “employees”, agents or servants in the hiring, supervision, retention or control of any person, whether or not an officer, “employee”, agent or servant of the insured.*

Assault and Battery Each Occurrence Limit	\$100,000
Assault and Battery P&AI Limit	\$100,000
Assault and Battery Aggregate Limit	\$100,000



Assault and Battery Coverage

Sample Language (continued)

This insurance does not apply to:

- 1) Emotional distress or for loss of society, services, consortium and/or income; or*
- 2) Reimbursement for expenses (including but not limited to medical expenses, hospital expenses and wages) paid or incurred by such other person, firm or organization; or*
- 3) Any obligation to share damages with or repay someone who must pay damages because of the injury*



David Cohne v. Navigators Specialty Insurance Co.

- David Cohne was a bouncer/doorman at the Royale Night Club in Boston.
- Kenneth Yianacopolus was a patron of the club.
- Kenneth left the club and attempted to re-enter. When David tried to stop him, there was a physical altercation.
- Kenneth filed suit against David and Royale Night Club.



David Cohne v. Navigators Specialty Insurance Co.

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Issue #1 – Was David acting within the scope of his employment or while performing duties related to the conduct of the Club's business?

- Navigators claimed no.
- Court decided yes.

Effect: David is an insured under the CGL.



David Cohne v. Navigators Specialty Insurance Co.

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Issue #2 – Was coverage excluded by the A&B exclusion?

The policy excluded BI or PD arising from:

I. A. Assault and/or battery committed or alleged to have been committed by any person; or

Any act or omission connected directly or indirectly with the prevention or suppression of any act indicated in [Item A]..including the protection of persons or property, whether caused by or at the instigation or direction of any insured, an insured's employee, an insured's patrons or guests, or volunteers working for or on behalf of an insured, or any other person.



David Cohne v. Navigators Specialty Insurance Co.

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Issue #2 – Was coverage excluded by the A&B exclusion?

*Notwithstanding the foregoing, we shall pay up to the following amounts **you** become obligated to pay for all damages and claim expenses which result from claims or suits based on allegations of any of the acts or omissions in item I. above.*

\$250,000 any one claim or suit

\$250,000 aggregate for the policy period



A Related Issue Firearms Exclusion

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Sample Language

This insurance does not apply to:

“Bodily injury”, “property damage”, “personal and advertising injury”, or any loss, cost, damage or expense arising out of the ownership, rental, maintenance, use or misuse of any firearm.



Thank You for Being Here!



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