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Three CGL Exclusions to Avoid and What To Request Instead

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Three CGL Exclusions to Avoid and What to Request Instead

1. Total Pollution Exclusion Endorsement (CG 21 49)

- Aka "**absolute pollution exclusion.**"
- Essentially every pollution event is excluded by this endorsement

If unable to negotiate the exclusion away, offer one of two alternatives since they give back coverage for some injury or damage resulting from an otherwise excluded pollution event.

- **Total Pollution Exclusion with a Building Heating, Cooling and Dehumidifying Equipment Exception and a Hostile Fire Exception** (CG 21 65); or
- **Total Pollution Exclusion with a Hostile Fire Exception** (CG 21 55).
- **Note:** A "hostile fire" is defined in the CGL as a fire which becomes uncontrollable or breaks out from where it was intended to be.



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2. **Contractual Liability Limitation** (CG 21 39)

- Insureds regularly enter into contractual relationships to accomplish specific business purposes.
- The unendorsed commercial general liability policy **specifically excludes liability assumed by contract** ("2. Exclusions: b. Contractual Liability")
 - but the policy gives back coverage through exceptions to the exclusion.
 - One of the exceptions to the contractual liability exclusion spells out the parameters by which contractually accepted liability is covered in the CGL.
 - That exception states that protection is provided when: *The liability is assumed by an "insured contract"*
 - *So the key to the exception is the definition of "insured contract."*

Attachment of the **Contractual Liability Limitation** (CG 21 39) exclusion *alters the definition of "insured contract"* by removing the "all other business-related contracts" provision provided by definition "f."



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2. Contractual Liability Limitation (CG 21 39) continued

Altering the definition of "insured contract" by attachment of the CG 21 39 makes the list of contracts under which the insured can accept contractually-transferred liability limited to only:

- ✓ lease agreements
- ✓ sidetrack agreements
- ✓ easement or license agreements
- ✓ obligations to indemnify a municipality; and
- ✓ an elevator maintenance agreement

The insured needs to notify the Agent anytime it enters into a contract or agreement not contemplated in the remaining short list of acceptable contracts

Provided the insured is aware of the need to do so.

NO OTHER CONTRACTS are covered as "insured contracts" when the Contractual Liability Limitation (CG 21 39) is attached.

If unable to negotiate the exclusion away, recommend this alternative endorsement:

- The **Amendment of Insured Contract (CG 24 26)** endorsement redefines the meaning of "insured contract" to match the coverage granted by most additional insured endorsements.



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3. *Limitation of Coverage to Designated Premises or Project* (CG 21 44)

This restrictive endorsement is intended to restrict coverage to either:

- a specific scheduled premise (s) or
- a specific scheduled operation/project (s)

Additionally, there is **no coverage for a new location until the insurer is notified and the location is added.**

- ❖ It is often used to make an otherwise unattractive risk look attractive by attempting to convert the very broad commercial general liability coverage into a very narrow specific coverage form.

Unfortunately, **there is no alternative to this endorsement that can be offered.** Anytime faced with this exclusion, make every effort to have the exclusion removed to avoid a possible gap.

If possible, try to get the 1998 version of the form since the **NEWER VERSION IS MUCH MORE RESTRICTIVE:**

- **07/01/98 version:** Some significant lawsuits found off-premises coverage in this edition if it can be proven the other location was necessarily incidental to a listed location.
- **04/1/2017 version:** This version is much more precise as the phrase “arising out of” has been eliminated when referring to the premises. The goal is to cover ONLY injuries that occur on the premises itself and to not cover injuries from activities or decisions that might emanate from that premises.

