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Commercial General Liability – Changes Coming Soon!

N&D | Union Mutual Insurance Group

Commercial General Liability – Changes Coming Soon!

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CG 00 01 12 25
Commercial General Liability Coverage Form

- Effective date – 4/1/2027
  - Effective date may be different in certain states.
  - Insurers may adopt the changes with a later effective date.
- Various coverage changes to the CGL form (the focus of this course)
- Various coverage changes to endorsements
- In addition to changes to the coverage form and endorsements, numerous changes have been made to the ISO classification codes.

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CG 00 01 12 25
Coverage – Key Changes

- Language from several endorsements is incorporated into the coverage form, and those endorsements are withdrawn.
- "Insured contract" definition change
- Coverage B
  - "Personal and advertising injury" definition change
- Products-completed operations hazard
  - Definition change
  - Reflects elimination of plus/dagger sign classifications
- Numerous new and revised endorsements

Scope of Coverage Discussion

- Discussion of changes is limited to the CG 00 01 - Commercial General Liability Coverage Form (Occurrence Version).
- Similar language changes have been made to other coverage forms such as:
  - CG 00 02 Commercial General Liability Coverage Form (Claims-made Version)
  - CG 00 37 Products/Completed Operations Liability Coverage Form (Occurrence Version)
  - CG 00 38 Products/Completed Operations Liability Coverage Form (Claims-made Version)
- Similar endorsements have been introduced for use with other ISO liability coverage forms, e.g., Products/Completed Operations Liability, and Owners and Contractors Protective Liability.

Exclusions Incorporated Into The Form

Violation Of Law Addressing Data Privacy Exclusion

- Replaces CG 00 69 12 23 Exclusion – Violation Of Law Addressing Data Privacy, which is withdrawn
- The exclusion is added to Coverage A (Bodily Injury and Property Damage Liability) and Coverage B (Personal and Advertising Injury Liability.)

CG 00 69 12 23

- CG 00 69 12 23 Exclusion – Violation Of Law Addressing Data Privacy was introduced to reinforce the policy's intent not to cover damages related to violations of laws pertaining to data privacy.
- Examples:
  - Illinois Biometric Information Privacy Act (BIPA) – effective 2008
  - EU General Data Protection Regulation (GDPR) – effective 2018
  - California Consumer Protection Act (CCPA) – effective 2020

CG 00 01 04 13/12 25

CGL Exclusion - Recording And Distribution Of Material Or Information In Violation Of Law Exclusion

"Bodily injury" or "property damage" arising directly or indirectly out of any action or omission that violates or is alleged to violate:
(1) *The Telephone Consumer Protection Act (TCPA), including any amendment of or addition to such law;*
(2) *The CAN-SPAM Act of 2003, including any amendment of or addition to such law;*
(3) *The Fair Credit Reporting Act (FCRA), and any amendment of or addition to such law, including the Fair and Accurate Credit Transactions Act (FACTA); or*
(4) *Any federal, state or local statute, ordinance or regulation, other than the TCPA, CAN-SPAM Act of 2003 or FCRA and their amendments and additions, that addresses, prohibits, or limits the printing, dissemination, disposal, collecting, recording, sending, transmitting, communicating or distribution of material or information.*

Note: A similar exclusion applies to Coverage B.

Violation Of Law Addressing Data Privacy Exclusion

Coverage A Exclusion

r. Violation Of Law Addressing Data Privacy

"Bodily injury" or "property damage" arising directly or indirectly out of any action or omission that violates or is alleged to violate:

***(1)** Any federal, state or local statute, ordinance, regulation or other law that addresses, prohibits, or limits access to, use of or the printing, dissemination, disposal, obtaining, collecting, storing, safeguarding, recording, retention, sending, transmitting, communicating, selling or distribution of any person's or organization's confidential or personal material or information, including financial, health, biometric or other nonpublic material or information.*

Note: Similar language is added as exclusion q. in Coverage B.

Violation Of Law Addressing Data Privacy Exclusion

Coverage A Exclusion (continued)

Any such federal, state or local statute, ordinance, regulation or other law includes but is not limited to:

***(a)** The Illinois Biometric Information Privacy Act (BIPA), including any amendment of or addition to such law;*
or
***(b)** The California Consumer Privacy Act (CCPA), including any amendment of or addition to such law; or*

Violation Of Law Addressing Data Privacy Exclusion

Coverage A Exclusion (continued)

r. Violation Of Law Addressing Data Privacy

"Bodily injury" or "property damage" arising directly or indirectly out of any action or omission that violates or is alleged to violate:

***(2)** Any law of a jurisdiction other than the United States of America (including its territories and possessions) or Puerto Rico that is similar to any statute, ordinance, regulation or other law described in Paragraph (1) above, including but not limited to the European Union's General Data Protection Regulation.*

Employment-Related Practices Exclusion

- Replaces CG 21 47 12 07 Employment-related practices, which is withdrawn
- The exclusion is added to Coverage A (Bodily Injury and Property Damage Liability) and Coverage B (Personal and Advertising Injury Liability.)

Employment-Related Practices Exclusion

Coverage A Exclusion

t. Employment-related practices

"Bodily injury" to:

(1) *A person arising out of any:*

(a) *Refusal to employ that person;*

(b) *Termination of that person's employment; or*

(c) *Employment-related practices, policies, acts or omissions, such as coercion, demotion, evaluation, reassignment, discipline, defamation, harassment, humiliation, discrimination or malicious prosecution directed at that person; or*

(2) *The spouse, child, parent, brother or sister of that person as a consequence of "bodily injury" to that person at whom any of the employment-related practices described in Paragraph* ***(a), (b)*** *or* ***(c)*** *above is directed.*

Note: Similar language is added as exclusion s. in Coverage B.

Employment-Related Practices Exclusion

Coverage A Exclusion (continued)

t. Employment-related practices

This exclusion applies:

(1) *Whether the injury-causing event described in Paragraph* ***(a), (b)*** *or* ***(c)*** *above occurs before employment, during employment or after employment of that person;*

(2) *Whether the insured may be liable as an employer or in any other capacity; and*

(3) *To any obligation to share damages with or repay someone else who must pay damages because of the injury.*

Employment Practices Liability Policies

Sample EPLI Policy Exclusion

*The Company shall not be liable for **Loss** on account of any **Claim:***

*for bodily injury, mental anguish, emotional distress, humiliation, sickness, disease or death of any person or damage to or destruction of any tangible property including loss of use thereof whether or not it is damaged or destroyed; provided that this Exclusion shall not apply to mental anguish, emotional distress or humiliation resulting from any **Wrongful Act**;*

Access Or Disclosure Of Confidential Or Personal Material Or Information Exclusion

- Replaces CG 21 06 12 23 Exclusion - Access Or Disclosure Of Confidential Or Personal Material Or Information, which is withdrawn
- Replaces CG 21 08 12 23 Exclusion - Access Or Disclosure Of Confidential Or Personal Material Or Information (Coverage B only), which is withdrawn
- The exclusion is added to Coverage A (Bodily Injury and Property Damage Liability and Coverage B (Personal and Advertising Injury Liability.)

Access Or Disclosure Of Confidential Or Personal Material Or Information Exclusion

Coverage A Exclusion

s. Access Or Disclosure Of Confidential Or Personal Material Or Information

"Bodily injury" or "property damage" arising out of any access to or disclosure of any person's or organization's confidential or personal material or information, including:
***(1)** Patents, trade secrets, processing methods, customer lists;*
***(2)** Financial information, credit card information;*
***(3)** Health information, biometric information; or*
***(4)** Any other type of nonpublic material or information.*
This exclusion applies even if damages are claimed for notification costs, credit or identity monitoring expenses, forensic expenses, public relations expenses, data restoration expenses, extortion expenses or any other loss, cost or expense incurred by you or others arising out of any access to or disclosure of any person's or organization's confidential or personal material or information.

Note: Similar language is added as exclusion r. in Coverage B.

Cyber Incident Exclusion

- Replaces CG 40 35 12 23 Exclusion – Cyber Incident, which is withdrawn
- The exclusion is added to Coverage A (Bodily Injury and Property Damage Liability and Coverage B (Personal and Advertising Injury Liability.)

What is a Cyber Incident?

5. "Cyber incident" *means any:*

a. *Unauthorized access to or use of any computer system.*
b. *Malicious code, virus or any other harmful code that is directed at, enacted upon or introduced into any computer system and is designed to access, alter, corrupt, damage, delete, destroy, disrupt, encrypt, exploit, use or prevent or restrict access to or the use of any part of any computer system or otherwise disrupt its normal functioning or operation.*
c. *Denial of service attack which disrupts, prevents or restricts access to or use of any computer system, or otherwise disrupts its normal functioning or operation.*

Cyber Incident Exclusion

Coverage A Exclusion

u. Cyber Incident

"Bodily injury" or "property damage" arising out of a "cyber incident".
This exclusion applies even if damages are claimed for notification costs, credit or identity monitoring expenses, forensic expenses, public relations expenses, data restoration expenses, extortion expenses or any other similar cost or expense incurred by you or others arising out of a "cyber incident".

Note: Similar language is added as exclusion t. in Coverage B.

Cyber Incident Exclusion

Claim Scenario

The Named Insured accidentally sends an email containing malware to a medical office. The malware damages the electronic data that runs a piece of medical equipment. The machine malfunctions during a procedure, causing bodily injury to a patient.

This claim is now excluded!

Limited Coverage for Cyber Incidents

The following endorsements introduced with a 12/23 edition date are updated:

- Cyber Incident Liability Coverage Subject To Each Cyber Incident Occurrence And Aggregate Limits **(CG 04 25 12 25)**
- Cyber Incident Liability Coverage And Loss Of Electronic Data Liability Coverage Subject To Loss Of Electronic Data, Each Cyber Incident Occurrence And Aggregate Limits **(CG 04 95 12 25)**

Limited Coverage for Cyber Incidents

POLICY NUMBER: COMMERCIAL GENERAL LIABILITY
CG 04 25 12 25

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

CYBER INCIDENT LIABILITY COVERAGE SUBJECT TO EACH CYBER INCIDENT OCCURRENCE AND AGGREGATE LIMITS

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

SCHEDULE

Limits Of Insurance	
Each Cyber Incident Occurrence Limit:	**$**
Cyber Incident Aggregate Limit:	**$**
Information required to complete this Schedule, if not shown above, will be shown in the Declarations.	

CG 04 25 12 25

Cyber Incident Liability Coverage Subject To Each Cyber Incident Occurrence And Aggregate Limits (CG 04 25 12 25)

- Provides a sublimit of coverage for bodily injury or property damage caused by a cyber incident
- Coverage B is not broadened by this endorsement.
- The following exclusion is added:

Cyber Incident Costs Or Expenses
Damages claimed for notification costs, credit or identity monitoring expenses, forensic expenses, public relations expenses, data restoration expenses, extortion expenses or any other similar cost or expense incurred by you or others arising out of a "cyber incident".

Limited Coverage for Cyber Incidents

POLICY NUMBER:

COMMERCIAL GENERAL LIABILITY
CG 04 95 12 25

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

CYBER INCIDENT LIABILITY COVERAGE AND LOSS OF ELECTRONIC DATA LIABILITY COVERAGE SUBJECT TO LOSS OF ELECTRONIC DATA, EACH CYBER INCIDENT OCCURRENCE AND AGGREGATE LIMITS

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

SCHEDULE

Limits Of Insurance	
Each Cyber Incident Occurrence Limit:	$
Loss Of Electronic Data Limit:	$
Cyber Incident Aggregate Limit:	$
Information required to complete this Schedule, if not shown above, will be shown in the Declarations.	

CG 04 95 12 25

Cyber Incident Liability Coverage And Loss Of Electronic Data Liability Coverage Subject To Loss Of Electronic Data, Each Cyber Incident Occurrence And Aggregate Limits (CG 04 95 12 25)

Like CG 04 25 12 25 BUT

- Adds a sublimit for loss of “electronic data” that results from physical injury to tangible property (like the CG 04 37 12 25)
- The Electronic Data exclusion does not apply to “Loss of, loss of use of, damage to, corruption of, inability to access, or inability to manipulate "electronic data" that results from physical injury to tangible property.” (up to the sublimit)

BI/PD Coverage under Cyber Forms

Sample Language
Contingent Bodily Injury Coverage [Sub-Limit]

2) The following is added to section VI. Exclusions, A. Exclusions Applicable to All Insuring Agreements, item 3. Bodily Injury:

However, this exclusion shall not apply to:

*a) solely with respect to Insuring Agreement I.B.1. (Network Security Liability), any **Claim** for **Bodily Injury** directly caused by, or directly resulting from, an otherwise covered **Network Security Wrongful Act**.*

BI/PD Coverage under Cyber Forms

Sample Language

We will pay on your behalf claim expenses, damages, and regulatory penalties that you become legally obligated to pay resulting from a claim against you for:
1. bodily injury, sickness, disease, or death of a person resulting directly from a security failure;
2. damage or injury to or destruction of tangible property resulting directly from a security failure; or
3. impairment to or loss of use of tangible property, whether physically damaged, injured, destroyed or not, including tangible property that cannot be accessed, used, or is less useful resulting directly from a security failure

Note: A sublimit applies.

Contractual Liability

Indemnification/Hold Harmless

- One party (the indemnitor) assumes financial responsibility for the liability of another party (the indemnitee).
- Liability is not transferred; only the financial responsibility is transferred.
- Duty to defend is often included and may be a separate obligation.

Indemnification Agreements

- Limited
- Intermediate
- Broad

Limited Form

- a/k/a Common Law a/k/a Comparative
- The indemnitor assumes responsibility when liability is imputed to the indemnitee because of the indemnitor's actions or inactions. (e.g., negligence)
- The indemnitor is obligated only to the extent of its own fault.

Intermediate Form

- Limited + responsibility for indemnitor's and indemnitee's joint actions/inactions (e.g., negligence) — % of responsibility of each party does not matter.
- The indemnitor assumes all liabilities of the indemnitee, except where the injury or damage is caused solely by the indemnitee or a third party.
- Not permitted in some states in certain kinds of contracts

Broad Form

- Intermediate + indemnitor agrees to be responsible even if it is without fault (e.g., indemnitee's sole negligence)
- The indemnitor assumes an unqualified obligation to hold the indemnitee harmless for all liabilities even if the injury or damage is not due to any wrongdoing on the part of the indemnitor.
- Not permitted in many states in certain types of contracts

Anti-Indemnity Statutes

- Most states allow a party to be indemnified for its own negligence if the language in the contract is clear and unequivocal.
- Construction contracts, though, are different. Intermediate and/or broad form agreements are often not permitted.
- In many states, additional insured coverage can be used to circumvent the intent of anti-indemnity statutes. In some states, though, this is considered against public policy.

CG 00 01 12 25
Contractual Liability Coverage A Exclusion

"Bodily injury" or "property damage" for which the insured is obligated to pay damages by reason of the assumption of liability in a contract or agreement. This exclusion does not apply to liability for damages:

1) *That the insured would have in the absence of the contract or agreement; or*

2) *Assumed in a contract or agreement that is an "insured contract", provided the "bodily injury" or "property damage" occurs subsequent to the execution of the contract or agreement…..*

"Insured Contract"

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"Insured contract" *means:*

a. *A contract for a* ***lease of premises****. However, that portion of the contract for a lease of premises that indemnifies any person or organization for damage by fire to premises while rented to you or temporarily occupied by you with permission of the owner is not an "insured contract";*

b. *A* ***sidetrack*** *agreement;*

c. *Any* ***easement or license agreement****, except in connection with construction or demolition operations on or within 50 feet of a railroad;*

d. ***An obligation, as required by ordinance, to indemnify a municipality****, except in connection with work for a municipality;*

e. *An* ***elevator maintenance agreement****;*

"Insured Contract"

"Insured contract" *means:*

f. *That part of any other contract or agreement pertaining to your business (including an indemnification of a municipality in connection with work performed for a municipality) under which you assume the tort liability of another party to pay for "bodily injury" or "property damage" to a third person or organization.* ***However, such part of a contract or agreement shall only be considered an "insured contract" to the extent your assumption of the tort liability is permitted by law.*** *Tort liability means a liability that would be imposed by law in the absence of any contract or agreement.*

"Insured Contract" Exceptions

Paragraph f. does not include that part of any contract or agreement:

***(1)** That indemnifies a railroad for "bodily injury" or "property damage" arising out of construction or demolition operations, within 50 feet of any railroad property and affecting any railroad bridge or trestle, tracks, road-beds, tunnel, underpass or crossing;*

Railroad Endorsements

CG 24 17 12 25 Contractual Liability – Railroads

- Railroad and job site are scheduled on the endorsement.
- Railroad language in easement/license agreements is removed.
- Railroad indemnity language in f. is removed.
- **Such part of a contract or agreement is an "insured contract" to the extent your assumption of the tort liability is permitted by law.**

CG 24 27 04 13 Limited Contractual Liability – Railroads

- Same as CG 24 17 BUT
- Incorporates the language of the CG 24 26 into f., which eliminates coverage for a broad form indemnification agreement.

CA 20 70 10 13 Coverage for Certain Operations in Connection with Railroads

Look for language embedded in certain insurer forms.

Insured Contract Exceptions

Paragraph f. does not include that part of any contract or agreement:
(2) *That indemnifies an architect, engineer or surveyor for injury or damage arising out of:*

> ***(a)*** *Preparing, approving, or failing to prepare or approve, maps, shop drawings, opinions, reports, surveys, field orders, change orders or drawings and specifications; or*
> ***(b)*** *Giving directions or instructions, or failing to give them, if that is the primary cause of the injury or damage; or*

(3) *Under which the insured, if an architect, engineer or surveyor, assumes liability for an injury or damage arising out of the insured's rendering or failure to render professional services, including those listed in (2) above and supervisory, inspection, architectural or engineering activities.*

Coverage B Personal And Advertising Injury Liability

CG 00 01 12 25
Personal and Advertising Injury Definition

"Personal and advertising injury" *means injury, including consequential "bodily injury", arising out of one or more of the following offenses:*

a. *False arrest, detention or imprisonment;*
b. *Malicious prosecution;*
c. *The wrongful eviction from, wrongful entry into, or invasion of the right of private occupancy of a room, dwelling or premises that a person* ***or organization*** *occupies, committed by or on behalf of its owner, landlord or lessor;*
d. *Oral or written publication, in any manner, of material that slanders or libels a person or organization or disparages a person's or organization's goods, products or services;*
e. *Oral or written publication, in any manner, of material that violates a person's right of privacy;*
f. *The use of another's advertising idea in your "advertisement"; or*
g. *Infringing upon another's copyright, trade dress or slogan in your "advertisement".*

Mirpad v. Cal. Ins. Guar. Ass'n., 132 Cal. App. 4th 1058, 34 Cal. Rptr.3d 136 (App. Dist. 2 2005)

- The California Court of Appeals addressed the "wrongful eviction" provision within the personal and advertising injury definition in the Commercial General Liability (CGL) Coverage Form.
- The court of appeals reversed the decision of the trial court and found no coverage for the personal injury offense of wrongful eviction from the premises that a corporation occupies.
- In reaching their decision, the court noted that the word "person," when used in isolation elsewhere in the policy, clearly means a natural person and not a corporation.

Endorsements Modified To Reflect This Change

- **CG 21 44 12 25** Limitation Of Coverage To Designated Premises, Project Or Operation
- **CG 23 05 12 25** Cannabis Exclusion With Hemp Exception Subject To Hemp Aggregate Limit
- **CG 40 14 12 25** Cannabis Exclusion
- **CG 40 15 12 25** Cannabis Exclusion With Hemp Exception
- **CG 40 16 12 25** Cannabis Exclusion With Hemp And Lessors Risk Exceptions

Products-Completed Operations Hazard

CG 00 01 12 25
Products-Completed Operations Hazard Definition

Products-completed operations hazard

a. *Includes all "bodily injury" and "property damage" occurring away from premises you own or rent and arising out of "your product" or "your work" except:*

(1) *Products that are still in your physical possession; or*

(2) *Work that has not yet been completed or abandoned. However, "your work" will be deemed completed at the earliest of the following times:*

(a) *When all of the work called for in your contract has been completed.*

(b) *When all of the work to be done at the job site has been completed if your contract calls for work at more than one job site.*

(c) *When that part of the work done at a job site has been put to its intended use by any person or organization other than another contractor or subcontractor working on the same project.*

Work that may need service, maintenance, correction, repair or replacement, but which is otherwise complete, will be treated as completed.

Products-Completed Operations Hazard Definition (cont'd)

Products-completed operations hazard

b. *Does not include "bodily injury" or "property damage" arising out of:*

(1) *The transportation of property, unless the injury or damage arises out of a condition in or on a vehicle not owned or operated by you, and that condition was created by the "loading or unloading" of that vehicle by any insured; or*

(2) *The existence of tools, uninstalled equipment or abandoned or unused materials; or*

~~*(3) Products or operations for which the classification, listed in the Declarations or in a policy Schedule, states that products-completed operations are subject to the General Aggregate Limit.*~~

Plus Sign Classifications

Plus sign (a/k/a dagger) classifications are eliminated.

Before the change

- CLM Rule 25, F.1. - The classification described in the policy Declarations or Schedule must include the words "Products-completed operations are subject to the General Aggregate Limit."
- Products/completed operations is included in the premises/operations coverage at no additional charge.

After the change

- Now, these classifications will be subject to the Products/Completed Operations Aggregate Limit.

CG 20 41 12 19 eliminated

Additional Insured – Owners, Lessees Or Contractors – Completed Operations Subject To The General Aggregate

A. Section II – Who Is An Insured is amended to include as an additional insured the person(s) or organization(s) shown in the Schedule of this endorsement, but only with respect to liability for:

1. "Bodily injury", "property damage", or "personal and advertising injury" caused, in whole or in part, by:
   a. Your acts or omissions; or
   b. The acts or omissions of those acting on your behalf;

   in the performance of your ongoing operations for the additional insured(s) at the location(s) shown and described in the Schedule of this endorsement; or

2. "Bodily injury" or "property damage" caused, in whole or in part, by "your work", other than that described in **A.1.**, at the location(s) shown and described in the Schedule of this endorsement performed for the additional insured(s).

...

Completed operations!

Ongoing operations!

Classification/Rule Changes

Classifications – Key Changes

ISO classifications are changing

- New codes are added.
- Some codes are eliminated.
- Some codes are revised.
- “NOC” is now shown as “Not Otherwise Classified.”
- “NA” classifications are removed.
- The premium base for some GL classifications is changed, with new codes assigned.
- Changes in the description of certain premium bases
- For many contracting classifications, residential and commercial work have different class codes.
- Some codes are combined.
  - e.g. Select not-for-profit only classes are combined with other than not-for-profit only classes.

Classifications – Key Changes

Some GL classifications are being reassigned to a different business group.

- Mercantile - Codes 10000-19999
- Miscellaneous - Codes 40000-49999
- Manufacturing or Processing - Codes 50000-59999
- Buildings or Premises -Codes 60000-69999
- Contracting or Servicing - Codes 90000-99999

Classifications – Key Changes

Plus sign/dagger sign classifications

- Classifications will no longer state that products-completed operations are subject to the general aggregate limit.
- Most of these classifications will have only a premises/operations loss cost, although some will have both a premises/operations loss cost and a separate products/completed operations loss cost.
- A separate products-completed operations aggregate will apply.

Thank You For Attending!

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