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ABOUT US





Jevon Bindman
Trial Attorney Focused on
Construction, Insurance Coverage,
and Appellate Litigation
jevon.bindman@maslon.com
612-672-8371



Peter Doely
Construction and Insurance
Coverage Attorney
peter.doely@maslon.com
612-672-8376

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CGL POLICY:

Anatomy of Coverage A

a. 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. . . .

. . . .

b. This insurance applies to “bodily injury” and “property damage” only if:

(1) The “bodily injury” or “property damage” is caused by an “occurrence” that takes place in the “coverage territory”; [and]

(2) The “bodily injury” or “property damage” occurs during the policy period

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CGL POLICY:

Anatomy of Coverage A

- Third-party coverage
 - Judgment/settlement
 - Insured contract
 - Additional insured

a. 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. . . .

. . . .

b. This insurance applies to “bodily injury” and “property damage” only if:

(1) The “bodily injury” or “property damage” is caused by an “occurrence” that takes place in the “coverage territory”; [and]

(2) The “bodily injury” or “property damage” occurs during the policy period

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CGL POLICY:

Anatomy of Coverage A

Definition of “property damage”:

- a. Physical injury to tangible property (including. loss of use).
- b. Loss of use of uninjured property.

a. 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. . . .

. . . .

b. This insurance applies to “bodily injury” and “property damage” only if:

(1) The “bodily injury” or “property damage” is caused by an “occurrence” that takes place in the “coverage territory”; [and]

(2) The “bodily injury” or “property damage” occurs during the policy period

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CGL POLICY:

Anatomy of Coverage A

Injury/Damage during policy period

Coverage triggered when damage occurs (not discovery)

Multiple policy periods = more coverage AND more deductibles

a. 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. . . .

. . . .

b. This insurance applies to “bodily injury” and “property damage” only if:

(1) The “bodily injury” or “property damage” is caused by an “occurrence” that takes place in the “coverage territory”; [and]

(2) The “bodily injury” or “property damage” occurs **during the policy period**

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"Business Risk" Exclusions



1. DAMAGE TO PROPERTY: Exclusions j(5)&(6)

- Damage to property on which insured is performing operations.
- Only applies to ongoing operations.

2. "YOUR PRODUCT": Exclusion k

- Damage to insured's product.

3. "YOUR WORK": Exclusion l

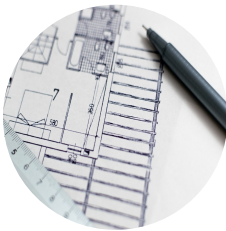
- Damage to insured's work after completion.
- Does not apply to subcontractor work.

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Don't Forget the Endorsements!

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Professional Liability
Endorsement



Additional Insured
Endorsement



Total Pollution
Exclusion

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PROFESSIONAL LIABILITY POLICIES



- Forms are unique to each insurer.
- Third-party coverage.
- Typically, coverage for amounts the insured is “legally obligated to pay” as a result of a “wrongful act” that results in a “claim.”
 - “Wrongful act” commonly defined as a “negligent act, error, or omissions in the performance of professional services...”
 - “Claim” includes a “demand.”
- Exclusions
 - Faulty workmanship
 - Express warranty

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PROFESSIONAL LIABILITY POLICIES

A Contrast with CGL

- “Claims-made” policies, as opposed to “occurrence” based policies.
 - Focus is on when the claim is made, not when the damage occurred.
 - Must report to insurer within the policy period (or extended reporting period).
 - Retroactive date may limit coverage.
- Defense costs
 - Defense costs will erode the policy limits, not be in addition to the policy limits.
- Additional insured coverage generally not available.

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PROPERTY POLICIES



- First-party coverage.
- Often have varied provisions.
- Coverage for “direct physical loss of or damage to” covered property.
 - Coverage for “busted stuff.”
 - But, “loss of” may be broader.
 - Time element coverage.
- Replacement cost v. actual cash value.
- Common exclusions:
 - Faulty workmanship (but, ensuing loss exception)
 - Earth movement
 - Water intrusion

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Builder's Risk Policies

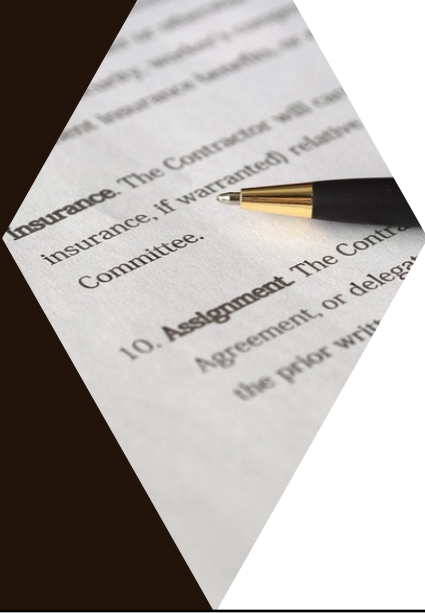


- Generally, all-risk policies.
- Coverage for property on the construction site, and some property offsite.
- Coverage extensions
 - Debris removal
 - Faulty workmanship
 - Expediting / extra expense
 - Delay in completion
- Limits / sub-limits for coverages.
- Who are insureds / waiver of subrogation

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Additional Insured Policies



- Dozens of forms
 - Operations only vs. completed operations
 - Specific insureds vs. “as required by contract”
 - Sole fault of AI vs. shared fault
- Make sure contract includes required AI language (and incorporates applicable policies)

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DRAFTING TIPS

- Establish specific insurance requirements
 - Types of coverages (e.g., CGL, worker’s compensation, automobile liability, PL, builder’s risk), amounts, duration, insureds, insurer criteria.
 - Who is responsible for each, especially for project-specific policies.
- Require other party to provide copies of policies or allow inspection; certificates of insurance are of limited value.
- Establish a right to receive notice of a policy being cancelled or non-payment.
- Receive a waiver of subrogation.

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DRAFTING TIPS – ADDITIONAL INSURED STATUS

- Specifically require other party to name you (and any other required parties) as additional insureds
 - Scheduled into the policy or via blanket endorsement
- Require the AI coverage to be primary and non-contributory
- Require specific minimum coverages, as the contract may control

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So, you have a loss or receive a claim. Now what?

- Communicate early and often in writing
- Tender any claims to your insurer(s)
 - Which policies?
 - Triggering defense obligations
- Cooperate / respond to reasonable requests
- Do not settle or compromise any claims without involving your insurer
- Develop a strategy based on the policy language

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INSURER'S POTENTIAL RESPONSES

- Accept and defend
- Deny
- Accept and defend, subject to a reservation of rights



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RESERVATION OF RIGHTS LETTERS

- ROR letters identify potential reasons to deny coverage.
- Insureds can successfully challenge ROR letters (or denials).
- Object to an insurer asserting a right to recoup defense costs.
- ROR letter may support a right to independent counsel.

Auto-Owners Insurance Company
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Auto-Owners Insurance Company
Auto-Owners Insurance Company
Auto-Owners Insurance Company

Auto-Owners Insurance
Life Home Car Business
Auto-Owners Insurance

TWIN CITIES WEST BRANCH CLAIM OFFICE
2030 East County Road E, White Bear Lake, MN 55110-4000
P.O. Box 66328, St. Paul, Minnesota 55166-0328
651-777-8100 FAX 651-777-8400
TOLL FREE 800-520-0034
WWW.AUTO-OWNERS.COM

June 26, 2013

THIS IS A RESERVATION OF RIGHTS LETTER
THIS IS NOT A DENIAL OF COVERAGE

SENT VIA CERTIFIED & U.S. MAIL

RE: Our Policy No. [REDACTED]
Our Claim No. [REDACTED]
Date of Loss [REDACTED]
Claimant [REDACTED]
Location [REDACTED]

This is a reservation of rights letter. If you have any questions, consult competent legal advice.

This will acknowledge under the above-referenced claim to Auto-Owners Insurance Company on 06/17/2013. Auto-Owners Insurance Company issued [REDACTED] under a Commercial General Liability policy. The Auto-Owners policy was in effect from 05/15/2012 to 05/15/2013.

We have reviewed all of the information provided to us with regard to this claim to date. The purpose of this correspondence is to inform you of our position with regard to coverage. This discussion of our coverage position is intended for your information only, and is not intended, nor should it be construed to be, an exhaustive discussion of all coverage issues that may be presented in this matter.

Our position, at this time, can only be based upon the facts as we presently understand them. The following is a summary of all the relevant facts that you have provided to us or that we have received from other sources. If you find that any relevant facts have been omitted from this summary or that we have incorrectly summarized any of the relevant facts, you have an obligation to provide us with your version of the facts. If you do not correct our summary of the facts, we will assume that it is accurate and complete.

MINNESOTA STATUTES PROVIDE THAT "A person who files a claim with intent to defraud or helps commit a fraud against an insurer is guilty of a crime."

Serving Our Policyholders and Agents for More Than 95 Years

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WHEN AN INSURER WILL NOT SEE THE LIGHT

- Ultimately, an insured may file a coverage action to seek defense/indemnity
 - Factors to consider:
 - Cost v. benefit
 - Ability to recover fees in coverage action
 - Potential bad faith damages
 - Minn. Stat. § 604.08

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THANK YOU

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Jevon Bindman

Jevon.Bindman@maslon.com
612-672-8371



Peter Doely

peter.doely@maslon.com
612-672-8376

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