

WEBINAR

DECODING THE ISO CGL FORM

Mastering the Basics of Commercial General Liability Insurance

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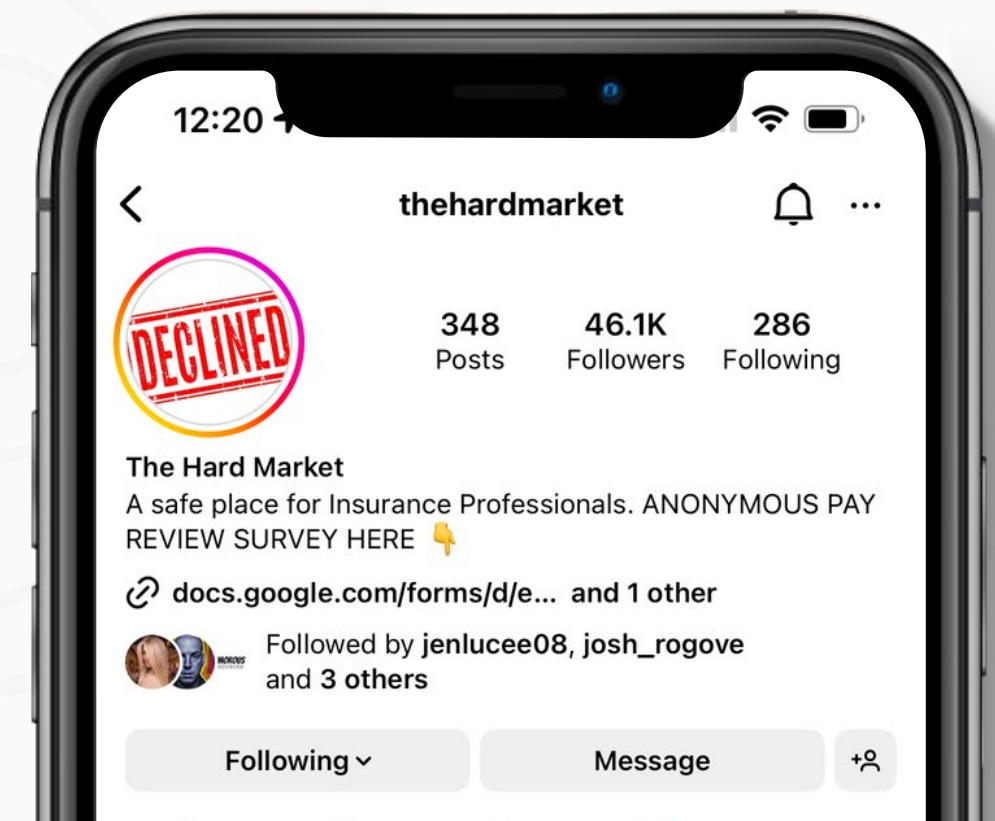
With panelists from:



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INTRODUCTION

A BRIEF HISTORY OF THE ISO FORM



- The version commonly used today (CG 00 01) was first introduced in 1985.
- Prior to this, the “Comprehensive General Liability Form” was used and it was...a mess.
- The current form is widely believed to be one of the most well-built contracts in the world. It is the basis for more business’ General Liability coverage than any other contract. For this reason, however, it is often amended in any number of ways.
- The purpose of today’s webinar is to get you to understand how to read the form: who is covered by it, what triggers it, how it works over time, and how it is often amended.
- Coverage Part A’s insuring agreement specifically provides that the insurer has a “right and duty to defend” its policyholder.

This is the number one reason people buy CGL Policies!

WHAT DOES THE FORM EVEN DO?

- **The most important thing to remember is that the form provides coverage to your client when they are legally obligated to pay money for having hurt someone or for having damaged property. This includes the cost of lawyers.**
- **The way the form does this will pull you in a dozen different directions, but as long as you remember this basic function, the various stimulations in the form will make more sense.**

Insuring Agreement



“My liability is all covered”

Exclusions



“Your liability is all excluded”

OUTLINE OF A STANDARD **CGL POLICY**

- **Declarations Page**
- **Section I – Coverages**
 - **Coverage A—Bodily Injury & Property Damage Liability**
 - Insuring Agreement
 - Exclusions
 - **Coverage B—Personal and Advertising Injury Liability**
 - Insuring Agreement
 - Exclusions
 - **Coverage C—Medical Payments**
 - Insuring Agreement
 - Exclusions
- **Supplementary Payments (Coverages A & B)**
- **Section II – Who Is An Insured**
- **Section III – Limits of Insurance**
- **Section IV – Commercial General Liability Conditions**
- **Section V – Definitions**
- **Endorsements**

THE ISO FORM IN 2 PARTS

THINK OF THE FORM IN TWO PARTS, AND THESE PARTS WORK IN ORDER:

PART 1: Insuring Agreement

What the form is there to do: send money and lawyers when you hurt someone or damage their stuff.

If the ISO form was just the Insuring Agreement, it would essentially cover everything so long as a few conditions are met

Part 2: Exclusions and Everything Else

What the form doesn't cover.

- The first thing you look at when evaluating a potential claim is the Insuring Agreement. Before looking at the exclusions, the first question a claims person asks is **“is this even something this form set out to cover?”**
- If the answer is no, it means the form wasn't even triggered. An example would be an insured damaging his own property. In general, the insured isn't going to have a legal obligation to fix his own stuff. It is not a liability issue. The form simply would not respond to it.
- If the answer is yes, the exclusions are then weighed in.

INSURING AGREEMENT:

How do you “trigger” the ISO FORM?

“We will pay those sums that the insured becomes legally obligated to pay because of “bodily injury” or “property damage” to which this insurance applies.” They will also defend the insured in a suit demanding these damages.

Easy enough. Okay so to what does the insurance apply?

- There has to be Bodily Injury or Property Damage as defined.
- The Bodily Injury or Property Damage has to be caused by an “occurrence” (to oversimplify it must be an accident)
- Occurrence must take place in the coverage territory.
- Bodily injury or property damage must occur during the policy period.

That’s it! As long as these things happen (an accident causes injury or damage at the right place and at the right time) the form is triggered.

INSURING AGREEMENT:

Some things to consider...

The definition of “bodily injury” and “property damage”

Bodily Injury

Property Damage

The definition of “occurrence”

Was it an accident?

What if an insured designs or constructs something (an intentional process) that is defective? Has there been an accident? Has there been actual property damage?

When did the bodily injury or property damage occur?

What if something happened slowly for many years before someone was aware of damage?



INSURER'S DUTY TO DEFEND



“We will have the right and duty to defend the Insured against any ‘suit’ seeking those damages.”

THE EXCLUSIONS

What happens now that the form is triggered

Something to consider...

Depends on what your insured does. Different exclusions will affect different businesses in different ways. The ISO form was meant to be amended via endorsement to address these needs. YOU need to know what to ask for (and not just read off a checklist of coverage specs provided to you by your firm).

NOTABLE EXCLUSIONS

- Expected or intended injury.
- Contractual Liability (notable exceptions)
- Pollution
- Aircraft, Auto, or Watercraft
- Damage to Property
- Damage to Your Product
- Damage to Your Work
- Damage to Specific Property
- Damage to “your product”
- Damage to “your work”
- Recall of Products or Work
- Damage to “impaired property” or property not physically injured
- Professional services

THE EXCLUSIONS

EXAMPLES

Exclusion J(4) removes coverage for damage to other people's personal property in your care, custody, or control. What if your insured is a dry cleaner and such an exposure is the main function of their business?

**What is an "Auto?"
Is a forklift an auto?
A cherry picker?
What about a snowplow?**

**Pollution Exclusions.
i.e. Is Carbon Monoxide a Pollutant? Raw Sewage?
Chili pepper vapor from a Sriracha Factory?**

Contractual Liability

CGL POLICY EXCLUSIONS:

How are exclusionary clauses interpreted?

State Law varies slightly, but typically:

- **Usually read in conjunction with other principles of policy interpretation:**
 - Give all words in the policy their plain & ordinary meaning.
 - If terms conflict or there is some other form of ambiguity, ambiguities usually construed against the drafter. Sometimes courts will look to extrinsic evidence to determine intent.
- **Burden on the insurance company to prove.**

QUICK NOTE:

Limits of Insurance and Supplementary Payments

Section III: Limits of Insurance

- **Most of what you need to know about the limits will be in the declarations page. However there is one very important clause pertaining to reinstatements:**

The Limits of Insurance of this Coverage Part apply separately to each consecutive annual period and to any remaining period of less than 12 months, starting with the beginning of the policy period shown in the Declarations, unless the policy period is extended after issuance for an additional period of less than 12 months. In that case, the additional period will be deemed part of the last preceding period for purposes of determining the Limits of Insurance.

Supplementary Payments

Similarly, this section discusses what the company pays for in addition to damages. Unamended, this section provides defense cover outside of the limit of insurance.

CLASSES & WHO IS AN INSURED

Classes and Section II

Three different classes of insureds on an ISO policy:

1. Insureds

2. Named insureds

3. The First Named insured

- Coverage applies differently to insureds versus named insureds. For example “you” and “your” only apply to named insureds. As such, only a named insured can create an “insured contract.” Additional insureds have NO coverage for their indemnification obligation to third parties.
- Exclusions that use “you” or “your” do not apply to additional insureds (“Premises YOU sell...)

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Section II – Who is an Insured

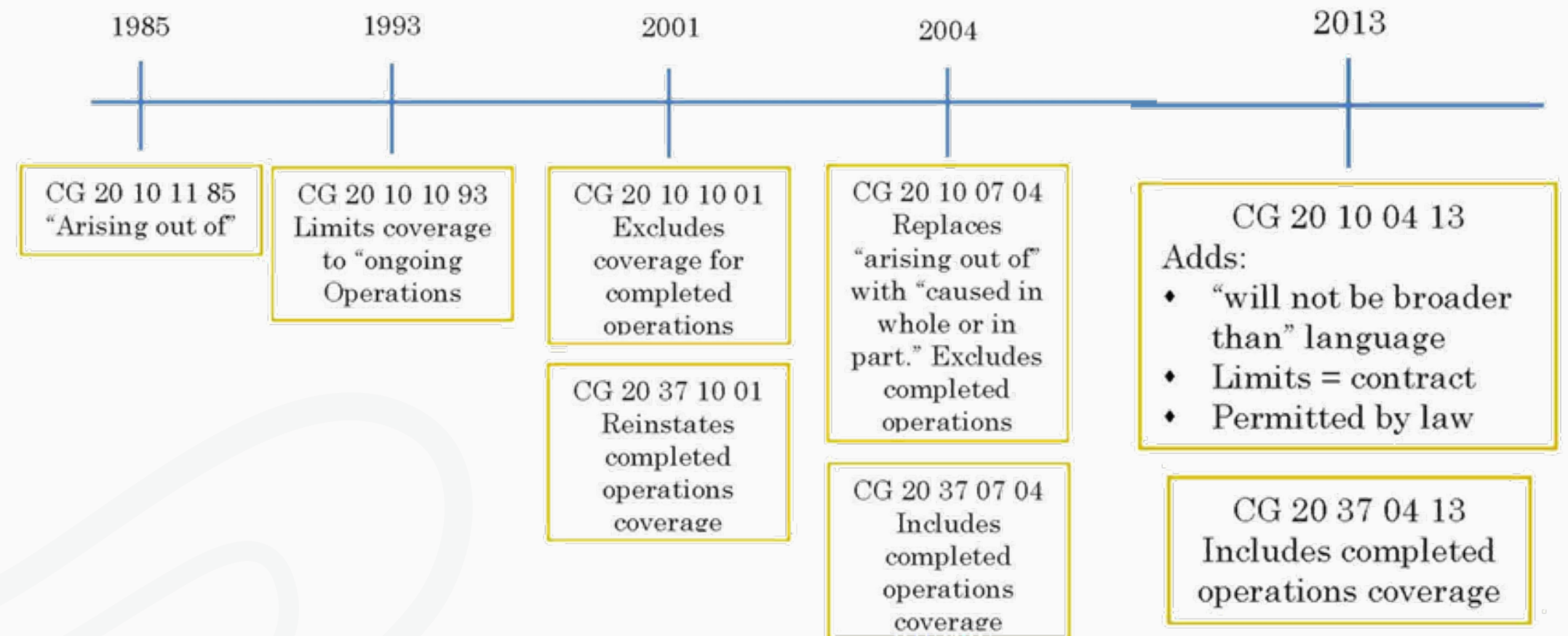
- Sole Proprietor (and spouse)
- Partnerships/Joint Ventures (partners/members and spouses, but only with respect to conduct of business)
- Organization (including executive directors, officers and stockholders. However this is limited to their duties/liabilities as such)
- Trust and trustees
- Volunteer workers and employees (some limitations. For example no coverage for injury to co-employee)
- Newly acquired organizations (for a short time).

AI ENDORSEMENTS

Contracting parties shift risk in two ways: (1) indemnification agreements; and (2) additional insured requirements.

MAJOR ISSUES WITH AI

- Conformance to state anti-indemnity laws.
- Causation trigger
- Privity issues



NOTICE CONDITION



- **What is “as soon as practicable?”**
- **What is late notice?**
- **Who must give notice?**
- **Excuses to late notice**

THANK YOU FOR JOINING!

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