

The VU *Beyond the Basics* Series

“The ISO CGL Property Damage Exclusions”

Damage to Property Being Worked Upon



Presented by

Jim Mahurin, CPCU, ARM
John Eubank, CPCU, ARM

Moderated by

Bill Wilson, CPCU, ARM

Copyrights and Disclaimers

COPYRIGHT

Copyright 2015 by James R. Mahurin, CPCU, ARM and Professional Insurance Education, Inc. (PIE). All rights reserved. All information and content included in this material, including but not limited to (i) text, graphics, logos, icons or images; (ii) data and content compilations; and (iii) software, is the property of the copyright holders or their content or software suppliers and is protected by United States and international copyright laws. You may not modify, copy, distribute, transmit, display, publish, sell, or license any information from this material without the express written consent of the authors. You may not create derivative works, or use any information or content for commercial or public purposes without the express written consent of the authors.. In addition, you may not reproduce, transmit, transcribe, store in a retrieval system, or translate into any human or computer language any part of the material in any form or by any means whatsoever without the express written consent of the authors,. Such consent may be requested by contacting Jim Mahurin at jimmahurin@aol.com or John Eubank at insspeak1@bellsouth.net.

TRADEMARKS

The trademarks, logos, service marks, graphics, and trade dress displayed are the intellectual property of the authors, and other applicable parties that have licensed their property and/or material to the authors. You should assume that any product or service name is a registered mark, trademark, or service mark and the intellectual property of the authors, or a third party. You are prohibited from using any of these trademarks or service marks for any purpose, including but not limited to use as metatags on other pages or sites on the World Wide Web, without the express written permission of the authors, or such third parties. If the authors grant such written permission, you may not use the trademarks and service marks in any manner that (i) is likely to cause confusion among customers or the public, or (ii) disparages or discredits the authors. This content "Includes Copyrighted Material of Insurance Services Office, Inc. With Its Permission. Copyright Insurance Services Office. 20__".

DISCLAIMER

This material has been designed for use in training programs for insurance industry personnel throughout the United States. It is not intended to be used as a complete reference resource on the programs and coverages outlined herein. Unless indicated otherwise, the coverage discussion herein are based on various editions of "ISO standard" policy forms. Programs, coverages, rules, and coverage interpretations presented in this publication may be different from those used by individual insurance companies writing these programs. Contact individual companies for details about their interpretations of the programs outlined herein and/or their own proprietary programs and contracts. The opinions expressed in this document are just that. No warranties, express or implied, of any kind are made, intended or inferred. The information contained herein is not legal advice, nor should it be taken as such. When such legal issues arise, proper advice should be sought, where applicable and appropriate, from qualified legal counsel.

INDEMNITY

You agree to defend, indemnify, and hold harmless the authors and presenters, together with their respective employees, agents, directors, officers, and shareholders, from and against all the liabilities, claims, damages, and expenses (including reasonable attorney's fees and costs) arising out of your use of this material; your breach or alleged breach of this Agreement; or your breach or alleged breach of the copyright, trademark, proprietary, or other rights the authors, presenters, or third parties.



Jim Mahurin

James R. Mahurin, CPCU, ARM is a risk management and insurance consultant providing fee-for-service assistance to the insurance buyer. He performs risk identification studies and audits the technical quality of commercial insurance programs in relation to identified risk.

Jim also prepares documents for the insurance buyer to use in seeking proposals from insurance providers and helps the buyer evaluate proposals received from the insurance industry.

Jim spent five years heavily involved in insurance related litigation arising out of Hurricane Katrina in the Greater New Orleans area.

Jim has had consulting projects from Alaska to Florida, Maine to Oregon. Clients include contractors, colleges, mines, adventure sports, financial institutions, public entities, oil spill response organizations, national lobbying organizations, destination resorts, public pollution funds, national unions, condominium developers, interstate toll highways, law firms, and a host of others.

He has had substantial experience with pollution liability and pollution remediation funding. He developed a state pollution remediation/financial responsibility insurance fund for petroleum storage tanks in 1990 that was cited by the U.S. Environmental Protection Agency in 1997 as one of four models for states with troubled funds to consider in the redevelopment of their programs.

Jim entered the insurance industry as an Aetna C & S marketing representative in 1973. He spent nine (9) years as an independent agent. The consulting practice was opened in late 1984. Jim is author of Personal Risk Management Survey published by the International Risk Management Institute and several senior level seminars.

Jim has been president of CPCU chapters in two states. He has served on the board of directors and as president of the Society of Risk Management Consultants in 2011.

For information about his consulting services, contact Jim at 207 Third Avenue, North, Franklin, TN 37064, 615-790-0083, or visit his web site at www.insuranceaudittn.com.



John Eubank

John O. Eubank, CPCU, ARM is CEO and President of Professional Insurance Education, Inc. in Nashville, Tennessee. He was previously employed by the Insurance Services Office, Inc. and ISO Commercial Risk Services, Inc. as the Regional Operations Manager for the Southern Region. He left ISO in 1987 to form PIE, Inc. and since has logged 14.72 gazillion miles in his insurance-manual-laden Lincoln.

John's professional affiliations include past Regional Vice President of the Society of Chartered Property & Casualty Underwriters (CPCU), PMLG of the Honorable Order of Blue Goose, International (HOBGI), member of the National Fire Protection Association (NFPA), and member of the Society of Fire Protection Engineers (SFPE).

John is recognized as one of the nation's premier insurance education instructors, having served as a National Faculty member of the Society of Certified Insurance Counselors since 1976, and is a recipient of the Professional Leadership Scroll from the American Institute for Property & Liability Underwriters and the Insurance Institute of America.

Since forming Professional Insurance Education, Inc. in 1987, he has served as a speaker and instructor for a wide variety of educational seminars for insurance associations in Alabama, California, Georgia, Illinois, Indiana, Kansas, Kentucky, Louisiana, Ohio, North & South Carolina, and Tennessee; Hoosier Ins. Co.; Society of CIC and the CPCU Society; National Association of Insurance Women (NAIW); and the North American Retail Dealers Association.

John is available for association-sponsored and in-house training programs, though he is usually booked over a year in advance. He can be contacted at 408 Page Road, Nashville, TN 37205, 615-383-5443, insspeak1@bellsouth.net.



Bill Wilson

William C. Wilson, Jr., CPCU, ARM, AIM, AAM is the Vice President of Education and Research and founder and director of the Virtual University of the Independent Insurance Agents & Brokers of America, the country's largest trade association of independent insurance agents. He is the former Director of Education & Technical Affairs for the Insurors of Tennessee and, prior to that time, he was employed by Insurance Services Office, Inc. Mr. Wilson is a graduate of the Illinois Institute of Technology with a B.S. degree in Fire Protection & Safety Engineering.

Bill was a licensed insurance and surplus lines agent, and his professional affiliations have included past president of the Middle Tennessee Chapter of CPCU, member of the board of directors of the national CPCU society, PMLG of the Honorable Order of Blue Goose, International, member of the Independent Insurance Agents & Brokers of America (IIABA) National Education Committee, member of the Certified Insurance Service Representative (CISR) National Advisory Committee, member of the National Underwriter FC&S editorial board, member of the Society of Insurance Trainers and Educators (SITE) and its SITE Journal editorial committee, member of the National Writers Association, chairman of the Tennessee Insurance Commissioner's Education Advisory Committee, member of the Middle Tennessee State University Insurance Liaison Committee, and member of the Nashville State Technical Institute's Business Management Advisory Committee.

Bill has served as a trainer and speaker for various organizations, including the Independent Insurance Agents & Brokers of America and 41 of its state affiliates, the CPCU Society national convention and chapter programs, the National Association of Insurance Women (NAIW), the Southern Agents Conference (SAC), the Risk & Insurance Managers Society (RIMS), the International Risk Management Institute (IRMI), and the Society of Risk Management Consultants (SRMC).

He has conducted hundreds of technical seminars, workshops and convention presentations—from Hawaii to Rhode Island and Alaska to Florida—as well as programs on time management, presentation and public speaking skills, seminar development, and many others. He has been the top-rated presenter at several CPCU National Conventions and his programs are always highly rated by attendees. He has presented seminars or webinars to as many as 5,000 attendees in a single session.

He was the recipient of the IIABA L.P. McCord National Education Award for having the #1 ranked state insurance education program in America and has won five other national education awards, including the George M. Gottheimer Memorial Award which is presented annually to a CPCU Society member who has made an outstanding contribution to the field of insurance education, risk management or insurance consulting.

Bill has researched, developed, written, and published dozens of technical articles, manuals and CDs/audio tapes, and has authored articles in business and industry trade periodicals such as *Presentations* magazine, *American Agent & Broker* magazine, *Independent Agent* magazine, *Tennessee Insuror* magazine, *Tennessee Business* magazine, the *CPCU Journal*, CPCU Interest Group newsletters, and the *SITE Journal*.

He has been quoted as an expert in a number of mainstream publications, including *Readers Digest*, *Kiplinger's*, and *Money* magazines and the *Wall Street Journal*, and he has been cited as an expert resource/interviewee for local television and radio media. He has also served as an expert witness in litigation.

According to Nashville NBC television affiliate WSMV, "Bill Wilson is an expert when it comes to insurance." Dr. William T. Hold, president of the Society of Certified Insurance Counselors in Austin, Texas has said that, "Bill Wilson is recognized by his peers as one of the premier insurance educators in America." Bob Rusbuldt, CEO of the Independent Insurance Agents & Brokers of America says, "Bill Wilson is the nation's foremost leading expert on form, coverage, and technical issues."

Finally, not that it has anything whatsoever to do with this program, but Bill is also an avid (notice we didn't say 'good') electric blues guitar player. He can be contacted at bill.wilson@iiaba.net.

Remaining 2015 Countrywide Webinars

July 8

“ISO Files Most Important Homeowners Change in 40 Years”

Presenters: Bill Wilson, CPCU, ARM and the Big “I” Technical Affairs Committee

July 15

“Cyber Exposures and Insurance” (aka “Data Breach, The New Wild, Wild West”)

Presenters: John Eubank, CPCU, ARM and Bill Wilson, CPCU, ARM

August 26

“Beyond the Basics: Emerging Personal Lines Issues”

Presenters: David Thompson, CPCU, AAI and Bill Wilson, CPCU, ARM

October 21

“Contractual Liability Issues and Answers”

Presenter: Craig Stanovich, CPCU, ARM

November 18

“Certificates of Insurance...2015 and Beyond”

Presenter: Bill Wilson, CPCU, ARM

December TBA


Free webinar

More info:

<http://www.independentagent.com/Education/Webinars/Pages/home.aspx>

Check out lots of archived webinars, many of them free!

The VU *Beyond the Basics* Series
“The ISO CGL Property Damage Exclusions”
Damage to Property Being Worked Upon



Presented by
John Eubank, CPCU, ARM
Jim Mahurin, CPCU, ARM

Moderator
Bill Wilson, CPCU, ARM

Overview of Today’s Program

- ✓ Learning objectives
- ✓ Purposes of the CGL PD coverages and exclusions
- ✓ The CGL Coverage A insuring agreement
- ✓ Broad Form Property Damage
Insuring Product Development
- ✓ Exclusions j., k., l., m., and n.
- ✓ Broad Form Property Damage
Exposure and Teaching Examples
- ✓ Wrap-up and Q&A

Primary Purpose of BFPD

Basically the purpose of Broad Form Property Damage (BFPD) coverage is to provide CGL liability insurance for damage to property during the course of work and following completion of the work. An additional premium is charged to provide this liability protection to the contractor.

CGL Coverage A Insuring Agreement

- Insuring agreement excerpts
- “Property damage” defined
- The CGL “No Occurrence” Claim Denial



Coverage A Insuring Agreement Excerpts

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

“Property Damage” Defined

- “Property damage” means:
 - a. Physical injury to tangible property, including all resulting loss of use of that property. All such loss of use shall be deemed to occur at the time of the physical injury that caused it; or
 - b. Loss of use of tangible property that is not physically injured. All such loss of use shall be deemed to occur at the time of the “occurrence” that caused it.
- For the purposes of this insurance, electronic data is not tangible property....

The CGL “No Occurrence” Claim Denial

- What is an “occurrence”?
- Faulty workmanship
- Exclusion L.
- Case law
- Endorsements
 - CG 22 94 and CG 22 95
 - “Occurrence” defined
- Legislation

“Occurrence” Defined

“Occurrence” means an **accident**, including continuous or repeated exposure to substantially the same general harmful conditions.

Accident...You Think?

One of the hottest topics in the insurance industry today is whether faulty workmanship constitutes an “occurrence” under a CGL policy. In other words, can damage to a contractor’s own work (including that of a subcontractor) trigger the CGL insuring agreement?

From Randy Maniloff's "Coverages Opinions" newsletter, May 8, 2013:

"Everyone knows what an accident is until the word comes up in court. Then it becomes a mysterious phenomenon, and, in order to resolve the enigma, witnesses are summoned, experts testify, lawyers argue, treatises are consulted and even when a conclave of twelve world-knowledgeable individuals agree as to whether a certain set of facts made out an accident, the question may not yet be settled and it must be reheard in an appellate court."

Brenneman v. St. Paul F. & M. Ins. Co. (Pa. Sup. Ct. 1963)

Depends on the State

The Virtual University publishes a chart listing known state and federal court decisions to date. To demonstrate how unclear this is, some states have decisions on both sides of an issue at the same jurisdictional level. For additional information, search the VU for the following articles:

- "The CGL 'No Occurrence' Claim Denial"
- "The CLG 'No Occurrence' Claim Denial Revisited"

The Problem

Whether faulty workmanship, to an insured's own work, constitutes an "occurrence" under a CGL policy.

Known fact: CGL policy does **not** provide coverage for the cost to repair or replace an insured's own work that is faulty. Except for a few exceptions, states are uniform in their conclusion that, if faulty workmanship *caused* property damage, to something *other than* the insured's work product, such injury or damage was caused by an "occurrence" and coverage exists.

More On The Problem

So if there is general agreement on these issues, why is so much time and money being spent in litigation over the “occurrence” issue? Because, while damage to the insured’s own completed work product is not covered, the rationale a court employs to reach this conclusion – no “occurrence” or the “your work” exclusion -- can make a world of difference. The reason is that the “your work” exclusion also contains what is commonly referred to as the “subcontractor exception.”

If It Isn’t An Accident All ‘Bets Are Off’

If damage to an insured’s defective workmanship is not covered, because it does not qualify as an “occurrence,” then the insured has not satisfied the requirements of the insuring agreement.

As a result of the insured’s failure to satisfy the insuring agreement, coverage is excluded and the court’s analysis ends there, without any need for the court to address the potential applicability of policy exclusions. In other words, by resting its decision on the insured’s failure to satisfy the insuring agreement, it becomes unnecessary for the court to reach the “your work” exclusion.

Broad Form Property Damage

- 1890 Contractor’s Liability Insurance
- 1920 to 1955 Lloyd’s Damage to Property forms
- 1941 Comprehensive General Liability Policy
- Pre-1956 Property Damage Legal Liability endorsements
- 1956 Broad Form Property Damage endorsement
- 1966 Broad Form Property Damage endorsement
- 1974 Broad Form Comprehensive General Liability endorsement
- 1986 Commercial General Liability incorporation of Broad Form coverage
- **CGL Edition Dates:** 1941, 1955, 1966, 1973, 1986, 1988, 1993, 1996, 1998, 2001, 2004, 2007, **2013**

Exclusion j.(1)

j. Damage To Property

“Property damage” to:

- (1) Property you own, rent, or occupy, including any costs or expenses incurred by you, or any other person, organization or entity, for repair, replacement, enhancement, restoration or maintenance of such property for any reason, including prevention of injury to a person or damage to another’s property;

Paragraphs (1), (3) and (4) of this exclusion do not apply to “property damage” (other than damage by fire) to premises, including the contents of such premises, rented to you for a period of seven or fewer consecutive days. A separate limit of insurance applies to Damage To Premises Rented To You as described in Section III – Limits Of Insurance.

Exclusion j.(1)

- “Property” means real and personal property
- Named Insured cannot be liable for damages to their own property
- Exclusion would apply with respect to sums the named insured might be required to pay to someone else in connection with damage to or destruction of the named insured’s own property
- Exclusion applies to another insured person’s liability for damage to the named insured’s property.
 - Damage to one insured’s property by the same insured - South Dakota Supreme Court in *Dakota Fire Ins. Co. v. J&J McNeil, LLC*, 2014 S.D. LEXIS 57 (June 25, 2014)
 - Preventive maintenance or repair.
 - Paragraphs (1)...of this exclusion do not apply to “property damage” (other than damage by fire) to premises, ...rented to you for a period of seven or fewer consecutive days.
 - Terms own, rent and occupy - *Gregory v. Tennessee Gas Pipeline Co.*, 948 F.2d 203 (5th Cir. 1991)
- \$100,000 FIRE Damage Legal Liability coverage is inadequate (limit and peril)

Exclusion j.(2)

j. Damage To Property

“Property damage” to:

- (2) Premises you sell, give away or abandon, if the “property damage” arises out of any part of those premises;

Paragraph (2) of this exclusion does not apply if the premises are “your work” and were never occupied, rented or held for rental by you.

Exclusion j.(2)

- Property damage coverage for premises that the named insured sells, gives away, or abandons if the damage arises out of the premises themselves.
- Liability for bodily injury arising from such premises and property damage to property other than the premises itself is not reached by the exclusion.
- Speculative builder or a developer chooses to occupy the premises on a short-term basis or rents out portions of the premises before selling it.

Exclusion j.(3)

j. Damage To Property

"Property damage" to:

- (3) Property loaned to you;

Paragraphs (1), (3) and (4) of this exclusion do not apply to "property damage" (other than damage by fire) to premises, including the contents of such premises, rented to you for a period of seven or fewer consecutive days. A separate limit of insurance applies to Damage To Premises Rented To You as described in Section III – Limits Of Insurance.

Paragraphs (3), (4), (5) and (6) of this exclusion do not apply to liability assumed under a sidetrack agreement.

Exclusion j.(3)

- Applies to real and personal property
- Excludes property damage coverage for the property of others that the named insured has borrowed.
- Give backs – Paragraphs ... (3) ... of this exclusion do not apply to "property damage" (other than damage by fire) to premises, including the contents of such premises, rented to you for a period of seven or fewer consecutive days.
- Paragraphs (3) ... of this exclusion do not apply to liability assumed under a sidetrack agreement.

Exclusion j.(4)

j. Damage To Property

"Property damage" to:

- (4) Personal property in the care, custody or control of the insured;

Paragraphs (1), (3) and (4) of this exclusion do not apply to "property damage" (other than damage by fire) to premises, including the contents of such premises, rented to you for a period of seven or fewer consecutive days. A separate limit of insurance applies to Damage To Premises Rented To You as described in Section III – Limits Of Insurance.

Paragraphs (3), (4), (5) and (6) of this exclusion do not apply to liability assumed under a sidetrack agreement.

Exclusion j.(4)

- The famous 'infamous' Care, Custody, Control Exclusion.
- Applies only to personal property
- Representative of court interpretations of the "care, custody or control" exclusion is an Indiana case—*American Family Mut. Ins. Co. v. Bentley*, 352 N.E.2d 860 (Ind. App. 1976). *Liberty Mut. Ins. Co. v. Zurich Ins. Co.*, 930 N.E.2d 573 (Ill. 2010). *Bolanowski v. McKinney*, 581 N.E.2d 345 (Ill. 1991)
- Paragraph... (4) of this exclusion do(es) not apply to "property damage" (other than damage by fire) to premises, including the contents of such premises, rented to you **for a period of seven or fewer consecutive days**. A separate limit of insurance applies to Damage To Premises Rented To You as described in Section III – Limits Of Insurance.

Exclusion j.(5)

j. Damage To Property

"Property damage" to:

- (5) That particular part of **real property** on which you or any contractors or subcontractors working directly or indirectly on your behalf are performing operations, if the "property damage" arises out of those operations; or

Paragraphs (3), (4), (5) and (6) of this exclusion do not apply to liability assumed under a sidetrack agreement.

Exclusion j.(5)

- Operations on “That Particular Part.”
- Applies primarily to the construction industry, and only to operations being performed on real property
- Affects coverage for various trade contractors who perform work on existing property, such as home repairs
- There is no coverage for damage to that particular part of the real property on which the operations are being performed

Exclusion j.(5) (cont’d)

- What does “that particular part” mean?
- Common insurance carrier interpretations
- Insurance industry teaching examples
- Most often cited court decision on the question is *Vinsant Elec. Contractors v. Aetna Cas. & Sur. Co.*, 530 S.W.2d 76 (Tenn. 1975).

Exclusion j.(5) (cont’d)

- The purpose of the “that particular part” language of exclusion j.(5), is to keep the exclusion from being used to eliminate all coverage a service provider or contractor has for damage to a structure on which operations are being performed
- Coverage for operations performed on the wrong property
- Paragraph...(5)...of this exclusion do(es) not apply to liability assumed under a sidetrack agreement.

**Primary value to contractors
performing work on real property**

- Residential structures
- Agricultural structures
- Commercial structures
- Industrial structures

ISO description of “that particular part”

That particular part...

Upon which operations are being performed by or on behalf of the insured at the time of the property damage arising out of such operations, or

Out of which any property damage arises.

Source: *Broad Form Property Damage Explained*, Insurance Services Office, 1979

ISO description of “that particular part”

Where the damage caused by the insured in the performance of his operations goes beyond damage to the property on which he is working, this section limits the exclusion to the particular part on which he is working.

Source: *Broad Form Property Damage Explained*, Insurance Services Office, 1979

ISO Teaching Examples

Painter is burning paint off a house with a torch and sets fire to the house.

Covered except for "that particular part" to which the torch was applied.

Source: *Broad Form Property Damage Explained*, Insurance Services Office, 1979

ISO Teaching Examples

Serviceman working on a television in the owner's home blows out picture tube while tinkering with another tube, or tips set over damaging other parts.

Covered since picture tube or other parts are not "that particular part" on which operations are being performed.

Source: *Broad Form Property Damage Explained*, Insurance Services Office, 1979

ISO Reference Material

The exclusion ("that particular part") is intended to apply only to the **part** of the property on which the operations are being performed. In this context, "property" is intended to mean any unit of property which may become the subject of liability.

Source: *Broad Form Property Damage Explained*, Insurance Services Office, 1979

ISO Reference Material

If the insured was an electrical contractor installing a switch which was furnished to him, and he damaged the switch which resulted in burning out the electrical system, the switch would be "that particular part" of the property.

Source: *Broad Form Property Damage Explained*, Insurance Services Office, 1979

ISO Reference Material

This clause excluded the property on which the insured is actually working **at the time** of the property damage. Where the damage caused by the insured in the performance of his operations goes beyond damage to the property on which he is working, this section limits the exclusion to the particular part on which he is working.

Source: *Broad Form Property Damage Explained*, Insurance Services Office, 1979

ISO Teaching Examples

Contractor replaces relief valve on a pressure vessel. As he is testing the vessel, it bursts because the relief valve does not function.

Covered with respect to the pressure vessel. Only the valve ("that particular part") is excluded.

Source: *Broad Form Property Damage Explained*, Insurance Services Office, 1979

ISO Teaching Examples

Painter damages chandelier while painting the interior of a home, the keys to which had been turned over to him.

Covered since it is not property used in connection with the insured's operations, nor is it property on which operations are being performed.

Source: *Broad Form Property Damage Explained*, Insurance Services Office, 1979

ISO Teaching Examples

A carpenter is installing a prefabricated kitchen cabinet furnished by the owner. He neglects to brace the cabinet properly for installation and, as he is attempting to install it to the wall, it falls and is damaged.

The damage is excluded.

Source: *Broad Form Property Damage Explained*, Insurance Services Office, 1979

Vinsant Electric Contractors v. Aetna Casualty & Surety Co., 530 S.W. 2d 76 (Tenn. 1975)

An electrical contractor was hired to install two 100-ampere circuit breakers in a switchboard. An employee working on the switchboard dropped a tool causing an electrical short which destroyed the entire box.

Court ruled the policy language excluded the switchboard in its entirety.

This 1975 court decision is not consistent with the 1979 ISO Teaching Examples found in the earlier slides.

Work on the wrong property

- Excavating on the wrong lot
- Demolishing the wrong building
- Cutting down the wrong trees
- Removing the wrong drainage pipe

Courts usually rule in favor of the insured, citing coverage applies to the manner in which the work is performed, not the property on which the work may be performed by mistake.

But not always.

Exclusion j.(6)

j. Damage To Property

“Property damage” to:

- (6) **That particular part** of any property that must be restored, repaired or replaced because “your work” was incorrectly performed on it.

Paragraphs (3), (4), (5) and (6) of this exclusion do not apply to liability assumed under a sidetrack agreement.

Paragraph (6) of this exclusion does not apply to “property damage” included in the “products-completed operations hazard”.

“Your Work” Defined

22. “Your work”:

a. Means:

- (1) Work or operations performed by you or on your behalf; and
- (2) Materials, parts or equipment furnished in connection with such work or operations.

b. Includes:

- (1) Warranties or representations made at any time with respect to the fitness, quality, durability, performance or use of “your work”; and
- (2) The providing of or failure to provide warnings or instructions.

Exclusion j.(6)

- This is referred to as the 'Faulty Workmanship' exclusion
- Also makes reference to ONLY "that particular part" of property that sustains damage because of the insured's work
- It applies only to work in progress—not damage that arises out of the insured's completed operations

Exclusion j.(6) (cont'd)

- Exclusion is potentially broader than j.(5) in some respects
- It applies to any kind of property—not just real property
- It applies whenever the property damage in question is caused by—or merely consists of—the insured's incorrectly performed work and necessitates the property's repair or replacement

Exclusion j.(6) (cont'd)

- Paragraph...(6) of this exclusion do not apply to liability assumed under a sidetrack agreement
- Paragraph (6) of this exclusion does not apply to "property damage" included in the "products-completed operations hazard"
- For "Completed Operations" see Exclusion I.

What is Faulty Workmanship?

Work that must be restored, repaired or replaced

1979 ISO Explanatory Memorandum

Policy language:

The restoration, repair or replacement of which has been made or is necessary by reason of faulty workmanship thereon by or on behalf of the **insured**.

Source: *Broad Form Property Damage Explained*, Insurance Services Office, 1979

Explanation of Intent

This section excludes property damage to “that particular part” of any property **which occurs after work on that part has been completed** and where it can be established that the property damage was the result of faulty workmanship by the insured or his subcontractor.

Source: *Broad Form Property Damage Explained*, Insurance Services Office, 1979

1981 FC&S Article

“...the insurance does not cover any obligation of the insured to repair or replace faulty products or re-do faulty work, even though the faulty work may have been done by a subcontractor. Liability for **other damage** resulting from the defective portion of the work or product is not excluded...”

Source: Fire, Casualty & Surety Bulletins, Casualty Surety Edition, National Underwriter Company, 1981

CGL 2013 (11th edition)

“...the exception of completed operations from paragraph (6) does eliminate from the current CGL forms the uncertainty under BFPD provisions of whether the faulty workmanship exclusion applies only to ongoing operations...”

Source: *Commercial General Liability Coverage Guide*, 11th edition, National Underwriter Company, 2013

ISO Teaching Example

A cabinet is installed on the wall, but because the carpenter neglected to fasten it securely, it falls while he is installing a counter unit below the cabinet.

The damage to the falling cabinet and the wall is excluded. Any damage to the counter unit is covered because the property damage did not arise out of the installation of the counter.

Faulty Workmanship Example

An improperly gauged wire in an electrical system caused a major fire during the course of construction. The "faulty workmanship" was the improperly gauged wiring.

The Property Damage is the fire.

Faulty Workmanship Example

Plumbing piping is improperly wrapped. Several pipes burst during extremely cold weather. The inadequate wrapping is the "faulty workmanship."

The Property Damage is the severe water damage to the building under construction.

Faulty Workmanship Example

A painter discovers paint overspray on windows. Paint damage to the windows is covered.

The painter tries to clean the windows and damages the glass finish. Damage to the glass finish is not covered.

The painter kicks over the paint bucket and damages the carpet. Damage to the carpet is covered.

The painter attempts to clean the carpet and causes permanent damage. Damage to the carpet is not covered.

Exclusion j.(6) Faulty Workmanship

- a. Does not apply to liability assumed under a sidetrack agreement.
- b. Does not apply to the "property damage" included in the "products/completed operations hazard".

Exclusion k.

k. Damage To Your Product

"Property damage" to "your product" arising out of it or any part of it.

"Your Product" Defined

21. "Your product":
- a. Means:
 - (1) Any goods or products, **other than real property**, manufactured, sold, handled, distributed or disposed of by:
 - (a) **You**;
 - (b) Others trading under your name; or
 - (c) A person or organization whose business or assets you have acquired; and
 - (2) Containers (other than vehicles), materials, parts or equipment furnished in connection with such goods or products.
 - b. Includes:
 - (1) Warranties or representations made at any time with respect to the fitness, quality, durability, performance or use of "your product"; and
 - (2) The providing of or failure to provide warnings or instructions.
 - c. Does not include vending machines or other property rented to or located for the use of others but not sold.

“Your Product” Defined (cont’d)

The exception of “real property” in the definition of “your product” says loud and clear that contractor work on structures, buildings, site preparation, and similar activities, are not “products”.

Exclusion I.

I. Damage To Your Work

“Property damage” to “your work” arising out of it or any part of it and included in the “products-completed operations hazard”.

This exclusion does not apply if the damaged work or the work out of which the damage arises was performed on your behalf by a subcontractor.

Exclusion I.

- “Your work” defined
- “Products-completed operations hazard” defined
- Application of the exclusion
- The subcontractor exception...a broad grant of coverage

“Your Work” Defined

22. “Your work”:

a. Means:

- (1)** Work or operations performed by you or on your behalf; and
- (2)** Materials, parts or equipment furnished in connection with such work or operations.

b. Includes:

- (1)** Warranties or representations made at any time with respect to the fitness, quality, durability, performance or use of “your work”; and
- (2)** The providing of or failure to provide warnings or instructions.

**“Products-Completed Operations Hazard” Defined
Part a.**

16. “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” Defined
Part b.**

16. “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;
- (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.

Completed Operations

- Assume the general contractor and all subcontractors have CGL insurance through the course of work.
- Assume the general contractor and all subcontractors have continued their CGL insurance following completion of the work.
- Assume damage to the property is caused by work of:
 - The general contractor; or
 - A subcontractor.
- How will CGL completed operations apply?

Broad Form Property Damage & Completed Operations Coverage

- Broad Form Property Damage is incorporated into the ISO CGL policy and an additional premium charge is included.
- It provides coverage to the contractor in the event insurance coverage for the subcontractors is absent.
- Carriers may limit or exclude Broad Form Property Damage under the completed operations part of the policy.
- The exclusion may apply to specific work or all work.

1966 Completed Operations Broad Form Property Damage

- The insured would have **no** coverage for damage to his work arising from his work.
- The insured would have coverage for damage to his work arising out of a subcontractor's work.
- The insured would have coverage for damage to a subcontractor's work arising out of the subcontractor's work.
- The insured would have coverage for damage to a subcontractor's work, or if the insured is a subcontractor, to a general contractor's work or another subcontractor's work, arising out of the insured's work.

Source: *Broad Form Property Damage Explained*, Insurance Services Office, 1979

So, what's NOT covered?

1. The insured would have **no** coverage for damage to his work arising from his work.

Contractor builds and entire structure without the benefit of subcontractors.

Following completion of the building, an electrical fire destroys 50% of the structure and severely damages the remainder. The property insurer subrogates their property damage and business interruption claim.

There is no coverage to protect the contractor for damage arising from his own work.

So, what's covered?

2. The insured would have coverage for damage to his work arising out of a subcontractor's work.

Contractor is responsible for the entire building, but subcontracts the electrical work.

Following completion of the building, an electrical fire destroys 50% of the structure and severely damages the remainder. The property insurer subrogates their property damage and business interruption claim.

The insured will have coverage for damage to his work arising out of the electrical contractor's work.

So, what's covered?

3. The insured would have coverage for damage to a subcontractor's work arising out of a subcontractor's work.

Contractor is responsible for the entire building, but subcontracts the electrical work.

Following completion of the building, an electrical fire destroys 50% of the structure and severely damages the remainder. The property insurer subrogates their property damage and business interruption claim.

The insured will have coverage for damage to his work arising out of the subcontractor's work AND damage to the electrical contractor's work.

So, what's covered?

- 4. The insured would have coverage for damage to a subcontractor's work, or if the insured is a subcontractor, to a general contractor's work or another subcontractor's work, arising out of the insured's work.

Contractor is responsible for the entire building, but subcontracts the site preparation, concrete, steel erection, plumbing, roofing, exterior finish, and electrical work. The contractor performs the interior finish work.

Following completion of the building, an electrical fire destroys 50% of the structure and severely damages the remainder. The property insurer subrogates their property damage and business interruption claim.

So, what's covered?

The insured contractor has coverage for damage to the subcontractor's work arising out of the subcontractor's work.

If the insured is a subcontractor, the insured has coverage for property damage to the general contractor's work or other subcontractor's work, but not damage to their own work.

If the insured is a general contractor and the property damage is caused by the work of a subcontractor, the insured will have coverage for damage to the entire work.

So, what's covered?

No party has coverage for damage arising from their work to their work.

The general contractor may have coverage for the entire loss when the damage was caused by a subcontractor.

The general contractor's CGL insurer will subrogate their loss against the responsible party...and the fun continues under THEIR policy.

Exclusion m.

m. Damage To Impaired Property Or Property Not Physically Injured

"Property damage" to "impaired property" or property that has not been physically injured, arising out of:

- (1) A defect, deficiency, inadequacy or dangerous condition in "your product" or "your work"; or
- (2) A delay or failure by you or anyone acting on your behalf to perform a contract or agreement in accordance with its terms.

This exclusion does not apply to the loss of use of other property arising out of sudden and accidental physical injury to "your product" or "your work" after it has been put to its intended use.

Exclusion m.

- "Impaired property" defined
- Property that has not been physically injured
- Application of the exclusion

"Impaired Property" Defined

8. "Impaired property" means tangible property, other than "your product" or "your work", that cannot be used or is less useful because:

- a.** It incorporates "your product" or "your work" that is known or thought to be defective, deficient, inadequate or dangerous; or
- b.** You have failed to fulfill the terms of a contract or agreement;

if such property can be restored to use by the repair, replacement, adjustment or removal of "your product" or "your work" or your fulfilling the terms of the contract or agreement.

Exclusion n.

n. Recall Of Products, Work Or Impaired Property

Damages claimed for any loss, cost or expense incurred by you or others for the loss of use, withdrawal, recall, inspection, repair, replacement, adjustment, removal or disposal of:

- (1) "Your product";
- (2) "Your work"; or
- (3) "Impaired property";

if such product, work, or property is withdrawn or recalled from the market or from use by any person or organization because of a known or suspected defect, deficiency, inadequacy or dangerous condition in it.

Exclusion n.

- Recall expenses
- Application of the exclusion

Broad Form Property Damage

Coverage under the policy is excess over any other insurance, whether primary, excess, contingent or on any other basis:

- i. Fire, Extended Coverage, Builder's Risk, Installation Risk or similar coverage for "your work";
- ii. That is Fire insurance for premises rented to you or temporarily occupied by you with permission of the owner;
- iii. That is insurance purchased by you to cover your liability as a tenant for "property damage" to premises rented to you or temporarily occupied by you with permission of the owner; or
- iv. If the loss arises out of the maintenance or use of aircraft, "autos" or watercraft to the extent not subject to Exclusion g. of Section 1 – Coverage A – Bodily Injury and Property Damage.

Wrap-Up and Q&A

- Wrap-up
- Q&A

Thank You!



Feel free to contact us:

Bill Wilson
bill.wilson@iiba.net

More info on this subject:
www.IndependentAgent.com/VU
