

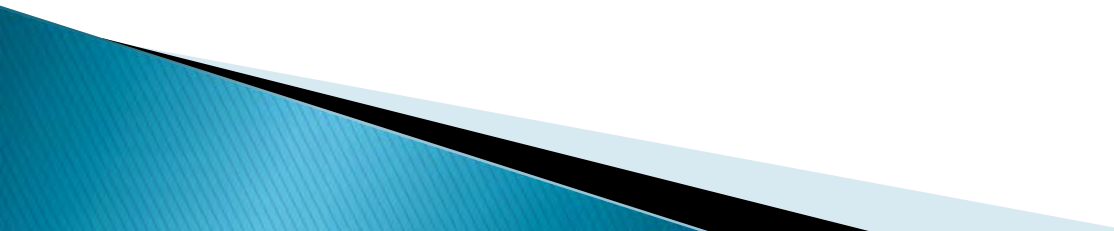
# RPPTL Insurance and Surety Committee

## An Overview and Discussion of Commercial General Liability Insurance

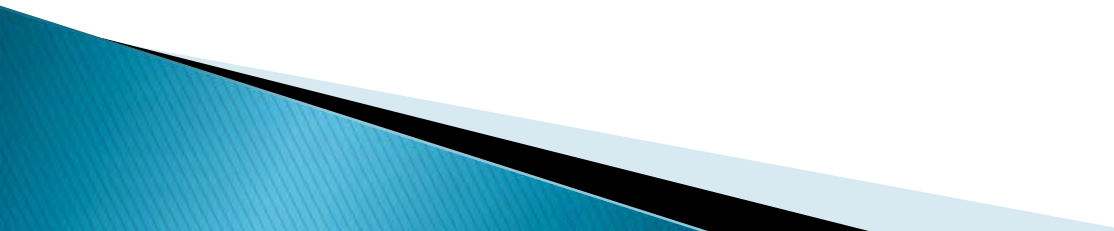
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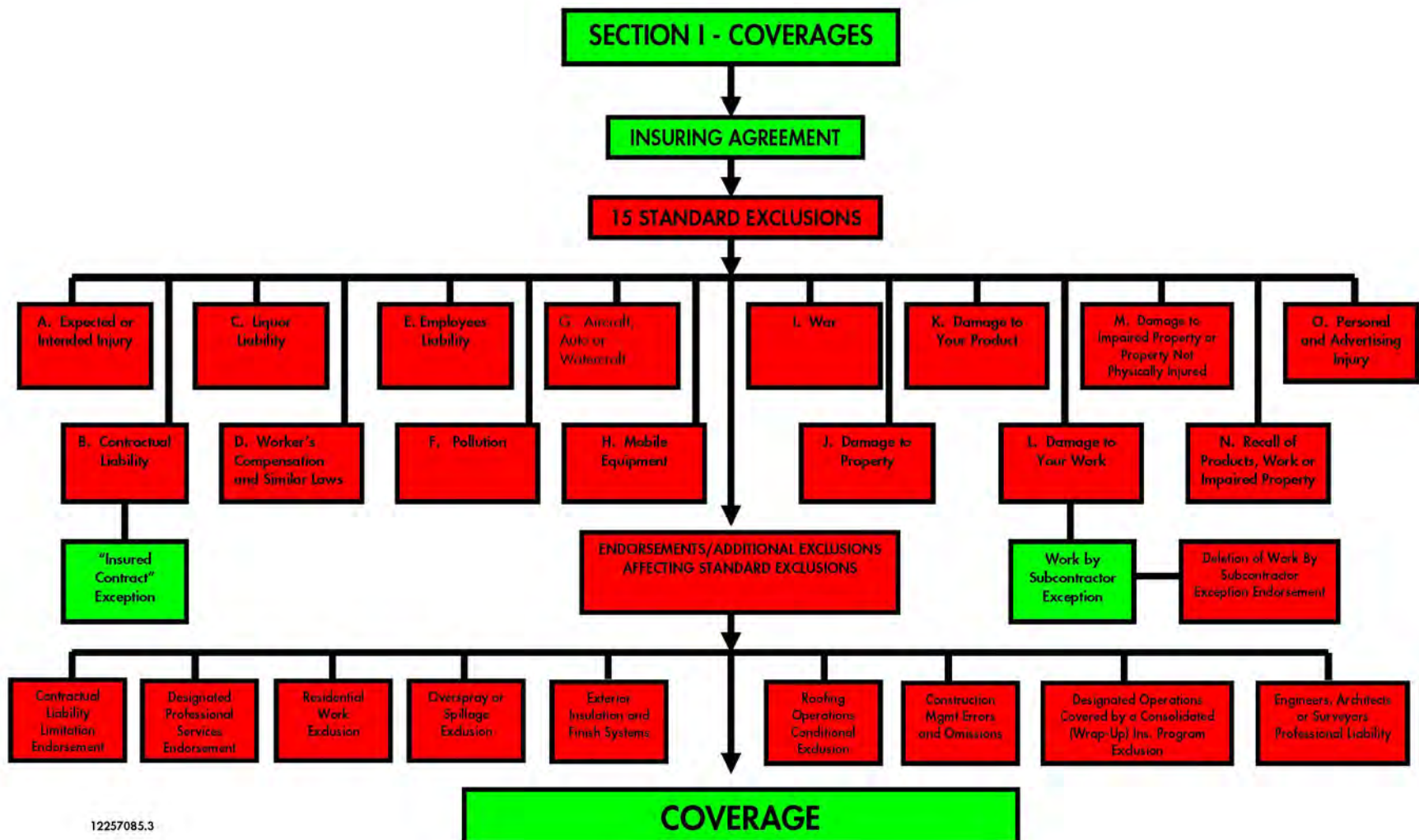
# Primary Types Of Insurance

- ▶ Commercial General Liability (CGL)
  - ▶ Professional Liability
  - ▶ Builder's Risk
  - ▶ WRAP, OCIP and CCIP
- 

# CGL Policy

- ▶ Typically a standard ISO policy
  - ▶ Duty to defend vs. duty to indemnify
  - ▶ Chapter 558 Notices Trigger Duty to Defend
  - ▶ Contains standard exclusions
  - ▶ Be aware of new endorsements
  - ▶ Be aware of Additional Insured endorsements
- 

# ▶ Structure Of The CGL Policy – The Path To Coverage



## COMMERCIAL GENERAL LIABILITY COVERAGE FORM

Various provisions in this policy restrict coverage. Read the entire policy carefully to determine rights, duties and what is and is not covered.

Throughout this policy the words "you" and "your" refer to the Named Insured shown in the Declarations, and any other person or organization qualified as a Named Insured under this policy. The words "we", "us" and "our" refer to the company providing this insurance.

The word "insured" means any person or organization qualifying as such under Section II – Who Is An Insured.

Other words and phrases that appear in quotation marks have special meaning. Refer to Section III – Definitions.

### SECTION I – COVERAGES

#### COVERAGE A BODILY INJURY AND PROPERTY DAMAGE LIABILITY

##### 1. Insuring Agreement

- 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. We will have the right and duty to defend the insured against any "suit" seeking those damages. However, we will have no duty to defend the insured against any "suit" seeking damages for "bodily injury" or "property damage" to which this insurance does not apply. We may, at our discretion, investigate any "occurrence" and settle any claim or "suit" that may result. But:

- (1) The amount we will pay for damages is limited as described in Section III – Limits Of Insurance; and
- (2) Our right and duty to defend ends when we have used up the applicable limit of insurance in the payment of judgments or settlements under Coverages A or B or medical expenses under Coverage C.

No other obligation or liability to pay sums or perform acts or services is covered unless explicitly provided for under Supplementary Payments – Coverages A and B.

## 1. Insuring Agreement

- 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

- c. "Bodily injury" or "property damage" which occurs during the policy period and was not, prior to the policy period, known to have occurred by any insured listed under Paragraph 1. of Section II – Who Is An Insured or any "employee" authorized by you to give or receive notice of an "occurrence" or claim, includes any continuation, change or resumption of that "bodily injury" or "property damage" after the end of the policy period.
- d. "Bodily injury" or "property damage" will be deemed to have been known to have occurred at the earliest time when any insured listed under Paragraph 1. of Section II – Who Is An Insured or any "employee" authorized by you to give or receive notice of an "occurrence" or claim:
- (1) Reports all, or any part, of the "bodily injury" or "property damage" to us or any other insurer;
  - (2) Receives a written or verbal demand or claim for damages because of the "bodily injury" or "property damage"; or
  - (3) Becomes aware by any other means that "bodily injury" or "property damage" has occurred or has begun to occur.

# Duty to Defend

- ▶ Controlled by the allegations in the complaint. *Pennsylvania Lumbermen's Mutual Ins. Co. v. Indiana Lumbermen's Mutual Ins. Co.*, 43 So. 3d 182 (Fla. 4<sup>th</sup> DCA 2010)
- ▶ Insurer has duty to defend even if only some of the allegations come within the coverage of the policy, at least until the covered claims are eliminated from the law suit. *SM Brickell Limited Partnership v. St. Paul Fire & Marine Ins. Co.* 786 So.2d 1204 (Fla. 3rd DCA 2001)



# Chapter 558 Notices

- ▶ Altman Contractors, Inc. v. Crum & Forster Specialty Insurance Company, Case No. SC16-1420 (Fla. Dec. 14, 2017)
  - Answering certified question from 11<sup>th</sup> Circuit
  - Chapter 558 Pre-Suit Notice Constitutes a “suit” within the meaning of Altman’s CGL Policy

# Trigger of Coverage

- ▶ Four Trigger of Coverage Theories
  - Exposure
  - Manifestation
  - Continuous Trigger
  - Injury-In-Fact



# Exposure Theory

- ▶ Property damage occurs upon installation of the defective product

# Manifestation Theory

- ▶ Property damage occurs at the time the damage manifests itself or is discovered

# Continuous Trigger Theory

- ▶ Defines property damage as occurring continuously from time of installation until the time of discovery

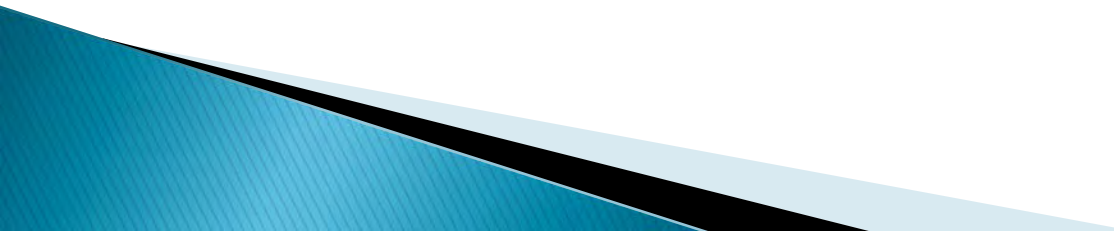
# Injury-In-Fact Theory

- ▶ Coverage is triggered when the property damage underlying the claim actually occurs

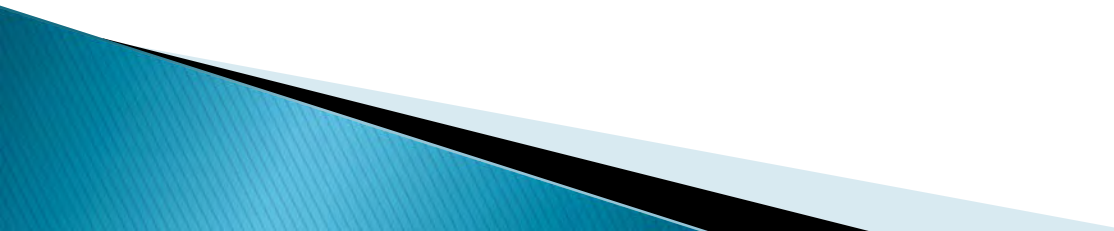
# Federal Courts Applying Florida Law Use Injury-In-Fact Theory

- ▶ *Carithers v. Mid-Continent Casualty Company*, 782 F.3d 1240 (11<sup>th</sup> Cir. 2015)
  - Limited to facts of the case where it was undisputed that damage actually occurred during the policy period.
  - The court expressed no opinion on what the trigger should be where it is difficult (if not impossible) to determine when the property damage occurred.

# 15 Standard Exclusions


- ▶ 2.a. – Expected or Intended Injury
  - ▶ 2.b. – Contractual Liability
  - ▶ 2.c. – Liquor Liability
  - ▶ 2.d. – Worker's Compensation
  - ▶ 2.e. – Employer's Liability
  - ▶ 2.f. – Pollution
  - ▶ 2.g. – Aircraft, Auto or Watercraft
  - ▶ 2.h. – Mobile Equipment
- 

# 15 Standard Exclusions

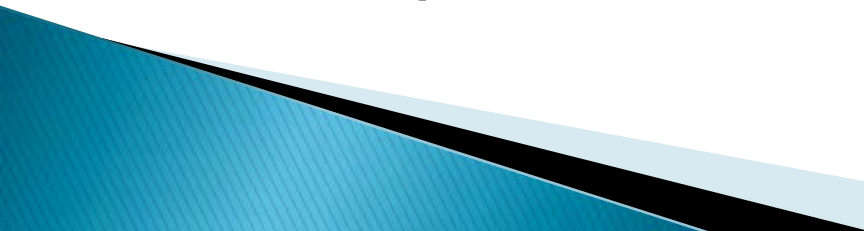
- ▶ 2.i. – War
  - ▶ 2.j. – Damage To Property
  - ▶ 2.k. – Damage To Your Product
  - ▶ 2.l. – Damage To Your Work
  - ▶ 2.m.– Damage To Impaired Property Or Property Not Physically Injured
  - ▶ 2.n. – Recall Of Products, Work Or Impaired Property
  - ▶ 2.o. – Personal And Advertising Injury
- 



# Exclusionary Endorsements

- ▶ Contractual Liability Limitation Endorsement
  - ▶ Exclusion 2.1. Endorsement – Damage to your work
  - ▶ Products–Completed Operations Hazard Exclusion
  - ▶ Residential Work Exclusion
  - ▶ Overspray or Spillage Exclusion
  - ▶ Roofing Operations Conditional Exclusions
  - ▶ Total Pollution Exclusion
  - ▶ Designated Professional Services Exclusion
- 

# Exclusionary Endorsements (cont.)

- ▶ Designated Operations Covered by a Consolidated (Wrap-Up) Insurance Program – Exclusion
  - ▶ Exterior Insulation and Finish Systems Exclusion
  - ▶ Construction Management Errors and Omissions Exclusion
  - ▶ Engineers, Architects or Surveyors Professional Liability Exclusion
- 

# Exclusion 2.b.(2)

## Contractual Liability

- ▶ “This insurance does not apply to **Contractual Liability....**”
- ▶ “This exclusion does not apply to liability for damages:

\* \* \*

(2) Assumed in a contract or agreement that is an “insured contract”....

- e. Damages because of "bodily injury" include damages claimed by any person or organization for care, loss of services or death resulting at any time from the "bodily injury".

## 2. Exclusions

This insurance does not apply to:

### a. Expected Or Intended Injury

"Bodily injury" or "property damage" expected or intended from the standpoint of the insured. This exclusion does not apply to "bodily injury" resulting from the use of reasonable force to protect persons or property.

### b. Contractual Liability

"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. Solely for the purposes of liability assumed in an "insured contract", reasonable attorney fees and necessary litigation expenses incurred by or for a party other than an insured are deemed to be damages because of "bodily injury" or "property damage", provided:
  - (a) Liability to such party for, or for the cost of, that party's defense has also been assumed in the same "insured contract"; and
  - (b) Such attorney fees and litigation expenses are for defense of that party against a civil or alternative dispute resolution proceeding in which damages to which this insurance applies are alleged.

### c. Liquor Liability

"Bodily injury" or "property damage" for which any insured may be held liable by reason of:

- (1) Causing or contributing to the intoxication of any person;
- (2) The furnishing of alcoholic beverages to a person under the legal drinking age or under the influence of alcohol; or
- (3) Any statute, ordinance or regulation relating to the sale, gift, distribution or use of alcoholic beverages.

This exclusion applies only if you are in the business of manufacturing, distributing, selling, serving or furnishing alcoholic beverages.

### d. Workers' Compensation And Similar Laws

Any obligation of the insured under a workers' compensation, disability benefits or unemployment compensation law or any similar law.

### e. Employer's Liability

"Bodily injury" to:

- (1) An "employee" of the insured arising out of and in the course of:
  - (a) Employment by the insured; or
  - (b) Performing duties related to the conduct of the insured's business; or
- (2) The spouse, child, parent, brother or sister of that "employee" as a consequence of Paragraph (1) above.

This exclusion applies:

- (1) Whether the insured may be liable as an employer or in any other capacity; and
- (2) To any obligation to share damages with or repay someone else who must pay damages because of the injury.

This exclusion does not apply to liability assumed by the insured under an "insured contract".

3. "Bodily injury" means bodily injury, sickness or disease sustained by a person, including death resulting from any of these at any time.
4. "Coverage territory" means:
- a. The United States of America (including its territories and possessions), Puerto Rico and Canada;
  - b. International waters or airspace, but only if the injury or damage occurs in the course of travel or transportation between any places included in a. above; or
  - c. All other parts of the world if the injury or damage arises out of:
    - (1) Goods or products made or sold by you in the territory described in a. above;
    - (2) The activities of a person whose home is in the territory described in a. above, but is away for a short time on your business; or
    - (3) "Personal and advertising injury" offenses that take place through the Internet or similar electronic means of communicationprovided the insured's responsibility to pay damages is determined in a "suit" on the merits, in the territory described in a. above or in a settlement we agree to.
5. "Employee" includes a "leased worker". "Employee" does not include a "temporary worker".
6. "Executive officer" means a person holding any of the officer positions created by your charter, constitution, by-laws or any other similar governing document.
7. "Hostile fire" means one which becomes uncontrollable or breaks out from where it was intended to be.
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:
- a. The repair, replacement, adjustment or removal of "your product" or "your work"; or
  - b. Your fulfilling the terms of the contract or agreement.

9. "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;
- 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. Tort liability means a liability that would be imposed by law in the absence of any contract or agreement.

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, roadbeds, tunnel, underpass or crossing;
- (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.



# Change in Definition of Insured Contract

9. *"Insured contract" means (definitions a through e are purposely left off for this example)*

*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. Tort liability means a liability that would be imposed by law in the absence of any contract or agreement.*

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*"property damage" to a third person or organization, provided the "bodily injury" or "property damage" is caused, in whole or in part, by you or by those acting on your behalf. Tort liability means a liability that would be imposed by law in the absence of any*

*contract or agreement. cause of the injury or damage;*

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# Contractual Liability Limitation Endorsement

- ▶ Deletes definitional language contained in Section V – 9.f.
- ▶ Results in redefining “Insured Contract” so that it does not include indemnification provisions.



# Change in Definition of Insured Contract

COMMERCIAL GENERAL LIABILITY

**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

## **CONTRACTUAL LIABILITY LIMITATION**

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART  
PRODUCTS/COMPLETED OPERATIONS LIABILITY COVERAGE PART

The definition of "insured contract" in the DEFINITIONS Section is replaced by the following:

"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.

# Groundbreaking Case on Contractual Liability Exclusion

- ▶ *Ewing Construction Co. v. Amerisure Ins. Co.*, No. 12–0661 (Tex. Jan. 17, 2014)
  - Ewing hired to build tennis courts for school district
  - Post construction, courts started cracking
  - School District sued for breach of contract and negligence
  - Amerisure denied coverage because:
    - (1) every contractor, as a matter of law, assumes in its contract a duty to perform its work in a good and workmanlike manner;
    - (2) the CGL policy excludes liability assumed in a contract.

# Texas Supreme Court

- ▶ No, because the liability imposed by operation of law, the duty to perform a contract in a workmanlike manner, is not really an obligation “assumed” by the contractor in the sense required by the exclusion.

# "YOUR WORK" Exclusion in Standard ISO Policy

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

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 7 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.

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.

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".

**k. Damage To Your Product**

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

**l. 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 damage work or the work out of which the damage arises was performed on your behalf by a subcontractor.

**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.

**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";

## 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.

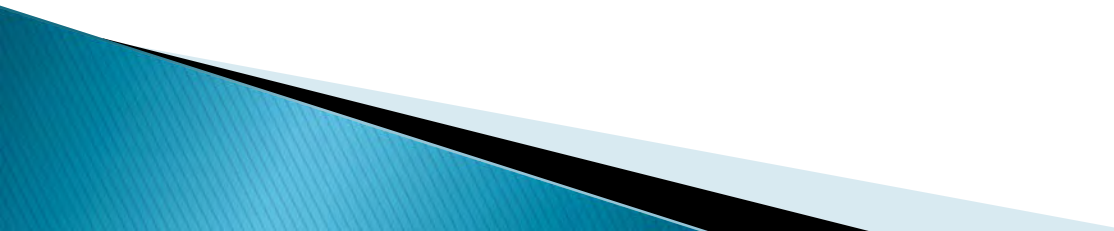
against any "suit" seeking those damages. However, we will have no duty to defend the insured against any "suit" seeking damages for "personal and advertising injury" to which this insurance does not apply. We may, at our discretion, investigate any offense and settle any claim or "suit" that may result. But:

- (1) The amount we will pay for damages is limited as described in Section III - Limits Of Insurance; and
- (2) Our right and duty to defend end when we have used up the applicable limit of insurance in the payment of judgments or settlements under Coverages A or B or medical expenses under Coverage C.

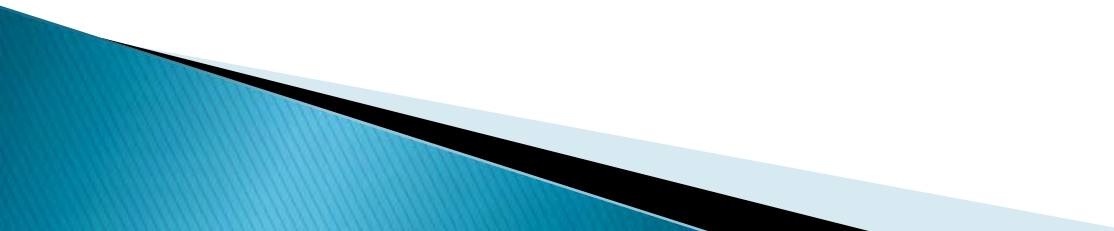
# Four Significant Cases

- ▶ *U.S. Fire Ins. Co. v. J.S.U.B., Inc.*, 979 So.2d 871 (Fla. 2007)
- ▶ *Auto-Owners Insurance Company v. Pozzi Window Co.*, 984 So.2d 1241 (Fla. 2008)
- ▶ *Amerisure Mut. Ins. v. Auchter Co.*, 673 F.3d 11<sup>th</sup> Cir. 2012)
- ▶ *Carithers v. Mid-Continent Casualty Company*, 782 F.3d 1240 11<sup>th</sup> Cir. 2015)

# *U.S. Fire Ins. Co. v. J.S.U.B., Inc.*

- ▶ Subcontractor's faulty workmanship caused damage to the general contractor's work
    - Subcontractor used poor soil and improper soil compaction and testing
    - Caused damage to foundations, drywall, and other interior portions of the homes
    - Damage appeared after completion of the project and delivery of the homes
- 

# *U.S. Fire Ins. Co. v. J.S.U.B., Inc.*

- ▶ **Issue:** “Whether a post-1986 standard form commercial general liability policy with products-completed operations hazard coverage, issued to a general contractor, provides coverage for damage to the completed project caused by a subcontractor’s defective work.”
  - ▶ **Brief Answer:** Yes!
- 



# *Auto-Owners Insurance Company v. Pozzi Window Company*

## ▶ Facts

- After moving into the house, the owner complained of water leaking around the windows, which was caused by defective installation of the windows.
- Insurance company paid for the consequent interior damage, but refused to pay for the replacement of the windows

# *Auto-Owners Insurance Company v. Pozzi Window Company*

## ▶ **Certified Question:**

“DOES A STANDARD FORM COMPPREHENSIVE GENERAL LIABILITY PRODUCT COMPLETED OPERATIONS HAZARD COVERAGE, SUCH AS THE POLICIES DESCRIBED HERE, ISSUED TO A GENERAL CONTRACTOR, COVER THE GENERAL CONTRACTOR’S LIABILITY TO A THIRD PARTY FOR THE COSTS OF REPAIR OR REPLACEMENT OF DEFECTIVE WORK BY ITS SUBCONTRACTOR?”

## ▶ **Brief Answer: Depends!**



# Answer To Certified Question

- ▶ “If the windows were purchased by the Homeowner and were *not* defective before being installed, coverage would exist for the cost of repair or replacement of the windows... However, a different result would follow if the windows *were* defective prior to being installed....”

# *Auto-Owners Insurance Company v. Pozzi Window Company*

## ▶ Analysis:

- Because the subcontractor's defective installation of the windows caused damage to the non-defective windows there was "property damage" under the terms of the CGL policies.
- Accordingly, there is coverage for the costs of repair and replacement of the windows.

# *Amerisure Mut. Ins. v. Auchter Co.,* 673 F.3d 1294 (11<sup>th</sup> Cir. 2012)

## ► Facts

- Roof tiles were delivered to project and paid for by Owner.
- Subcontractor installed roofing substrate and tiles.
- Storm blew off a small portion of the tiles.
- Due to the interlocking nature of the tiles, the entire roof had to be replaced.
- No “other property” damage other than to the tiles and substrate.
- Arbitrator found in favor of Owner for \$2.1 million for general contractor’s breach of contract.

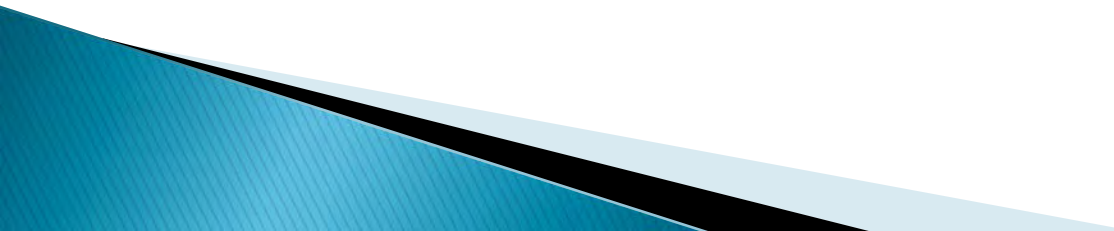
# *Amerisure Mut. Ins. v. Auchter Co.,* 673 F.3d 1294 (11<sup>th</sup> Cir. 2012)

- Analysis

- Under Florida law, unless defective component results in physical injury to some other tangible property (other than the component itself), there is no coverage under a post-1986 CGL Policy with products-completed operations coverage.
- Fact that Owner purchased the tiles separately was irrelevant – – tiles were part of the component – – i.e., the roof.
- The Owner was not entitled to a new roof because most of the tiles were not damaged. Owner's claim was for correcting subcontractor's defective work, not damage to "other property."

# *Carithers v. Mid-Continent Casualty Company, 782 F.3d 1240 11<sup>th</sup> Cir. 2015)*

## ► Facts:

- Incorrect application of exterior brick coating caused property damage to the brick.
  - The use of inadequate adhesive and an inadequate base in the installation of tile caused property damage to the tile.
  - Incorrect construction of a balcony, which allowed water to seep into the ceilings and walls of the garage leading to wood rot, caused property damage to the garage.
- 



*Carithers v. Mid-Continent Casualty Company*, 782 F.3d 1240 11<sup>th</sup> Cir. 2015)

- ▶ Bound by *Auchter* decision, so defects must be viewed from the perspective of a component
  - No coverage for damaged brick
  - No coverage for damaged tile
  - BUT there is coverage for the balcony because it had to be rebuilt in order to repair the garage

# Insurance Industry's Response

- ▶ Modify the language of Exclusion 2.I. to delete the “exception to the exclusion” language

**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

**EXCLUSION – DAMAGE TO WORK PERFORMED BY  
SUBCONTRACTORS ON YOUR BEHALF**

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

Exclusion I. of **Section I – Coverage A – Bodily Injury And Property Damage Liability** is replaced by the following:

**2. Exclusions**

This insurance does not apply to:

**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".



CG 21 04 11 85

## EXCLUSION—PRODUCTS-COMPLETED OPERATIONS HAZARD

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

This insurance does not apply to "bodily injury" or "property damage" included within the "products-completed operations hazard".

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# Products–Completed Operations Hazard Limiting Endorsement

- ▶ Imposes tremendous risk on the insured and the indemnitees of the insured
- ▶ Could impact scope of Additional Insured Coverage

ENDORSEMENT No. 11

This endorsement, effective 12:01 AM: [REDACTED]

Forms a part of policy no: [REDACTED]

Issued to: [REDACTED]

By: [REDACTED]

Commercial Umbrella Liability Policy with CrisisResponse<sup>SM</sup>

**Residential Construction Operations Exclusion**

This policy is amended as follows:

**Section V. EXCLUSIONS** is amended to include the following additional exclusion:

**Residential Construction Operations**

This insurance does not apply to any liability arising out of **Residential Construction Operations**. This exclusion applies whether or not the **Residential Construction Operations** have been completed or are ongoing.

**Section VII. DEFINITIONS** is amended to include the following additional definition:

**Residential Construction Operations** means any activity by or on behalf of any Insured, in any capacity, regarding, related to, or in support of, any construction of residential premises including, but not limited to, detached single family houses, attached single family houses or multiple unit residential structures, whether as condominiums, cooperatives, rental apartments, interval ownership dwellings, fee simple ownership or in any other form.

All other terms, definitions, conditions and exclusions of this policy remain unchanged.

[REDACTED]

[REDACTED]

[REDACTED]

## COMMERCIAL GENERAL LIABILITY

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

### EXCLUSION — OVERSPRAY OR SPILLAGE

This endorsement modifies insurance provided under the following:

#### COMMERCIAL GENERAL LIABILITY COVERAGE PART

The following exclusion is added to COVERAGE A (Section I):

This insurance does not apply to "property damage" caused by spraying, spillage, leakage or any form of application of hot tar, paint, foam or other liquefied substances.

All other Terms and Conditions of this Policy remain unchanged.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

#### ROOFING OPERATIONS CONDITIONAL EXCLUSION

This endorsement modifies insurance provided under the following:

#### COMMERCIAL GENERAL LIABILITY COVERAGE PART

The following exclusion is added to COVERAGE A (Section I):

This insurance does not apply to "property damage" for roofing operations conducted by you or arising out of operations performed for you or on your behalf by any independent contractor or sub-contractor unless the following conditions are met:

- (1) You or independent contractors or sub-contractors performing roofing operations have taken "appropriate" steps to determine any approaching adverse weather.
- (2) You or independent contractors or sub-contractors performing roofing operations have taken "appropriate" steps to provide a temporary cover for an "open roof", able to withstand the normal elements; and
- (3) The cover must be put in place if the roof is to be left unattended for more than four hours.

The following additional definitions apply:

"appropriate" means conduct or action customarily taken or used by contractors in the same field to protect or prevent damage under similar circumstances.

"open roof" means any roof or section where the protective covering (shingles, tar, felt paper, etc.) has been removed leaving exposed the underlying materials, structure shell or structure interior.

All other Terms and Conditions of the Policy remain unchanged.



# Total Pollution Exclusion

- ▶ ALMOST EVERYTHING IS CONSIDERED A POLLUTANT
  - AMMONIA SPILL FROM BLUEPRINT MACHINE
  - LEAD IN PAINT
  - FUMES FROM ROOFING MATERIAL
  - OFF-GASING OF SULFURIC ACID FROM CHINESE DRYWALL
- ▶ MAY BE DISTINCTION BETWEEN ONGOING AND COMPLETED OPERATIONS

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

**TOTAL POLLUTION EXCLUSION ENDORSEMENT**

This endorsement modifies insurance provided under the following:

**COMMERCIAL GENERAL LIABILITY COVERAGE PART**

Exclusion L under Paragraph 2., Exclusions of Section 1 - Coverage A - Bodily Injury And Property Damage Liability is replaced by the following:

This insurance does not apply to:

**f. Pollution**

- (1) "Bodily injury" or "property damage" which would not have occurred in whole or part but for the actual, alleged or threatened discharge, dispersal, seepage, migration, release or escape of "pollutants" at any time.
- (2) Any loss, cost or expense arising out of any:

(a) Request, demand, order or statutory or regulatory requirement that any insured or others test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to, or assess the effects of "pollutants"; or

(b) Claim or suit by or on behalf of a governmental authority for damages because of testing for, monitoring, cleaning up, removing, containing, treating, detoxifying or neutralizing, or in any way responding to, or assessing the effects of, "pollutants".

# Designated Professional Services Exclusion

9TH REPRINT  
AUGUST 2010

COMMERCIAL LIABILITY  
CGL—ENDORSEMENTS

CG 21 16 07 98

## EXCLUSION—DESIGNATED PROFESSIONAL SERVICES

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

### SCHEDULE

#### Description Of Professional Services:

- 1.
- 2.
- 3.

(If no entry appears above, information required to complete this endorsement will be shown in the Declarations as applicable to this endorsement.)

With respect to any professional services shown in the Schedule, the following exclusion is added to Paragraph 2., Exclusions of Section I—Coverage A—Bodily Injury And Property Damage Liability and Paragraph 2., Exclusions of Section I—Coverage B—Personal And Advertising Injury Liability:

This insurance does not apply to "bodily injury", "property damage" or "personal and advertising injury" due to the rendering of or failure to render any professional service.

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CG 21 17

# Designated Operations Covered by a Consolidated (Wrap-Up) Insurance Program Exclusion (cont.)

CG 21 54 01 96

## **EXCLUSION—DESIGNATED OPERATIONS COVERED BY A CONSOLIDATED (WRAP-UP) INSURANCE PROGRAM (cont.)**

The following exclusion is added to paragraph 2., Exclusions of COVERAGE A—BODILY INJURY AND PROPERTY DAMAGE LIABILITY (Section I—Coverages):

This insurance does not apply to "bodily injury" or "property damage" arising out of either your ongoing operations or operations included within the "products-completed operations hazard" at the location described in the Schedule of this endorsement, as a consolidated (wrap-up) insurance program has been provided by the prime contractor/project manager or owner of the construction project in which you are involved.

This exclusion applies whether or not the consolidated (wrap-up) insurance program:

- (1) Provides coverage identical to that provided by this Coverage Part;
- (2) Has limits adequate to cover all claims; or
- (3) Remains in effect.

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CG 21 55

# Designated Operations Covered by a Consolidated (Wrap-Up) Insurance Program Limited Exclusion

CG 21 31 05 09

## LIMITED EXCLUSION – DESIGNATED OPERATIONS COVERED BY A CONSOLIDATED (WRAP-UP) INSURANCE PROGRAM

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART  
SCHEDULE

Description And Location Of Operation(s):

Information required to complete this Schedule, if not shown above, will be shown in the Declarations.

The following exclusion is added to Paragraph 2. Exclusions of Section I – Coverage A – Bodily Injury And Property Damage Liability:

This insurance does not apply to "bodily injury" or "property damage" arising out of either your ongoing operations or operations included within the "products-completed operations hazard" at the location described in the Schedule of this endorsement, as a consolidated (wrap-up) insurance program has been provided by the prime contractor/project manager or owner of the construction project in which you are involved.

This exclusion applies whether or not the consolidated (wrap-up) insurance program:

- (1) Provides coverage identical to that provided by this Coverage Part; or
- (2) Has limits adequate to cover all claims.

This exclusion does not apply if the consolidated (wrap-up) insurance program covering your operations described in the Schedule has been cancelled, non-renewed or otherwise no longer applies for reasons other than the exhaustion of all available limits, whether such limits are available on a primary, excess or on any other basis. You must advise us of such cancellation, nonrenewal or termination as soon as practicable.

© Insurance Services Office, Inc., 2008

# Exterior Insulation and Finish Systems Exclusion

CG 21 86 12 04

## EXCLUSION – EXTERIOR INSULATION AND FINISH SYSTEMS

This endorsement modifies insurance provided under the following:

### COMMERCIAL GENERAL LIABILITY COVERAGE PART

- A.** This insurance does not apply to "bodily injury", "property damage" or "personal and advertising injury" arising out of, caused by, or attributable to, whether in whole or in part, the following:
1. The design, manufacture, construction, fabrication, preparation, distribution and sale, installation, application, maintenance or repair, including remodeling, service, correction or replacement, of any "exterior insulation and finish system" or any part thereof, or any substantially similar system or any part thereof, including the application or use of conditioners, primers, accessories, flashings, coatings, caulking or sealants in connection with such a system; or
  2. "Your product" or "your work" with respect to any exterior component, fixture or feature of any structure if an "exterior insulation and finish system", or any substantially similar system, is used on the part of that structure containing that component, fixture or feature.
- B.** The following definition is added to the **Definitions** Section:
- "Exterior insulation and finish system" means a non-load bearing exterior cladding or finish system, and all component parts therein, used on any part of any structure, and consisting of:
1. A rigid or semi-rigid insulation board made of expanded polystyrene and other materials;
  2. The adhesive and/or mechanical fasteners used to attach the insulation board to the substrate;
  3. A reinforced or unreinforced base coat;
  4. A finish coat providing surface texture to which color may be added; and
  5. Any flashing, caulking or sealant used with the system for any purpose.

© ISO Properties, Inc., 2003



# Construction Management Errors and Omissions Exclusion

CG 22 34 07 98

## EXCLUSION—CONSTRUCTION MANAGEMENT ERRORS AND OMISSIONS

This endorsement modifies insurance provided under the following:

### COMMERCIAL GENERAL LIABILITY COVERAGE PART

The following exclusion is added to Paragraph 2., Exclusions of Section I—Coverage A—Bodily Injury And Property Damage Liability and Paragraph 2., Exclusions of Section I—Coverage B—Personal And Advertising Injury Liability:

This insurance does not apply to "bodily injury", "property damage" or "personal and advertising injury" arising out of:

1. The preparing, approving, or failure to prepare or approve, maps, shop drawings, opinions, reports, surveys, field orders, change orders or drawings and specifications by any architect, engineer

or surveyor performing services on a project on which you serve as construction manager; or

2. Inspection, supervision, quality control, architectural or engineering activities done by or for you on a project on which you serve as construction manager.

This exclusion does not apply to "bodily injury" or "property damage" due to construction or demolition work done by you, your "employees" or your subcontractors.

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CG 22 36



# Engineers, Architects or Surveyors Professional Liability

CG 22 43 07 98

## **EXCLUSION—ENGINEERS, ARCHITECTS OR SURVEYORS PROFESSIONAL LIABILITY**

This endorsement modifies insurance provided under the following:

### **COMMERCIAL GENERAL LIABILITY COVERAGE PART**

The following exclusion is added to Paragraph 2., Exclusions of Section I—Coverage A—Bodily Injury And Property Damage Liability and Paragraph 2., Exclusions of Section I—Coverage B—Personal And Advertising Injury Liability:

This insurance does not apply to "bodily injury", "property damage" or "personal and advertising injury" arising out of the rendering of or failure to render any professional services by you or any engineer, architect or surveyor

who is either employed by you or performing work on your behalf in such capacity.

Professional services include:

1. The preparing, approving, or failing to prepare or approve, maps, shop drawings, opinions, reports, surveys, field orders, change orders or drawings and specifications; and
2. Supervisory, inspection, architectural or engineering activities.

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# Practice Point

- ▶ Know the Endorsements and Exclusions that impact your Client's work

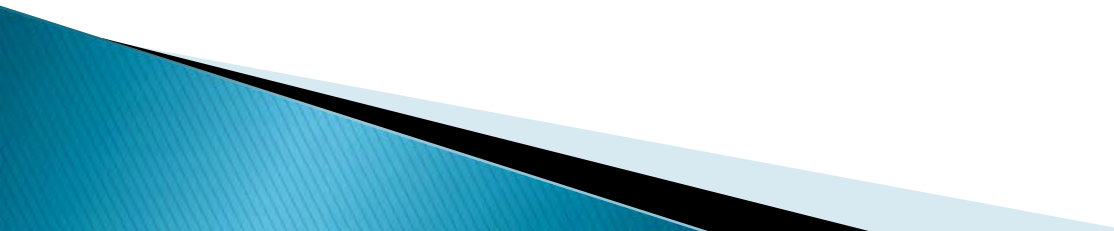
# Concurrent Cause Doctrine

- ▶ Sebo v. American Home Assurance, 2016 WL 7013850 (Fla. Dec. 1, 2016)
  - “[w]hen independent perils converge and no single cause can be considered the sole or approximate cause, it is appropriate to apply the concurring cause doctrine.”

# Who Should be Named as an Additional Insured?

- ▶ OWNERS
- ▶ GENERAL CONTRACTORS
- ▶ SUBCONTRACTORS IF THEY HAVE LOWER-TIER SUBCONTRACTORS ON PROJECT

# WHY BE NAMED AS AN ADDITIONAL INSURED?

- ▶ Obtain the same benefit as the insured with respect to defense of suit and coverage issues
  - ▶ Assure that indemnification-type obligations are funded
    - Broad Form
    - Intermediate Form
    - Limited Form
- 

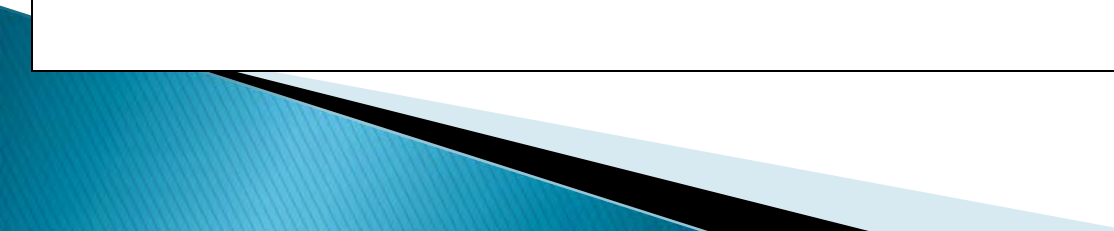
# Indemnification Continuum

Common Law Indemnification  
(Indemnitee 100% faultless)

Intermediate Form  
("in whole or in part" by Indemnitor)

Limited Form  
(to the extent of Indemnitor's  
negligence)

Broad Form  
("in whole or in part by  
Indemnitee" i.e., sole negligence  
of indemnitee)



# Old Additional Insured Endorsements

- ▶ MUST OBTAIN ENDORSEMENT BECAUSE CERTIFICATE OF INSURANCE NOT BINDING
- ▶ COMPLETED OPERATIONS/BROAD FORM INDEMNIFICATION
  - CG 2010 11 85
  - CG 2037 10 01
- ▶ ONGOING OPERATIONS/BROAD FORM INDEMNIFICATION
  - CG 2010 10 01



## ISO CG 20 10 Ed. 10-85

### ADDITIONAL INSURED -- OWNERS, LESSEES OR CONTRACTORS (FORM B)

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART.

**WHO IS AN INSURED (Section II) is amended to include as an insured the person or organization shown in the Schedule, but only with respect to liability arising out of "your work" for that insured by or for you.**

(If no entry appears above, information required to complete this endorsement will be shown in the Declarations as applicable to this endorsement.)

WHO IS AN INSURED (Section II) is amended to include as an insured the person or organization shown in the Schedule, but only with respect to liability arising out of "your work" for that insured by or for you.

Copyright, Insurance Services Office, Inc., 1984

CG 20 37 10 01

**ADDITIONAL INSURED – OWNERS, LESSEES OR  
CONTRACTORS – COMPLETED OPERATIONS**

This endorsement modifies insurance provided under the following:

**COMMERCIAL GENERAL LIABILITY COVERAGE PART**

**SCHEDULE**

**Name of Person or Organization:**

**Location And Description of Completed Operations:**

**Additional Premium:**

(If no entry appears above, information required to complete this endorsement will be shown in the Declarations as applicable to this endorsement.)

**Section II – Who Is An Insured** is amended to include as an insured the person or organization shown in the Schedule, but only with respect to liability arising out of "your work" at the location designated and described in the schedule of this endorsement performed for that insured and included in the "products-completed operations hazard".

CG 20 37 10 01

Copyright ISO Properties, Inc., 2000

While ISO did separate the Additional Insured wordings, the 1985 version of the CG 20 10 was still widely available for larger contractors from many carriers. Those carriers which no longer

Work

**Section II – Who Is An Insured** is amended to include as an insured the person or organization shown in the Schedule, but only with respect to liability arising out of "your work" at the location designated and described in the schedule of this endorsement performed for that insured and included in the "products-completed operations hazard".

A. Section II – Who Is An Insured is amended to include as an insured the person or organization shown in the Schedule, but only with respect to liability arising out of your ongoing operations performed for that insured.

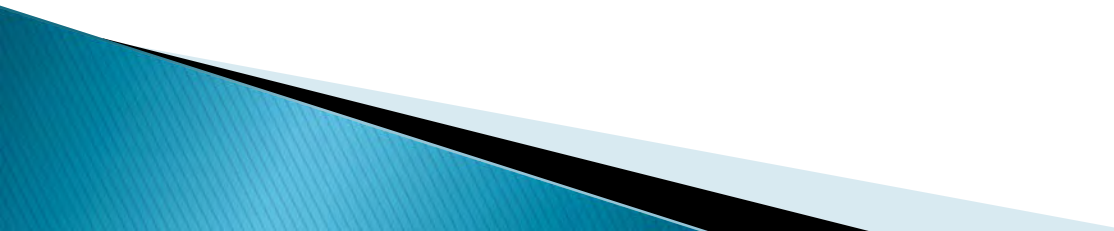
B. With respect to the insurance afforded to these additional insureds, the following exclusion is added:

## 2. Exclusions

This insurance does not apply to "bodily injury" or "property damage" occurring after:

- (1) All work, including materials, parts or equipment furnished in connection with such work, on the project (other than service, maintenance or repairs) to be performed by or on behalf of the additional insured(s) at the site of the covered operations has been completed; or
- (2) That portion of "your work" out of which the injury or damage arises has been put to its intended use by any person or organization other than another contractor or subcontractor engaged in performing operations for a principal as a part of the same project.

# 2004 Additional Insured Endorsements

- ▶ COMPLETED OPERATIONS/INTERMEDIATE FORM INDEMNIFICATION
    - CG 20 37 07 04
  - ▶ ONGOING OPERATIONS/INTERMEDIATE FORM INDEMNIFICATION
    - CG 20 10 07 04
- 



**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

## **ADDITIONAL INSURED – OWNERS, LESSEES OR CONTRACTORS – COMPLETED OPERATIONS**

This endorsement modifies insurance provided under the following:

**Section II – Who Is An Insured is amended to include as an additional insured the person(s) or organization(s) shown in the Schedule, but only with respect to liability for “bodily injury” or “property damage” caused, in whole or in part, by “your work” at the location designated and described in the schedule of this endorsement performed for that additional insured and included in the “products completed operations hazard”.**

Information required to complete this Schedule, if not shown above, will be shown in the Declarations.

Section II – Who Is An Insured is amended to include as an additional insured the person(s) or organization(s) shown in the Schedule, but only with respect to liability for “bodily injury” or “property damage” caused, in whole or in part, by “your work” at the location designated and described in the schedule of this endorsement performed for that additional insured and included in the “products completed operations hazard”.

20 10 ed. 07 04:

*Construction Practice*

The new ISO additional insured endorsement (editions effective 07/04), seek to narrow the intent in a similar fashion as the definition of Insured Contracts discussed earlier. The wordings are intended to only address liability caused "in whole or in part" by the acts of the named insured or omission or the acts or omissions of those acting on its behalf". In contrast to the old CG 20 10 11 85, this can have a big impact on the breadth of coverage available to the additional insured as sole negligence (and potentially, joint negligence of both parties) will not be covered by these endorsements.

*The new*

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This endorsement  
under the  
COMMER  
COVERAGE  
SCHEDULE

Name Of Additional Insured Person(s)

these additional insureds, the following  
additional exclusions

in the performance of your ongoing operations  
for the additional insured(s) at the location(s)  
designated above.

include as an additional insured the person(s) or  
organization(s) shown in the Schedule, but only  
with respect to liability for "bodily injury",  
"property damage" or "personal and advertising  
injury" caused, in whole or in part, by:

1. Your acts or omissions; or
2. The acts or omissions of those acting  
on your behalf;

# 2013 Additional Insured Endorsements

- ▶ COMPLETED OPERATIONS–  
INTERMEDIATE/LIMITED/OTHER? FORM  
INDEMNIFICATION
  - CG 20 37 04 13
- ▶ ONGOING OPERATIONS–  
INTERMEDIATE/LIMITED/OTHER? FORM  
INDEMNIFICATION
  - CG 20 10 04 13



THIS ENDORSEMENT CHANGES THE

**ADDITIONAL INSURED  
CONTRACTORS – C**

This endorsement modifies insurance provided under

COMMERCIAL GENERAL LIABILITY COVERAGE  
PRODUCTS/COMPLETED OPERATIONS LIABILITY

Name Of Additional Insured Person(s) Or Organization(s)	Location And Description Of Completed Operations
Any person or organization whom you have agreed to include as an additional insured under a written contract, provided such contract was executed prior to the date of loss.	All locations as required by contract.
Information required to complete this Schedule, if not	

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, but only with respect to liability for "bodily injury" or "property damage" caused, in whole or in part, by "your work" at the location designated and described in the Schedule of this endorsement performed for that additional insured and included in the "products-completed operations hazard".

However:

1. The insurance afforded to such additional insured only applies to the extent permitted by law; and
2. If coverage provided to the additional insured is required by a contract or agreement, the insurance afforded to such additional insured will not be broader than that which you are required by the contract or agreement to provide for such additional insured.

**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, but only with respect to liability for "bodily injury" or "property damage" caused, in whole or in part, by "your work" at the location designated and described in the Schedule of this endorsement performed for that additional insured and included in the "products-completed operations hazard".

**1. The insurance afforded to such additional insured only applies to the extent permitted by law; and**

**2. If coverage provided to the additional insured is required by a contract or agreement, the insurance afforded to such additional insured will not be broader than that which you are required by the contract or agreement to provide for such additional insured.**

amount of insurance:

1. Required by the contract or agreement; or

**If coverage provided to the additional insured is required by a contract or agreement, the most we will pay on behalf of the additional insured is the amount of insurance:**

- 1. Required by the contract or agreement; or**
  - 2. Available under the applicable Limits of Insurance shown in the Declarations;**
- whichever is less.**

THIS ENDORS

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This endorsement modifi

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**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, but only with respect to liability for "bodily injury", "property damage" or "personal and advertising injury" **caused, in whole or in part, by:**

1. Your acts or omissions; or
2. 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) designated above.

Applicable Limits of  
Declarations;

not increase the  
amount shown in the

Name Of Additional Insured(s)	Location(s) Of Covered Operations
Any Owner, Lessee or Contractor whom you have agreed to include as an additional insured in a written contract, provided prior to the date of loss.	All locations as required by contract

1. The insurance afforded to such additional insured only applies **to the extent permitted by law; and**

Information required to co

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, but only with respect to liability for "bodily injury", "property damage" or "personal and advertising injury" caused, in whole or in part,

1. Your acts or omissions;
2. 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) designated above.

However:

1. The insurance afforded to such additional insured only applies to the extent permitted by law; and
2. If coverage provided to the additional insured is required by a contract or agreement, the insurance afforded to such additional insured will not be broader than that which you are required by the contract or agreement to provide for such additional insured.

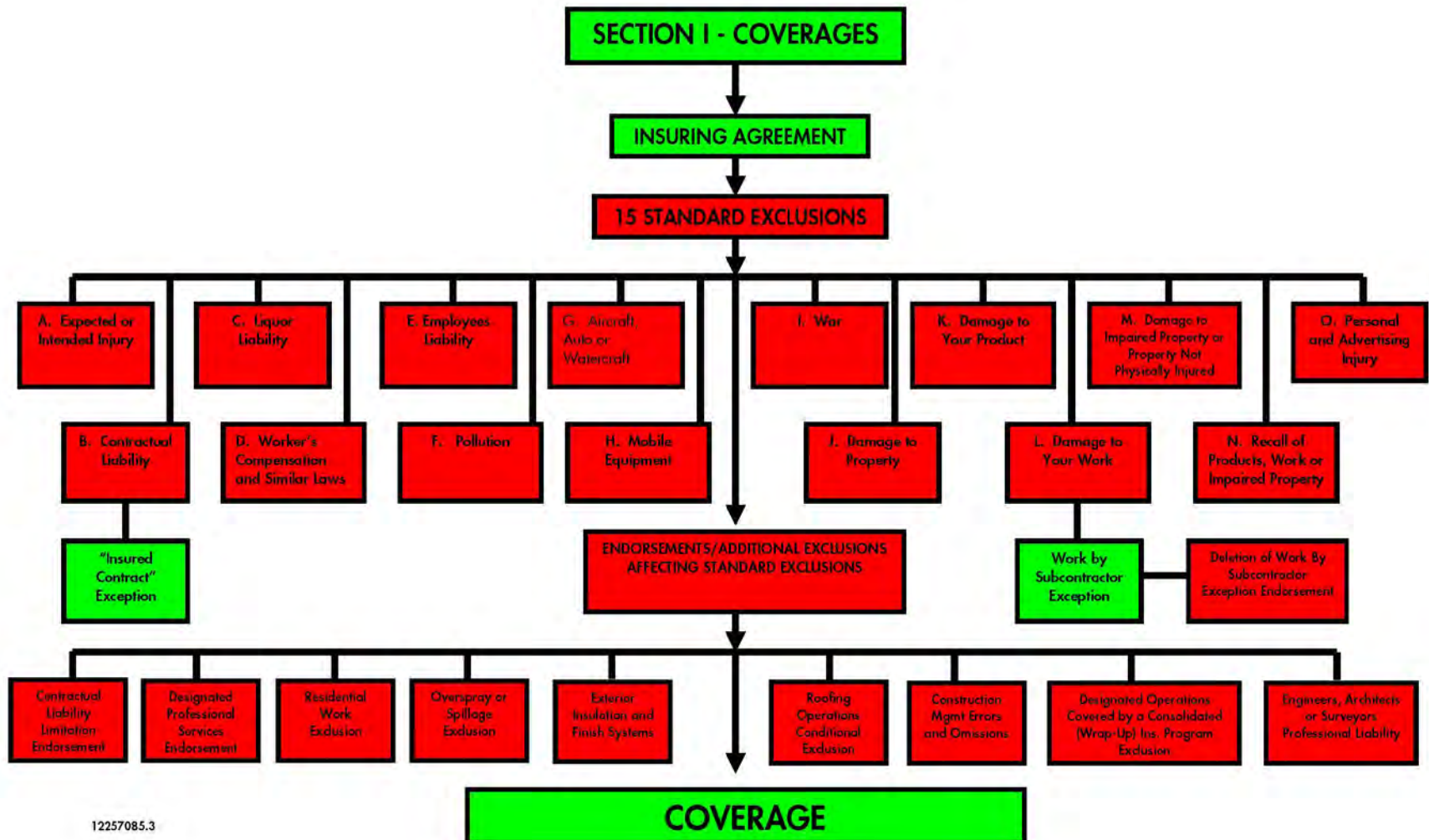
2. That portion of "your work" out of which the

If coverage provided to the additional insured is required by a contract or agreement, **the most we will pay on behalf of the additional insured is the amount of insurance:**

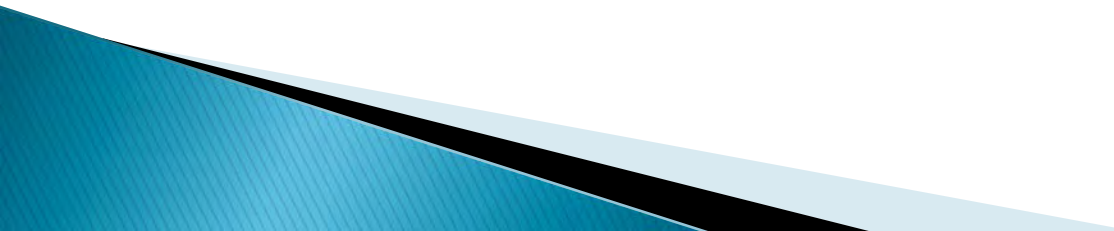
1. **Required by the contract or agreement; or**
2. **Available under the applicable Limits of Insurance shown in the Declarations; whichever is less.**



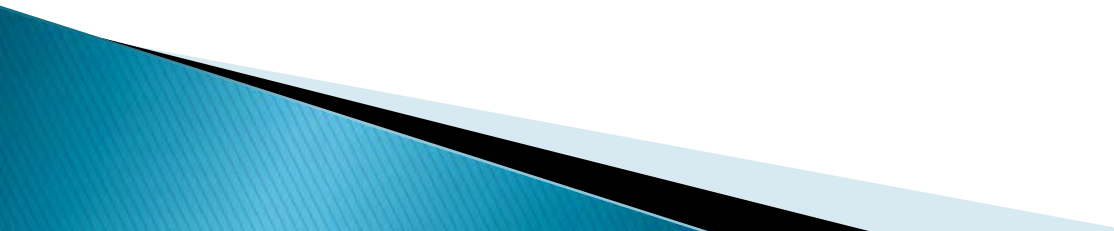
# Structure Of The CGL Policy – The Path To Coverage Can Be Frustrating If You Are Stopped By An Exclusion



# WRAP, OCIP AND CCIP INSURANCE

- ▶ Policy obtained to insure most of the project participants – owner, general contractor and subcontractors
    - General Liability
    - Workers Compensation
    - Property Coverage
    - Builders Risk
- 

# Disadvantages

- ▶ Coverage typically ceases when the project is completed
  - ▶ High deductibles
  - ▶ High administrative costs
  - ▶ Contractors' CGL Policies may have exclusions for projects that are covered by Wrap, OCIP or CCIP policies, resulting in uninsured exposure from completion through the 10-year statute of repose
- 

# Public Projects Are Governed By Section 255.0517, Fla. Stat.

- ▶ Estimated total cost of Project is:
  - \$75 million or more
  - \$30 million or more, if for construction or renovation of two or more public schools during a fiscal year
  - \$10 million or more if for one public school
- ▶ Program maintains completed operations coverage, if commercially reasonable, but for no less than 10 years



# Public Projects Are Governed By Section 255.0517, Fla. Stat.

- ▶ Program cannot prohibit contractor from purchasing additional insurance
- ▶ The deductible cannot exceed \$1 million per occurrence
- ▶ Public body responsible for deductible
- ▶ Exemptions
  - FDOT Projects
  - OCIPs issued before October 1, 2004; or
  - Public Projects advertised before October 1, 2004

**Thank you**