

# Insurance Provisions in Commercial Contracts

July 21, 2015

Presented By:  
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BRADLEY ARANT  
BOULT CUMMINGS  
LLP

# Contract Insurance & Indemnity Provisions Reallocate Risk

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# Today's Presentation

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- **Discuss contractual allocation of risk between parties and their insurers**
- **Examples of successful risk allocation and unsuccessful risk allocation**
- **Three steps to successful risk allocation**
  - Deliberate
  - Designate
  - Document

# Risk Allocation Step 1

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- **Deliberate – identify the risk**
  - Type of risk determines relevant coverage
    - Bodily injury or property damage = CGL
    - Financial loss = professional liability or E&O
  - Amount of risk
    - What is the potential financial exposure?
  - Availability of existing insurance program to address the risk

# Risk Allocation Step 2

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- **Designate the placement of the risk**
  - Different risks with different parties or insurers
  - Risks typically with party in best position to control risk
  - Insurance typically runs with the risk

# Risk Allocation Step 2 (cont.)

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- **Which portion of risk should be insured?**
  - Type
  - Amount (consider limits, sublimits, SIRs, deductibles)
- **All risks need not be insured through contract**
  - Role of parties' existing insurance programs
- **Not all risks can be insured**
  - Deliberate wrongdoing, e.g., is not insurable

# Risk Allocation Step 3

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- **Document**
  - Contractual terms and conditions
  - Proof of counterparty's insurance

# Potential Gaps In Coverage

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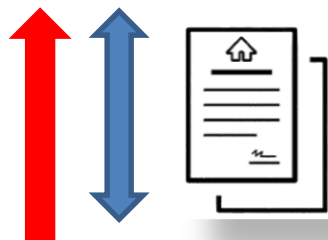


# Unsuccessful Risk Allocation

## Valley Crest

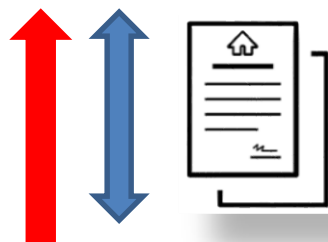


Regis (Owner)



Defense &  
indemnity by  
contract

Valley Crest (GC)



Mission Pools (Sub)

Regis =  
Additional Insured



CGL with  
National Union



# Unsuccessful Risk Allocation

## Valley Crest Accident

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2001: Project Completed



2007: Diving Accident

*Epps v. Valley Crest*



Tender to Mission Pools



Mission Pools 2001-  
2004 CGL Policy  
“Cancelled”



# Unsuccessful Risk Allocation

## Valley Crest Settlement

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- **Regis paid Epps \$4.5 million**
- **Valley Crest paid \$50,000**
  - \$20,000 to Epps
  - \$30,000 to Regis
- **Mission Pools paid \$200,000**
  - \$130,000 to Epps
  - \$70,000 to Regis

# Unsuccessful Risk Allocation

## Valley Crest Defense Costs

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- Valley Crest: \$200,000 to defend Regis
- Valley Crest: \$400,000 to defend itself
- Valley Crest paid first \$250,000 under its own CGL's SIR
- National Union paid \$400,000
  - \$50,000 paid to Epps and Regis
  - \$350,000 in defense costs
- Regis responsible for \$4.4 million

# Unsuccessful Risk Allocation Valley Crest Litigation

*Epps v. Valley Crest*



National Union



*Valley Crest v. Mission Pools*



Assumes Defense  
Under  
Valley Crest  
Policy



*National Union v. Mission Pools*

# Unsuccessful Risk Allocation

## Valley Crest Litigation

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- **Trial Court**

- \$400,000 to National Union under equitable subrogation
- \$250,000 to Mission Pools under express indemnity

- **Appellate Court**

- Upheld equitable subrogation
- Reversed for jury trial on express indemnity claim

# Unsuccessful Risk Allocation

## Valley Crest Lessons Learned

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- **Dispute may have been avoided if Mission Pools had CGL coverage in place**
  - Policy was cancelled prior to injury
    - Cancelled in 2004
    - Injury in 2007
    - Query whether contract required notice of cancellation
- **No waiver of subrogation precluding suit by National Union**

# **Avoid Valley Crest Risk Allocation Steps 1 and 2**

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- **Determine Risk**
- **Designate Risk Allocation**

# Allocate Risk Through Waiver of Subrogation

POLICY NUMBER:

COMMERCIAL GENERAL LIABILITY  
CG 29 88 10 93

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

## **WAIVER OF TRANSFER OF RIGHTS OF RECOVERY AGAINST OTHERS TO US**

This endorsement modifies insurance provided under the following:

OWNERS AND CONTRACTORS PROTECTIVE LIABILITY COVERAGE PART

### **SCHEDULE**

**Name of Person or Organization:**

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

The TRANSFER OF RIGHTS OF RECOVERY AGAINST OTHERS TO US Condition (Section IV) is amended by the addition of the following:

We waive any rights of recovery we may have against the person or organization shown in the Schedule above because of payments we make for "bodily injury" or "property damage" arising out of your ongoing operations. This waiver applies only to the person or organization shown in the Schedule above.

We waive any rights of recovery we may have against the person or organization shown in the Schedule above because of payments we make for "bodily injury" or "property damage" arising out of your ongoing operations. This waiver applies only to the person or organization shown in the Schedule above.

# Allocate Risks to Appropriate Policy

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- **Bodily Injury and Property Damage**
  - Not arising out of professional services = CGL
  - Arising out of professional services = professional liability or errors & omission
- **Financial Losses**
  - Professional services
  - Errors & omission

# CGI Coverage for Bodily Injury and Property Damage

COMMERCIAL GENERAL LIABILITY  
CG 00 01 04 13

## 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 qualifying 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 V – 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.

- b. This insurance applies to "bodily injury" and "property damage" only if:

- (1) The "bodily injury" or "property damage" is caused by an "occurrence" that takes place in the "coverage territory";

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

- (3) Prior to the policy period, no insured listed under Paragraph 1. of Section II – Who Is

An Insured by you to "occurrence injury" or "in whole or in part" or authorize policy per "property continuation" "bodily injury" or after the have been

- c. "Bodily injury" occurs during prior to the occurred by Paragraph 1. c or any "employ receive notice includes any resumption of damage" after

- d. "Bodily injury" deemed to have at the earliest under Paragraph Insured or any give or receive claim:

- (1) Reports all, or "property insurer,

- (2) Receives 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.

- 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".

## 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

# Occurrence Form

## 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 such damages.

we will have the right and duty to defend the insured against any "suit" seeking damages because of "bodily injury" or "property damage" to which this insurance applies.

against any "suit" seeking damages because of "bodily injury" or "property damage" to which this insurance does not apply. We reserve the right, in our discretion, to investigate any "occurrence" and to settle any claim or "suit" that may result.

(1) The amount we will pay for damages shall be limited as described in Section II – Limits of Insurance; and

(2) Our right and duty to defend does not extend to any suit in which the insured has 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.

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

(1) The "bodily injury" or "property damage" is caused by an "occurrence" that takes place in the "coverage territory";

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

(1) The "bodily injury" or "property damage" is caused by an "occurrence" that takes place in the "coverage territory";

(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.

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) The "bodily injury" or "property damage" occurs during the policy period; and

(3) Prior to the policy period, no insured listed under Paragraph 1. of Section II – Who Is An Insured and no "employee" authorized by you to give or receive notice of an "occurrence" or claim, knew that the "bodily injury" or "property damage" had occurred, in whole or in part. If such a listed insured

# Claims-Made Form

COMMERCIAL GENERAL LIABILITY  
CG 00 02 12 07

## COMMERCIAL GENERAL LIABILITY COVERAGE FORM

COVERAGES A AND B PROVIDE  
CLAIMS-MADE COVERAGE  
PLEASE READ THE ENTIRE FORM CAREFULLY

Various provisions in this policy restrict coverage. Read the entire policy carefully to duties and what is and is not covered. b. This insurance applies to "bodily injury" and

Throughout this policy the words refer to the Named Insured shown in and any other person or organization Named Insured under this policy. "us" and "our" refer to the Company insurance.

The word "insured" means any person qualifying as such under Section I insured.

Other words and phrases that appear in quotation marks have special meaning. Refer to Section VI – 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. We will have

Paragraph c. below, during the policy period or any Extended Reporting Period we provide under Section V – Extended Reporting Periods.

c. A claim by a person or organization seeking damages will be deemed to have been made at the earlier of the following times:

- (1) When notice of such claim is received and recorded by any insured or by us, whichever comes first; or
- (2) When we make settlement in accordance with Paragraph a. above.

All claims for damages because of "bodily injury" to the same person, including damages claimed by any person or organization for care, loss of services, or death resulting at any time from the "bodily injury", will be deemed to have been made at the time the first of those claims is made against any insured.

All claims for damages because of "property damage" causing loss to the same person or organization will be deemed to have been made at the time the first of those claims is made against any insured.

##### 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. 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" did not occur before the Retroactive Date, if any, shown in the Declarations or after the end of the policy period; and
- (3) A claim for damages because of the "bodily injury" or "property damage" is first made against any insured, in accordance with Paragraph c. below, during the policy period or any Extended Reporting Period we provide under Section V – Extended Reporting Periods.

# CGL – Completed Operations

COMMERCIAL GENERAL LIABILITY  
CG 00 37 04 13

## PRODUCTS/COMPLETED OPERATIONS 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 qualifying 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 – V Insured.

Other words and phrases that appear in marks have special meaning. Refer to SI Definitions.

### SECTION I – COVERAGES PRODUCTS/COMPLETED OPERATIONS

#### 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" included within the "products-completed operations hazard" 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.

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

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

- (1) The "bodily injury" or "property damage" is caused by an "occurrence" that takes place in the "coverage territory";
- (2) The "bodily injury" or "property damage" occurs during the policy period; and

## 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" included within the "products-completed operations hazard" to which this insurance applies. We will have the right and duty to

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.

# Allocate Risk Arising out of Professional Services - PL



MISCELLANEOUS PROFESSIONAL LIABILITY  
MP 71 00 02 00

## MISCELLANEOUS PROFESSIONAL LIABILITY INSURANCE COVERAGE FORM

THIS IS A CLAIMS MADE POLICY WITH DEFENSE EXPENSES INCLUDED IN THE LIMIT OF LIABILITY. PLEASE READ AND REVIEW THE POLICY CAREFULLY.

In consideration of the payment of the premium, and in reliance on all statements made and information furnished to the Company identified in the Declarations (hereinafter the Insurer), including the Application, and subject to all of the terms, conditions and limitations of all of the provisions of this Policy, the Insurer and the Insureds agree as follows:

### I. INSURING AGREEMENT

The Insurer shall pay on behalf of the Insured Loss resulting from a Claim first made against the Insured during the Policy Period or, if applicable, the Optional Extension Period, for a Wrongful Act.

### II. DEFINITIONS

#### I. INSURING AGREEMENT

- (A) "A" The Insurer shall pay on behalf of the Insured Loss resulting from a Claim first made against the Insured during the Policy Period or, if applicable, the Optional Extension Period, for a Wrongful Act.

which shall be retained on file by the Insurer and shall be deemed to be physically attached to this Policy.

- (B) "Claim" means:

- (1) any civil proceeding in a court of law or equity, or arbitration;
- (2) any criminal proceeding which is commenced by the return of an indictment;
- (3) any written notice received by an Insured that any person or entity intends to hold any Insured responsible for a Wrongful Act, or
- (4) a formal administrative regulatory proceeding or formal investigation of an Insured which is commenced by the filing or issuance of a notice of charges, formal investigative order or similar document identifying in writing such Insured as a person or entity against whom a proceeding as described in (B)(1) or (2) above may be commenced.

- (C) "Defense Expenses" means reasonable legal fees and expenses incurred in the defense of any Claim including the premium for an appeal bond, attachment bond or similar bond but will not include applying for or furnishing such bond. Defense Expenses will not include the Insured's overhead expenses or any salaries, wages, fees, or benefits of any Insured.

- (D) "Insured" means:

- (1) any natural person who was, is or shall become a director, officer, employee, partner or member of the Board of Managers of the Insured Entity, but only while such person was, is or shall be acting within the scope of his or her duties as such;
- (2) the lawful spouse of any natural person set forth in the above provisions of this definition, but only to the extent the spouse is a party to any Claim solely in their capacity as a spouse of such persons and only for the purposes of any Claim seeking damages recoverable from marital community property, property jointly held by any such person and spouse, or property transferred from any such person to the spouse, and

# Allocate Risk Arising out of Professional Services – E&O



## SAMPLE POLICY

### REAL ESTATE LICENSEES ERRORS AND OMISSIONS POLICY

#### NOTICE

THIS INSURANCE IS WRITTEN ON A CLAIMS-MADE AND REPORTED BASIS. EXCEPT TO SUCH EXTENT AS MAY OTHERWISE BE PROVIDED HEREIN, COVERAGE UNDER THIS MASTER POLICY IS LIMITED TO LIABILITY ONLY FOR THOSE CLAIMS THAT ARE FIRST MADE AGAINST THE INSURED AND REPORTED TO THE COMPANY DURING THE INDIVIDUAL POLICY PERIOD OR ANY APPLICABLE EXTENDED REPORTING PERIOD. NO COVERAGE EXISTS FOR CLAIMS FIRST MADE AGAINST THE INSURED BEFORE THE BEGINNING OR AFTER THE END OF THE INDIVIDUAL POLICY PERIOD. PLEASE REVIEW THIS MASTER POLICY CAREFULLY AND DISCUSS THIS COVERAGE WITH YOUR INSURANCE AGENT OR BROKER.

#### INSURING AGREEMENT

##### I. COVERAGE

The Company will pay on behalf of the Insured Damages in excess of the Deductible as a result of a Claim

which the  
(including  
against the  
Individual:

- A. sui
- be
- B. pri
- an
- Or

The Com  
this policy  
Claim, or  
necessar

of the rights of the Insured in the choice of arbitrators or mediators and in the conduct of any arbitration or mediation proceeding. The Company has no duty to defend any Claim not covered by this policy.

The Company will not settle any Claim without the consent of the Insured, which consent shall not be unreasonably withheld. If the Company recommends a settlement to the Insured which is agreeable to the claimant and the Insured does not agree to settle, the Company's Limits of Liability are reduced to the total amount for which the Claim could have been settled. The maximum amount the Company will pay in the event of any later settlement or judgment is the amount for which the Claim could have been settled plus the amount of Claim Expenses incurred up to the time the Company made the recommendation.

##### II. LIMITS OF LIABILITY

The Company's Limits of Liability for the Licensee are as set forth in the Declarations. The Limits of Liability are excess of the Deductible. All other persons or organizations included under the definition of Insured share such Limits of Liability with the Licensee. The Limits of Liability apply regardless of the number of Claims made or the number of persons or organizations making Claims against the Insured. If Related Claims are subsequently made against the Insured and reported to the Company during this group policy or any renewal of this group policy, all such Related Claims, whenever made shall be considered a single Claim first made and reported to the Company within the Individual Policy Period in which the earliest of the Related Claims was first made and reported to the Company. If a Claim involves coverage issued to two or more Licensees, the amount paid by the Company on behalf of all Insureds under each Licensee's coverage, shall be prorated in relationship to the amount awarded against each such Insured, but in no event shall that amount paid by the Company for all Insureds under each Licensee's coverage exceed the per Licensee Limits of Liability shown on the Declarations.

- A. Subject to paragraphs B. through G. below, the Company's Limit of Liability for Damages for each



# Claims-Made Professional Liability



MISCELLANEOUS PROFESSIONAL LIABILITY  
MP 71 00 02 00

## MISCELLANEOUS PROFESSIONAL LIABILITY INSURANCE COVERAGE FORM

THIS IS A CLAIMS MADE POLICY WITH DEFENSE EXPENSES INCLUDED IN THE LIMIT OF LIABILITY. PLEASE READ AND REVIEW THE POLICY CAREFULLY.

In consideration of the payment of the premium, and in reliance on all statements made and information furnished to the Company identified in the Declarations (hereinafter the Insurer), including the Application, and subject to all of the terms, conditions and limitations of all of the provisions of this Policy, the Insurer and the Insureds agree as follows:

### I. INSURING AGREEMENT

The Insurer shall pay on behalf of the Insured Loss resulting from a Claim first made against the Insured during the Policy Period or, if applicable, the Optional Extension Period, for a Wrongful Act.

### II. DEFINITIONS

#### I. INSURING AGREEMENT

- (A) "A" The Insurer shall pay on behalf of the Insured Loss resulting from a Claim first made against the Insured during the Policy Period or, if applicable, the Optional Extension Period, for a Wrongful Act.

which shall be retained on file by the Insurer and shall be deemed to be physically attached to this Policy.

- (B) "Claim" means:

- (1) any civil proceeding in a court of law or equity, or arbitration;
- (2) any criminal proceeding which is commenced by the return of an indictment;
- (3) any written notice received by an Insured that any person or entity intends to hold any Insured responsible for a Wrongful Act, or
- (4) a formal administrative regulatory proceeding or formal investigation of an Insured which is commenced by the filing or issuance of a notice of charges, formal investigative order or similar document identifying in writing such Insured as a person or entity against whom a proceeding as described in (B)(1) or (2) above may be commenced.

- (C) "Defense Expenses" means reasonable legal fees and expenses incurred in the defense of any Claim including the premium for an appeal bond, attachment bond or similar bond but will not include applying for or furnishing such bond. Defense Expenses will not include the Insured's overhead expenses or any salaries, wages, fees, or benefits of any Insured.

- (D) "Insured" means:

- (1) any natural person who was, is or shall become a director, officer, employee, partner or member of the Board of Managers of the Insured Entity, but only while such person was, is or shall be acting within the scope of his or her duties as such;
- (2) the lawful spouse of any natural person set forth in the above provisions of this definition, but only to the extent the spouse is a party to any Claim solely in their capacity as a spouse of such persons and only for the purposes of any Claim seeking damages recoverable from marital community property, property jointly held by any such person and spouse, or property transferred from any such person to the spouse, and



# Potential Gap in Professional Liability

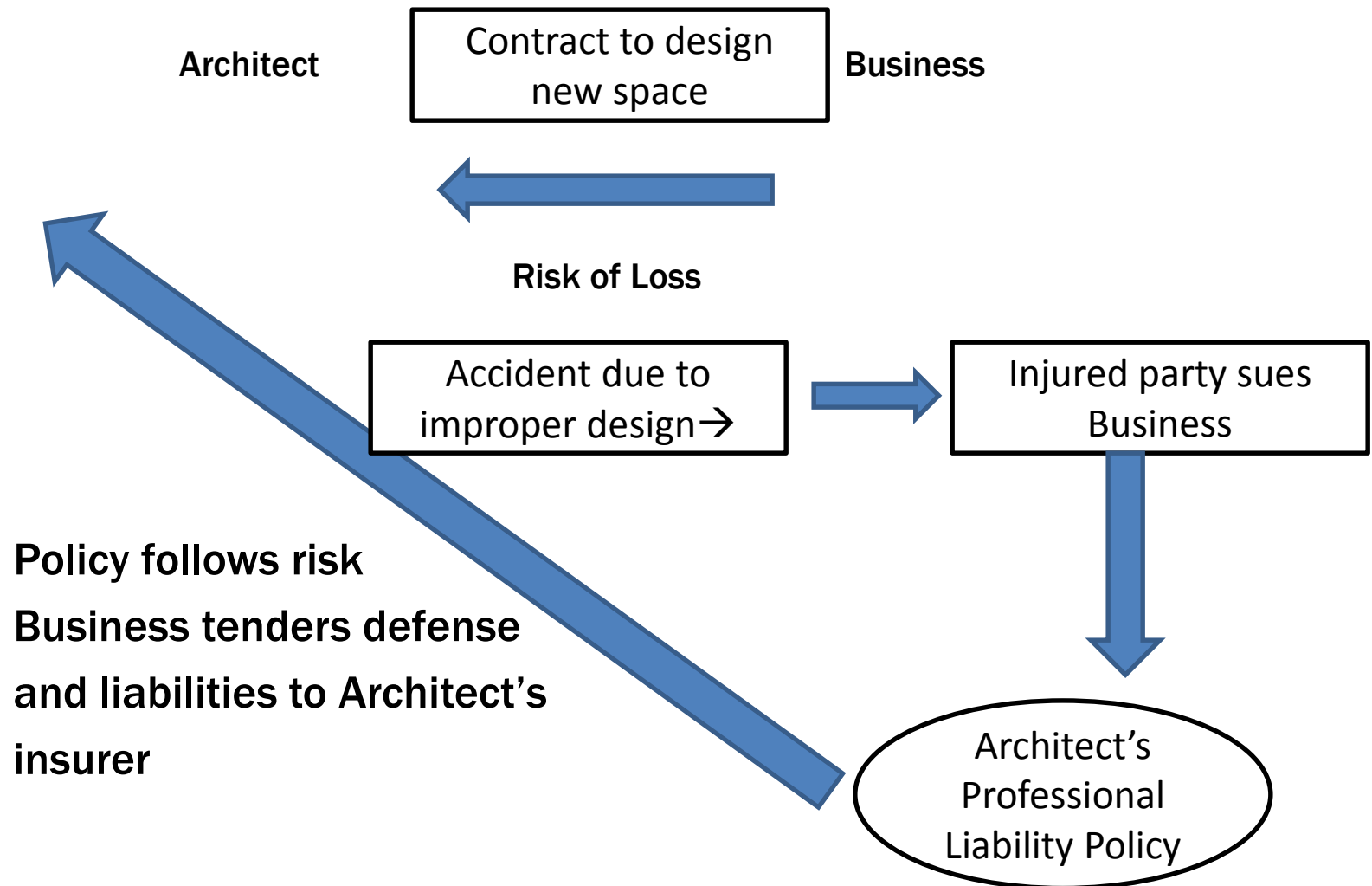
## Policy A

- “all sums in excess of any applicable Self-Insured Retention that the Insured is legally obligated to pay as Damages or Claim Expenses because of a Claim for an actual or alleged negligent act, error or omission in the rendering of Professional Services . . . .”

## Policy B

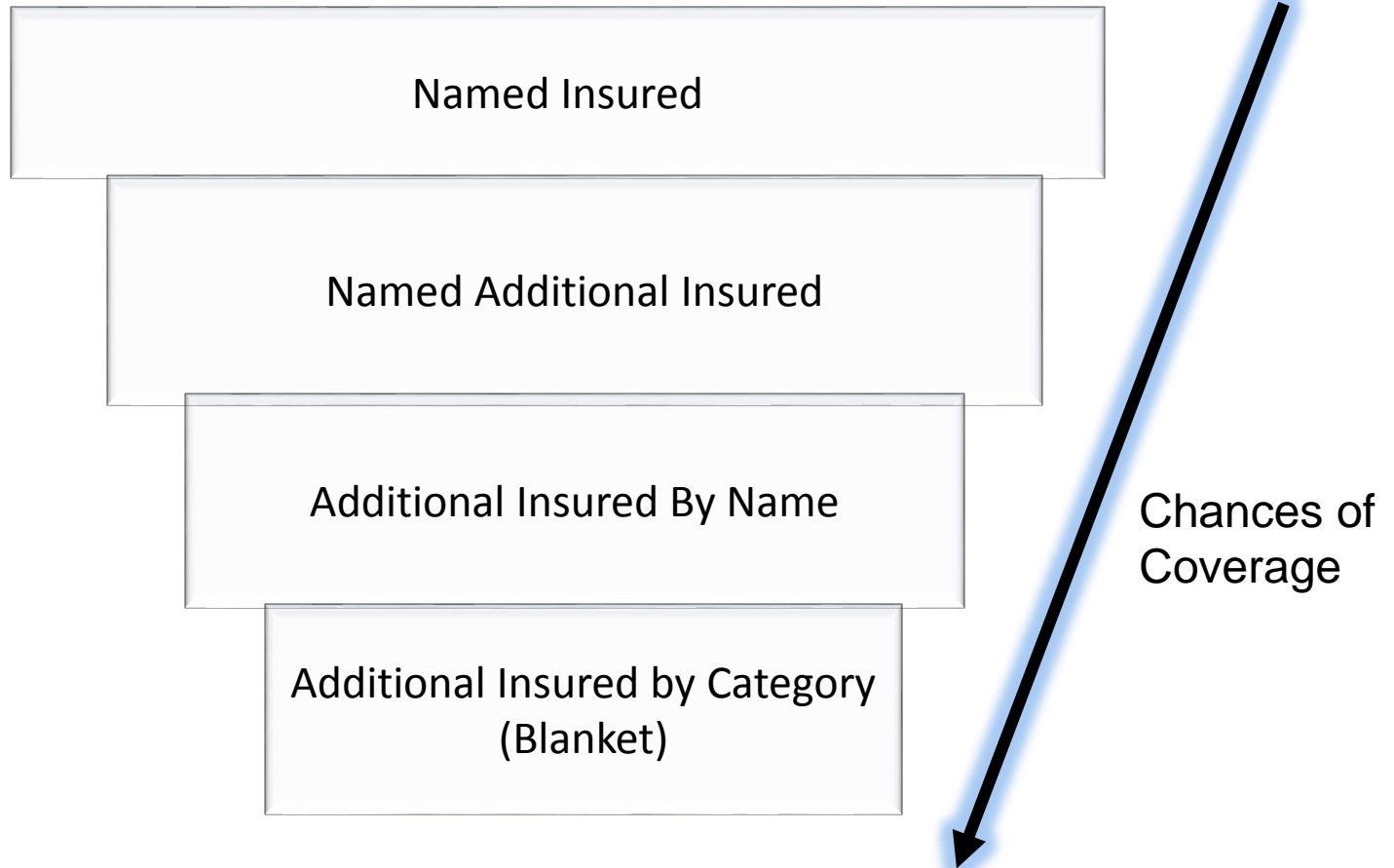
**Professional Services exclusion:** “based upon or arising out of any Wrongful Act in connection with the performance of professional services by or on behalf of the Insured Entity for the benefit of any other entity or natural person . . . .”

# Successful Risk Allocation Professional Liability Policy



# Allocate Risk Through Insured Party Status

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# Named Insured

POLICY NUMBER:

COMMERCIAL GENERAL LIABILITY  
CG DS 01 10 01

## COMMERCIAL GENERAL LIABILITY DECLARATIONS

COMPANY NAME AREA	PRODUCER NAME AREA
NAMED INSURED: _____	
MAILING ADDRESS: _____	
POLICY PERIOD: FROM _____ TO _____ AT 12:01 A.M. TIME AT YOUR MAILING ADDRESS SHOWN ABOVE	

IN RETURN FOR THE PAYMENT OF THE PR  
POLICY, WE AGREE WITH YOU TO PROVIDE

\_\_\_\_\_ **LII**  
EACH OCCURRENCE LIMIT  
DAMAGE TO PREMISES  
RENTED TO YOU LIMIT  
MEDICAL EXPENSE LIMIT  
PERSONAL & ADVERTISING INJURY LIMIT  
GENERAL AGGREGATE LIMIT  
PRODUCTS/COMPLETED OPERATIONS AG

NAMED INSURED: _____	
MAILING ADDRESS: _____	
POLICY PERIOD: FROM _____ TO _____ AT 12:01 A.M. TIME AT YOUR MAILING ADDRESS SHOWN ABOVE	

### RETROAC

THIS INSURANCE DOES NOT APPLY TO "BODILY INJURY", "PROPERTY DAMAGE" OR "PERSONAL AND  
ADVERTISING INJURY" WHICH OCCURS BEFORE THE RETROACTIVE DATE, IF ANY, SHOWN BELOW.  
RETROACTIVE DATE: \_\_\_\_\_  
(ENTER DATE OR "NONE" IF NO RETROACTIVE DATE APPLIES)

### DESCRIPTION OF BUSINESS

FORM OF BUSINESS:

☐ INDIVIDUAL    ☐ PARTNERSHIP    ☐ JOINT VENTURE    ☐ TRUST  
☐ LIMITED LIABILITY COMPANY    ☐ ORGANIZATION, INCLUDING A CORPORATION (BUT NOT IN-  
CLUDING A PARTNERSHIP, JOINT VENTURE OR LIMITED LIABILITY  
COMPANY)

BUSINESS DESCRIPTION: \_\_\_\_\_

CG DS 01 10 01

© ISO Properties, Inc., 2000

Page 1 of 2

# Additional Named Insured

COMMERCIAL GENERAL LIABILITY  
CG 00 01 04 13

## 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 qualifying 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 V 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.

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

- (1) The "bodily injury" or "property damage" is caused by an "occurrence" that takes place in the "coverage territory";

(2) The "bodily injury" or "property damage" occurs during the policy period; and

(3) Prior to the policy period, no insured listed under Paragraph 1. of Section II – Who Is An Insured and no "employee" authorized by you to give or receive notice of an "occurrence" or claim, knew that the "bodily injury" or "property damage" had occurred, in whole or in part. If such a listed insured or authorized "employee" knew, prior to the policy period, that the "bodily injury" or "property damage" occurred, then any

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

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.

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".

# Additional Insured

---

- **Protects AI from NI's negligence (except sole negligence)**
- **Insures AI for its own negligence**
- **Benefits:**
  - Coverage without premium
  - No responsibility for deductibles or SIRs
  - No erosion of AI's policies
- **By Name or category (Blanket)**

# Additional Insureds by Name

POLICY NUMBER:

COMMERCIAL GENERAL LIABILITY  
CG 20 26 04 13

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

## ADDITIONAL INSURED – DESIGNATED PERSON OR ORGANIZATION

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

SCHEDULE

Name Of Additional Insured Person(s) Or Organization(s):

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

SCHEDULE

Name Of Additional Insured Person(s) Or Organization(s):

Information required to complete this Schedule

**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 your acts or omissions or the acts or omissions of those acting on your behalf:

1. In the performance of your ongoing operations; or
2. In connection with your premises owned by or rented to you.

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.

**B. With respect to the insurance afforded to these additional insureds, the following is added to Section III – Limits Of Insurance:**

If coverage provided to the insured is required by a contract or agreement, the insurance shown in the Schedule will pay on behalf of the additional insured the amount of insurance:

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

This endorsement shall not apply to any Limits of Insurance or Deductibles.

**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 your acts or omissions or the acts or omissions of those acting on your behalf:



# Additional Insureds by Name

POLICY NUMBER:

HOMEOWNERS  
HO 07 51 10 00

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

## ADDITIONAL INSURED – VENDORS

(FOR USE ONLY WITH THE HOME BUSINESS INSURANCE COVERAGE ENDORSEMENT)

### SCHEDULE\*

Name Of Vendor (Additional Insured)

"Your Products"

\*Entries may be left blank if shown elsewhere in this policy

### DEFINITIONS

Definition 5, which defines "Insured" is extended to include the vendor named in the Schedule above, but only with respect to "bodily injury" or "property damage" arising out of "your products", described in the Schedule, which are distributed or sold in the regular course of the vendor's business.

### SECTION II – EXCLUSIONS

#### F. Coverage E – Personal Liability

The following exclusions are added but only with respect to:

1. The vendor named; and
2. "Your Products" described; in the Schedule;

Coverage E does not apply to any:

1. "Bodily injury" or "property damage" for which the vendor 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 that the vendor would have in the absence of the contract or agreement;
2. Expressed warranty unauthorized by you;
3. Physical or chemical change in the product made intentionally by the vendor;
4. Repackaging, unless:
  - a. Unpacked solely for the purpose of inspection, demonstration, testing or the substitution of parts under instructions from the manufacturer; and then
  - b. Repackaged in the original container;

## DEFINITIONS

Definition 5, which defines "Insured" is extended to include the vendor named in the Schedule above, but only with respect to "bodily injury" or "property damage" arising out of "your products", described in the Schedule, which are distributed or sold in the regular course of the vendor's business.

a container, part or ingredient of any other thing or substance by or for the vendor;

8. Insured person or organization from whom you have acquired such products, or any ingredient, part or container entering into, accompanying or containing such products; or
  9. Act or omission, or failure to act, by the additional insured, even if such:
    - a. Act or omission; or
    - b. Failure to act;is directly related to the ownership, maintenance or use of the premises rented to the insured.
- All other provisions of this policy apply.



# Blanket Additional Insured

COMMERCIAL GENERAL LIABILITY  
CG 20 31 10 93

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

## **ADDITIONAL INSURED – ENGINEERS, ARCHITECTS OR SURVEYORS**

This endorsement modifies insurance provided under the following:

**A. WHO IS AN INSURED (Section II)** is amended to include as an insured any architect, engineer or surveyor engaged by you but only with respect to liability arising out of your premises or ongoing operations performed by you or on your behalf.

The insurance with respect to such architects, engineers or surveyors described in paragraph A. above does not apply to "bodily injury" or "property damage" arising out of the rendering of or the failure to render any professional services by or for you, including:

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

# Construction Endorsements

COMMERCIAL GENERAL LIABILITY  
CG 20 38 04 13

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

## ADDITIONAL INSURED – OWNERS, LESSEES OR CONTRACTORS – AUTOMATIC STATUS FOR OTHER PARTIES WHEN REQUIRED IN WRITTEN CONSTRUCTION AGREEMENT

This endorsement modifies insurance provided under the following:

### COMMERCIAL GENERAL LIABILITY COVERAGE PART

#### A. Section II – Who Is An Insured is amended to include as an additional insured:

1. Any person or organization for whom you are performing operations when you and such person or organization have agreed in writing in a contract or agreement that such person or organization be added as an additional insured on your policy; and

2. Any other person or organization you are required to add as an additional insured under the contract or agreement described in Paragraph 1. above.

Such person(s) or organization(s) is an additional insured only with respect to liability for "bodily injury", "property damage" or "personal and advertising injury" caused, in whole or in part, by:

- a. Your acts or omissions; or
- b. The acts or omissions of those acting on your behalf;

In the performance of your ongoing operations for the additional insured.

However, the insurance afforded to such additional insured described above:

- a. Only applies to the extent permitted by law; and
- b. Will not be broader than that which you are required by the contract or agreement to provide for such additional insured.

A person's or organization's status as an additional insured under this endorsement ends when your operations for the person or organization described in Paragraph 1. above are completed.

#### B. With respect to additional exclusions at this insurance:

1. "Bodily injury" and "advertising injury" involving rendering professional services or surveying

- a. The preparation of, or change of, specifications

- b. Super engine

This excludes any insured in the supervising or monitoring of "occurrence" "property damage" the "personal and advertising injury", involved the rendering of, or the failure to render, any professional architectural, engineering or surveying services.

2. "Bodily injury" or "property damage" occurring after:

- a. 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 location of the covered operations has been completed; or

#### A. Section II – Who Is An Insured is amended to include as an additional insured:

1. Any person or organization for whom you are performing operations when you and such person or organization have agreed in writing in a contract or agreement that such person or organization be added as an additional insured on your policy; and

2. Any other person or organization you are required to add as an additional insured under the contract or agreement described in Paragraph 1. above.

# Construction Endorsements

POLICY NUMBER:

COMMERCIAL GENERAL LIABILITY  
CG 20 10 10 93

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

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

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

Name of Person or Organization:

SCHEDULE

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

(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 ongoing operations performed for that insured.

# Successful Reallocation of Risk

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- Retail store contracts with printing company to advertise event
- Printing company agrees to indemnify owner for its own negligence
- Printing company three days late and retail store sustains financial loss
- Retail store sues printer for loss
- Printer's errors and omissions policy provides defense and indemnity

# Successful Reallocation of Risk

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- Business contracts with billing vendor
- Vendor names Business as AI on Vendor's professional liability policy
- Vendor discloses private information about Business' clients
- Business' clients sue Business for improper disclosure
- Insurer defends and indemnifies Business (and Vendor)

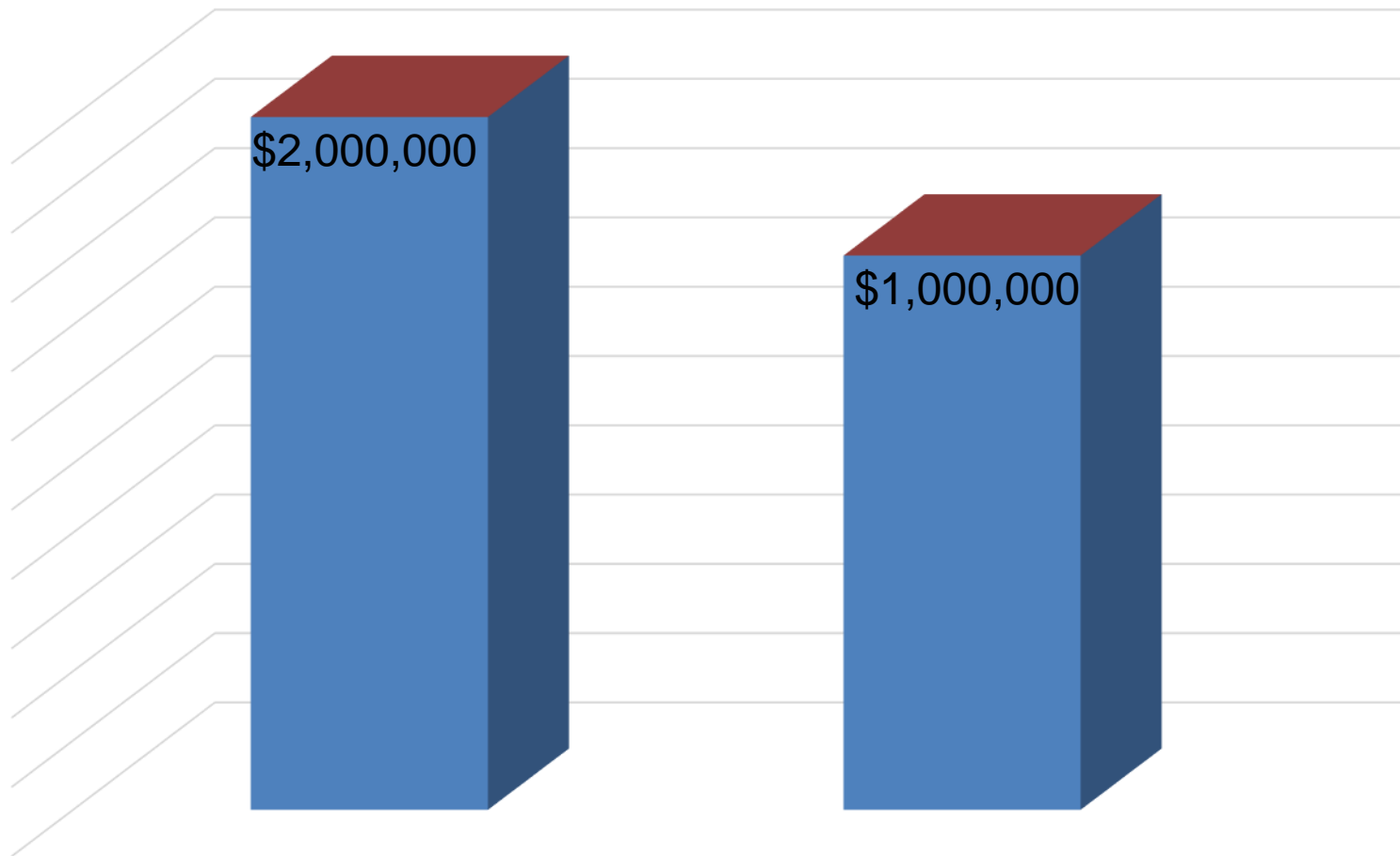
# Allocate Financial Risk

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# Policy Limits Determine Amount of Reallocated Risk

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# Financial Impact of Deductible vs. SIR



# Consider Impact on Existing Insurance Program

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# Step 3: Document

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- **Contract terms should specify the responsible parties for each risk**
- **Contract terms should specify the types of coverage for each risk**
  - Best to specify forms or equivalents
  - Best to specify particular coverages
  - Contract should specify the amount of coverage

# All Policy Components Are Relevant to Contract

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# Declarations

POLICY NUMBER:

COMMERCIAL GENERAL LIABILITY  
CG DS 01 10 01

## COMMERCIAL GENERAL LIABILITY DECLARATIONS

COMPANY NAME AREA	PRODUCER NAME AREA
NAMED INSURED: _____	
MAILING ADDRESS: _____	
POLICY PERIOD: FROM _____ TO _____ AT 12:01 A.M. TIME AT YOUR MAILING ADDRESS SHOWN ABOVE	

IN RETURN FOR THE PAYMENT OF THE PREMIUM  
POLICY, WE AGREE WITH YOU TO PROVIDE 1

**LIMIT**

EACH OCCURRENCE LIMIT  
DAMAGE TO PREMISES  
RENTED TO YOU LIMIT  
MEDICAL EXPENSE LIMIT  
PERSONAL & ADVERTISING INJURY LIMIT  
GENERAL AGGREGATE LIMIT  
PRODUCTS/COMPLETED OPERATIONS AGG

**RETROACTIVE**

THIS INSURANCE DOES NOT APPLY TO "BOD  
ADVERTISING INJURY" WHICH OCCURS BEFORE  
RETROACTIVE DATE: \_\_\_\_\_

(ENTER DATE OR "NONE" IF NO RETROACTIVE DATE APPLIES)

DESCRIPTION OF BUSINESS	
FORM OF BUSINESS:	
<input type="checkbox"/> INDIVIDUAL	<input type="checkbox"/> PARTNERSHIP
<input type="checkbox"/> JOINT VENTURE	<input type="checkbox"/> TRUST
<input type="checkbox"/> LIMITED LIABILITY COMPANY	<input type="checkbox"/> ORGANIZATION, INCLUDING A CORPORATION (BUT NOT INCLUDING A PARTNERSHIP, JOINT VENTURE OR LIMITED LIABILITY COMPANY)
BUSINESS DESCRIPTION: _____	

### LIMITS OF INSURANCE

EACH OCCURRENCE LIMIT	\$ _____	
DAMAGE TO PREMISES		
RENTED TO YOU LIMIT	\$ _____	Any one premises
MEDICAL EXPENSE LIMIT	\$ _____	Any one person
PERSONAL & ADVERTISING INJURY LIMIT	\$ _____	Any one person or organization
GENERAL AGGREGATE LIMIT	\$ _____	
PRODUCTS/COMPLETED OPERATIONS AGGREGATE LIMIT	\$ _____	

CG DS 01 10 01

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Page 1 of 2

# Insuring Agreements

**XL** INSURANCE

MISCELLANEOUS PROFESSIONAL LIABILITY  
MP 71 00 02 00

## MISCELLANEOUS PROFESSIONAL LIABILITY INSURANCE COVERAGE FORM

THIS IS A CLAIMS MADE POLICY WITH DEFENSE EXPENSES INCLUDED IN THE LIMIT OF LIABILITY. PLEASE READ AND REVIEW THE POLICY CAREFULLY.

In consideration of the payment of the premium, and in reliance on all statements made and information furnished to the Company identified in the Declarations (hereinafter the Insurer), including the Application, and subject to all of the terms, conditions and limitations of all of the provisions of this Policy, the Insurer and the Insureds agree as follows:

### I. INSURING AGREEMENT

The Insureds agree during:

### I. INSURING AGREEMENT

II. DE

(A) The Insurer shall pay on behalf of the **Insured Loss** resulting from a **Claim** first made against the **Insured** during the **Policy Period** or, if applicable, the **Optional Extension Period**, for a **Wrongful Act**.

(2) any materials submitted therewith,

which shall be retained on file by the Insurer and shall be deemed to be physically attached to this Policy.

(B) "Claim" means:

- (1) any civil proceeding in a court of law or equity, or arbitration;
- (2) any criminal proceeding which is commenced by the return of an indictment;
- (3) any written notice received by an **Insured** that any person or entity intends to hold any **Insured** responsible for a **Wrongful Act**; or
- (4) a formal administrative regulatory proceeding or formal investigation of an **Insured** which is commenced by the filing or issuance of a notice of charges, formal investigative order or similar document identifying in writing such **Insured** as a person or entity against whom a proceeding as described in (B)(1) or (2) above may be commenced.

(C) "Defense Expenses" means reasonable legal fees and expenses incurred in the defense of any **Claim** including the premium for an appeal bond, attachment bond or similar bond but will not include applying for or furnishing such bond. **Defense Expenses** will not include the **Insured's** overhead expenses or any salaries, wages, fees, or benefits of any **Insured**.

(D) "Insured" means:

- (1) any natural person who was, is or shall become a director, officer, employee, partner or member of the Board of Managers of the **Insured Entity**, but only while such person was, is or shall be acting within the scope of his or her duties as such;
- (2) the lawful spouse of any natural person set forth in the above provisions of this definition, but only to the extent the spouse is a party to any **Claim** solely in their capacity as a spouse of such persons and only for the purposes of any **Claim** seeking damages recoverable from marital community property, property jointly held by any such person and spouse, or property transferred from any such person to the spouse; and

MP 71 00 02 00

Page 1 of 6

# Exclusions (CGL)

## 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 attorneys' 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 attorneys' 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 even if the claims against any insured allege negligence or other wrongdoing in:

- (a) The supervision, hiring, employment, training or monitoring of others by that insured; or
- (b) Providing or failing to provide transportation with respect to any person that may be under the influence of alcohol;

## 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:

# Exclusions (Professional Liability)

## MISCELLANEOUS PROFESSIONAL LIABILITY MP 71 00 02 00

(3) the Insured Entity.

In the event of the death, incapacity or bankruptcy of a natural person identified in (D)(1) or (2) above, any **Claim** against the estate, heirs, legal representatives or assigns of such individual for a **Wrongful Act** of such individual will be deemed to be a **Claim** against such individual.

(E) "Insured Entity" means the entity named in ITEM 1 of the Declarations.

(F) "Interrelated Wrongful Acts" means **Wrongful Acts** which are based on, arising out of, directly or indirectly resulting from, in consequence of, or in any way involving any of the same or series of related facts, circumstances, situations, transactions or events.

(G) "Loss" means damages, judgments, settlements or other amounts (including punitive or exemplary damages, where insurable by law) and **Defense Expenses** in excess of the Retention that the **Insured** is legally obligated to pay. **Loss** will not include:

### III. EXCLUSIONS

(H) (A) The Insurer shall not be liable to make any payment for **Loss** in connection with any **Claim** made against an **Insured** brought about or contributed to in fact by any:

(I)

(J) (1) intentionally dishonest, fraudulent or criminal act or omission or any willful violation of any statute, rule or law; or

III.

(A) The Insurer shall not be liable to make any payment for **Loss** in connection with any **Claim** made against an **Insured** brought about or contributed to in fact by any:

(1) intentionally dishonest, fraudulent or criminal act or omission or any willful violation of any statute, rule or law; or

(2) profit or remuneration gained by any **Insured** to which such **Insured** is not legally entitled;

provided, that each **Insured** agrees that, if by a final adjudication in the underlying action or in a separate action or proceeding that the Insurer has no liability to an **Insured** for **Loss** as a result of a **Claim** by reason of this EXCLUSION (A), such **Insured** will repay the Insurer upon demand all **Defense Expenses** paid on behalf of such **Insured** in connection with such **Claim**.

(B) The Insurer shall not be liable to make any payment for **Loss** in connection with any **Claim** made against an **Insured** based upon, arising out of, directly or indirectly resulting from, in consequence of, or in any way involving:

(1) any actual or alleged bodily injury, sickness, mental anguish, emotional distress, libel, slander, oral or written publication of defamatory or disparaging material, disease or death of any person, or damage or destruction of any tangible property including loss of use thereof;

(2) any actual, alleged or threatened discharge, dispersal, release, escape, seepage, transportation, emission, treatment, removal or disposal of pollutants, contaminants, or waste of any kind including but not limited to nuclear material or nuclear waste or any actual or alleged direction, request or voluntary decision to test for, abate, monitor, clean up, recycle, remove, recondition, reclaim, contain,

# Conditions

3. The Products-Completed Operations Aggregate Limit is the most we will pay under Coverage A for damages because of "bodily injury" and "property damage" included in the "products-completed operations hazard".
4. Subject to Paragraph 2. above, the Personal And Advertising Injury Limit is the most we will pay under Coverage B for the sum of all damages because of all "personal and advertising injury" sustained by any one person or organization.
5. Subject to Paragraph 2. or 3. above, whichever applies, the Each Occurrence Limit is the most we will pay for the sum of:
  - a. Damages under Coverage A; and
  - b. Medical expenses under Coverage C because of all "bodily injury" and "property damage" arising out of any one "occurrence".
6. Subject to Paragraph 5. above, the [Premises Rented To You] Limit is the most we will pay under Coverage A for damages because of "property damage" to any one premises rented to you, or in the case of damage while rented to you or temporarily occupied with permission of the owner.
7. Subject to Paragraph 5. above, the [Medical Expense] Limit is the most we will pay under Coverage C for all medical expenses "bodily injury" sustained by any one person.

You must see to it that we receive written notice of the claim or "suit" as soon as practicable.

## SECTION IV – COMMERCIAL GENERAL LIABILITY CONDITIONS

### 1. Bankruptcy

Bankruptcy or insolvency of the insured or of the insured's estate will not relieve us of our obligations under this Coverage Part.

### 2. Duties In The Event Of Occurrence, Offense, Claim Or Suit

a. You must see to it that we are notified as soon as practicable of an "occurrence" or an offense which may result in a claim. To the extent possible, notice should include:

- (1) How, when and where the "occurrence" or offense took place;
- (2) The names and addresses of any injured persons and witnesses; and

means a settlement and release of liability signed by us, the insured and the claimant or the claimant's legal representative.

## SECTION IV – COMMERCIAL GENERAL LIABILITY CONDITIONS

### 1. Bankruptcy

Bankruptcy or insolvency of the insured or of the insured's estate will not relieve us of our obligations under this Coverage Part.

### 2. Duties In The Event Of Occurrence, Offense, Claim Or Suit

- a. You must see to it that we are notified as soon as practicable of an "occurrence" or an offense which may result in a claim. To the extent possible, notice should include:
- (1) How, when and where the "occurrence" or offense took place;
  - (2) The names and addresses of any injured persons and witnesses; and

# Conditions

## MISCELLANEOUS PROFESSIONAL LIABILITY MP 71 00 02 00

both the **Insured** and persons or entities not insured under this Policy, the **Insured** and the Insurer will use their best efforts to determine a fair and appropriate allocation of Loss between that portion of Loss that is covered under this Policy and that portion of Loss that is not covered under this Policy. Additionally, the **Insured** and the Insurer agree that in determining a fair and appropriate allocation of Loss, the parties will take into account the relative legal and financial exposures of, and relative benefits obtained in connection with the defense and/or settlement of the Claim by, the **Insured** and others.

- (E) In the event that an agreement cannot be reached between the Insurer and the **Insured** as to an allocation of Loss, as described in (D) above, then the Insurer shall advance that portion of Loss which the **Insured** and the Insurer agree is not in dispute until a final amount is agreed upon or determined pursuant to the provisions of this Policy and applicable law.

## VI. GENERAL CONDITIONS

### (A) NOTICE

- (1) As a condition precedent to any right to payment under this Policy with respect to any Claim, the **Insured** shall give written notice to the Insurer of any Claim as soon as practicable after it is first made.
- (2) If, during the Policy Period, the **Insured** first becomes aware of a specific **Wrongful Act** and if, during the Policy Period, the **Insured**:
- (a)

## VI. GENERAL CONDITIONS

### (b) (A) NOTICE

- (3) All n  
equi
- (1) As a condition precedent to any right to payment under this Policy with respect to any Claim, the **Insured** shall give written notice to the Insurer of any Claim as soon as practicable after it is first made.

### (B) INTERRELATED

All Claims arising from **Interrelated Wrongful Acts** shall be deemed to constitute a single Claim and shall be deemed to have been made at the earliest of the time at which the earliest such Claim is made or deemed to have been made pursuant to GENERAL CONDITIONS (A)(1) above or GENERAL CONDITIONS (A)(2), if applicable.

### (C) OTHER INSURANCE

All Loss payable under this Policy will be specifically excess of and will not contribute with any other insurance, including but not limited to any insurance under which there is a duty to defend, unless such other insurance is specifically excess of this Policy. This Policy will not be subject to the terms of any other insurance policy.

### (D) CANCELLATION AND RENEWAL OF COVERAGE

- (1) Except for the nonpayment of premium, as set forth in (D)(2) below, the **Insured** has the exclusive right to cancel this Policy. Cancellation may be effected by mailing to the Insurer written notice when such cancellation shall be effective, provided the date of cancellation is not later than the Expiration Date set forth in ITEM 2 of the Declarations. In such event, the Insurer shall retain the customary short rate portion of the earned premium. Return or tender of the unearned premium is not a condition of cancellation.

# Form vs. Endorsement

POLICY NUMBER:

COMMERCIAL GENERAL LIABILITY  
CG 04 35 12 07

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

## EMPLOYEE BENEFITS LIABILITY COVERAGE

THIS ENDORSEMENT PROVIDES CLAIMS-MADE COVERAGE.  
PLEASE READ THE ENTIRE ENDORSEMENT CAREFULLY.

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

Coverage
Employee Benefits Programs
Retroactive Date:
Information required

POLICY NUMBER:

COMMERCIAL GENERAL LIABILITY  
CG 04 35 12 07

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

## EMPLOYEE BENEFITS LIABILITY COVERAGE

THIS ENDORSEMENT PROVIDES CLAIMS-MADE COVERAGE.  
PLEASE READ THE ENTIRE ENDORSEMENT CAREFULLY.

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

A. The following is additional  
COVERAGE – EMPLOYEE  
LIABILITY

### 1. Insuring Agreement

a. We will pay for damages because of the insured's acts which this is the right to sue against any insured. However, we will not pay for damages to which the insured is not entitled. We may report or settle any claim.

- But:
- (1) The amount we will pay for damages is limited as described in Paragraph D. (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.

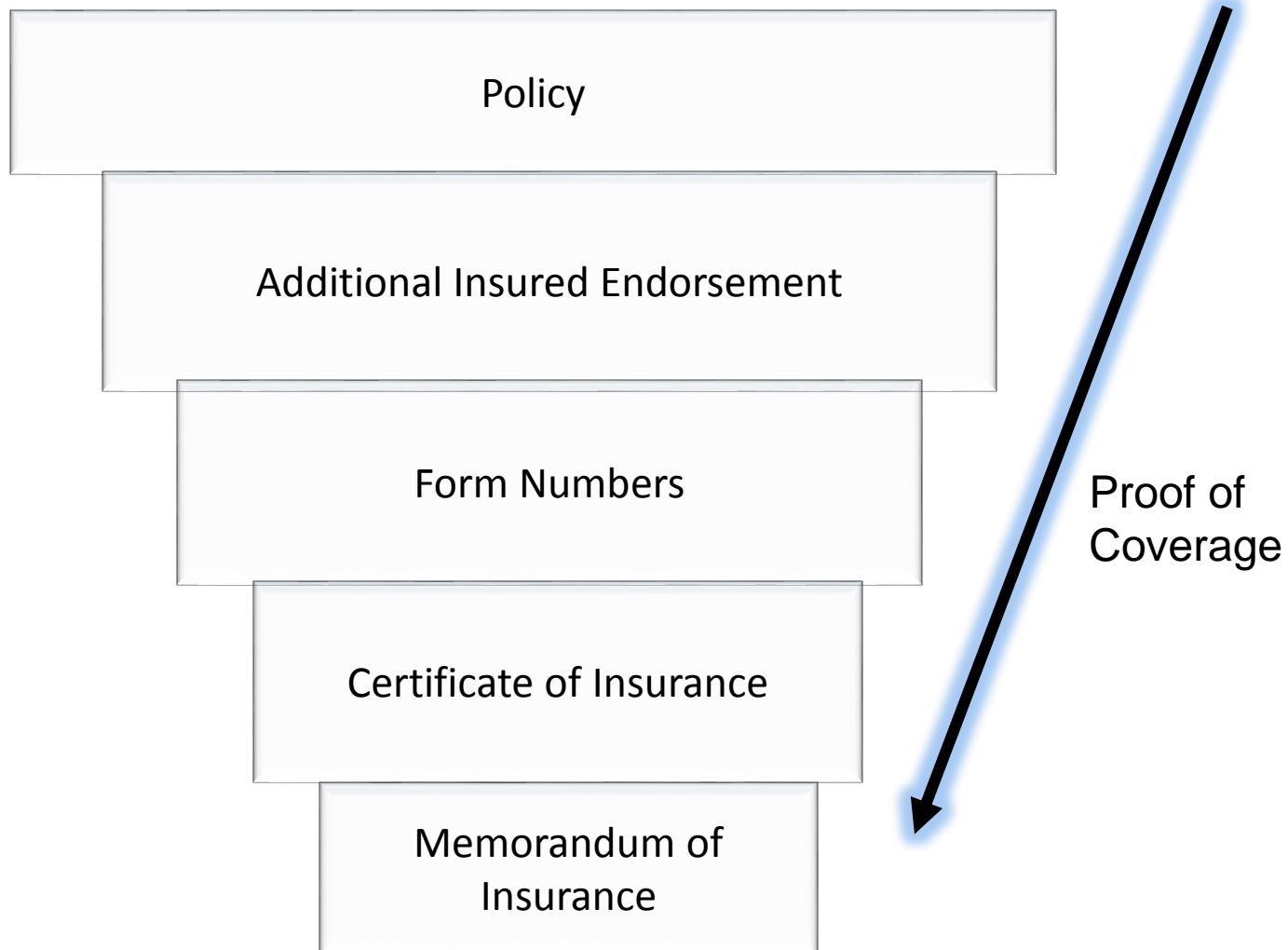
endorsement.

c. A "claim" seeking damages will be deemed to have been made at the earlier of the following times:

- (1) When notice of such "claim" is received and recorded by any insured or by us, whichever comes first; or

# Require Proof of Insurance

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# Certificate of Insurance Not Binding

**ACORD** **CERTIFICATE OF LIABILITY INSURANCE** OP ID: JI  
DATE (MM/DD/YYYY) 07/22/11

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

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COVERAGES		CERTIFICATE NUMBER:		REVISION NUMBER:	
INS LTR	TYPE OF INSURANCE	INSUR. NO.	POLICY NUMBER	INSUR. NO.	POLICY NUMBER
	<b>GENERAL LIABILITY</b> <input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR  GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input checked="" type="checkbox"/> PER <input type="checkbox"/> LOC		07/01/11	07/01/12	LIMITS EACH OCCURRENCE \$ 1,000,000 EXCESS TO RENTED PREMISES (EA OCCURRENCE) \$ 50,000 MED EXP (Any one person) \$ 5,000 PERSONAL & ADV INJURY \$ 1,000,000 GENERAL AGGREGATE \$ 2,000,000 PRODUCTS - COMP/OP AGG \$ 2,000,000
	<b>AUTOMOBILE LIABILITY</b> <input type="checkbox"/> ANY AUTO <input type="checkbox"/> ALL OWNED AUTOS <input type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> HIRED AUTOS <input type="checkbox"/> NON-OWNED AUTOS				COMBINED SINGLE LIMIT (EA accident) \$ BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ \$ \$ \$
	<b>UMBRELLA LIAB</b> <input type="checkbox"/> OCCUR <input checked="" type="checkbox"/> CLAIMS-MADE EXCESS LIAB \$ DEDUCTIBLE \$ RETENTION \$				EACH OCCURRENCE \$ AGGREGATE \$ \$ \$
	<b>WORKERS COMPENSATION AND EMPLOYERS LIABILITY</b> ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? <input type="checkbox"/> Y/N <input checked="" type="checkbox"/> N/A (Mandatory in NH) If yes, section 1001 DESCRIPTION OF OPERATIONS below		07/01/11	07/01/20	WGS STATE <input type="checkbox"/> OTH- <input type="checkbox"/> SE E.L. EACH ACCIDENT \$ 1,000,000 E.L. DISEASE - EA EMPLOYEE \$ 1,000,000 E.L. DISEASE - POLICY LIMIT \$ 1,000,000
DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (Attach ACORD 101, Additional Remarks Schedule, if more space is required)					

CERTIFICATE HOLDER	CANCELLATION
Joe Somebody 567 Any Street Atlanta, GA 30327	SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.  AUTHORIZED REPRESENTATIVE Jim Schubert

ACORD 25 (2009/09)

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# Take Aways

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- **Deliberate**
- **Designate**
- **Document**
- **Avoid Valley Crest outcome**
  - Unfunded liabilities
  - Unintended litigation



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# Questions?

Katherine J. Henry

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**Please contact Pam Wiener,  
[pwienner@babbc.com](mailto:pwienner@babbc.com), to be added to  
our BABBC blog, newsletters and  
alerts. By signing up for our  
newsletters, you'll also be invited to  
special events and seminars of note  
to your expertise.**