LIABILITY INSURANCE LAW FOR THE THERMOGRAPHER

ILLUSTRATED IN INFRARED THERMOGRAPHY

Robert J. Incollingo, Esq.

IR/Info January 17 - 20, 2016









22.00 °C

18.00

16.00

14.00

12.00

10.00

8.00 °C

Insurance – Optional?

- □ Contrast:
- □ Plumbers None
- Heating, Ventilating, Air Conditioning and Refrigeration Contractors - CGL \$500,000
- □ Electrical Contractors CGL \$300,000
- Home Improvement Contractors CGL \$500,000
- Locksmiths CGL \$500,000
- □ Home Inspectors E&O \$500,000
- Landscape Architect None

Standard Insurance Policy Forms

- An insurance policy form that is designed to be used by many different insurers and has exactly the same provisions, regardless of the insurer issuing the policy. Most standard insurance policy forms are developed by insurance advisory organizations, such as Insurance Services Office, Inc. (ISO), American Association of Insurance Services (AAIS), the Surety Association of America (SAA), and National Council on Compensation Insurance, Inc. (NCCI).
 - Insurance and Risk Management Glossary, © 2000-2015 International Risk Management Institute, Inc. (IRMI). http://www.irmi.com/online/insuranceglossary/terms/s/standard-form-or-standard-policy.aspx

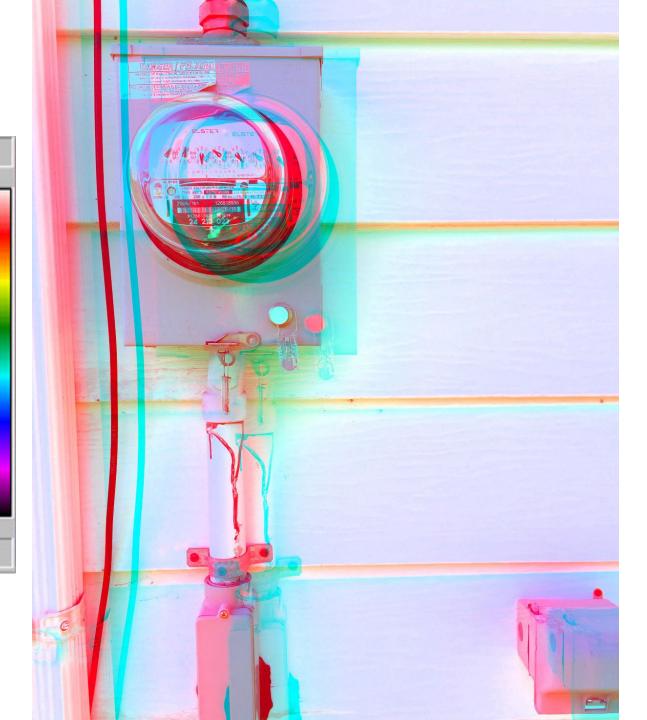


Commercial General Liability Coverage

- A commercial general liability (CGL) policy is a standard insurance policy issued to business organizations to protect them against liability claims for bodily injury (BI) and property damage (PD) arising out of premises, operations, products, and completed operations; and advertising and personal injury (PI) liability. The CGL policy was introduced in 1986 and replaced the "comprehensive" general liability policy.
 - © 2000-2015 International Risk Management Institute, Inc. (IRMI). http://www.irmi.com/online/insurance-glossary/terms/c/commercial-general-liability-cgl-policy.aspx

Bodily Injury (BI)

Liability insurance term that includes bodily harm, sickness, or disease, including resulting death. This type of coverage generally has two limits—one limit applying to each person (\$15,000, for example) and another limit applying to each accident (for example, \$30,000).



>149.0°F

140.0 -

120.0 -

100.0 -

80.0

60.0 -

40.0 -

20.0 -

<14.0°F

Property Damage (PD)

- As defined in the general liability policy, physical injury to tangible property including resulting loss of use and loss of use of tangible property that has not been physically injured.
 - Insurance and Risk Management Glossary, © 2000-2015 International Risk Management Institute, Inc. (IRMI). http://www.irmi.com/online/insuranceglossary/terms/p/property-damage-pd.aspx



Hazard Risk, or Event Risk

- □ A hazard risk, or event risk, is a risk of loss associated with fortuitous occurrences (e.g., fires, hurricanes, tortious misconduct). Event risk, which is synonymous with pure risk, hazard risk, or insurance risk, presents no chance of gain, only of loss. The perils covered by traditional property-casualty (P&C) insurance products are within the realm of event risk.
 - Insurance and Risk Management Glossary, © 2000-2015 International Risk Management Institute, Inc. (IRMI). http://www.irmi.com/online/insurance-glossary/terms/e/event-risk.aspx

Premises-Operations Coverage

- One of the categories of hazards ordinarily insured by a general liability policy. Composed of those exposures to loss that fall outside the defined "products-completed operations hazard," it includes liability for injury or damage arising out of the insured's premises or out of the insured's business operations while such operations are in progress.
 - Insurance and Risk Management Glossary, © 2000-2015 International Risk Management Institute, Inc. (IRMI). http://www.irmi.com/online/insuranceglossary/terms/p/premises-operations.aspx

Premises

In an insurance policy, the "premises" is the particular location of the property or a portion of it as the designated location where coverage applies. The premises is usually described in the policy with a legal address. It is often a shorthand reference to a building or land occupied or owned by an insured.



Products-Completed Operations Coverage

- One of the hazards ordinarily insured by a general liability policy. It encompasses liability arising out of the insured's products or business operations conducted away from the insured's premises once those operations have been completed or abandoned.
 - Insurance and Risk Management Glossary, © 2000-2015 International Risk Management Institute, Inc. (IRMI). http://www.irmi.com/online/insurance-glossary/terms/p/products-completed-operations.aspx

Personal Injury (PI) Coverage

- Under general liability coverage, a category of insurable offenses that produce harm other than bodily injury (BI). As covered by the 1986 commercial general liability (CGL) policy, PI includes: false arrest, detention, or imprisonment; malicious prosecution; wrongful eviction; slander; libel; and invasion of privacy. Also addressed in the homeowners policy. Under umbrella liability insurance, a broad category of insurable offenses that includes both BI and the offenses defined as "personal injury" in CGL policies.
 - Insurance and Risk Management Glossary, © 2000-2015 International Risk Management Institute, Inc. (IRMI). http://www.irmi.com/online/insurance-glossary/terms/p/personal-injury-pi.aspx



Advertising Injury Coverage

- A general liability coverage, combined in standard commercial general liability (CGL) policies with personal injury (PI) coverage, that insures the following offenses in connection with the insured's advertising of its goods or services: libel, slander, invasion of privacy, trademark and copyright infringement, and misappropriation of advertising ideas.
- The definition of "advertising" has been interpreted differently in case law from state to state.

Damage Must Occur During the Policy Period

The CGL insuring agreement promises to pay only if bodily or property damage occurs during the policy period. If, for example, a homeowner falls through a deck after the policy is terminated, there is no coverage (under that policy). The policy must be in effect when the damage or injury occurs.



Occurrence Policy

- An occurrence policy is a policy covering claims that arise out of damage or injury that took place during the policy period, regardless of when claims are made. Most commercial general liability (CGL) insurance is written on an occurrence form.
- Contrast with Claims-made policy.
 - Insurance and Risk Management Glossary, © 2000-2015 International Risk Management Institute, Inc. (IRMI). http://www.irmi.com/online/insuranceglossary/terms/o/occurrence-policy.aspx



Claims-made Policy

- □ A policy providing coverage that is triggered when a claim is made against the insured during the policy period, regardless of when the wrongful act that gave rise to the claim took place. Most professional, errors and omissions (E&O), directors and officers (D&O), and employment practices liability insurance (EPLI) is written as claims-made policies.
 - Insurance and Risk Management Glossary, © 2000-2015 International Risk Management Institute, Inc. (IRMI). http://www.irmi.com/online/insurance-glossary/terms/c/claims-made-policy.aspx





Errors and Omissions (E&O) Insurance

- An insurance form that protects the insured against liability for committing an error or omission in performance of professional duties. Generally, such policies are designed to cover financial losses rather than liability for bodily injury (BI) and property damage (PD).
 - © 2000-2015 International Risk Management Institute, Inc. (IRMI). https://www.irmi.com/online/insurance-glossary/terms/e/errors-and-omissions-eo-insurance.aspx

CGL vs E&O: Expanded Coverage

- Unlike a commercial general liability (CGL) policy, which provides insurance for mainly bodily injury and property damage, the professional liability policy pays for third-party damages, generally speaking, and goes beyond bodily injury or property damage to include any third-party damages that are not excluded.
 - Mold and Professional Liability Insurance, by Jeff Slivka, January 2015 https://www.irmi.com/articles/expert-commentary/moldand-professional-liability-insurance



The Certificate of Insurance

A certificate of insurance, also referred to as a "certificate of liability insurance," is a document that provides a description of coverage contained in a specific insured's policy.

The Certificate of Insurance

- Ultimately, the certificate provides proof the insured has an in-force commercial general liability policy (CGL policy).
 - Warning: the insurance companies ability and willingness to issue a notice of cancellation of coverage to the certificate holder is problematic
- A company by the name of ACORD has a form that is generally accepted nationwide as proof of coverage. ACORD is an organization that provides insurance related forms for just about every necessary aspect of insurance.
 - Copyright © 2008-2015 The Truth About Insurance.com http://www.thetruthaboutinsurance.com/certificate-ofinsurance/



	ACORD _®	CERTIFIC	ATE	OF INS	SURANCE	ISSUE DATE (MM	/DD/YY):			
PRO	DUCER			CONFERS CERTIFICA	NO RIGHTS U	PON THE CERTIFICATE MEND, EXTEND, OR ALTE	HOLDER. THIS			
				COMPANIES AFFORDING COVERAGE						
				COMPANY A						
INSU	RED			COMPANY						
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				CERTIFICATE DOES NOT AMEND, EXTEND, OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. COMPANIES AFFORDING COVERAGE COMPANY A COMPANY B COMPANY C C COMPANY D BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, IMAY HAVE BEEN REDUCED BY PAID CLAIMS. LIMITS FEFECTIVE POLICY EXPIRATION DATE (MM/DD/YY) ATE (MM/DD/YY) GENERAL AGGREGATE \$ PRODUCTS-COMP/OP AGG \$ PERSONAL & ADV. INJURY \$ EACH OCCURRENCE \$ FIRE DAMAGE (any one fire) \$ MED. EXPENSE (any one person) \$ COMBINED SINGLE LIMIT \$ BODILY INJURY (per person) \$ BODILY INJURY (per person) \$ COMBINED SINGLE LIMIT \$ BODILY INJURY (per accident) \$ PHYSICAL DAMAGE \$ AUTO ONLY - EA ACCIDENT \$ OTHER THAN AUTO ONLY: EACH ACCIDENT \$ AGGREGATE \$ EACH OCCURRENCE \$ S AGGREGATE \$ EACH ACCIDENT \$ DISEASE-POLICY LIMIT \$ DI	COMPANY					
COV	ERAGES									
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©ACORD CORPORATION 1993

ACORD 25-8 (3/93)



CERTIFICATE OF LIABILITY INSURANCE OPID JA

DATE (MM/DD/YYYY) 08/18/10

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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	P.O. Box 323			PRO							
	Linden IN 47955	7.	_ ,								
	Phone: 765-538-3535 Fax	: / 6	5-3								
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	Artisan Electric I	ŢC.		INS	INSURER B:						
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Ì	SCHEDULED AUTOS						PROPERTY DAMAGE	s			
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ı	NON-OWNED AUTOS		1					\$			
t								\$			
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	ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED?	N/A		100		100	E.L. EACH ACCIDENT	s 500000			
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Policy Exclusions

- An exclusion is a provision of an insurance policy or bond referring to hazards, perils, circumstances, or property not covered by the policy. Exclusions are usually contained in the coverage form or causes of loss form used to construct the insurance policy.
 - Insurance and Risk Management Glossary, © 2000-2015 International Risk Management Institute, Inc. (IRMI). http://www.irmi.com/online/insurance-glossary/terms/e/exclusion.aspx

"Your Work" Exclusion

- "Your work" is a broadly defined term and includes operations performed by the named insured or on the named insured's behalf, including material, parts, or equipment in connection with the operations. Operations or work performed on behalf of the named insured means that work done by a subcontractor is still considered your work.
 - Insurance and Risk Management Glossary, © 2000-2015 International Risk Management Institute, Inc. (IRMI). http://www.irmi.com/online/insurance-glossary/terms/c/claims-made-policy.aspx



SCOVILLE HEAT SCALE

15,000,000

2,000,000-5,300,000

1,000,000

577,000

200,000-350,000

100,000-250,000

30,000-50,000

15,000-30,000

12,000-30,000

8,000-23,000

5,000-8,000

3,500-8,000

2,500-4,000

1,500-2,500

1,000-2,500

1,000-2,000

500-2,000

500-1,500

500-1,000

500-750

TYPE OF CHILES

Pure Capsaician

U.S. Grade Pepper Spray

Bhut Jolokia

Red Savina Habanero

Habanero

Chiltepin

Cayenne

Arbol

Manzano

Serrano

Yellow Hot

Jalepeño Pepper

Guajillo

Chilaca

Pasilla

Pablano, Villa Ancho

Anaheim, Arizona 20 Chile Verde, Arizona 105

Yellow Genetics

Red Chile

Bell Peppers

"Your Work" Exclusion

- Remediation of the insured's faulty work is an uninsurable business risk. Weedo v. Stone-E-Brick, 81 N.J. 233 (1979); Firemen's Insurance Co. of Newark v. National Union Fire Insurance Co., 387 N.J. Super.434 (App. Div. 2006)
- The cited cases construed ISO's 1973 standard CGL form, and only the cost of replacing the defective work was at issue.

Policy Exclusions – Your Work

Property damage exclusion j.(6), which eliminates coverage for the cost of restoring, repairing, or replacing the named insured's work that was incorrectly performed, does not apply to property damage that is included within the products-completed operations hazard.



Policy Exclusions - Endorsements

- □ A discussion of the <u>Sacknoff</u> case
- Application of the Your Work Policy Exclusion
- Application of the Policy Exclusion for Roofing Activities
- Application of the Policy Endorsement Excluding Unlicensed Contractors





Preferred Contractors Insurance Company, RRG p. Professional Services

Any claim for "bodity injury" or "property damage" arising out of, resulting from, caused by, contributed to, or in any way related to, in whole or in part, the performance of or failure to perform professional services of an architect, engineer, surveyor or other similar professional whether employed, hired or contracted to perform work by any insured or performed by any insured or anyone acting on any insured's behalf

q. Course of Roofing Operations and Open Roof

Any claim for 'bodily injury" or 'property damage" that arises out of, results from, is caused by, contributed to, or in any way related to, in whole or in part, roofing operations performed by any insured or any contractor or subcontractor working on behalf of any insured. Roofing operations include, but are not limited to, the removal or installation of any and all materials on a roof that constitute a roof on any building, home or structure, including but not limited to shakes, shingles, tar paper, felt paper, tiles, decking, and other covering. Also excluded is any claim involving repair work by any insured on a roof, or deck that also provides a covering over interior rooms of a building, home or structure, including over a garage or storage area.

Any claim for "bodity injury" or "property damage" that arises out of, results from, is caused by, contributed to, or in any way related to, in whole or in part, a time when an "open roof" exists. An "open roof" means any section of roof where, in whole or in part, there is no "protective covering" to a building or other structure, whether by failure to install, through removal or otherwise, that exposes the interior or any substantial part of the interior to the

For purposes of this exclusion, "roofing operations" shall also include any work or operations touching or concerning the roof, including, but not limited to roof decks or other operations touching or connected to the roof in any manner.

It is a condition of this exclusion that any claim reported under this Policy has a maximum occurrence limit of \$25,000 for any claim for "bodity injury" or "property damage" that arises out of, results from, is caused by, contributed to, or in any way related to, in whole or in part, roofing operations performed by any insured or any contractor or subcontractor working on behalf of the insured:

- in conjunction with a remodel project; and/or
- the roofing operations are less than 25% of the Insured's work at any project.

Heating Devices

"Bodity injury" or "property damage" arising out of, resulting from, caused by, contributed to, or in any way related to, in whole or in part, any insured's use of any "fire or heating devices" as part of "your work" or "your product." The term "fire or heating devices" includes but is not limited to a heat wand, welding equipment, open flame devices, torches, heaters, or any type of heat application whether applied to a roof, exterior or interior portion of a project, site, house or building,

s. Condominiums, Townhouses, and Timeshares "Bodity injury" or "property damage" arising out of, resulting from, caused by, contributed to by, or in any way related to work, development, construction, renovation or reconstruction on, or performed about the premises of:

commercial



ENDORSEMENT TO POLICY NO. 51

THIS ENDORSEMENT CHANGES THE POLICY, PLEASE READ IT CAREFULLY.

RISK RETENTION GROUP, LLC COMMERCIAL GENERAL LIABILITY POLICY

EXCLUSION- UNLICENSED CONTRACTORS

The following is added to Section II, Exclusions:

This insurance does not apply to:

- "Bodity injury" or "property damage" arising out of or in any way related to any act or omission of any insured, or any contractor or subcontractor working for or on behalf of any insured, who is required to be licensed by any local, state or federal licensing authority but is not in compliance with any such licensing requirement;
- "Bodity injury" or "property damage" arising out of or in any way related to any work of any insured, or any
 contractor or subcontractor working for or on behalf of any insured that does not meet federal, state, or local
 laws, rules, regulations, or standards, including but not limited to standards promulgated by the Occupational
 Safety and Health Administration (OSHA), and any and all similar laws, rules regulations and standards.

Other than as set forth above, all other terms, conditions, provisions, exclusions and endorsements of the policy remain in full force and effect.

Policy No.: PCIC5030-PCA242298 Preferred Contractors Insurance Company

Date: 1/6/2014 Risk Retention Group, LLC
27 North 27th Street, Suite 1900

Bittings, Montana 59103

Time: 12:01 a.m. By: Phillip Salvage

Assignment

- A transfer of legal rights under, or interest in, an insurance policy to another party. In most instances, the assignment of such rights can only be effected with the written consent of the insurer.
 - Insurance and Risk Management Glossary, © 2000-2015 International Risk Management Institute, Inc. (IRMI). http://www.irmi.com/online/insurance-glossary/terms/a/assignment.aspx
- More to the story...
- The One Call case

Assignment of Benefits — Storm Warning

 Florida Homeowner Insurers Deluged by Assignment of Benefit Lawsuits

> http://www.claimsjournal.com/news/southeast/2015/06/ 22/264117 htm

23/264117.htm



Assignment of Benefits

- "Attached to the complaint was a copy of the assignment, which stated in relevant part:
- "I, the Owner, hereby assign any and all insurance rights, benefits, and proceeds under any applicable insurance policies to One Call. I make this assignment in consideration of One Call's agreement to perform services and supply materials and otherwise perform its obligations under this contract, including One Call not requiring full payment at the time of service. I intend to transfer all insurance rights to One Call, including any causes of action which exist or may exist in the future.



Open Q&A



Robert J. Incollingo 4 Munn Avenue Cherry Hill, NJ 08034

856-857-1500 RJI@RJILAW.com

LIABILITY INSURANCE LAW FOR THE THERMOGRAPHER

Robert J. Incollingo, Esq.

IR/Info January 17 - 20, 2016





