

How to Read and Understand Your Insurance Policies: The Insuring Clause

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Last time we reviewed the content of the declarations page. We pick up here with the coverage provisions of your liability policy. Next time, it's coverage limitations and insurance company defenses.

The Insuring Clause

The insuring clause sets the scope of coverage. It is often deceptively short, as it relies on definitions elsewhere in the policy and it is qualified by conditions, exclusions, and endorsements. As you parse each insuring clause, maintain focus on the insured qualification (i.e. who is covered); the damages qualification (i.e. the type of loss or harm covered); and the activity qualification (i.e. the type of activity or peril covered).

Insuring clauses are given broad interpretation by the courts. But you will see that what the insuring clause giveth, conditions, exclusions (and, potentially, the endorsements) taketh away. An endorsement can be a stand-alone coverage or limitation, or it might be used to change a definition or even an entire insuring clause. When a coverage question arises, the burden is on the insured initially to demonstrate that the claimed loss is within the coverage provided by the policy's insuring clause. If the insured satisfies this burden, the burden then shifts to the insurer to demonstrate that an exclusion applies.

Examples of a CGL insuring clause are:

- "COVERAGE A- BODILY INJURY AND PROPERTY DAMAGE LIABILITY 1. Insuring Agreement a. We will pay on behalf of the insured the 'ultimate net loss' in excess of the 'retained limit' because of 'bodily injury' or 'property damage' to which this insurance applies."
- "COVERAGE B - PERSONAL AND ADVERTISING INJURY LIABILITY 1. Insuring Agreement a. We will pay on behalf of the insured the 'ultimate net loss' in excess of the 'retained limit' because of 'personal and advertising injury' to which this insurance applies."

Examples of D&O insuring clauses are:

"Management Liability Insuring Agreement"

- Individuals: "The Insurer shall pay on behalf of the Insured Persons Loss for which the Insured Persons are not indemnified by the Company and which the Insured Persons become legally obligated to pay on account of any Claim first made against them, individually or otherwise, during the Policy Period, the Automatic Discovery Period, or, if exercised, the Additional Extended Discovery Period, for a Management Practices Act taking place before or during the Policy Period."
- Company: "If Company Liability Coverage is granted as set forth in the Declarations, the Insurer shall pay on behalf of the Company Loss for which the Company becomes legally obligated to pay on account of any Claim . . . for a Management Practices Act taking place before or during the Policy Period."

An example of an E&O insuring clause is:

"PROFESSIONAL LIABILITY COVERAGE PART"

"The Insurer will pay on behalf of the Insured, that Loss, in excess of the retention and up to the applicable limit of liability, resulting from any Claim first made against the Insured during the Policy Period, or any Extended Reporting Period, if applicable, for a Wrongful Act by the Insured, or by someone for whose Wrongful Act the Insured is legally responsible provided..."