

Anatomy of a Liability Insurance Policy

Part 1: Policy Structure

FORMS

Liability policies are generally written on standardized forms, many of which are drafted by the Insurance Services Office or ISO. Each form has a form number, usually printed in the upper right or lower left corner of each page. Often forms will indicate how many pages comprise each form. Most of these forms have no blanks to fill in so that there is no opportunity to modify the language. A list of all of the forms which comprise the complete policy contract will be found, usually in the Declarations, but sometimes in an Endorsement. Physically, the written policy contract usually consists of Declarations, the Jacket, and Endorsements. The Declarations and Endorsement are usually clearly labeled as such, while the Jacket is not. The Declarations set forth variables which customize the contract to a particular policyholder. The Jacket usually includes the principle contract terms including the Insuring Agreement, Conditions, Definitions, Exclusions, and Limitations. Endorsements usually alter the language of standardized forms, add to or subtract from the coverages enunciated in the Jacket. The physical arrangement of the pages of the complete policy often place the Jacket in the middle of the document. Since the Jacket is not labeled as such, it can usually be identified as the longest form in the packet.

Giveth and Taketh Away

An easy way to grasp the structure of a standard liability policy is to understand that the only thing the policyholder gets from the insurer is two promises. The only place in the entire contract document where the insurer agrees to do anything is the Insuring Agreement.¹ The entire rest of the policy then limits the breadth of these primary promises. To adapt a Biblical phrase, a liability policy “giveth and taketh away.”² The Insuring Agreement has the only “giveth” language. Unless limited, the Insuring Agreement would protect the policyholder for wrongdoing anywhere in the world, done at any time for damage in any amount arising from a wide variety of activities. The entire remainder of the policy consists of “taketh away” language, which can sometimes consist of hundreds of pages. The “taketh away” language restricts, limits, conditions and detracts from the breadth of the “giveth” language in the insuring clause. These “giveth” and “taketh away” feature of a standard liability policy is significant because the duty to defend is often triggered by the “giveth” language alone, while the duty to indemnify requires laborious analysis of all of the “taketh away” language.

There are seven structural elements to a typical liability policy, which are:

1. **Insuring Agreement:** Found in the Jacket, the Insuring Agreement is so broadly worded that if it were read alone, it would cover a policyholder for almost everything. The insuring agreement usually consists of only two sentences. Words or phrases in quotation marks are usually defined in the Definitions section of the policy.

The promise to indemnify agrees to pay a final judgment entered against the policyholder if and only if all terms of the policy are satisfied. Standard language is: “We will pay those sums tha the insured becomes legally obligated to pay as damages because of ‘bodily injury’, ‘property damage’, ‘personal injury’, or ‘advertising injury’ to which this insurance applies.”

¹ Many liability policies do have Medical and Supplementary payment provisions.

² Job 1:21.

The promise to defend is much broader and much simpler than the promise to indemnify. The duty to defend is “triggered” if a lawsuit is “potentially” covered for indemnity. Standard language is: “We will have the right and duty to defend the insured against any ‘suit’ seeking those damages.”

2. **Declarations:** The Declarations personalize the policy to a particular insured by expressing variables such as name of insured, policy period, limits of liability, a list of forms comprising the contract, and other variable peculiar to each specific policy contract. The Declarations consist of one or more pages usually found at the beginning of the contract.

3. **Conditions:** The conditions generally express the policyholder’s obligations under a liability policy such as paying the premium and notifying the company of important events.

4. **Definitions:** Many words in the policy contract have special meaning. The meaning of each term tends to limit the breadth of coverage. The jacket usually includes a section entitled “definitions” where these terms are defined. Often defined terms are shown in quotation marks throughout the policy. Definitions tend to limit the meaning of words and phrases and are not always intuitive. For example, “personal injury” is usually defined as a laundry list of covered offenses, such as false arrest, malicious prosecution, wrongful eviction, and libel, none of which have anything to do with bleeding injuries, which often causes confusion among lawyers and judges who are accustomed equating a “personal injury” lawsuit as one which focuses on bleeding injuries. As another example, “property damage” is usually defined as “physical injury to tangible property, including all resulting loss of use of that property,” effectively excluding coverage for intangible property interests. Some definitions are not particularly enlightening, such as “bodily injury” which is usually defined to mean: “bodily injury.” Some definitions are illuminated by case law. For example, “emotional distress” does not constitute a bodily injury unless accompanied by physical manifestations.³

5. **Limitations:** The Limits of Insurance section of a typical policy states the maximum amount the insurer is contractually obligated to pay. A variable policy limit is usually stated in the Declarations. Despite the monetary maximum enunciated in clear contract language, the policy limit can be “popped.”⁴

6. **Exclusions:** The exclusions section of the policy usually follows immediately after the Insuring Agreement, found in the jacket. By itself, the Insuring Agreement is properly understood to cover all risks of loss. The exclusions provide a long laundry list of risks that are not covered, despite the breadth of the language of the Insuring Agreement. It is useful to think of many exclusions as an inventory list of other policies one can buy to get additional coverage, but which are not covered by this particular policy. For example, worker’s compensation liability is routinely excluded from a Commercial General Liability policy. But if one wants worker’s compensation insurance, another policy is readily available in the market place.

³ “Given the clear and ordinary meaning of the word “bodily,” we find the term “bodily injury” unambiguous. It means physical injury and its consequences. It does not include emotional distress in the absence of physical injury.” (*Aim Ins. Co. v. Culcasi* (1991) 229 Cal.App.3d 209, 220.)

⁴ See, *How to Make a Policy Limit Settlement Offer Properly* at DutytoDefend.com.

7. **Endorsements:** Endorsements add to or replace what the policy says elsewhere. Often an endorsement will entirely replace language found elsewhere in the policy. Thus, the language of standardized preprinted forms may be changed entirely by an endorsement.