Your First Insurance Policy Coverage Dispute

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This primer on insurance contract disputes helps practitioners spot basic issues and understand general coverage terms.

A client walks into your office with several serious concerns. Her daughter is suffering from devastating medical problems following exposure to formaldehyde emanating from inside her new home. Medical bills are running into the hundreds of thousands of dollars, and the child is expected to live with a permanent physical impairment. The cost of mitigating the formaldehyde-containing building products exceeds $100,000. Your client's health insurer is denying payment of much of the claim because it deems most of the medical treatment "experimental." Her homebuilder is on its way to insolvency due to a downturn in the housing market, and its liability insurance carrier says its policy excludes pollution and contamination injuries. The client's homeowners' insurer is denying formaldehyde mitigation coverage on various grounds. Your client and her homebuilder paid substantial premiums for insurance coverage that they thought would respond to these losses. How do you determine your client's coverage, and what should you do to resolve the disputed coverage issues?

This article is a primer on insurance contract disputes for attorneys who confront these matters only occasionally. The article focuses on the format and content of commercial general liability (CGL) insurance, which is insurance that protects insured businesses against third-party liability claims.

Common Types of Insurance Policies

Identifying the type of insurance policy implicated is usually straightforward, but it is worthwhile to have a working knowledge of the different types of insurance that may be available. Coverage can sometimes be found in unexpected places.

The following are examples of general types of insurance. Some policies contain combinations or hybrids of these coverages.

- **Liability Insurance:** CGL, Employer's Liability, Homeowners Liability, Renters Liability, Automobile Liability, Personal Umbrella Liability, Excess Liability.
- **Professional Liability Insurance:** This is a specialized liability insurance for various professionals, including all kinds of Errors and Omissions (E&O) Insurance, such as Legal and Medical Professional Liability; Design Professional E&O; and Broker and Investment Advisor E&O.
- **Directors and Officers (D&O) Insurance:** This is a specialized liability insurance for directors, officers, managers, and other

legal entity personnel, and may include protections for the entity itself.

- **Property/Casualty Insurance:** Homeowners Property, Renters Property, Business All-Risk, Builders Risk, Business Interruption, Fire, Boiler, Inland Marine,[1] Travel, Flood, Hurricane, Earthquake, Automobile Collision and Comprehensive Insurance.
- **Life, Health, Disability, Workers' Compensation, and Long-Term Care Insurance:** These insurances generally provide compensation for death or injury, or pay for medical or other care.

Sometimes different insurance coverages are simultaneously triggered or even overlap. For example, if a bicycle delivery person and a tourist on a rental scooter collide and both are injured, workers' compensation and health insurance might pay benefits for the delivery person's medical bills and injuries, although one may be deemed primary (first to respond) versus the other. The scooter driver's homeowner's insurance and the delivery person's employer's business liability insurance might be implicated if they sued one another in tort for compensation. If a credit card was used to rent the scooter, the credit card company might afford some insurance benefits, perhaps for damage to the scooter, and the scooter rental company rental agreement might offer some property and liability coverage options as well. Finally, the scooter driver's automobile liability and property damage insurance might be implicated if the scooter fell within the policy's definition of a motor vehicle.

Contracts that are Not Insurance

The law views some contracts often thought of as insurance as a three-party credit or guarantee rather than as equivalent to a two-party insurance contract. Examples of such contracts include payment and performance bonds, and fidelity, bail, and surety bonds, all of which are beyond the scope of this article.[2]

Differences among Policy Types

Different policy types contain significant distinctions. For example, distinct events activate coverage under the policies: liability policies are usually implicated by "occurrences"[3] and "offenses"; auto policies usually involve "accidents" or "auto accidents"; property policies are typically triggered by "all risks of physical loss or damage"; and professional liability policies are often activated by the insured's receipt of notice of a "claim" or "wrongful act."

> "Determining and analyzing collection options is as important as evaluating liability because a money judgment has no value if it cannot be collected, and insurance proceeds often represent the primary, if not the only, source for collection."

There are also significant differences in how the contracts are structured and compiled. For example, health insurance policies often consist of a single form that is updated over time (sometimes referred to as a Certificate of Coverage), while business liability and property policies typically consist of multiple forms, including endorsements, that were published at different times but that are combined into a single contract.

This article primarily uses examples from third-party liability insurance to illustrate the interpretive principles discussed. (Determining and analyzing collection options is as important as evaluating liability because a money judgment has no value if it cannot be collected, and insurance proceeds often represent the primary, if not the only, source for collection.) While the terminology used in other types of policies may differ from the terminology used in liability policies, the same interpretive principles used to construe liability policies generally apply to all insurance policies.[4] This article assumes Colorado law controls. In some cases, complicated choice of law issues may arise that are beyond the scope of this discussion.[5]

Interpretation Basics

The basic principles of insurance policy interpretation are relatively simple and essentially track those of ordinary contract interpretation. But due to the unique format and structure of insurance policies, interpreting a specific policy is rarely straightforward.

The broad principles described for interpreting CGL policies apply to most other kinds of insurance contracts, including first-party coverage that insures against losses or expenses an insured sustains, as opposed to third-party coverage that insures against liabilities owed to others. From time to time, this article refers to a CGL policy form currently in use. This standardized policy language was first compiled by insurance rating bureaus, which have been succeeded by an industry policy writing group, the Insurance Services Organization (ISO). The CGL format originated more than a half-century ago and was known as a General Comprehensive Liability policy. Over time, the word "Comprehensive" was replaced with "Commercial." This change underscores the most important rule of policy interpretation: Every word is important! And each word must be interpreted within the context of the entire policy.

The mechanics of compiling a complete copy of the insurance contract (not just the cover sheet and some of the policy's pages) and grasping

the meaning and interrelation of its complex provisions can be challenging. And parsing insurance coverage questions often involves frequent communications between insureds and their insurers. Because new liabilities may arise from insurer-insured dealings due to unique common law and statutory duties and obligations imposed on insurers, it is critical to carefully manage these communications.

CGL Policy Structure

The more important provisions in a standard CGL policy are:

- the Declarations, which typically describe who is entitled to receive the policy's benefits, the time period during which those benefits are afforded, the benefits' monetary limits, deductibles, and a description of what documents the insurance contract comprises. The Appendix contains a sample liability insurance Declarations.
- the Coverage Grant (also known as the Insuring Clause), which typically describes the universe of events and/or losses covered by the policy. A policy may contain more than one coverage grant, each directed at a different class of risks. In a business liability policy this might include coverage for certain property damage and bodily injury, advertising and personal injury,[6] pollution liability, and employment practices.
- A Coverage Grant also usually distinguishes between "occurrence" and "claims-made" coverage: the happening of a specific injury or loss during the policy period triggers "occurrence" coverage, while notice of a potential claim triggers "claims-made" coverage.[7] Some policies contain Additional Coverages separate from the Coverage Grant, usually describing a subset of insured risks independent and distinct from the Coverage Grant, and often accompanied by their own special terms and monetary limits.
- the Exclusions, which typically carve out a subset of matters that, although within the Coverage Grant's scope, are not afforded the policy's benefits.
- the Exceptions to Exclusions, which typically describe a subset of matters not subject to a specific policy Exclusion.
- the Definitions, which provide meaning to certain policy terms.

In addition, most insurance policies contain Conditions, often consisting of prerequisites to or limitations on the insurer's obligations. Examples of these conditions include required notice of claims by the insured to the insurer and limits on the insured's ability to assign its rights under the policy.

Most liability insurance policies also contain Limits of Liability, which describe the policy's monetary payment limits and how these limits are to be applied, and Other Insurance Clauses, which describe the effect of overlapping insurance coverage afforded by other policies. Liability insurance policies also typically contain Supplementary Payments Provisions describing additional monetary benefits available under the policy, such as coverage for costs taxed and prejudgment interest assessed against an insured, as well as reimbursement of the insured's travel expenses for attending trial.

Finally, the policy may contain Endorsements (sometimes referred to as "Riders"), usually consisting of amendments to the main policy. These endorsements are deemed part of the insurance contract and may change or delete provisions in the main policy, or add completely new provisions. The sidebar on the next page shows how various types of insurance policies are commonly organized.

A Look at Sample Policy Language

The following are sample provisions from a business liability insurance policy. The provisions are greatly simplified, yet those unfamiliar with insurance law may find interpreting them daunting. (The step-by-step process described later offers a detailed methodology for analyzing coverage.) Defined terms are typically highlighted in the policy by bold print, italics, or both.

Simplified Liability Insurance Provisions for Illustrative Purposes

Coverage Grant

We will pay those sums that the insured becomes legally obligated to pay as damages because of "***property damage***" to which this insurance applies. We will have the right and duty to defend the insured against any "***suit***" seeking these damages.

This insurance applies to "***property damage***" only if:

1. The "***property damage***" is caused by an "***occurrence***" that takes place in the "***coverage territory***," and
2. The "***property damage***" occurs during the policy period.

Exclusion and Exception to Exclusion

This insurance does not apply to:

"***Property damage***" to "***your work***" arising out of it or any part of it and included in the "***products-completed operations hazard***." This exclusion does not apply if the damaged work or the work out of which the damage arises was performed on your behalf by a subcontractor.

Definitions

"***Property damage***" means (a) Physical injury to tangible property, including all resulting loss of use of that property. All such loss of use shall be deemed to occur at the time of the physical injury that caused it; or (b) Loss of use of tangible property that is not physically injured. All such loss of use shall be deemed to occur at the time of the "***occurrence***" that caused it.

"***Occurrence***" means an accident, including continuous or repeated exposure to substantially the same general harmful conditions.

"***Your work***" means: (a) Work or operations performed by you or on your behalf; and (b) Materials, parts or equipment furnished in connection with such work or operations. "***Your work***" includes: (a) Warranties or representations made at any time with respect to the fitness, quality, durability, performance or use of "***your work***"; and (b) The providing of or failure to provide warnings or instructions.

In this example, the Coverage Grant, the Exclusion, and the Exception to the Exclusion are the operative provisions. It is critical to carefully read and apply the definition of each defined term in the operative provisions. One

useful exercise is to substitute the definition of each defined term for that term. Use, for example, the Coverage Grant:

> We will pay those sums that the insured becomes legally obligated to pay as damages because of "***property damage***" to which this insurance applies.

This provision, read by itself, provides little helpful information regarding when the insurer would be legally obligated to pay damages on the insured's behalf. To obtain that additional information, replace the term "***property damage***" with its definition. And because the definition of "***property damage***" contains the defined term "***occurrence***," also substitute the definition of "***occurrence***" for that term in the definition of "***property damage***"—like a Russian nesting doll of definitions. Thus, the first sentence of the Coverage Grant becomes:

> We will pay those sums that the insured becomes legally obligated to pay as damages because of:
>
> (a) Physical injury to tangible property, including all resulting loss of use of that property. All such loss of use shall be deemed to occur at the time of the physical injury that caused it; or
>
> (b) Loss of use of tangible property that is not physically injured. All such loss of use shall be deemed to occur at the time of the accident, including continuous or repeated exposure to substantially the same general harmful conditions that caused it.
>
> to which this insurance applies.

Thus, replacing the two terms with their definitions provides more useful information than reading the Coverage Grant alone.

But what does "to which this insurance applies" mean? Per the Coverage Grant, it means "***property damage***" caused by an "***occurrence***" that takes place in the "***coverage territory***" during the policy period. The "***coverage territory***" is defined elsewhere as including the United States, and the policy period is set forth in the Declarations as constituting the time between August 1, 2019 (midnight) and August 1, 2020 (midnight).

Stitching together the meaning of each policy provision by substituting definitions

TYPICAL INSURANCE POLICY STRUCTURE

Property Insurance Policies

These are typically separated into

- a Declarations page
- a Definitions section
- a Property Coverage section (Buildings, Personal Property, Property Not Covered, Additional Coverages, etc.)
- a Losses (Perils) Insured section
- a Losses (Perils) Not Insured section
- a Deductibles and Liability Limits section
- a Conditions section

Auto Insurance Policies

These are typically separated into

- a Declarations page
- a Definitions section
- a (Third-Party) Liability section
- a Medical Payments section
- UM and UIM coverages
- Coverage for Damage to the Auto
- Duties after Loss or Accident
- General Provisions and Conditions

Health Insurance Policies

(Certificates of Coverage)

These are typically separated into

- a Schedule of Benefits
- a Description of Eligibility
- a Pre-Approval Protocol
- a Description of Benefits/Coverage
- a Description of Limitations/Exclusions
- Payment Requirements
- Claims Procedures
- General Policy Provisions
- Termination, Nonrenewal, and Continuation conditions
- Appeals and Complaints

While most people usually refer to the shorter and simpler Schedule of Benefits or Benefit Summary, the more extensive Certificate of Coverage typically controls.

Excess policies typically "follow the form" of the underlying policies and provide additional limits of liability beyond the underlying policies, but they also may contain unique terms, definitions, conditions, and coverage limitations/exclusions.

Umbrella policies are similar to excess policies but are more likely to provide supplemental coverages beyond those described in the underlying insurance.

for defined terms may be time-consuming and complicated. For example, the typical definition of "***products-completed operations hazard***," found in the sample Exclusion above, which definition was omitted from this example, has 11 sub-parts and over 225 words—including an additional five defined terms whose definitions are not included in this word count! While tedious, this substitution of definitions is a crucial step in interpreting any insurance policy.

Of course, not every term can be explained by referencing a policy definition. For example, the term "accident" in the above definition of "***occurrence***" is critical to interpreting this policy, yet it is undefined within the policy. As discussed below, the law ordinarily assigns undefined terms their common and ordinary meaning, typically dictionary meanings. But which dictionary and which common and ordinary meaning should apply may be fertile grounds for argument.

Sometimes a state statute also provides guidance when interpreting or applying a policy term. For example, if the underlying dispute involves insurance coverage for a building contractor, CRS § 13-20-808(3) helps with interpreting the word "accident" in the policy: "In interpreting a liability insurance policy issued to a construction professional, a court shall presume that the work of a construction professional that results in property damage, including damage to the work itself or other work, ***is an accident*** unless the property damage is intended and expected by the insured."[8] (Emphasis added.)

Along with substituting the meaning of defined terms, you must treat the policy as a logic puzzle, working methodically through its various provisions. For example, using the simplified liability policy provisions above, ask yourself the following pertinent questions:

- Is an insured legally obligated to pay damages because of property damage?
- If "yes," does this property damage consist of physical injury to tangible property *or* the loss of use of tangible property that has not been physically injured?
- If "yes," was the property damage caused by an occurrence that happened in the coverage territory *and* during the policy period?
- If "yes," did the occurrence involve an accident, including continuous or repeated exposure to substantially the same general harmful conditions?
- If "yes," does the first part of the Exclusion apply, excepting from coverage property damage to "***your work***" (apply the definition of "***your work***") arising out of it or any part of it?
- If "yes," is that property damage included in the "***products-completed operations hazard***" (apply the definition of "***products-completed operations hazard***") as the second part of the Exclusion requires?
- If "yes," does *either* part of the Exception to the Exclusion apply, restoring coverage, because the damaged work *or* the work out of which the damage arises was performed on the insured's behalf by a subcontractor?

Clear as mud? Hang in there!

> "In these situations, there may be overlapping coverages for a loss or injury, and—depending on the policy language and applicable statutes—it may be possible to aggregate or 'stack' the coverages."

The Coverage Analysis

The following is a step-by-step approach to analyzing coverage in a particular case. Most experienced insurance coverage lawyers take these steps *before* interpreting an insurance policy.

Step 1: Determine the Date of Loss or Injury

Determine as best you can the date of the loss or injury for which coverage is sought. Depending on the loss or injury and the nature of the insurance, more than one policy may be implicated. For example, if the loss or injury progressed over time, more than one liability policy's coverage may be triggered.[9] If the loss or injury date is uncertain, it may be necessary to analyze coverage under each potentially implicated policy. In these situations, there may be overlapping coverages for a loss or injury,[10] and—depending on the policy language and applicable statutes—it may be possible to aggregate or "stack" the coverages. Alternatively, the law may require that the loss be equitably allocated among the policies.

Step 2: Locate a Complete Copy of the Relevant Policy or Policies

Obtain a complete copy of the relevant insurance policy or policies. Typically, the insured will have been sent an electronic or paper (hard) copy. Frequently, especially in the case of commercial entities, the procuring insurance broker may have a record of the policy as well. An insured can also request a copy directly from its insurer.

When representing a third-party claimant or other stranger to the policy, it is unlikely that a liability insurer will directly provide you or your client with a copy of the relevant policy or policies. But under a recently enacted law, an auto insurer may be required to produce a potentially applicable policy upon demand.[11] If litigation ensues over the loss or injury, however, an insured-defendant should be obligated

to voluntarily produce a copy of the policy or policies as part of its mandatory CRCP 26 disclosure obligations.

No matter who you represent in an insurance dispute, do not presume that the policies provided by any of these means are authentic, valid, and complete, even if the insurer has produced a "certified copy" of the policy. The further actions in step 3 must also be followed.

Step 3: Gather Critical Information from the Declarations

Locate the policy's "Declarations" page or pages.[12] The Declarations provide critical information, such as the insurance contract's unique policy number (important to later analysis, including determining what endorsements apply); the policy period (when the policy's coverage is in effect); and a description of the insured's home or business premises location(s), which usually consist of a street address or legal description (sometimes additional addresses may be listed on an endorsement). The Declarations also provide

- a list of the policy forms and endorsements the insurance contract comprises. Perhaps the most important information on the Declarations is a list of forms and endorsements constituting the insurance contract. This list of alpha-numeric codes, for example, "CG 00 01 12 07," often consists of the form number (CG 00 01) and the form's publication or issuance date (12 07), for each form and endorsement comprising the policy. These papers may consist of standardized industry forms, standard or specialized company-generated ("manuscript") forms, or a combination of the two. Without this list of forms and endorsements, it is virtually impossible to verify whether you have a complete copy of the policy, as explained further in step 4 below.
- Often, there is not enough room on the Declarations to list all the policy forms and endorsements, so they may appear on an endorsement called a Form/Endorsement Schedule, referred to in and accompanying the Declarations, as shown on the second page of the Appendix.
- the insured's identity. The primary insured's identity is usually designated on the Declarations as the Named Insured. Other persons or entities qualifying for the status of an "insured" entitled to some or all of the policy's benefits may appear by name on endorsements.
- The policy often includes provisions or endorsements granting the status of "insured" to persons by descriptive category, rather than by name.[13] For example, this might include the Named Insured's "executive officers and directors with respect to their duties as officers and directors," the Named Insured's "real estate managers," or "persons with proper temporary custody of the Named Insured's property if the Named Insured dies." (For property and casualty policies, an insured also must have an "insurable interest" in the property that is the subject of the policy, and often the policy will identify the insured property by location, name, or property type.)
- the policy's liability limits, which establish the maximum dollar amount the insurer will pay for different descriptive categories of losses, injuries, and damages.[14] Sometimes Supplementary Payments and Additional Coverage provisions afford benefits beyond or different from the policy's liability limits, while other times payment of these benefits reduces the policy limits. Stacking of different but overlapping policy coverages and their separate liability limits is sometimes allowed.[15] Most CGL and other liability policies require the insurer to pay for and provide a legal defense to the insured against third-party claims, with no monetary limit on the cost of that defense. However, in certain policies, especially E&O policies, the cost of such defense is often subsumed within the policy's liability limits (so-called "Pac-man," "cannibalizing," or "eroding" limits policies).
- a summary description of the policy premium. The Declarations often have a summary description of the policy premium that may include a short-hand basis for calculating the premium. This may consist of an abbreviated generic description of the broad type of risks (hazards) being insured and the insurer's internal weighting or "rating" of those risks, for example, a dollar premium per square foot, gross sales, units insured, goods sold, or other metric. This information may be useful if a dispute arises concerning a policy that ostensibly excludes coverage for a risk that the insured paid a premium toward.

Step 4: Ensure that the Policy is Complete

Compare the assembled policy pages against the forms and endorsements identified by alpha-numeric code in the Declarations. Verify that you have a complete copy of every form and endorsement, each of which may consist of multiple pages, that makes up the policy. Also, make sure you have the correct edition (i.e., issuance or publication date) of each form, and that the forms and endorsements logically interrelate with each other; sometimes a stray or mismatched page was not included or was substituted during the compilation process.

Once you have matched up each policy form number from the Declarations with each policy page, you probably have a complete copy of the policy. Yet you must also factor in the possibility that the policy has

- extra pages. You may have assembled or were supplied with forms or endorsements that are not listed on the Declarations. There may be many reasons for this; do not automatically assume they are not part of the policy. Whether these forms or endorsements are deemed a part of the policy if they were delivered to the insured or its representative when the policy issued may be disputed.
- missing pages. Sometimes, policy forms and endorsements are listed on the Declarations but are not in the insured's possession or were never provided to the insured. Or an incomplete policy may have been delivered to the insured, raising questions as to whether the missing pages should be re-created based on the Declarations' description of what forms and endorsements the policy comprises.[16]

- pages without form or endorsement information. Pages or forms lacking any alpha-numeric identifying information may be appended to a Policy. If papers that the insurer, insured, or other person such as a broker has supplied cannot be matched to the Declarations' alpha-numeric identifying information, whether those papers constitute part of the insurance contract may be disputed.

Further, sometimes it may be necessary to prove the contents of a lost or missing policy that cannot be recompiled. This happens less frequently today due to the proliferation of electronic record keeping. Courts have approved of the use of secondary evidence to accomplish this recompilation.[17]

Once you are satisfied that you have obtained or re-created a complete copy of the policy's Declarations, the list of applicable policy forms and endorsements, and the complete policy contents, you must establish whether the party seeking the policy's benefits and protections qualifies as an insured per the policy's terms.

Step 5: Determine Whether All Policy Provisions are Valid and Effective

In Colorado, state statutes or regulations may govern certain policy coverages and limitations.[18] Statutorily mandated coverages missing from a policy will be read into the policy, while limitations that are statutorily prohibited will be declared void as against public policy.[19] Workers' compensation insurance and automobile liability uninsured motorist (UM) and underinsured motorist (UIM) coverages are highly regulated.

The following are descriptions of some nuances relating to renewal policies, policy changes, and statutory/regulatory controls, including those governing policy cancellation, which may affect the validity and effectiveness of policy provisions.

Renewal policies. Renewal policies typically are assigned a unique policy number, and each renewal policy is considered a new and separate contract. This is true even where the terms and conditions in the renewal policy are identical to the predecessor policy. It is much more likely, however, that differences will exist between a renewal policy and its predecessor. These differences can be significant and should be examined carefully to determine which provisions apply to particular claims.

Prohibitions on unilateral modifications during a policy term. An insurer is prohibited by common law from unilaterally modifying a policy during its term. Under common law, an insurer can only modify the policy during the term if the insured agrees to the modification and if the modification is supported by consideration. Any modifications should be analyzed to determine whether or to what extent they are effective.

Statutory and regulatory controls. In addition to the above-described common law limitations, Colorado imposes statutory and regulatory limitations on policy changes made during the policy term and upon renewal, and for cancelling a policy. An insurer's failure to comply with these requirements may limit or void such changes. Examples of these laws include those governing

- changes in an existing policy's coverage. Colorado Insurance Regulation 6-1-1 § 5 provides that any riders, endorsements, or amendments limiting coverage afforded by existing life and health policies are not effective unless the named insured or primary policyholder has signified his or her acceptance by signing the proposed rider, endorsement, or amendment, and a signed and dated copy must be attached to the policy.[20]
- advance notice of renewal changes (timing and content). CRS § 10-4-110.5(1) provides that an insurer cannot decrease coverage on a policy renewal for commercial exposures unless it sends a 45-day advance notice by first-class mail to the Named Insured, at the insured's last address shown in the insurer's records, accompanied by the reasons for the decrease, the renewal terms, and the amount of the premium due.
- advance notice of renewal changes (justification). CRS § 10-4-110.5(2) provides that a notice of a decrease in coverage benefits on commercial exposures during the policy term must be based on one or more of the following: nonpayment of premium; a false statement knowingly made by the insured on the application for insurance; or a substantial change in the exposure or risk other than that indicated in the application and underwritten as of the effective date of the policy, unless the insured has notified the insurer of the change and the insurer accepts such change.
- advance notice of cancellation. Generally, an insurer may not cancel an insurance policy without providing written notice to the insured, and sometimes others, in advance of the cancellation. The insurance contract or Colorado statute may limit the permissible grounds for cancellation, and the insurer may be required to return a portion of the premium depending on the contract. CRS § 10-4-105 (life insurance), CRS § 10-4-107 (medical malpractice), CRS § 10-4-109.7 (commercial insurance), CRS § 10-4-110.7 (homeowners insurance), and CRS § 10-4-603 (automobile insurance) each affects how, when, and why an insurer may cancel certain kinds of insurance policies. The policy itself may impose additional conditions on cancellation.

Step 6: Interpreting and Applying the Policy Language

Once you have

- located complete copies of the relevant policy or policies;
- verified from the Declarations and the policy itself who qualifies for the benefits of the policy's coverage, and the time period and geographic location encompassed by the policy's coverage;
- familiarized yourself with the relevant statutes and regulations governing the policies' issuance and contents; and
- determined that all policy conditions have been, will be, or need not be satisfied,[21]

it is time to try to tie the policy's potentially disparate provisions into a harmonious whole, interpret and apply the policy's coverage to the circumstances at hand, and determine whether there is coverage for some or all of the loss, injury, or damage at issue.

To start, read the entire policy carefully, even portions that may seem irrelevant. This

step is tedious, yet critical, and often full of surprises. Note every provision and condition that might possibly apply. This exercise helps with identifying, investigating, obtaining, and evaluating all relevant facts. It also aids with thoroughly preparing the client for an insurer's interview, which often follows notice of a claim, loss, or injury. And given the complexity of most policies, reading them again and again over time may spark new and creative thoughts about how they might be interpreted. Although many policies consist of standard forms, the authors are consistently surprised at the insights gained after each re-reading.

Basic Principles of Insurance Contract Interpretation

The following interpretive rules, which are based on decisional law construing key policy provisions, serve as polestars when interpreting and applying an insurance policy.[22]

General Rules

The construction of an insurance policy is almost always a question of law for the court. A jury generally decides factual disputes regarding application of a policy's coverage to particular circumstances. Insurance policies governed by Colorado law are interpreted broadly and in favor of coverage. Exclusions are construed narrowly and not applied unless they clearly and unambiguously deny coverage. Generally, endorsements prevail when they conflict with a provision contained in the policy's body. However, if the policy body and the endorsement are presented at the same time as a "single package" of coverage to the insured, the endorsement contains no separate signature, and there is no evidence that the endorsement was separately negotiated, then the policy, including the endorsement, will be construed together and in favor of coverage.

Insureds usually bear the burden of proving that the loss, injury, or claim falls within the scope of the policy's Coverage Grant. Insurers generally bear the burden of proving that an exclusion applies to a claim. Where an exclusion applies, the burden generally rests with the insured to bring the claim back into coverage through an exception to the exclusion. However, in certain cases, CRS § 13-20-808(6)(b) shifts the common law burden to a construction professional's insurer to prove that an exception to an exclusion does not restore coverage under the policy. An insured's failure to satisfy a condition may defeat coverage. However, an insured will not be denied coverage if its breach of a policy condition is immaterial. Even the insured's breach of a material condition may be excused if the breach does not materially prejudice the insurer, such as untimely notice (except as to claims-made policies).

Plain and Ordinary Meaning

Words used in an insurance policy should be given their plain and ordinary meaning unless the contract expressly shows that the parties intended an alternative interpretation. Dictionaries may be used to assist in determining the plain and ordinary meaning of words. An insurance contract's meaning (and whether its provisions conflict) is not determined by the understanding of insurance contract interpretation experts but by reference to the understanding of a person of ordinary intelligence.

Beyond the Plain and Ordinary Meaning: Plain English Requirement

In Colorado, an insurer is obligated to write the critical portions of its policies in plain English and with such precision that a reasonable lay person can, by reading the policy, understand the coverage. The complex structure of many insurance policies, and the reality of applying them to myriad circumstances, some of which may have been beyond the contemplation of the insurer issuing the policy, have led to endless debates over whether a reasonable lay person can, by reading the policy, understand the coverage. In practice, some urge that the real test seems to be whether a reasonable lay person can, by reading the policy *and* knowing the relevant case law, understand the coverage.

Ambiguity

Whether a contract term is ambiguous is a question of law to be reviewed de novo. Ambiguous policy provisions will be construed in favor of coverage and against limitations that inure to the insurer's benefit. Although a contract term is ambiguous when susceptible to more than one reasonable interpretation, the mere potential for more than one interpretation of a term, considered in the abstract, does not create an ambiguity. And a policy term that may be ambiguous with respect to one set of facts is not necessarily ambiguous with respect to other facts directly within the purview of the terms.[23]

Intent and Extrinsic Evidence

Colorado courts rarely examine the parties' intent regarding an insurance contract. Instead, they usually resolve any uncertainty or ambiguity concerning coverage in favor of the insured. Because insurers customarily do not provide the insured with a copy of the insurance contract until after binding (formally accepting) the contract, an insurer would be hard pressed to establish that the insured had any input into the language of the contract or formed any pre-existing "mutual intent" as to the meaning or application of the policy's terms. Some insurance counsel argue that the "contra-insurer" rule of construing ambiguities against insurers does not apply in favor of commercially sophisticated insureds, or where the dispute over policy construction is between two insurers. These arguments are usually rejected.

In most cases, based on the parol evidence rule (which generally precludes varying the terms of a contract by resort to extrinsic evidence), testimony of claims personnel, insurers' internal memoranda, and comments made to regulatory agencies are inadmissible in interpreting a policy. In extremely rare cases, however, such evidence may be admissible to establish industry custom and usage regarding a term's meaning.

A 2010 statute, CRS § 13-20-808(4)(c), allows courts greater freedom to consider extrinsic evidence in construing a liability insurance policy issued to a construction professional. That law states that, in construing such a policy, the court may consider any non-privileged writing concerning the disputed provision that is "generated, approved, adopted or relied on" by an insurer or an insurance rating or policy drafting organization. But such "writing shall not

ADDITIONAL RESOURCES

- Russ et al., *Couch on Insurance* 3d (West 1997 and Supp. 2019). Multi-volume loose-leaf treatise on insurance with forms, analysis, and case law.
- Long, *New Appleman Law of Liability Insurance* (2d ed. Matthew Bender & Company, Inc. 2011 and Supp. 2019). Treatise containing extensive discussion of liability insurance principles, contracts, coverages, exclusions, and more.
- Keeton et al., *Insurance Law: A Guide to Fundamental Principles, Legal Doctrines, and Commercial Practices* (2d ed. West Academic Publishing 2017). Foundational insurance treatise explaining how principles or doctrines such as insurable interests, designation of insurers, and risk transference apply to property, life, liability, and other types of insurance.
- Miller, Miller's *Standard Insurance Policies Annotated* (7th ed. Thomson Reuters 2013 and Supp. 2019). Collection of the most widely used and litigated ISO standard property and casualty (liability) insurance policies and endorsements. Each insurance policy clause and endorsement is annotated with jurisdictionally organized summaries of all relevant U.S. appellate court decisions issued since 1978.
- Fire, Casualty & Surety Bulletins (FC&S), https://www.nuco.com/fcs. A loose-leaf bulletin service often viewed as expressing the insurance industry's perspective and intent regarding fire, casualty (including public liability), and surety forms. FC&S is published by National Underwriter Company, an organization often affiliated with the ISO.
- Insurance Risk Management Institute (IRMI), https://www.irmi.com. An online resource for insurance professionals discussing multiple insurance lines, including commentary and article links.
- *43 Am. Jur. 2d* Insurance (Thomson Reuters 2019 Supp.).
- 44 *C.J.S.* Insurance (West Publishing 2019 Supp.).
- Bjorkman et al., *Law and Practice of Insurance Coverage Litigation* (Thomson/West 2019 Supp).
- Malecki et al., *Commercial General Liability Coverage Guide* (12th ed. National Underwriter Company 2017). An excellent primer on CGL policies, including their structure and history.
- Turner, *Insurance Coverage of Construction Disputes* (2d ed. West 1999 and Supp. 2019). The most comprehensive treatise on liability insurance coverage for construction defect claims.
- Bruner and O'Connor, Jr., *Bruner & O'Connor on Construction Law* (West 2002 and Supp. 2019). Treatise containing a detailed discussion of liability insurance coverage for construction defect claims.
- Widiss and Thomas, *Uninsured and Underinsured Motorist Insurance* (Rev. 3d ed. LexisNexis 2019).
- Ostrager et al., *Handbook on Insurance Coverage Disputes* (19th ed. Wolters Kluwer 2019).
- Lathrop, *Insurance Coverage for Environmental Claims* (Matthew Bender 1992 and Supp. 2018).
- Markham et al., *The Claims Environment* (Insurance Institute of America 1993). A foundational insurance treatise.
- Windt, *Insurance Claims and Disputes: Representation of Insurance Companies and Insureds* (6th ed. Thomson Reuters 2013 and Supp. 2019).
- Harnett, *Responsibilities of Insurance Agents and Brokers* (Matthew Bender 1974 and Supp. 2019).
- Grund et al., *Personal Injury Practice: Torts and Insurance* (3d ed. West 2012 and Supp. 2019). Desktop encyclopedia discussing Colorado insurance coverage law and relevant statutes.
- Benson et al., *The Practitioner's Guide to Colorado Construction Law*, Chapters 6 and 14.12 (2d ed. CLE in Colorado, Inc. Supp. 2020) (forthcoming 2020). A comprehensive discussion of Colorado insurance law concerning liability coverage for construction defects and related issues.
- Harnett and Lesnick, *The Law of Life and Health Insurance* (Matthew Bender 1988 and Supp. 2018).

be used to restrict, limit, exclude, or condition coverage or the insurer's obligation beyond that which is reasonably inferred from the words used in the insurance policy."

Courts may also conditionally admit extrinsic evidence to determine whether a clause is ambiguous, such as evidence of local usage. For example, a court may look beyond the four corners of the agreement to determine if the parties intended for a term to have some special or technical meaning and the term's meaning is not apparent from the contract itself. However, courts generally may not consider a party's own unilateral extrinsic expression of intent.

In one unusual case, the Colorado Court of Appeals held that, where an ambiguity exists regarding a policy's premium calculation and the ambiguity cannot be resolved by reference to other contractual provisions, extrinsic evidence must be considered to determine the parties' mutual intent when contracting.[24] The Court added that an undefined policy term is not ambiguous if its meaning can be determined by looking at the definitions generally accepted by courts, industry, and authoritative secondary sources.[25]

Ejusdem Generis

Many courts outside Colorado apply the rule of ejusdem generis (meaning "of the same kind or nature") to insurance contracts.[26] This doctrine has been adopted in Colorado[27] but Colorado appellate courts have not yet decided whether it applies to insurance contracts. Ejusdem generis requires that where general words follow the enumeration of particular classes of persons or things, the general words will be construed as applicable only to persons or things of the same general nature or class as those enumerated. The particular words are presumed to describe certain species, and the general words are to be used for the purpose of including other species (examples) of the same genus (category). Thus, the doctrine of ejusdem generis does not apply where it would hinder the plain purpose and intent of the language at issue; or where the specific words embrace all objects of their class, such that the general words must bear a different meaning from the specific words or be meaningless. Where the particular words exhaust the class, the general words must be given a meaning beyond the class or be discarded altogether.

Reasonable Expectations

Colorado recognizes two general circumstances where the reasonable expectations doctrine renders an exclusion unenforceable: where a reasonable person would, based on the policy language, not understand that she is not entitled to coverage; and where, because of circumstances attributable to an insurer, an objectively reasonable insured would be misled into understanding that she is entitled to coverage, while the insurer would maintain she is not.[28]

In addition, where a Colorado court needs to give meaning to an ambiguous provision, it will interpret the policy to meet the insured's reasonable expectations. It has been said that this rule does not apply to insurance policies that are not ambiguous or contrary to public policy, and the rule merely supplements but does not replace the rule that insurance policies are to be construed according to principles of contract construction. However, the Tenth Circuit has observed that Colorado applies the reasonable expectations doctrine broadly, even to construe insurance policies in a manner that is consistent with the insureds' reasonable expectations in the absence of a finding of ambiguity.[29]

Paralleling this common law rule, in certain cases CRS § 13-20-808(4)(a) directs courts to consider a construction professional's objective, reasonable expectations concerning coverage in the event of an ambiguity. The legislative declarations in the statute demonstrate this law was enacted because the legislature found that insurance policies issued to construction professionals have become very complex, often including multiple, lengthy endorsements and exclusions conflicting with the insured's reasonable expectations.

Illusory Coverage

The "illusory coverage" doctrine concerns coverage for which the insured has paid a premium but that, as a practical matter, could never apply. Under this doctrine, courts will not interpret an exclusion to be so broad or nebulous that it swallows and effectively nullifies a broad Coverage Grant.

Public Policy Violations

As a general rule, provisions that dilute, condition, or limit statutorily mandated coverage or violate public policy are void or will have limited application. These issues often arise with respect to motor vehicle insurance, which is closely regulated by the General Assembly. For example, a UM/UIM policy's definition of "resident relative," which required a relative to reside primarily with the named insured to receive UM/UIM benefits, violated public policy because it provided coverage to a narrower class of persons than required by the UM/UIM statute.[30] Colorado courts have also held that liability insurance cannot cover punitive damages because such coverage would violate public policy.[31]

What if Judges Disagree about What the Policy Means?

After reading dozens of cases from around the country construing identical policy provisions—with many reaching different, if not contradictory, interpretations of the same insurance contract language—one might naturally ask whether it could be argued that a policy provision must be capable of more than one reasonable interpretation, and is therefore ambiguous, where appellate judges disagree on the interpretation of the same provision. Some Colorado decisions have embraced this view on the facts before them.[32]

Case Law and Interpretive Treatise Resources

There are many research aids to assist practitioners in finding relevant case law and treatises analyzing coverage under various types of insurance. Some popular research aids are included in the sidebar.

Considering the Insurer's Perspective

If the insurer has already attempted to apply the policy's terms and conditions to a claim, it may have issued a coverage position letter, either a Denial (Declination) or Reservation of Rights (ROR) Letter. Denial and ROR Letters provide a

window into how the insurer is analyzing coverage and offer one potential policy interpretation. Irrespective of the insurer's position, counsel representing the insured should independently analyze coverage.

A Denial Letter establishes that the insurer is denying coverage. An ROR Letter, on the other hand, signals that the insurer is attempting to reserve its right to deny coverage completely but may be leaving the door open for continued investigation and consideration of the claim. Often, in both Denial and ROR Letters, the insurer invites the insured to present the insurer with any new information that might bear on or change its coverage analysis. Neither a Denial nor an ROR Letter necessarily binds the insurer to the identified basis upon which it relies in declining or reserving its right to decline coverage (although it might, under some circumstances).[33]

In the case of a third party's liability claim against the insured, the insurer may offer to provide and pay for the insured's legal defense in an ROR Letter. This does not, however, mean that the insurer will necessarily indemnify the insured against any legal liability emanating from the claim. An insurer defending under an ROR Letter may be able to obtain reimbursement from its insured of the insurer's defense costs under limited circumstances.[34]

Applying the Policy to the Facts and the Facts to the Policy

There is a "chicken or the egg" dilemma when analyzing coverage: Should you investigate and pin down all the relevant facts first, or should you educate yourself on the relevant policy terms, conditions, and interpretive case law before searching out the facts? In practice, after securing a complete copy of the insurance policy, the typical cyclical course is to (1) obtain the basic facts; (2) review the entire policy, identifying relevant portions, and research pertinent coverage law in light of the facts; (3) obtain and analyze all available Denial and ROR Letters; (4) investigate and fill any gaps in the factual record in light of the relevant policy provisions and coverage law; (5) conduct further policy review and legal research; and (6) search for more facts relevant to coverage as illuminated by your legal research and investigation to date.

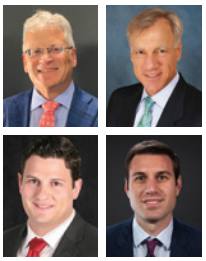
Making Your Coverage Case to the Insurer

Colorado recognizes both statutory and common law causes of action for damages against insurers who unreasonably deny, delay, or otherwise mishandle claims to the insureds' detriment. In addition to recovering the benefit owed, these claims may allow for the recovery of double damages; attorney fees; and compensation for, among other things, emotional distress, credit injury, and economic loss.[35] Every communication between an insured and its insurer regarding coverage should be viewed as a potential exhibit in later litigation and drafted with an eye toward this endgame. Because such litigation is likely to include both the resolution of a contract dispute over what the policy does or does not cover and whether the insurer handled the claim fairly and promptly, the timing, content, value, and import of these communications cannot be underestimated.

Those new to insurance policy analysis may want to consider whether experienced coverage or bad faith counsel may be aware of inconsistent positions a particular insurer has taken in the past, or of internal claims handling or policy interpretive materials that suggest that the insurer should be charting a different course. Such information may be very useful when negotiating a claim with the insurer. If one chooses to consult or associate with more experienced counsel, an insurer may become more attentive to the matter, especially if such counsel have established themselves as being willing to engage in extended coverage litigation when necessary.

Conclusion

Interpreting and applying insurance coverage is essentially no more difficult than analyzing any contract dispute. With time, study, careful policy review, solid legal research, and dogged effort, a practitioner unfamiliar with insurance matters should be able to parse what is and is not covered by most insurance policies. Some insurance policies are relatively simple to interpret and apply, such as auto insurance. Others are extremely complicated and from an economic, efficiency, and competency standpoint, it may make sense to associate with or refer the matter to experienced insurance coverage counsel. Moreover, if potential extra-contractual damages exposure may exist on the part of an insurer, such as for its unreasonable or bad faith handling of a claim, association with experienced bad faith counsel may be prudent. CL



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NOTES

1. Much terminology relating to insurance derives from its centuries-old origins. The concept of insurance—that is, of many parties pooling their funds and sharing a risk of loss—originated with the transport of goods on sailing ships across dangerous seas. These "ocean marine" loss-sharing concepts eventually were applied to risks located on land, that is, "inland marine." *See* Jerry, "A Brief History of Insurance," 1-1 *New Appleman on Insurance Law Library Edition* § 1.02 (2019).

2. *See generally* Olson et al., "Introduction to Suretyship," 11-138 *New Appleman on Insurance Law Library Edition* § 138.01 (2019).

3. Such "occurrences" typically do not mean the negligent act itself but the occurrence of property damage or bodily injury caused by that act.

4. In the rare case where an insurance contract is governed by federal common and statutory law, such law usually controls.

5. Such choice of law difficulties might involve, for example, a University of Texas resident-student involved in an auto accident while traveling through Colorado who is insured under her parents' Oklahoma auto insurance policy, or a California manufacturer insured by a New York insurer whose product explodes in Colorado, injuring the product user's relative visiting from Nebraska.

6. "Personal injury" as used in these insurance policies is usually defined to include false arrest, malicious prosecution, defamation, and a number of other specified torts.

7. Some Claims-Made policies restrict coverage to wrongful acts occurring on or after a specific date; others afford full prior acts coverage, insuring wrongful acts occurring any time before the policy's inception date. Most Claims-Made policies offer the insured the option of paying an additional premium for an extended reporting period, covering claims first made after the policy's expiration and during the extension.

8. This law was adopted in response to an appellate court decision suggesting to some that negligent construction might not qualify as an "accident," and therefore was not an "occurrence" covered by a construction professional's liability insurance. *See* Sandgrund and Sullan, "H.B. 10-1394: New Law Governing Insurance Coverage for Construction Defect Claims," 39 *Colo. Law.* 89 (Aug. 2010) (discussing this law's adoption in response to the holding in *Gen. Sec. Indem. Co. v. Mt. States Mut. Cas. Co.*, 205 P.3d 529 (2009), which many insureds, as well as insurers, found to be out of step with the policy's underlying intent).

9. In the case of Claims-Made policies with full prior acts coverage, the date the notice of the claim was first received may be the only relevant question, regardless of when the alleged wrongful act or its ensuing injury occurred.

10. For example, a permissive driver of another's car may qualify as an insured under her own auto liability policy as well as the car owner's. If the accident was work-related, the employer's policy may apply, although a "business pursuits" exclusion in the driver's policy might negate that policy's coverage. Similarly, a slip and fall on business premises might trigger coverage under one's own health insurance policy, a workers' compensation policy (if one was acting in the course and scope of one's employment), and the medical payments coverage available under the business owner's liability policy, although one type of coverage may be deemed primary versus the others.

11. HB 19-1283 § 2; CRS § 10-3-1117.

12. Most liability and property insurance policies follow this general format and contain Declarations. Health, accident, and disability policies generally have a different format, such as a short form policy coverage description, which may or may not be binding on the insurer depending on applicable state law, and a comprehensive master policy or certificate of coverage.

13. These persons are often referred to or defined as "Additional Insureds," "Other Insureds," and "Omnibus Insureds."

14. In addition, liability insurance coverages may provide separate limits for each "occurrence," and an aggregate limit (or "cap") on all occurrences. Property insurance coverages usually have different limits for different kinds of property losses (e.g., home, contents, or jewelry), as well as aggregate limits. Other policies have unique payment limitations; for example, travel insurance policies have different limits for cancellation, delays, lost baggage, emergency medical expense, and personal liability.

15. Most modern policies employ some sort of "anti-stacking" language to avoid this result. Some policies provide that they are secondary or excess to other overlapping policy coverage, although when these provisions appear in both policies, they often negate one another.

16. In one case, a Colorado court refused to enforce against the insured coverage limitations found in the portion of a policy that was accidentally printed and delivered with several blank pages. *Woodruff v. O'Dell*, 701 P.2d 112, 113–14 (Colo.App. 1985) (where insurance policy was delivered with six of its 14 pages left blank, the blank pages controlled over the insurer's standard form policy).

17. *See generally* Sandgrund, "The Lost or Missing Insurance Policy," 22 *Colo. Law.* 1277 (June 1993); Johnson, "Litigating Lost or Missing Insurance Policies," 25 *Colo. Law.* 115 (Oct. 1996).

18. "Surplus lines" insurance carriers may be relieved from complying with some Colorado insurance statutes, and some insureds may be "exempt" from a statute's application. *See, e.g.*, CRS § 10-4-109.7 (section inapplicable to insurers authorized to write surplus line insurance and to insurers providing coverage for exempt commercial policyholders).

19. *See, e.g.*, *Farmers Ins. Exch. v. Dotson*, 913 P.2d 27, 30 (Colo. 1996) (finding exclusion violative of public policy as expressed in No-Fault Act); *FDIC v. Bowen*, 824 P.2d 41, 43 (Colo.App. 1991) ("[P]ublic policy is derived from legislation or legal precedent."), *rev'd on other grounds, FDIC v. Am. Cas. Co.*, 843 P.2d 1285 (Colo. 1992).

20. 3 CCR 702-6.

21. Whether a policy condition has been satisfied can often be determined simply by asking the insured. While it is generally true that an insurer cannot, through operation of implied waiver or estoppel principles, expand coverage, both doctrines may be available to excuse an insured's failure to satisfy a policy condition so as to avoid a forfeiture of insurance benefits. *See generally* Sandgrund et al., "Applying Waiver and Estoppel Principles to Insurance Contracts," 49 *Colo. Law.* 50 (Jan. 2020).

22. Case citations to the general rules described in this section can be found in *The Practitioner's Guide to Colorado Construction Law* § 14.12.2 (2d ed. CLE in Colo., Inc. Supp. 2020) (forthcoming 2020). Specific citations are included only for authority not appearing in § 14.12.2.

23. One case held that an exclusion for criminal acts unambiguously denied coverage to an insured who pleaded guilty to criminal assault and menacing for related civil liability, even given the potential that such exclusion could be ambiguous in other, unrelated situations. *See Allstate Ins. Co. v. Juniel*, 931 P.2d 511 (Colo.App. 1996).

24. *Travelers Indem. Co. v. Howard Elec. Co.*, 879 P.2d 431, 434–35 (Colo.App. 1994).

25. *Id.* at 434.

26. *See, e.g.*, *Cox Commc'ns, Inc. v. Nat'l Union Fire Ins. Co. of Pittsburgh, PA*, 708 F.Supp.2d 1322 (N.D.Ga. 2010) (under ejusdem generis, a company's D&O insurance policy succeeded in time only to policies previously issued to the company, not to the policy issued to the third party with whom the company had a contractual relationship, thus barring application of a "prior notice" exclusion based on the prior claim made on the third party's policy; the policy term "succeed in time" was located in a series with "renewal" and "replacement," and because the term's ordinary meaning was so broad that it created ambiguity, "succeed in time" was to be considered of the same kind or class).

27. *See Winter v. People*, 126 P.3d 192, 195 (Colo. 2006) ("where a general term follows a list of things in a statute, we apply the principle of *ejusdem generis*, that is, the general terms are applied only to those things of the same general kind or class as those specifically mentioned."). (Emphasis in original.)

28. *Bailey v. Lincoln Gen. Ins. Co.*, 255 P.3d 1039, 1048-49 (Colo. 2011).

29. *Reg'l Bank of Colo., N.A. v. St. Paul Fire & Marine Ins. Co.*, 35 F.3d 494, 497–98 (10th Cir. 1994) ("We believe the Colorado Supreme Court would apply the rule of reasonable expectations . . . here, regardless of whether or not the policy was found to be ambiguous.") (citing, e.g., *State Farm Mut. Ins. Co. v. Nissen*, 851 P.2d 165, 168 (Colo. 1993)).

30. *Grippin v. State Farm Mut. Auto. Ins. Co.*, 409 P.3d 529 (Colo.App. 2016) (construing CRS § 10-4-601(13) (2015)).

31. *See, e.g.*, *Lira v. Shelter Ins. Co.*, 913 P.2d 514, 517 (Colo. 1996).

32. "If there is a split of authority interpreting an insurance policy provision, then the provision may be ambiguous." *Thompson v. Maryland Cas. Co.*, 84 P.3d 496, 504 (Colo. 2004) (citing *Hecla Min. Co. v. New Hampshire Ins. Co.*, 811 P.2d 1083, 1092, n.13 (Colo. 1991) (while "mere existence of conflicting authority does not establish the ambiguity of a contract term . . . this type of comprehensive debate dispels the insurer's contention that the exclusionary language is clear." (internal citations omitted)). *See also Colo. Pool Systems, Inc. v. Scottsdale Ins. Co.*, 317 P.3d 1262, 1273 (extent of policy's ambiguity "is evidenced by the differing opinions issued by divisions of this court").

33. For further exploration of this topic, *see* Sandgrund et al., *supra* note 21.

34. *Hecla Mining Co.*, 811 P.2d at 1092.

35. *See* CRS § 10-3-1116(1) (providing that a claimant whose claim for payment of insurance benefits has been unreasonably denied may "recover reasonable attorney fees and court costs and two times the covered benefit"); *Goodson v. Am. Std. Ins. Co.*, 89 P.3d 409, 417 (Colo. 2004) (holding that damages for "emotional distress," "inconvenience," and "impairment of the quality of life" are available in actions for bad faith breach of an insurance contract).

Appendix

[redacted] INSURANCE COMPANY

COMMERCIAL GENERAL LIABILITY COVERAGE PART DECLARATIONS

POLICY NUMBER: [redacted]

☐ Extension of Declarations is attached.

Effective Date: 07/10/2008 12:01 A.M. Standard Time

LIMITS OF INSURANCE	☐ If box Is checked, refer to form S132 for Limits of Insurance.
General Aggregate Limit (Other Than Products/Completed Operations)	$2,000,000 Products/Completed Operations
Aggregate Limit	$2,000,000
Personal and Advertising Injury Limit	$1,000,000 Any One Person Or Organization
Each Occurrence Limit	$1,000,000
Damage To Premises Rented To You Limit	$100,000 Any One Premises
Medical Expense Limit	$5,000 Any One Person

RETROACTIVE DATE (CG 00 02 ONLY)

This Insurance does not apply to "bodily Injury", "property damage" or "personal and advertising injury" which occurs before the Retroactive Date, If any, shown here: NONE (Enter Date or "NONE" If no Retroactive Date applies).

BUSINESS DESCRIPTION AND LOCATION OF PREMISES

BUSINESS DESCRIPTION: Construction
LOCATION OF ALL PREMISES YOU OWN, RENT, OR OCCUPY: ☒ Location address Is same as mailing address.
1. [redacted] Arvada CO 80004
2.
Additional locations (if any) will be shown on form S170.
LOCATION OF JOB SITE (If Designated Projects are to be Scheduled):

CODE#	CLASSIFICATION	*	PREMIUM BASIS	RATE PR/CO	RATE All Other	ADVANCE PREMIUM
91580	Contractors — Executive Supervisors or Executive Superintendents	p	31,500	Included	75,000	Included 2,363
91583	Contractors — subcontracted work — In connection with building construction, reconstruction, repair or erection — 1 or 2 family dwellings	c	563,000	Included	9,060	Included 5,101

PREMIUM BASIS SYMBOLS
a = Area (per 1,000 sq. ft. of area)
c = Total Cost (per $1,000 of Total Cost)
m = Admissions (per 1,000 Admissions)
+ - Products/Completed Operations are subject to the General Aggregate Limit
c = Total Operating Expenses (per $ 1,000 Total Operating Expenditures)
p = Payroll (per $1,000 of Payroll)
s = Gross Sales (per $ 1,000 of Gross Sales)
t = See Classification
u = Units (per unit)

PREMIUM FOR THIS COVERAGE PART $ 7,464

FORMS AND ENDORSEMENTS (other than applicable Forms and Endorsements shown elsewhere In the policy)

Forms and Endorsements applying to this Coverage Part and made part of this policy at time of issue:
Refer to S902 Schedule of Forms and Endorsements

THESE DECLARATIONS ARE PART OF THE POLICY DECLARATIONS
CONTAINING THE NAME OF THE INSURED AND THE POLICY PERIOD.

Appendix (cont.)

[redacted] INSURANCE COMPANY

POLICY NUMBER: [redacted]

Named [redacted]

Insured: Construction Co. (Residential Division)

SCHEDULE OF FORMS AND ENDORSEMENTS

IL0017	(Il/98)	Common Policy Conditions
EOO1J	(Il/06)	[redacted] Policy Jacket
E906	(06/07)	Service of Suit
S013	(12/00)	Minimum Earned Premium Endt
Sl50	(10/04)	CGL coverage Part Declarations
CG000l	(12/04)	Comml General Liability Cvg Form
CG0067	(03/05)	Excl—Violation of Statutes
CG2134	(01/97)	Excl—Designated Work
CG2147	(07/98)	Excl—Employmt-Related Practices
CG2153	(01/96)	Excl—Designated Ongoing Ops
CG2173	(01/08)	Excl of certified Acts of Terror
CG2196	(03/05)	Silica/Silica—Related Dust Excl
IL0021	(07/02)	Nuclear Energy Liab Exclusion
L201	(06/07)	Excl—Ext Insul/Finish Sys (EIFS)
L205	(02/08)	Excl—Injury Empl/Contr/Vol/Wrkr
L213	(06/06)	Excl—Certain Comp-Related Losses
L217	(06/07)	Excl—Punitive Exemplary Dmgs
L219	(06/07)	Excl—Prf Svc/Cntr/Enqr/Arct/srvy
L223	(06/07)	Excl—Total Pollution
L241	(06/07)	Excl—Micro/Bio Organisms/Contam
L245	(06/07)	Excl—Ovrspry/Spill/Leak/Overflow
L266	(06/07)	Condl Excl—Wrck, Dismant/Salv Ops
L280	(06/07)	Cond Excl—Weathr Rel Dmg-Roof Op
L285	(06/07)	Coverage Limitation—Mobile Equip
L288	(06/07)	Addl Cond & Excl—Contr Subcontr
L292	(06/07)	Excl—Work Completd Prior to Date
L305	(08/07)	Excl—All Ops Cvrd by Cnsld Prg
L601	(06/07)	Amend of Conditions—Prem Audit
L850	(06/07)	Deductible Liab Insurance
S038	(05/04)	Amendment of Liquor Liab Excl
S261	(08/03)	Asbestos Exclusion