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**The Anatomy of an Insurance Policy****Linda Dedman**

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## **The Anatomy of an Insurance Policy**

### **I. Introduction.**

Although insurance policies provide various types of coverage and the specific wording of provisions differ from one coverage part to the next, insurance policies are typically organized in the same manner. Understanding the basic structure of an insurance policy is essential to efficiently analyzing potential coverage. Many insurance practitioners develop a systematic method of dissecting insurance policies. This paper outlines one approach.

### **II. Determining the Applicable Coverage – Selecting the Specimens.**

Before dissecting a policy, it is important to identify all the insurance policies containing a coverage part potentially affording coverage. There are multiple types of insurance policies (i.e., **commercial general liability**, **professional liability** and **commercial property**)<sup>1</sup> and each policy generally contains multiple **coverage parts**. The particular facts or allegations may trigger one or more coverage parts in one or more policies. The timing of events will also dictate which policy year is potentially implicated. For example, commercial general liability policies are usually **triggered** by the date of the **occurrence** whereas professional liability policies are usually written on a **claims-made** basis. So, in a case filed in 2007 involving negligent hiring and supervision and malpractice which occurred in 2005, the 2005 CGL and 2007 professional liability policies would be the most logical starting point for coverage analysis. Also, **umbrella policies** by definition are broader than underlying policies and should be evaluated. Consequently, to provide a comprehensive coverage evaluation, copies of all potentially applicable insurance policies should be obtained and review of each coverage part within each policy should be completed.

The insured may be unaware of the policies and specific types of coverage available to respond to a loss or other event. But, the insurer should have a good understanding of coverages that exist in the marketplace and also should have a specific listing of other coverages that the insured purchased for a given policy year. Also, if the policy was procured or issued through an agent, it is often helpful to communicate with the agent to obtain a schedule of all existing coverages. Sometimes, the insured may have coverage issued by different agents, and, in such event, each agent should be consulted. Finally, the insured may have coverage available through another entity's policy by virtue of an **insured contract**, **indemnity agreement** or status as an **additional insured**.

After identifying the potentially applicable policies and coverage parts, the insurance policy analysis can begin.

### **III. Basic Approach – Preparing the Specimen.**

The first step is to obtain a certified copy of each policy that is potentially triggered. With respect to each policy, be certain that all **endorsements** listed on the

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<sup>1</sup> Definitions for bolded terms are located in Appendix 2 of this paper.

schedule are included and that the **form number** on the schedule matches the endorsement that is actually attached. The absence of an endorsement or the inclusion of an incorrect endorsement can change the entire analysis. Also make sure the pages are consecutively numbered. Policies are frequently printed as two-sided documents but copied as one-sided documents.

Some insurance policies are issued as package policies, meaning that they contain more than one **base policy** form (i.e., commercial general liability and employee benefits liability). In such an event, be sure that all base policy forms and **declarations pages** are included. It is best to separate each base policy form, together with the applicable declarations and endorsements. An independent analysis of each potentially applicable coverage part contained within each base policy form should be completed. Finally, reviewing the entire policy is important. Coverage disputes frequently surround the meaning of a particular phrase. A slight difference in wording between otherwise parallel provisions can be outcome determinative—or at least persuasive. For example, even if pollution is not a direct coverage issue, the wording and structure of the absolute pollution exclusion can be helpful to contrast a narrower exclusion.

#### **IV. Analysis – Dissecting the Specimen.**

Once all potential base policy forms have been identified, the dissection of each coverage part may begin. Each policy will contain: (1) a declarations page; (2) a form that schedules all endorsements; and (3) a base coverage form. A review of each section essentially dissects the policy, which ultimately results in a determination of the potential for coverage.

##### **A. Declarations.**

The declarations page is usually the first page in the policy and will contain specific and important information, including the name of the insurer, the policy number, the policy period, the named insured, the type(s) of coverage, and the schedule of limits. If applicable, the declarations page will also include a **retained limit** or **deductible** and a **retroactive date**.

In a package policy, each policy form will have a declarations page with applicable limits. The package should include a limits section that states how the limits intertwine in the event more than one policy form and/or coverage part is triggered. Limits are generally listed on a per claim or occurrence basis and in the **aggregate**.

##### **B. Listing of Forms and Endorsements.**

Endorsements change the base policy – some add coverage, some exclude coverage, some modify coverage; some are broad and some are narrow. Basically, endorsements may impact any provision in the base policy form, including who is a named insured or additional insured and whether liability is limited to certain premises, vehicles, persons or activities. Because an endorsement either adds to or replaces what is contained in the base policy form, review of the schedule of endorsements should be completed prior to review of the base policy form.

An endorsement list may be included on the declarations page or a separate endorsement list or schedule may be attached to the declarations page. Usually the schedule will include a form number as well as the title of the endorsement. The title may or may not be enough to determine whether it will impact coverage. When in doubt, review the endorsement. During this process, review the number of each endorsement and compare it with the number listed on the endorsement list to be certain that the correct endorsement was attached. Often, there are multiple forms with the same name and obtaining the correct one (determined by number) can be essential. In addition, if it appears that a listed endorsement is not included, obtaining the missing endorsement is necessary prior to making any final determination of whether coverage exists.

During review, if an endorsement replaces or modifies a provision in the base policy form, a notation in the base policy form should be made so that there is no reliance on the base policy form provision. Also, if coverage is added, a notation in the appropriate insuring agreement section, if applicable, should be made so that any accompanying exclusions can be analyzed in conjunction with the endorsed coverage.

Importantly, if the policy is a **renewal**, review of the prior policy is necessary. If endorsements that modify coverage are included in the renewal policy that were not included in the prior policy, review of applicable common, statutory and regulatory laws is needed to determine whether the added endorsement will be permitted to modify the coverage.

### **C. Base Policy Form.**

The base policy form contains four key sections: (1) the insuring agreement; (2) the exclusions; (3) the definitions; and (4) the conditions.

#### **1. Definitions.**

While the definitions section is necessarily referred to throughout the review of the policy, it is rarely if ever near the front of the policy. It is a good idea to mark the page on which the definitions begin to ease the constant need for review of the defined terms.

#### **2. The Insuring Agreement.**

The **insuring agreement** is the heart of the insurance policy. It determines whether or not the claim is potentially within the initial scope of coverage.

There can be more than one insuring agreement in a base policy form and more than one base policy form that may apply to any given claim. A review of each insuring agreement within each policy form is essential. For example, a CGL policy typically has three separate coverage parts: (1) Coverage A -- Bodily Injury and Property Damage; (2) Coverage B -- Personal Injury and Advertising Injury; and (3) Coverage C -- Medical Payments. Each coverage part has its own insuring agreement and affords a different scope for coverage.

Insuring agreement issues may include: