

circular

January 29, 1979

BROAD FORM PROPERTY DAMAGE COVERAGE EXPLAINED

General Liability GL 79-12
(Rules/Forms)

BACKGROUND

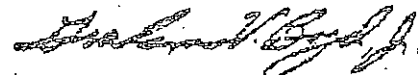
Because Broad Form Property Damage Coverage is difficult to understand, companies and agents have requested that we make available an explanation of this coverage as provided by Advisory Endorsements ADV-3005 and ADV-3006. This coverage is also provided in Standard Endorsement G222 (GL 04 04 07 76), Broad Form Comprehensive General Liability Endorsement.

ISO ACTION

We have established a comparative analysis showing the advisory endorsement language and the explanation of intent.

ATTACHMENT

Explanatory Memorandum for Broad Form Property Damage Coverage



Graham V. Boyd, Jr.
Manager
General Liability Division
(212) 487-4672



Insurance Services Office 160 Water Street, New York, New York 10038 (212) 487-5000

EXHIBIT A

EXPLANATORY MEMORANDUM
BROAD FORM PROPERTY DAMAGE COVERAGE

The Broad Form Property Damage Endorsements ADV.-J005 and ADV.-3006 are intended primarily for contracting risks. However, when either endorsement is used in connection with a Comprehensive General Liability Policy, the result is to broaden and clarify property damage coverage for any risk covered thereunder. Although the effect of these endorsements is to extend property damage coverage, the approach is to modify the application of the property damage exclusion. The following explanation of intent corresponds to the appropriate sections of the endorsements. It should be pointed out that these endorsements are the same, except for the difference between exclusion (x) and (z), and will therefore be discussed together.

ADVISORY ENDORSEMENT LANGUAGE

It is agreed that the insurance for property damage liability applies, subject to the following additional provisions:

A. The exclusions relating to property damage to (1) property owned, occupied or used by or rented to the insured or in the care, custody or control of the insured or as to which the insured is for any purpose exercising physical control and (2) work performed by or on behalf of the named insured existing out of the work or any portion thereof, or out of materials, parts or equipment furnished in connection therewith, are replaced by the following exclusions (v) and (x).

(u or y) to property damage

(1) to property owned or occupied by or rented to the insured, or, except with respect to the use of elevators, to property held by the insured for sale or entrusted to the insured for storage or safekeeping.

This explanation also applies to that portion of Endorsement G22 that pertains to Broad Form Property Damage Coverage.

EXPLANATION OF INTENT

A. This paragraph is self explanatory and refers to certain exclusions to which this Advisory Endorsement applies.

(v or y)(1) - Property owned by the insured is excluded in accordance with the traditional approach in liability policies but considerable difficulty has been found in defining owned property in connection with contracting risks. It is intended that property manufactured or purchased by the insured and constructed or installed at premises not owned by the insured shall be considered property owned by the insured until the construction or installation is accepted by the owner. Property of others which is constructed or installed on premises owned by the insured becomes property owned by the insured only when the construction or installation thereof is completed and the insured has the right to use such property.

(The following applies to exclusion (2) in Advisory Endorsement ADV.-3005-Broad Form Property Damage Endorsement) (Including Completed Operations)

(2) with respect to the completed operations hazard and with respect to any classification stated below as "including completed operations", to property damage to work performed by the named insured arising out of the work or any portion thereof, or out of materials, parts or equipment furnished in connection therewith.

(2) -- This exclusion in endorsement ADV.-3006, which modifies the corresponding policy exclusion. Provides broad form completed operations property damage coverage by excluding only damages caused by the named insured in his own work. Thus,

- (1) The insured would have no coverage for damage to his work arising out of his work.
- (2) The insured would have coverage for damage to his work arising out of a subcontractor's work.
- (3) The insured would have coverage for damage to a subcontractor's work arising out of the subcontractor's work.
- (4) The insured would have coverage for damage to a subcontractor's work, or if the insured is a subcontractor to a general contractor's work or another subcontractor's work, arising out of the insured's work.

B. The insurance afforded by this endorsement shall be excess insurance over any valid and collectible property insurance (including any deductible portion thereof) available to the insured, such as but not limited to Fire and Extended Coverage, Builder's Risk Coverage or Installation Risk Coverage, and the "Other Insurance" Condition is amended accordingly.

B. This paragraph is included to clarify the intent that endorsement coverage provided under these endorsements is to be excess over first party coverages available to the insured.

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July 15, 1986

COMMERCIAL GENERAL LIABILITY PROGRAM INSTRUCTIONS PAMPHLET FURNISHED

Commercial Multiple Line CML-86-128
General Liability GL-86-204
(Rates-Rules/Forms)

REFERENCE

GL-85-47 (2/10/86)

LIMITED DISTRIBUTION

Each recipient of this circular has received one copy of the attached pamphlet. One or two additional copies of the pamphlet may be ordered, free of charge, from our Customer Service area, (212) 487-5192.

BACKGROUND

In the referenced circular, we furnished you with a sample policyholder notice to be used with the Commercial General Liability Coverage Forms. This notice could be used at the time of application for the new policies or upon actual policy issuance. In addition, we provided you with a sample notice to alert the named insured of the availability of the Supplemental Extended Reporting Period Endorsement.

ISO ACTION

We have developed a pamphlet which includes:

- the notices we have already furnished you along with instructions on their use;
- a newly developed notice on Extended Reporting Periods for use by new carriers and instructions on its use;
- newly developed notices and instructions on their use to correspond to the special "claims-made" endorsements. These new notices are suggested when the "laser" endorsement - CG 27 02 - is attached to renewal policies or to policies which are issued by a new carrier and follow a "claims-made" contract; and
- instructions on the use of the special "claims-made" endorsements.



Insurance Services Office, Inc., 160 Water Street, New York, New York 10038 (212) 487-500

INSURANCE SERVICES OFFICE 160 WATER STREET

PERSON
TO
CONTACT

Inquiries on this material, other than distribution, may
be directed to the undersigned.



Michael L. Averill, CPCU
Manager
Commercial Casualty Division

**ISO GENERAL LIABILITY POLICY REVISION
HIGHLIGHTS OF CURRENT AND REVISED CONTRACTS**

The brief descriptive statements in this chart only highlight the respective subject items. They are not a substitute for the policy provisions. Only the provisions of your policy determine the scope of your insurance protection. Refer to policies for details.

SUBJECT	CURRENT "OCCURRENCE" POLICY	NEW "OCCURRENCE" POLICY	NEW "CLAIMS-MADE" POLICY
9. Property Damage	<p>Various exclusions address property damage to the insured's products or work or to property in the insured's care, custody or control. Generally, such damage is not covered if due to an inherent defect in the product or work itself, or to negligence in handling or working on the entrusted property. Recall or withdrawal of products, work, or property incorporating them is specifically excluded. Other loss of use, including loss of use of uninjured property, is covered if due to physical injury inflicted on other property by the insured's products or work, or if due to sudden and accidental physical injury to the products or work themselves after they are put to use. Broad Form Endorsement narrows concept of care, custody or control so that coverage is provided for parts of property other than those on which the insured is actually working at the time of the damage. Endorsement also covers damage caused by faulty workmanship to other parts of work in progress, and damage to, or caused by, a subcontractor's work after the insured's operations are completed.</p>	<p>Exclusions have been completely rewritten and clarified with no change in overall scope of coverage. "Broad Form" coverage has been incorporated in the new provisions. Real property is specifically eliminated from the definition of "your product," so that the broad form coverage for work and completed operations clearly applies. Care, custody, or control exclusion has been restricted to personal property to clarify further the application of these provisions. A new definition of "impaired property" clarifies the application of the "failure to perform" and "sisterhood" exclusions (m and n).</p>	<p>Same as new "occurrence" policy.</p>
10. Alienated Premises	<p>Excluded unconditionally.</p>	<p>Exclusion does not apply to premises built and held for sale by named insured, providing coverage for contractors who build on speculation.</p>	<p>Same as new "occurrence" policy.</p>

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156 STATE STREET
BOSTON, MA. 02109

January 29, 1979

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(Rules/Forms)

BACKGROUND


Because Broad Form Property Damage Coverage is difficult to understand, companies and agents have requested that we make available an explanation of this coverage as provided by Advisory Endorsements ADV-3005 and ADV-3006. This coverage is also provided in Standard Endorsement G222 (GL 04 04 07 76), Broad Form Comprehensive General Liability Endorsement.

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We have established a comparative analysis showing the advisory endorsement language and the explanation of intent.

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Explanatory Memorandum for Broad Form Property Damage Coverage



Graham V. Boyd, Jr.
Manager
General Liability Division
(212) 487-4672



EXPLANATORY MEMORANDUM*
BROAD FORM PROPERTY DAMAGE COVERAGE

The Broad Form Property Damage Endorsements ADV.-3005 and ADV.-3006 are intended primarily for contracting risks. However, when either endorsement is used in connection with a Comprehensive General Liability Policy, the result is to broaden and clarify property damage coverage for any risk covered thereunder. Although the effect of these endorsements is to extend property damage coverage, the approach is to modify the application of the property damage exclusion. The following explanation of intent corresponds to the appropriate sections of the endorsements. It should be pointed out that these endorsements are the same, except for the difference between exclusion (x) and (z), and will therefore be discussed together.

ADVISORY ENDORSEMENT LANGUAGE

It is agreed that the insurance for property damage liability applies, subject to the following additional provisions:

- A. The exclusions relating to property damage to (1) property owned, occupied or used by or rented to the insured or in the care, custody or control of the insured or as to which the insured is for any purpose exercising physical control and (2) work performed by or on behalf of the named insured arising out of the work or any portion thereof, or out of materials, parts or equipment furnished in connection therewith, are replaced by the following exclusions (w) and (x).

(w or y) to property damage

- (1) to property owned or occupied by or rented to the insured, or, except with respect to the use of elevators, to property held by the insured for sale or entrusted to the insured for storage or safekeeping.

*This explanation also applies to that portion of Endorsement G222 that pertains to Broad Form Property Damage Coverage.

EXPLANATION OF INTENT

- A. This paragraph is self explanatory and refers to certain exclusions to which this Advisory Endorsement applies.

(w or y)(1) - Property owned by the insured is excluded in accordance with the traditional approach in liability policies but considerable difficulty has been found in defining owned property in connection with contracting risks. It is intended that property manufactured or purchased by the insured and contracted or installed at premises not owned by the insured shall be considered property owned by the insured until the construction or installation is accepted by the owner. Property of others which is constructed or installed on premises owned by the insured becomes property owned by the insured only when the construction or installation thereof is completed and the insured has the right to use such property.

The exclusion of property occupied by the insured is not intended to apply to occupancy in the sense of the insured's mere presence therein. The exclusion applies only to property which is formally occupied over a specific period of time for a specific purpose, as in the case where a general contractor is given the exclusive use of an area in a building as headquarters for his construction operations.

The exclusion of property held by the insured for sale is intended to apply only to property which is in his possession for that purpose. The exclusion of property entrusted for storage or safekeeping is intended to apply whether or not the insured retains possession of such property. These exclusions do not apply to the use of elevators.

(2) except with respect to liability under a written sidetrack agreement or the use of elevators to

(w or y)(2) - It must be kept in mind that this paragraph of the exclusion does not apply to property owned or rented to the insured, for such property is already specifically excluded by paragraph (1). The exception with which this paragraph commences follows the present exception to the property damage exclusion and has the effect of giving coverage for damage to property for which the insured is liable under a sidetrack agreement and for damage to property with respect to which the insured has purchased elevator property damage insurance. Thus, while property at the insured's premises is excluded generally under (w and y)(2)(a), if such property is damaged because of the use of an elevator, then the damage is covered. Property damage which results solely out of the existence of the property while on the elevator is not covered. The property damage must result from the use of the elevator.

(a) property while on premises owned by or rented to the insured for the purpose of having operations performed on such property by or on behalf of the insured,

(2)(a) - This exclusion is intended to apply to the insured who is engaged in operations at his own premises, such as a television repairman. The exclusion applies from the time property is brought onto the premises until it is taken away therefrom. The language is not intended to exclude coverage for damage to property brought onto the insured's premises in connection with his operations or to be installed for the insured. For example, consider a general contractor who is performing construction operations on premises which he owns. If a subcontractor brings property that the subcontractor owns onto the insured premises for the purpose of installation or construction, and the general contractor damages this property owned by the subcontractor, such damage is intended to be covered. As another example, consider an insured manufacturer who order a piece of machinery. The machinery is brought onto the insured manufacturer's premises to be installed by the seller, and the insured damages the machinery during the installation. Coverage is intended for such damage.

(b) tools or equipment while being used by the insured in performing his operations,

(2)(b) - Tools and equipment not excluded under paragraph (1) are excluded while actually being used by the insured. The word "equipment" is intended to mean any property used to implement the operations of the insured and particularly any mechanical device, whether it is permanently installed at the premises or whether it is brought onto the premises by the insured. Property damage to cranes, hoists, etc., not formally rented to the insured but borrowed temporarily would be excluded under this section. Property damage arising out of the occasional use by the insured of an elevator on the premises to carry materials would not be excluded, but if the insured were performing operations on an elevator shaft and using the elevator as a platform for such operations, then the elevator would be regarded as "equipment" and property damage to such equipment would be excluded.

(c) property in the custody of the insured which is to be installed, erected or used in construction by the insured,

(d) that particular part of any property, not on premises owned by or rented to the insured,

(2)(c) - This exclusion is intended to apply to property furnished to the insured for construction or installation from the time such property is delivered to the insured until the time the insured commences the construction or installation. For example, the owner of premises may turn over to the general contractor an expensive piece of machinery, such as an air-conditioning unit, to be installed in a building which is being erected by the general contractor-insured. Damage to such property is excluded.

(2)(d) - This paragraph is intended to precisely define the extent to which damage to property on which the insured is actually working is to be excluded. Under the present policy language, with respect to general contracting risks, the exclusion relating to property in the care, custody or control of the insured is intended to remove from coverage all property damage caused by an insured in many situations.

Under this care, custody or control exclusion, if the general contractor who is in charge of a project damages a portion of it, the damage is excluded even though that portion may be work being performed by a subcontractor. On the other hand, if a subcontractor damages some portion of the job beyond his own scope of operations, the damage would be covered. The intent under these endorsements is to give the same coverage to both the general and subcontractor for damage arising out of their own operations and to exclude only damage to the particular property on which the insured is working.

The exclusion is intended to apply only to the part of the property on which the operations are being performed. In this context, "property" is intended to mean any unit of property which may become the subject of liability. For example, consider an insured subcontractor who is erecting steel beams furnished to him by the general contractor. Having erected four steel beams, the subcontractor is in the process of erecting a fifth steel beam and this beam falls, resulting in damage to all five beams. "That particular part" of the property would be the fifth beam. As another example, if the insured were an electrical subcontractor and, in the process of installing a switch which was furnished to him, he damaged the switch which resulted in burning out the electrical system, the switch would be "that particular part" of the property.

(1) upon which operations are being performed by or on behalf of the insured at the time of the property damage arising out of such operations, or

(2)(d)(1) - This clause excludes the property on which the insured is actually working at the time of the property damage. It also excludes property damage caused by subcontractors of the insured while they are actually working on the property. Where the damage caused by the insured in the performance of his operations goes beyond damage to the property on which he is working, this section limits the exclusion to the particular part on which he is working.

(ii) out of which any property damage arises, or

(2)(d)(ii) - This section excludes property damage to the particular part of any property which was in use when damage occurred even though work on that part has been completed and also where it cannot be established that the damage was the result of faulty workmanship. For example, if the insured has installed a valve on a pressure vessel, and, while being tested, the valve fails to function because of a defect in the valve which causes the vessel to explode, only the damage to the valve is excluded.

(iii) the restoration, repair or replacement of which has been made or is necessary by reason of faulty workmanship thereon by or on behalf of the insured;

(2)(d)(iii) - This section excludes property damage to that particular part of any property which occurs after work on that part has been completed and where it can be established that the property damage was the result of faulty workmanship by the insured or his subcontractor. This section has particular application to the insured who undertakes to repair property.

(The following applies to exclusion (x) in Advisory Endorsement ADV. 3005-Broad Form Property Damage Endorsement) (Excluding Completed Operations)

(x) with respect to the completed operations hazard (if the insurance otherwise applies to property damage included within such hazard) and with respect to any classification stated below as "including completed operations", to property damage to work performed by or on behalf of the named insured arising out of the work or any portion thereof, or out of materials, parts or equipment furnished in connection therewith.

(x) - This paragraph repeats the policy exclusion but makes it clear that the exclusion applies only to the completed operations hazard, thus avoiding any apparent conflict between this policy exclusion and exclusion (w)(2)(d) of endorsement ADV-3005.

(The following applies to exclusion (z) in Advisory Endorsement ADV.-3006-Broad Form Property Damage Endorsement)
(Including Completed Operations)

(z) with respect to the completed operations hazard and with respect to any classification stated below as "including completed operations", to property damage to work performed by the named insured arising out of the work or any portion thereof, or out of materials, parts or equipment furnished in connection therewith.

(z) - This exclusion in endorsement ADV.-3006, which modifies the corresponding policy exclusion, provides broad form completed operations property damage coverage by excluding only damages caused by the named insured to his own work. Thus,

- (1) The insured would have no coverage for damage to his work arising out of his work.
- (2) The insured would have coverage for damage to his work arising out of a subcontractor's work.
- (3) The insured would have coverage for damage to a subcontractor's work arising out of the subcontractor's work.
- (4) The insured would have coverage for damage to a subcontractor's work, or if the insured is a subcontractor to a general contractor's work or another subcontractor's work, arising out of the insured's work.

B. The insurance afforded by this endorsement shall be excess insurance over any valid and collectible property insurance (including any deductible portion thereof) available to the insured, such as but not limited to Fire and Extended Coverage, Builder's Risk Coverage or Installation Risk Coverage, and the "Other Insurance" Condition is amended accordingly.

B. This paragraph is included to clarify the intent that endorsement coverage provided under these endorsements is to be excess over first party coverages available to the insured.

The following are specific examples showing the application of coverage provided under these endorsements:

<u>Situation</u>	<u>Result</u>
Painter decorating a home damages furniture while moving it out of the way.	Covered since it is not property to be used in connection with the insured's operations.
Painter damages chandelier while painting the interior of a home, the keys to which had been turned over to him.	Covered since it is not property used in connection with the insured's operations, nor is it property on which operations are being performed.
Contractor borrows a crane to set steel. The steel is not at the job site, and the crane is damaged (while at the site).	Covered since the borrowed crane is not actually being used.
Subcontractor brings equipment on job which is damaged by the insured general contractor who is not performing operations upon such equipment.	Covered since equipment is not property to be installed, erected or used in operations by the insured.
Insured general contractor damages light fixture being installed by subcontractor while moving concrete forms.	Covered since equipment is not property to be installed, erected or used in operations by the insured.
Insured general contractor pouring concrete floor for tenth story of new building. Forms used for construction of the tenth story collapse damaging rough plumbing being installed by a subcontractor.	Covered since equipment is not property to be installed, erected or used in operations by the insured.
Contractor replaces relief valve on a pressure vessel. As he is testing the vessel, it bursts because the relief valve does not function.	Covered with respect to the pressure vessel. Only the valve ("that particular part") is excluded.
Painter is burning paint off a house with a torch and sets fire to the house.	Covered except for "that particular part" to which the torch was applied.
Serviceman working on television in owner's home blows out picture tube while tinkering with another tube, or tips set over damaging other parts.	Covered since picture tube or other parts are not "that particular part" on which operation are being performed.

The following examples illustrate the intent of exclusion (2)(d):

A carpenter undertakes to install a prefabricated kitchen cabinet furnished to him by the owner. He carelessly neglects to brace the cabinet properly for installation and, as he is attempting to install it on the wall, it falls and is damaged. The damage is excluded under (2)(d)(i). If he installs it on the wall, but, because he neglected to fasten it securely, it falls while he is installing a counter unit underneath the cabinet, the damage to the cabinet and the wall is excluded under (2)(d)(iii). Any damage to the counter unit is covered because the property damage did not arise out of the installation of the counter.

Again, a general contractor engages a steel erection contractor to erect steel beams for a building. After erecting several beams, the subcontractor negligently swings another beam against the erected beams causing damage to all the beams. The damage to the beams already erected would be covered. The damage to the swinging beams would be excluded under (2)(d)(i). If, after the beam is erected, it fell because it was improperly fastened or because it proved to be inappropriate for the purpose intended, damage to the beam would be excluded either under (2)(d)(ii) or (2)(d)(iii) respectively.

INSURANCE SERVICES OFFICE, INC.