

# *Scope of Coverage Is a Matter of Contract Interpretation*

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BY VANCE A. WOODWARD

The typical comprehensive general liability (“CGL”) policy using a standard occurrence-based form provides pro rata coverage, not all-sums coverage, for long-tail claims. There is no need to refer to the “reasonable expectations of the insured,” public policy, equity or any other extra-contractual aids to interpret the policy; the policy language alone answers the allocation question. This article shows how. Yet, a survey of the leading scope-of-coverage cases reveals that many courts simply fail to mention the key policy language, let alone analyze it.

Courts consider the scope of coverage when confronted with long-tail (aka delayed-manifestation) claims: claims where exposure to a harmful substance happens in one or more policy periods and the manifestation of injury becomes apparent in later policy periods. The question courts struggle with is whether a policyholder can pick any one triggered policy to pay the entire claim even though several policies have been triggered (“all-sums coverage”) or whether each triggered policy covers only a pro rata share of the policyholder’s liability (“pro rata coverage”). The CGL form only provides pro rata coverage. The following is the coverage grant of the 1966 CGL policy form promulgated by the National Bureau of Casualty Underwriters (one of the ISO’s predecessors):

The company will pay on behalf of the insured all sums which the insured shall become legally liable to pay as damages because of

- A. bodily injury or
- B. property damage

to which this insurance applies, caused by an occurrence.

The occurrence definition provides:

“occurrence” means an accident, including injurious exposure to conditions which results, during the policy period, in bodily injury or property damage neither expected nor intended from the standpoint of the insured.

The occurrence definition tells us what triggers the policy: bodily injury or property damage during the policy period. But it does not tell us the scope of coverage. The scope of coverage is resolved by considering the policy period provision and, in later CGL policies, the bodily injury and property damage definitions. The policy period provision provides:

This insurance applies only to bodily injury or property damage which occurs during the policy period . . . .

The policy period provision echoes the coverage grant (“to which this insurance applies”) and tells us to what the insurance applies. The insurance applies only to bodily injury or property damage during the policy period. The necessary implication is that the policy does not

apply to bodily injury or property damage that does not happen during the policy period. Had the drafters intended to have an all-sums rule apply, they could have used the following simpler and far more obvious language:

This insurance applies to all bodily injury or property damage arising from an occurrence during the policy period.

The bodily injury and property damage definitions also tell us the typical CGL policy only covers bodily injury and property damage during the policy period:

“bodily injury” means bodily injury, sickness or disease sustained by any person which occurs during the policy period.

“property damage” means injury to or destruction of tangible property which occurs during the policy period.

The “all sums” phrase of the typical CGL coverage grant, quoted above, does not affect the analysis. CGL policies cover all sums of something, and that something is bodily injury or property damage that happens during the policy period. Calling insurance policies “all sums” policies makes as much sense as calling them “during the policy period” policies or “to which this insurance applies” policies. One should account for all the language contained in the policy and not simply focus in on a few words to the exclusion of others. By considering all the relevant policy language, it becomes clear that typical CGL policies only provide pro rata coverage.

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