

HAYNES BOONE

Ten Things Every Lawyer Should Know About Insurance Coverage

Reese Letourneau

**Insurance Recovery Associate,
Haynes and Boone, LLP**



March 31, 2025

HB

#10 Know your policies



HAYNES BOONE

Types of Policies

- **Commercial General Liability Policy**
 - Bodily Injury
 - Property Damage
 - Advertising Injury
 - Personal Injury
- **Directors and Officers**
 - Wrongful Acts (errors, omissions, misleading statements, breach of duty) of management
- **Errors and Omissions**
 - Wrongful Acts in connection with insured's profession
- **Employment Practices**
 - Employment-related claims
- **Property Policies**
 - Property damage and
 - Resulting business income losses
- **Cyber Policies**
 - Cyber losses and related third-party claims

Types of Coverage

- Claims-Made v. Occurrence
- Primary v. Excess v. Umbrella

Occurrence v. Claims-Made

- **Occurrence-Based**

- Policy Triggered if **Occurrence or Event** Took Place Within Policy Period, Regardless When Claim Made
- Key: Multiple Policy Periods May be Implicated
- Provides coverage long after policy period expires

- **Claims-Made**

- Policy Triggered if **Claim** Made Within Policy Period, Regardless of when “Occurrence” Took Place
- “Claims-Made” v. “Claims-Made and Reported”
- Reporting an Event that May Give Rise to a Claim
- Retroactive dates
- Extended reporting periods
- Expansive pleading is not beneficial

Primary v. Excess v. Umbrella

- Primary usually equals defense
- Excess usually does **NOT** equal defense
- Umbrella is broader than traditional primary and can serve as primary or excess

Practice Pointers

- Take Inventory
- Make Sure You Have Complete Policies
- Make Extra Copy of Policies and Keep printed
- Do Not Throw Your Policies Away!
- Think beyond the CGL policy
- More than one policy may cover your claim:
 - Types of policies
 - Parties to the suit
 - Time period
 - Tower of coverage

#9 Indemnification v. Insurance



HAYNES BOONE

Belt and Suspenders

- **Indemnification:** transfer of risk within the contractual relationship (usually for defense and indemnity)
 - Limitations?
- **Insurance:** contractual benefit from insurance company
- Can work together!

#8 Policies v. Certificates of Insurance

Certificates are not insurance!

- **Best Practice:** get a copy of the policy
- **Alternatively,** at least get a copy of the AI endorsement and declarations page

ACORD **CERTIFICATE OF LIABILITY INSURANCE** DATE (MM/DD/YYYY)

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER	NAME	CONTACT	
	PHONE	PHONE	FAX
	FAC. No. Ext.	[AC, No.]	
	E-MAIL		
	ADDRESS		
		INSURER(S) AFFORDING COVERAGE	NAIC #
INSURED		INSURER A:	
		INSURER B:	
		INSURER C:	
		INSURER D:	
		INSURER E:	
		INSURER F:	

COVERAGES **CERTIFICATE NUMBER:** **REVISION NUMBER:**

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR	TYPE OF INSURANCE	INSR. WVD	POLICY NUMBER	POLICY EFF. (MM/DD/YYYY)	POLICY EXP. (MM/DD/YYYY)	LIMITS
	GENERAL LIABILITY					EACH OCCURRENCE \$
	COMMERCIAL GENERAL LIABILITY					DAMAGE TO RENTED PREMISES (EA OCCURRENCE) \$
	CLAIMS-MADE <input type="checkbox"/> OCCUR <input type="checkbox"/>					MED EXP (Any one person) \$
						PERSONAL & ADV INJURY \$
						GENERAL AGGREGATE \$
	GEN'L AGGREGATE LIMIT APPLIES PER:					PRODUCTS - COMP/OP AGG \$
	POLICY <input type="checkbox"/> PRO: <input type="checkbox"/> LOC <input type="checkbox"/>					\$
	AUTOMOBILE LIABILITY					COMBINED SINGLE LIMIT (Per accident) \$
	ANY AUTO					BODILY INJURY (Per person) \$
	ALL OWNED AUTOS					BODILY INJURY (Per accident) \$
	SCHEDULED AUTOS					PROPERTY DAMAGE (Per accident) \$
	NON-OWNED AUTOS					\$
	HIRE AUTOS					\$
	UMBRELLA LIAB					EACH OCCURRENCE \$
	EXCESS LIAB					AGGREGATE \$
	CLAIMS-MADE <input type="checkbox"/> OCCUR <input type="checkbox"/>					\$
	DED <input type="checkbox"/> RETENTION \$					WG STATUTORY LIMITS OTHER \$
	WORKERS COMPENSATION AND EMPLOYERS LIABILITY					\$
	ANY PROPRIETOR/PARTNER/EXCLUSIVE OFFICE MEMBER EXCLUDED? (Mandatory in WA)	Y/N	N/A			E.L. EACH ACCIDENT \$
	If yes, describe under DESCRIPTION OF OPERATIONS below					E.L. DISEASE - EA EMPLOYEE \$
						E.L. DISEASE - POLICY LIMIT \$

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (Attach ACORD 101, Additional Remarks Schedule, if more space is required)

(B)

ACORD **CERTIFICATE OF LIABILITY INSURANCE** DATE (MM/DD/YYYY)

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

#7 Decoding Policy Benefits



HAYNES BOONE

Policy Benefits

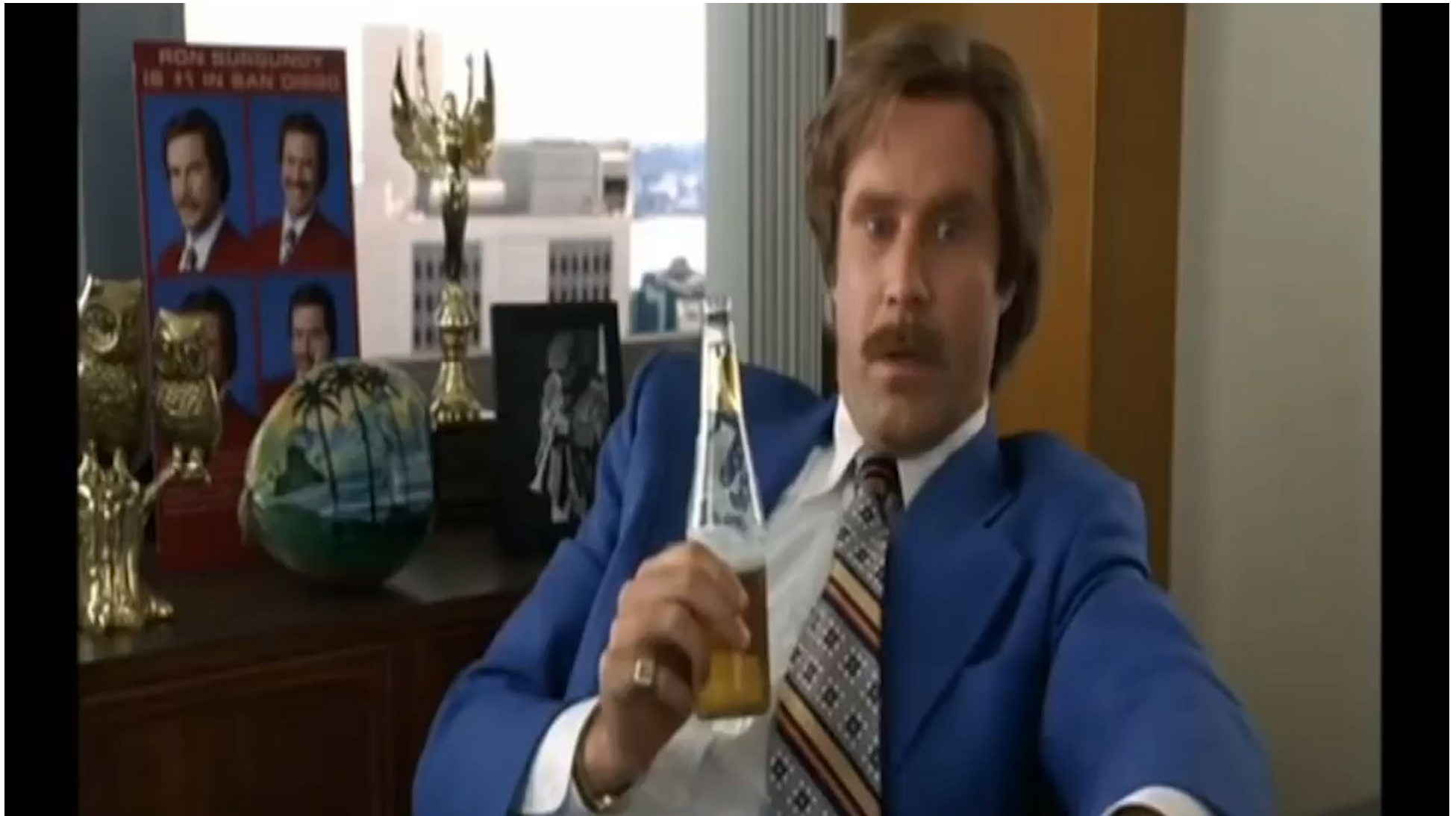
Liability Policies

- Payment of defense
 - Normally not capped by the policy limit
 - Could be “wasting asset”
- Payment of settlements and judgments (capped by the policy limit)

Property Policies

- Payment of “loss” or “damage” to property
 - Other triggers: ingress/egress, civil authority, lack of incoming services, others
- Payment of lost income from property damage

#6 NOTIFY! NOTIFY! NOTIFY!



HAYNES BOONE

Who?

- Broker
- Primary Carrier(s)
- Excess Carrier(s)

What?

- Occurrence/event
 - “Occurrence-based” policy
 - “Claims-made” policy
- Demand for money
- Suit
- Arbitration
- Amended Pleadings
- Developments

When?

- “As soon as practicable”
- Promptly
- “Within the policy period” (some claims made policies)
- When pleadings are amended

Why?

- Condition of coverage
- Pre-tender defense costs generally **NOT** covered
- Late notice defense (BUT insurer must show **prejudice**)

#5 Don't forget your AI Policies

Additional Insured Policies

- Keep track of contracts where you are an AI
- Request copies of the policies when the transaction is negotiated (not when an event happens)
- Notify all potential insurers
- **Practice Pointer:** in negotiating AI coverage, request that counter-party's policies be primary

#4 Understand the Rules of Construction

Beneficial Rules for Policyholders

- Policy provisions are construed broadly in favor of coverage
- Exclusions are interpreted narrowly against insurer
- If there are ambiguities in coverage, the tie goes to the insured
- Insured has the burden to prove coverage, insurer has the burden to prove any exclusion

Liability Policy Rules

- Defense is broader than indemnity
- Duty to defend: eight corners
- Duty to indemnify: actual facts
- Applying eight corners rule:
 - Look to factual allegations only
 - Liberal interpretation of allegations
 - Use of extrinsic evidence?

Liability Policy Rules

- If even One Claim Covered, Must Defend Entire Suit
- Must Defend Even if Claims are Groundless, False or Fraudulent
- When does duty to defend end?

Practice Pointer

- Watch for amended pleadings - they may change coverage
- Notify quickly: generally, carrier not responsible for pre-tender defense costs
- How the allegations are pled makes a difference!

#3 Know your obligations

Policyholder Obligations

- Timely report all claims
- Ongoing obligation to keep insurer informed of developments in claim
- **First party:** duty to respond to requests for information?
- **Third Party:** no settlement without consent?

#2 Insurer's Role in Litigation

Reservation of Rights

- Contrast with Unqualified Defense
- Reserves right to deny coverage later
- Insurer may file a declaratory judgment
- Raises potential conflicts
- Who gets to choose the lawyer?
- Whose lawyer are they anyway?

Reservation of Rights

- As a general matter, do not agree to reservation; no need to formally accept reservation of rights
- Not every reservation equals selection of counsel
 - Material conflict required
 - Conflict = when the facts to be adjudicated in the liability suit are the same facts upon which coverage depends
 - What issue will the jury decide?
- What is a reasonable defense?

Who controls settlement?

- *Stowers*
 - The Core Requirements:
 - Demand Must be Reasonable
 - Demand Must be Within Policy Limits
 - Claim Must be Within Scope of Coverage
 - The Supplemental Requirements:
 - Demand must offer to fully release insured
 - Demand must not be conditional
 - Demand must provide reasonable time to accept
- If *Stowers* Triggered, Limits Lifted
- What if Insured Has Layers of Coverage?

Practice Pointer

- **Any** time there is settlement talk with the other side, know your rights and obligations under the policy!
- Seek insurer consent
- Know all policies in play
- Know priority of policies
- Know how carriers operate in context of settlement

#1 Know How to Handle Disagreements with Insurers



HAYNES BOONE

How to Handle Disagreement



Utilize your broker



Call a coverage attorney



Understand leverage points

Section 541 (Unfair Settlement Practices)

Section 542 (Prompt Pay Statute)

Recovery of Attorneys' Fees

HAYNES BOONE