

# Mind the Gap: Coverage Gaps Created by Commercial General Liability Policies

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One of the most important things a business owner can do to protect their business is to purchase insurance. If you are new to the realm of insurance – or are simply relying on common sense – you may believe that the best policy to protect your business is a simple commercial general liability policy (CGL). After all, a typical CGL appears to provide broad coverage, usually for “all sums that the insured becomes legally obligated to pay as damages because of bodily injury or property damage to which this insurance applies.”

Yet while this language initially appears broad, the standard CGL policy is often rife with exclusions and definitions that may significantly undercut your coverage – limiting the types of injury and damage “to which this insurance applies.” These exclusions or definitions can create what are called coverage “gaps” when standing alone or interacting with other policies you may have.

## The Professional Services Exclusion

Imagine this: You own an architecture and engineering firm that provides design specifications for large construction projects. Despite a design that, when implemented properly, would have been executed safely, your subcontractor’s employee is injured on the job when the bosses instruct them to perform a more dangerous maneuver than your designs specified. Your insurer issued you a CGL policy, which contained an exclusion for bodily injury “arising from or caused by the rendering or failure to render professional services.” You notify your CGL insurer, expecting CGL insurer coverage for the accident because your designs were safe, and the accident was caused by deviation from your safe specifications.

To your surprise, your CGL insurer denies coverage on the basis that the bodily injury arises from your firm’s professional services, because you created the designs, and because many courts will interpret exclusionary language including phrases such as “arising from” or “arising out of” expansively. How do you navigate this coverage “gap?”

You may convince your CGL insurer that, because the cause of the accident was really deviation from your safety specifications, the bodily injury did not actually stem from your professional services, such that your CGL policy may still apply. However, that argument may be an uphill battle that largely depends on state interpretation of exclusionary provisions.

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You may be able to argue that such a “gap” creates “illusory” coverage, where based on the services your firm regularly provides, your CGL policy fails to provide any coverage at all. Such an argument also depends on your jurisdiction, but where such an argument is accepted, courts will generally uphold the reasonable expectations of the insured and may require the insurer to cover such a gap, so long as your reasonable expectation was that such injuries would be covered upon procurement of the policy.

While there certainly may be arguments that you could make in favor of coverage, the easiest solution to the coverage gap is to ensure no gaps exist at all. One common way to do this is to ensure you have a policy that complements any “gap” created by your CGL policy. In this scenario, such a policy would be a professional liability policy specifically designed to provide coverage for bodily injury stemming from professional services that you offer.

When obtaining such a policy from a broker or insurer, it is important to read the language of each policy purchased to ensure that any coverage gaps are filled. For example, if a CGL policy excludes bodily injury arising from rendering or failure to render professional services, you should carefully review your professional liability policy to ensure that your professional liability policy does not exclude bodily injury generally, as such a combination may likewise provide only illusory coverage.

## **Other Common Coverage Gaps**

Other common exclusions in a CGL policy that could create coverage gaps may be exclusions based on use of an automobile; cyberattacks or other data breaches; actions taken by directors and officers of a company that may cause harm your company; and/or pollution. Mitigating the harm that may derive from these coverage gaps can be similar to the strategies outlined above, with the most important being to ensure that, where any gaps may exist, a business owner has purchased a policy that may provide the coverage a CGL policy has excluded.

A comprehensive insurance package will generally contain protections for all facets of an operation. Such a package may include a policy or multiple policies providing coverage for commercial general liability, commercial property, professional liability, automobiles, directors and officers’ liability, and/or cyber liability.

A business owner should always mind the gaps in coverage that a CGL policy can create. Pay particular attention when purchasing new policies or a package of policies to ensure that those policies work together, rather than against one another in a way that might leave you with uncovered liability. There is no reason to battle an insurer over concepts such as interpretation or illusory coverage stemming from a coverage gap when those gaps could have been successfully avoided in the first place.

## **FOOTNOTES**

*[1] When your CGL policy contains a professional services exclusion that does not define or otherwise provide examples of what actions or tasks constitute “professional services,” you may also be able to successfully argue that such a provision is ambiguous and should be construed against the insurer and in favor of coverage, depending on your jurisdiction. See, e.g., Johnson ex rel. Estate of Johnson v. Acceptance Insurance Co., 292 F. Supp. 2d 857, 866 (N.D. W. Va. 2003) (“[S]ince the policy does not provide an explicit definition of ‘professional services,’ this Court finds that the term ‘professional services’ in this policy is ambiguous. Ambiguities in insurance policies are construed against the insurer.”).*

[2] See, e.g., *Spirtas Co. v. Fed. Ins. Co.*, 521 F.3d 833, 835 (8th Cir. 2008) (interpreting “arising from” in an insurance policy as meaning “flowed from” or “having [] origin[] in”); *Taurus Holdings, Inc. v. U.S. Fid. & Guar. Co.*, 913 So. 2d 528, 532 (Fla. 2005) (interpreting language “arising out of” to be broader than the language “caused by” in insurance policy and meaning “originating from,” “having its origin in,” “growing out of,” “flowing from,” “incident to,” or “having a connection with”).

[3] See generally, *id.*

[4] See, e.g., *Monticello Ins. Co. v. Mike's Speedway Lounge, Inc.*, 949 F. Supp. 694, 704 (S.D. Ind. 1996).

[5] *Id.*

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