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## ILLINOIS LAW MANUAL

### CHAPTER XI INSURANCE COVERAGE AND DEFENSES

#### A. THE INSURING AGREEMENT

The insuring agreement is the basic promise or undertaking of the company to defend and indemnify its insured with regard to certain risks or liabilities in exchange for the insured's payment of a premium.

The different portions of each policy, such as Personal Liability, Medical Payments, and additional coverages, each have their own insuring agreements. Though the policy terms may change from insurer to insurer, all contain the same basic elements. The key words of each agreement are set out in bold print and are defined in the "DEFINITIONS" section of the policy.

A typical insuring agreement under a personal liability provision states:

#### **COVERAGE L - PERSONAL LIABILITY**

If a claim is made or suit is brought against an insured for damages because of **bodily injury** to which this coverage applies caused by an **occurrence**, we will:

- 1) pay up to our limit of liability for the damages for which the insured is legally liable; and
- 2) provide a defense at our expense by counsel of our choice. We may make any investigation and settle any claim or suit that we decide is appropriate. Our obligation to defend any claim or suit ends when the amount we pay for

damages, to effect settlement or satisfy a judgment resulting from the **occurrence**, equals our limit of liability.

It should first be noted that the agreement requires that a "claim" or "suit" be brought against the insured. The policy does not define a "claim" or "suit." Illinois law has defined a "claim" to mean "any demand for money or property." Evanston Ins. Co. v. Security Assurance Co., 715 F. Supp. 1405 (1989) (citing Black's Law Dictionary 224 (5th Ed. 1979)). The term "suit" as used in liability policies is clear and unambiguous and is defined as a complaint filed in a court of law. Lapham-Hickey Steel Corp. v. Protection Mut. Ins. Co., 166 Ill. 2d 520 (1995).

A typical insuring agreement contained in a general liability policy states:

#### **COVERAGE L - BUSINESS LIABILITY**

We will pay those sums that the insured becomes legally obligated to pay as damages because of **bodily injury, property damage, personal injury, or advertising injury** to which this insurance applies. No other obligation or liability to pay sums or perform acts or services is covered unless specifically provided for under Supplementary Payments. This insurance applies only:

- 1) to **bodily injury** or **property damage** caused by an **occurrence** which takes

place in the **coverage territory** during the policy period;

- 2) to **personal injury** caused by an **occurrence** committed in the **coverage territory** during the policy period. The **occurrence** must arise out of the conduct of our business, excluding advertising, publishing, broadcasting or telecasting done by you or for you;
- 3) to **advertising injury** caused by an **occurrence** committed in the **coverage territory** during the policy period. The **occurrence** must be committed in the course of advertising your goods, products, or services.

#### **RIGHT AND DUTY TO DEFEND**

We will have the right and duty to defend any claim or **suit** seeking damages payable

under this policy even though the allegations of the **suit** may be groundless, false or fraudulent. The amount we will pay for damages is limited as described in Limits of Insurance. Damages because of **bodily injury** include damages claimed by any person or organization for care, loss of service or death resulting at any time from the **bodily injury**. We may investigate and settle any claim or **suit** at our discretion. Our right and duty to defend end when we have used up the applicable limit of insurance in payment of judgments or settlements or medical expenses.

The risk undertaken in the business policy is broader than that of the homeowner's policy, as it extends not only to damages because of bodily injury and property damage, but also to personal injury and advertising injury. Unlike the homeowners policy, the business policy does define "suit" in its "DEFINITIONS" section.



Querrey & Harrow, Ltd.  
175 W. Jackson Blvd., Suite 1600, Chicago, IL 60604  
[www.querrey.com](http://www.querrey.com)