

Insurance Policy Terms

Insurance Client Seminar - October 22, 2015

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Scenario

- An insured deliberately sets fire to a property



- Is there coverage?

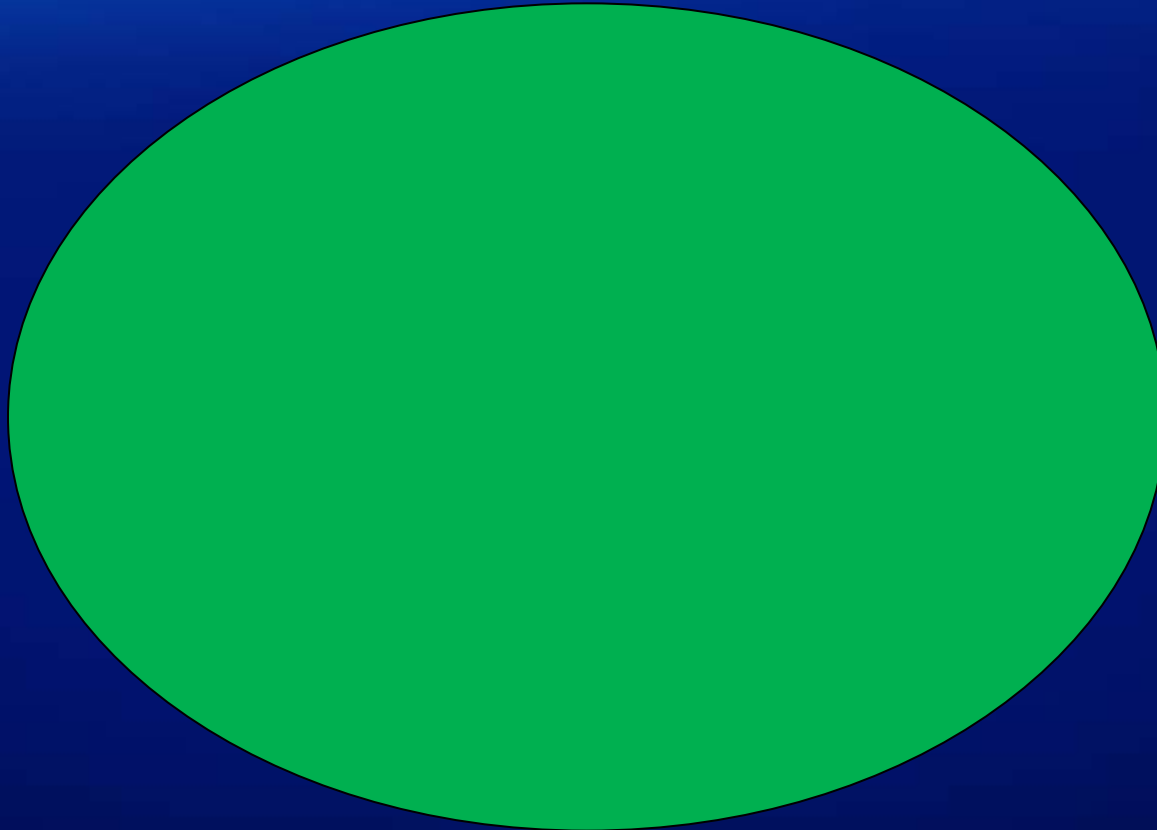
Overview

1. Insurance Policy Terms
2. Insuring Agreement
3. Exclusions
4. Exceptions
5. Burden of Proof
6. Conditions
7. Other Terms

What are Policy Terms?

- Form part of the contract of insurance
- Can appear on the policy form(s) as listed in the Declarations or through endorsements
- Dictate the scope of coverage that is available under the policy
- Also provides for what must occur in order for the insured to receive indemnity for a claim

Insuring Agreement



Insuring Agreement

- Coverage analysis starts here
- Defines what types of losses the policy will cover
- Interpreted broadly
- If the claim does not fall within the IA, there is no coverage

CGL Insuring Agreement (Coverage A)

- We will pay those sums that the insured becomes legally obligated to pay as compensatory damages because of bodily injury or property damage to which this insurance applies
- This insurance applies only to bodily injury and property damage which occurs during the policy period
- The bodily injury or property damage must be caused by an occurrence

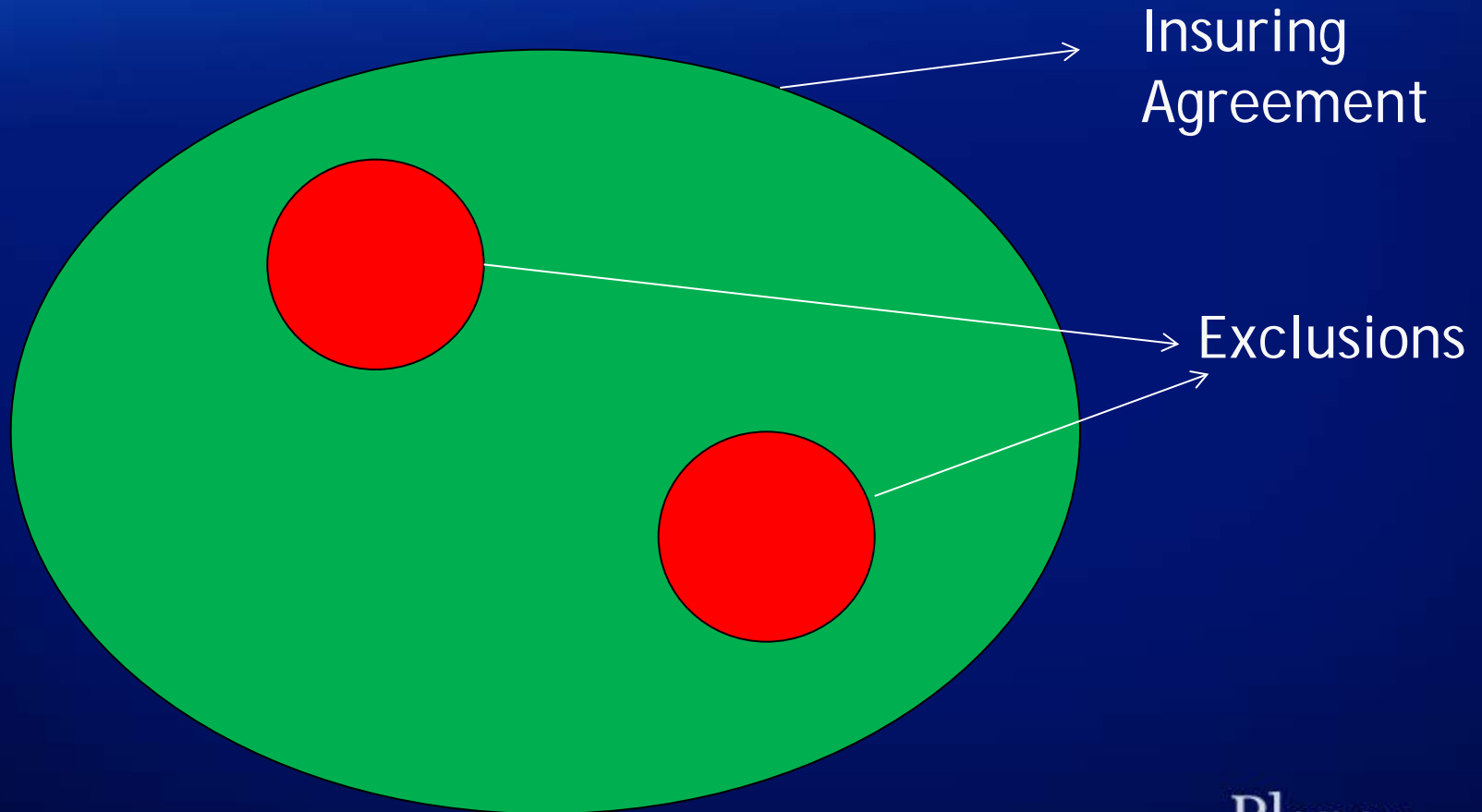
CGL Insuring Agreement

- Compensatory damages
 - No coverage for punitive or exemplary damages
 - No coverage for declaratory relief
- Bodily injury (BI) or property damage (PD)
 - No coverage for economic loss claims
- BI or PD must occur during the policy period
- BI or PD must be caused by an occurrence
 - Occurrence defined as an accident

Property Insuring Agreement

- All risks of direct physical loss or damage to covered property

Exclusions



Exclusions

- Apply to preclude coverage for certain losses that satisfy the Insuring Agreement
- Only necessary to consider if there is a trigger of coverage
- Interpreted narrowly

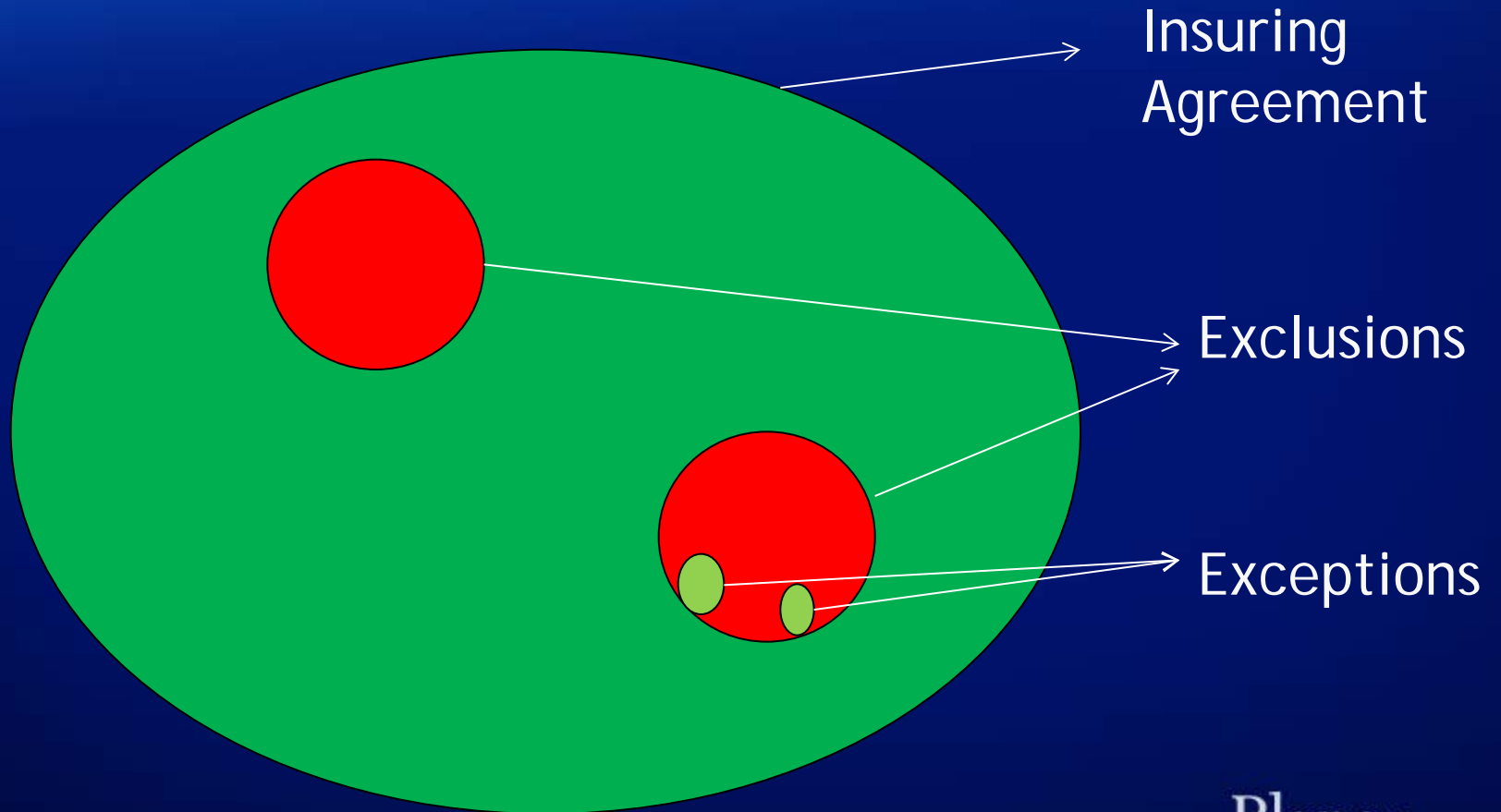
CGL Exclusion Example

- This insurance does not apply to...property damage to...property you own, rent or occupy
- *Poplawski v. McGrimmon*, 2010 ONCA 655
 - Tense of “own” implies current ownership
 - The insured no longer owned the property, so the exclusion did not apply
- Lesson: if relying on an exclusion, ensure that it clearly and unambiguously applies

Property Exclusions

- Property excluded
 - Automobiles
- Perils excluded
 - Flood
- Type of damage excluded
 - Corrosion

Exceptions



Exceptions

- An exception will apply to limit the scope of a certain exclusion
- In other words, an exception can bring back coverage for a loss that is excluded
- Only applies to the exclusion that it appears under
- Does not extend the coverage provided by the policy's Insuring Agreement
- Interpreted broadly

CGL Exception Example

- This insurance does not apply to...property damage to your work arising out of it or any part of it and included in the products-completed operations hazard. This exclusion does not apply if the damaged work or the work out of which the damage arises was performed on your behalf by a subcontractor.

Property Exception Example

- This policy does not insure...corrosion...unless caused by a peril not otherwise excluded

Procedure for Coverage Analysis

- Insuring Agreement - Interpreted broadly
 - Burden on insured
- Exclusions - Interpreted narrowly
 - Burden on insurer
- Exceptions - Interpreted broadly
 - Burden on insured

Policy Conditions

- Things that must happen before the insured can receive indemnity for a loss
- Notification, cooperation conditions in CGL and property policies
- Property policies commonly have what are known as statutory conditions
- Breach of a condition by an insured does not necessarily mean that the insurer can deny indemnity for the claim
 - May be subject to relief from forfeiture

Other Policy Terms

- CGL – Who is an Insured
 - Named Insured, Additional Insured
- Property – Co-insurance

Procedure for Coverage Analysis

1. Insuring Agreement
 2. Exclusions
 3. Exceptions
 4. Breach of condition
- Also consider whether there are other applicable terms that may affect the scope of coverage
 - Consider whether there are alternative grounds to preclude or limit coverage

Back to the Scenario



Back to the Scenario

- Deliberate destructive actions do not trigger the Insuring Agreements of CGL or property policies
- Exclusions can be relied on in the alternative
- Also consider breach of conditions

Potential Issues with Exclusions

- Exclusions are interpreted narrowly
- Criminal Act exclusion may apply
 - May depend on whether criminal charges are brought against the insured
 - May also depend on whether there is a criminal conviction
- Intentional act exclusion may apply
 - Some intentional act exclusions only apply if the loss or damage is intended by the insured
 - Did the insured intend for all of the damage to have occurred? What if the intention was to burn only a small portion of the property?

Conclusions

- When assessing coverage, consider all policy terms
- Don't automatically jump to exclusions
- Consider alternate grounds of denial/reservation of rights to increase likelihood that it will be upheld by a court

QUESTIONS?