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Who is an "Insured" in the CGL and the BAC?

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Today's Agenda

- Two Competing Issues
- Insureds in the CGL
- Insureds in the BAC
- Properly Extending “Insured Status”
- Guidelines for Combining Entities



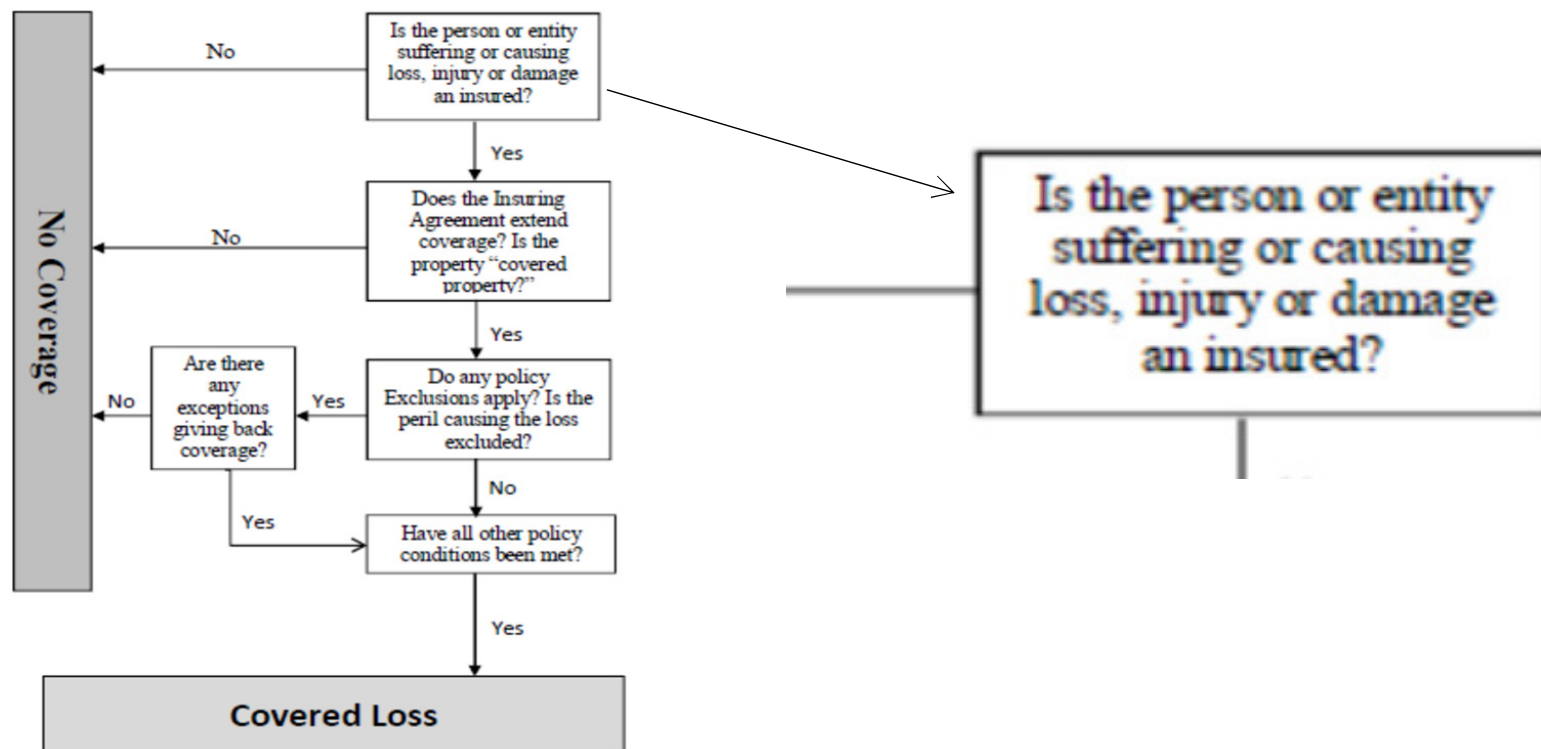
Competing Issues

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Two Competing Issues

1. Status as an “Insured” must exist before any question of coverage can be tackled!
2. Incorrectly extending “Insured” status places an insurer’s financial resources at risk!

Coverage Flowchart



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Insureds in the CGL

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Four Levels of Insured Status

- The “You” (Named Insured)
- Extended insureds
- Automatic insureds
- Additional Insureds

The “You” (aka Named Insured)

Given the broadest protection in the policy.

This HAS to be right!

Types of “You”

- Individuals
- Partnerships
- Joint Ventures
- Limited Liability Company
- Organization **other than** a partnership, joint venture, or LLC (i.e. corporations, etc.)
- Trusts

“Individual”

- A “Sole Proprietorship”
- An individual **cannot be owned** by any other entity. Sole proprietorships end when the individual ceases operations

Partnerships

- Created when two or more **natural** persons agree to bind themselves in a working agreement (a partnership agreement) on an ongoing basis.
- A partnership **cannot** be owned by any other entity.
- Partnerships end when there is any change in partners.
- Types of partnerships include: 1) General Partnerships; 2) Limited Partnerships; 3) Limited Liability Partnerships (LLPs); and 4) Limited Liability Limited Partnerships (LLLPs) (not recognized in all states).

Joint Ventures

- A separate legal entity formed by two or more natural persons, legal persons, or a combination of natural and legal persons.
- Can legally be set up in a number of ways: as a partnership, a limited partnership, or a corporation.
- Are not set up as perpetual entities; they are expected to end.
- A joint venture is not and **cannot be owned** by any other entity.

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Limited Liability Company (LLC)

- A separate legal entity formed by one or more natural persons, legal persons, or a combination of natural and legal persons.
- Governed by members
- Day-to-day activities supervised by managers
- Although not “owned,” can be set up as a subsidiary of a corporation
- Exist in perpetuity until dissolved.
- LLC vs. LLP

Other Type - Corporations

- A separate legal entity, known as a “legal person.”
- Corporations have the same rights as natural persons.
- Day-to-day activities are governed by executive officers and directors.
- Can and generally do sell (or give) stock, allowing for many owners.
- **Owned** or formed by other legal and natural persons
- Exist in perpetuity unless dissolved by a majority of its stockholders.

Trust

- Can be created for both personal and business purposes.
- “Trust” in the CGL refers to a “business trust.”
- An unincorporated business used in place of a corporation or partnership for the transaction of various kinds of business with limited liability to the owners.
- Trusts do not receive a charter from the state giving them legal recognition.
- Business trusts derive their status from the voluntary action of the persons who form them and are **separate legal entities** distinct from their beneficial owners and trustees.
- Business trusts exist until dissolved.

“Limited” and Temporary “Yous”

- Limited and temporary coverage for newly acquired or formed entities – new “Yous.”
- Subject to four limitations:
 1. Automatic coverage is limited to 90 days;
 2. The named insured must **own** a majority interest;
 3. There is no coverage for any occurrences prior to the acquisition of the entity; and
 4. The automatic extension does not apply to newly acquired or formed partnerships, joint ventures or LLCs.

Extended Insureds

Varies based on entity type

If the Insured is a(n)...	The extended insureds are:
Individual	A spouse (not a defined term)
Partnership	Each partner and their spouses
Joint Venture	Varies based on the formation of the JV. Each person/spouse or member
Limited Liability Company	Members and managers
Other Organizations	"Executive officers," directors and stockholders (for vicarious liability)
Trust	Trustees

Protection for "Extended Insureds" is equivalent to the protection extended to the "You."

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Automatic Insureds

Protection is provided because of these “insured’s” relationship with and to the named insured.

These individuals/entities are related to and/or contribute directly to the activities of the insured’s business or operation.

- Employees and Volunteer Workers
- Real Estate Managers
- Any person or entity having temporary custody of property if “You” die.
- Legal Representative if “You” die (given all the rights and duties under the coverage).
- Newly Acquired or Formed Organizations over which “You” maintain ownership or majority interest. Automatic coverage afforded for only a limited amount of time.

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Specifically Excluded Entities

NO Coverage for any Previous, Newly Formed, or Newly Acquired:

- Partnership
- Joint Venture
- Limited Liability Company

This limitation/exclusion has four key elements:

1. Applies to the entirety of this Section;
 2. Applies to entities the named insured **cannot** own;
 3. Applies to the “**conduct**” of the specified entity types; and
 4. For any of these entity types to garner protection as an insured, it/they must be listed as a named insured.
- Some believe this precludes coverage for Additional Insureds.

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Additional Insureds

Additional insureds provide benefit to OR receive benefit from the named insured but are not “related” to the named insured, so...

- Protection is always extended by endorsement.
- Additional Insureds are often extended the **least** amount of or very limited protection.
- A relationship may move AI up to “Automatic Insured” coverage status (still by endorsement)
 - Who benefits from the activity or the relationship?
 - Who could potentially be held liable for the injury or damage?
 - Can or does the Additional Insured exist apart from the existence of the Named Insured?

Extending Insured Status in the CGL

How is insured status extended?

- Name the entity on the declarations page;
- Acquire or form a new entity that can be owned (but only for 90 days); or
- Endorse the policy:
 - Additional Insured endorsement; or
 - A proprietary “additional NAMED insured” endorsement.



Insureds in the BAC

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Three Levels of Insured Status

- The “You” (Named Insured);
- Permitted drivers – with several exceptions; and
- Those with vicarious liability for the actions of an insured.

The “You”

- The Named Insured
- Protected for “any covered auto”
- Will likely never drive the car
- Protection essentially limited to vicarious liability for the actions of a “permitted user.”

Permitted Users

- BAC protection is almost exclusively for the benefit of the permitted users.
- Why coverage for permitted users is essentially equivalent to the protection extended to the named insured.
- Permitted users include anyone that has permission from the named insured (express or implied) or the named insured's representative to drive a **covered auto**.
- But there are specific exclusions:

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Other Entities with Vicarious Liability

- Vicarious liability protection for any party liable for the conduct of a previously described “insured.”
- NO reason for the CA 20 48

“Other” Insureds

- The BAC can be used to extend broad coverage to other insureds.
- Same level protection as a Permitted User.
- Depending on the relationship, coverage is extended to the “Other” Insured on either a primary or excess basis.

Common “Other” Insured Endorsements

- CA 20 54 – Employee Hired Autos
- CA 99 16 – Hired Autos Specified as Covered Autos You Own
- CA 99 17 – Individual Named Insured
- CA 99 33 – Employees as Insureds
- CA 99 47 – Employee as Lessor

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Properly Extending Insured Status

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Extending Named Insured Status

Key Concept:

The Insured is ALWAYS a person!

Listing the Named Insured

If the Insured is a(n)...	...the name on the declarations should read:
Individual	The full legal name of the individual.
Partnership	The answer depends on the existence of and information in the partnership agreement: 1) If a partnership name is found in the partnership agreement, that is the named insured; but 2) If there is no name provided in the agreement or there is no agreement, the named insured is the last names of the individuals making up the partnership.
Joint Venture (JV)	The name of the JV as found in the written agreement.
Limited Liability Company	The name filed with the regulatory authority.
Other Organizations	Exactly as listed by the Secretary of State or other regulatory authority.
Trust	The name found on the declaration of trust.

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Assumed Names (To DBA or T/A)

1. The use difference centers around the legal position of the “Assumed Name.”
2. If the “Assumed Name” has been filed with a licensing entity, use DBA
3. If the “Assumed Name” has not been filed with any licensing entity, use T/A
4. The “Assumed Name” is NOT generally required for coverage to apply. Coverage applies to the legal entity, not how it is known in the community. Neither DBA nor T/A is necessary

Unacceptable Combinations

One “person” (entity type) cannot DBA or T/A another “person” (entity type).

- Tucker, Inc. DBA Boggs, Inc.
- Chris Boggs T/A Insurance Geeks, Inc.
- Miller, Inc. T/A Ryan Miller DBA Insurance Guru

Unacceptable Terminology

- “As their interest may appear” (ATIMA)
- Omnibus wording (“any and all past entities,” “all associated...”)
- “Et al” or “Etc.”
- Any specific location
- A limitation of coverage such as, “only with respect to...”
- Anything other than the natural or legal person and the assumed name. (“Operations conducted by Disney, Inc.”)

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Guidelines for Combining Entities

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Common Majority Interest Must Exist

Relationships Creating Common Majority Interest:

- The legal person (corporation) has a majority interest in other legal persons (includes LLCs).
- The natural person owners, individually or collectively, maintain majority interest in more than one legal person.
- The legal person combines with some or all of its natural or legal person owners to hold majority interest in another legal person.
- The legal person has a majority interest in another legal person which itself owns or owned a majority interest in a third legal person currently operating or which operated in the last five years.

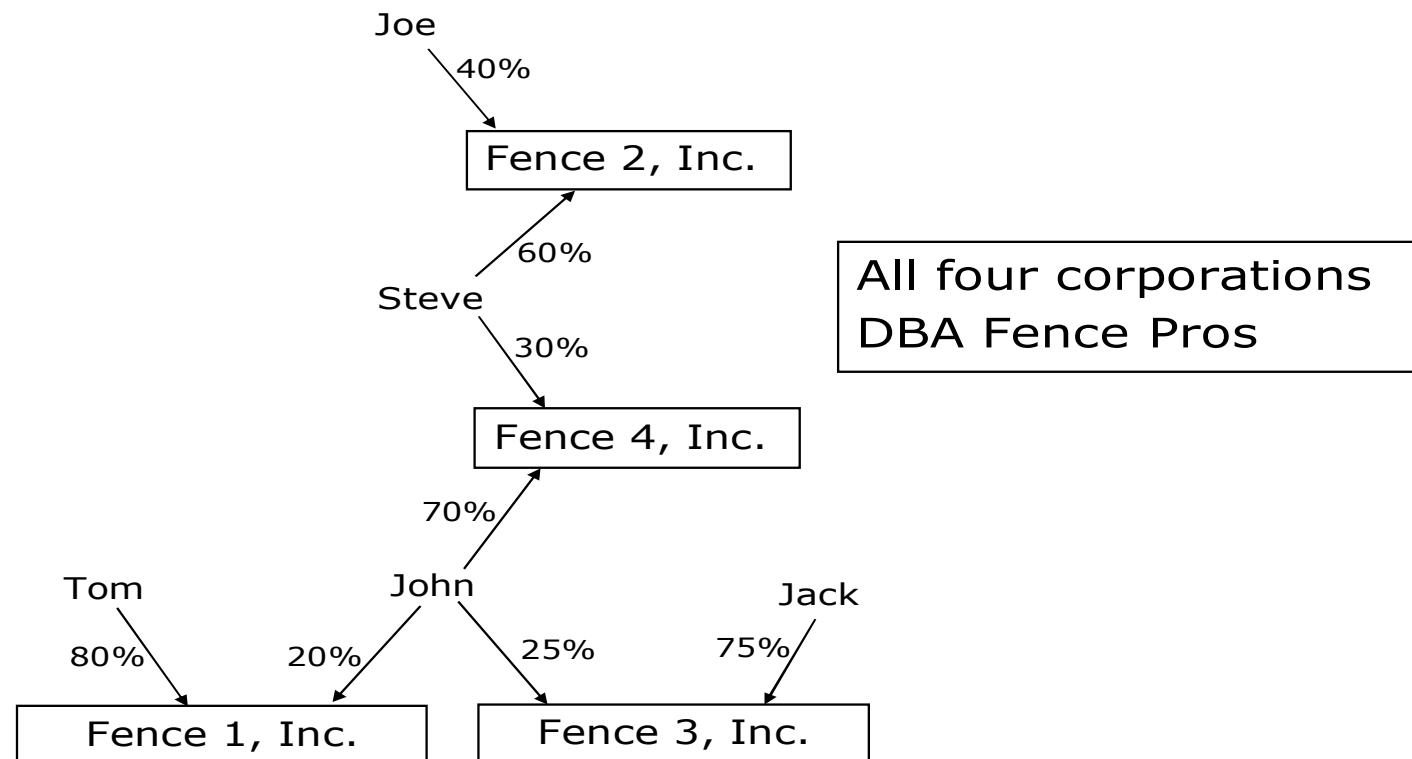
Creating Common Majority Interest

- Owning more than 50% of any entity
- Owning majority of the voting stock
- Majority of owners
- Majority common board

The “Rules” for Combining Entities

- Rigid Rule: At least 51% common ownership / interest before combinability is allowed.
- Reasonable Rule: The 51% can sometimes be waived IF: 1) reasonable commonality among the owners exists; AND 2) the operations of the multiple entities are essentially the same. (This may be allowed for package policies but not WC.)

Reasonable “Rule” Example



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Misuse of Combinability Allowances

Don't combine dissimilar operations just because common majority interest exists!

First Named Insured – Important Consideration

The first named insured is given special responsibilities and benefits:

- Allowed to make changes;
- Receive correspondence; and
- Responsible for paying premiums.



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