



Beware of the Dangers of Designating a Project “Premises” When Using the ISO CG 21 44 or its Equivalents

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Project-specific policies sold to the construction industry routinely include ISO form CG 21 44 07 98, entitled “Limitation of Coverage to Designated Premises or Project”, to identify the covered construction project. Care must be taken in the use of this form, however, to avoid granting more coverage than the insured and insurer intend.

The CG 21 44 07 98 includes a schedule:

SCHEDULE

Premises:
Project:

The schedule is followed by the following limiting language:

This insurance applies only to “bodily injury”, “property damage”, “personal and advertising injury” and medical expenses arising out of:

- 1. The ownership, maintenance or use of the premises shown in the Schedule and operations necessary or incidental to those premises;
or*
- 2. The project shown in the Schedule.*

By design, this form can be used to support a location-specific operations policy (insuring the business operations of the insured at scheduled locations) or to support a location-specific construction policy (insuring the designated projects). The two functions are separated by the preposition “or”, not “and”, meaning it is not designed to support premises operations *and* projects. When this form is included in a construction project-specific policy, however, it is very common to see the form’s schedule populated by both a “premises” and a “project”. In such cases, the scheduled “premises” is usually the construction project’s address, and the scheduled “project” is typically a description of the project. Scheduling the project’s address as “premises”, though, may result in providing operations coverage to the project’s owner which was not intended. Consider the following:

Example 1: The construction manager (“CM”) of a school expansion project in city location arranges for a contractor-controlled insurance program (“CCIP”). The project involves the construction of several new dormitory and classroom buildings. The CCIP policy period runs for the four-year anticipated project term, followed by a completed operations extension. Three years into the project, portions of the project are largely completed with only finish work being performed. The owner decides that it can admit more students for the coming academic year by using one of the completed dormitory buildings now. Nothing in the project’s contracts prevent the owner from doing so. The CCIP includes a CG 21 44 form identifying the address of the city block on which the project is located as the scheduled “premises”, and a general description of the project as the scheduled “project”. A student slips on a wet spot left by a school janitor mopping floors and sues the owner.¹

Example 2: An airline purchases a project-specific general liability policy to insure itself and its construction manager for a terminal renovation and expansion project at an airport. The owner intends to operate the terminal during the project. The terminal is identified as the scheduled “premises” and the project is described as the scheduled “project”. A passenger sues the airline after falling in a part of the terminal where there are no construction operations.

Most insurance industry professionals would not expect the coverage under a project-specific construction policy to apply to the claims scenarios above. Both arise from risks attendant to the owner’s operation of the asset, not from construction. In both cases, one would expect the insurance to come from an owner’s operations or “practice” insurance program, not from the project-specific construction insurance. Yet, in both cases, because the project-specific insurance policies listed the location of the project as designated “premises”, the owner is likely entitled to coverage.² The CG 21 44 provides coverage for: “[T]he ownership, maintenance or use of the premises shown in the Schedule and operations necessary or incidental to those premises, *or* [T]he project shown in the Schedule.” By its terms, the CG 21 44 provides coverage for *either* the project *or* the operations of the designated premises.

¹While this is not intended to be a COVID-19 article, a very similar scenario has come up with medical facility projects opened early to accommodate anticipated COVID-19 patient volume, and even some non-medical projects which have been repurposed to provide temporary bed space for quarantines or actual medical care.

²Other exclusions or limitations could certainly apply depending on the particular policy.

Some insurers intend to use the “premises” schedule to give the owner some flexibility for incidental operations not directly connected to the construction project. For example, where the owner provides site security through its existing site security vendor, an underwriter might feel comfortable taking that part of the owner’s risk. Insurers who do this usually find comfort in the language referring to operations “necessary or incidental” to the designated premises. However, these are vague terms and their meaning has not been litigated in this context. Given the pro-policyholder standards around the duty to defend, an insurer likely faces an uphill battle trying to establish that it owes no obligation to defend claims such as the two examples above.

As such, stakeholders to project-specific insurance policies are well advised to consider whether including any information in the “premises” schedule is consistent with what they intend. If identifying the project location is important, that can be done in the “project” portion of the schedule (e.g. “the project involving _____, located at _____”). Doing so avoids the coverage for “ownership, maintenance or use” associated with the “premises” portion of the schedule.³ Conversely, where coverage for both operations and construction is intended, we recommend not simply relying on the CG 21 44 language alone. As indicated above, many insurance professionals would assume that coverage is intended for construction only, and an insurer’s claims people might contest coverage for owner operations notwithstanding the form’s language.⁴ If we take the first example above involving use of the completed dormitory, including a statement in the “premises” schedule such as “[address], including any of owner’s business operations on the premises during the course of the project described in this endorsement” would address this potential coverage issue. It bears mentioning here that whenever a project starts to deviate from what was originally proposed in the application process (scope, early occupancy, temporary shutdown, etc.), insureds should contract their broker to discuss whether notification to the underwriter is warranted. Discussing potential issues like these up front can avoid significant problems - and costs - later.

³The newest edition of this form, ISO CG 21 44 04 17 (seen less frequently in construction insurance) adds a provision allowing the coverage to be tailored either to liability occurring on the scheduled premises or arising out of the scheduled premises or scheduled project. It effectively allows the coverage to be restricted to “on a premises” versus “arising out of a premises”. The point made by this article is equally true for the newer form edition –listing a project location as a scheduled premises may give an owner operations coverage unrelated to the project.

⁴The project insurance would also likely look for and pursue any “other insurance”, including the owner’s practice program. Given that project insurance is usually written as primary and non-contributory for its stakeholders, the owner’s practice program may be entitled to an excess position over the project insurance.