

# West Virginia Board of Risk and Insurance Management (BRIM)

## *A General Guide to BRIM Liability Insurance Policies*

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This memo is intended to be a very general guide to the liability insurance policies BRIM provides to various State of West Virginia agencies, as well as to those customers (other than private health care providers insured under House Bill 601) which we cover under W. Va. Code §29-12A-1, *et seq.* The information in this memo is not intended and should not be relied on as legal advice or counsel. It has, in fact, been prepared by a non-lawyer. For specific legal advice, please contact a licensed attorney. Any actual claim must be analyzed independently for coverage, and any coverage decision for an actual claim will be conveyed to you separately, by certified letter.

So, with that in mind:

If you are insured with BRIM, you and your organization have two distinct liability insurance policies issued by BRIM.

The first is the auto policy. It provides coverage for you and your fleet vehicles for liability insurance, and for physical damage coverage for your fleet vehicle (commonly referred to as "collision" coverage and "comprehensive" coverage). It does not provide auto rental reimbursement coverage for you. If you are driving a fleet vehicle and cause an accident, the auto policy responds on behalf of you and the employed driver of your fleet vehicle, and pays damages for which you may be legally liable (subject, of course, to the terms and conditions of the actual insurance policy). If you are **not** a State of West Virginia agency customer of BRIM, you also have coverage for uninsured motorists insurance, and underinsured motorists insurance. State agencies have neither uninsured motorists insurance, nor underinsured motorists insurance, with BRIM.

As we said, the auto policy also includes physical damage coverage for your fleet vehicles. If you have windshield damage, or a vehicle theft, or hit a tree, or incur some other physical damage to your fleet vehicle, this part of the policy kicks in to pay for repairs to your vehicle – subject to a \$1,000 deductible, per loss. The deductible does not apply to payments made on your behalf to others whose damage you caused and for which you are legally liable.

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Next, let's turn to the general liability policy (for other than autos, which, of course, we discussed above). This policy is entirely separate from the auto policy and it covers different exposures. We do not intend for a loss to be covered under both the auto policy and the general liability policy. The general liability policy is divided into 5 separate coverage parts, each designed for different and specific types of exposures. The coverage parts are: the Personal Injury Liability coverage part (PIL), the Comprehensive General Liability coverage part (CGL), the Stop Gap Liability coverage part (SGL), the Professional Liability coverage part (PL), and the Wrongful Acts Liability (WAL) coverage part. We'll give you some examples, later, as to which coverage part fits which type of claim.

When you report a claim, lawsuit, or possible claim or lawsuit to us, it is completely unnecessary for you to worry about which of these coverage parts applies to provide coverage and defense for

you. We will examine the allegations made against you and determine which of the coverage parts provides your maximum protection. Since your insurance premium is based, in large part, on your overall loss experience history over the previous five years, it makes no difference from a pricing standpoint as to which of these coverage parts applies to your claim.

Insured customers often express confusion over how to report a claim to us. In the past, great emphasis was placed on exactly what was "The Correct Form" to use when reporting a loss. The best answer we can give you to this dilemma is: there is no "The Correct Form". So, do not, ever, delay reporting a claim or possible claim because you are unclear as to which form to use. We have designed, for your convenience, a form which is available at our website <http://www.state.wv.us/brim>. You can follow the "claim" links on the BRIM web page to find it. We also have set up a form, at the same site, for "on-line" internet submission of a new claim. If you can not find the link, or the referenced forms - don't worry! Because, as we mentioned - there is no such thing as "The Correct Form". Simply write a note to us and explain what the claim is about. Just remember - we need to know when it happened, where it happened, who it happened to, how to contact that person, how to contact you, and very briefly - what did happen. We can take it from there if we know how to reach you.

Next, here is a simplified explanation of what the 5 different coverage parts are designed to cover. First, if you are sued as a result of a covered claim (meaning the allegations made against you are covered under one, or more, of the coverage parts), the insurance company (AIG since 1995 and CNA before 1995) has the right to choose your legal representation. We will pay the associated legal defense expenses. You may have a favorite lawyer, but AIG has a proven track record with specific lawyers and law firms who have the experience and resources to handle the type of claim made against you. If you have additional questions about the theory behind how attorneys are chosen, or the actual process of finding, selecting and directing the attorneys, please call us and ask for the Claim Manager.

Next, remember that these various coverage parts are supposed to only pay for covered claims for damages for which you are *legally liable*. This is an important point - we only pay for claims for which you are *legally liable*. We do not automatically pay just because someone has been injured, or something has been damaged. You must be *legally liable*. So, then - a reasonable question is: what does *legally liable* actually mean? For the most part, it means you must be negligent. Well, just what does negligent mean? Very simply stated, for you to be held negligent and, therefore, legally liable for someone's claim, there must be 4 basic elements established:

- Duty Owed
- Duty Breached
- Damages
- Proximate Cause

Duty owed means that you owe the duty of reasonable care to someone or something.

Duty breached means that such a duty did exist and, by virtue of your actions, you breached that duty.

Even if duty owed and duty breached are sufficiently established by the facts of a claim, there still must be evidence of some damage. Something must be damaged or someone must be injured.

Which brings us to the last item – proximate cause. If it is established that there was a duty owed, and that you did breach that duty, and there is evidence of injury or damage, the person making the claim still has to prove that your actions in breaching the owed duty proximately caused the claimed injury or damage.

That may sound a little tricky – but here's a specific example to illustrate the principle: you are driving your fleet vehicle and you approach a stop sign. You have a duty to stop at the stop sign and proceed only when it is safe to do so. But rather than stop, you merely slow down and coast on through. So, now we have a duty owed (to stop) and a duty breached (you didn't stop). But, if nothing else happens, there is still no legal liability. However, now let's add that another party, driving in their 1991 Ford Explorer with all four fenders previously banged in, and with a broken windshield, comes legally from your right; you clip the Explorer's driver's side rear bumper and put a fresh dent in it. Now, we have added the elements of damage (dented bumper) and proximate cause (the bumper was unblemished before you hit it). Because all four elements of negligence have been reasonably established, you are legally liable for his damages and we owe the owner of the Explorer for the cost of rear bumper repairs.

But, what if the owner of the Explorer also wants us to pay for his previously broken windshield and his already dinged fenders? Your negligent act of running the stop sign and hitting his rear bumper did not proximately cause the windshield damage or the dinged fenders, since they were in that condition before you hit him, so you were not negligent in causing that particular damage and you are not *legally liable* to pay for those repairs.

Remember – this discussion of negligence and legal liability is intended only to be very basic. But, 90%, or more, of insurance claims fall into this category of negligence based, legal liability. There are, however, lots of exceptions. There are also lots of very thick legal textbooks that describe the fine points and countless variations of legal liability. Our best advice is: if in doubt, do as we do – consult an attorney.

Next, here are some examples of different types of claims that might fall under various coverage parts of your BRIM general liability insurance policy. This list is not intended to be comprehensive, nor the final word as to whether any particular claim may be covered. Rather, it is a general illustration to try to point out some of the basic types of claims that may be covered under any of the various coverage parts.

#### Personal Injury Liability coverage part (PIL)

- libel
- slander
- false arrest

#### Comprehensive General Liability coverage part (CGL)

- a student or visitor falls down on your insured premises and suffers injury (but, remember – we only pay for injury or damage for which you are legally liable – please refer to above discussion about negligence)

- premises failure resulting in injury or damage (a parking gate falls onto a visitor's car, a piece of ceiling tile falls on someone, a broken sidewalk causes someone to trip, an area is insufficiently lit and someone falls as a result, etc.)

Stop Gap Liability coverage part (SGL)

- An employee is injured on the job and sues you for amounts over and above his workman's compensation benefits

Professional Liability coverage part (PL)

- you have a person on staff who is professionally licensed as an engineer, medical professional, etc. and a claim is made against that person, or your organization, for his/her alleged professional negligence (malpractice) for acts committed while working for you in an official capacity

Wrongful Acts Liability coverage part (WAL)

- you are sued by an employee for wrongful termination, sexual, age, or racial discrimination
- failure to properly supervise
- alleged battery, or sexual misconduct, etc. (a *caveat* here – if the person accused of sexual misconduct, or battery, etc. admits to the act, or is convicted of the act in a criminal proceeding, there is no coverage for that individual, although your organization still has coverage for the organization)
- alleged misconduct by Board members, directors or other officers or volunteers of the organization (so long as committed within the scope of their official duties for your organization)

Again, it is important to remember that these examples should be recognized as only a very general guide, and are not the final answer for coverage for any specific claim. The actual language of the policy, along with all of its terms and conditions, always prevails over any example or explanation given in this memo.

If you have any questions about the insurance policies, what is covered, or how claims are handled, please contact us. In fact, we would appreciate any questions, since – if you have a question about something concerning the BRIM liability insurance policies – it's likely someone else has the same question, too. And, we hope to add to this memo, over time, as we get more questions from our customers.

For questions, please contact any of the following:

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