

# DECLARATORY JUDGMENT ACTIONS - WHO, WHERE, HOW, WHAT, WHY AND WHEN

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## I. INTRODUCTION--THE INSURING AGREEMENT, EXCLUSIONS, AND THE BURDENS OF PROOF AND PERSUASION IN INSURANCE LITIGATION

A liability insurance policy consists, generally, of three parts: (1) the insuring agreement, which is the affirmative grant of coverage, setting forth who and what are covered, and the time span that is covered; (2) the exclusions, which limit the coverage provided by the insuring agreement; and (3) the conditions, which set forth a procedural framework governing how the insurer and insured will deal with each other, particularly after a loss (e.g., the insured must give notice of a loss, the insured must cooperate with the insurer, etc.). A brief word is in order about the importance of recognizing the differences in the three parts in the context of actual insurance coverage litigation, particularly in the context of declaratory judgment filings.

The typical liability policy insuring agreement provides, in pertinent part:

We [The Insurer] will pay those sums that the insured becomes **legally obligated to pay** as damages because of “bodily injury” or “**property damage**” to which this insurance applies. We will have the right and duty to defend any “suit” seeking those damages...

This insurance applies to “bodily injury” and “property damage” only if (1)The “bodily injury” or “property damage” is caused by an “occurrence” that takes place in the “coverage territory”; and (2)The “bodily injury” or “property damage” occurs during the policy period.<sup>2</sup>

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<sup>2</sup>The language is from CG 0001 10 93, prepared by the Insurance Services Office (ISO). Emphasis added by the author.