



# **CERTIFIED INSURANCE COUNSELORS**

## **Commercial Multiline**

The National Alliance  
2021 Learning Guide



**CERTIFIED INSURANCE COUNSELORS**  
**Commercial Multiline**  
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### **A Letter from William J. Hold, President/CEO**

We know that choosing the right professional development programs to strengthen your career can be challenging. There are many options for you to choose from; so how can you be sure that your time, efforts, and money are being invested and not wasted?

By becoming a committed participant of The National Alliance, you can rest assured that you are also making the best educational choice for your career—no matter what step of your learning path you are on.

For the last 50 years, our designations have been regarded throughout the industry as symbols of quality and trust. Our practical insurance and risk management courses are taught by active insurance practitioners, include policies and forms currently used in the field, and guide you through real-world scenarios to give you a deeper understanding of what your clients are facing today. The knowledge and skills you develop in any one of our courses (or designation programs) can be put to use immediately.

You will build long-lasting relationships with your clients, stay ahead of industry trends, emerging risks, and products that are constantly evolving in our dynamic market. You will have access to the industry's latest learning materials and will be the first to hear about new courses. With a learning path customized to fit your needs, you will be better equipped to protect your clients.

Have no doubt that your success is our priority. Whether you are new to your career, or a seasoned professional, you are about to embark on a wonderful professional development journey. Thank you for choosing The National Alliance for Insurance Education & Research as your guide toward a thriving career.

Let's take the first step.

William J. Hold, M.B.A., CRM, CISR  
President/CEO



## DISCLAIMER

This outline is intended as a general guideline and may not apply in each situation.

For any matters of legal and/or tax issues, one should consult with competent counsel or advisor for the matter in question and in the jurisdiction in question.

The Society of CIC and any organization for which this seminar is conducted shall have neither liability nor responsibility to any person or entity with respect to any loss or damage alleged to be caused directly or indirectly as a result of the information contained in this outline.

Insurance policy forms, clauses, rules, court decisions, and laws change constantly. Policy forms and underwriting rules vary from company to company.

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# **EXAM INFORMATION**



# Examination Techniques

## During the Program

### 1. Listen Professionally

Adjust the way you listen to the pace of the instructor. Listen actively for the “big ideas” and search for facts to back them up. Listen for key words and clue phrases like “You should know...,” “Three steps are...,” etc. Listen to the speaker’s inflection and tone. If you intend to take the examination, study and review each evening while it is fresh—don’t wait for the night before the exam.

### 2. Take Careful Notes

During the lectures, take clear notes on each topic and be sure to ask the instructor if you need clarification on a point. Each evening, review these notes, as well as the materials to be covered next. Compose your own exam questions from the material. Study with others and concentrate on the areas you are least certain of—but don’t forget to get a good night’s rest before the examination.

## During the Examination

### 1. Remain Calm

Some of you may have had experiences in your previous schooling that have caused you to feel anxious at the thought of taking an examination. Relax and you will do much better. You will have more access to your memory if you take the examination as a confirmation of your understanding of the material and not as a test of your value as a person. Even if you do not pass the examination the first time, you cannot fail an institute! Your mere presence here is proof of your dedication to professional education and improvement.

### 2. Understand the Examination Format

The examination period is two hours long for the CIC institutes and CPRM courses, and two and one-half hours long for the CRM courses. It is an essay-type exam with a total value of 200 points. In order to pass the exam a participant must score at least 140 points. The examination questions are in the order of presentation of the topics and are weighted to the length of the presentations. To work at a proper pace within the two-hour or two and one-half hour period, you should allow approximately six to eight minutes to answer each question. To work slower may mean that some questions might not be answered. It is a good rule of thumb in exam writing to NEVER LEAVE AN ANSWER BLANK.

## During the Examination (*continued*)

### 3. Understand Each Question

Read the question carefully, looking for clues contained in it. Look for action words, such as: compare, contrast, define, summarize, explain, etc. Underline key points or questions. Be sure that you answer the question that is asked and not the one that you wish had been asked.

### 4. Plan Before You Write

It makes sense to briefly outline your answer before you begin writing. This will help you make sure you understand the full scope of the question and make it less likely that you will leave something important out of your answer. Be specific and give reasons. “Yes” or “No,” “Covered” or “Not Covered” are not adequate answers. Rarely will a question require only a short, one-sentence answer. Take the time to explain.

### 5. Use All of Your Time

Even if you finish your examination early, use the extra time to carefully review both the questions and the answers. Have you really answered the question that was asked? Is your answer as complete as it should be to convey your understanding? Use all of your time. Have you answered ALL of the questions?

## Sample Examination Questions and Composite Answers

### Note to Candidates:

This composite set of answers to the Certified Insurance Counselors examinations is published for CIC candidates and others interested in the CIC study program. The answers have been taken from actual student papers and have been edited by the staff of the Society. The questions and answers are ***illustrative only***; the answers are not necessarily perfect.

It should be understood that these answers may be longer and more complete than necessary to receive a high grade. Your answers will be graded on the factual response to the question asked, the instructions given, and the completeness of the answer. You should not use this set of questions and answers as a substitute for a thorough study of the subject matter.

# Agency Management Institute

## Sample Examination Questions and Composite Answers

### Sample Question 1:

Agency planning should be conducted through a formal process that includes several steps. Please identify the five formal steps in the planning process.

### Sample Answer 1:

1. *Conduct a situation analysis*
2. *Review the agency's mission statement*
3. *Write the agency plan*
4. *Implement*
5. *Monitor/evaluate and adjust*

### Sample Question 2:

Agent Best placed a Commercial Property policy with the Fire and Casualty Company. Subsequently, Agent Best's client suffered a large fire loss covered by the policy. However, because of financial difficulties, Fire and Casualty could not pay. Explain the possible liability of the agent in this case.

### Sample Answer 2:

*One of the agent's legal responsibilities to clients is the duty to investigate the solvency of an insurance company. This can include not only the initial placement, but also an ongoing duty.*

# Commercial Casualty Institute

## Sample Examination Questions and Composite Answers

### Sample Question 1:

Your insured states that he understands his Commercial General Liability (CGL) Policy provides coverage for an “insured contract.” He then asks, “What is an ‘insured contract’?” Answer your insured’s question by listing the six “insured contracts” found in the CGL policy.

### Sample Answer 1:

1. *Lease of premises, except for fire damage to the rented premises.*
2. *Sidetrack agreement.*
3. *Easement or license agreement, except construction or demolition on or within 50 feet of a railroad.*
4. *An obligation to indemnify a municipality as required by ordinance, except in connection with work for municipality.*
5. *Elevator maintenance agreement.*
6. *That part of any other contract, pertaining to an insured’s business, assuming tort liability of another to pay a third party.*

### Sample Question 2:

The Workers Compensation and Employers Liability Insurance Policy is composed of three coverages. Name each coverage and briefly describe the purpose of one of the coverages.

### Sample Answer 2:

Must Name All Three Coverages:

*Workers Compensation Insurance*

*Employers Liability Insurance*

*Other States Insurance*

Provide Any One Description:

*Workers Compensation Insurance provides coverage for workers compensation benefits to employees as required by state law.*

*or*

*Employers Liability Insurance provides coverage for liability other than state mandated benefits arising out of an employee’s work-related injuries.*

*or*

*Other States Insurance provides temporary automatic coverage for new operations in other states, plus coverage for incidental exposures in other states. The states must be listed in Item 3C on the Information Page for other states insurance to apply.*

# Commercial Property Institute

## Sample Examination Questions and Composite Answers

### Sample Question 1:

MAP Company insures its corporate headquarters under an unendorsed Building and Personal Property Coverage Form with the Special Causes of Loss Form. The building is insured for \$600,000 and the business personal property for \$200,000. The 80% coinsurance requirement is satisfied. Ms. Peterson, the comptroller, asks the following questions. How would you respond to each question? Support your answer.

- A. "Part of our premises includes an unattached retaining wall for decorative effects. The value of this wall is \$15,000. What coverage applies if someone runs their car into the wall?"
- B. "Will our policy pay for loss to our employees' belongings while they are at work?"

### Sample Answer 1A:

*No coverage. Retaining walls that are not part of the building are defined as Property Not Covered.*

### Sample Answer 1B:

*Covered. Under the Coverage Extension Personal Effects And Property of Others coverage applies up to \$2,500 at each described premises. However, loss or damage by theft is not covered.*

### Sample Question 2:

A prospect of yours decides to purchase Business Income Coverage from your agency. This prospect asks you the following question: "How is the term 'Business Income' defined?" Please respond to the client's question.

### Sample Answer 2:

*Business Income is defined as Net Income that would have been earned/incurred and continuing normal operating expenses including payroll.*

# Life & Health Institute

## Sample Examination Questions and Composite Answers

### Sample Question 1:

The following policy provisions are commonly found in most major medical insurance policies: (a) coinsurance clause, (b) deductible. Describe each provision.

### Sample Answer 1:

- (a) *The coinsurance clause requires that the insured pay a portion of each dollar loss after the deductible has been exceeded.*
- (b) *A deductible is an amount of money paid by the insured. It must be satisfied before the insurance contract responds.*

### Sample Question 2:

One of the standard provisions found in most life insurance contracts is the reinstatement provision. Explain the reinstatement provision and list the requirements needed to reinstate a policy.

### Sample Answer 2:

*After the expiration of the grace period, the insured may request the reinstatement of the contract. Requirements: proof of insurability, payment of all back premiums, interest, and policy loans.*



# Personal Lines Institute

## Sample Examination Questions and Composite Answers

### Sample Question 1:

John has his home insured on a Homeowner 3 - Special Policy that has a \$200,000 Coverage A – Dwelling limit and a \$300,000 Coverage E - Liability coverage.

- A. John has an apartment above his detached garage that he rents to a college student. The tenant accidentally starts a fire that causes \$25,000 damage to the garage/apartment. The fire also causes \$6,000 damage to the tenant's personal property. Ignoring any deductible, how much of this loss is covered by John's Homeowners Policy? Include the reason for your answer.
- B. While John was on vacation, a neighbor cared for his dog as a favor. When the neighbor failed to shut the gate to the fence, John's dog got out of the yard and bit a child. The parents of the injured child have filed a \$500,000 lawsuit against both John and his neighbor for the bodily injury to the child. Will John's Homeowner Policy provide coverage to both him and his neighbor? Explain your answer.

### Sample Answer 1:

- A. *While fire is a covered peril, the homeowners policy does not cover another structure rented or held for rental to others unless used solely as a private garage. The tenant's property is not covered as the homeowner policy excludes property of tenants.*
- B. *John is an insured and is provided coverage for bodily injury caused by his dog. The neighbor is also an insured while caring for John's dog as the neighbor is not in the business of caring for animals. The maximum the policy will pay is the \$300,000 per occurrence limit.*

### Sample Question 2:

Sue is the named insured on a Personal Auto Policy on which she insures her 2014 Toyota. The policy has Part A – Liability limits of 50,000/100,000/25,000. Sue also has a company car provided by her employer.

- A. Sue has an at-fault accident while driving her company car. The driver of the other car is seriously injured, and the other vehicle is totaled. Explain whether or not Sue's Personal Auto Policy will provide liability coverage for the injury to the other driver and the damage to the other vehicle.
- B. Sue is helping her friend move. While driving her Toyota, Sue has an accident and the friend's property in her car is damaged. Explain whether or not Sue's Personal Auto Policy will pay for the \$1,500 damage to her friend's property.

### Sample Answer 2:

- A. *Sue's policy does not provide liability coverage while she is driving her company car. There is an exclusion for a vehicle furnished or available for her regular use.*
- B. *Sue's policy will not cover the damage to her friend's property. There is an exclusion for property damage to property being transported.*





# The Society of Certified Insurance Counselors

*a proud member of The National Alliance for Insurance Education & Research*

## Section 1

# COMMERCIAL INLAND MARINE CONCEPTS & COVERAGES



## Commercial Inland Marine Concepts & Coverages

### Section Goal

In this section, participants will analyze selected Commercial Inland Marine Coverages to determine how and when coverage applies and how coverage may be modified.

### Learning Objectives

1. Using knowledge of the overview of Inland Marine, the participant will describe the general concepts unique to Inland Marine Coverages.
2. Using knowledge of bailment, including:
  - Elements of bailment
  - Coverages
  - Exclusions
  - Conditionsthe participant will be able to describe how Bailee Coverage applies in the event of loss.
3. Using knowledge of the basic concepts of builders risk, the participant will be able to identify the exposures to loss and to explain the methods of writing Builders Risk Coverage.

4. Using knowledge of the Commercial Inland Marine Builders Risk Coverage Form, including:

- Covered Property and Property Not Covered
- Coverage Extensions and Supplemental Coverages
- Perils Covered and Perils Excluded
- Limitations, Valuation, and Settlement

the participant will be able to describe how coverage applies in the event of a loss, explain why and how much the policy will pay, and describe endorsements, if any, that may be used to modify the insurance coverage.

5. Using knowledge of the Commercial Inland Installation Floater, including:

- Property Covered and Property Not Covered
- Perils Covered and Perils Excluded
- Limitations, Valuation, and Settlement

the participant will be able to describe how coverage applies in the event of a loss, explain why and how much the policy will pay, and describe endorsements, if any, that may be used to modify the insurance coverage.

6. Using knowledge of the Commercial Inland Marine Contractors Equipment Coverage Form, including:

- Property Covered and Property Not Covered
- Coverage Extensions and Supplemental Coverages
- Perils Covered and Perils Excluded
- Valuation and Settlement

the participant will be able to describe how coverage applies in the event of a loss, explain why and how much the policy will pay, and describe endorsements, if any, that may be used to modify the insurance coverage.

7. Using knowledge of the basic concepts for Goods In Transit, including exposures to loss, the participant will be able to describe the types of carriers used to transport goods and identify how to write coverage for Goods In Transit.

8. Using knowledge of the Commercial Inland Marine Transportation Policy, including:

- Property Covered and Property Not Covered
- Perils Covered, Perils Excluded, and Optional Coverages
- Special Provisions and Settlement

the participant will be able to describe how coverage applies in the event of a loss and to explain why and how much the policy will pay.

## Overview of Inland Marine

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### **Learning Objective 1:**

Using knowledge of the overview of Inland Marine, the participant will describe the general concepts unique to Inland Marine Coverages.

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### Who needs Inland Marine Coverages?

**Generally, every business will have an exposure that is best addressed through inland marine coverages**

**Almost every business has an exposure to property in transit or property that is not confined to a fixed location**

**Commercial property coverage forms may provide small sublimits for these exposures that create possible gaps in coverage**

### Historical Development

#### **Evolved from ocean marine insurance**

- Ocean marine covered the property while it was in transit over the ocean
- Had not become traditional property exposures because the goods were not yet at their final destination
- Needed a method to cover goods after they were off-loaded from the ship

**Inland marine filled the gap in coverage as goods transitioned from coverage under an Ocean Marine Policy to coverage under Commercial Property Policies**

#### **Today inland marine insurance has evolved to cover a wide range of property**

- Generally, has an element of mobility or a relationship to transportation
- Inland marine insurance is generally limited to providing coverages on land, inland waterways but may also be expanded to include airborne



## Nationwide Marine Definition

Developed by the National Association of Insurance Commissioners (NAIC) to better define what is eligible for marine insurance treatment

### ***Section 1. Purpose***

The purpose of this instrument is to describe the kinds of risks and coverages which may be classified or identified under State Insurance Laws as Marine, Inland Marine or Transportation insurance

### ***Section 2. Applicability***

Marine policies (Ocean, Inland) may cover property under the following conditions/categories:

- Imports – Goods coming into the USA (most frequently an ocean marine exposure)
- Exports – Goods leaving the USA (most frequently an ocean marine exposure)
- Domestic shipments – Goods moving around the USA (can still be an ocean marine exposure if transported over water)
- Instruments of transportation and communication – Not necessarily mobile but facilitate movement of goods
  - Bridges
  - Tunnels
  - Piers, wharfs, docks
  - Railways
  - Pipelines
  - Transmission lines
  - Communication equipment – towers, antennas, etc.

- Floaters – Property that does not always stay at a described location
  - Personal property floaters – for individuals
  - Examples include: jewelry, fine art, collections, musical instruments, etc.
  - Commercial property floaters – for businesses
  - Examples include: physician's and surgeon's instruments, pattern and dies, theatrical property, film property, transportation, etc.

### ***Section 3. Exclusions***

- Basically, stating that property in a fixed location is not eligible for marine insurance treatment, subject to certain exceptions (stated above) and conditions

## Filed vs. Non-Filed Inland Marine Forms

### Filed or Controlled Forms

#### Characteristics

1. Relative uniformity of exposures
  - Regardless of industry, the exposures are similar
2. General agreement by the insurance industry concerning appropriate coverage provisions, underwriting rules, and rates
3. Tend to be specialty coverages
  - Accounts receivable insures only accounts receivable, for example
4. Inflexible terms and conditions
  - Policy terms and conditions are dictated by the filings made with each jurisdiction – non-negotiable
5. Outcome of filed or controlled forms
  - Rates filed
  - Coverage forms filed

#### *Examples*

*Accounts Receivable*

*Valuable Papers and Records*

*Signs*

*Commercial Articles*

- Organizations that make the filings on behalf of their members include American Association of Insurance Services (AAIS) and Insurance Services Office (ISO)

## Non-Filed or Unfiled Forms

### Characteristics

1. Exposures not uniform even within the same industries
2. Exposures too unique or diverse to reasonably require insurers to insure them on other than a case-by-case basis
3. More flexibility on how coverage will be provided – terms and conditions are negotiable
4. Examples of classes where underwriters need flexibility to address the risks individually
  - Contractors Equipment
  - Transportation Policies
  - Builders Risk Policies
5. Outcome of non-filed or unfiled forms
  - Rates not filed
  - Coverage forms not filed
6. Inland marine forms and rate filing requirements can vary by jurisdiction. Check with your individual carriers and/or the Department of Insurance in your jurisdiction for requirements.

## Summary of Policies to be Discussed in this Course

### Bailee

- Covers customer's goods in the named insured's care, custody or control

### Builders Risk

- Covers buildings or structures in the course of construction

### Installation Floater

- Covers materials to be installed by a contractor

### Contractors Equipment

- Covers equipment of a mobile nature

### Transportation Policy

- Cover goods being shipped

## Bailee Coverage

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### Learning Objective 2:

Using knowledge of bailment, including:

- Elements of bailment
- Coverages
- Exclusions
- Conditions

the participant will be able to describe how Bailee Coverage applies in the event of loss.

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## Elements of Bailment Exposure

### Bailment

- Describes the relationship where one person accepts personal property from another for a particular purpose
- Promises to return the personal property in the same or better condition
  - This creates an obligation, whether implied or express
  - Creates an obligation to act in good faith to ensure that any contract terms are met
- Bailor is the owner of the personal property given to the other party
- Bailee is the party that accepts the personal property of others

- Three types of bailment:
  1. Gratuitous bailment for the benefit of the bailor (I store someone's property for no charge)
  2. Gratuitous bailment for the benefit of the bailee (I borrow another's tool for my own use)
  3. Bailment for mutual benefit that benefits both the bailor and the bailee (I agree to take your clothes into my possession to clean them)
- In a gratuitous bailment for benefit of the bailor – the bailee owes the bailor a low duty of care; whereas in a gratuitous bailment for the benefit of the bailee – the bailee owes the bailor a high duty of care.
- Bailment for mutual benefit requires a reasonable duty of care

## Types of Bailment Policies

### Bailee Coverages

- Many inland marine coverages are available to cover a bailment exposure.

#### *Examples:*

*Bailee Customers Goods Floater*

*Bailee Processor Floater*

*Cargo Coverage Forms such as Motor Truck Cargo*

*Furriers Customers Floater*

*Warehouse Operators Legal Liability*

- Other types of policies cover the exposure of personal property of others in the named insured's care, custody or control (which is a form of bailment) even though that may not be their primary purpose, such as:
  - Inland Marine Floaters of various kinds
    - Installation Floater
    - Jewelers Block
    - Furriers Block
    - Riggers Floater
    - Valuable Papers and Records
  - Commercial Property Policies
    - Limited – doesn't usually include off premises or in transit
  - Garagekeepers Coverage



## Bailor coverages

- Covers the named insured's property while in the possession of others
  - May also cover similar property of others in the named insured's possession or similar property of others in the possession of another party for which the named insured is responsible
- Generally written on a scheduled basis
- Excludes property on premises owned, leased, rented or otherwise occupied by the named insured
  - Building And Personal Property Coverage Form will provide the coverage for this exposure

*Examples of these types of policies include:*

*Patterns and Dies Floater*

*Garment Contractors Floater*

**The need for coverage for bailment exposure is often driven by exclusions in various policies such as**

- Commercial General Liability Policy (Exclusion j.) – Care, Custody OR Control
- No Benefit To Bailee Condition in many types of property policies

## Two Ways to Provide Bailee Coverage

### 1. Legal Liability Basis

#### Sample Wording of the Insuring Agreement for Legal Liability

This insurance covers you for loss or damage to covered property you accept for storage for which you issue a receipt. In order to cover the damage, you must be legally liable for the damage to the property in your care, custody or control.

- Covers the value of the customer's property
- In order to trigger coverage, the bailee must be legally liable for the damage to the bailors property

#### *Example:*

#### *Warehouse Operators Legal Liability*

- Generally, coverage includes the value of the bailees investment in labor and materials
  - Would you pay the bailee for a repair bill when the goods don't get returned to you in at least the condition they were in when the bailment was created?

## 2. Direct Damage Basis

### Sample Wording of the Insuring Agreement for Direct Damage

We will pay for direct physical loss or damage as a result of a covered cause of loss to property in your care, custody or control.

- Covers the value of the customer's property
- Includes the value of the bailee's investment in labor and materials
- Since coverage is on a direct basis, the bailee does not have to be legally responsible for the damage to the bailor's property

#### *Example:*

##### *Bailee Customers Goods Floater*

- Care, custody or control establishes the responsibility
- Payment is made without regard to liability in order to maintain the goodwill of the customer

## Bailee Coverage Form

### Property Covered

Example

#### PROPERTY COVERED

"We" cover the following property unless the property is excluded or subject to limitations.

1. **Coverage** – "We" cover direct physical loss caused by a covered peril to property of others that is in "your" care, custody, and control for processing.

Processing, includes but is not limited to finishing, repairing, restoring, adjusting, or other similar work upon the property.

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- Customer's property in the care, custody and control of the named insured for processing

## Covered Locations

Example

<b>SCHEDULE OF COVERAGES</b> <b>MISCELLANEOUS BAILEE – PROCESSOR FLOATER</b> (The entries required to complete this schedule will be shown below or on the "schedule of coverages".)		
<b>COVERED PREMISES</b>		
<b>Prem.No.</b>	<b>DESCRIBED PREMISES</b>	<b>"Limits"</b>
_____	_____	_____
_____	_____	_____
<b>COVERED PROPERTY</b>		
	<b>DESCRIBED PROPERTY</b>	
	_____	
	_____	
		<b>"Limits"</b>
<b>COVERAGE EXTENSIONS</b>		
Additional Debris Removal Expenses		\$ _____
<b>SUPPLEMENTAL COVERAGES</b>		
Off-Site Property		\$ _____
Pollutant Cleanup And Removal		\$ _____
Property In Storage		\$ _____
Transit		\$ _____
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1. On the described premises

2. On the premises of others

*Example:*

*Where the named insured has sent the customer's property for servicing or processing*

3. Anywhere in the coverage territory when being transported

- Between named insured premises, including branches
- Between named insured's premises and premises of others for the purposes of servicing or processing
- Between the named insured's premises and the customer's premises

## Property Not Covered

Example: Miscellaneous Bailee – Processor Floater

### PROPERTY NOT COVERED

1. **Aircraft Or Watercraft** -- "We" do not cover aircraft or watercraft.
2. **Contraband** -- "We" do not cover contraband or property in the course of illegal transportation or trade.
3. **Furs** -- "We" do not cover furs or fur trimmed garments.
4. **Jewelry, Stones, And Metals** -- "We" do not cover jewelry, precious or semi-precious stones, gold, silver, platinum, or other precious metals or alloys.
5. **Money And Securities** -- "We" do not cover accounts, bills, currency, food stamps, or other evidences of debt, lottery tickets not held for sale, money, notes, or securities.
6. **No Charge For Service** -- "We" do not cover property of others that "you" accept without charging for "your" service as a processor.
7. **Vehicles** -- "We" do not cover automobiles or any self-propelled vehicles that are designed for highway use.
8. **Waterborne Property** -- "We" do not cover property while waterborne except while in transit in the custody of a carrier for hire.

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1. Bailee forms can have a wide range of property not covered
2. Many of the same property types that are property not covered on other Inland Marine or Commercial Property Coverage Forms are also not covered under Bailee Policies
  - Better insured elsewhere
    - Accounts receivable, valuable papers, bills, currency, money, deeds, evidence of debt, motor vehicles, landscaping
  - Generally considered uninsurable
    - Contraband, land, water

## Interests Covered

1. Covers the interests of the bailee – the named insured under the Policy
  - Their responsibility for the value of the goods of the bailor in their care, custody or control
  - The bailee's investment of time and materials incurred in the repair or processing conducted on those goods
  - Policy usually contains a provision that allows the settlement of a claim directly with the bailor
    - Any claim settled directly will also settle the claims of the bailee – in other words, we won't pay more than the actual amount of the loss based on the insurable interests of each party
2. Covers the interests of the bailor
  - They may have their own coverage on the goods
  - The bailor's policy will contain a provision that prevents protection for any bailee (Condition – No Benefit To Bailee)
  - If loss occurs, the bailor's own policy will pay the loss (if covered)
  - Bailor's insurance provider will then attempt subrogation against the bailee

## Covered Causes of Loss (Perils Covered)

1. Usually written on an open perils basis
  - Specified Causes Of Loss may also be available
2. List of exclusions will be extensive in order to clearly define the intent of coverage
  - Depending on the type of bailee policy written, some exclusions that may normally be expected will not be present

### *Example:*

*Dry cleaners and laundries will have coverage for damage caused by steam boiler explosion (since many of them have this equipment) and coverage for confusion of goods (you give my property to someone else accidentally)*

## Bailee Exclusions

**Selected exclusions** commonly found in policies providing bailment coverage

1. Theft of property left overnight in or on a vehicle, unless inside a locked building and there are signs of forced entry
2. Loss resulting from misdelivery
3. Voluntary parting with property due to trick, scheme, or fraud
4. Damage caused by processing performed by the bailee



## Bailee Conditions

### Coverage Territory

- Generally, the United States of America, including its territories or possessions, Canada and Puerto Rico
- May need to consider broader coverage territory if processing is done outside the stated coverage territory

### Reporting Conditions

- Details the policy conditions applicable when coverage is written on a reporting basis
- Named insured must submit reports for the period no later than 30 days after the end of the reporting period
- Premium will be calculated based on the amounts reported
- Generally, includes penalties for failing to accurately or timely report
  - If reports are not submitted, the most the insurer will pay is a reduced percentage of the amount of the loss
  - If reports are less than the full value, the insurer will only pay a portion of the loss calculated by dividing the amount reported by the amount that should have been reported times the amount of the loss
  - If the reported amount is larger than the Limit Of Insurance, the most the insurer will pay is still the Limit Of Insurance but insured will pay premium for the amount reported

[illegible]

## Payment of Losses

- Insurer has several options available
  - Pay the value of the lost or damaged property
  - Pay the cost to repair the damaged property
  - Rebuild, repair or replace the property with property of like kind or quality
  - Take any part of the property at an appraised or the agreed value
- For property of others, the insurer has the right to adjust the loss directly with the customer or with the named insured on the owner's behalf, solely at the insurer's discretion
- If the customer sues the named insured, the insurer has the right, but not the duty, to defend the suit. If the insurer agrees to defend the suit, the insurer will pay for all the costs incurred in that defense



## Knowledge Check 1

1. Indicate whether each of the following statements is a characteristic of filed forms or unfilled forms.

	Filed/controlled forms	Unfiled/uncontrolled forms
a. Tend to be specialty coverages.		
b. Exposures too unique or diverse to reasonably require insurers to insure them on other than a case-by-case basis.		
c. Relative uniformity of exposures.		
d. More flexibility on how coverage will be provided – terms and conditions are negotiable.		

2. Indicate whether the following are true or false.

	True	False
a. Bailee is the owner of the personal property given to the other party		
b. A gratuitous bailment for benefit of the bailor is where the bailor owes the bailee a low duty of care.		
c. Bailment for mutual benefit requires a low duty of care.		

3. Which of the following is an accurate statement?

- a. In order to trigger coverage on a legal liability basis, the bailor must be legally liable for damage to the bailee's property.
- b. In order to trigger coverage on a legal liability basis, the bailee must be legally liable for damage to the bailor's property.
- c. Only policies written on a direct damage basis cover the value of the customer's property.
- d. In order to trigger coverage on a direct basis, the bailor does not have to be legally responsible.

4. Indicate which of the following is an exclusion that is commonly found in policies providing bailment coverage?

	Yes	No
a. Theft of property left overnight in or on a vehicle, unless inside a locked building and there are signs of forced entry.		
b. Loss resulting from misdelivery.		
c. Voluntary parting with property due to trick, scheme or fraud.		
d. Damage caused by processing performed by the bailee.		

## Builders Risk

---

### **Learning Objective 3:**

Using knowledge of the basic concepts of builders risk, the participant will be able to identify the exposures to loss and to explain the methods of writing Builders Risk Coverage.

---

### Basic Concepts

**Designed to provide coverage for buildings and structures during the course of construction or renovation and to avoid litigation between or among the parties involved**

#### **Unique coverage challenges for projects under construction**

- Changing/increasing values and exposures
- Insurable interests can vary as project develops
- There is property to be covered that is not necessarily located at the project site
- Projects in the course of construction are more susceptible to loss than are already completed buildings or structures

#### **Can be written to cover**

- New construction
  - May apply to either single or multiple location exposures
- Additions to existing buildings or structures
- Renovations, repair or remodeling
  - May include or not include the permanent structure

**Those with an insurable interest in the building or structure under construction can be listed as a named insured, such as:**

- Project owners
- General contractor and subcontractors of all levels (tiers)
- Others that can be insureds under the policy (based on financial interest)
  - Architects and/or engineers
  - Mortgagee and other lenders
  - Suppliers
  - Construction manager

#### **Parties who arrange for the Builders Risk Policy and issues created**

- Usually determined as part of the construction contract
- Important to review construction agreements to determine whose responsibility it is to secure a builders risk policy and whose interests must be covered
- Whether arranged by the project owner or the general contractor (as is generally the case), it should include all parties with an insurable interest as named insureds
- Advantages to having all insurable interests under a single policy
  - Greater efficiency including avoidance of litigation
  - Fewer coverage disputes
  - All parties included would be entitled to a copy of the policy
  - All insured parties have direct policy rights
  - Will usually limit any subrogation efforts by an insurer
- Disadvantages of having all insurable interests under a single policy
  - The claim payment may be made to all insureds
  - Misrepresentation, concealment or fraud by any “insured” may void coverage, unless there is a provision that protects innocent insureds

## Exposures to Loss

**Building or structure under construction**, including foundations, excavations, fixtures, machinery and equipment constituting a permanent part of the building or the structure – this includes site work

**Materials and supplies at the jobsite**, but not yet part of the building or structure, stored in or on the building or structure, in on-site temporary structures or other storage means (such as a trailer) or in the open

**Materials and supplies NOT at jobsite BUT at temporary storage locations**, including the possibility of being in the care, custody or control of another party – may even be the contractor's permanent yard

**Temporary structures** including scaffolding, fences, portable toilets, jobsite trailers and concrete forms

**Materials and supplies of others in the care, custody or control of the insureds**

**Property in transit**

**Debris removal**

**"Soft costs"** (delayed opening exposures)

**Business income and/or rental value**



## Methods of Writing a Builders Risk Coverage

### Commercial Property Coverage Form

- **Builders Risk Coverage Form CP 00 20**
- Limitations
  - Property in transit has very limited coverage
  - Temporary storage locations off premises have small limits included unless specifically scheduled as a covered location
  - Collapse during construction is limited  
Coverage available by endorsement  
**Collapse During Construction CP 11 20**
  - Theft of materials and supplies is not covered  
Coverage available by endorsement  
**Theft of Materials, Equipment Fixtures, Machinery CP 11 21**

### Commercial Inland Marine Policy

- No standard policy
  - Carefully compare forms for differences and potential gaps
- Can better negotiate coverage to match exposures
  - Broader covered property
  - Broader covered perils
  - Usually include transit coverage and temporary storage locations

## Completed Value Basis vs. Reporting Form Basis

Regardless of coverage form, the Limit Of Insurance indicated on the schedule is the completed value of the project(s), plus any other insured exposures such as temporary structures

### Completed Value Basis

1. Coverage applies at the full Limit Of Insurance
2. Premium charge will reflect the ever-changing values
3. No further report is needed, unless there is a change in the completed value
  - Change orders
  - Increases in material or labor costs that occur during the course of construction

**Note:**

May be a provision in the Policy that includes an allowance for a certain percentage of change

4. Premium will be adjusted once the project is completed to reflect that actual completed value of the project
5. Often include a 100% coinsurance clause
6. Most common way to write a single location project

## Reporting Form Basis

1. Coverage applies at the full Limit Of Insurance
  - May have a specific sublimit that applies per location
2. Premium charged initially is a deposit – premium will be charged based on the values reported
3. Values can be reported in one of two ways
  - Estimated completed value of all projects
  - Progress value (how much has been completed as of the report due date)
4. Newly started projects are covered if reported on the next periodic report
5. Coverage ceases when a project is not included on the next report
6. Reports must be submitted on a timely basis and accurately reflect the exposures
  - Penalty provisions exist if the named insured fails to comply with these provisions
7. Often contains a full insurance to value provision that is essentially a 100% coinsurance clause

[illegible]

AAIS

POLICY NUMBER

IM 7056 01 12

Page 1 &amp; 2 Combined

## SCHEDULE OF COVERAGES BUILDERS' RISK

(The entries required to complete this schedule  
will be shown below or on the "schedule of coverages".)

### SCHEDULED JOBSITES

Loc. No.	"Jobsite"	"Limit"
_____	_____	\$ _____

Check if applicable:

[ ] Attach Additional Builders' Risk Schedule to schedule more buildings

CATASTROPHE LIMIT	\$ _____
-------------------	----------

COVERAGE EXTENSIONS	"Limits"
Additional Debris Removal Expenses	\$ _____
Emergency Removal	_____ days
Limited Fungus Coverage	\$ _____

SUPPLEMENTAL COVERAGES	"Limits"
Expense To Re-Erect Scaffolding	\$ _____
Fire Department Service Charges	\$ _____
Pollutant Cleanup And Removal	\$ _____
Temporary Storage Locations	\$ _____
Transit	\$ _____

DEDUCTIBLE	
Deductible Amount	\$ _____

### COINSURANCE (check one)

[ ] 100%

[ ] Coinsurance Provisions Are Waived

### ADDITIONAL INFORMATION

\_\_\_\_\_

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## Commercial Inland Marine Builders Risk Coverage

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### Learning Objective 4:

Using knowledge of the Commercial Inland Marine Builders Risk Coverage Form, including:

- Covered Property and Property Not Covered
- Coverage Extensions and Supplemental Coverages
- Perils Covered and Perils Excluded
- Limitations, Valuation, and Settlement

the participant will be able to describe how coverage applies in the event of a loss, explain why and how much the policy will pay, and describe endorsements, if any, that may be used to modify the insurance coverage.

---

### Covered Property Overview

#### Described Project

1. Buildings or structures at the project described in the Declarations
  - Great deal of flexibility in how the project location is described
  - Can write coverage on a “blanket” basis
    - Coverage will be provided for all projects
    - Will utilize a reporting form
  - In the course of construction, remodeling or renovation

2. Includes materials and supplies which will become part of the building or structure
  - Wide variation in how the policies describe Covered Property
  - Most desirable would be a broad description such as “property used in or incidental to the project”

**Scaffolding, construction forms, fencing, and other temporary structures are often included while on the construction site**

- Contractors may already cover these items separately
- May be subject to a sublimit on the policy
- Can appear as an additional coverage or coverage extension

**Property in transit to the jobsite**

## Property Covered

### Example

#### **PROPERTY COVERED**

"We" cover the following property unless the property is excluded or subject to limitations.

#### **Course Of Construction --**

1. **Coverage** -- "We" cover direct physical loss or damage caused by a covered peril to "buildings or structures" while in the course of construction, erection, or fabrication.
2. **Scaffolding, Fencing, And Temporary Structures** -- "We" also cover direct physical loss or damage caused by a covered peril to:
  - a. scaffolding, construction forms or temporary fencing; and
  - b. temporary structures.
3. **Coverage Limitation** -- "We" only cover:
  - a. "buildings or structures" in the course of construction; and
  - b. scaffolding, construction forms, temporary fencing, and temporary structures at the "jobsite" described on the "schedule of coverages".

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#### **DEFINITIONS**

1. "Buildings or structures" means:
  - a. buildings;
  - b. structures;
  - c. materials and supplies that will become a permanent part of the buildings or the structures; and
  - d. foundations, excavations, grading, filling, attachments, permanent fencing, and other permanent fixtures.

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### **Coverage – “Buildings or structures” under construction, including**

- Materials and supplies that become a permanent part
- Foundations, excavations, grading, filling, permanent fencing



**PROPERTY COVERED**

2. **Scaffolding, Fencing, And Temporary Structures** -- "We" also cover direct physical loss or damage caused by a covered peril to:
  - a. scaffolding, construction forms or temporary fencing; and
  - b. temporary structures.
3. **Coverage Limitation** -- "We" only cover:
  - a. "buildings or structures" in the course of construction; and
  - b. scaffolding, construction forms, temporary fencing, and temporary structures at the "jobsite" described on the "schedule of coverages".

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**Scaffolding, Temporary Fencing, And Temporary Structures***Example:**Temporary security fencing around the perimeter of the jobsite*

## Property Not Covered

### Example

#### **PROPERTY NOT COVERED**

1. **Contraband** -- "We" do not cover contraband or property in the course of illegal transportation or trade.
2. **Land** -- "We" do not cover land including land on which covered property is located.
3. **Not A Permanent Part Of Building** -- "We" do not cover:
  - a. materials and supplies;
  - b. machinery, tools, and equipment; and
  - c. business personal propertythat will not become a permanent part of a covered "building or structure".
4. **Roadways And Walkways** -- "We" do not cover any portion of walkways, roadways, and other paved surfaces that is more than 1,000 feet from a covered "building or structure".

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1. **Contraband**
2. **Land** – Including land on which the covered property is located
3. **Not A Permanent Part Of Building** – That will not become a permanent part
4. **Roadways And Walkways** – More than 1,000 feet from covered building or structure

### **PROPERTY NOT COVERED**

#### **5. Standing Building Or Structure --**

##### **a. "We" do not cover any:**

- 1) standing "building or structure"; or
- 2) part of a standing "building or structure"

that has been wholly or partially constructed, erected, or fabricated prior to the inception of this policy.

##### **b. "We" do not cover any standing "building or structure" in the process of rehabilitation or renovation. Rehabilitation and renovation includes, but is not limited to, any additions, alterations, improvements, or repairs to an existing "building or structure".**

#### **6. Trees, Shrubs, Or Plants -- "We" do not cover trees, shrubs, plants, or lawns.**

#### **7. Waterborne Property -- "We" do not cover property while waterborne except while in transit in the custody of a carrier for hire.**

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#### **5. Existing property being renovated**

- May need to change this if policy is being used on a renovation project
- Some carriers use special policies to cover this exposure

#### **6. Landscaping materials, including trees, grass, shrubbery, plants**

##### **Note:**

A per item, per occurrence sublimit may be provided subject to "specified causes of loss" (as defined)

#### **7. Waterborne Property – except while in transit in the custody of a carrier for hire**

#### **8. Other coverage forms also may exclude aircraft, watercraft, automobiles**

## Coverage Extensions

### Example

#### **COVERAGE EXTENSIONS**

**Provisions That Apply To Coverage Extensions** -- The following Coverage Extensions indicate an applicable "limit". This "limit" may also be shown on the "schedule of coverages".

If a different "limit" is indicated on the "schedule of coverages", that "limit" will apply instead of the "limit" shown below.

However, if no "limit" is indicated for a Coverage Extension within this coverage form, coverage is provided up to the full "limit" for the applicable covered property unless a different "limit" is indicated on the "schedule of coverages".

Unless otherwise indicated, the coverages provided below are part of and not in addition to the applicable "limit" for coverage described under Property Covered.

The "limit" provided under a Coverage Extension cannot be combined or added to the "limit" for any other Coverage Extension or Supplemental Coverage, including a Coverage Extension, Supplemental Coverage, or other coverage that is added to this policy by endorsement.

If coinsurance provisions are part of this policy, the following Coverage Extensions are not subject to and not considered in applying coinsurance conditions.

**1. Debris Removal --**

- a. **Coverage** -- "We" pay the cost of debris removal. Debris removal means the costs for the demolition, clearing, and removal of debris of covered property if such debris results from a covered peril.
- b. **We Do Not Cover** -- This coverage does not include costs to:
  - 1) extract "pollutants" from land or water; or
  - 2) remove, restore, or replace polluted land or water.
- c. **Limit** -- "We" do not pay any more under this coverage than 25% of the amount "we" pay for the direct physical loss or damage exclusive of the costs for debris removal. "We" will not pay more for loss to property and debris removal combined than the "limit" for the damaged property.
- d. **Additional Limit** -- "We" pay up to an additional \$5,000 for debris removal expense when the debris removal expense exceeds 25% of the amount "we" pay for direct physical loss or when the loss to property and debris removal combined exceeds the "limit" for the damaged property.
- e. **You Must Report Your Expenses** -- "We" do not pay any expenses unless they are reported to "us" in writing within 180 days from the date of direct physical loss to covered property.

**2. Emergency Removal --**

- a. **Coverage** -- "We" cover any direct physical loss or damage to covered property while it is being moved or being stored to prevent a loss caused by a covered peril.
- b. **Time Limitation** -- This coverage applies for up to ten days after the property is first moved. Also, this coverage does not extend past the date on which this policy expires.

**3. Limited Fungus Coverage -- ...**

**Debris Removal**

- Caused by a covered cause of loss
- No coverage to extract pollutants

**Emergency Removal (Preservation of Property)**

- Necessary to preserve property from a covered cause of loss
- While it is being moved or stored
- Limited to 10 consecutive days but not beyond policy expiration

**Limited Fungus Coverage**

## Supplemental Coverages

**Sublimits normally apply** – may be increased by entry on the Schedule Of Coverages

Example

### **SUPPLEMENTAL COVERAGES**

**Provisions That Apply To Supplemental Coverages** -- The following Supplemental Coverages indicate an applicable "limit". This "limit" may also be shown on the "schedule of coverages".

If a different "limit" is indicated on the "schedule of coverages", that "limit" will apply instead of the "limit" shown below.

However, if no "limit" is indicated for a Supplemental Coverage within this coverage form, coverage is provided up to the full "limit" for the applicable covered property unless a different "limit" is indicated on the "schedule of coverages".

Unless otherwise indicated, a "limit" for a Supplemental Coverage provided below is separate from, and not part of, the applicable "limit" for coverage described under Property Covered.

The "limit" available for coverage described under a Supplemental Coverage:

- a. is the only "limit" available for the described coverage; and
- b. is not the sum of the "limit" indicated for a Supplemental Coverage and the "limit" for coverage described under Property Covered.

The "limit" provided under a Supplemental Coverage cannot be combined or added to the "limit" for any other Supplemental Coverage or Coverage Extension, including a Supplemental Coverage, Coverage Extension, or other coverage that is added to this policy by endorsement.

If coinsurance provisions are part of this policy, the following Supplemental Coverages are not subject to and not considered in applying coinsurance conditions.

1. **Expense To Re-Erect Scaffolding** --

- a. **Coverage** -- "We" pay "your" expense to re-erect scaffolding after a covered loss to a covered "building or structure".
- b. **Limit** -- The most "we" pay for expense to re-erect scaffolding is \$2,500.

2. **Fire Department Service Charges** --

- a. **Coverage** -- "We" cover "your" liability for fire department or volunteer fire department service charges.
- b. **Coverage Limitations** -- "We" only pay for:
  - 1) fire department or volunteer fire department service charges that relate to covered property; and
  - 2) charges incurred when the fire department or volunteer fire department is called to save or protect covered property from a covered peril.
- c. **Limit** -- The most "we" pay in any one occurrence for "your" liability for fire department or volunteer fire department service charges is \$1,000.

No deductible applies to this Supplemental Coverage.

3. **Pollutant Cleanup And Removal** -- ...

4. **Temporary Storage Locations** --

- a. **Coverage** -- "We" cover direct physical loss or damage caused by a covered peril to materials and supplies that will become a permanent part of a covered "building or structure" while temporarily in storage at a location that is not described on the "schedule of coverages".
- b. **We Do Not Cover** -- "We" do not cover property in storage if the property has not been specifically allocated to or otherwise identified with a covered "building or structure".
- c. **Limit** -- The most "we" pay in any one occurrence for loss to property at a storage location is \$10,000.

5. **Transit** --

- a. **Coverage** -- "We" cover direct physical loss or damage caused by a covered peril to materials and supplies that will become a permanent part of a covered "building or structure" while in transit.
- b. **Limit** -- The most "we" pay in any one occurrence for loss to property in transit is \$10,000.

**Expense To Re-Erect Scaffolding – \$2,500**

**Fire Department Service Charges – \$1,000**

**Pollutant Cleanup And Removal – \$10,000**

- Caused by a covered cause of loss
- Reported within 180 days
- No coverage for mandated testing

**Temporary Storage Locations – \$10,000**

**Transit – \$10,000**

[illegible]



## Perils Covered

### Example

#### PERILS COVERED

"We" cover risks of direct physical loss or damage unless the loss is limited or caused by a peril that is excluded.

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**Direct physical loss to covered property unless excluded is the most common cause of loss found in Builders Risk Policies**

## Perils Excluded

### Example

#### **PERILS EXCLUDED**

1. "We" do not pay for loss or damage caused directly or indirectly by, or consisting of, one or more of the following excluded causes, events, or conditions. Such loss or damage is excluded regardless of other causes, events, or conditions that contribute in any sequence to or aggravate the loss, whether such causes, events, or conditions act to produce the loss before, at the same time as, or after the excluded causes, events, or conditions.

- a. **Civil Authority** -- ....

- b. **Earth Movement** -- Any "earth movement" whether natural or manmade and regardless of cause and regardless of whether or not the cause of the "earth movement":

- 1) originated at the covered property; or
- 2) was being performed at "your" request or for "your" benefit.

However, if eruption, explosion, or effusion of a volcano results in "volcanic action", "we" will pay for the loss or damage caused by that "volcanic action".

If "earth movement" results in fire, "we" will pay for the loss or damage caused by that fire. If "earth movement" (other than eruption, explosion, or effusion of a volcano) results in explosion, "we" will pay for the loss or damage caused by that explosion.

This exclusion does not apply to covered property while in transit.

- c. **Flood** -- "Flood".

"We" also do not cover waterborne material carried or otherwise moved by "flood", whether or not driven by wind, including storm surge, or material carried or otherwise moved by mudslide or mudflow. However, if "flood" results in fire, explosion, or sprinkler leakage, "we" will pay for the loss or damage caused by that fire, explosion, or sprinkler leakage. This exclusion does not apply to covered property while in transit.

- d. **Fungus** -- ...

- e. **Nuclear Hazard** -- ...

- f. **Ordinance Or Law** -- Enforcement of any code, ordinance, or law regulating the use, construction, or repair of any "building or structure"; or requiring the demolition of any "building or structure" including the cost of removing its debris.

"We" do not pay for loss or increased cost regardless if the loss or increased cost is caused by or results from the:

- 1) enforcement of any code, ordinance, or law even if a "building or structure" has not been damaged; or
- 2) increased costs that "you" incur because of "your" compliance with a code, ordinance, or law during the construction, repair, rehabilitation, remodeling, or razing of a "building or structure", including the removal of debris, following direct physical loss or damage to the property.

- g. **Sewer, Septic Tank, Sump, Or Drain Backup And Water Below The Surface** --

- 1) water or waterborne material that backs up, overflows or is otherwise discharged through a sewer or drain, sump or septic tank, eaves trough or downspout; or
- 2) water or waterborne material below the surface of the ground, whether naturally or artificially occurring, including but not limited to water or waterborne material that exerts pressure on or flows, seeps, or leaks through or into a covered "building or structure", sidewalk, driveway, foundation, swimming pool, or other structure.

But if sewer, drain, sump, septic tank, eaves trough, or downspout backup and water or waterborne material below the surface results in fire, explosion, or sprinkler leakage, "we" cover the loss or damage caused by that fire, explosion, or sprinkler leakage.

This exclusion does not apply to covered property while in transit.

- h. **War And Military Action** -- ...

Selected exclusions for discussion.

**Tier 1 Exclusions: Direct or indirect**

1. Earth Movement – will pay for ensuing fire, explosion, or “volcanic action”
  - Can be added in many instances
2. Flood – flood, surface water, mudslide or mudflow
  - Limited coverage for flood available through NFIP
  - Can provide primary and/or excess coverage on Builders Risk Policy
  - Exclusion does not apply to covered property while in transit
3. Ordinance Or Law – Building ordinances may change while in the course of construction – will have to comply with current codes if there is damage – may be required to tear down and start over
4. Sewer, Septic Tank, Sump, Or Drain Backup And Water Below The Surface

## Example

### PERILS EXCLUDED

2. "We" do not pay for loss or damage that is caused by or results from one or more of the following:
  - a. **Contamination Or Deterioration** -- ...
  - b. **Criminal, Fraudulent, Dishonest, Or Illegal Acts** -- ....
  - c. **Defects, Errors, And Omissions** --
    - 1) "We" do not pay for loss or damage consisting of, caused by, or resulting from an act, defect, error, or omission (negligent or not) relating to:
      - a) design, specifications, construction, materials, or workmanship;
      - b) planning, zoning, development, siting, surveying, grading, or compaction; or
      - c) maintenance, installation, renovation, remodeling, or repair.But if an act, defect, error, or omission as described above results in a "specified peril", "we" do cover the loss or damage caused by that "specified peril".
    - 2) This exclusion applies regardless of whether or not the act, defect, error, or omission:
      - a) originated at a covered "building or structure"; or
      - b) was being performed at "your" request or for "your" benefit.
  - d. **Delay In Completion And Increased Construction Costs** -- ...
  - e. **Electrical Currents** -- ...
  - f. **Freezing** -- "We" do not pay for loss or damage caused by or resulting from water; other liquids; powder; or molten material that leaks or flows from plumbing, heating, air-conditioning systems, or appliances other than fire protective systems caused by freezing.

This exclusion does not apply if "you" use reasonable care to maintain heat in the "building or structure"; or "you" drain the equipment and turn off the supply if the heat is not maintained.
  - g. **Loss Of Use And Consequential Loss** -- ...
  - h. **Materials And Workmanship** -- "We" do not pay for loss or damage caused by or resulting from faulty, inadequate, or defective materials or workmanship. But if loss by a covered peril results, "we" pay for the resulting loss.
  - i. **Mechanical Breakdown** -- "We" do not pay for loss or damage caused by or resulting from:
    - 1) mechanical breakdown; or
    - 2) rupturing or bursting of moving parts of machinery caused by centrifugal force.But if a mechanical breakdown or rupturing or bursting of moving parts of machinery caused by centrifugal force results in a "specified peril", "we" do cover the loss or damage caused by that "specified peril".
  - j. **Missing Property** -- ...
  - k. **Pollutants** -- ...
  - l. **Rain, Snow, Ice, Or Sleet** -- ...
  - m. **Settling, Cracking, Shrinking, Bulging, Or Expanding** -- ...
  - n. **Steam Boiler Explosion** -- ...
  - o. **Temperature/Humidity** -- ...
  - p. **Voluntary Parting** -- ...
  - q. **Wear And Tear** -- ...

**Tier 2 Exclusions:**

1. Defects, Errors, And Omissions
2. Freezing, unless precautions have been taken to prevent freezing
3. Materials And Workmanship
4. Mechanical Breakdown
5. Others – depends on insurer's form

## Testing

1. Testing Endorsement available as a buy-back for an exclusion that appears in most policies
2. Operational testing ("cold testing" and/or performance testing "hot testing")
3. It is important to address power surge, boiler explosion and mechanical breakdown during performance testing

Example: Partial policy wording from IM 7962 01 12

TESTING ENDORSEMENT	
Testing Schedule: Testing Limit:\$ _____; Testing Deductible Amount: \$ _____	
<b>Supplemental Coverages</b>	
<ol style="list-style-type: none"><li>1. <b>Coverage</b> – "We" cover direct physical loss to a covered "building or structure" resulting from testing.</li><li>2. <b>Testing Means</b> – Testing as used in this endorsement means start-up, performance, stress, pressure, or overload testing of materials, supplies, machinery, fixtures, and equipment that will become a permanent part of a covered "building or structure".</li><li>3. <b>Testing Limit</b> -- The Testing Limit indicated on the Testing Schedule is the most "we" pay in any one occurrence for loss resulting from testing. However, if testing results in a "specified peril", the most "we" will pay for any resulting loss is the "limit" indicated on the "schedule of coverages" for the covered "building or structure".</li><li>4. <b>Exclusions That Still Apply</b> – The exclusions for Electrical Currents, Steam Boiler Explosion, and Mechanical Breakdown still apply except to the extent that coverage is provided under this endorsement.</li><li>5. <b>Deductible</b> -- "We" only pay that part of "your" testing loss over the deductible amount indicated on the Testing Schedule in any one occurrence.</li></ol>	
<b>Additional Perils Excluded</b>	
<b>Testing</b> -- Except to the extent coverage is provided under this endorsement, "we" do not pay for loss or damage caused by or resulting from testing. But if testing results in a "specified peril", "we" do cover the loss or damage caused by that "specified peril".	
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## Limitations

### When does coverage begin?

- Coverage normally begins when the named insured becomes responsible for the property

### Additional Coverage Limitations

#### Example

##### ADDITIONAL COVERAGE LIMITATIONS

1. **Occupancy And Use** -- "We" do not provide coverage under this policy if, without "our" prior written consent, a covered "building or structure" as described under Property Covered is:
  - a. occupied in whole or in part; or
  - b. put to its intended use.
2. **When Coverage Ceases** -- Coverage will end when one of the following first occurs:
  - a. this policy expires or is canceled;
  - b. a covered "building or structure" is accepted by the purchaser;
  - c. "your" insurable interest in the covered property ceases;
  - d. "you" abandon construction with no intent to complete it; or
  - e. a covered "building or structure" has been completed for more than 90 days.

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#### 1. Occupancy And Use

- a. Coverage ceases when occupied in whole or in part or put to its intended use
- b. Permission to occupy endorsement may be required in order to continue coverage

#### 2. When Coverage Ceases

- a. Policy expires or is cancelled
- b. Property is accepted by the purchaser
- c. Insurable interest ceases
- d. Project is abandoned with no intention of completion
- e. 90 days after completion

# Valuation

## Example

### VALUATION

1. **Replacement Cost** -- The value of covered property will be based on replacement cost as described below.
  - a. **Replacement Cost Means** -- Replacement cost means:
    - 1) the necessary and reasonable costs of materials and labor incurred to repair or replace, without deduction for depreciation, the part of the covered property that sustains direct physical loss or damage;
    - 2) the reasonable overhead and profit related to the covered property that sustains direct physical loss or damage but not to exceed the overhead and profit being charged for the construction, erection, or fabrication of a covered "building or structure" in accordance with the construction contracts; and
    - 3) other related construction costs and expenses that are re-incurred to repair or replace the part of the covered property that sustains direct physical loss or damage but only if such costs have been included as part of the "limit" for a covered "building or structure".
  - b. **Replacement Cost Limitations** -- Replacement cost is limited to the cost of repair or replacement with similar materials on the same site and used for the same purpose.
  - c. **Payment Limitation** -- If the part of the covered property that sustains direct physical loss or damage is repaired or replaced, the payment will not exceed the amount "you" spend to repair or replace the damaged or destroyed property.
2. **Pair Or Set** -- The value of a lost or damaged article that is part of a pair or set is based on a reasonable proportion of the value of the entire pair or set. The loss is not considered a total loss of the pair or set.
3. **Loss To Parts** -- The value of a lost or damaged part of an item that consists of several parts when it is complete is based on the value of only the lost or damaged part or the cost to repair or replace it.

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## Replacement Cost

- The AAIS form shown is Replacement Cost; however, actual cash value is the valuation found in some policy forms. If replacement cost is an option, it should be the valuation chosen.

## Pair or Set

- The value is based on the proportion damaged

## Loss to Parts

- Will pay the value of the lost or damaged part



## Settlement

### Example

#### HOW MUCH WE PAY

1. **Insurable Interest** -- "We" do not cover more than "your" insurable interest in any property.
2. **Deductible** -- "We" pay only that part of "your" loss over the deductible amount indicated on the "schedule of coverages" in any one occurrence.
3. **Loss Settlement Terms** -- "..."
4. **Catastrophe Limit** ...

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### How much is paid?

1. Insurable Interest
2. Deductible is per occurrence
  - May have different deductibles applicable to different causes of loss, such as flood or earthquake, if covered
  - If more than one deductible applies to the same loss, only the largest deductible will apply to the loss

### 3. Limits of insurance

- Based on the completed value of the project

Should reflect

- Cost of labor and materials
- Contractor overhead and profit
- Any covered temporary structures or buildings

- Consider change orders and potential increase in the cost of building materials and labor during the project

- May have more than one limit of insurance

- If covering a single project, will have a limit of insurance that applies to property at the described premises
- If covering multiple projects, will have
  - Policy limit of insurance that applies to all projects
  - Per location limit of insurance that is the maximum at any one covered location
  - Provision for coverage for new construction projects that begin before the next report is submitted
- Will have a sublimit of insurance that applies to
  - Property in transit
  - Property being stored off-site

Example (cont.)

#### HOW MUCH WE PAY

##### 5. Coinsurance --

- a. **When Coinsurance Applies** -- "We" only pay a part of the loss if the "limit" is less than 100% of the estimated completed value of the covered "building or structure". Coinsurance does not apply when Coinsurance Provisions Are Waived has been checked on the "schedule of coverages".
- b. **How We Determine Our Part Of The Loss** -- "Our" part of the loss is determined using the following steps:
  - 1) determine the 100% expected completed value of the "building or structure"; this figure is based on the estimated value of the property at completion of construction had no loss occurred;
  - 2) divide the "limit" for covered property by the result determined in b.1) above; and
  - 3) multiply the total amount of loss, after the application of any deductible, by the result determined in b.2) above.

The most "we" pay is the amount determined in b.3) above or the "limit", whichever is less. "We" do not pay any remaining part of the loss.
- c. **If There Is More Than One Limit** -- If there is more than one "limit" indicated on the "schedule of coverages" for this coverage part, this procedure applies separately to each "limit".
- d. **If There Is Only One Limit** -- If there is only one "limit" indicated on the "schedule of coverages" for this coverage, this procedure applies to the total of all covered property to which the "limit" applies.

##### 6. Insurance Under More Than One Coverage -- ...

##### 7. Insurance Under More Than One Policy -- ...

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#### 4. Coinsurance may apply

- May have a specific coinsurance clause – AAIS is 100% unless coinsurance has been waived

**Example**

AAIS  
IM 8015 01 12  
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POLICY NUMBER \_\_\_\_\_

**SOFT COST SCHEDULE  
SINGLE JOBSITE – BUILDERS' RISK**

(The entries required to complete this schedule  
will be shown below or on the "schedule of coverages".)

**Loc. No.**

**JOBSITE**

\_\_\_\_\_  
\_\_\_\_\_

**ADDITIONAL SOFT COSTS**

**"LIMITS"**

The most "we" pay for soft cost  
expenses in any 30 day period is: \$ \_\_\_\_\_

The most "we" pay in any one occurrence  
for soft cost expenses is: \$ \_\_\_\_\_

**EXTRA EXPENSE**

The most "we" pay for extra  
expenses in any 30 day period is: \$ \_\_\_\_\_

The most "we" pay in any one occurrence  
for extra expenses is: \$ \_\_\_\_\_

**RENTAL INCOME**

The most "we" pay for loss of rental  
income in any 30 day period is: \$ \_\_\_\_\_

The most "we" pay in any one occurrence  
for loss of rental income is: \$ \_\_\_\_\_

**COVERAGE EXTENSIONS**

Ordinance Or Law \_\_\_\_\_

Interruption By Civil Authority \_\_\_\_\_

Limited Fungus Coverage \_\_\_\_\_ days

**WAITING PERIOD (check one)**

☐ Number of Days \_\_\_\_\_

☐ Not Applicable

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## Soft Costs Endorsement

**Coverage for “soft costs” typically added by endorsement.** However, there may be some forms that have the language built in.

**Purpose:** Soft costs covers the financial loss resulting from a delay in completion due to a Covered Cause Of Loss To Covered Property

*Examples of soft costs expenses typically include additional costs such as:*

- *Professional fees for legal and accounting fees*
- *Financing – additional interest on borrowed money*
- *Advertising and promotion expenses*
- *Additional real estate taxes*
- *Lease administration – administrative expenses and additional commissions from re-negotiation of leases*
- *Design fees – services provided by architects and engineers*
- *General administrative fees such as additional security costs*
- *Lease expenses such as the additional costs to extend leases for construction equipment and temporary office space*
- *Permit fees*
- *Additional insurance premiums*

**Additional coverages** that can be added in addition to soft costs

- Extra Expense
- Rental Income
- Coverage Extensions – also can include delay caused by:
  - Ordinance Or Law
  - Interruption By Civil Authority
  - Limited Fungus Coverage

**Additional exclusions** – in addition to exclusions under Builders Risk Policy

- Interference by strikers, regardless of who the strike is against
- Suspension, lapse or cancellation of a contract
- Costs to test for, monitor or assess pollutants
- Any other consequential or indirect loss or damage, such as fines or penalties
- Breach of contract penalties
- Changes in plans, designs or specifications

## Valuation and Limits of Insurance

- Limits of insurance can be provided in different ways depending on the insurance provider used
  - Single Limit Of Insurance applicable to all soft cost losses
  - Named insured must choose Limits Of Insurance for specified soft costs
- Limits Of Insurance apply separately from the Limit Of Insurance applicable under the Builders Risk Policy
- Valuation of covered losses will be on an actual loss sustained basis

## Waiting Period

Example: Additional Soft Cost, Extra Expense, And Rental Income – Builders Risk

### HOW MUCH WE PAY

Other "terms" relating to How Much We Pay may also apply. These are shown in the Contractors' Combination Form.

1. **Expenses And Income Limit** -- "We" pay for the soft cost expenses, extra expenses, and loss of rental income after the loss to a covered "builders' risk project". The most "we" pay for loss in any one occurrence is the "limit" indicated for Soft Cost, Extra Expense, and Rental Income.
2. **Waiting Period** -- If a waiting period is indicated on the Soft Cost Schedule, "we" do not pay for "your" soft cost expenses or loss of rental income until after the number of days indicated on the schedule have passed.

This waiting period does not apply to extra expenses that "you" incur.

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## Commercial Inland Marine Installation Floater

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### Learning Objective 5:

Using knowledge of the Commercial Inland Installation Floater, including:

- Property Covered and Property Not Covered
- Perils Covered and Perils Excluded
- Limitations, Valuation, and Settlement

the participant will be able to describe how coverage applies in the event of a loss, explain why and how much the policy will pay, and describe endorsements, if any, that may be used to modify the insurance coverage.

---

### Basic Concepts

**Essentially a Builders Risk Policy written to cover a specific type of property or to cover a specific piece of equipment during its installation**

### Comparison to Builders Risk Policy

- Installation Floater covers property at temporary storage locations, during transport to the jobsite, and during the installation process
- Installation Floater typically has only one insured while the Builders Risk Policy can have several
- Installation Floater is usually purchased by a trade contractor while the Builders Risk Policy is obtained by the general contractor or project owner
- Installation Floater does not have a provision concerning occupancy



## Use/Purpose

1. Provides coverage for property that will be installed into a new building under construction or into a building being renovated
  - If coverage is provided by the Builders Risk Policy, the Installation Floater may not be necessary
2. Used by individuals or businesses involved in the installation of materials, machinery or equipment such as:
  - HVAC
  - Refrigeration
  - Electrical
  - Carpeting
  - Appliances
  - Plumbing
  - Landscaping

## Why use an Installation Floater?

1. Control of coverage
  - Size of deductible
  - Policy Limits Of Insurance
  - The Builders Risk Policy may be insufficient
2. Is there a Builders Risk Policy in place?
  - The job may not require a Builders Risk Policy
  - Installation jobs on existing buildings are not in many cases appropriately treated by a Builders Risk Policy

## Who can be the Insured?

- An insured can be an individual or a business
  - Contractors installing materials or supplies
  - Seller of the property to be installed
  - Buyer of the property to be installed

## Exposures to loss

1. Materials and supplies at the jobsite, not yet part of the building
  - Subject especially to theft and vandalism as well as other causes of loss
2. Property in transit
  - Collision
  - Theft
3. Temporary storage locations
  - Property must be specifically allocated to a covered installation project

## Property Covered

### What is covered?

#### PROPERTY COVERED

We" cover only the following property and only to the extent the property is not otherwise excluded or subject to limitations.

1. **Coverage** -- "We" cover direct physical loss or damage caused by a covered peril to:
  - a. "your" materials, supplies, fixtures, machinery, or equipment; and
  - b. similar property of others that is in "your" care, custody, or control while at "your" "jobsite" and that "you" are installing, constructing, or rigging as part of an "installation project".
2. **Coverage Limitations** --
  - a. "We" only cover materials, supplies, machinery, fixtures, and equipment that will become a permanent part of "your" completed "installation project".

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#### DEFINITIONS

4. "Installation project" means an installation or construction project including, but not limited to, a repair or maintenance project that involves the installation, construction, or rigging of materials, supplies, fixtures, machinery, or equipment.

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- Named insureds' materials, supplies, fixtures, machinery or equipment

And

- Materials, supplies, fixtures, machinery or equipment of others in named insured's care, custody or control
- While at the jobsite AND that will become a permanent part of the completed installation project

## At what locations is the property covered?

### PROPERTY COVERED

#### 2. Coverage Limitations --

- b. If Scheduled Locations Coverage is indicated on the "schedule of coverages", "we" only cover an "installation project" at a "jobsite" that is described on the "schedule of coverages".

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- At the location of the installation project

### SUPPLEMENTAL COVERAGES

#### 3. Temporary Storage Locations --

- a. **Coverage** -- "We" cover direct physical loss or damage caused by a covered peril to materials, supplies, fixtures, machinery, or equipment that will become a permanent part of a covered "installation project" while temporarily in storage at a location away from "your" "jobsite".
- b. **We Do Not Cover** -- "We" do not cover property in a temporary storage location if the property has not been specifically allocated to or otherwise identified with a covered "installation project".
- c. **Limit** -- The most "we" pay in any one occurrence for loss to property at a storage location is \$5,000.

#### 4. Transit --

- a. **Coverage** -- "We" cover direct physical loss or damage caused by a covered peril to materials, supplies, machinery, fixtures, and equipment that will become a permanent part of a covered "installation project" while they are in transit.
- b. **Limit** -- The most "we" pay in any one occurrence for loss to property in transit is \$5,000.

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- At a temporary storage location
- In transit

## Property Not Covered

### PROPERTY NOT COVERED

1. **Airborne Property** -- "We" do not cover property while airborne except while in transit on a regularly scheduled airline flight.
2. **Buildings, Structures, And Land** -- "We" do not cover buildings, structures, or land.
3. **Contraband** -- "We" do not cover contraband or property in the course of illegal transportation or trade.
4. **Machinery, Tools, Or Equipment** -- "We" do not cover machinery, tools, equipment, or similar property that will not become a permanent part of "your" "installation project".
5. **Trees, Shrubs, And Plants** -- "We" do not cover trees, shrubs, plants, or lawns.
6. **Waterborne Property** -- "We" do not cover property while waterborne except while in transit in the custody of a carrier for hire.

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### 1. **Airborne Property**

### 2. **Buildings, Structures, And Land**

### 3. **Contraband**

### 4. **Machinery, Tools, Or Equipment**

- That will not become a permanent part of the installation project

### 5. **Trees, Shrubs, And Plants**

### 6. **Waterborne Property**

### 7. **Other policies also include these as property not covered**

- Plans or blueprints
- Property sold under a deferred payment agreement
- Property on insured's premises unless intended to be installed at any described project site

## Perils Covered and Perils Excluded

### PERILS COVERED

"We" cover risks of direct physical loss or damage unless the loss is limited or caused by a peril that is excluded.

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**Open perils – direct physical loss to covered property**

- Coverage applies unless excluded or limited

**Named perils is not common**

**Commonly excluded perils are similar to those found under a builders risk policy**

## Limitations

### When does coverage cease?

**When Coverage Ceases** -- Coverage ends when one of the following occurs:

1. this policy expires or is canceled;
2. the covered "installation project" is accepted by the purchaser;
3. "your" insurable interest in the covered property ceases;
4. "you" abandon the "installation project" with no intent to complete it;
5. the "installation project" has been completed for more than 30 days; or
6. the covered property has been put to its intended use. However, this does not apply to roofs or walls.

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### **Coverage ceases when one of the following occurs:**

1. The policy expires or is cancelled
2. The installation project is accepted by the purchaser
3. Insurable interest ceases
4. The project is abandoned without intention to complete
5. The project has been completed for over 30 days
6. The covered property has been put to its intended use, with exception

## Valuation

If property is repaired, replaced or rebuilt, the Policy will pay the reasonable and necessary costs incurred with like kind and quality

- Includes material, labor, reasonable overhead and profit

If property is not repaired, replaced or rebuilt, loss will be based on estimated reasonable and necessary costs that would have been incurred

Will not pay more than the limit of insurance

Will only pay the value of a lost or damaged article that is part of a pair or sets based on a reasonable proportion of the value of the entire pair or set

Will only pay the value of a lost or damaged part of an item that consists of several parts based on the value of the lost or damaged part



## Settlement

### LOSS PAYMENT

1. **Loss Payment Options --**
  - a. **Our Options --** In the event of loss covered by this coverage form, "we" have the following options:
    - 1) pay the value of the lost or damaged property;
    - 2) pay the cost of repairing or replacing the lost or damaged property;
    - 3) rebuild, repair, or replace the property with other property of equivalent kind and quality, to the extent practicable, within a reasonable time; or
    - 4) take all or any part of the property at the agreed or appraised value.
  - b. **Notice Of Our Intent To Rebuild, Repair, Or Replace --** "We" must give "you" notice of "our" intent to rebuild, repair, or replace within 30 days after receipt of a duly executed proof of loss.
2. **Your Losses --**
  - a. **Adjustment And Payment Of Loss --** "We" adjust all losses with "you". Payment will be made to "you" unless another loss payee is named in the policy.
  - b. **Conditions For Payment Of Loss --** An insured loss will be payable 30 days after:
    - 1) a satisfactory proof of loss is received; and
    - 2) the amount of the loss has been established either by written agreement with "you" or the filing of an appraisal award with "us".
3. **Property Of Others --**
  - a. **Adjustment And Payment Of Loss To Property Of Others --** Losses to property of others may be adjusted with and paid to:
    - 1) "you" on behalf of the owner; or
    - 2) the owner.
  - b. **We Do Not Have To Pay You If We Pay The Owner --** If "we" pay the owner, "we" do not have to pay "you". "We" may also choose to defend any suits brought by the owners at "our" expense.

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### Loss Payment Options

1. Pay the value of the lost or damaged property
2. Pay the cost of repairing or replacing the property
3. Repair, replace or rebuild with materials of like kind or quality
4. Take the property at an appraised or agreed value
5. Will adjust losses with named insured, with named insured on behalf of the owner or directly with the owner

## Endorsements

### Testing and Commissioning

- Damage caused by testing

### Equipment Breakdown

- Mechanical or electrical breakdown

### Separate or Subcontractor Exclusion

- Excludes damage to property being installed by other than the named insured

### Separate or Subcontractor Coverage

- Include coverage for damage to Covered Property being installed by a subcontractor of the named insured



## Knowledge Check 2

1. Which of the following is covered under an unendorsed Inland Marine Builders Risk?
  - a. Trees, Shrubs and Plants to be installed at the jobsite.
  - b. Construction forms, temporary fencing, and temporary structures at the "jobsite" described on the "schedule of coverages."
  - c. Scaffolding to be used at a construction project that is stored away from the jobsite.
  - d. Land on which the building is being constructed.

2. Coverage under an Inland Marine Installation ceases when which of the following occurs?

	True	False
a. The policy expires or is cancelled		
b. The installation project is accepted by the purchaser		
c. Insurable interest ceases		
d. The project is abandoned without intention to complete		
e. Immediately after the project is completed.		
f. 90 days after the covered property has been put to its intended use.		

## Contractors Equipment

---

### **Learning Objective 6:**

Using knowledge of the Commercial Inland Marine Contractors Equipment Coverage Form, including:

- Property Covered and Property Not Covered
- Coverage Extensions and Supplemental Coverages
- Perils Covered and Perils Excluded
- Valuation and Settlement

the participant will be able to describe how coverage applies in the event of a loss, explain why and how much the policy will pay, and describe endorsements, if any, that may be used to modify the insurance coverage.

---

### Basic Concepts

#### **Designed to provide broad coverage for contractors**

- Equipment
- Machinery
- Tools

#### **At various locations and of a mobile nature**

- Contractors' premises
- Jobsites
- Temporary locations
- In transit

**Property exposed to loss**

- Owned equipment
- Newly purchased equipment
- Equipment rented, leased or borrowed from others
- Owned equipment rented, leased or loaned to others

**Causes of loss affecting contractors equipment**

- Transportation risks
- Theft
- Vandalism
- Collisions at jobsites
- Overload

## Scheduled vs. Blanket Coverage

**Scheduled coverage**

- List owned and leased equipment
- Each item has a specified limit of insurance
- Can have a “blanket” limit for miscellaneous tools and equipment
- Can have a “blanket” limit for rented equipment
  - Written subject to a reporting provision

**Blanket coverage**

- Single limit for all owned and leased equipment
- Maximum per item limit may apply

## Property Covered

### PROPERTY COVERED

"We" cover the following property unless the property is excluded or subject to limitations.

#### **Scheduled Equipment --**

1. **Coverage** -- "We" cover direct physical loss caused by a covered peril to:
  - a. "your" "contractors' equipment"; and
  - b. "contractors' equipment" of others in "your" care, custody, or control.
2. **Coverage Limitation** -- "We" only cover "your" "contractors' equipment" and "contractors' equipment" of others that are described on the "equipment schedule".

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### **Scheduled Equipment**

- Named Insured's contractors equipment
- Contractors equipment of others in the named insured's CCC
- Coverage limited to what is described on the "equipment schedule"

### DEFINITIONS

4. "Equipment schedule" means a schedule of "contractors' equipment" that is attached to this policy and that describes each piece of covered equipment.

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## Definition of “contractor’s equipment”

### DEFINITIONS

3. "Contractors' equipment" means machinery, equipment, and tools of a mobile nature that "you" use in "your" contracting, installation, erection, repair, or moving operations or projects.

"Contractors' equipment" does not mean:

- a. self-propelled vehicles designed and used primarily to carry mounted equipment; or
- b. vehicles designed for highway use that are unlicensed and not operated on public roads.

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### *Examples of contractor’s equipment*

- *Cranes*
- *Earthmovers*
- *Tractors*
- *Generators*
- *Tools*
- *Power shovels*
- *Greens keeping equipment and golf carts*

## Property Not Covered

### PROPERTY NOT COVERED

1. **Aircraft Or Watercraft** -- "We" do not cover aircraft or watercraft.
2. **Contraband** -- "We" do not cover contraband or property in the course of illegal transportation or trade.
3. **Leased Or Rented Property** -- "We" do not cover property that "you" lease or rent to others.
4. **Loaned Property** -- "We" do not cover property that "you" loan to others.
5. **Underground Mining Operations** -- "We" do not cover property while stored or operated underground in connection with any mining operations.
6. **Vehicles** -- "We" do not cover automobiles, motor trucks, tractors, trailers, and similar conveyances designed for highway use.
7. **Waterborne Property** -- "We" do not cover property while waterborne except while in transit in the custody of a carrier for hire.

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1. **Aircraft or watercraft**
2. **Contraband**
3. **Property rented or leased to others**
4. **Property loaned to others**
5. **Underground mining operations**
  - Some policies may have an absolute underground exclusion
6. **Vehicles designed for highway use**
7. **Waterborne property with exception**



## Coverage Extensions

### COVERAGE EXTENSIONS

**Provisions That Apply To Coverage Extensions** -- The following Coverage Extensions indicate an applicable "limit". This "limit" may also be shown on the "schedule of coverages".

If a different "limit" is indicated on the "schedule of coverages", that "limit" will apply instead of the "limit" shown below.

However, if no "limit" is indicated for a Coverage Extension, coverage is provided up to the full "limit" for the applicable covered property unless a different "limit" is indicated on the "schedule of coverages".

Unless otherwise indicated, the coverages provided below are part of and not in addition to the applicable "limit" for coverage described under Property Covered.

The "limit" provided under a Coverage Extension cannot be combined or added to the "limit" for any other Coverage Extension or Supplemental Coverage including a Coverage Extension or Supplemental Coverage that is added to this policy by endorsement.

If coinsurance provisions are part of this policy, the following coverage extensions are not subject to and not considered in applying coinsurance conditions.

#### **Debris Removal** --

1. **Coverage** -- "We" pay the cost to remove the debris of covered property that is caused by a covered peril.
2. **We Do Not Cover** -- This coverage does not include costs to:
  - 1) extract "pollutants" from land or water; or
  - 2) remove, restore, or replace polluted land or water.
3. **Limit** -- "We" do not pay any more under this coverage than 25% of the amount "we" pay for the direct physical loss. "We" will not pay more for loss to property and debris removal combined than the "limit" for the damaged property.
4. **Additional Limit** -- "We" pay up to an additional \$5,000 for debris removal expense when the debris removal expense exceeds 25% of the amount "we" pay for direct physical loss or when the loss to property and debris removal combined exceeds the "limit" for the damaged property.
5. **You Must Report Your Expenses** -- "We" do not pay any expenses unless they are reported to "us" in writing within 180 days from the date of direct physical loss to covered property.

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### **Debris Removal**

- Limited to 25% of the amount of loss payable under the policy
- Additional \$5,000 when debris removal costs exceed 25%
- No coverage to extract pollutants

[illegible]

## Supplemental Coverages

### SUPPLEMENTAL COVERAGES

**Provisions That Apply To Supplemental Coverages** -- The following Supplemental Coverages indicate an applicable "limit". This "limit" may also be shown on the "schedule of coverages".

If a different "limit" is indicated on the "schedule of coverages", that "limit" will apply instead of the "limit" shown below.

However, if no "limit" is indicated for a Supplemental Coverage, coverage is provided up to the full "limit" for the applicable covered property unless a different "limit" is indicated on the "schedule of coverages".

Unless otherwise indicated, a "limit" for a Supplemental Coverage provided below is separate from, and not part of, the applicable "limit" for coverage described under Property Covered.

The "limit" available for coverage described under a Supplemental Coverage:

- a. is the only "limit" available for the described coverage; and
- b. is not the sum of the "limit" indicated for a Supplemental Coverage and the "limit" for coverage described under Property Covered.

The "limit" provided under a Supplemental Coverage cannot be combined or added to the "limit" for any other Supplemental Coverage or Coverage Extension including a Supplemental Coverage or Coverage Extension that is added to this policy by endorsement.

If coinsurance provisions are part of this policy, the following supplemental coverages are not subject to and not considered in applying coinsurance conditions.

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### **Preamble to the list of Supplemental Coverages**

- A limit is indicated in the form; however, a different limit can be selected if shown on the Schedule of Coverages
- The Supplemental Coverages are not subject to coinsurance
- The list of Supplemental Coverages can vary significantly from one policy to another

## **SUPPLEMENTAL COVERAGES**

### **1. Newly Purchased Property --**

- a. **Coverage** -- "We" cover direct physical loss caused by a covered peril to additional "contractors' equipment" that "you" purchase during the policy period.
- b. **Limit** -- The most that "we" pay for any loss under this supplemental coverage is the least of the:
  - 1) actual cash value of the covered property; or
  - 2) "limit" for newly purchased property indicated on the "schedule of coverages". If no "limit" is indicated, then 30% of the Catastrophe Limit indicated on the "schedule of coverages" applies to this coverage.
- c. **Time Limitation** -- "We" extend coverage to the additional "contractors' equipment" that "you" purchase for up to 30 days.

This supplemental coverage will end when any of the following first occur:

  - 1) this policy expires;
  - 2) 30 days after "you" obtain the additional "contractors' equipment"; or
  - 3) "you" report the additional "contractors' equipment" to "us".
- d. **Additional Premium** -- "You" must pay any additional premium due from the date "you" purchase the additional "contractors' equipment".

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### **1. Newly Purchased Property**

- Coverage provided if acquired during the policy period
- Limit
  - If no "limit" is indicated on the schedule, then 30% of the Catastrophe Limit indicated on the schedule of coverages applies to this coverage.
  - ACV basis applies
- Coverage for newly purchased equipment ends when any of the following first occur
  - Policy expires
  - 30 days after the property is purchased
  - Company is notified of the purchase

## SUPPLEMENTAL COVERAGES

### 2. Pollutant Cleanup And Removal --

- a. **Coverage** -- "We" pay "your" expense to extract "pollutants" from land or water if the discharge, dispersal, seepage, migration, release, or escape of the "pollutants" is caused by a covered peril that occurs during the policy period.
- b. **Time Limitation** -- The expenses to extract "pollutants" are paid only if they are reported to "us" in writing within 180 days from the date the covered peril occurs.
- c. **We Do Not Cover** -- "We" do not pay the cost of testing, evaluating, observing, or recording the existence, level, or effects of "pollutants".  
However, "we" pay the cost of testing which is necessary for the extraction of "pollutants" from land or water.
- d. **Limit** -- The most "we" pay for each location is \$10,000 for the sum of all such expenses arising out of a covered peril occurring during each separate 12-month period of this policy.

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## 2. Pollutant Cleanup And Removal

- Pay the costs to extract pollutants from land or water if the escape is caused by a covered peril
- Must be reported within 180 days
- No coverage for testing EXCEPT for cost of testing which is necessary for the extraction
- \$10,000 for each location occurring during each separate 12-month period of this policy (aggregate limit)

## Perils Covered

### Risks of physical loss unless limited or excluded

#### PERILS COVERED

"We" cover risks of direct physical loss unless the loss is limited or caused by a peril that is excluded.

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## Perils Excluded

### PERILS EXCLUDED

1. "We" do not pay for loss or damage caused directly or indirectly by one or more of the following excluded causes or events. Such loss or damage is excluded regardless of other causes or events that contribute to or aggravate the loss, whether such causes or events act to produce the loss before, at the same time as, or after the excluded causes or events.
  - a. **Civil Authority** -- ...
  - b. **Nuclear Hazard** --....
  - c. **War And Military Action** --...
2. "We" do not pay for loss or damage that is caused by or results from one or more of the following:
  - a. **Contamination Or Deterioration** --...
  - b. **Criminal, Fraudulent, Dishonest, Or Illegal Acts** -- "We" do not pay for loss caused by or resulting from criminal, fraudulent, dishonest, or illegal acts committed alone or in collusion with another by:
    - 1) "you";
    - 2) others who have an interest in the property;
    - 3) others to whom "you" entrust the property;
    - 4) "your" partners, officers, directors, trustees, joint venturers, or "your" members or managers if "you" are a limited liability company; or
    - 5) the employees or agents of 1), 2), 3), or 4) above, whether or not they are at work.This exclusion does not apply to acts of destruction by "your" employees, but "we" do not pay for theft by employees.  
This exclusion does not apply to covered property in the custody of a carrier for hire.
  - c. **Loss Of Use** -- ...
  - d. **Mechanical Breakdown** -- "We" do not pay for loss caused by any mechanical, structural, or electrical breakdown or malfunction including a breakdown or malfunction resulting from a structural, mechanical, or reconditioning process.  
But if a mechanical, structural, or electrical breakdown or malfunction results in a "specified peril", "we" do cover the loss or damage caused by that "specified peril".
  - e. **Missing Property** -- "We" do not pay for missing property where the only proof of loss is unexplained or mysterious disappearance of covered property, or shortage of property discovered on taking inventory, or any other instance where there is no physical evidence to show what happened to the covered property.  
This exclusion does not apply to covered property in the custody of a carrier for hire.
  - f. **Pollutants** -- "We" do not pay for loss caused by or resulting from release, discharge, seepage, migration, dispersal, or escape of "pollutants":
    - 1) unless the release, discharge, seepage, migration, dispersal, or escape is caused by a "specified peril"; or
    - 2) except as specifically provided under the Supplemental Coverages - Pollutant Cleanup and Removal."We" do cover any resulting loss caused by a "specified peril".
  - g. **Puncture, Blowout, And Road Damage** -- "We" do not pay for loss caused by puncture, blowout, and road damage to tires and tubes mounted on vehicles.  
However, "we" do cover puncture, blowout, or road damage caused by a "specified peril".
  - h. **Temperature/Humidity** --...
  - i. **Voluntary Parting** -- "We" do not pay for loss caused by or resulting from voluntary parting with title to or possession of any property because of any fraudulent scheme, trick, or false pretense.
  - j. **Wear and Tear** --...
  - k. **Weight of Load** -- "We" do not pay for loss caused by the weight of a load which, under the operating conditions at the time of a loss, exceeds the registered lifting capacity of any equipment or machine.

Selected Perils Excluded for discussion.

**Tier 2 Excluded Perils:**

- Criminal, Fraudulent, Dishonest, Or Illegal Acts
- Mechanical Breakdown
  - Mechanical, structural or electrical breakdown or malfunction
- Missing Property
- Pollutants
  - Exception if caused by a specified peril
- Puncture, Blowout, And Road Damage
- Voluntary Parting
  - Caused by or resulting from any fraudulent scheme, trick, or false pretense
- Weight of Load
  - Excludes loss caused by the weight of a load that exceeds the registered lifting capacity of any equipment or machine.

## Valuation

### Actual Cash Value

- Value of the property at the time of the loss
- Will make a deduction for depreciation

### Replacement Cost

- Cost to replace the property with no deduction for depreciation
- Limited to the cost of repair or replacement with similar materials and used for the same purpose
- Not more than is actually spent by the insured

### Agreed Value

- Loss paid on the basis of an agreement between the named insured and the underwriter regarding the value of the covered property

### Loss to a Pair or Set

- Loss payment for the lost or damaged item is based on the proportionate value of the entire pair or set

### Loss to Parts

- Based on the value of the lost or damaged part or the cost to replace it



## Deductible Optional Approaches

- Per item/per occurrence
  - If deductible applies per item, policy will hopefully contain a maximum that will apply per occurrence
- Flat
  - Policy pays only those amounts that exceed the deductible amount
- Percentage
  - Amount of deductible is the percentage times the value of the covered property, subject to stated minimum and maximum
  - If two or more items are damaged, percentage is applied to the highest valued item

## Settlement

### HOW MUCH WE PAY

#### 4. Coinsurance --

- a. **When Coinsurance Applies** -- "We" only pay a part of the loss if the "limit" is less than the percentage of the value of the covered property that is indicated on the "schedule of coverages".
- b. **How We Determine Our Part of The Loss** -- "Our" part of the loss is determined using the following steps:
  - 1) multiply the percent indicated on the "schedule of coverages" by the value of the covered property at the time of loss;
  - 2) divide the "limit" for covered property by the result determined in b.1) above;
  - 3) multiply the total amount of loss, after the application of any deductible, by the result determined in b.2) above.

The most "we" pay is the amount determined in b.3) above or the "limit", whichever is less. "We" do not pay any remaining part of the loss.
- c. **If There Is More Than One Limit** -- If there is more than one "limit" indicated on the "schedule of coverages" for this coverage part, this procedure applies separately to each "limit".
- d. **If There Is Only One Limit** -- If there is only one "limit" indicated on the "schedule of coverages" for this coverage, this procedure applies to the total of all covered property to which the "limit" applies.
- e. **When Coinsurance Does Not Apply** -- Conditions for coinsurance do not apply unless a coinsurance percentage is indicated on the "schedule of coverages".

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**Coinsurance provisions** are built into IM 7001 04 04 and percentages of 100%, 90%, 80%, or other percentage are shown on the Schedule of Coverages

- Coinsurance does not apply unless a coinsurance percentage is indicated on the "schedule of coverages"

#### **Per item**

- Named insured must carry enough insurance to satisfy specified coinsurance percentage for each item

#### **Per schedule**

- Named insured must carry enough insurance to satisfy specified coinsurance percentage over the entire schedule

## Endorsements

Read and compare coverages/exclusions; there may be significant variation from one company to another

### **Rented, leased or loaned to others**

- Covers direct damage to covered property of the named insured for this exposure
- May include a provision requiring the named insured to be working at the same jobsite as the party that rents, leases or borrows the equipment

### **Rented, leased or borrowed from others**

- Covers direct damage for the named insured's liability for equipment in the care, custody or control of the named insured when leased, rented or borrowed from others
- Provides coverage in response to the CGL Policy exclusion for personal property of others in the care, custody or control of the insured

### **Contractors Equipment – income coverage**

- Covers loss of net income plus continuing normal operating expenses as a result of direct damage to covered equipment from a covered cause of loss
- Period Of Restoration is not limited by the policy expiration

### **Rental reimbursement endorsement**

- Loss of use coverage similar in nature to automobile rental reimbursement coverage
- Pays up to the stated amount per day, subject to a maximum per loss; may have a waiting period deductible
- Covers the costs of renting a substitute item when the insured's property is damaged from a covered cause of loss
- Coverage is not limited to policy period – will continue to pay until damaged equipment is repaired or replaced or until policy limit is exhausted

### **Tools endorsement/employees' tools**

- Coverage made available to cover employee tools while located at
  - The named insured's premises
  - At the jobsite
- Usually has a small limit per employee with a limit per occurrence
- A separate lower deductible may also be used on this coverage
- No coverage while on the personal vehicle of the employee or on their residence premises

## Boom Exclusion

### Sample Boom Exclusion

The following Exclusion applies

1. Crane and Derrick Booms

We will not pay for loss to crane or derrick booms while being operated, unless the "loss" is directly caused by fire, lightning, hail, windstorm, explosion, riot, civil commotion, aircraft, other vehicles, landslide or overturn of the unit of which they are a part.

- Great deal of variation in the approach to booms – excluded, limited, covered, or silent
- May require an endorsement or may be modified in the coverage form

## Boom Restriction Endorsement

AAIS IM 7016 04 04 Page 1 of 1	This endorsement changes the Contractors' Equipment Coverage -- PLEASE READ THIS CAREFULLY --
<b>BOOM RESTRICTION ENDORSEMENT</b>	
<b>ADDITIONAL PROPERTY NOT COVERED</b>	
<p><b>Booms</b> -- "We" do not cover crane booms that exceed 25 feet in length.</p> <p>However, "we" do cover booms over 25 feet in length when the loss is caused by a "specified peril" while the equipment is in transit.</p>	
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## Knowledge Check 3

1. Which of the following is an accurate statement in regard to an unendorsed Contractors Equipment Floater?
  - a. Newly Acquired equipment is automatically covered for 120 days.
  - b. Scheduled contractors equipment is covered while loaned to others as long as it is no more than 30 days.
  - c. Contractors Equipment borrowed from others is automatically covered regardless of whether it is scheduled or not.
  - d. Contractors Equipment of others that is in the care custody or control of the insured is covered as long as it is scheduled on the insured's policy.
2. Which of the following is not covered under the unendorsed Contractors Equipment Floater?
  - a. Theft of equipment.
  - b. Equipment damaged by fire.
  - c. Property in the insured's care while waterborne.
  - d. Vandalism to property.
3. Which of the following is a true statement in regard to an unendorsed Contractors Equipment Floater?
  - a. Does not provide coverage for loss caused by the weight of a load which, under the operating conditions at the time of a loss, exceeds the registered lifting capacity of any equipment or machine.
  - b. Coverage is automatically provided for all types of loss to crane or derrick booms while being operated.
  - c. Coverage is provided for voluntary parting of equipment caused by or resulting from any fraudulent scheme, trick, or false pretense.

## Goods In Transit

---

### **Learning Objective 7:**

Using knowledge of the basic concepts for Goods In Transit, including exposures to loss, the participant will be able to describe the types of carriers used to transport goods and identify how to write coverage for Goods In Transit.

---

### Basic Concepts

**Intended to cover the goods while in transit by truck, train, or air**

- Goods being transported while waterborne usually subject to Ocean Marine Coverage

**Items being transported may be the owner's goods OR the goods of others**

**Following are some Inland Marine policies available to cover goods in transit:**

- Transportation Policy
  - Covers owned goods using various means of transit
- Motor Truck Cargo
  - Transportation of goods on a motor vehicle
- Trip Transit
  - Covers goods in transit for a one-time occurrence
- Air Cargo
  - Goods being transported by air freight providers

**Note:**

The focus of this presentation will be on the Transportation Policy. Further discussion on the other types of policies are beyond the scope of this course.

**Note:**

It is important to understand who the parties are when discussing goods in transit

Shipper: The party that makes the arrangements for the goods to enter the course of transit

Owner: The party that holds title to the property being shipped

- When ownership changes is very important

Carrier: The party providing the actual transportation of the goods

Who these parties are (Shipper, Owner, Carrier) will be identified on the Bill of Lading

**Need for insurance to cover goods in transit**

- Dollar limitations on liability of carriers
  - Bill of lading may affect the responsibility of the carrier
- Delay in collecting benefits
- Carriers not liable for all losses

**Advantages for the owner of the goods to purchase coverage**

- Immediate payment for loss
- Insurer will handle action of negligence (subrogation)
- Broad coverages
- Purchase limits of insurance necessary

**Inexpensive when compared to what a carrier may charge**



## Exposures to Loss

### Transportation by way of trucks, trains, and airplanes

- Property in transit while on the conveyance
- Property in a terminal

### Perils affecting property in transit

- Collision and overturn
- Spoilage
- Vandalism
- Fire
- Explosion
- Theft
  - Types of cargo being transported are a special consideration – food and beverages was the number one commodity stolen in 2015

## Types of Carriers used to Transport Goods

- 1 Common Carrier
- 2 Contract Carrier
- 3 Private Carrier

## 1

# Common Carrier

## Services offered to the general public

- Regulated carriers
- Can be intrastate or interstate

## **Liability of common carrier**

- Strict liability – Liable for all losses due to negligence or not subject to exceptions
- Exceptions to common carrier liability

1) Acts of nature, such as

- Flood
- Windstorm
- Earthquake

2) Acts of public enemy

*Example:*

*A country that is at war with the United States*

3) Exercise of public authority

*Example:*

*Delay due to a storm when the civil authority denies passage to the carrier*

4) Fault or neglect on part of shipper

*Example:*

*Failure to properly pack breakable items*

5) Inherent vice

*Example:*

*Apples cause dates to rot when shipped in the same truck*

## Limitations on common carrier responsibility

- A bill of lading can basically be described as a receipt from the carrier to the shipper for goods being transported. It serves as a contract between the shipper and the carrier.
- A bill of lading identifies the:
  - 1) Date of shipment
  - 2) Destination
  - 3) Delivery instructions/responsibility
  - 4) Ownership of goods
  - 5) Fees

### *Examples of bills of lading*

#### *1) Uniform Bill of Lading*

*Carrier is liable for the full value of the cargo*

#### *2) Released Bill of Lading*

*Reduced carrier liability*

*Limitation typically based on value per pound*

*Carrier charges lower cartage rate*

*Shipper may have to purchase coverage to cover the full value*

## Shipper's weight, load, and count

- The shipper provides a description of the goods, the weight and cubic measurements of the contents of the container
- Used when the carrier has no access to the contents of the load being shipped

2

## Contract Carrier

**Operates for specific businesses, using a written contract**

**Liability of contract carrier established in writing between the two contracting parties**

- Cannot contract away simple negligence – contrary to public policy

3

## Private Carrier

**Hauls only their own goods in their own vehicles**

**Backhauling may be an issue**

- Backhauling is where the carrier does not wish to return with an empty trailer and accepts a load on the return trip
- Elevates the status to either a contract carrier or in some cases a common carrier

## Coverage for Goods In Transit

Discussion will focus on the Transportation Policy. It may go by other names as well, such as Annual Transit Policy or Shipper's Interest Policy

### Underwriting Considerations

1. Type of property being transported/moved
  - Fragile
  - Subject to spoilage
  - Liquids
  - Target commodity (theft exposure)
2. Method of travel
  - Truck
  - Rail
  - Air
3. Distance of travel
  - Local
  - Long haul
  - Time in carrier possession

4. Territory traveled by carrier
  - Less than 50 miles
  - More than 250 miles
  - Metro areas being serviced
  - Rural areas
5. Frequency of trips
  - One time versus Weekly
6. Subrogation possibilities
  - Financial condition of the carrier
7. Financial condition of the named insured
8. Condition and maintenance of vehicles
9. Loss history

## Methods of Writing

1. Annual
  - Covers all shipments made during the policy period
  - Usually written on a reporting basis
2. Trip transit
  - Used to cover a one-time transportation of goods

## Where Coverage Applies

1. Wide variation in how policies state where coverage is provided
2. May depend on who is transporting the goods
  - More narrowly defined when the goods are being transported on owned vehicles
3. Coverage is often included when goods are located in a terminal
  - Does not cover goods being stored at a terminal for later delivery

### Sample Wording of Where Coverage Applies

Shipment to a specific destination, including the ordinary, necessary and reasonable stops, interruptions, delays or transfers incidental to the route and method of shipment and ending on acceptance of the goods at the specified destination.



## Commercial Inland Marine Transportation Policy

### Learning Objective 8:

Using knowledge of the Commercial Inland Marine Transportation Policy, including:

- Property Covered and Property Not Covered
- Perils Covered, Perils Excluded, and Optional Coverages
- Special Provisions and Settlement

the participant will be able to describe how coverage applies in the event of a loss and to explain why and how much the policy will pay.

### Property Covered

#### PROPERTY COVERED

"We" cover the following property unless the property is excluded or subject to limitations.

1. **Property In A Terminal -- ...**
2. **Property In Transit --**
  - a. **Coverage --** "We" cover direct physical loss caused by a covered peril to property described on the "schedule of coverages" while in due course of "transit" including loading and unloading.
  - b. **Coverage Limitations --**
    - 1) "We" only cover described property while in due course of "transit" when a "limit" for one or more of the following modes of transportation is indicated on the "schedule of coverages":
      - a) Aircraft;
      - b) Owned Vehicle;
      - c) Carrier For Hire; or
      - d) Railroad.
    - 2) If property described on the "schedule of coverages" includes property of others, "we" only cover property of others to the extent of "your" legal liability for direct physical loss caused by a covered peril.
    - 3) "We" only cover loading and unloading if the described property is loaded from or unloaded onto a sidewalk, street, loading dock, or similar area that is adjacent to the indicated mode of transportation.

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**Provides first party coverage to the named insured for shipment of owned goods by some mode of transportation**

## Property Not Covered

### PROPERTY NOT COVERED

1. **Art, Antiques And Fur** -- "We" do not cover objects of art, antiques, or fur garments.
2. **Carrier For Hire** -- "We" do not cover property of others that "you" are responsible for as:
  - a. a carrier for hire; or
  - b. an arranger of transportation; this includes carloader, consolidator, broker, freight forwarder, or shipping association.
3. **Contraband** -- "We" do not cover contraband or property in the course of illegal transportation or trade.
4. **Exports And Imports** -- "We" do not cover exported or imported property:
  - a. that is covered under any ocean marine cargo policy that anyone has obtained to cover exports or imports; or
  - b. while on an ocean or air conveyance.
5. **Jewelry, Stones And Metals** -- "We" do not cover jewelry, precious or semi-precious stones, gold, silver, platinum, or other precious metals or alloys.
6. **Lease Agreement** -- "We" do not cover property for which "you" are contractually liable under a lease agreement with any transportation carrier.

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### **Art, antiques, and fur**

### **Carrier for hire**

### **Contraband**

### **Exports and imports**

### **Jewelry, stones, and metals**

### **Lease agreement**

**PROPERTY NOT COVERED**

7. **Live Animals** -- "We" do not cover animals including cattle or poultry unless death is caused or made necessary by a "specified peril".
8. **Mail** -- "We" do not cover mail shipments in the custody of the U.S. Postal Service.
9. **Money And Securities** -- "We" do not cover accounts, bills, currency, food stamps, or other evidences of debt, lottery tickets not held for sale, money, notes, or securities.
10. **Samples** -- "We" do not cover samples while in the custody of a sales representative.
11. **Storage** -- "We" do not cover property held in storage.

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**Live animals**

- Exception if death is caused by or made necessary by a "specified peril"

**DEFINITIONS**

11. "Specified perils" means the perils of:
  - a. fire;
  - b. lightning; windstorm; hail;
  - c. collision, overturn, or derailment of a transporting conveyance;
  - d. collapse of a bridge or culvert; and
  - e. theft.

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**Mail**

- Property in the custody of the USPS

**Money and securities****Samples****Storage**

## Perils Covered

### PERILS COVERED

"We" cover risks of direct physical loss unless the loss is limited or caused by a peril that is excluded.

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**Open perils; direct damage** – often called “Perils of Transportation”

**Named perils**

## Perils Excluded

**The typical exclusions apply such as:**

- Contamination or deterioration – including corrosion, decay, rust or weakness
- Criminal, fraudulent, dishonest, or illegal acts
- Delay, loss of use, loss of market
- Temperature/humidity
- Voluntary parting
- Improper packing/storage
- Spoilage

**Loading and unloading**

- Most coverage forms provide protection when goods are being loaded or unloaded from the conveyance
- Limits coverage to the area immediately adjoining the conveyance
  - Eliminates the possibility of covering the goods while being moved to their final destination (such as inside a building delivery) after unloaded from the conveyance

## Optional Coverages

### Selected Coverage Extensions/Optional coverages

1. Packing or consolidating companies
  - Provides coverage while in the custody of a third party for the purposes consolidating shipments
2. Fraud or deceit
  - Covers voluntary parting with property by the acceptance of fraudulent bills of lading
  - Covers voluntary parting by persons falsely representing themselves as the proper person to receive the property
3. Loss of refrigeration or heating mechanical breakdown
  - Covers damage to goods due to loss of refrigeration or heating
  - Covers the cargo but not the equipment that breaks down
  - Contains exclusions that make it clear the only property being covered is the loss to the goods by sudden and accidental mechanical breakdown of the equipment
4. Return shipments
  - Policy provisions that describe the coverage provided if the intended recipient refuses a shipment
  - Usually limits coverage to a stated time period when awaiting return instructions and while actually in the course of transit back to the shipper

## Special Provisions

### **Subrogation Provisions**

- Named insured will be required to transfer their rights of recovery against the carrier if the named insured receives payment for their insurance
- Named insured is usually allowed to waive rights of recovery against the carrier if done in writing prior to a loss

### **Permission to accept Released Bill of Lading**

- A policy provision that will let the named insured ship goods under this type of bill of lading
- Permission may be required due to the impact this bill of lading has on the possibility of subrogation

## Settlement

### Limits of Insurance

- As needed
- Deductible will apply
- Catastrophe limit of insurance may apply
- Separate limits of insurance may apply to different forms of transportation
  - Aircraft
  - Common carrier
  - Contract carrier
  - Owned vehicles
  - Railroad

## Review of Learning Objectives

1. Using knowledge of the overview of Inland Marine, the participant will describe the general concepts unique to Inland Marine Coverages.
2. Using knowledge of bailment, including:
  - Elements of bailment
  - Coverages
  - Exclusions
  - Conditionsthe participant will be able to describe how Bailee Coverage applies in the event of loss.
3. Using knowledge of the basic concepts of builders risk, the participant will be able to identify the exposures to loss and to explain the methods of writing Builders Risk Coverage.
4. Using knowledge of the Commercial Inland Marine Builders Risk Coverage Form, including:
  - Covered Property and Property Not Covered
  - Coverage Extensions and Supplemental Coverages
  - Perils Covered and Perils Excluded
  - Limitations, Valuation, and Settlementthe participant will be able to describe how coverage applies in the event of a loss, explain why and how much the policy will pay, and describe endorsements, if any, that may be used to modify the insurance coverage.
5. Using knowledge of the Commercial Inland Installation Floater, including:
  - Property Covered and Property Not Covered
  - Perils Covered and Perils Excluded
  - Limitations, Valuation, and Settlementthe participant will be able to describe how coverage applies in the event of a loss, explain why and how much the policy will pay, and describe endorsements, if any, that may be used to modify the insurance coverage.



6. Using knowledge of the Commercial Inland Marine Contractors Equipment Coverage Form, including:
  - Property Covered and Property Not Covered
  - Coverage Extensions and Supplemental Coverages
  - Perils Covered and Perils Excluded
  - Valuation and Settlementthe participant will be able to describe how coverage applies in the event of a loss, explain why and how much the policy will pay, and describe endorsements, if any, that may be used to modify the insurance coverage.
7. Using knowledge of the basic concepts for Goods In Transit, including exposures to loss, the participant will be able to describe the types of carriers used to transport goods and identify how to write coverage for Goods In Transit.
8. Using knowledge of the Commercial Inland Marine Transportation Policy, including:
  - Property Covered and Property Not Covered
  - Perils Covered, Perils Excluded, and Optional Coverages
  - Special Provisions and Settlementthe participant will be able to describe how coverage applies in the event of a loss and to explain why and how much the policy will pay.



## Knowledge Check 1 – ANSWERS

1. Indicate whether each of the following statements is a characteristic of filed forms or unfilled forms.

	Filed/controlled forms	Unfiled/uncontrolled forms
a. Tend to be specialty coverages	X	
b. Exposures too unique or diverse to reasonably require insurers to insure them on other than a case-by-case basis		X
c. Relative uniformity of exposures	X	
d. More flexibility on how coverage will be provided – terms and conditions are negotiable		X

2. Indicate whether the following are true or false.

	True	False
a. Bailee is the owner of the personal property given to the other party		X
b. A gratuitous bailment for benefit of the bailor is where the bailor owes the bailee a low duty of care.		X
c. Bailment for mutual benefit requires a low duty of care.		X

3. Which of the following is an accurate statement?

- b. In order to trigger coverage on a legal liability basis, the bailee must be legally liable for damage to the bailor's property.**

4. Indicate which of the following is an exclusion that is commonly found in policies providing bailment coverage?

	Yes	No
a. Theft of property left overnight in or on a vehicle, unless inside a locked building and there are signs of forced entry	X	
b. Loss resulting from misdelivery	X	
c. Voluntary parting with property due to trick, scheme or fraud	X	
d. Damage caused by processing performed by the bailee	X	



## Knowledge Check 2 – ANSWERS

1. Which of the following is covered under an unendorsed Inland Marine Builders Risk?
  - b. Construction forms, temporary fencing, and temporary structures at the "jobsite" described on the "schedule of coverages."
  
2. Coverage under an Inland Marine Installation ceases when which of the following occurs?

	True	False
a. The policy expires or is cancelled	X	
b. The installation project is accepted by the purchaser	X	
c. Insurable interest ceases	X	
d. The project is abandoned without intention to complete	X	
e. Immediately after the project is completed.		X
f. 90 days after the covered property has been put to its intended use.		X



## Knowledge Check 3 – ANSWERS

1. Which of the following is an accurate statement in regard to an unendorsed Contractors Equipment Floater?
  - d. Contractors Equipment of others that is in the care custody or control of the insured is covered as long as it is scheduled on the insured's policy.
2. Which of the following is not covered under the unendorsed Contractors Equipment Floater?
  - c. Property in the insured's care while waterborne
3. Which of the following is a true statement in regard to an unendorsed Contractors Equipment Floater?
  - a. Does not provide coverage for loss caused by the weight of a load which, under the operating conditions at the time of a loss, exceeds the registered lifting capacity of any equipment or machine.



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## Section 2

# **EMPLOYMENT PRACTICES LIABILITY INSURANCE**



## Employment Practices Liability Insurance

### Section Goal

*In this section, participants will be able to identify employment-related exposures and to analyze an Employment Practices Liability Policy to determine whether the policy provides coverage or not.*

### Learning Objectives

1. Using knowledge of the various sources of liability exposures that may result in employment-related claims, including:
  - Workplace torts
  - Breach of contracts
  - Violation of statutes

the participant will be able to explain the need for Employment Practices Liability Insurance (EPLI) to a client.

2. Using knowledge of the common characteristics found in EPLI Policies, including:
  - Key Elements of an Insuring Agreement
  - Who Is An Insured
  - Third Party Liability
  - Wrongful Acts
  - Exclusions

the participant will be prepared to describe the applicable insurance coverage and the person or organization who has insured status and to identify what endorsements may be needed to modify coverage.

3. Using knowledge of the defense provisions found in EPLI Policies, including:

- Duty to defend
- Right to investigate and settle
- Defense costs/expenses
- Definitions of claim, loss, and coverage territory

the participant will be prepared to explain to a client the scope of defense coverage provided to a covered person/organization under an EPLI Policy.

4. Using knowledge of selected provisions, including:

- Limits of Insurance, Deductibles, and Coinsurance and Co-Payment Provisions
- Selected Conditions

the participant will be prepared to explain to a client the extent of coverage provided in a claim situation and the conditions that impact an insured's rights under an EPLI Policy.



### **Learning Objective 1:**

Using knowledge of the various sources of liability exposures that may result in employment-related claims, including:

- Workplace torts
- Breach of contracts
- Violation of statutes

the participant will be able to explain the need for Employment Practices Liability Insurance (EPLI) to a client.

---

Employment-related claims can arise from various sources including claims alleging:

Workplace Torts

Breach of Contracts

Violation of Statutes

## Workplace Torts

**Both large and small employers have significant exposures to claims alleging workplace torts**

**Workplace torts may be based on negligence or intentional torts**

- Negligence (unintentional tort). Can basically be described as the failure to use the amount of care an ordinary, reasonable prudent person is required to use to protect others from harm or injury.
- Intentional torts. A person's actions/activities are intentional and may or may not be intended to cause injury (mental or physical harm) to others.

**Claims alleging workplace torts are sometimes filed in conjunction with claims alleging violation of statutes** (not just federal law, but also state law and county and municipal ordinances)

- Preserves full right of action if a federal case falters – plus more money is often available in tort actions.

**Too many mistakenly think claims regarding employment practices are only a federal issue and “right-to-work” protects the employer in certain states**

- This ties in to the need for a broad definition of an insured (to be discussed later) since in tort there is generally no exception to individual personal liability as applies in most federal law.

**Types of workplace torts** (inappropriate behaviors) that are employment related-vary. Following are some activities that could result in a workplace tort.

1. Bullying, humiliation, or other types of infliction of emotional distress

*Example:*

*Berating and belittling a subordinate in front of others*

2. Invasion of privacy

*Examples:*

*Release of an employee's or job applicant's personal or private information*

*Unreasonable search of an employees' personal property – purses, backpack, car, etc.*

*Inappropriate access and actions taken in response to an employee's personal emails, Facebook account, text messages or other social media*

3. Coercion

*Example:*

*Pressuring an employee to perform illegal or unethical activities*

4. Libel, slander, defamation of character

*Example:*

*A manager defames an employee seeking a transfer to another department*

5. Negligent hiring practices

*Example:*

*Hiring a person known to have a history of violence who later intentionally injures or threatens another employee*

6. Negligent supervision

*Example:*

*Awareness that one employee has threatened, bullied or harassed another employee but has taken no action*

**7. Retaliation**

***Examples:***

*Employee goes over his/her manager's head to report mismanagement of department funds. Manager later fires the employee.*

*Employee may claim sexual harassment by a supervisor but loses case with the Equal Employment Opportunity Commission (EEOC) or a state agency. Employee is then terminated for allegations – this is illegal under most federal laws.*

**8. Wrongful or negligent evaluations, criticism, demotions, discipline, etc.**

***Example:***

*Employee evaluation was based on incorrect or inaccurate information; thereby affecting an employee's assignment, promotion, salary increase, or bonus, etc.*

**9. Wrongful detention or imprisonment**

***Example:***

*Wrongful detention can occur if your manager calls you into his or her office and refuses to allow you to leave (by locking the door or threatening you) and then proceeds to interrogate you about workplace problems or even about personal issues.*

**10. Wrongful termination including constructive discharge claims**

***Example:***

*Employee claims that the manager made the work environment so difficult or so unbearable that the employee felt forced to resign*

**Claims regarding breach of contracts can arise from either written contracts or implied contracts.**

**Written contracts may include:**

- Employment contracts
- Collective bargaining agreements

**Note:**

Usually not the subject of EPLI coverage

**Implied contracts may include:**

- Job offer letter
- Employee manual
- Oral promises
- Evaluations
- Tenure

***Examples of breach of contract:***

*Failure to provide compensation as per an employment contract*

*Failure to follow agreed-upon process when terminating an employee*

*Failure to provide compensation, benefits, or other job perks promised in a job offer letter*

## Violation of Statutes Regarding Employment Practices

In-depth discussion of statutes is beyond the scope of this course. Further, the goal of reviewing these laws is not to apply the laws to the named insured or the named insured's workplace but to understand the exposure for which Employment Practices Liability Insurance may apply.

**Numerous federal, state, and local laws provide certain protections for employees and job applicants.** Unlawful employment practices are prohibited.

- A great many of these violations are due to claims and suits alleging discrimination

### Summary of Discrimination Types (not an all-inclusive list)

- Age
- Compensation/Equal Pay
- Disability
- Genetic information
- Military Service
- National Origin
- Pregnancy and Medical Conditions
- Race/Color
- Religion
- Retaliation
- Sex/Gender
- Sexual harassment

**Example:**

*Title VII Civil Rights Act of 1964 and its amendments make it unlawful for an employer to discriminate on the basis of race/color, sex, religion, or national origin.*

### Exemptions may apply, such as:

- Some small businesses are exempt, as application of certain federal laws are based on the number of employees. However, small businesses are still at risk as a state or local law may apply.
- Application of certain federal laws require reasonable accommodations be in place for qualified employees or job applicants UNLESS it causes undue hardship.

*For example:*

*Religion may be a bona fide qualification for hiring an individual as clergy*

**Federal laws do NOT preempt a state law or local law, where the state or local law provide broader employee and job applicant protection**

**Some laws overlap each other or are coupled with other laws** (federal, state, or local laws)

### Remedies for violations vary by type of charge or claim

- May include compensatory and punitive damages
- May be limited to liquidated damages
  - In cases where a plaintiff cannot recover compensatory or punitive damages, they may be entitled to liquidated damages (e.g., amount of back pay)

**Note:**

Discussion as to whether or not an EPLI Policy will pay certain types of damages will be addressed later.

**Amendments to statutes that broaden employee protection create additional exposures for employers**



## Knowledge Check 1

1. Many federal statutes do not apply to small employers; therefore, these small employers are protected from EPLI claims alleging workplace torts. True or False?
  
2. A workplace tort can be based on:
  - a. Negligence (unintentional tort)
  - b. Intentional tort
  - c. Both a and b
  - d. Neither
  
3. EPLI claims can be filed against an employer for breach of written contracts, but not implied contracts. True or False?
  
4. Discrimination is the only unlawful employment practice prohibited by federal law. True or False?



## Employment Practices Liability Insurance (EPLI) Policies

2

### Overview of EPLI Policies

Even though there is an ISO form available, many EPLI Policies are written on nonstandard, non-ISO forms on a stand-alone basis. Since most insurers have their own company-specific EPLI Policy, excerpts primarily from the ISO Employment-Related Practices Liability Coverage Form EP 00 01 will be used for analysis.

#### Example 1

Various provisions in this policy restrict coverage. Read the entire policy carefully to determine rights, duties and what is and is not covered

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### **EPLI is typically written on a claims-made basis**

#### Example 2

THIS IS A CLAIMS-MADE COVERAGE WITH DEFENSE EXPENSES INCLUDED IN THE LIMIT OF LIABILITY.  
PLEASE READ ALL TERMS CAREFULLY.

### **Some insurers may add EPLI as a separate coverage part to a package policy**

#### *Example:*

*Executive Liability Package Policies or some type of Management Liability Package Policy*

### **Some insurers may have an endorsement available to provide certain EPLI coverages to a Directors and Officers Liability Policy or to certain types of professional policies**

#### **BEWARE!**

Coverage provided by endorsement is usually limited and not as broad as can be found in stand-alone EPLI policies or package policies

## EPLI Coverage Form

Most EPLI Policies are written to provide coverage for claims filed by employees (or by job applicants) against the organization named in the Declarations because of an employment-related incident. It is crucial to understand the terminology found within the policy and to read the entire policy carefully to recognize what coverage is being provided.

---

### **Learning Objective 2:**

Using knowledge of the common characteristics found in EPLI Policies, including:

- Key Elements of an Insuring Agreement
- Who Is An Insured
- Third Party Liability
- Wrongful Acts
- Exclusions

the participant will be prepared to describe the applicable insurance coverage and the person or organization who has insured status and to identify what endorsements may be needed to modify coverage.

---

## Key Elements in an Insuring Agreement

2

Example: Partial description of the Insuring Agreement

### SECTION I – EMPLOYMENT-RELATED PRACTICES LIABILITY COVERAGE

#### A. Insuring Agreement

1. We will pay those sums the insured becomes legally obligated to pay as damages resulting from a "wrongful act" to which this insurance applies. We will have the right and duty to defend the insured against any "suit" seeking those damages. However, we will have no duty to defend the insured against any "suit" seeking damages because of a "wrongful act" to which this insurance does not apply. We may, at our discretion, investigate any incident that may result from a "wrongful act". We may, with your written consent, settle any "claim" that may result.

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### Pay sums the insured becomes legally obligated to pay as damages

- Promise to pay based on legal obligation

### Resulting from a "wrongful act"

- Extent of insurance protection provided is dependent on definition of wrongful act

### Right and duty to defend any "suit" seeking damages for wrongful act

- Contractual duty to defend
- But – NO COVERAGE – NO DEFENSE

### Consent to settle

- May require named insured's consent to settle

#### Note:

The Consent to Settle Condition, commonly known as the "hammer clause" will be addressed later

## Who Is An Insured

### Example 1: ISO

#### SECTION II – WHO IS AN INSURED

**A.** If you are designated in the Declarations as:

1. An individual, you and your spouse are insureds.
2. A partnership or joint venture, you are an insured. Your partners or members are also insureds.
3. A limited liability company, you are an insured. Your members and managers are also insureds.
4. An organization other than a partnership, joint venture or limited liability company, you are an insured. Your "executive officers" and directors are also insureds.

**B.** Your "employees" are also insureds, unless otherwise excluded in this policy.

**C.** Your former "employees" are also insureds, unless otherwise excluded in this policy, but only with respect to "wrongful acts" committed while in your employ.

**D.** Any organization you newly acquire or form, other than a partnership, joint venture or limited liability company, and over which you maintain ownership or majority interest, will qualify as a Named Insured if no other similar insurance applies to that organization. You must notify us of such acquisition or formation as soon as practicable. However, coverage under this provision:

1. Is afforded only until the 90th day after you acquire or form the organization, or until the end of the policy period, whichever is earlier; and
2. Does not apply to a "wrongful act" committed before you acquired or formed the organization.

No person or organization is an insured with respect to the conduct of any current or past partnership, joint venture or limited liability company that is not shown as a Named Insured in the Declarations.

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### Example 2

**Insured(s)** means the Organization shown in the Declarations and any Insured Person.

**Insured Person** means former, current or those who shall become:

- Full time, part-time, temporary, leased or seasonal employees but only while acting in his or her capacity as such for the insured organization;
- Volunteers but only while acting in his or her capacity as such for the insured organization;
- Director, officer, trustee, committee members but only while acting in his or her capacity as such for the insured organization;
- An Independent Contractor but only while working for the insured organization and only if there is a written contract to indemnify the Independent Contractor for liability arising from any covered wrongful act.

## Named insured organization indicated on the Declarations

- Often referred to as entity coverage
- May not automatically include newly acquired or newly formed organizations
- Unlike the CGL Policy, insured status may not expand to the spouse of a named individual or to the spouse of a partner or member

### Example

#### Spousal Liability

Liability extends to the Insured Person's lawful spouse only if the claimant seeks such spouse's ownership interest in property which the claimant seeks as recovery for alleged Wrongful Employment Acts of the Insured Person. However, liability coverage does not apply to any Claim alleging any wrongful act or omission by the Insured Person's spouse.

## Insured persons

- Directors, officers, trustees of the organization

#### BEWARE!

Look for any limitations

- Employees

#### BEWARE!

Even though employees are listed as insured persons, look to the policy definition to see who qualifies as an employee

- May be broad enough to include wrongful acts made by part-time or seasonal employees
- May include wrongful acts made by former employees or it may be limited to only current and/or future employees
- May include wrongful acts made by leased employees and temporary workers

#### Note:

Employees as insureds is important because of common law tort/statute and, to a more limited degree, federal law. This ties in with earlier material in the outline. Many employers/employees believe there is no individual liability since many federal laws limit exposure to the employer.

- A volunteer or an intern may or may not be listed as an insured person but may be included in the definition of employee

Example 1: No mention of volunteers. Does not include independent contractors.

"Employee" includes a "leased worker" and a "temporary worker" but does not include an independent contractor.

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Example 2: Does not include independent contractors.

"Employee" includes part-time, seasonal, leased and temporary employee, intern or volunteer. Employee does not include any Independent Contractor.

Example 3: Includes independent contractors subject to applicable law.

"Employee" includes volunteers, past, present, prospective, part-time, temporary, seasonal, contract and leased employees. Employee also means any independent contractor who is considered an employee under applicable law as an employee of the Company.

- Independent contractors may or may not be listed as an insured person, but may be included in the definition of employee
  - Even if included as an insured person or in the definition of employee, beware of any limitations that may apply

**Note:**

Some EPLI Policies may limit employee status to leased workers or independent contractors pursuant to a written contract that requires indemnification of such individuals.

**TIP**

There are some "portfolio" type policies that consist of a coverage part for Directors And Officers Liability Insurance and a separate coverage part for Employment Practices Liability Insurance.

A Directors And Officers Liability Policy that allows Employment Related Practice Coverage by endorsement is different than a "portfolio" policy. When an endorsement is added to a Directors And Officers Liability Policy, it is necessary to also have entity coverage. This is because the trigger for coverage for directors and officers is that the entity must also be named in the suit and respond simultaneously.

## Third Party Liability

2

EPLI Policies are typically written to provide coverage for claims filed by employees (or by job applicants) against the organization named in the Declarations because of an employment-related incident.

However, coverage may **NOT** apply to a claim against the named insured, and/or the named insured's employees, by a third party. These third parties typically involve individuals that the business or business's employees have contact with, such as customers, clients, vendors, independent contractors, volunteers or other non-employees.

Some EPLI Policies provide this coverage by endorsement while the majority of coverage forms have a separate insuring agreement for third party liability.

Coverage may be limited to only certain types of third parties and not all third parties.

### Beware!

Coverage may be limited to certain wrongful acts such as discrimination and/or harassment claims

#### Example 1

##### Insuring Agreements

- B. We will pay those sums the insured becomes legally obligated to pay as damages resulting from a Third Party Claim, as defined, to which this insurance applies.

#### Example 2

##### Insuring Clauses

2. If Third Party Liability Coverage is shown on the Declarations, then we shall pay on behalf of the insureds on account of any Third Party Claim for a covered Third Party Wrongful Act.

Third party means a customer, vendor, or other business invitee of the insured.

#### Example 3

##### Insuring Agreements

2. The Company will pay on behalf of the **Insured**, damages because of a **Third Party Claim**, but only if Third Party Liability Coverage is purchased and shown in the Declarations.

Third party means a customer or client of the insured organization.

**LIABILITY TO YOUR CUSTOMERS AND CLIENTS**

- A. The following is added to Paragraph A. of Section VII – Definitions:

"Claim" also means a "suit" or demand made by or for a customer or client for damages because of an alleged "wrongful act".

- B. The following is added to Paragraph J. of Section VII – Definitions:

"Wrongful act" also means verbal, physical, mental or emotional abuse arising out of "discrimination" against a customer or client by any insured.

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**LIABILITY TO INDEPENDENT CONTRACTORS**

- A. The following is added to Paragraph A. of Section VII – Definitions:

"Claim" also means a "suit" or demand made by or for an independent contractor for damages because of an alleged "wrongful act".

- B. The following is added to Paragraph J. of Section VII – Definitions:

"Wrongful act" also means verbal, physical, mental or emotional abuse arising out of "discrimination" against an independent contractor by any insured.

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**LIABILITY TO VOLUNTEERS**

- A. The following is added to Paragraph A. of Section VII – Definitions:

"Claim" also means a "suit" or demand made by or for a volunteer for damages because of an alleged "wrongful act".

- B. The following is added to Paragraph J. of Section VII – Definitions:

"Wrongful act" also means verbal, physical, mental or emotional abuse arising out of "discrimination" against a volunteer by any insured.

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**LIABILITY TO NON-EMPLOYEES**

- A. The following is added to Paragraph A. of Section VII – Definitions:

"Claim" also means a "suit" or demand made by or for a non-"employee" for damages because of an alleged "wrongful act".

- B. The following is added to Paragraph J. of Section VII – Definitions:

"Wrongful act" also means verbal, physical, mental or emotional abuse arising out of "discrimination" or harassment against a non-"employee" by any insured in the course of that insured's work for you.

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## Wrongful Acts

2

**Many of today's EPLI Policies provide coverage for a broad range of wrongful acts**

### Example 1

#### Insuring Clauses

1. We will pay on behalf of the **Insured** all **Loss** for which the **Insured** becomes legally obligated to pay on account of any **Claim** because of a **Wrongful Employment Act**.

### Example 2

#### Insuring Agreements

1. The Company will pay on behalf of the **Insured**, damages resulting from **Claims** made against the **insured** pursuant to the terms of the Policy, for an **Employment Practice Act**.

**Terminology within an Insuring Agreement varies by insurer.** Wrongful acts may be referred to as an Employment Practice Wrongful Act, Employment Offense, Insured Event, Covered Offense, etc.

**It is crucial to see what is included in the definition to determine what is included as a covered "wrongful act"**

### Example 1

**Employment Practice Wrongful Act** means one or more of the following, but only if committed, attempted or allegedly committed by an Insured Person

- Discrimination
- Sexual Harassment
- Retaliation
- Wrongful termination

- Some definitions may be very limited but almost all EPLI Policies cover at least discrimination, wrongful termination, sexual harassment and retaliation

#### **BEWARE!**

Some EPLI Policies may or may not define each of these wrongful acts

Example 2

**Wrongful Employment Practice** means any actual or alleged:

- Breach of employment contract
- Deprivation of career opportunities, denial of seniority,
- Discrimination
- Employment-related misrepresentation
- Failure to grant tenure
- Libel, slander, invasion of privacy, defamation or humiliation that is employment related
- Negligent hiring, supervision of others, or training of employees which results in any of the other offenses listed in this definition
- Retaliation
- Sexual or workplace harassment
- Violation of the Family Medical Leave Act
- Workplace tort
- Wrongful demotion, discipline, termination including constructive discharge

Example 3: ISO

- J. "Wrongful act" means one or more of the following offenses, but only when they are employment-related:
1. Wrongful demotion or failure to promote, negative evaluation, reassignment or discipline of your current "employee" or wrongful refusal to employ;
  2. Wrongful termination, meaning the actual or constructive termination of an "employee":
    - a. In violation or breach of applicable law or public policy; or
    - b. Which is determined to be in violation of a contract or agreement, other than any employment contract or agreement, whether written, oral or implied, which stipulates financial consideration if such financial consideration is due as the result of a breach of the contract;
  3. Wrongful denial of training, wrongful deprivation of career opportunity or breach of employment contract;
  4. Negligent hiring or supervision which results in any of the other offenses listed in this definition;
  5. Retaliatory action against an "employee" because the "employee" has:
    - a. Declined to perform an illegal or unethical act;
    - b. Filed a complaint with a governmental authority or a "suit" against you or any other insured in which damages are claimed;
    - c. Testified against you or any other insured at a legal proceeding; or
    - d. Notified a proper authority of any aspect of your business operation which is illegal;
  6. Coercing an "employee" to commit an unlawful act or omission within the scope of that person's employment;
  7. Harassment;
  8. Libel, slander, invasion of privacy, defamation or humiliation; or
  9. Verbal, physical, mental or emotional abuse arising from "discrimination".

**Some definitions of wrongful acts include other words/phrases that have their own definitions**

- Harassment
  - Some definitions of workplace harassment include both sexual and non-sexual harassment

**Example**

**Harassment** means workplace harassment and sexual harassment.

- Workplace harassment includes harassment of a non-sexual nature that interferes with performance or that creates an intimidating, abusive, offensive or hostile working environment within the insured's organization.
- Sexual harassment includes any actual or alleged unwelcome sexual advances, requests for sexual favors or any other conduct of a sexual nature that is made as a condition for employment, promotion, bonuses or salary increases or which create an intimidating, or offensive work environment within the insured's organization.

- Some definitions of wrongful acts include harassment but limit it to that of a sexual nature

**Example**

"Sexual harassment" includes any actual or alleged unwelcome sexual advances, requests for sexual favors or any other conduct of a sexual nature that is made a term or condition for employment or advancement.

- Workplace torts

**Example**

Workplace tort means actual or alleged defamation including libel and slander, invasion of privacy, wrongful infliction of emotional distress, mental anguish, or humiliation. It also includes negligent evaluation, wrongful discipline or deprivation of career opportunities; negligent hiring or training, retentions, or supervision.

- Some policies are broad enough to include workplace torts as a wrongful act. However, it is important to review the definition to see what is included as a workplace tort.

**BEWARE!**

Some EPLI Policies do NOT provide coverage for any type of workplace torts

## Exclusions

Exclusions vary from policy to policy. Selected exclusions for discussion:

### B. Exclusions

This insurance does not apply to:

#### 1. Criminal, Fraudulent Or Malicious Acts

An insured's liability arising out of criminal, fraudulent or malicious acts or omissions by that insured.

This exclusion does not affect our duty to defend, in accordance with Paragraph **A.1.** above, an insured prior to determining, through the appropriate legal processes, that that insured is responsible for a criminal, fraudulent or malicious act or omission.

#### 2. Contractual Liability

Any "wrongful act" for which the insured is obligated to pay damages by reason of the assumption of liability in a contract or agreement. This exclusion does not apply to liability for damages that the insured would have in the absence of the contract or agreement.

#### 3. Workers' Compensation And Similar Laws

Any obligation of the insured under a workers' compensation, disability benefits or unemployment compensation law or any similar law.

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1. All EPLI Policies exclude criminal, fraudulent, or malicious acts but almost all promise to defend until the issue has been adjudicated
2. Contractual liability unless the liability exists in the absence of the contract or agreement
3. Workers compensation, unemployment compensation, disability benefits and similar laws
  - Separate insurance protection available

## B. Exclusions

This insurance does not apply to:

### 4. Violation Of Laws Applicable To Employers

A violation of your responsibilities or duties required by any other federal, state or local statutes, rules or regulations, and any rules or regulations promulgated therefor or amendments thereto, except for the following, and including amendments thereto: Title VII of the Civil Rights Act of 1964, the Americans With Disabilities Act, the Age Discrimination in Employment Act, the Equal Pay Act, the Pregnancy Discrimination Act of 1978, the Immigration Reform and Control Act of 1986, the Family and Medical Leave Act of 1993 and the Genetic Information Nondiscrimination Act of 2008 or any other similar state or local statutes, rules or regulations to the extent that they prescribe responsibilities or duties concerning the same acts or omissions.

However, this insurance does not apply to a "wrongful act" arising out of your failure to comply with any of the accommodations for the disabled required of you by, or any expenses incurred as the result of physical modifications made to accommodate any person pursuant to, the Americans With Disabilities Act, or any amendments thereto, or any similar state or local statutes, rules or regulations to the extent that they prescribe responsibilities or duties concerning the same acts or omissions.

This Exclusion 4. does not apply to any "claim" for retaliatory treatment by an insured against any person making a "claim" pursuant to such person's rights under any statutes, rules or regulations.

### 5. Strikes And Lockouts

Any "wrongful act" committed against any striking or locked-out "employee", or to an "employee" who has been temporarily or permanently replaced due to any labor dispute.

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## 4. Violations of certain federal acts

### *Example:*

*The policy will not pay for the named insured's non-compliance with building codes, such as installing handicapped access ramps but would cover any claim filed by a handicapped individual for discrimination*

## 5. Strikes And Lockouts

- Business risk that is not provided insurance protection

**6. Prior Or Pending Litigation**

Any "claim" or "suit" against any insured which was pending on, or existed prior to, the applicable Pending or Prior Litigation Date shown in the Declarations, or any "claim" or "suit" arising out of the same or substantially the same facts, circumstances or allegations which are the subject of, or the basis for, such "claim" or "suit".

**7. Prior Notice**

Any "wrongful act" alleged or contained in any "claim" which has been reported, or for which, in any circumstance, notice has been given, under any other prior insurance policy providing essentially the same type of coverage.

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- 6. Prior Or Pending Litigation – insured knew of the claim potential
- 7. Prior events or activities – limited to prior policy provisions
- 8. May include an exclusion for violation of employees' rights to engage in collective bargaining

**Example**

Violation of any federal, state or local statutory law that violates:

- a) The rights of employees to engage in, or to refrain from engaging in, union or other collective activities,
- b) Enforcement of any collective bargaining agreement,
- c) Any similar rights or duties.

9. May include an exclusion for wage and hour violations

Example

Violation of any federal, state or local statutory law that violates wage, hour, and payroll practices and procedures including but not limited to minimum wage, overtime, classification of persons for compensation purposes, garnishments or other withholdings

- Increase in claims associated with wage and hour violations

*Examples:*

*Exempt vs. nonexempt employee status*

*Employee vs. independent contractor status*

*Minimum wage and overtime*

*Other types of compensation-related claims*

- Some insurers may provide coverage by endorsement
  - These endorsements are for defense only and not for the indemnity portion of any claim
  - Subject to a sublimit



## Knowledge Check 2

1. Insureds under an EPLI Policy are the same as under a Commercial General Liability Policy. True or False?
2. A typical EPLI Policy will pay a claim made by an employee or job applicant against the insured employer
  - a. Because of any legal liable obligation owed to the insured.
  - b. Because of a wrongful act as defined in the EPLI Policy.
  - c. Because of any wrongful act in violation of federal statute
3. Which of the following accurately describes a third party liability claim filed against the insured employer?
  - a. A claim is filed by an employee of the named insured alleging sexual harassment committed by a vendor.
  - b. A claim is filed by a vendor against the named insured alleging sexual harassment committed by the named insured's employee
4. If an EPLI Policy includes discrimination as a wrongful act, this means that the named insured automatically has coverage for a discrimination claim made by a customer against the named insured or the named insured's employee. True or False?
5. EPLI Policies automatically include workplace torts as a wrongful act. True or False?



## Learning Objective 3:

Using knowledge of the defense provisions found in EPLI Policies, including:

- Duty to defend
- Right to investigate and settle
- Defense costs/expenses
- Definitions of claim, loss, and coverage territory

the participant will be prepared to explain to a client the scope of defense coverage provided to a covered person/organization under an EPLI Policy.

Example 1: ISO

### A. Insuring Agreement

1. We will pay those sums the insured becomes legally obligated to pay as damages resulting from a "wrongful act" to which this insurance applies. We will have the right and duty to defend the insured against any "suit" seeking those damages. However, we will have no duty to defend the insured against any "suit" seeking damages because of a "wrongful act" to which this insurance does not apply. ....

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Example 2

The Insurance Company will have the right and duty to defend any claim or suit seeking damages. This coverage shall apply even if the allegations are groundless, false or fraudulent.

**Most EPLI insuring agreements include a right and duty to defend**

- Some policies clarify that defense will be provided even if an allegation is groundless, false or fraudulent

**No duty to defend if a wrongful act is not covered**

Example: ISO

**If You Are Permitted To Select Defense Counsel**

If, by mutual agreement or court order, the insured is given the right to select defense counsel and the Limit of Insurance has not been used up, the following provisions apply:

1. We retain the right, at our discretion, to:
  - a. Settle, approve or disapprove the settlement of any "claim"; and
  - b. Appeal any judgment, award or ruling at our expense.
2. You and any other involved insured must:
  - a. Continue to comply with Section V – Paragraph C. Duties In The Event Of A Claim Or Wrongful Act That May Result In A Claim Condition as well as the other provisions of this policy; and
  - b. Direct defense counsel of the insured to:
    - (1) Furnish us with the information we may request to evaluate those "suits" for coverage under this policy; and
    - (2) Cooperate with any counsel we may select to monitor or associate in the defense of those "suits".
3. If we defend you under a reservation of rights, both your and our counsel will be required to maintain records pertinent to your "defense expenses". These records will be used to determine the allocation of any "defense expenses" for which you may be solely responsible, including defense of an allegation not covered by this insurance.

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**Some EPLI Policies give the Insured the right to select defense counsel under certain conditions**

**The insurer typically has the right to investigate and settle, not the insured**

Example 1: ISO

**A. Insuring Agreement**

1. We will pay those sums ...

We may, at our discretion, investigate any incident that may result from a "wrongful act". We may, with your written consent, settle any "claim" that may result. But:

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Example 2

The Insured shall not settle any claim, incur any defense costs or assume any contractual obligation or admit any liability without the insurance company's written consent.

- Some may allow the insured person to settle but only with the insurer's written consent

## The cost of defense is usually included within the Limit of Insurance

Example: ISO

### A. Insuring Agreement

1. We will pay... But:
  - a. The amount we will pay for damages and "defense expenses" is limited as described in Section III – Limit Of Insurance and in Section IV – Deductible; and

### SECTION III – LIMIT OF INSURANCE

#### B. The Limit of Insurance is the most we will pay for the sum of:

1. All damages; and
2. All "defense expenses"  
because of all "wrongful acts" to which this insurance applies.

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## Defense expenses typically are in excess of the deductible or retention amount shown in the Declarations

Example 1: ISO

### SECTION IV – DEDUCTIBLE

- A. We will not pay for our share of damages and "defense expenses" until the amount of damages and "defense expenses" exceeds the Deductible shown in the Declarations. We will then pay the amount of damages and "defense expenses" in excess of the Deductible, up to the limit of insurance.

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Example 2

Defense costs shall apply only in excess of the applicable Retention Amount shown on the Declarations.

## Duty ends when limits have been exhausted by payment of defense expenses, judgments or settlements

Example: ISO

### A. Insuring Agreement

1. We will pay... But: ...
  - b. The coverage and duty to defend provided by this policy will end when we have used up the applicable limit of insurance for "defense expenses" or the payment of judgments or settlements.

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## Definition of “defense expenses”

### Example 1: ISO

- C. "Defense expenses" means payments allocated to a specific "claim" we investigate, settle or defend, for its investigation, settlement or defense, including:
1. Fees and salaries of attorneys and paralegals we retain, including attorneys and paralegals who are our "employees".
  2. Fees of attorneys the insured retains when, by our mutual agreement or court order (or when required by administrative hearing or proceeding), the insured is given the right to retain defense counsel to defend against a "claim".
  3. All other litigation or administrative hearing expenses, including fees or expenses of expert witnesses hired either by us or by the defense attorney retained by an insured.
  4. Reasonable expenses incurred by the insured at our request to assist us in the investigation or defense of the "claim", including actual loss of earnings up to \$250 a day because of time off from work.
  5. Costs taxed against the insured in the "suit".
- "Defense expenses" does not include salaries and expenses of our "employees" or the insured's "employees" (other than those described in Paragraphs **1.** and **4.** above).

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### Example 2

Defense costs means payments incurred in defending, opposing or appealing any claim, including any reasonable costs, charges, and attorney fees, and the cost for appeal, attachment or similar bonds. Defense costs does not include wages, salaries, fees, benefits of the employees of the Insured Organization.

- Defense expenses are typically those costs incurred to investigate, defend, or settle a claim
- Defense expenses do not include insurer or insured internal claims handling expenses

## Other Key Words or Phrases Defined

2

### Example 1: ISO

#### A. Insuring Agreement

1. ... We will have the right and duty to defend the insured against any "suit" seeking those damages. We may, with your written consent, settle any "claim" that may result.

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### “Claim”

### Example 1: ISO

#### SECTION VII – DEFINITIONS

- A. "Claim" means a "suit" or demand made by or for a current, former or prospective "employee" for damages because of an alleged "wrongful act".
- H. "Suit" means a civil proceeding in which damages because of a "wrongful act" to which this insurance applies are alleged, including:
1. An arbitration proceeding in which such damages are claimed and to which the insured must submit or does submit with our consent;
  2. Any other alternative dispute resolution proceeding in which such damages are claimed and to which the insured submits with our consent; or
  3. Any administrative proceeding or hearing conducted by a governmental agency (federal, state or local) having the proper legal authority over the matter in which such damages are claimed.

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### Example 2

#### Employment Claim means

- A written demand for monetary relief; or
- A written demand for reinstatement or re-employment; or
- A civil proceeding ...or
- An arbitration proceeding ... or
- A formal administrative, regulatory proceeding commenced by the Insured's receipt of a notice of charge including but not limited to any such proceeding by or in association with Equal Employment Opportunity Commission or any other similar governmental agency. The claim shall be limited to the Notice of Violation or Order to Show Cause or written demand for monetary damages or injunctive relief.

Claim does not include any labor or grievance proceeding which is subject to a collective bargaining agreement.

**Note:**

Since defense coverage only applies to a “claim” resulting from a wrongful act, it is important that the definition of claim be as broad as possible.

- A demand for monetary relief or non-monetary relief
- May require a written demand
- Civil proceeding
- Arbitration proceedings
- Alternative dispute resolution
- Administrative or regulatory proceedings

**“Loss”**

**Example 1**

Loss means the total sum which any Insured becomes legally obligated to pay as a result of any claim made against any Insured for Wrongful Acts, including but not limited to judgments, settlements, pre-judgment and post-judgment interests and defense costs.

**Example 2**

Loss means the total sum which any Insured becomes legally obligated to pay as a result of any claim made against any Insured for Wrongful Acts, including but not limited to

- Damages (including punitive or exemplary damages)
- Judgments and settlements,
- Pre-judgment and post-judgment interests;
- Defense Costs;
- Salary, wages, and bonus compensation, including back pay and front pay;
- Statutory attorneys’ fees

Loss does not include employment-related benefits, injunctive relief, or other non-monetary relief, fines or penalties, taxes....

- Typically includes judgments and settlements, defense costs
- May include pre-judgment or post-judgment interest
- May include punitive or exemplary damages
- May include other items

### **“Coverage territory”**

- Coverage typically applies only if the wrongful act takes place in the coverage territory

#### Example 1

##### **A. Insuring Agreement**

...

2. This insurance applies to "wrongful acts" only if:
  - a. The "wrongful act" takes place in the "coverage territory";

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#### Example 2

Coverage under this policy shall apply to Claim made and Wrongful Acts occurring anywhere in the world.

- Definition of “coverage territory” varies

#### **BEWARE!**

There may be limitations as to where the suit must be filed

#### Example 1

##### **B. "Coverage territory" means:**

1. The United States of America (including its territories or possessions) and Puerto Rico; or
2. All parts of the world if the insured's responsibility to pay damages is determined in a "suit" on the merits brought in the territory described in Paragraph 1. above or in a settlement we agree to.

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#### Example 2

##### **TERRITORY**

Liability applies to wrongful acts, as defined, occurring anywhere in the world.

## Limit of Insurance

### Learning Objective 4:

Using knowledge of selected provisions, including:

- Limit of Insurance, Deductibles, and Coinsurance and Co-Payment Provisions
- Selected Conditions

the participant will be prepared to explain to a client the extent of coverage provided in a claim situation and the conditions that impact an insured's rights under an EPLI Policy.

The Limit of Insurance shown in the Declarations is typically the most paid for all damages **AND** all defense costs

#### SECTION III – LIMIT OF INSURANCE

- A. The Limit of Insurance shown in the Declarations and the rules below fix the most we will pay regardless of the number of:
1. Insureds;
  2. "Claims" made or "suits" brought; or
  3. Persons, organizations or government agencies making "claims" or bringing "suits".
- B. The Limit of Insurance is the most we will pay for the sum of:
1. All damages; and
  2. All "defense expenses"
- because of all "wrongful acts" to which this insurance applies.

The Limit of Insurance of this Coverage Part applies separately to each consecutive annual period and to any remaining period of less than 12 months, starting with the beginning of the policy period shown in the Declarations, unless the policy period is extended after issuance for an additional period of less than 12 months. In that case, the additional period will be deemed part of the last preceding period for purposes of determining the Limit of Insurance.

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#### EMPLOYMENT-RELATED PRACTICES LIABILITY DECLARATIONS

*(Partial copy)*

Policy Period	
From:	
To:	12:01 A.M. at your mailing address shown above.

IN RETURN FOR THE PAYMENT OF THE PREMIUM, AND SUBJECT TO ALL THE TERMS OF THIS POLICY, WE AGREE WITH YOU TO PROVIDE THE INSURANCE AS STATED IN THIS POLICY.

Limit Of Insurance	Deductible Amount
\$	\$

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## Deductible

2

### SECTION IV – DEDUCTIBLE

- A. We will not pay for our share of damages and "defense expenses" until the amount of damages and "defense expenses" exceeds the Deductible shown in the Declarations. We will then pay the amount of damages and "defense expenses" in excess of the Deductible, up to the limit of insurance.  
(see the Coverage Form for examples)
- B. The Deductible amount shown in the Declarations applies to all "claims" arising out of:
1. The same "wrongful acts"; or
  2. A series of incidents, circumstances or behaviors which arise from a common cause regardless of the number of persons, organizations or government agencies making such "claims".
- C. We may pay any part or all of the Deductible amount to effect settlement of any "claim" and, upon notification of the action taken, you shall promptly reimburse us for such part of the Deductible amount as has been paid by us.

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**Deductible amount indicated may apply to all claims arising out of the same wrongful act**

**Insurer may pay – named insured has obligation to reimburse**

## Coinsurance

**May or may not include a coinsurance or co-payments provisions**

Example

### Coinsurance Provision

Excess the applicable deductible amount, the insured shall be responsible for that percent of all such Loss specified as the Coinsurance Percent indicated in the Declarations.

Example – partial copy

<b>Limit of Liability</b>	
Each Claim:	
Each Policy Period	
Retention Amount:	
Coinsurance Percent:	

**Note:** Limits of Liability and any Retention are reduced or can be exhausted by Defense Costs.

**Used to encourage loss control**

**Usually 5% to 10% of the claim**

## Conditions

*Conditions vary by policy (selected conditions for discussion)*

### **Duties In The Event Of A Claim Or Wrongful Act That May Result In A Claim**

#### **Duties In The Event Of A Claim Or Wrongful Act That May Result In A Claim**

1. If a "claim" is received by any insured, you must:
  - a. Immediately record the specifics of the "claim" and the date received; and
  - b. Notify us, in writing, as soon as practicable.
2. You and any other involved insured must:
  - a. Immediately send us copies of any demands, notices, summonses or legal papers received in connection with the "claim";
  - b. Authorize us to obtain records and other information;
  - c. Cooperate with us in the investigation or settlement of the "claim" or defense against the "suit"; and
  - d. Assist us, upon our request, in the enforcement of any right against any person or organization which may be liable to the insured because of a "wrongful act" to which this insurance may also apply.
3. No insured will, except at that insured's own cost, voluntarily make a payment, assume any obligation, or incur any expense without our written consent.
4. If you become aware of a "wrongful act" that may reasonably be expected to give rise to a "claim" and for which a "claim" has not yet been received, you must notify us, in writing, as soon as practicable. Such notice must provide:
  - a. A description of the "wrongful act", including all relevant dates;
  - b. The names of the persons involved in the "wrongful act", including names of the potential claimants;
  - c. Particulars as to the reasons why you became aware of and reasonably expect a "claim" which may result from such "wrongful act";
  - d. The nature of the alleged or potential damages arising from such "wrongful act"; and
  - e. The circumstances by which the insured first became aware of the "wrongful act".

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#### **BEWARE!**

Many non-ISO EPLI Policies require a claim either to be reported to the insurer during the policy period in which the claim is made or no later than 30 or 60 days after the policy has expired. Failure to meet this condition can result in a denial of coverage to the insured.

## Consent To Settle

2

### Consent To Settle

If we recommend a settlement to you which is acceptable to the claimant, but to which you do not consent, the most we will pay as damages in the event of any later settlement or judgment is the amount for which the "claim" could have been settled, to which you did not give consent, less any deductible.

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- Commonly called a "hammer clause"
- Some policies may have provisions that are "softer" in application

## Transfer Of Duties When Limit Of Insurance Is Used Up

### Transfer Of Duties When Limit Of Insurance Is Used Up

1. If we conclude that, based on "claims" which have been reported to us and to which this insurance may apply, the Limit of Insurance is likely to be used up in the payment of judgments or settlements for damages or the payment of "defense expenses", we will notify the first Named Insured, in writing, to that effect.
2. When the Limit of Insurance has actually been used up in the payment of judgments or settlements for damages or the payment of "defense expenses", we will:
  - a. Notify the first Named Insured in writing, as soon as practicable, that such a limit has actually been used up, and that our duty to defend the insured against "suits" seeking damages subject to that limit has also ended;
  - b. Initiate, and cooperate in, the transfer of control, to any appropriate insured, of all "suits" for which the duty to defend has ended for the reason described in Paragraph 2.a. above and which are reported to us before that duty to defend ended; and
  - c. Take such steps, as we deem appropriate, to avoid a default in, or continue the defense of, such "suits" until such transfer is completed, provided the appropriate insured is cooperating in completing such transfer.
3. When 2.a. above has occurred, the first Named Insured, and any other insured involved in a "suit" seeking damages subject to that limit, must:
  - a. Cooperate in the transfer of control of "suits"; and
  - b. Arrange for the defense of such "suit" within such time period as agreed to between the appropriate insured and us. Absent any such agreement, arrangements for the defense of such "suit" must be made as soon as practicable.
4. We will take no action with respect to defense for any "claim" if such "claim" is reported to us after the applicable limit of insurance has been used up. It becomes the responsibility of the first Named Insured, and any other insured involved in such a "claim", to arrange defense for such "claim".
5. The first Named Insured will reimburse us as soon as practicable for expenses we incur in taking those steps we deem appropriate in accordance with Paragraph 2. above.
6. The exhaustion of the applicable limit of insurance and the resulting end of our duty to defend will not be affected by our failure to comply with any of the provisions of this Condition.

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Partial copy of pages 5-6

- Outlines how claim will be transferred from insurer to insured when limit of insurance has been exhausted

## Representations & Separation Of Insureds

### Example 1

#### G. Representations

By accepting this policy, you agree that:

1. The statements in the Declarations are accurate and complete;
2. Those statements are based upon representations you made to us; and
3. We have issued this policy in reliance upon your representations.

#### H. Separation Of Insureds

Except with respect to the Limit of Insurance, and any rights or duties specifically assigned in this policy to the first Named Insured, this insurance applies:

1. As if each Named Insured were the only Named Insured; and
2. Separately to each insured against whom "claim" is made.

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### Example 2

#### Representation and Severability

In granting coverage to the Insureds, the insurer has relied upon the declarations, representations and warranties in the written application for this policy and...

All such declarations, representations and warranties are the basis of coverage and shall be considered as incorporated in and constituting a part of this policy.

Such application for coverage shall be constituted as a separate application for coverage by each of the Insured Persons. No knowledge possessed by an Insured Person shall be imputed to any other Insured Person.

If such application contains any misrepresentations... then no coverage shall be afforded for any Claim or Suit based upon, arising from or in consequence of such misrepresentation...

- Coverage is provided based on information in the application
- Such application typically is incorporated and considered a part of the EPLI Policy
- EPLI applications may include warranty statements
- Important as to how false statements or intentional omissions of one insured will affect coverage for other insureds, including the entity

*Example of a warranty statement in an application*

**NOTICE TO APPLICANT – PLEASE READ CAREFULLY**

FOR THE PURPOSE OF THIS APPLICATION, THE UNDERSIGNED WARRANTS THAT TO THE BEST OF HIS/HER KNOWLEDGE THE STATEMENTS HEREIN ARE TRUE AND COMPLETE. THE INSURER IS AUTHORIZED TO MAKE ANY INQUIRY IN CONNECTION WITH THIS APPLICATION. SIGNING THIS APPLICATION DOES NOT BIND THE INSURER TO ISSUE, OR THE APPLICANT TO PURCHASE, ANY INSURANCE POLICY.

THE INFORMATION CONTAINED IN AND SUBMITTED WITH THIS APPLICATION IS ON FILE WITH THE INSURER. THIS APPLICATION WILL BECOME A PART OF SUCH POLICY, IF ISSUED. THE INSURER WILL HAVE RELIED UPON THIS APPLICATION AND ATTACHMENTS IN ISSUING THIS POLICY. IN THE EVENT THAT THE APPLICATION CONTAINS ANY MISREPRESENTATION OR MISSTATEMENT OF A MATERIAL FACT, THIS POLICY SHALL NOT AFFORD COVERAGE TO ANY INSURED WHO KNEW OF SUCH MISREPRESENTATION OR MISSTATEMENT.

IF THE INFORMATION IN THIS APPLICATION MATERIALLY CHANGES PRIOR TO THE EFFECTIVE DATE OF THE POLICY, THE APPLICANT MUST PROVIDE WRITTEN NOTIFICATION TO THE INSURER, WHO MAY MODIFY OR WITHDRAW THE QUOTATION.

THE UNDERSIGNED FURTHER AGREES TO AUTHORIZE THE RELEASE OF ANY AND ALL INFORMATION IN THIS APPLICATION TO A LOSS CONTROL PROVIDER THAT PROVIDES LOSS CONTROL SERVICES TO THE INSURER AND TO COMPLY WITH THE TERMS AND CONDITIONS OF THOSE LOSS CONTROL SERVICES.

THE UNDERSIGNED DECLARES THAT THE INDIVIDUALS AND ORGANIZATIONS PROPOSED FOR THIS INSURANCE HAVE BEEN NOTIFIED THAT:

- A. THIS POLICY APPLIES ONLY TO CLAIMS FIRST MADE OR DEEMED MADE AGAINST THE INSURED DURING THE POLICY PERIOD OR ANY EXTENDED REPORTING PERIOD, IF APPLICABLE; AND
- B. THE LIMIT OF LIABILITY IS REDUCED BY AMOUNTS INCURRED AS DAMAGES AND SUCH EXPENSES WILL BE SUBJECT TO THE DEDUCTIBLE AND/OR CO-PAYMENT AMOUNT.



## Knowledge Check 3

1. Under an unendorsed EPLI Policy, which is an accurate statement?
  - a. Defense costs are typically inside the limit of liability
  - b. Defense costs are typically in addition to the limit of liability
  
2. The named insured knows about a pending claim for a wrongful act committed during a prior EPLI policy period. Will an unendorsed EPLI Policy that is in effect at the time that judgment is awarded in a later policy period with a different insurer respond? Yes or No?
  
3. The insurer offers a claimant an amount of \$100,000 to settle a workplace tort which the claimant finds acceptable. The insured does not consent to this amount and wants to either renegotiate or go to trial. A judgment is later awarded in the amount of \$250,000. Assuming there are sufficient limits of liability, what is the most that the insurer will pay according to the typical Consent to Settle Provision?
  - a. \$100,000, less any deductible
  - b. \$250,000, less any deductible
  
4. An unendorsed EPLI Policy typically covers all types of violation of statutes including disputes about exempt vs. nonexempt status. True or False?

## Review of Learning Objectives

1. Using knowledge of the various sources of liability exposures that may result in employment-related claims, including:

- Workplace torts
- Breach of contracts
- Violation of statutes

the participant will be able to explain the need for Employment Practices Liability (EPLI) Insurance to a client.

2. Using knowledge of the common characteristics found in EPLI Policies, including:

- Key Elements of an Insuring Agreement
- Who Is An Insured
- Third Party Liability
- Wrongful Acts
- Exclusions

the participant will be prepared to describe the applicable insurance coverage and the person or organization who has insured status and to identify what endorsements may be needed to modify coverage.

3. Using knowledge of the defense provisions found in EPLI Policies, including:

- Duty to defend
- Right to investigate and settle
- Defense costs/expenses
- Definitions of claim, loss, and coverage territory

the participant will be prepared to explain to a client the scope of defense coverage provided to a covered person/organization under an EPLI Policy.

4. Using knowledge of selected provisions, including:

- Limits of Insurance, Deductibles, and Coinsurance and Co-Payment Provisions
- Selected Conditions

the participant will be prepared to explain to a client the extent of coverage provided in a claim situation and the conditions that impact an insured's rights under an EPLI Policy.



## Knowledge Check 1

1. Many federal statutes do not apply to small employers; therefore, these small employers are protected from EPLI claims alleging workplace torts. True or False?

**False**

2. A workplace tort can be based on:

**c. Both a and b**

3. EPLI claims can be filed against an employer for breach of written contracts, but not implied contracts. True or False?

**False**

4. Discrimination is the only unlawful employment practice prohibited by federal law. True or False?

**False**





## Knowledge Check 2

1. Insureds under an EPLI Policy are the same as under a Commercial General Liability Policy. True or False?

**False**

2. A typical EPLI Policy will pay a claim made by an employee or job applicant against the insured employer

**b. Because of a wrongful act as defined in the EPLI Policy.**

3. Which of the following accurately describes a third party liability claim filed against the insured employer?

**b. A claim is filed by a vendor against the named insured alleging sexual harassment committed by the named insured's employee**

4. If an EPLI Policy includes discrimination as a wrongful act, this means that the named insured automatically has coverage for a discrimination claim made by a customer against the named insured or the named insured's employee. True or False?

**False**

5. EPLI Policies automatically include workplace torts as a wrongful act. True or False?

**False**



## Knowledge Check 3

1. Under an unendorsed EPLI Policy, which is an accurate statement?
    - a. **Defense costs are typically inside the limit of liability**
  
  2. The named insured knows about a pending claim for a wrongful act committed during a prior EPLI policy period. Will an unendorsed EPLI Policy that is in effect at the time that judgment is awarded in a later policy period with a different insurer respond? Yes or No?
- No**
3. The insurer offers a claimant an amount of \$100,000 to settle a workplace tort which the claimant finds acceptable. The insured does not consent to this amount and wants to either renegotiate or go to trial. A judgment is later awarded in the amount of \$250,000. Assuming there are sufficient limits of liability, what is the most that the insurer will pay according to the typical Consent to Settle Provision?
    - a. **\$100,000, less any deductible**
  
  4. An unendorsed EPLI Policy typically covers all types of violation of statutes including disputes about exempt vs. nonexempt status. True or False?

**False**

## EXHIBITS

2

Selected Federal Employment Statutes

## FORMS

Form Number	Form Name
EP 00 01	Employment – Related Practices Liability Coverage Form

## Selected Federal Employment Statutes

*This is summary for illustration purposes only.  
Refer to the statute and any amendments for full and accurate wording.*

Name/Title	Highlight of the Act	Application - Number of employees (exceptions apply)
Age Discrimination in Employment Act (ADEA) 1967, and amended in 1985	Prohibits discrimination against those age 40 or older	20 or more employees
Americans with Disabilities Act of 1990 (ADA) and ADA Amendments Act of 2008 (ADAA)	Prohibits employment discrimination against a qualified person with a disability. The law requires an employer to provide reasonable accommodation to an employee or job applicant with a disability, unless doing so would cause "undue hardship".	15 or more employees
Title VII Civil Rights Act of 1964	Prohibits discrimination actions based on race/color, sex, religion, national origin.	15 or more employees
Civil Rights Act of 1991	Amends Title VII and the ADA to permit jury trials and compensatory and punitive damage awards in intentional discrimination cases. Expanded definition of discrimination due to all types of sexual harassment	15 or more employees
The Equal Pay Act of 1963	Requires that men and women in the same workplace be given equal pay for equal work.	Almost all employers
The Fair Labor Standards Act of 1938	Prescribes the standards for the basic minimum wage, overtime pay, and child labor.	Applicable to most employers
Family and Medical Leave Act	Entitles eligible employees to take unpaid, job-protected leave for specified family and medical reasons.	50 or more employees
The Immigration Reform and Control Act of 1986 (IRCA)	Prohibits certain employers to fire or refuse to hire a person on the basis of that person's origin or citizenship.	
Lilly Ledbetter Fair Pay Act of 2009	Amends Title VII, ADEA, ADA, Rehab Act. Resets the 180-day limit to file a claim for each discriminatory paycheck.	15 or more employees
Genetic Information Nondiscrimination Act of 2008 (GINA)	Restricts employers from requesting, requiring, or purchasing genetic information. Prohibits discrimination in employment decisions including health benefits.	15 or more employees
Pregnancy Discrimination Act	Amendment to Title VII prohibits discrimination because of pregnancy, childbirth, or related medical conditions.	15 or more employees
Uniformed Services Employment and Reemployment Rights Act of 1994 (USERRA)	Protects service members' reemployment rights and prohibits employer discrimination based on past military service, current obligation, or intent to serve.	Almost all employers
Violations of Worker Adjustment and Retraining Notification Act (WARN)	Offers protections to workers by requiring 60 days advance notice of plant closings and covered mass layoffs.	100 or more employees

# EMPLOYMENT-RELATED PRACTICES LIABILITY COVERAGE FORM

THIS FORM PROVIDES CLAIMS-MADE AND REPORTED COVERAGE.  
PLEASE READ THE ENTIRE FORM CAREFULLY.

2

Various provisions in this policy restrict coverage. Read the entire policy carefully to determine rights, duties and what is and is not covered.

Throughout this policy the words "you" and "your" refer to the Named Insured shown in the Declarations, and any other person or organization qualifying as a Named Insured under this policy. The words "we", "us" and "our" refer to the company providing this insurance.

The word "insured" means any person or organization qualifying as such under Section II – Who Is An Insured.

Other words and phrases that appear in quotation marks have special meaning. Refer to Section VII – Definitions.

## SECTION I – EMPLOYMENT-RELATED PRACTICES LIABILITY COVERAGE

### A. Insuring Agreement

1. We will pay those sums the insured becomes legally obligated to pay as damages resulting from a "wrongful act" to which this insurance applies. We will have the right and duty to defend the insured against any "suit" seeking those damages. However, we will have no duty to defend the insured against any "suit" seeking damages because of a "wrongful act" to which this insurance does not apply. We may, at our discretion, investigate any incident that may result from a "wrongful act". We may, with your written consent, settle any "claim" that may result. But:

- a. The amount we will pay for damages and "defense expenses" is limited as described in Section III – Limit Of Insurance and in Section IV – Deductible; and
- b. The coverage and duty to defend provided by this policy will end when we have used up the applicable limit of insurance for "defense expenses" or the payment of judgments or settlements.

No other obligation or liability to pay sums, such as civil or criminal fines, imposed on you or any other insured, or to perform acts or services is covered unless explicitly provided for under Supplementary Payments.

2. This insurance applies to "wrongful acts" only if:

- a. The "wrongful act" takes place in the "coverage territory";
- b. The "wrongful act" did not commence before the Retroactive Date, if any, shown in the Declarations or after the end of the policy period; and
- c. A "claim" against any insured for damages because of the "wrongful act" is first made during the policy period or the Section VI – Extended Reporting Period, if provided, in accordance with Paragraphs 3. and 4. below.

3. A "claim" will be deemed to have been made at the earlier of the following times:

- a. When notice of such "claim", after being received by any insured, is reported to us in writing; or
- b. When a claim against an insured is made directly to us in writing.

A "claim" received by the insured during the policy period and reported to us within 30 days after the end of the policy period will be considered to have been reported within the policy period. However, this 30-day grace period does not apply to "claims" that are covered under any subsequent insurance you purchase, or that would be covered but for exhaustion of the amount of insurance applicable to such "claims".

4. If during the policy period you become aware of a "wrongful act" that may reasonably be expected to give rise to a "claim" against any insured, you must provide notice to us in accordance with the provisions of Section V, Condition C. Duties In The Event Of A Claim Or Wrongful Act That May Result In A Claim. If such notice is provided, then any "claim" subsequently made against any insured arising out of that "wrongful act" shall be deemed under this policy to be a "claim" made during the policy period in which the "wrongful act" was first reported to us.

5. All "claims" for damages because of a "wrongful act" committed against the same person, including damages claimed by any person for care, loss of services or death resulting at any time from the "wrongful act", will be deemed to have been made at the time the first of such "claims" is made, regardless of the number of "claims" subsequently made.

## **B. Exclusions**

This insurance does not apply to:

### **1. Criminal, Fraudulent Or Malicious Acts**

An insured's liability arising out of criminal, fraudulent or malicious acts or omissions by that insured.

This exclusion does not affect our duty to defend, in accordance with Paragraph A.1. above, an insured prior to determining, through the appropriate legal processes, that that insured is responsible for a criminal, fraudulent or malicious act or omission.

### **2. Contractual Liability**

Any "wrongful act" for which the insured is obligated to pay damages by reason of the assumption of liability in a contract or agreement. This exclusion does not apply to liability for damages that the insured would have in the absence of the contract or agreement.

### **3. Workers' Compensation And Similar Laws**

Any obligation of the insured under a workers' compensation, disability benefits or unemployment compensation law or any similar law.

### **4. Violation Of Laws Applicable To Employers**

A violation of your responsibilities or duties required by any other federal, state or local statutes, rules or regulations, and any rules or regulations promulgated therefor or amendments thereto, except for the following, and including amendments thereto: Title VII of the Civil Rights Act of 1964, the Americans With Disabilities Act, the Age Discrimination in Employment Act, the Equal Pay Act, the Pregnancy Discrimination Act of 1978, the Immigration Reform and Control Act of 1986, the Family and Medical Leave Act of 1993 and the Genetic Information Nondiscrimination Act of 2008 or any other similar state or local statutes, rules or regulations to the extent that they prescribe responsibilities or duties concerning the same acts or omissions.

However, this insurance does not apply to a "wrongful act" arising out of your failure to comply with any of the accommodations for the disabled required of you by, or any expenses incurred as the result of physical modifications made to accommodate any person pursuant to, the Americans With Disabilities Act, or any amendments thereto, or any similar state or local statutes, rules or regulations to the extent that they prescribe responsibilities or duties concerning the same acts or omissions.

This Exclusion 4. does not apply to any "claim" for retaliatory treatment by an insured against any person making a "claim" pursuant to such person's rights under any statutes, rules or regulations.

### **5. Strikes And Lockouts**

Any "wrongful act" committed against any striking or locked-out "employee", or to an "employee" who has been temporarily or permanently replaced due to any labor dispute.

### **6. Prior Or Pending Litigation**

Any "claim" or "suit" against any insured which was pending on, or existed prior to, the applicable Pending or Prior Litigation Date shown in the Declarations, or any "claim" or "suit" arising out of the same or substantially the same facts, circumstances or allegations which are the subject of, or the basis for, such "claim" or "suit".

### **7. Prior Notice**

Any "wrongful act" alleged or contained in any "claim" which has been reported, or for which, in any circumstance, notice has been given, under any other prior insurance policy providing essentially the same type of coverage.

## **C. Supplementary Payments**

We will pay, with respect to any "claim" we investigate or settle, or any "suit" against an insured we defend:

1. Prejudgment interest awarded against the insured on that part of the judgment we pay. If we make an offer to pay the applicable limit of insurance, we will not pay any prejudgment interest based on that period of time after the offer.
2. All interest on the full amount of any judgment that accrues after entry of the judgment and before we have paid, offered to pay, or deposited in court the part of the judgment that is within the applicable limit of insurance.

These payments will not reduce the limit of insurance nor be subject to Section IV – Deductible.

## SECTION II – WHO IS AN INSURED

- A. If you are designated in the Declarations as:
1. An individual, you and your spouse are insureds.
  2. A partnership or joint venture, you are an insured. Your partners or members are also insureds.
  3. A limited liability company, you are an insured. Your members and managers are also insureds.
  4. An organization other than a partnership, joint venture or limited liability company, you are an insured. Your "executive officers" and directors are also insureds.
- B. Your "employees" are also insureds, unless otherwise excluded in this policy.
- C. Your former "employees" are also insureds, unless otherwise excluded in this policy, but only with respect to "wrongful acts" committed while in your employ.
- D. Any organization you newly acquire or form, other than a partnership, joint venture or limited liability company, and over which you maintain ownership or majority interest, will qualify as a Named Insured if no other similar insurance applies to that organization. You must notify us of such acquisition or formation as soon as practicable. However, coverage under this provision:
1. Is afforded only until the 90th day after you acquire or form the organization, or until the end of the policy period, whichever is earlier; and
  2. Does not apply to a "wrongful act" committed before you acquired or formed the organization.

No person or organization is an insured with respect to the conduct of any current or past partnership, joint venture or limited liability company that is not shown as a Named Insured in the Declarations.

## SECTION III – LIMIT OF INSURANCE

- A. The Limit of Insurance shown in the Declarations and the rules below fix the most we will pay regardless of the number of:
1. Insureds;
  2. "Claims" made or "suits" brought; or
  3. Persons, organizations or government agencies making "claims" or bringing "suits".
- B. The Limit of Insurance is the most we will pay for the sum of:
1. All damages; and

### 2. All "defense expenses"

because of all "wrongful acts" to which this insurance applies.

The Limit of Insurance of this Coverage Part applies separately to each consecutive annual period and to any remaining period of less than 12 months, starting with the beginning of the policy period shown in the Declarations, unless the policy period is extended after issuance for an additional period of less than 12 months. In that case, the additional period will be deemed part of the last preceding period for purposes of determining the Limit of Insurance.

## SECTION IV – DEDUCTIBLE

- A. We will not pay for our share of damages and "defense expenses" until the amount of damages and "defense expenses" exceeds the Deductible shown in the Declarations. We will then pay the amount of damages and "defense expenses" in excess of the Deductible, up to the limit of insurance.

### Example No. 1

Deductible: \$5,000

Limit of Insurance: \$100,000

Damages and "Defense Expenses": \$75,000

The Deductible will be subtracted from the amount of damages and "defense expenses" in calculating the amount payable:

$\$75,000 - \$5,000 = \$70,000$  Amount Payable

### Example No. 2

Deductible: \$5,000

Limit of Insurance: \$100,000

Damages and "Defense Expenses": \$120,000

The Deductible will be subtracted from the amount of damages and "defense expenses" ( $\$120,000 - \$5,000 = \$115,000$ ). Since the amount of the damages and "defense expenses" minus the Deductible exceeds the Limit of Insurance, the policy will pay the full Limit of Insurance (\$100,000).

- B. The Deductible amount shown in the Declarations applies to all "claims" arising out of:
1. The same "wrongful acts"; or
  2. A series of incidents, circumstances or behaviors which arise from a common cause
- regardless of the number of persons, organizations or government agencies making such "claims".
- C. We may pay any part or all of the Deductible amount to effect settlement of any "claim" and, upon notification of the action taken, you shall promptly reimburse us for such part of the Deductible amount as has been paid by us.

## SECTION V – CONDITIONS

### A. Bankruptcy

Bankruptcy or insolvency of the insured or of the insured's estate will not relieve us of our obligations under this policy.

### B. Consent To Settle

If we recommend a settlement to you which is acceptable to the claimant, but to which you do not consent, the most we will pay as damages in the event of any later settlement or judgment is the amount for which the "claim" could have been settled, to which you did not give consent, less any deductible.

### C. Duties In The Event Of A Claim Or Wrongful Act That May Result In A Claim

1. If a "claim" is received by any insured, you must:
  - a. Immediately record the specifics of the "claim" and the date received; and
  - b. Notify us, in writing, as soon as practicable.
2. You and any other involved insured must:
  - a. Immediately send us copies of any demands, notices, summonses or legal papers received in connection with the "claim";
  - b. Authorize us to obtain records and other information;
  - c. Cooperate with us in the investigation or settlement of the "claim" or defense against the "suit"; and
  - d. Assist us, upon our request, in the enforcement of any right against any person or organization which may be liable to the insured because of a "wrongful act" to which this insurance may also apply.
3. No insured will, except at that insured's own cost, voluntarily make a payment, assume any obligation, or incur any expense without our written consent.
4. If you become aware of a "wrongful act" that may reasonably be expected to give rise to a "claim" and for which a "claim" has not yet been received, you must notify us, in writing, as soon as practicable. Such notice must provide:
  - a. A description of the "wrongful act", including all relevant dates;
  - b. The names of the persons involved in the "wrongful act", including names of the potential claimants;

- c. Particulars as to the reasons why you became aware of and reasonably expect a "claim" which may result from such "wrongful act";
- d. The nature of the alleged or potential damages arising from such "wrongful act"; and
- e. The circumstances by which the insured first became aware of the "wrongful act".

### D. Legal Action Against Us

No person or organization has a right under this policy:

1. To join us as a party or otherwise bring us into a "suit" asking for damages from an insured; or
2. To sue us on this policy unless all of its terms have been fully complied with.

A person or organization may sue us to recover on an agreed settlement or on a final judgment against an insured obtained after an actual trial; but we will not be liable for damages that are not payable under the terms of this policy or that are in excess of the applicable limit of insurance. An agreed settlement means a settlement and release of liability signed by us, the insured and the claimant or the claimant's legal representative.

We will also not be liable for the insured's share of any payment due because of a settlement or judgment for which the insured is responsible under Section IV – Deductible.

### E. Other Insurance

If other valid and collectible insurance is available to the insured, our obligations are limited as follows:

#### 1. Primary Insurance

This insurance is primary. We will not seek contribution from any other insurance available to you or the involved insured unless the other insurance is specifically designed to provide coverage because of liability arising out of a "wrongful act". Then we will share with that other insurance by the method described below.

#### 2. Method Of Sharing

If all of the other insurance permits contribution by equal shares, we will follow this method also. Under this approach each insurer contributes equal amounts until it has paid its applicable limit of insurance or none of the liability remains, whichever comes first.



If any of the other insurance does not permit contribution by equal shares, we will contribute by limits. Under this method, each insurer's share is based on the ratio of its applicable limit of insurance to the total applicable limits of insurance of all insurers.

The method chosen for the handling of other valid insurance will not affect your responsibility to share with us as specified under Section **IV – Deductible**.

#### **F. Premium Audit**

1. We will compute all premiums for this policy in accordance with our rules and rates.
2. Premium shown in this policy as advance premium is a deposit premium only. At the close of each audit period we will compute the earned premium for that period and send notice to the first Named Insured. The due date for audit premiums is the date shown as the due date on the bill. If the sum of the advance and audit premiums paid for the policy period is greater than the earned premium, we will return the excess to the first Named Insured.
3. The first Named Insured must keep records of the information we need for premium computation and send us copies at such times as we may request.
4. We will waive the premium audit only with your consent.

#### **G. Representations**

By accepting this policy, you agree that:

1. The statements in the Declarations are accurate and complete;
2. Those statements are based upon representations you made to us; and
3. We have issued this policy in reliance upon your representations.

#### **H. Separation Of Insureds**

Except with respect to the Limit of Insurance, and any rights or duties specifically assigned in this policy to the first Named Insured, this insurance applies:

1. As if each Named Insured were the only Named Insured; and
2. Separately to each insured against whom "claim" is made.

#### **I. Transfer Of Rights Of Recovery Against Others To Us**

If the insured has rights to recover all or part of any payment we have made under this policy, those rights are transferred to us. The insured must do nothing to impair those rights. At our request, the insured will bring "suit" or transfer those rights to us and help us enforce them.

#### **J. If You Are Permitted To Select Defense Counsel**

If, by mutual agreement or court order, the insured is given the right to select defense counsel and the Limit of Insurance has not been used up, the following provisions apply:

1. We retain the right, at our discretion, to:
  - a. Settle, approve or disapprove the settlement of any "claim"; and
  - b. Appeal any judgment, award or ruling at our expense.
2. You and any other involved insured must:
  - a. Continue to comply with Section **V – Paragraph C. Duties In The Event Of A Claim Or Wrongful Act That May Result In A Claim Condition** as well as the other provisions of this policy; and
  - b. Direct defense counsel of the insured to:
    - (1) Furnish us with the information we may request to evaluate those "suits" for coverage under this policy; and
    - (2) Cooperate with any counsel we may select to monitor or associate in the defense of those "suits".
3. If we defend you under a reservation of rights, both your and our counsel will be required to maintain records pertinent to your "defense expenses". These records will be used to determine the allocation of any "defense expenses" for which you may be solely responsible, including defense of an allegation not covered by this insurance.

#### **K. Transfer Of Duties When Limit Of Insurance Is Used Up**

1. If we conclude that, based on "claims" which have been reported to us and to which this insurance may apply, the Limit of Insurance is likely to be used up in the payment of judgments or settlements for damages or the payment of "defense expenses", we will notify the first Named Insured, in writing, to that effect.

2. When the Limit of Insurance has actually been used up in the payment of judgments or settlements for damages or the payment of "defense expenses", we will:
  - a. Notify the first Named Insured in writing, as soon as practicable, that such a limit has actually been used up, and that our duty to defend the insured against "suits" seeking damages subject to that limit has also ended;
  - b. Initiate, and cooperate in, the transfer of control, to any appropriate insured, of all "suits" for which the duty to defend has ended for the reason described in Paragraph 2.a. above and which are reported to us before that duty to defend ended; and
  - c. Take such steps, as we deem appropriate, to avoid a default in, or continue the defense of, such "suits" until such transfer is completed, provided the appropriate insured is cooperating in completing such transfer.
3. When 2.a. above has occurred, the first Named Insured, and any other insured involved in a "suit" seeking damages subject to that limit, must:
  - a. Cooperate in the transfer of control of "suits"; and
  - b. Arrange for the defense of such "suit" within such time period as agreed to between the appropriate insured and us. Absent any such agreement, arrangements for the defense of such "suit" must be made as soon as practicable.
4. We will take no action with respect to defense for any "claim" if such "claim" is reported to us after the applicable limit of insurance has been used up. It becomes the responsibility of the first Named Insured, and any other insured involved in such a "claim", to arrange defense for such "claim".
5. The first Named Insured will reimburse us as soon as practicable for expenses we incur in taking those steps we deem appropriate in accordance with Paragraph 2. above.
6. The exhaustion of the applicable limit of insurance and the resulting end of our duty to defend will not be affected by our failure to comply with any of the provisions of this Condition.

#### **L. When We Do Not Renew**

If we decide not to renew this policy, we will mail or deliver to the first Named Insured shown in the Declarations written notice of the nonrenewal at least 30 days before the end of the policy period, or earlier if required by the state law or regulation controlling the application of this Coverage Part.

If notice is mailed, proof of mailing will be sufficient proof of notice.

#### **SECTION VI – EXTENDED REPORTING PERIOD**

- A. You will have the right to purchase an Extended Reporting Period from us if:
  1. This Coverage Part is cancelled or not renewed for any reason; or
  2. We renew or replace this Coverage Part with insurance that:
    - a. Has a Retroactive Date later than the date shown in the Declarations of this Coverage Part; or
    - b. Does not apply to "wrongful acts" on a claims-made basis.
- B. An Extended Reporting Period, as specified in Paragraph A. above, lasts three years and is available only by endorsement and for an additional charge.
- C. The Extended Reporting Period starts with the end of the policy period. It does not extend the policy period or change the scope of coverage provided. It applies only to "claims" to which the following applies:
  1. The "claim" is first made during the Extended Reporting Period;
  2. The "wrongful act" occurs before the end of the policy period; and
  3. The "wrongful act" did not commence before the Retroactive Date, if any.
- D. You must give us a written request for the Extended Reporting Period Endorsement within 30 days after the end of the policy period or the effective date of cancellation, whichever comes first.
- E. The Extended Reporting Period will not go into effect unless you pay the additional premium promptly when due and any premium or deductible you owe us for coverage provided under this policy. Once in effect, the Extended Reporting Period may not be cancelled.

F. We will determine the additional premium in accordance with our rules and rates. In doing so, we may take into account the following:

1. The exposures insured;
2. Previous types and amounts of insurance;
3. Limit of Insurance available under this policy for future payment of damages; and
4. Other related factors.

The additional premium will not exceed 200% of the annual premium for this policy.

G. When the Extended Reporting Period Endorsement is in effect, we will provide a Supplemental Limit of Insurance for any "claim" first made during the Extended Reporting Period.

The Supplemental Limit of Insurance will be equal to the dollar amount shown in the Declarations in effect at the end of the policy period.

Paragraph B. of Section III – Limit Of Insurance will be amended accordingly.

## SECTION VII – DEFINITIONS

A. "Claim" means a "suit" or demand made by or for a current, former or prospective "employee" for damages because of an alleged "wrongful act".

B. "Coverage territory" means:

1. The United States of America (including its territories or possessions) and Puerto Rico; or
2. All parts of the world if the insured's responsibility to pay damages is determined in a "suit" on the merits brought in the territory described in Paragraph 1. above or in a settlement we agree to.

C. "Defense expenses" means payments allocated to a specific "claim" we investigate, settle or defend, for its investigation, settlement or defense, including:

1. Fees and salaries of attorneys and paralegals we retain, including attorneys and paralegals who are our "employees".
2. Fees of attorneys the insured retains when, by our mutual agreement or court order (or when required by administrative hearing or proceeding), the insured is given the right to retain defense counsel to defend against a "claim".
3. All other litigation or administrative hearing expenses, including fees or expenses of expert witnesses hired either by us or by the defense attorney retained by an insured.
4. Reasonable expenses incurred by the insured at our request to assist us in the investigation or defense of the "claim", including actual loss of earnings up to \$250 a day because of time off from work.

5. Costs taxed against the insured in the "suit".

"Defense expenses" does not include salaries and expenses of our "employees" or the insured's "employees" (other than those described in Paragraphs 1. and 4. above).

D. "Discrimination" means violation of a person's civil rights with respect to such person's race, color, national origin, religion, gender, marital status, age, sexual orientation or preference, physical or mental condition, or any other protected class or characteristic established by any federal, state or local statutes, rules or regulations.

E. "Employee" includes a "leased worker" and a "temporary worker" but does not include an independent contractor.

F. "Executive officer" means a person holding any of the officer positions created by your charter, constitution, by-laws or any other similar governing document.

G. "Leased worker" means a person leased to you by a labor leasing firm under an agreement between you and the labor leasing firm to perform duties related to the conduct of your business. "Leased worker" does not include a "temporary worker".

H. "Suit" means a civil proceeding in which damages because of a "wrongful act" to which this insurance applies are alleged, including:

1. An arbitration proceeding in which such damages are claimed and to which the insured must submit or does submit with our consent;
2. Any other alternative dispute resolution proceeding in which such damages are claimed and to which the insured submits with our consent; or
3. Any administrative proceeding or hearing conducted by a governmental agency (federal, state or local) having the proper legal authority over the matter in which such damages are claimed.

I. "Temporary worker" means a person who is furnished to you to substitute for a permanent "employee" on leave or to meet seasonal or short-term workload conditions.

J. "Wrongful act" means one or more of the following offenses, but only when they are employment-related:

1. Wrongful demotion or failure to promote, negative evaluation, reassignment or discipline of your current "employee" or wrongful refusal to employ;
2. Wrongful termination, meaning the actual or constructive termination of an "employee":
  - a. In violation or breach of applicable law or public policy; or

- b.** Which is determined to be in violation of a contract or agreement, other than any employment contract or agreement, whether written, oral or implied, which stipulates financial consideration if such financial consideration is due as the result of a breach of the contract;
- 3.** Wrongful denial of training, wrongful deprivation of career opportunity or breach of employment contract;
- 4.** Negligent hiring or supervision which results in any of the other offenses listed in this definition;
- 5.** Retaliatory action against an "employee" because the "employee" has:
  - a.** Declined to perform an illegal or unethical act;
  - b.** Filed a complaint with a governmental authority or a "suit" against you or any other insured in which damages are claimed;
  - c.** Testified against you or any other insured at a legal proceeding; or
  - d.** Notified a proper authority of any aspect of your business operation which is illegal;
- 6.** Coercing an "employee" to commit an unlawful act or omission within the scope of that person's employment;
- 7.** Harassment;
- 8.** Libel, slander, invasion of privacy, defamation or humiliation; or
- 9.** Verbal, physical, mental or emotional abuse arising from "discrimination".



# The Society of Certified Insurance Counselors

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## Section 3

# **CRIME COVERAGES & ENDORSEMENTS**



## Crime Coverages & Endorsements

3

### Section Goal

In this section, participants will analyze the Insuring Agreements contained in Commercial Crime Coverage Forms to determine the appropriate Insuring Agreement necessary to meet the insured's needs and how coverage may be modified.

### Learning Objectives

1. Using knowledge of the overview of Crime Coverage, the participant will understand why Crime Coverage is needed, identify the Seven Insuring Agreements, and describe when coverage applies under the Loss Sustained and Discovery Crime Forms.
2. Using knowledge of Insuring Agreement A.1. Employee Theft, the participant will be able to describe the coverage, definitions, and exclusions applicable in the event of loss and endorsements available to modify coverage.
3. Using knowledge of the following Insuring Agreements:
  - Forgery Or Alteration
  - Inside The Premises – Theft Of Money And Securities
  - Inside The Premises – Robbery Or Safe Burglary Of Other Property
  - Outside The Premisesthe participant will be able to describe the coverages, definitions, and exclusions applicable in the event of loss and endorsements available to modify coverage.
4. Using knowledge of the following Insuring Agreements:
  - Computer And Funds Transfer Fraud
  - Money Orders And Counterfeit Moneythe participant will be able to describe the coverages, definitions, and exclusions applicable in the event of loss and endorsements available to modify coverage.
5. Using knowledge of the Conditions applicable to the Insuring Agreements contained in the Commercial Crime Coverage Forms, the participant will be able to describe how the Conditions may affect coverage in the event of a loss.

## Overview of Crime Coverage

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### **Learning Objective 1:**

Using knowledge of the overview of Crime Coverage, the participant will understand why Crime Coverage is needed, identify the Seven Insuring Agreements, and describe when coverage applies under the Loss Sustained and Discovery Crime Forms.

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## Types of ISO Crime Coverage Forms Available

### **Package Policies**

1. Most Commercial Entities
  - Commercial Crime Coverage Form (Discovery Form) – **CR 00 20**
  - Commercial Crime Coverage Form (Loss Sustained Form) – **CR 00 21**
2. Government Entities
  - Government Crime Coverage Form (Discovery Form) – **CR 00 24**
  - Government Crime Coverage Form (Loss Sustained Form) – **CR 00 25**
3. Kidnap/Ransom And Extortion
  - Kidnap/Ransom And Extortion Coverage Form – **CR 00 40**



## Monoline Crime Policies

1. Most Commercial Entities
  - Commercial Crime Policy (Discovery Form) – **CR 00 22**
  - Commercial Crime Policy (Loss Sustained Form) – **CR 00 23**
2. Government Entities
  - Government Crime Policy (Discovery Form) – **CR 00 26**
  - Government Crime Policy (Loss Sustained Form) – **CR 00 27**
3. Employee Theft and Forgery
  - Employee Theft And Forgery Policy (Discovery Form) – **CR 00 28**
  - Employee Theft And Forgery Policy (Loss Sustained Form) – **CR 00 29**
4. Government Employee Theft and Forgery
  - Government Employee Theft And Forgery Policy (Discovery Form) – **CR 00 30**
  - Government Employee Theft And Forgery Policy (Loss Sustained Form) – **CR 00 31**
5. Kidnap/Ransom and Extortion
  - Kidnap/Ransom And Extortion Policy – **CR 00 41**

## Limited Crime Coverage Under Commercial Property Forms

Even though there is limited crime coverage under certain circumstances under the Commercial Property (CP) Forms, the CP Forms were not designed to provide Crime Coverage.

### Building And Personal Property Coverage Form

#### 2. Property Not Covered

Covered Property does not include:

- a. Accounts, bills, currency, food stamps or other evidences of debt, money, notes or securities. Lottery tickets held for sale are not securities;

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- The Property Not Covered provision specifically lists certain items that are not covered that have value or can be involved in transactions

### Causes Of Loss Forms

- Causes Of Loss – Basic Form and Broad Form do NOT provide coverage for theft
- Causes Of Loss – Special Form **CP 10 30 09 17** provides theft coverage but with significant exclusions and limitations

## Causes Of Loss – Special Form – Exclusions

### B. Exclusions

2. We will not pay for loss or damage caused by or resulting from any of the following:

- h. Dishonest or criminal act (including theft) by you, any of your partners, members, officers, managers, employees (including temporary employees and leased workers), directors, trustees or authorized representatives, whether acting alone or in collusion with each other or with any other party; or theft by any person to whom you entrust the property for any purpose, whether acting alone or in collusion with any other party.

This exclusion:

- (1) Applies whether or not an act occurs during your normal hours of operation;
  - (2) Does not apply to acts of destruction by your employees (including temporary employees and leased workers) or authorized representatives; but theft by your employees (including temporary employees and leased workers) or authorized representatives is not covered.
- i. Voluntary parting with any property by you or anyone else to whom you have entrusted the property if induced to do so by any fraudulent scheme, trick, device or false pretense.

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- Excludes dishonest or criminal acts by anyone involved in the insured's business
- Excludes voluntary parting (being induced to surrender property or title by a dishonest act)

## Causes Of Loss Form – Special Form – Limitations

### C. Limitations

The following limitations apply to all policy forms and endorsements, unless otherwise stated.

1. We will not pay for loss of or damage to property, as described and limited in this section. In addition, we will not pay for any loss that is a consequence of loss or damage as described and limited in this section.  
...
  - e. Property that is missing, where the only evidence of the loss or damage is a shortage disclosed on taking inventory, or other instances where there is no physical evidence to show what happened to the property.
  - f. Property that has been transferred to a person or to a place outside the described premises on the basis of unauthorized instructions....- 3. The special limit shown for each category, **a.** through **d.**, is the total limit for loss of or damage to all property in that category. The special limit applies to any one occurrence of theft, regardless of the types or number of articles that are lost or damaged in that occurrence. The special limits are:
  - a. \$2,500 for furs, fur garments and garments trimmed with fur.
  - b. \$2,500 for jewelry, watches, watch movements, jewels, pearls, precious and semi-precious stones, bullion, gold, silver, platinum and other precious alloys or metals. This limit does not apply to jewelry and watches worth \$100 or less per item.
  - c. \$2,500 for patterns, dies, molds and forms.
  - d. \$250 for stamps, tickets, including lottery tickets held for sale, and letters of credit.These special limits are part of, not in addition to, the Limit of Insurance applicable to the Covered Property.

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- Loss discovered by inventory or where there is no physical evidence that shows what happened to the property is not covered
- Property transferred by unauthorized instructions is not covered
- For the Cause of Loss of Theft, dollar limitations apply to specified types of property

## Commercial Crime Insuring Agreements

3

### Seven Insuring Agreements

- The Discovery Forms/Policies and Loss Sustained Forms/Policies contain the following seven Insuring Agreements
  1. Employee Theft
  2. Forgery Or Alteration
  3. Inside The Premises – Theft Of Money And Securities
  4. Inside The Premises – Robbery Or Safe Burglary Of Other Property
  5. Outside The Premises
  6. Computer And Funds Transfer Fraud
  7. Money Orders And Counterfeit Money
- Some of these Insuring Agreements may be modified by endorsements
- Other Insuring Agreements may be added by endorsement

*Example:*

#### A. Insuring Agreements

Coverage is provided under the following Insuring Agreements for which a Limit Of Insurance is shown in the Declarations and applies to loss that you sustain resulting directly from an "occurrence" taking place during the Policy Period shown in the Declarations,

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- Coverage is triggered or activated by showing a Limit Of Insurance in the Declarations
- Mandatory Endorsement **CR 25 47 09 17 U.S. Department of Labor – ERISA Plan Coverage Amendments** is designed to be used when coverage applies to employee benefit plans subject to ERISA and affects coverage only as respects the employee benefit plans

## Loss Sustained Form vs. Discovery Form

The triggers to activate coverage are different in the Loss Sustained Form compared to the Discovery Form.

### Commercial Crime Coverage Form (Loss Sustained Form) CR 00 21 11 15

#### Insuring Agreements

##### A. Insuring Agreements

Coverage is provided under the following Insuring Agreements for which a Limit Of Insurance is shown in the Declarations and applies to loss that you sustain resulting directly from an "occurrence" taking place during the Policy Period shown in the Declarations, except as provided in Condition E.1.k. or E.1.l., which is "discovered" by you during the Policy Period shown in the Declarations or during the period of time provided in the Extended Period To Discover Loss Condition E.1.g.:

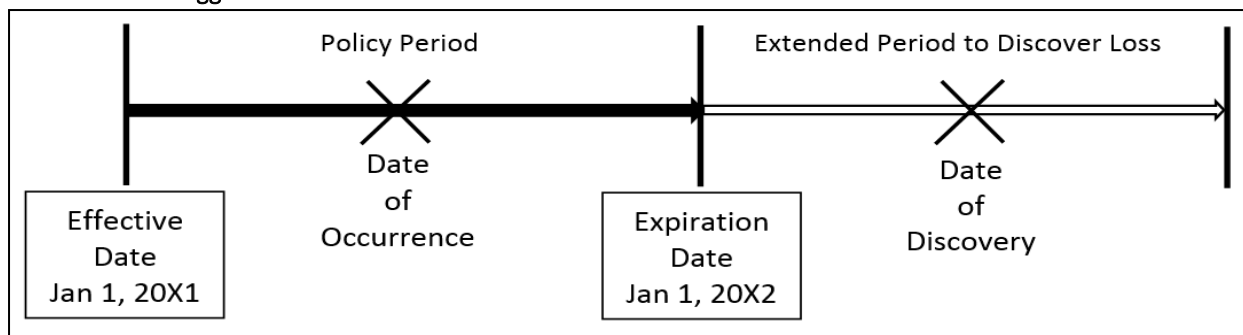
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- "Occurrence" must take place during the policy period AND be "discovered" (as defined) during the Policy Period or during the Extended Period To Discover Loss Condition
- "Occurrence" definition – slight variations between insuring agreements

#### Loss Sustained Trigger Exhibit



Loss Sustained coverage is triggered when a loss has occurred during the policy period  
**AND**  
is discovered during the policy period or the Extended Period to Discover Loss  
(usually one year)

#### Note:

Other policy conditions to be discussed later may modify this

## Definitions Under the Loss Sustained Form

### F. Definitions

#### 17. "Occurrence" means:

##### a. Under Insuring Agreement A.1.:

- (1) An individual act;
- (2) The combined total of all separate acts whether or not related; or
- (3) A series of acts whether or not related;

committed by an "employee" acting alone or in collusion with other persons, during the Policy Period shown in the Declarations, except as provided under Condition E.1.k. or E.1.l.

##### b. Under Insuring Agreement A.2.:

- (1) An individual act;
- (2) The combined total of all separate acts whether or not related; or
- (3) A series of acts whether or not related;

committed by a person acting alone or in collusion with other persons, involving one or more instruments, during the Policy Period shown in the Declarations, except as provided under Condition E.1.k. or E.1.l.

##### c. Under all other Insuring Agreements:

- (1) An individual act or event;
- (2) The combined total of all separate acts or events whether or not related; or
- (3) A series of acts or events whether or not related;

committed by a person acting alone or in collusion with other persons, or not committed by any person, during the Policy Period shown in the Declarations, except as provided under Condition E.1.k. or E.1.l.

- **"Occurrence" is a defined term**
  - Individual acts, the total of separate acts (whether or not related), or a series of acts committed by an employee acting alone or in collusion, taking place during the Policy Period **EXCEPT as provided under Loss Sustained During Prior Insurance Issued By Us Or Any Affiliate or Loss Sustained During Prior Insurance NOT Issued By Us Or Any Affiliate**
  - When coverage is being written for employee benefit plans subject to ERISA, mandatory endorsement **CR 25 47** amends the definition of "occurrence" to include individual acts, all separate acts related and unrelated, or a series of acts related and unrelated when **committed by an "employee", sole proprietor, partner or "member" whether acting alone or in collusion with other persons, during the Policy Period shown in the Declarations, before such Policy Period or both.**

**F. Definitions**

5. "Discover" or "discovered" means the time when you first become aware of facts which would cause a reasonable person to assume that a loss of a type covered by this insurance has been or will be incurred, regardless of when the act or acts causing or contributing to such loss occurred, even though the exact amount or details of loss may not then be known.

"Discover" or "discovered" also means the time when you first receive notice of an actual or potential claim in which it is alleged that you are liable to a third party under circumstances which, if true, would constitute a loss under this insurance.

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- **“Discover” or “discovered” is a defined term**
  - Means when named insured becomes aware of facts which would cause a reasonable person to assume a loss has occurred,
  - OR
  - When the named insured receives notice of an actual or potential claim in which the insured would be liable to a third party



## Insuring Agreement

3

### A. Insuring Agreements

Coverage is provided under the following Insuring Agreements for which a Limit Of Insurance is shown in the Declarations and applies to loss that you sustain resulting directly from an "occurrence" taking place at any time which is "discovered" by you during the Policy Period shown in the Declarations or during the period of time provided in the Extended Period To Discover Loss Condition **E.1.g.:**

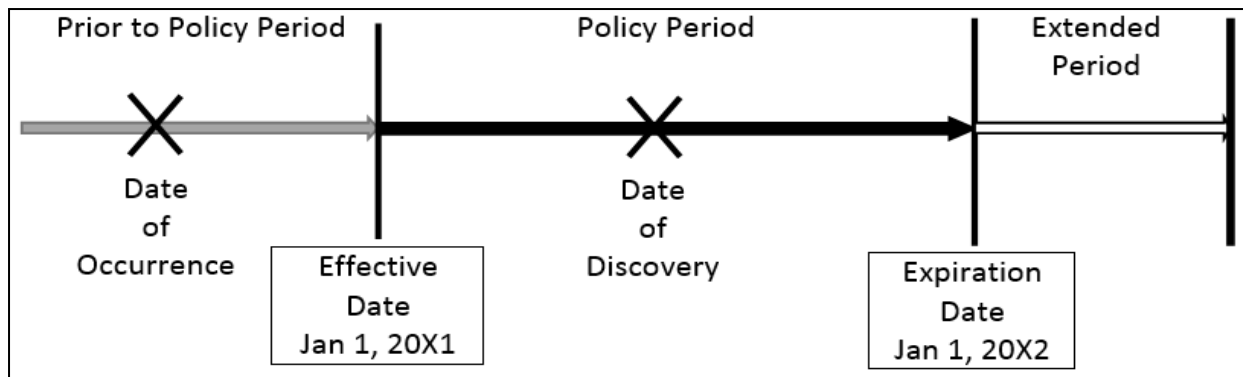
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- Provides coverage for occurrence taking place any time AND is discovered during the Policy Period or during the Extended Period To Discover Loss Condition

### Discovery Trigger Exhibit



Discovery coverage is triggered for a loss that occurred at any time,  
AND  
has to be discovered during the policy period or the Extended Period to Discover Loss  
(usually 60 days)

### Note:

Other policy conditions to be discussed later may modify this

## Definitions Under the Discovery Form

**17. "Occurrence" means:**

**a. Under Insuring Agreement A.1.:**

- (1) An individual act;
  - (2) The combined total of all separate acts whether or not related; or
  - (3) A series of acts whether or not related;
- committed by an "employee" acting alone or in collusion with other persons, during the Policy Period shown in the Declarations, before such Policy Period or both.

**b. Under Insuring Agreement A.2.:**

- (1) An individual act;
  - (2) The combined total of all separate acts whether or not related; or
  - (3) A series of acts whether or not related;
- committed by a person acting alone or in collusion with other persons, involving one or more instruments, during the Policy Period shown in the Declarations, before such Policy Period or both.

**c. Under all other Insuring Agreements:**

- (1) An individual act or event;
  - (2) The combined total of all separate acts or events whether or not related; or
  - (3) A series of acts or events whether or not related;
- committed by a person acting alone or in collusion with other persons, or not committed by any person, during the Policy Period shown in the Declarations, before such Policy Period or both.

- **"Occurrence" is a defined term**
  - Means individual acts, separate acts, or a series of acts by the same person (whether or not related), taking place before or during the Policy Period or both

**Note:**

The definition of **"discover" or "discovered"** is the same as in the Loss Sustained Coverage Form

## Endorsements Available

Endorsements are available to eliminate or limit coverage for “occurrences” taking place before a specified date – a retroactive date (if applicable)

3

- **Include Retroactive Date – CR 20 05**
  - Applies coverage to only those occurrences that take place entirely after the retroactive date
- **Provide Limited Coverage For Loss Occurring Before Retroactive Date – CR 20 24**
  - Applies to loss that takes place entirely after the retroactive date OR partly before and partly after the retroactive date

## Analyzing the Commercial Crime Coverage Form (Loss Sustained)

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### Learning Objective 2:

Using knowledge of Insuring Agreement A.1. Employee Theft, the participant will be able to describe the coverage, definitions, and exclusions applicable in the event of loss and endorsements available to modify coverage.

### Insuring Agreement A.1. Employee Theft

#### COMMERCIAL CRIME COVERAGE FORM (LOSS SUSTAINED FORM)

Various provisions in this Policy restrict coverage. Read the entire Policy carefully to determine rights, duties and what is or is not covered.

Throughout this Policy, the words "you" and "your" refer to the Named Insured shown in the Declarations. The words "we", "us" and "our" refer to the company providing this insurance.

Other words and phrases that appear in quotation marks have special meaning. Refer to Section F. Definitions.

#### A. Insuring Agreements

...

##### 1. Employee Theft

We will pay for loss of or damage to "money", "securities" and "other property" resulting directly from "theft" committed by an "employee", whether identified or not, acting alone or in collusion with other persons.

For the purposes of this Insuring Agreement, "theft" shall also include forgery.

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**Covered property** is money, securities, and other property (all are defined) for loss or damage

**Covered property may be:**

1. Property the named insured owns or leases
2. Property held by the named insured in any capacity
3. Property for which the named insured is legally liable, if the named insured was liable before the loss

**Coverage applies per loss, not per employee**

- Applies whether employee is acting alone or in collusion with others
- May be endorsed to apply Limit Of Insurance per employee – **Employee Theft – Name Or Position Schedule – CR 04 08**

**Employee theft includes forgery by employee under this Insuring Agreement**

## Definitions

### “Money”

16. "Money" means:

- a. Currency, coins and bank notes in current use and having a face value;
- b. Traveler's checks and money orders held for sale to the public; and
- c. In addition, includes:
  - (1) Under Insuring Agreements A.1. and A.2., deposits in your account at any "financial institution"; and

...

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- Currency, coins and bank notes having a face value
- Traveler's checks and money orders held for sale
- Applicable to Insuring Agreements A.1. and A.2.
  - Deposits in the named insured's account at any financial institution

### “Securities”

22. "Securities" means negotiable and nonnegotiable instruments or contracts representing either "money" or property and includes:

- a. Tokens, tickets, revenue and other stamps (whether represented by actual stamps or unused value in a meter) in current use; and
- b. Evidences of debt issued in connection with credit or charge cards, which cards are not issued by you;  
but does not include "money".

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- Negotiable and nonnegotiable instruments
- Includes tokens, tickets, revenue and other stamps
- Includes evidences of debt from charge cards, if cards were not issued by the named insured
- Does not include money

## **“Other property”**

**18.** "Other property" means any tangible property other than "money" and "securities" that has intrinsic value. "Other property" does not include "computer programs", "electronic data" or any property specifically excluded under this insurance.

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3

- Tangible property other than money and securities
- Does NOT include computer programs, electronic data or any other property excluded by this coverage

### **Note:**

These exposures are best covered under a Cyber Policy that is discussed in this Commercial Multiline course

## **“Theft”**

**23.** "Theft" means the unlawful taking of property to the deprivation of the Insured.

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- Unlawful taking of property to the deprivation of the insured
  - In other words, theft is any act of stealing from the insured

**"Employee"**

**7. "Employee":**

**a. Means:**

**(1) Any natural person:**

**(a)** While in your service and for the first 30 days immediately after termination of service, unless such termination is due to "theft" or any other dishonest act committed by the "employee";

**(b)** Whom you compensate directly by salary, wages or commissions; and

**(c)** Whom you have the right to direct and control while performing services for you;

**(2) Any natural person who is furnished temporarily to you:**

**(a)** To substitute for a permanent "employee", as defined in Paragraph **7.a.(1)**, who is on leave; or

**(b)** To meet seasonal or short-term workload conditions; while that person is subject to your direction and control and performing services for you;

**(3) Any natural person who is leased to you under a written agreement between you and a labor leasing firm, to perform duties related to the conduct of your business, but does not mean a temporary "employee" as defined in Paragraph **7.a.(2)**;**

**(4) Any natural person who is:**

**(a)** A trustee, officer, employee, administrator or manager, except an administrator or manager who is an independent contractor, of any "employee benefit plan"; or

**(b)** Your director or trustee while that person is engaged in handling "money", "securities" or "other property" of any "employee benefit plan";

**(5) Any natural person who is a former "employee", partner, "member", "manager", director or trustee retained by you as a consultant while performing services for you;**

**(6) Any natural person who is a guest student or intern pursuing studies or duties;**

**(7) Any natural person employed by an entity merged or consolidated with you prior to the effective date of this insurance; and**

**(8) Any natural person who is your "manager", director or trustee while:**

**(a)** Performing acts within the scope of the usual duties of an "employee"; or

**(b)** Acting as a member of any committee duly elected or appointed by resolution of your board of directors or board of trustees to perform specific, as distinguished from general, directorial acts on your behalf.

**b. Does not mean:**

Any agent, broker, factor, commission merchant, consignee, independent contractor or representative of the same general character not specified in Paragraph **7.a**.



*Definitions – “Employee” (cont.)*

a. Means any natural person

- 1) Direct employees while in the named insured’s service and for the first 30 days after termination, unless the termination is due to the employee’s dishonesty
- 2) Furnished temporarily to the named insured
  - Substitutes, seasonal or short-term
- 3) Leased employees
- 4) Involved in handling an “employee benefit plan”
- 5) A former employee, partner, member, manager, director and trustee retained as a consultant-while performing services
- 6) Guest student or intern
- 7) A person employed by an entity merged or consolidated with the named insured prior to the effective date of coverage
- 8) The named insured’s managers, directors or trustees while performing duties as employees or acting as a member of a committee to perform specific duties

b. Does NOT mean:

- Any agents, brokers, factors, commission merchants, consignees or independent contractors

**Note:**

Employee does not have to be identified (unendorsed policy). There are endorsements available.

## **Selected Endorsements Used to Modify Who is Included or Excluded as an Employee**

### **1. Employee Theft – Name Or Position Schedule – CR 04 08**

- Used to apply coverage to identified employee (as defined in endorsement)
- Coverage applies to either the named employee or the person who occupies a named position
- Can have different limits and deductibles apply to each person or position
- The limit and deductible apply separately to each employee
- A clause that operates much like a coinsurance clause applies to the position schedule coverage
- Occurrence definition refers to each employee rather than an employee
- Termination of any employee discovered to have committed theft applies

### **2. Exclude Designated Persons Or Classes Of Persons As Employees – CR 25 01**

- Used to exclude certain persons or classes of persons
- “Employee” does not include any person named or class of person shown in the schedule

### **3. Include Designated Agents As Employees – CR 25 02**

- Adds coverage for agents appointed by the insured and designated in the endorsement
- All partners, officers and employees of that agent are collectively considered a single employee
- Limit shown is part of the employee theft limit, not in addition to that limit

**4. Include Chairperson And Members Of Specified Committees As Employees – CR 25 06**

- Amends employee definition to include any natural person while performing services for the named insured as a chairperson or member of a committee, whether compensated or not

**5. Include Specified Non-Compensated Officers As Employees – CR 25 08**

- Adds specifically identified, non-compensated officers to the definition of employee for dishonest acts they may commit

**6. Include Volunteer Workers As Employees – CR 25 09**

- Intended for use when the insured is a nonprofit organization or governmental agency
- Includes non-compensated individuals in the definition of employee when performing duties usual to an employee or when acting as a fund solicitor during fundraising campaigns

**7. Include Designated Persons Or Classes Of Persons As Employees – CR 25 41**

- Amends definition of employee to include persons or classes of persons scheduled in the endorsement

**8. Include Computer Software Contractors As Employees – CR 25 42**

- Employee includes individuals employed by software contractor
- All employees are collectively considered one employee
- Limit shown is part of employee theft limit, not in addition

## Exclusions Applicable to All Insuring Agreements

Discussion will address exclusions applicable to **all** Insuring Agreements, not just Insuring Agreement A.1. Employee Theft, followed by exclusions applicable **only** to Insuring Agreement A.1. Employee Theft.

**Note:**

Similar exclusions are found in the Discovery Form

### Exclusions Applicable to All Insuring Agreements

- a. Acts Committed By You, Your Partners Or Your Members
- b. Acts Committed By Your Employees Learned Of By You Prior To The Policy Period
- c. Acts Committed By Your Employees, Managers, Directors, Trustees Or Representatives
- d. Confidential Or Personal Information
- e. Data Security Breach
- f. Governmental Action
- g. Indirect Loss
- h. Legal Fees, Costs And Expenses
- i. Nuclear Hazard
- j. Pollution
- k. Virtual Currency
- l. War And Military Action

### Exclusions Applicable To Insuring Agreement A.1. – Employee Theft

- a. Inventory Shortages
- b. Trading
- c. Warehouse Receipts

Only the following selected exclusions will be discussed.

#### D. Exclusions

1. This insurance does not cover:

a. **Acts Committed By You, Your Partners Or Your Members**

Loss resulting from "theft" or any other dishonest act committed by:

(1) You; or

(2) Any of your partners or "members";

whether acting alone or in collusion with other persons.

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#### Exclusion a. Theft or dishonest acts committed by you, your partners or members

- Excludes loss, whether acting alone or in collusion with others

#### Endorsements available:

- **U.S. Department of Labor – ERISA Plan Coverage Amendments – CR 25 47 09 17**

1. In Section D.1.:

- a. The **Acts Committed By You, Your Partners Or Your Members** Exclusion is replaced by the following:

**Acts Committed By You, Your Partners Or Your Members**

Loss resulting from "theft" or any other dishonest or fraudulent act committed by:

(1) You; or

(2) Any of your partners or "members";

whether acting alone or in collusion with other persons, except while handling "money", "securities" or "other property" of an "employee benefit plan".

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- Mandatory endorsement that provides coverage for the insured, insured partners or members while handling "employee benefit plans"
- "Employee benefit plan" is a defined term

#### F. Definitions

...

8. "Employee benefit plan" means any welfare or pension benefit plan shown in the Declarations that you sponsor and that is subject to the Employee Retirement Income Security Act of 1974 (ERISA) and any amendments thereto.

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- **Include Partners As Employees – CR 25 03 09 17**
  - Endorsement amends definition of employee to include coverage for partners
  - Payment limited to the amount that is excess of any amounts owed to that partner plus the value of that partner's interest and any deductible
  - This endorsement shall not apply to loss sustained by an employee benefit plan caused by a partner; however, there is a right to recover the amount of such loss from that partner
  
- **Include Members Of A Limited Liability Company As Employees – CR 25 04 09 17**
  - Amends definition to include members for coverage, except if the members are covered as employees
  - Payment limited to the amount that is excess of any amounts owed to that member plus the value of that member's interest and any deductible
  - This endorsement shall not apply to loss sustained by an employee benefit plan; however, there is a right to recover the amount of such covered loss from that member

**D. Exclusions**

**1. This insurance does not cover:**

...

**b. Acts Committed By Your Employees Learned Of By You Prior To The Policy Period**

Loss caused by an "employee" if the "employee" had also committed "theft" or any other dishonest act prior to the effective date of this insurance and you or any of your partners, "members", "managers", officers, directors or trustees, not in collusion with the "employee", learned of such "theft" or dishonest act prior to the Policy Period shown in the Declarations.

**c. Acts Committed By Your Employees, Managers, Directors, Trustees Or Representatives**

Loss resulting from "theft" or any other dishonest act committed by any of your "employees", "managers", directors, trustees or authorized representatives:

(1) Whether acting alone or in collusion with other persons; or

(2) While performing services for you or otherwise;

except when covered under Insuring Agreement **A.1.**

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**Exclusion b. Acts Committed By Your Employees Learned Of By You Prior To The Policy Period**

- Excludes loss by an employee if that employee also committed theft prior to the policy period, AND
- Excludes loss if the named insured or any of its partners, members, managers, officers directors or trustees (not in collusion with the employee) learned of such theft prior to the policy period

**Exclusion c. Acts Committed By Your Employees, Managers, Directors, Trustees Or Representatives**

- Unless covered by Insuring Agreement A.1. Employee Theft

**D. Exclusions**

**1. This insurance does not cover:**

...

**d. Confidential Or Personal Information**

Loss resulting from:

- (1)** The disclosure or use of another person's or organization's confidential or personal information; or
- (2)** The disclosure of your confidential or personal information. However, this Paragraph **1.d.(2)** does not apply to loss otherwise covered under this insurance that results directly from the use of your confidential or personal information.

For the purposes of this exclusion, confidential or personal information includes, but is not limited to, patents, trade secrets, processing methods, customer lists, financial information, credit card information, health information or any other type of nonpublic information.

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**Exclusion d. Confidential Or Personal Information**

- Excludes loss from **disclosure** of insured's or another person's or organization's confidential information
- Also excludes **use** of another individual's or organization's confidential information
  - Does NOT exclude **use** of the insured's personal or confidential information
- Exclusion also includes, but not limited to, patents, trade secrets, processing methods, customer lists, financial information, credit card information, health information or any other nonpublic information



The **Confidential Or Personal Information** Exclusion is replaced by the following:

**Confidential Or Personal Information**

Loss resulting from:

- (1) The disclosure or use of another person's or organization's confidential or personal information, except as provided in Paragraph (2).
- (2) The disclosure of your or an "employee benefit plan" participant's confidential or personal information. However, this Paragraph (2) does not apply to loss otherwise covered under Insuring Agreement A.1. that results directly from the use of your or an "employee benefit plan" participant's confidential or personal information.

For the purposes of this exclusion, confidential or personal information includes, but is not limited to, patents, trade secrets, processing methods, customer lists, financial information, credit card information, health information, retirement or health savings account information or any other type of nonpublic information.

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- Exclusion d. is modified by **U.S. Department Of Labor – ERISA Plan Coverage Amendments – CR 25 47 09 17**
  - Mandatory endorsement that provides coverage when loss results from the use of the named insured's or employee benefit plan's confidential or personal information

**D. Exclusions**

1. This insurance does not cover:

...

**e. Data Security Breach**

Fees, costs, fines, penalties and other expenses incurred by you which are related to the access to or disclosure of another person's or organization's confidential or personal information including, but not limited to, patents, trade secrets, processing methods, customer lists, financial information, credit card information, health information or any other type of nonpublic information.

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**Exclusion e. Data Security Breach**

- Excludes costs, fines or other expenses associated with the access to or disclosure of another's personal or confidential information
- Coverage may be available under Cyber Liability policies

**D. Exclusions**

**1. This insurance does not cover:**

...

**g. Indirect Loss**

Loss that is an indirect result of an "occurrence" covered by this insurance including, but not limited to, loss resulting from:

- (1)** Your inability to realize income that you would have realized had there been no loss of or damage to "money", "securities" or "other property";
- (2)** Payment of damages of any type for which you are legally liable. But, we will pay compensatory damages arising directly from a loss covered under this insurance; or
- (3)** Payment of costs, fees or other expenses you incur in establishing either the existence or the amount

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**Exclusion g. Indirect Loss**

- Excludes the named insured's inability to realize income had there been no loss of or damage to money, securities or other property;
- Excludes payment of damages of any type for which the named insured is legally liable, except compensatory damages resulting from a covered loss; or
- Excludes payment of costs, fees or other expenses the named insured incurs in establishing either the existence or the amount of loss under this insurance
- Endorsement suggestion – **Include Expenses Incurred To Establish Amount Of Covered Loss – CR 25 40**
  - Adds coverage for the amount of covered expenses incurred to determine the amount of an employee theft loss or computer fraud loss – lesser of dollar or percentage shown in endorsement
  - Amount paid is part of the limit of insurance

#### D. Exclusions

1. This insurance does not cover:

...

**h. Legal Fees, Costs And Expenses**

Fees, costs and expenses incurred by you which are related to any legal action, except when covered under Insuring Agreement **A.2.**

...

**k. Virtual Currency**

Loss involving virtual currency of any kind, by whatever name known, whether actual or fictitious including, but not limited to, digital currency, crypto currency or any other type of electronic currency

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#### Exclusion h. Legal Fees, Costs And Expenses

- Excludes loss, except under Insuring Agreement – Forgery Or Alterations

#### Exclusion k. Virtual Currency

- Excludes loss involving virtual currency known by any name whether actual or fictitious

*Example:*  
*Bitcoin*

- Endorsement suggestion – **Include Virtual Currency As Money – CR 25 45**
  - Used to amend Insuring Agreement A.1. Employee Theft or to amend Insuring Agreement A.6. Computer And Funds Transfer Fraud
  - Amends the definition of “money” to include virtual currency
  - Coverage provided is based on the monetary value of the virtual currency as of close of business on the date the loss was discovered

## Exclusions Applicable to Insuring Agreement A.1. Employee Theft

### D. Exclusions

#### 2. Insuring Agreement A.1. does not cover:

##### a. Inventory Shortages

Loss, or that part of any loss, the proof of which as to its existence or amount is dependent upon:

- (1) An inventory computation; or
- (2) A profit and loss computation.

However, where you establish wholly apart from such computations that you have sustained a loss, then you may offer your inventory records and actual physical count of inventory in support of the amount of loss claimed.

##### b. Trading

Loss resulting from trading, whether in your name or in a genuine or fictitious account.

##### c. Warehouse Receipts

Loss resulting from the fraudulent or dishonest signing, issuing, cancelling or failing to cancel, a warehouse receipt or any papers connected with it.

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#### a. Inventory Shortages

- Excludes loss from inventory shortages discovered by inventory or profit and loss computation

#### b. Trading

- Excludes loss from trading, whether in the name of the insured or a genuine or fictitious account
- **Add Trading Coverage CR 25 16**
  - Adds back coverage for employee trading but only up to the limit shown in the endorsement schedule

#### c. Warehouse Receipts

- Excludes loss from fraudulent signing, issuing, cancelling or failure to cancel
- **Add Warehouse Receipts Coverage CR 25 17**
  - Adds back coverage for employee theft involving warehouse receipts but only up to the limit shown in the endorsement schedule

- **U.S. Department Of Labor – ERISA Plan Coverage Amendments – CR 25 47 09 17**
  - Mandatory endorsement used when coverage applies to employee benefit plans subject to ERISA and affects coverage only as respects the employee benefit plans
  - Deletes the Trading Exclusion so that trading losses involving funds of employee benefit plans are automatically covered without the need for endorsement – **Add Trading Coverage CR 25 16**
  - Also deletes the Warehouse Receipts Exclusion as respects employee benefit plans without the need for endorsement – **Add Warehouse Receipts Coverage CR 25 17**



## Knowledge Check 1

1. Identify which is the trigger for the Loss Sustained Form vs. the Discovery Form.

	Loss Sustained	Discovery
a. Coverage is triggered when a loss has occurred during the policy period AND is discovered during the policy period or the Extended Period to Discover Loss (usually one year).		
b. Coverage is triggered for a loss that occurred at any time, AND it has to be discovered during the policy period or the Extended Period to Discover Loss (usually 60 days).		

2. Indicate which of the following are true or false in regard to Insuring Agreement A.1. Employee Theft under an unendorsed Commercial Crime Policy.

	True	False
a. Employee theft covers loss committed by an employee while acting alone for money and securities only.		
b. Other property as defined; applies to tangible property other than money and securities.		
c. The definition of employees includes seasonal, short-term or leased employees.		
d. <b>Employee Theft – Name Or Position Schedule – CR 04 08</b> can be used to apply coverage to either the named employee or the person who occupies a named position.		

3. Which of the following statements is true in regard to coverage under all Insuring Agreements including Employee Theft under an unendorsed Commercial Crime Policy?
- a. Coverage includes the payment of costs, fees or other expenses the named insured incurs in establishing the existence of an employee theft loss.
  - b. Coverage excludes the payment of costs, fees or other expenses the named insured incurs in establishing the existence or the amount of loss.
  - c. Coverage includes loss from virtual currency, such as bitcoin, since it fits the definition of “money,” “securities,” and “other property.”
  - d. Coverage excludes loss from inventory shortages as a result of employee theft.

### Learning Objective 3:

Using knowledge of the following Insuring Agreements:

- Forgery Or Alteration
- Inside The Premises – Theft Of Money And Securities
- Inside The Premises – Robbery Or Safe Burglary Of Other Property
- Outside The Premises

the participant will be able to describe the coverages, definitions, and exclusions applicable in the event of loss and endorsements available to modify coverage.

#### A. Insuring Agreements

##### 2. Forgery Or Alteration

- a. We will pay for loss resulting directly from "forgery" or alteration of checks, drafts, promissory notes, or similar written promises, orders or directions to pay a sum certain in "money" that are:

- (1) Made or drawn by or drawn upon you; or
- (2) Made or drawn by one acting as your agent; or that are purported to have been so made or drawn.

For the purposes of this Insuring Agreement, a substitute check as defined in the Check Clearing for the 21st Century Act shall be treated the same as the original it replaced.

- b. If you are sued for refusing to pay any instrument covered in Paragraph 2.a., on the basis that it has been forged or altered, and you have our written consent to defend against the suit, we will pay for any reasonable legal expenses that you incur and pay in that defense. The amount that we will pay for such legal expenses is in addition to the Limit of Insurance applicable to this Insuring Agreement.

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**Pays for loss resulting from forgery or alteration of checks, drafts, or promissory notes**

**Includes substitute checks as defined in the Check Clearing for the 21st Century Act**

**Subject to the insurance company's written consent, pays for unlimited defense coverage for a suit that results from the insured's refusal to pay a covered instrument believed to be forged or altered**

**"Forgery" is a defined term**

11. "Forgery" means the signing of the name of another person or organization with intent to deceive; it does not mean a signature which consists in whole or in part of one's own name signed with or without authority, in any capacity, for any purpose.

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## Insuring Agreement A.3. Inside The Premises – Theft Of Money And Securities

### A. Insuring Agreements

...

#### 3. Inside The Premises – Theft Of Money And Securities

We will pay for:

- a. Loss of "money" and "securities" inside the "premises" or "financial institution premises":
  - (1) Resulting directly from "theft" committed by a person present inside such "premises" or "financial institution premises"; or
  - (2) Resulting directly from disappearance or destruction.
- b. Loss from damage to the "premises" or its exterior resulting directly from an actual or attempted "theft" of "money" and "securities", if you are the owner of the "premises" or are liable for damage to it.
- c. Loss of or damage to a locked safe, vault, cash register, cash box or cash drawer located inside the "premises" resulting directly from an actual or attempted "theft" of, or unlawful entry into, those containers.

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**Pays for loss of money and securities inside the named insured's "premises" or a "financial institution premises" as defined**

Loss must result directly from:

- (1) Theft committed by a person actually inside the premises or banking premises
- (2) Disappearance or destruction

**Includes damage to premises or its exterior from actual or attempted theft if the named insured owns the premises or is responsible for it**

**Includes damage to locked safe, vault, cash register, cash box or cash drawer located inside the premises from actual or attempted theft**

**"Premises" and "financial institution premises" are defined terms**

19. "Premises" means the interior of that portion of any building you occupy in conducting your business.
10. "Financial institution premises" means the interior of that portion of any building occupied by a "financial institution" as defined in Paragraph F.9.a.
9. "Financial institution" means:
  - a. ...
    - (1) A bank, savings bank, savings and loan association, trust company, credit union or similar depository institution; or
    - (2) An insurance company.

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## Insuring Agreement A.4. Inside The Premises – Robbery Or Safe Burglary Of Other Property

3

### A. Insuring Agreements

...

#### 4. Inside The Premises – Robbery Or Safe Burglary Of Other Property

We will pay for:

- a. Loss of or damage to "other property":
  - (1) Inside the "premises" resulting directly from an actual or attempted "robbery" of a "custodian"; or
  - (2) Inside the "premises" in a safe or vault resulting directly from an actual or attempted "safe burglary".
- b. Loss from damage to the "premises" or its exterior resulting directly from an actual or attempted "robbery" or "safe burglary" of "other property", if you are the owner of the "premises" or are liable for damage to it.
- c. Loss of or damage to a locked safe or vault located inside the "premises" resulting directly from an actual or attempted "robbery" or "safe burglary".

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- a. Pays for loss to tangible property other than money and securities
  - (1) Robbery or attempted robbery of a custodian inside the premises, or
  - (2) Actual or attempted burglary of a safe or vault inside the premises
- b. Includes damage to premises or its exterior from actual or attempted robbery or safe burglary if the named insured owns the premises or is responsible for it
- c. Includes damage to locked safe, vault, cash register, cash box or cash drawer located inside the premises from actual or attempted robbery or safe burglary

### **“Robbery” is a defined term**

20. "Robbery" means the unlawful taking of property from the care and custody of a person by one who has:

- a. Caused or threatened to cause that person bodily harm; or
- b. Committed an obviously unlawful act witnessed by that person.

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- Unlawful taking of property from the care and custody of a person who has caused or threatened to cause that person bodily harm, or
- Committed an obviously unlawful act witnessed by that person

### **“Custodian” is a defined term**

4. "Custodian" means you, or any of your partners or "members", or any "employee" while having care and custody of property inside the "premises", excluding any person while acting as a "watchperson" or janitor.

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- The named insured, any of its partners or members, or any employee while having care and custody of property inside the premises
- Excludes any watchperson or janitor

### **“Safe burglary” is a defined term**

21. "Safe burglary" means the unlawful taking of:

- a. Property from within a locked safe or vault by a person unlawfully entering the safe or vault as evidenced by marks of forcible entry upon its exterior; or
- b. A safe or vault from inside the "premises".

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- Unlawful taking of property from within a locked safe or vault by a person entering the safe or vault as evidenced by marks of forcible entry, or
- Unlawful taking of a safe or vault from inside the premises

## Insuring Agreement A.5. Outside The Premises

3

### A. Insuring Agreements

...

#### 5. Outside The Premises

We will pay for:

- a. Loss of "money" and "securities" outside the "premises" in the care and custody of a "messenger" or an armored motor vehicle company resulting directly from "theft", disappearance or destruction.
- b. Loss of or damage to "other property" outside the "premises" in the care and custody of a "messenger" or an armored motor vehicle company resulting directly from an actual or attempted "robbery".

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#### a. Pays for loss of money and securities

- Loss must occur outside the premises
- Must be in the care and custody of a "messenger" or an armored motor vehicle company
- Loss must result directly from theft, disappearance or destruction

#### b. Pays for loss or damage to other property

- Loss must occur outside the premises
- Must be in the care and custody of a messenger or an armored motor vehicle company
- Loss must result directly from an actual or attempted robbery

#### c. "Messenger" is a defined term

### F. Definitions

...

15. "Messenger" means you, or your relative, or any of your partners or "members", or any "employee" while having care and custody of property outside the "premises".

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## Exclusions Applicable to Insuring Agreement A.3., A.4., & A.5.

Exclusions applicable to all Insuring Agreements discussed earlier are applicable to Insuring Agreements A.3., A.4. & A.5. Following are additional exclusions that apply only to Insuring Agreements A.3., A.4. & A.5.

3. Insuring Agreements **A.3., A.4. and A.5.** do not cover:
  - a. **Accounting Or Arithmetical Errors Or Omissions**  
Loss resulting from accounting or arithmetical errors or omissions.
  - b. **Exchanges Or Purchases**  
Loss resulting from the giving or surrendering of property in any exchange or purchase.
  - c. **Fire**  
Loss or damage resulting from fire, however caused, except:
    - (1) Loss of or damage to "money" and "securities"; and
    - (2) Loss from damage to a safe or vault.
  - d. **Money Operated Devices**  
Loss of property contained in any money operated device unless the amount of "money" deposited in it is recorded by a continuous recording instrument in the device.
  - e. **Motor Vehicles Or Equipment And Accessories**  
Loss of or damage to motor vehicles, trailers or semitrailers or equipment and accessories attached to them.

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- a. **Accounting Or Arithmetical Errors Or Omissions**
- b. **Exchanges Or Purchases**
- c. **Fire**
  - Exception for money, securities, or damage to a safe or vault
- d. **Money Operated Devices**
- e. **Motor Vehicles Or Equipment And Accessories**

**3. Insuring Agreements A.3., A.4. and A.5. do not cover:**

**f. Transfer Or Surrender Of Property**

(1) Loss of or damage to property after it has been transferred or surrendered to a person or place outside the "premises" or "financial institution premises":

(a) On the basis of unauthorized instructions; or

(b) As a result of a threat including, but not limited to:

(i) A threat to do bodily harm to any person;

(ii) A threat to do damage to any property;

(iii) A threat to introduce a denial of service attack into any "computer system";

(iv) A threat to introduce a virus or other malicious instruction into any "computer system" which is designed to damage, destroy or corrupt "electronic data" or "computer programs" stored within the "computer system";

(v) A threat to contaminate, pollute or render substandard your products or goods; or

(vi) A threat to disseminate, divulge or utilize:

i. Your confidential information;

ii. Confidential or personal information of another person or organization; or

iii. Weaknesses in the source code within any "computer system".

(2) However, this exclusion does not apply under Insuring Agreement A.5. to loss of "money", "securities" or "other property" while outside the "premises" in the care and custody of a "messenger" if you:

(a) Had no knowledge of any threat at the time the conveyance began; or

(b) Had knowledge of a threat at the time the conveyance began, but the loss was not related to the threat.

**g. Vandalism**

Loss from damage to the "premises" or its exterior, or to any safe, vault, cash register, cash box, cash drawer or "other property" by vandalism or malicious mischief.

**h. Voluntary Parting Of Title To Or Possession Of Property**

Loss resulting from your, or anyone else acting on your express or implied authority, being induced by any dishonest act to voluntarily part with title to or possession of any property.

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**f. Transfer Or Surrender Of Property**

(1) Excludes loss of or damage to property after it has been transferred or surrendered

(a) Loss caused by unauthorized instructions

(b) Loss as a result of a threat

(2) Exception for Insuring Agreement A.5. Outside The Premises

- Exclusion does not apply to money, securities, or other property in the care and custody of a messenger if there was no knowledge of the threat

**g. Vandalism**

- Excludes loss from damage by vandalism or malicious mischief

**h. Voluntary Parting Of Title To Or Possession Of Property**

- Loss from being induced by any dishonest act to part with title or property

## Insuring Agreement A.6. Computer And Funds Transfer Fraud

### Learning Objective 4:

Using knowledge of the following Insuring Agreements:

- Computer And Funds Transfer Fraud
- Money Orders And Counterfeit Money

the participant will be able to describe the coverages, definitions, and exclusions applicable in the event of loss and endorsements available to modify coverage.

#### A. Insuring Agreements

...

#### 6. Computer And Funds Transfer Fraud

##### a. We will pay for:

##### (1) Loss resulting directly from a fraudulent:

(a) Entry of "electronic data" or "computer program" into; or

(b) Change of "electronic data" or "computer program" within;

any "computer system" owned, leased or operated by you, provided the fraudulent entry or fraudulent change causes, with regard to Paragraphs **6.a.(1)(a)** and **6.a.(1)(b)**:

(i) "Money", "securities" or "other property" to be transferred, paid or delivered; or

(ii) Your account at a "financial institution" to be debited or deleted.

(2) Loss resulting directly from a "fraudulent instruction" directing a "financial institution" to debit your "transfer account" and to transfer, pay or deliver "money" or "securities" from that account.

b. As used in Paragraph **6.a.(1)**, fraudulent entry or fraudulent change of "electronic data" or "computer program" shall include such entry or change made by an "employee" acting, in good faith, upon a "fraudulent instruction" received from a computer software contractor who has a written agreement with you to design, implement or service "computer programs" for a "computer system" covered under this Insuring Agreement.

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**Pays for loss resulting from a fraudulent entry of data or change of "electronic data" or "computer program" that causes money, securities or other property to be transferred, paid or delivered to another (in other words, coverage is intended for hacker-type computer incidents)**

- Includes entry by an employee acting in good faith on a fraudulent instruction received from the named insured's computer software contractor

**Also pays for loss resulting from a "fraudulent instruction" to a financial institution to transfer money or securities from the insured's transfer account**

## F. Definitions

1. "Computer program" means a set of related electronic instructions, which direct the operation and function of a computer or devices connected to it, which enable the computer or devices to receive, process, store or send "electronic data".
- ...
6. "Electronic data" means information, facts, images or sounds stored as or on, created or used on, or transmitted to or from computer software (including systems and applications software) on data storage devices, including hard or floppy disks, CD-ROMs, tapes, drives, cells, data processing devices or any other media which are used with electronically controlled equipment.
- ...
12. "Fraudulent instruction" means:
  - a. With regard to Insuring Agreement **A.6.a.(2)**:
    - (1) A computer, telefacsimile, telephone or other electronic instruction directing a "financial institution" to debit your "transfer account" and to transfer, pay or deliver "money" or "securities" from that "transfer account", which instruction purports to have been issued by you, but which in fact was fraudulently issued by someone else without your knowledge or consent; or
    - (2) A written instruction (other than those covered under Insuring Agreement **A.2.**) issued to a "financial institution" directing the "financial institution" to debit your "transfer account" and to transfer, pay or deliver "money" or "securities" from that "transfer account", through an electronic funds transfer system at specified times or under specified conditions, which instruction purports to have been issued by you, but which in fact was issued, forged or altered by someone else without your knowledge or consent.
  - b. With regard to Insuring Agreement **A.6.b.:**  
 A computer, telefacsimile, telephone or other electronic, written or voice instruction directing an "employee" to enter or change "electronic data" or "computer programs" within a "computer system" covered under the Insuring Agreement, which instruction in fact was fraudulently issued by your computer software contractor.

"Computer program," "electronic data," and "fraudulent instruction" are defined terms

## Exclusions Applicable to Insuring Agreement A.6. Computer And Funds Transfer Fraud

### D. Exclusions

...

#### 4. Insuring Agreement A.6. does not cover:

##### a. Authorized Access

Loss resulting from a fraudulent:

- (1) Entry of "electronic data" or "computer program" into; or
- (2) Change of "electronic data" or "computer program" within;

any "computer system" owned, leased or operated by you by a person or organization with authorized access to that "computer system", except when covered under Insuring Agreement A.6.b.

##### b. Credit Card Transactions

Loss resulting from the use or purported use of credit, debit, charge, access, convenience, identification, stored-value or other cards or the information contained on such cards.

##### c. Exchanges Or Purchases

Loss resulting from the giving or surrendering of property in any exchange or purchase.

##### d. Fraudulent Instructions

Loss resulting from an "employee" or "financial institution" acting upon any instruction to:

- (1) Transfer, pay or deliver "money", "securities" or "other property"; or
- (2) Debit or delete your account;

which instruction proves to be fraudulent, except when covered under Insuring Agreement A.6.a.(2) or A.6.b.

##### e. Inventory Shortages

Loss, or that part of any loss, the proof of which as to its existence or amount is dependent upon:

- (1) An inventory computation; or
- (2) A profit and loss computation.

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#### a. Authorized Access

- Excludes loss from a fraudulent entry by another who has authorized access
- Exception for an employee acting on instructions received from the named insured's computer software contractor

#### b. Credit Card Transactions

- Excludes loss caused by the use of credit, debit or similar cards, or the information on them



**c. Exchanges Or Purchases**

- Excludes loss from the giving or surrendering of property in any exchange or purchase

**d. Fraudulent Instructions**

- Excludes loss resulting from an employee who is acting on any fraudulent instruction to transfer, pay or deliver money, securities or other property.
- **Fraudulent Impersonation – CR 04 17**
  - Endorsement adds an additional Insuring Agreement
  - Endorsement provides coverage when, in good faith, the named insured transfers money, securities or other property in reliance upon a fraudulent transfer instruction
  - Fraudulent instruction is purportedly issued by one or both of the following, as shown on the endorsement's schedule:
    1. The insured, an employee, partner, member, manager, officer, director, or trustee of the insured, **OR**
    2. A customer or vendor of the insured with whom the insured has a written contract, **AND**
    3. Which transfer instruction proves to have been fraudulently issued by an imposter without the knowledge or consent of the above person(s)
  - Insured has a choice of three levels of verification of transactions
    - Option A: All transfer instructions must be verified
    - Option B: All transactions over a specified amount must be verified
    - Option C: Verification is not required
  - Coverage territory is anywhere in the world

**e. Inventory Shortages**

- Losses based on inventory computation or profit and loss computations

## Insuring Agreement A.7. Money Orders And Counterfeit Money

### A. Insuring Agreements

...

#### 7. Money Orders And Counterfeit Money

We will pay for loss resulting directly from your having, in good faith, accepted in exchange for merchandise, "money" or services:

- a. Money orders issued by any post office, express company or "financial institution" that are not paid upon presentation; or
- b. "Counterfeit money" that is acquired during the regular course of business.

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**Pays for loss resulting from the named insured's accepting the following in exchange for merchandise, "money" or services:**

- a. Money orders not paid upon presentation, or
- b. Counterfeit money acquired in the course of business

**"Counterfeit money" is a defined term**

### F. Definitions

...

3. "Counterfeit money" means an imitation of "money" which is intended to deceive and to be taken as genuine.

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## Limit Of Insurance

3

### B. Limit Of Insurance

The most we will pay for all loss resulting directly from an "occurrence" is the applicable Limit Of Insurance shown in the Declarations.

If any loss is covered under more than one Insuring Agreement or coverage, the most we will pay for such loss shall not exceed the largest Limit of Insurance available under any one of those Insuring Agreements or coverages.

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**The most paid for all loss resulting directly from an occurrence is the applicable Limit Of Insurance**

**If a loss is covered by more than one Insuring Agreement, the most payable is equal to the largest limit available**

### **Convert To An Aggregate Limit Of Insurance – CR 20 08**

- Endorsement used to establish maximum payable for all losses during the policy period
- Losses paid will reduce the limit available for the remainder of the policy period
- Recoveries after settlement do not increase or reinstate the aggregate
- Does not apply to a loss sustained by an employee benefit plan

## Deductible

### C. Deductible

We will not pay for loss resulting directly from an "occurrence" unless the amount of loss exceeds the Deductible Amount shown in the Declarations. We will then pay the amount of loss in excess of the Deductible Amount, up to the Limit of Insurance.

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**Will pay only those amounts that exceed the amount of the deductible, up to the applicable Limit Of Insurance**

#### Note:

The Limit of Insurance and the Deductible provision is modified accordingly if **Employee Theft – Name Or Position Schedule – CR 04 08** endorsement is added

### Learning Objective 5:

Using knowledge of the Conditions applicable to the Insuring Agreements contained in the Commercial Crime Coverage Forms, the participant will be able to describe how the Conditions may affect coverage in the event of a loss.

The Commercial Crime Coverage Form (Loss Sustained Form) includes Conditions that are applicable to all Insuring Agreements and Conditions that apply only to specific Insuring Agreements. All of these conditions are in addition to the Common Policy Conditions.

#### Conditions Applicable to All Insuring Agreements

- a. Additional Premises Or Employees
- b. Concealment, Misrepresentation Or Fraud
- c. Consolidation – Merger Or Acquisition
- d. Cooperation
- e. Duties In The Event Of Loss
- f. Employee Benefit Plans
- g. Extended Period To Discover Loss
- h. Joint Insured
- i. Legal Action Against Us
- j. Liberalization
- k. Loss Sustained During Prior Insurance Issued By Us Or Any Affiliate
- l. Loss Sustained During Prior Insurance Not Issued By Us Or Any Affiliate
- m. Other Insurance
- n. Ownership Of Property; Interests Covered
- o. Records
- p. Recoveries
- q. Territory
- r. Transfer Of Your Rights Of Recovery Against Others To Us
- s. Valuation – Settlement

**Conditions Applicable to Insuring Agreement A.1. Employee Theft**

- a. Termination As To Any Employee
- b. Territory

**Conditions Applicable To Insuring Agreement A.2. Forgery or Alteration**

- a. Deductible Amount
- b. Electronic And Mechanical Signatures
- c. Proof Of Loss
- d. Territory

**Conditions Applicable To Insuring Agreements A.4. Inside The Premises –  
Robbery Or Safe Burglary Of Other Property and  
A.5. Outside The Premises**

- a. Armored Motor Vehicle Companies
- b. Special Limit Of Insurance For Specified Property

**Conditions Applicable To Insuring Agreement A.6.  
Computer And Funds Transfer Fraud**

- a. Special Limit Of Insurance For Specified Property
- b. Territory

**Note:**

The Discovery Form has similar conditions except where indicated in this material

## Conditions Applicable to All Insuring Agreements

Only the following selected conditions will be discussed.

3

### E. Conditions

The following conditions apply in addition to the Common Policy Conditions:

#### 1. Conditions Applicable To All Insuring Agreements

##### a. Additional Premises Or Employees

If, while this insurance is in force, you establish any additional "premises" or hire additional "employees", other than through consolidation or merger with, or purchase or acquisition of assets or liabilities of, another entity, such "premises" and "employees" shall automatically be covered under this insurance. Notice to us of an increase in the number of "premises" or "employees" is not required, and no additional premium will be charged for the remainder of the Policy Period shown in the Declarations.

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### Condition a. Additional Premises Or Employees

- Other than consolidation, merger or acquisitions, any additional locations and employees shall be automatically included
- No requirement to report and no additional premium charge
- This condition does not apply if **Employee Theft – Name Or Position Schedule – CR 04 08** endorsement is added

**E. Conditions**

The following conditions apply in addition to the Common Policy Conditions:

**1. Conditions Applicable To All Insuring Agreements**

...

**b. Concealment, Misrepresentation Or Fraud**

This insurance is void in any case of fraud by you as it relates to this insurance at any time. It is also void if you or any other Insured, at any time, intentionally conceals or misrepresents a material fact concerning:

- (1) This insurance;
- (2) The property covered under this insurance;
- (3) Your interest in the property covered under this insurance; or
- (4) A claim under this insurance.

**c. Consolidation – Merger Or Acquisition**

If you consolidate or merge with, or purchase or acquire the assets or liabilities of, another entity:

- (1) You must give us written notice as soon as possible and obtain our written consent to extend the coverage provided by this insurance to such consolidated or merged entity or such purchased or acquired assets or liabilities. We may condition our consent by requiring payment of an additional premium; but
- (2) For the first 90 days after the effective date of such consolidation, merger or purchase or acquisition of assets or liabilities, the coverage provided by this insurance shall apply to such consolidated or merged entity or such purchased or acquired assets or liabilities, provided that all "occurrences" causing or contributing to a loss involving such consolidation, merger or purchase or acquisition of assets or liabilities, must take place after the effective date of such consolidation, merger or purchase.

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**Condition b. Concealment, Misrepresentation Or Fraud**

- Declares insurance to be void if insured intentionally conceals or misrepresents material facts

**Condition c. Consolidation – Merger Or Acquisition**

- Named insured must give the company written notice when it acquires, consolidates or merges with another entity
- Insurer must consent to provide coverage and may collect additional premium
- Coverage for the first 90 days will be provided for losses provided the losses occur after the effective date of the consolidation, merger or acquisition
- This Condition does not apply if the **Employee Theft – Name or Position Schedule – CR 04 08** endorsement added



#### E. Conditions

The following conditions apply in addition to the Common Policy Conditions:

##### 1. Conditions Applicable To All Insuring Agreements

...

##### d. Cooperation

You must cooperate with us in all matters pertaining to this insurance as stated in its terms and conditions.

##### e. Duties In The Event Of Loss

After you "discover" a loss or a situation that may result in loss of or damage to "money", "securities" or "other property", you must:

- (1) Notify us as soon as possible. If you have reason to believe that any loss (except for loss covered under Insuring Agreement **A.1.** or **A.2.**) involves a violation of law, you must also notify the local law enforcement authorities;
- (2) Give us a detailed, sworn proof of loss within 120 days;
- (3) Cooperate with us in the investigation and settlement of any claim;
- (4) Produce for our examination all pertinent records;
- (5) Submit to examination under oath at our request and give us a signed statement of your answers; and
- (6) Secure all of your rights of recovery against any person or organization responsible for the loss and do nothing to impair those rights.

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#### Condition d. Cooperation

- Named insured must cooperate in all matters

#### Condition e. Duties In The Event Of Loss

- Notify us as soon as possible and report the loss to the police if you believe a crime has been committed – exception for Insuring Agreements A.1 and A.2.
- Give a detailed, sworn proof of loss within 120 days
- Cooperate in the investigation of the claim
- Provide all pertinent records for our examination
- Submit to examination under oath
- Secure all rights of recovery against any person or organization responsible for the loss, and do nothing to impair those rights – no right to waive subrogation

## E. Conditions

The following conditions apply in addition to the Common Policy Conditions:

### 1. Conditions Applicable To All Insuring Agreements

...

#### f. Employee Benefit Plans

The "employee benefit plans" shown in the Declarations (hereinafter referred to as Plan) are included as Insureds under Insuring Agreement **A.1.**, subject to the following:

(1) If any Plan is insured jointly with any other entity under this insurance, you or the Plan Administrator is responsible for selecting a Limit of Insurance for Insuring Agreement **A.1.** that is sufficient to provide a Limit of Insurance for each Plan that is at least equal to that required under ERISA as if each Plan were separately insured.

(2) With respect to loss sustained or "discovered" by any such Plan, Insuring Agreement **A.1.** is replaced by the following:

We will pay for loss of or damage to "money", "securities" and "other property" resulting directly from fraudulent or dishonest acts committed by an "employee", whether identified or not, acting alone or in collusion with other persons.

*The above paragraph (2) is replaced by mandatory endorsement CR 25 47 when coverage applies to employee benefit plans subject to ERISA.*

(2) With respect to loss sustained or "discovered" by any such Plan, Insuring Agreement **A.1.** is replaced by the following:

*We will pay for loss of or damage to "money", "securities" and "other property" resulting directly from fraudulent or dishonest acts committed by an "employee" whether identified or not, sole proprietor, partner or "member" acting alone or in collusion with other persons while such "employee", sole proprietor, partner or "member" is handling "money", "securities" or "other property" of an "employee benefit plan*

(3) If the first Named Insured is an entity other than a Plan, any payment we make for loss sustained by any Plan will be made to the Plan sustaining the loss.

(4) If two or more Plans are insured under this insurance, any payment we make for loss:

(a) Sustained by two or more Plans; or

(b) Of commingled "money", "securities" or "other property" of two or more Plans; resulting directly from an "occurrence", will be made to each Plan sustaining loss in the proportion that the Limit of Insurance required under ERISA for each Plan bears to the total of those limits.

(5) The Deductible Amount applicable to Insuring Agreement **A.1.** does not apply to loss sustained by any Plan.

## Condition f. Employee Benefit Plans

- Insured or plan administrator is responsible for selecting a limit sufficient to satisfy ERISA requirements
- Payment for loss will be made to the plan that sustains the loss
- If more than one plan is insured and more than one plan sustains a loss, payment will be made to each plan proportionately
- Deductible amounts applicable to Insuring Agreement **A.1.** do not apply to loss sustained by any plan

#### E. Conditions

The following conditions apply in addition to the Common Policy Conditions:

##### 1. Conditions Applicable To All Insuring Agreements

...

##### g. Extended Period To Discover Loss

We will pay for loss that you sustained prior to the effective date of cancellation of this insurance, which is "discovered" by you:

- (1) No later than one year from the date of that cancellation. However, this extended period to "discover" loss terminates immediately upon the effective date of any other insurance obtained by you, whether from us or another insurer, replacing in whole or in part the coverage afforded under this insurance, whether or not such other insurance provides coverage for loss sustained prior to its effective date.
- (2) No later than one year from the date of that cancellation with regard to any "employee benefit plan".

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#### Condition g. Extended Period To Discover Loss (Loss Sustained Form)

- Describes when a loss that occurs prior to the current policy cancellation but discovered after the current policy cancellation will be covered by the current policy
- Maximum of one year
- Provision is terminated if other insurance is secured by the insured as of the effective date of the other insurance

**E. Conditions**

The following conditions apply in addition to the Common Policy Conditions:

...

**g. Extended Period To Discover Loss**

We will pay for loss that you sustained prior to the effective date of cancellation of this insurance, which is "discovered" by you:

- (1) No later than 60 days from the date of that cancellation. However, this extended period to "discover" loss terminates immediately upon the effective date of any other insurance obtained by you, whether from us or another insurer, replacing in whole or in part the coverage afforded under this insurance, whether or not such other insurance provides coverage for loss sustained prior to its effective date.
- (2) No later than one year from the date of that cancellation with regard to any "employee benefit plan".

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**Condition g. Extended Period To Discover Loss (Discovery Form)**

- Must be discovered no later than 60 days from cancellation
  - One year for Employee Benefit Plans
- The extended period to discover loss terminates immediately upon the effective date of any other insurance obtained by the named insured
- May be modified by endorsement – **Change Extended Period To Discover Loss – CR 20 04**
  - Increases period to discover by adding the number of days shown in the endorsement to the 60 days provided
  - Endorsement does not change the one year applicable to any "employee benefit plan"

#### E. Conditions

The following conditions apply in addition to the Common Policy Conditions:

##### 1. Conditions Applicable To All Insuring Agreements

...

##### h. Joint Insured

- (1) If more than one Insured is named in the Declarations, the first Named Insured will act for itself and for every other Insured for all purposes of this insurance. If the first Named Insured ceases to be covered, then the next Named Insured will become the first Named Insured.
- (2) If any Insured, or partner, "member", "manager", officer, director or trustee of that Insured has knowledge of any information relevant to this insurance, that knowledge is considered knowledge of every Insured.
- (3) An "employee" of any Insured is considered to be an "employee" of every Insured.
- (4) If this insurance or any of its coverages are cancelled as to any Insured, loss sustained by that Insured is covered only if it is "discovered" by you:
  - (a) No later than one year from the date of that cancellation. However, this extended period to "discover" loss terminates immediately upon the effective date of any other insurance obtained by that Insured, whether from us or another insurer, replacing in whole or in part the coverage afforded under this insurance, whether or not such other insurance provides coverage for loss sustained prior to its effective date.
  - (b) No later than one year from the date of that cancellation with regard to any "employee benefit plan".
- (5) We will not pay more for loss sustained by more than one Insured than the amount we would pay if all such loss had been sustained by one Insured.
- (6) Payment by us to the first Named Insured for loss sustained by any Insured, or payment by us to any "employee benefit plan" for loss sustained by that Plan, shall fully release us on account of such loss.

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#### Condition h. Joint Insured

- First named insured will act on behalf of all insureds under the policy
- Knowledge of any insured (or partner, member, officer, director or trustee) is considered knowledge of all
- An employee of any insured is considered an employee of every insured
- If insurance is cancelled as to any insured, coverage continues in accordance with the Extended Period to Discover Loss provision
- Insurance company will not pay more for a loss sustained by more than one insured than the amount it would pay if only one insured sustained a loss
- Payment to the first named insured releases insurance company

## **E. Conditions**

The following conditions apply in addition to the Common Policy Conditions:

### **1. Conditions Applicable To All Insuring Agreements**

...

#### **k. Loss Sustained During Prior Insurance Issued By Us Or Any Affiliate**

##### **(1) Loss Sustained Partly During This Insurance And Partly During Prior Insurance**

If you "discover" loss during the Policy Period shown in the Declarations, resulting directly from an "occurrence" taking place:

- (a)** Partly during the Policy Period shown in the Declarations; and
- (b)** Partly during the policy period(s) of any prior cancelled insurance that we or any affiliate issued to you or any predecessor in interest;

and this insurance became effective at the time of cancellation of the prior insurance, we will first settle the amount of loss that you sustained during this Policy Period. We will then settle the remaining amount of loss that you sustained during the policy period(s) of the prior insurance.

##### **(2) Loss Sustained Entirely During Prior Insurance**

If you "discover" loss during the Policy Period shown in the Declarations, resulting directly from an "occurrence" taking place entirely during the policy period(s) of any prior cancelled insurance that we or any affiliate issued to you or any predecessor in interest, we will pay for the loss, provided:

- (a)** This insurance became effective at the time of cancellation of the prior insurance; and
- (b)** The loss would have been covered under this insurance had it been in effect at the time of the "occurrence".

We will first settle the amount of loss that you sustained during the most recent prior insurance. We will then settle any remaining amount of loss that you sustained during the policy period(s) of any other prior insurance.

##### **(3) In settling loss under Paragraphs k.(1) and k.(2):**

- (a)** The most we will pay for the entire loss is the highest single Limit of Insurance applicable during the period of loss, whether such limit was written under this insurance or was written under the prior insurance issued by us.
- (b)** We will apply the applicable Deductible Amount shown in the Declarations to the amount of loss sustained under this insurance. If no loss was sustained under this insurance, we will apply the Deductible Amount shown in the Declarations to the amount of loss sustained under the most recent prior insurance.

If the Deductible Amount is larger than the amount of loss sustained under this insurance, or the most recent prior insurance, we will apply the remaining Deductible Amount to the remaining amount of loss sustained during the prior insurance.

We will not apply any other Deductible Amount that may have been applicable to the loss.

**Condition k. Loss Sustained During Prior Insurance Issued By Us Or Any Affiliate**

- Describes how the policy will settle/pay for losses that occur during **prior** policy periods when coverage is provided by the same insurance company or affiliate
- When prior coverage is provided by the same insurance company or an affiliate:
  1. Loss must be a covered loss under the current policy
  2. Current policy must be effective on the cancellation date of the prior insurance (uninterrupted coverage)
  3. Settle losses from current policy period backwards
  4. Highest limit of insurance and current deductible apply
- This condition is applicable to the Loss Sustained Form

**Note:**

Further discussion is beyond the scope of this course

**E. Conditions**

The following conditions apply in addition to the Common Policy Conditions:

**1. Conditions Applicable To All Insuring Agreements**

...

**I. Loss Sustained During Prior Insurance Not Issued By Us Or Any Affiliate**

- (1) If you "discover" loss during the Policy Period shown in the Declarations, resulting directly from an "occurrence" taking place during the policy period of any prior cancelled insurance that was issued to you or a predecessor in interest by another company, and the period of time to discover loss under that insurance had expired, we will pay for the loss under this insurance, provided:
  - (a) This insurance became effective at the time of cancellation of the prior insurance; and
  - (b) The loss would have been covered under this insurance had it been in effect at the time of the "occurrence".
- (2) In settling loss subject to this condition:
  - (a) The most we will pay for the entire loss is the lesser of the Limits of Insurance applicable during the period of loss, whether such limit was written under this insurance or was written under the prior cancelled insurance.
  - (b) We will apply the applicable Deductible Amount shown in the Declarations to the amount of loss sustained under the prior cancelled insurance.
- (3) The insurance provided under this condition is subject to the following:
  - (a) If loss covered under this condition is also partially covered under Condition **E.1.k.**, the amount recoverable under this condition is part of, not in addition to, the amount recoverable under Condition **E.1.k.**
  - (b) For loss covered under this condition that is not subject to Paragraph **I.(3)(a)**, the amount recoverable under this condition is part of, not in addition to, the Limit of Insurance applicable to the loss covered under this insurance and is limited to the lesser of the amount recoverable under:
    - (i) This insurance as of its effective date; or
    - (ii) The prior cancelled insurance had it remained in effect.



### Condition I. Loss Sustained During Prior Insurance Not Issued By Us Or Any Affiliate

- Describes how the policy settles/pays for losses that occur during **prior** policy periods when coverage is provided by a different insurance company
- When loss is discovered during the current policy period from an occurrence that took place during a prior policy period with coverage provided by a different insurance company than the current policy:
  1. Loss must be a covered loss under the current policy
  2. Current policy must be effective on the cancellation date of the prior insurance (uninterrupted coverage)
  3. Time period to discover loss of prior policy must have expired
    - Time period to discover loss expires when replaced by another policy – see policy condition E.1.g.
  4. Lowest limit of insurance, whether that is the current policy limit or any prior policy limit, and current deductible apply
  5. If both E.1.k. and E.1.l. apply, the part payable under this provision is part of, and not in addition to, E.1.k.
  6. If not subject to E.1.k., amount recoverable is the lowest amount recoverable under this insurance or the prior policy had it remained in effect
- This condition is applicable to the Loss Sustained Form

**Note:**

Further discussion is beyond the scope of this course

**E. Conditions**

The following conditions apply in addition to the Common Policy Conditions:

**1. Conditions Applicable To All Insuring Agreements**

...

**m. Other Insurance**

If other valid and collectible insurance is available to you for loss covered under this insurance, our obligations are limited as follows:

**(1) Primary Insurance**

When this insurance is written as primary insurance, and:

- (a)** You have other insurance subject to the same terms and conditions as this insurance, we will pay our share of the covered loss. Our share is the proportion that the applicable Limit Of Insurance shown in the Declarations bears to the total limit of all insurance covering the same loss.
- (b)** You have other insurance covering the same loss other than that described in Paragraph **m.(1)(a)**, we will only pay for the amount of loss that exceeds:
  - (i)** The Limit of Insurance and Deductible Amount of that other insurance, whether you can collect on it or not; or
  - (ii)** The Deductible Amount shown in the Declarations;whichever is greater. Our payment for loss is subject to the terms and conditions of this insurance.

**(2) Excess Insurance**

- (a)** When this insurance is written excess over other insurance, we will only pay for the amount of loss that exceeds the Limit of Insurance and Deductible Amount of that other insurance, whether you can collect on it or not. Our payment for loss is subject to the terms and conditions of this insurance.
- (b)** However, if loss covered under this insurance is subject to a deductible, we will reduce the Deductible Amount shown in the Declarations by the sum total of all such other insurance plus any Deductible Amount applicable to that other insurance.

**Condition m. Other Insurance (Loss Sustained Form)**

- If coverage is written as primary
  - 1) Other insurance written on the same basis will pay a proportionate share based on the policy limit as part of the total limit available
  - 2) Other insurance written on other than the same basis will pay the amount that exceeds the greater of
    - a) The limit and deductible of the other policy, whether collectible or not, or
    - b) The deductible that applies under this policy
- If coverage written as excess
  - 1) Pays in excess of the other policy and deductible, whether collectible or not
  - 2) Deductible under this policy will be reduced by the sum of the insurance and deductible under the other insurance

**Condition k. Other Insurance (Discovery Form)**

- Similar policy wording to the Loss Sustained Form Condition m.
- HOWEVER, if coverage is written using the Discovery Form and if the Policy Bridge – Discovery Replacing Loss Sustained clause applies, then the Other Insurance clause does not apply

**Note:**

The following condition is applicable to the Discovery Form.

**E. Conditions**

The following conditions apply in addition to the Common Policy Conditions:

...

**m. Policy Bridge – Discovery Replacing Loss Sustained**

- (1) If this insurance replaces insurance that provided you with an extended period of time after cancellation in which to discover loss and which did not terminate at the time this insurance became effective:
  - (a) We will not pay for any loss that occurred during the policy period of that prior insurance which is discovered by you during such extended period to discover loss, unless the amount of loss exceeds the Limit of Insurance and Deductible Amount of that prior insurance. In that case, we will pay for the excess loss subject to the terms and conditions of this insurance.
  - (b) However, any payment we make for the excess loss will not be greater than the difference between the Limit of Insurance and Deductible Amount of that prior insurance and the Limit Of Insurance shown in the Declarations. We will not apply the Deductible Amount shown in the Declarations to this excess loss.
- (2) **Other Insurance** Condition **E.1.k.** does not apply to this condition.

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**Condition m. Policy Bridge – Discovery Replacing Loss Sustained**

- Eliminates potential duplicate coverage under Loss Sustained Form and Discovery Form
- Only applies if Extended Period to Discover Loss of prior policy has not been terminated
- Current policy (Discovery Form) pays in excess of the prior Loss Sustained policy limit and deductible
- Amount payable is limited to the difference between the current policy limit (Discovery Form) and the limit and deductible of the prior Loss Sustained policy – current policy deductible (Discovery Form) does not apply
- Other insurance clause does not apply to this condition

#### E. Conditions

The following conditions apply in addition to the Common Policy Conditions:

##### 1. Conditions Applicable To All Insuring Agreements

...

##### n. Ownership Of Property; Interests Covered

The property covered under this insurance is limited to property:

- (1) That you own or lease;
- (2) That is held by you in any capacity; or
- (3) For which you are legally liable, provided you were liable for the property prior to the time the loss was sustained.

However, this insurance is for your benefit only. It provides no rights or benefits to any other person or organization. Any claim for loss that is covered under this insurance must be presented by you.

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#### Condition n. Ownership Of Property; Interests Covered

- Limited to:
  - (1) Property the named insured owns or leases
  - (2) Held by the named insured in any capacity
  - (3) For which the named insured is legally liable if the insured was liable before the loss
- Insurance is for the insured's benefit only – no other party has the right to file a claim
- Endorsement suggestion – **Clients' Property – CR 04 01**
  - Endorsement adds an Insuring Agreement to the policy
  - Applies to theft of client property by an identified employee
  - Theft refers to theft of client's property or property of others held by the client

[illegible]

#### E. Conditions

The following conditions apply in addition to the Common Policy Conditions:

##### 1. Conditions Applicable To All Insuring Agreements

...

##### p. Recoveries

- (1) Any recoveries, whether effected before or after any payment under this insurance, whether made by us or by you, shall be applied net of the expense of such recovery:
  - (a) First, to you in satisfaction of your covered loss in excess of the amount paid under this insurance;
  - (b) Second, to us in satisfaction of amounts paid in settlement of your claim;
  - (c) Third, to you in satisfaction of any Deductible Amount; and
  - (d) Fourth, to you in satisfaction of any loss not covered under this insurance.
- (2) Recoveries do not include any recovery:
  - (a) From insurance, suretyship, reinsurance, security or indemnity taken for our benefit; or
  - (b) Of original "securities" after duplicates of them have been issued.

##### q. Territory

This insurance covers loss that you sustain resulting directly from an "occurrence" taking place within the United States of America (including its territories and possessions), Puerto Rico and Canada.

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#### Condition p. Recoveries

- Enumerates how any recoveries made will be handled

#### Condition q. Territory

- U.S., including territories and possessions, Canada and Puerto Rico

##### Note:

This condition applies differently under the conditions that are specific to Insuring Agreements A.1., A.2. and A.6.

- **Amend Territory Condition – Include Worldwide Coverage – CR 20 30**

Broadens coverage territory to anywhere in the world, EXCEPT for:

1. Territories specifically listed in the endorsement schedule
2. Territories subject to sanction or embargo by the United States

**E. Conditions**

The following conditions apply in addition to the Common Policy Conditions:

**1. Conditions Applicable To All Insuring Agreements**

...

**s. Valuation – Settlement**

The value of any loss for purposes of coverage under this insurance shall be determined as follows:

**(1) Money**

Loss of "money" but only up to and including its face value. We will, at your option, pay for loss of "money" issued by any country other than the United States of America:

- (a) At face value in the "money" issued by that country; or
- (b) In the United States of America dollar equivalent, determined by the rate of exchange published in The Wall Street Journal on the day the loss was "discovered".

**(2) Securities**

Loss of "securities" but only up to and including their value at the close of business on the day the loss was "discovered". We may, at our option:

- (a) Pay the market value of such "securities" or replace them in kind, in which event you must assign to us all your rights, title and interest in and to those "securities"; or
- (b) Pay the cost of any Lost Securities Bond required in connection with issuing duplicates of the "securities". However, we will be liable only for the payment of so much of the cost of the bond as would be charged for a bond having a penalty not exceeding the lesser of the:
  - (i) Market value of the "securities" at the close of business on the day the loss was "discovered"; or
  - (ii) Limit of Insurance applicable to the "securities".

**(3) Property Other Than Money And Securities**

- (a) Loss of or damage to "other property" or loss from damage to the "premises" or its exterior for the replacement cost of the property without deduction for depreciation. However, we will not pay more than the least of the following:

- (i) The Limit of Insurance applicable to the lost or damaged property;
- (ii) The cost to replace the lost or damaged property with property of comparable material and quality and used for the same purpose; or
- (iii) The amount you actually spend that is necessary to repair or replace the lost or damaged property.

- (b) We will not pay on a replacement cost basis for any loss or damage to property covered under Paragraph **s.(3)(a)**:

- (i) Until the lost or damaged property is actually repaired or replaced; and
- (ii) Unless the repair or replacement is made as soon as reasonably possible after the loss or damage.

If the lost or damaged property is not repaired or replaced, we will pay on an actual cash value basis.

- (c) We will, at your option, pay for loss or damage to such property:

- (i) In the "money" of the country in which the loss or damage was sustained; or
- (ii) In the United States of America dollar equivalent of the "money" of the country in which the loss or damage was sustained, determined by the rate of exchange published in The Wall Street Journal on the day the loss was "discovered".

- (d) Any property that we pay for or replace becomes our property.



**Condition s. Valuation – Settlement**

- Money at face value in country of origin OR dollar equivalent determined by exchange rate published in *The Wall Street Journal* on date of discovery
- Securities at their value at the close of business on the date of discovery
- Property Other Than Money And Securities
  - 1) Replacement cost for loss or damage to other property or the premises or its exterior, subject to the lesser of:
    - a) Limit of insurance applicable
    - b) Cost to replace the property with like kind or quality
    - c) Amount the insured actually spends to repair or replace the damaged property
    - d) Will not pay on a replacement basis until such property is actually repaired or replaced
  - 2) Will pay on an actual cash value basis if the damaged property is not repaired or replaced
  - 3) Insured has the option of being paid for loss or damage in the currency of the country where the loss was sustained or the U.S. equivalent
  - 4) Any property the insurer pays for or replaces becomes the insurer's property

## Conditions Applicable to Insuring Agreement A.1. Employee Theft

### E. Conditions

The following conditions apply in addition to the Common Policy Conditions:

...

#### 2. Conditions Applicable To Insuring Agreement A.1.

##### a. Termination As To Any Employee

This Insuring Agreement terminates as to any "employee":

(1) As soon as:

(a) You; or

(b) Any of your partners, "members", "managers", officers, directors or trustees not in collusion with the "employee";  
learn of "theft" or any other dishonest act committed by the "employee" whether before or after becoming employed by you; or

(2) On the date specified in a notice mailed to the first Named Insured. That date will be at least 30 days after the date of mailing.

We will mail or deliver our notice to the first Named Insured's last mailing address known to us. If notice is mailed, proof of mailing will be sufficient proof of notice.

##### b. Territory

We will pay for loss caused by any "employee" while temporarily outside the territory specified in Territory Condition **E.1.q.** for a period of not more than 90 consecutive days.

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#### a. Termination as to any employee

- Coverage terminates immediately when the named insured or any of its partners, members, managers, officers, directors or trustees (not in collusion with the employee) learn of any dishonest act or theft by an employee – whether before or after becoming employed by the named insured, OR
- On the date specified in a notice to the first named insured with at least 30 days notice

#### b. Territory

- Extends policy territory to wherever employee is located for a period of 90 days

## Conditions Applicable to Insuring Agreement A.2. Forgery Or Alteration

3

### E. Conditions

The following conditions apply in addition to the Common Policy Conditions:

...

#### 3. Conditions Applicable To Insuring Agreement A.2.

##### a. Deductible Amount

The Deductible Amount does not apply to legal expenses paid under Insuring Agreement A.2.

##### b. Electronic And Mechanical Signatures

We will treat signatures that are produced or reproduced electronically, mechanically or by other means the same as handwritten signatures.

##### c. Proof Of Loss

You must include with your proof of loss any instrument involved in that loss or, if that is not possible, an affidavit setting forth the amount and cause of loss.

##### d. Territory

We will cover loss that you sustain resulting directly from an "occurrence" taking place anywhere in the world. Territory Condition **E.1.q.** does not apply to Insuring Agreement A.2.

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#### a. Deductible Amount

- Does NOT apply to legal expenses

#### b. Electronic And Mechanical Signatures

- Treated the same as handwritten signatures

#### c. Proof Of Loss

- Forged or altered instrument must be included in the proof of loss

#### d. Territory

- Territory is worldwide

## Conditions Applicable to Insuring Agreement A.4. & A.5.

### E. Conditions

The following conditions apply in addition to the Common Policy Conditions:

...

#### 4. Conditions Applicable To Insuring Agreements A.4. And A.5.

##### a. Armored Motor Vehicle Companies

Under Insuring Agreement **A.5.**, we will only pay for the amount of loss you cannot recover:

- (1) Under your contract with the armored motor vehicle company; and
- (2) From any insurance or indemnity carried by, or for the benefit of customers of, the armored motor vehicle company.

##### b. Special Limit Of Insurance For Specified Property

We will only pay up to \$5,000 for any one "occurrence" of loss of or damage to:

- (1) Precious metals, precious or semiprecious stones, pearls, furs, or completed or partially completed articles made of or containing such materials that constitute the principal value of such articles; or
- (2) Manuscripts, drawings, or records of any kind, or the cost of reconstructing them or reproducing any information contained in them.

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#### a. Armored Motor Vehicle Companies

- Only pays for what cannot be recovered from the company under the contract with the named insured or from any insurance carried by the company for the benefit of its customers

#### b. Special Limit Of Insurance For Specified Property

- \$5,000 for each occurrence
- Applies to precious metals, semiprecious stones, pearls, furs, or completed or partially completed articles where these items constitute the principal value
- Applies to manuscripts, drawings, or records of any kind, or the cost of reconstructing or reproducing any information in them

## Conditions Applicable to Insuring Agreement A.6. Computer And Funds Transfer Fraud

3

### E. Conditions

The following conditions apply in addition to the Common Policy Conditions:

...

#### 5. Conditions Applicable To Insuring Agreement A.6.

##### a. Special Limit Of Insurance For Specified Property

We will only pay up to \$5,000 for any one "occurrence" of loss of or damage to manuscripts, drawings, or records of any kind, or the cost of reconstructing them or reproducing any information contained in them.

##### b. Territory

We will cover loss that you sustain resulting directly from an "occurrence" taking place anywhere in the world. Territory Condition **E.1.q.** does not apply to Insuring Agreement **A.6.**

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#### a. Special Limit Of Insurance For Specified Property

- Subject to \$5,000 per occurrence sublimit
- May be endorsed: **Increase Limit For Specified Property Subject To Special Limit Of Insurance – CR 35 04**

#### b. Territory

- Territory is worldwide



## Knowledge Check 2

1. Indicate which of the following are true or false under an unendorsed Commercial Crime Policy.

	True	False
a. Insuring Agreement A.2. Forgery or Alteration provides coverage for alteration of electronic data in a computer program that results in the unlawful taking of funds.		
b. Insuring Agreement A.3. Inside The Premises – Theft Of Money And Securities includes coverage for the theft, disappearance or destruction of money and securities.		
c. Burglary under Insuring Agreement A.4. Inside The Premises – Robbery Or Safe Burglary Of Other Property is defined as the unlawful taking of property from the care and custody of a person who has caused or threatened to cause bodily harm or committed an obviously unlawful act witnessed by that person.		
d. Under Insuring Agreement A.5. Outside The Premises, loss of money outside the premises in the care and custody of a messenger resulting directly from theft, disappearance or destruction is covered.		
e. Under Insuring Agreement A.6. Computer and Funds Transfer Fraud, loss from a fraudulent change of electronic data (hacker incident) that causes the transfer of money, securities or other property is covered.		
f. Insuring Agreement A.7. Money Orders and Counterfeit Money provides coverage for loss resulting from the acceptance of money orders or counterfeit money in exchange for merchandise, money or services.		

2. Which of the following statements is true in regard to the unendorsed Commercial Crime Policy?
- a. Loss covered by more than one Insuring Agreement will be limited to the smallest limit available.
  - b. The time period for the named insured to discover loss is unlimited under Condition g. Extended Period To Discover Loss.
  - c. The Coverage Territory for all Insuring Agreements is worldwide.
  - d. Insuring Agreement A.1. Employee Theft terminates coverage for any employee as soon as the named insured learns of any dishonest act or theft by that employee.

## Review of Learning Objectives

1. Using knowledge of the overview of Crime Coverage, the participant will understand why Crime Coverage is needed, identify the Seven Insuring Agreements, and describe when coverage applies under the Loss Sustained and Discovery Crime Forms.
2. Using knowledge of Insuring Agreement A.1. Employee Theft, the participant will be able to describe the coverage, definitions, and exclusions applicable in the event of loss and endorsements available to modify coverage.
3. Using knowledge of the following Insuring Agreements:
  - Forgery Or Alteration
  - Inside The Premises – Theft Of Money And Securities
  - Inside The Premises – Robbery Or Safe Burglary Of Other Property
  - Outside The Premisesthe participant will be able to describe the coverages, definitions, and exclusions applicable in the event of loss and endorsements available to modify coverage.
4. Using knowledge of the following Insuring Agreements:
  - Computer And Funds Transfer Fraud
  - Money Orders And Counterfeit Moneythe participant will be able to describe the coverages, definitions, and exclusions applicable in the event of loss and endorsements available to modify coverage.
5. Using knowledge of the Conditions applicable to the Insuring Agreements contained in the Commercial Crime Coverage Forms, the participant will be able to describe how the Conditions may affect coverage in the event of a loss.



## Knowledge Check 1 – ANSWERS

1. Identify which is the trigger for the Loss Sustained Form vs. the Discovery Form.

	Loss Sustained	Discovery
a. Coverage is triggered when a loss has occurred during the policy period AND is discovered during the policy period or the Extended Period to Discover Loss (usually one year).	X	
b. Coverage is triggered for a loss that occurred at any time, AND it has to be discovered during the policy period or the Extended Period to Discover Loss (usually 60 days).		X

2. Indicate which of the following are true or false in regard to Insuring Agreement A.1. Employee Theft under an unendorsed Commercial Crime Policy.

	True	False
a. Employee theft covers loss committed by an employee while acting alone for money and securities only.		X
b. Other property as defined; applies to tangible property other than money and securities.	X	
c. The definition of employees includes seasonal, short-term or leased employees.	X	
d. <b>Employee Theft – Name Or Position Schedule – CR 04 08</b> can be used to apply coverage to either the named employee or the person who occupies a named position.	X	

3. Which of the following statements is true in regard to coverage under all Insuring Agreements including Employee Theft under an unendorsed Commercial Crime Policy?

- b. Coverage excludes the payment of costs, fees or other expenses the named insured incurs in establishing the existence or the amount of loss.





## Knowledge Check 2 – ANSWERS

1. Indicate which of the following are true or false under an unendorsed Commercial Crime Policy.

	True	False
a. Insuring Agreement A.2. Forgery or Alteration provides coverage for alteration of electronic data in a computer program that results in the unlawful taking of funds.		X
b. Insuring Agreement A.3. Inside The Premises – Theft Of Money And Securities includes coverage for the theft, disappearance or destruction of money and securities.	X	
c. Burglary under Insuring Agreement A.4. Inside The Premises – Robbery Or Safe Burglary Of Other Property is defined as the unlawful taking of property from the care and custody of a person who has caused or threatened to cause bodily harm or committed an obviously unlawful act witnessed by that person.		X
d. Under Insuring Agreement A.5. Outside The Premises, loss of money outside the premises in the care and custody of a messenger resulting directly from theft, disappearance or destruction is covered.	X	
e. Under Insuring Agreement A.6. Computer and Funds Transfer Fraud, loss from a fraudulent change of electronic data (hacker incident) that causes the transfer of money, securities or other property is covered.	X	
f. Insuring Agreement A.7. Money Orders and Counterfeit Money provides coverage for loss resulting from the acceptance of money orders or counterfeit money in exchange for merchandise, money or services.	X	

2. Which of the following statements is true in regard to the unendorsed Commercial Crime Policy?

- d. **Insuring Agreement A.1. Employee Theft terminates coverage for any employee as soon as the named insured learns of any dishonest act or theft by that employee.**

## FORMS

<b>Form Number</b>	<b>Form Name</b>
<b>CR 00 21</b>	Commercial Crime Coverage Form (Loss Sustained Form)
<b>CR 00 20</b>	Commercial Crime Coverage Form (Discovery Form)
<b>CR 25 47</b>	U.S. Department Of Labor – ERISA Plan Coverage Amendments

## COMMERCIAL CRIME COVERAGE FORM (LOSS SUSTAINED FORM)

3

Various provisions in this Policy restrict coverage. Read the entire Policy carefully to determine rights, duties and what is or is not covered.

Throughout this Policy, the words "you" and "your" refer to the Named Insured shown in the Declarations. The words "we", "us" and "our" refer to the company providing this insurance.

Other words and phrases that appear in quotation marks have special meaning. Refer to Section F. Definitions.

### A. Insuring Agreements

Coverage is provided under the following Insuring Agreements for which a Limit Of Insurance is shown in the Declarations and applies to loss that you sustain resulting directly from an "occurrence" taking place during the Policy Period shown in the Declarations, except as provided in Condition E.1.k. or E.1.l., which is "discovered" by you during the Policy Period shown in the Declarations or during the period of time provided in the Extended Period To Discover Loss Condition E.1.g.:

#### 1. Employee Theft

We will pay for loss of or damage to "money", "securities" and "other property" resulting directly from "theft" committed by an "employee", whether identified or not, acting alone or in collusion with other persons.

For the purposes of this Insuring Agreement, "theft" shall also include forgery.

#### 2. Forgery Or Alteration

a. We will pay for loss resulting directly from "forgery" or alteration of checks, drafts, promissory notes, or similar written promises, orders or directions to pay a sum certain in "money" that are:

(1) Made or drawn by or drawn upon you; or

(2) Made or drawn by one acting as your agent;

or that are purported to have been so made or drawn.

For the purposes of this Insuring Agreement, a substitute check as defined in the Check Clearing for the 21st Century Act shall be treated the same as the original it replaced.

b. If you are sued for refusing to pay any instrument covered in Paragraph 2.a., on the basis that it has been forged or altered, and you have our written consent to defend against the suit, we will pay for any reasonable legal expenses that you incur and pay in that defense. The amount that we will pay for such legal expenses is in addition to the Limit of Insurance applicable to this Insuring Agreement.

### 3. Inside The Premises – Theft Of Money And Securities

We will pay for:

a. Loss of "money" and "securities" inside the "premises" or "financial institution premises":

(1) Resulting directly from "theft" committed by a person present inside such "premises" or "financial institution premises"; or

(2) Resulting directly from disappearance or destruction.

b. Loss from damage to the "premises" or its exterior resulting directly from an actual or attempted "theft" of "money" and "securities", if you are the owner of the "premises" or are liable for damage to it.

c. Loss of or damage to a locked safe, vault, cash register, cash box or cash drawer located inside the "premises" resulting directly from an actual or attempted "theft" of, or unlawful entry into, those containers.

### 4. Inside The Premises – Robbery Or Safe Burglary Of Other Property

We will pay for:

a. Loss of or damage to "other property":

(1) Inside the "premises" resulting directly from an actual or attempted "robbery" of a "custodian"; or

(2) Inside the "premises" in a safe or vault resulting directly from an actual or attempted "safe burglary".

- b. Loss from damage to the "premises" or its exterior resulting directly from an actual or attempted "robbery" or "safe burglary" of "other property", if you are the owner of the "premises" or are liable for damage to it.
- c. Loss of or damage to a locked safe or vault located inside the "premises" resulting directly from an actual or attempted "robbery" or "safe burglary".

## 5. Outside The Premises

We will pay for:

- a. Loss of "money" and "securities" outside the "premises" in the care and custody of a "messenger" or an armored motor vehicle company resulting directly from "theft", disappearance or destruction.
- b. Loss of or damage to "other property" outside the "premises" in the care and custody of a "messenger" or an armored motor vehicle company resulting directly from an actual or attempted "robbery".

## 6. Computer And Funds Transfer Fraud

a. We will pay for:

- (1) Loss resulting directly from a fraudulent:
  - (a) Entry of "electronic data" or "computer program" into; or
  - (b) Change of "electronic data" or "computer program" within;
 any "computer system" owned, leased or operated by you, provided the fraudulent entry or fraudulent change causes, with regard to Paragraphs 6.a.(1)(a) and 6.a.(1)(b):
  - (i) "Money", "securities" or "other property" to be transferred, paid or delivered; or
  - (ii) Your account at a "financial institution" to be debited or deleted.
- (2) Loss resulting directly from a "fraudulent instruction" directing a "financial institution" to debit your "transfer account" and to transfer, pay or deliver "money" or "securities" from that account.

- b. As used in Paragraph 6.a.(1), fraudulent entry or fraudulent change of "electronic data" or "computer program" shall include such entry or change made by an "employee" acting, in good faith, upon a "fraudulent instruction" received from a computer software contractor who has a written agreement with you to design, implement or service "computer programs" for a "computer system" covered under this Insuring Agreement.

## 7. Money Orders And Counterfeit Money

We will pay for loss resulting directly from your having, in good faith, accepted in exchange for merchandise, "money" or services:

- a. Money orders issued by any post office, express company or "financial institution" that are not paid upon presentation; or
- b. "Counterfeit money" that is acquired during the regular course of business.

## B. Limit Of Insurance

The most we will pay for all loss resulting directly from an "occurrence" is the applicable Limit Of Insurance shown in the Declarations.

If any loss is covered under more than one Insuring Agreement or coverage, the most we will pay for such loss shall not exceed the largest Limit of Insurance available under any one of those Insuring Agreements or coverages.

## C. Deductible

We will not pay for loss resulting directly from an "occurrence" unless the amount of loss exceeds the Deductible Amount shown in the Declarations. We will then pay the amount of loss in excess of the Deductible Amount, up to the Limit of Insurance.

## D. Exclusions

1. This insurance does not cover:

### a. Acts Committed By You, Your Partners Or Your Members

Loss resulting from "theft" or any other dishonest act committed by:

- (1) You; or
- (2) Any of your partners or "members"; whether acting alone or in collusion with other persons.

**b. Acts Committed By Your Employees Learned Of By You Prior To The Policy Period**

Loss caused by an "employee" if the "employee" had also committed "theft" or any other dishonest act prior to the effective date of this insurance and you or any of your partners, "members", "managers", officers, directors or trustees, not in collusion with the "employee", learned of such "theft" or dishonest act prior to the Policy Period shown in the Declarations.

**c. Acts Committed By Your Employees, Managers, Directors, Trustees Or Representatives**

Loss resulting from "theft" or any other dishonest act committed by any of your "employees", "managers", directors, trustees or authorized representatives:

- (1) Whether acting alone or in collusion with other persons; or
- (2) While performing services for you or otherwise;

except when covered under Insuring Agreement **A.1.**

**d. Confidential Or Personal Information**

Loss resulting from:

- (1) The disclosure or use of another person's or organization's confidential or personal information; or
- (2) The disclosure of your confidential or personal information. However, this Paragraph **1.d.(2)** does not apply to loss otherwise covered under this insurance that results directly from the use of your confidential or personal information.

For the purposes of this exclusion, confidential or personal information includes, but is not limited to, patents, trade secrets, processing methods, customer lists, financial information, credit card information, health information or any other type of nonpublic information.

**e. Data Security Breach**

Fees, costs, fines, penalties and other expenses incurred by you which are related to the access to or disclosure of another person's or organization's confidential or personal information including, but not limited to, patents, trade secrets, processing methods, customer lists, financial information, credit card information, health information or any other type of nonpublic information.

**f. Governmental Action**

Loss resulting from seizure or destruction of property by order of governmental authority.

**g. Indirect Loss**

Loss that is an indirect result of an "occurrence" covered by this insurance including, but not limited to, loss resulting from:

- (1) Your inability to realize income that you would have realized had there been no loss of or damage to "money", "securities" or "other property";
- (2) Payment of damages of any type for which you are legally liable. But, we will pay compensatory damages arising directly from a loss covered under this insurance; or
- (3) Payment of costs, fees or other expenses you incur in establishing either the existence or the amount of loss under this insurance.

**h. Legal Fees, Costs And Expenses**

Fees, costs and expenses incurred by you which are related to any legal action, except when covered under Insuring Agreement **A.2.**

**i. Nuclear Hazard**

Loss or damage resulting from nuclear reaction or radiation, or radioactive contamination, however caused.

**j. Pollution**

Loss or damage caused by or resulting from pollution. Pollution means the discharge, dispersal, seepage, migration, release or escape of any solid, liquid, gaseous or thermal irritant or contaminant, including smoke, vapor, soot, fumes, acids, alkalis, chemicals and waste. Waste includes materials to be recycled, reconditioned or reclaimed.

**k. Virtual Currency**

Loss involving virtual currency of any kind, by whatever name known, whether actual or fictitious including, but not limited to, digital currency, crypto currency or any other type of electronic currency.

**l. War And Military Action**

Loss or damage resulting from:

- (1) War, including undeclared or civil war;

(2) Warlike action by a military force, including action in hindering or defending against an actual or expected attack, by any government, sovereign or other authority using military personnel or other agents; or

(3) Insurrection, rebellion, revolution, usurped power, or action taken by governmental authority in hindering or defending against any of these.

**2. Insuring Agreement A.1. does not cover:**

**a. Inventory Shortages**

Loss, or that part of any loss, the proof of which as to its existence or amount is dependent upon:

(1) An inventory computation; or

(2) A profit and loss computation.

However, where you establish wholly apart from such computations that you have sustained a loss, then you may offer your inventory records and actual physical count of inventory in support of the amount of loss claimed.

**b. Trading**

Loss resulting from trading, whether in your name or in a genuine or fictitious account.

**c. Warehouse Receipts**

Loss resulting from the fraudulent or dishonest signing, issuing, cancelling or failing to cancel, a warehouse receipt or any papers connected with it.

**3. Insuring Agreements A.3., A.4. and A.5. do not cover:**

**a. Accounting Or Arithmetical Errors Or Omissions**

Loss resulting from accounting or arithmetical errors or omissions.

**b. Exchanges Or Purchases**

Loss resulting from the giving or surrendering of property in any exchange or purchase.

**c. Fire**

Loss or damage resulting from fire, however caused, except:

(1) Loss of or damage to "money" and "securities"; and

(2) Loss from damage to a safe or vault.

**d. Money Operated Devices**

Loss of property contained in any money operated device unless the amount of "money" deposited in it is recorded by a continuous recording instrument in the device.

**e. Motor Vehicles Or Equipment And Accessories**

Loss of or damage to motor vehicles, trailers or semitrailers or equipment and accessories attached to them.

**f. Transfer Or Surrender Of Property**

(1) Loss of or damage to property after it has been transferred or surrendered to a person or place outside the "premises" or "financial institution premises":

(a) On the basis of unauthorized instructions; or

(b) As a result of a threat including, but not limited to:

(i) A threat to do bodily harm to any person;

(ii) A threat to do damage to any property;

(iii) A threat to introduce a denial of service attack into any "computer system";

(iv) A threat to introduce a virus or other malicious instruction into any "computer system" which is designed to damage, destroy or corrupt "electronic data" or "computer programs" stored within the "computer system";

(v) A threat to contaminate, pollute or render substandard your products or goods; or

(vi) A threat to disseminate, divulge or utilize:

i. Your confidential information;

ii. Confidential or personal information of another person or organization; or

iii. Weaknesses in the source code within any "computer system".

(2) However, this exclusion does not apply under Insuring Agreement **A.5.** to loss of "money", "securities" or "other property" while outside the "premises" in the care and custody of a "messenger" if you:

- (a) Had no knowledge of any threat at the time the conveyance began; or
- (b) Had knowledge of a threat at the time the conveyance began, but the loss was not related to the threat.

**g. Vandalism**

Loss from damage to the "premises" or its exterior, or to any safe, vault, cash register, cash box, cash drawer or "other property" by vandalism or malicious mischief.

**h. Voluntary Parting Of Title To Or Possession Of Property**

Loss resulting from your, or anyone else acting on your express or implied authority, being induced by any dishonest act to voluntarily part with title to or possession of any property.

**4. Insuring Agreement A.6. does not cover:**

**a. Authorized Access**

Loss resulting from a fraudulent:

- (1) Entry of "electronic data" or "computer program" into; or
- (2) Change of "electronic data" or "computer program" within;

any "computer system" owned, leased or operated by you by a person or organization with authorized access to that "computer system", except when covered under Insuring Agreement **A.6.b.**

**b. Credit Card Transactions**

Loss resulting from the use or purported use of credit, debit, charge, access, convenience, identification, stored-value or other cards or the information contained on such cards.

**c. Exchanges Or Purchases**

Loss resulting from the giving or surrendering of property in any exchange or purchase.

**d. Fraudulent Instructions**

Loss resulting from an "employee" or "financial institution" acting upon any instruction to:

- (1) Transfer, pay or deliver "money", "securities" or "other property"; or

(2) Debit or delete your account;

which instruction proves to be fraudulent, except when covered under Insuring Agreement **A.6.a.(2)** or **A.6.b.**

**e. Inventory Shortages**

Loss, or that part of any loss, the proof of which as to its existence or amount is dependent upon:

- (1) An inventory computation; or
- (2) A profit and loss computation.

**E. Conditions**

The following conditions apply in addition to the Common Policy Conditions:

**1. Conditions Applicable To All Insuring Agreements**

**a. Additional Premises Or Employees**

If, while this insurance is in force, you establish any additional "premises" or hire additional "employees", other than through consolidation or merger with, or purchase or acquisition of assets or liabilities of, another entity, such "premises" and "employees" shall automatically be covered under this insurance. Notice to us of an increase in the number of "premises" or "employees" is not required, and no additional premium will be charged for the remainder of the Policy Period shown in the Declarations.

**b. Concealment, Misrepresentation Or Fraud**

This insurance is void in any case of fraud by you as it relates to this insurance at any time. It is also void if you or any other Insured, at any time, intentionally conceals or misrepresents a material fact concerning:

- (1) This insurance;
- (2) The property covered under this insurance;
- (3) Your interest in the property covered under this insurance; or
- (4) A claim under this insurance.

**c. Consolidation – Merger Or Acquisition**

If you consolidate or merge with, or purchase or acquire the assets or liabilities of, another entity:

- (1) You must give us written notice as soon as possible and obtain our written consent to extend the coverage provided by this insurance to such consolidated or merged entity or such purchased or acquired assets or liabilities. We may condition our consent by requiring payment of an additional premium; but
- (2) For the first 90 days after the effective date of such consolidation, merger or purchase or acquisition of assets or liabilities, the coverage provided by this insurance shall apply to such consolidated or merged entity or such purchased or acquired assets or liabilities, provided that all "occurrences" causing or contributing to a loss involving such consolidation, merger or purchase or acquisition of assets or liabilities, must take place after the effective date of such consolidation, merger or purchase or acquisition of assets or liabilities.

**d. Cooperation**

You must cooperate with us in all matters pertaining to this insurance as stated in its terms and conditions.

**e. Duties In The Event Of Loss**

After you "discover" a loss or a situation that may result in loss of or damage to "money", "securities" or "other property", you must:

- (1) Notify us as soon as possible. If you have reason to believe that any loss (except for loss covered under Insuring Agreement **A.1.** or **A.2.**) involves a violation of law, you must also notify the local law enforcement authorities;
- (2) Give us a detailed, sworn proof of loss within 120 days;
- (3) Cooperate with us in the investigation and settlement of any claim;
- (4) Produce for our examination all pertinent records;
- (5) Submit to examination under oath at our request and give us a signed statement of your answers; and

- (6) Secure all of your rights of recovery against any person or organization responsible for the loss and do nothing to impair those rights.

**f. Employee Benefit Plans**

The "employee benefit plans" shown in the Declarations (hereinafter referred to as Plan) are included as Insureds under Insuring Agreement **A.1.**, subject to the following:

- (1) If any Plan is insured jointly with any other entity under this insurance, you or the Plan Administrator is responsible for selecting a Limit of Insurance for Insuring Agreement **A.1.** that is sufficient to provide a Limit of Insurance for each Plan that is at least equal to that required under ERISA as if each Plan were separately insured.

- (2) With respect to loss sustained or "discovered" by any such Plan, Insuring Agreement **A.1.** is replaced by the following:

We will pay for loss of or damage to "money", "securities" and "other property" resulting directly from fraudulent or dishonest acts committed by an "employee", whether identified or not, acting alone or in collusion with other persons.

- (3) If the first Named Insured is an entity other than a Plan, any payment we make for loss sustained by any Plan will be made to the Plan sustaining the loss.
- (4) If two or more Plans are insured under this insurance, any payment we make for loss:

- (a) Sustained by two or more Plans; or
- (b) Of commingled "money", "securities" or "other property" of two or more Plans;

resulting directly from an "occurrence", will be made to each Plan sustaining loss in the proportion that the Limit of Insurance required under ERISA for each Plan bears to the total of those limits.

- (5) The Deductible Amount applicable to Insuring Agreement **A.1.** does not apply to loss sustained by any Plan.



**g. Extended Period To Discover Loss**

We will pay for loss that you sustained prior to the effective date of cancellation of this insurance, which is "discovered" by you:

- (1) No later than one year from the date of that cancellation. However, this extended period to "discover" loss terminates immediately upon the effective date of any other insurance obtained by you, whether from us or another insurer, replacing in whole or in part the coverage afforded under this insurance, whether or not such other insurance provides coverage for loss sustained prior to its effective date.
- (2) No later than one year from the date of that cancellation with regard to any "employee benefit plan".

**h. Joint Insured**

- (1) If more than one Insured is named in the Declarations, the first Named Insured will act for itself and for every other Insured for all purposes of this insurance. If the first Named Insured ceases to be covered, then the next Named Insured will become the first Named Insured.
- (2) If any Insured, or partner, "member", "manager", officer, director or trustee of that Insured has knowledge of any information relevant to this insurance, that knowledge is considered knowledge of every Insured.
- (3) An "employee" of any Insured is considered to be an "employee" of every Insured.
- (4) If this insurance or any of its coverages are cancelled as to any Insured, loss sustained by that Insured is covered only if it is "discovered" by you:
  - (a) No later than one year from the date of that cancellation. However, this extended period to "discover" loss terminates immediately upon the effective date of any other insurance obtained by that Insured, whether from us or another insurer, replacing in whole or in part the coverage afforded under this insurance, whether or not such other insurance provides coverage for loss sustained prior to its effective date.
  - (b) No later than one year from the date of that cancellation with regard to any "employee benefit plan".

- (5) We will not pay more for loss sustained by more than one Insured than the amount we would pay if all such loss had been sustained by one Insured.

- (6) Payment by us to the first Named Insured for loss sustained by any Insured, or payment by us to any "employee benefit plan" for loss sustained by that Plan, shall fully release us on account of such loss.

**i. Legal Action Against Us**

You may not bring any legal action against us involving loss:

- (1) Unless you have complied with all the terms of this insurance;
- (2) Until 90 days after you have filed proof of loss with us; and
- (3) Unless brought within two years from the date you "discovered" the loss.

If any limitation in this condition is prohibited by law, such limitation is amended so as to equal the minimum period of limitation provided by such law.

**j. Liberalization**

If we adopt any revision that would broaden the coverage under this insurance without additional premium within 45 days prior to or during the Policy Period shown in the Declarations, the broadened coverage will immediately apply to this insurance.

**k. Loss Sustained During Prior Insurance Issued By Us Or Any Affiliate**

**(1) Loss Sustained Partly During This Insurance And Partly During Prior Insurance**

If you "discover" loss during the Policy Period shown in the Declarations, resulting directly from an "occurrence" taking place:

- (a) Partly during the Policy Period shown in the Declarations; and
- (b) Partly during the policy period(s) of any prior cancelled insurance that we or any affiliate issued to you or any predecessor in interest;

and this insurance became effective at the time of cancellation of the prior insurance, we will first settle the amount of loss that you sustained during this Policy Period. We will then settle the remaining amount of loss that you sustained during the policy period(s) of the prior insurance.

**(2) Loss Sustained Entirely During Prior Insurance**

If you "discover" loss during the Policy Period shown in the Declarations, resulting directly from an "occurrence" taking place entirely during the policy period(s) of any prior cancelled insurance that we or any affiliate issued to you or any predecessor in interest, we will pay for the loss, provided:

- (a) This insurance became effective at the time of cancellation of the prior insurance; and
- (b) The loss would have been covered under this insurance had it been in effect at the time of the "occurrence".

We will first settle the amount of loss that you sustained during the most recent prior insurance. We will then settle any remaining amount of loss that you sustained during the policy period(s) of any other prior insurance.

**(3) In settling loss under Paragraphs k.(1) and k.(2):**

- (a) The most we will pay for the entire loss is the highest single Limit of Insurance applicable during the period of loss, whether such limit was written under this insurance or was written under the prior insurance issued by us.
- (b) We will apply the applicable Deductible Amount shown in the Declarations to the amount of loss sustained under this insurance. If no loss was sustained under this insurance, we will apply the Deductible Amount shown in the Declarations to the amount of loss sustained under the most recent prior insurance.

If the Deductible Amount is larger than the amount of loss sustained under this insurance, or the most recent prior insurance, we will apply the remaining Deductible Amount to the remaining amount of loss sustained during the prior insurance.

We will not apply any other Deductible Amount that may have been applicable to the loss.

**(4) The following examples demonstrate how we will settle losses subject to this condition:**

**Example Number 1**

The Insured sustained a covered loss of \$10,000 resulting directly from an "occurrence" taking place during the terms of Policy A and Policy B.

**Policy A**

The current policy. Written at a Limit of Insurance of \$50,000 and a Deductible Amount of \$5,000.

**Policy B**

Issued prior to Policy A. Written at a Limit of Insurance of \$50,000 and a Deductible Amount of \$5,000.

**Settlement Of Loss**

The amount of loss sustained under Policy A is \$2,500 and under Policy B, \$7,500.

The highest single Limit of Insurance applicable to this entire loss is \$50,000 written under Policy A. The Policy A Deductible Amount of \$5,000 applies. The loss is settled as follows:

- (a) The amount of loss sustained under Policy A (\$2,500) is settled first. The amount we will pay is nil (\$0.00) because the amount of loss is less than the Deductible Amount (i.e., \$2,500 loss - \$5,000 deductible = \$0.00).
- (b) The remaining amount of loss sustained under Policy B (\$7,500) is settled next. The amount recoverable is \$5,000 after the remaining Deductible Amount from Policy A of \$2,500 is applied to the loss (i.e., \$7,500 loss - \$2,500 deductible = \$5,000).

The most we will pay for this loss is \$5,000.

**Example Number 2**

The Insured sustained a covered loss of \$250,000 resulting directly from an "occurrence" taking place during the terms of Policy A and Policy B.

**Policy A**

The current policy. Written at a Limit of Insurance of \$125,000 and a Deductible Amount of \$10,000.

### Policy B

Issued prior to Policy A. Written at a Limit of Insurance of \$150,000 and a Deductible Amount of \$25,000.

#### Settlement Of Loss

The amount of loss sustained under Policy A is \$175,000 and under Policy B, \$75,000.

The highest single Limit of Insurance applicable to this entire loss is \$150,000 written under Policy B. The Policy A Deductible Amount of \$10,000 applies. The loss is settled as follows:

- (a) The amount of loss sustained under Policy A (\$175,000) is settled first. The amount we will pay is the Policy A Limit of \$125,000 because \$175,000 loss - \$10,000 deductible = \$165,000, which is greater than the \$125,000 policy limit.
- (b) The remaining amount of loss sustained under Policy B (\$75,000) is settled next. The amount we will pay is \$25,000 (i.e., \$150,000 Policy B limit - \$125,000 paid under Policy A = \$25,000).

The most we will pay for this loss is \$150,000.

### Example Number 3

The Insured sustained a covered loss of \$2,000,000 resulting directly from an "occurrence" taking place during the terms of Policies A, B, C and D.

#### Policy A

The current policy. Written at a Limit of Insurance of \$1,000,000 and a Deductible Amount of \$100,000.

#### Policy B

Issued prior to Policy A. Written at a Limit of Insurance of \$750,000 and a Deductible Amount of \$75,000.

#### Policy C

Issued prior to Policy B. Written at a Limit of Insurance of \$500,000 and a Deductible Amount of \$50,000.

#### Policy D

Issued prior to Policy C. Written at a Limit of Insurance of \$500,000 and a Deductible Amount of \$50,000.

### Settlement Of Loss

The amount of loss sustained under Policy A is \$350,000; under Policy B, \$250,000; under Policy C, \$600,000; and under Policy D, \$800,000.

The highest single Limit of Insurance applicable to this entire loss is \$1,000,000 written under Policy A. The Policy A Deductible Amount of \$100,000 applies. The loss is settled as follows:

- (a) The amount of loss sustained under Policy A (\$350,000) is settled first. The amount we will pay is \$250,000 (i.e., \$350,000 loss - \$100,000 deductible = \$250,000).
- (b) The amount of loss sustained under Policy B (\$250,000) is settled next. The amount we will pay is \$250,000 (no deductible is applied).
- (c) The amount of loss sustained under Policy C (\$600,000) is settled next. The amount we will pay is \$500,000, the policy limit (no deductible is applied).
- (d) We will not make any further payment under Policy D, as the maximum amount payable under the highest single Limit of Insurance applying to the loss of \$1,000,000 under Policy A has been satisfied.

The most we will pay for this loss is \$1,000,000.

### I. Loss Sustained During Prior Insurance Not Issued By Us Or Any Affiliate

- (1) If you "discover" loss during the Policy Period shown in the Declarations, resulting directly from an "occurrence" taking place during the policy period of any prior cancelled insurance that was issued to you or a predecessor in interest by another company, and the period of time to discover loss under that insurance had expired, we will pay for the loss under this insurance, provided:
  - (a) This insurance became effective at the time of cancellation of the prior insurance; and
  - (b) The loss would have been covered under this insurance had it been in effect at the time of the "occurrence".

**(2) In settling loss subject to this condition:**

- (a)** The most we will pay for the entire loss is the lesser of the Limits of Insurance applicable during the period of loss, whether such limit was written under this insurance or was written under the prior cancelled insurance.
- (b)** We will apply the applicable Deductible Amount shown in the Declarations to the amount of loss sustained under the prior cancelled insurance.

**(3) The insurance provided under this condition is subject to the following:**

- (a)** If loss covered under this condition is also partially covered under Condition **E.1.k.**, the amount recoverable under this condition is part of, not in addition to, the amount recoverable under Condition **E.1.k.**
- (b)** For loss covered under this condition that is not subject to Paragraph **I.(3)(a)**, the amount recoverable under this condition is part of, not in addition to, the Limit of Insurance applicable to the loss covered under this insurance and is limited to the lesser of the amount recoverable under:
  - (i)** This insurance as of its effective date; or
  - (ii)** The prior cancelled insurance had it remained in effect.

**m. Other Insurance**

If other valid and collectible insurance is available to you for loss covered under this insurance, our obligations are limited as follows:

**(1) Primary Insurance**

When this insurance is written as primary insurance, and:

- (a)** You have other insurance subject to the same terms and conditions as this insurance, we will pay our share of the covered loss. Our share is the proportion that the applicable Limit Of Insurance shown in the Declarations bears to the total limit of all insurance covering the same loss.

- (b)** You have other insurance covering the same loss other than that described in Paragraph **m.(1)(a)**, we will only pay for the amount of loss that exceeds:

- (i)** The Limit of Insurance and Deductible Amount of that other insurance, whether you can collect on it or not; or
- (ii)** The Deductible Amount shown in the Declarations;

whichever is greater. Our payment for loss is subject to the terms and conditions of this insurance.

**(2) Excess Insurance**

- (a)** When this insurance is written excess over other insurance, we will only pay for the amount of loss that exceeds the Limit of Insurance and Deductible Amount of that other insurance, whether you can collect on it or not. Our payment for loss is subject to the terms and conditions of this insurance.
- (b)** However, if loss covered under this insurance is subject to a deductible, we will reduce the Deductible Amount shown in the Declarations by the sum total of all such other insurance plus any Deductible Amount applicable to that other insurance.

**n. Ownership Of Property; Interests Covered**

The property covered under this insurance is limited to property:

- (1)** That you own or lease;
- (2)** That is held by you in any capacity; or
- (3)** For which you are legally liable, provided you were liable for the property prior to the time the loss was sustained.

However, this insurance is for your benefit only. It provides no rights or benefits to any other person or organization. Any claim for loss that is covered under this insurance must be presented by you.

**o. Records**

You must keep records of all property covered under this insurance so we can verify the amount of any loss.

**p. Recoveries**

- (1) Any recoveries, whether effected before or after any payment under this insurance, whether made by us or by you, shall be applied net of the expense of such recovery:
  - (a) First, to you in satisfaction of your covered loss in excess of the amount paid under this insurance;
  - (b) Second, to us in satisfaction of amounts paid in settlement of your claim;
  - (c) Third, to you in satisfaction of any Deductible Amount; and
  - (d) Fourth, to you in satisfaction of any loss not covered under this insurance.
- (2) Recoveries do not include any recovery:
  - (a) From insurance, suretyship, reinsurance, security or indemnity taken for our benefit; or
  - (b) Of original "securities" after duplicates of them have been issued.

**q. Territory**

This insurance covers loss that you sustain resulting directly from an "occurrence" taking place within the United States of America (including its territories and possessions), Puerto Rico and Canada.

**r. Transfer Of Your Rights Of Recovery Against Others To Us**

You must transfer to us all your rights of recovery against any person or organization for any loss you sustained and for which we have paid or settled. You must also do everything necessary to secure those rights and do nothing after loss to impair them.

**s. Valuation – Settlement**

The value of any loss for purposes of coverage under this insurance shall be determined as follows:

**(1) Money**

Loss of "money" but only up to and including its face value. We will, at your option, pay for loss of "money" issued by any country other than the United States of America:

- (a) At face value in the "money" issued by that country; or

- (b) In the United States of America dollar equivalent, determined by the rate of exchange published in The Wall Street Journal on the day the loss was "discovered".

**(2) Securities**

Loss of "securities" but only up to and including their value at the close of business on the day the loss was "discovered". We may, at our option:

- (a) Pay the market value of such "securities" or replace them in kind, in which event you must assign to us all your rights, title and interest in and to those "securities"; or
- (b) Pay the cost of any Lost Securities Bond required in connection with issuing duplicates of the "securities". However, we will be liable only for the payment of so much of the cost of the bond as would be charged for a bond having a penalty not exceeding the lesser of the:
  - (i) Market value of the "securities" at the close of business on the day the loss was "discovered"; or
  - (ii) Limit of Insurance applicable to the "securities".

**(3) Property Other Than Money And Securities**

- (a) Loss of or damage to "other property" or loss from damage to the "premises" or its exterior for the replacement cost of the property without deduction for depreciation. However, we will not pay more than the least of the following:
  - (i) The Limit of Insurance applicable to the lost or damaged property;
  - (ii) The cost to replace the lost or damaged property with property of comparable material and quality and used for the same purpose; or
  - (iii) The amount you actually spend that is necessary to repair or replace the lost or damaged property.

- (b) We will not pay on a replacement cost basis for any loss or damage to property covered under Paragraph **s.(3)(a)**:

- (i) Until the lost or damaged property is actually repaired or replaced; and
- (ii) Unless the repair or replacement is made as soon as reasonably possible after the loss or damage.

If the lost or damaged property is not repaired or replaced, we will pay on an actual cash value basis.

- (c) We will, at your option, pay for loss or damage to such property:
- (i) In the "money" of the country in which the loss or damage was sustained; or
  - (ii) In the United States of America dollar equivalent of the "money" of the country in which the loss or damage was sustained, determined by the rate of exchange published in The Wall Street Journal on the day the loss was "discovered".
- (d) Any property that we pay for or replace becomes our property.

## **2. Conditions Applicable To Insuring Agreement A.1.**

### **a. Termination As To Any Employee**

This Insuring Agreement terminates as to any "employee":

- (1) As soon as:
  - (a) You; or
  - (b) Any of your partners, "members", "managers", officers, directors or trustees not in collusion with the "employee";

learn of "theft" or any other dishonest act committed by the "employee" whether before or after becoming employed by you; or

- (2) On the date specified in a notice mailed to the first Named Insured. That date will be at least 30 days after the date of mailing.

We will mail or deliver our notice to the first Named Insured's last mailing address known to us. If notice is mailed, proof of mailing will be sufficient proof of notice.

### **b. Territory**

We will pay for loss caused by any "employee" while temporarily outside the territory specified in Territory Condition **E.1.q.** for a period of not more than 90 consecutive days.

## **3. Conditions Applicable To Insuring Agreement A.2.**

### **a. Deductible Amount**

The Deductible Amount does not apply to legal expenses paid under Insuring Agreement **A.2.**

### **b. Electronic And Mechanical Signatures**

We will treat signatures that are produced or reproduced electronically, mechanically or by other means the same as handwritten signatures.

### **c. Proof Of Loss**

You must include with your proof of loss any instrument involved in that loss or, if that is not possible, an affidavit setting forth the amount and cause of loss.

### **d. Territory**

We will cover loss that you sustain resulting directly from an "occurrence" taking place anywhere in the world. Territory Condition **E.1.q.** does not apply to Insuring Agreement **A.2.**

## **4. Conditions Applicable To Insuring Agreements A.4. And A.5.**

### **a. Armored Motor Vehicle Companies**

Under Insuring Agreement **A.5.**, we will only pay for the amount of loss you cannot recover:

- (1) Under your contract with the armored motor vehicle company; and
- (2) From any insurance or indemnity carried by, or for the benefit of customers of, the armored motor vehicle company.

### **b. Special Limit Of Insurance For Specified Property**

We will only pay up to \$5,000 for any one "occurrence" of loss of or damage to:

- (1) Precious metals, precious or semiprecious stones, pearls, furs, or completed or partially completed articles made of or containing such materials that constitute the principal value of such articles; or

- (2) Manuscripts, drawings, or records of any kind, or the cost of reconstructing them or reproducing any information contained in them.

#### 5. Conditions Applicable To Insuring Agreement A.6.

##### a. Special Limit Of Insurance For Specified Property

We will only pay up to \$5,000 for any one "occurrence" of loss of or damage to manuscripts, drawings, or records of any kind, or the cost of reconstructing them or reproducing any information contained in them.

##### b. Territory

We will cover loss that you sustain resulting directly from an "occurrence" taking place anywhere in the world. Territory Condition E.1.q. does not apply to Insuring Agreement A.6.

#### F. Definitions

1. "Computer program" means a set of related electronic instructions, which direct the operation and function of a computer or devices connected to it, which enable the computer or devices to receive, process, store or send "electronic data".
2. "Computer system" means:
  - a. Computers, including Personal Digital Assistants (PDAs) and other transportable or handheld devices, electronic storage devices and related peripheral components;
  - b. Systems and applications software; and
  - c. Related communications networks; by which "electronic data" is collected, transmitted, processed, stored or retrieved.
3. "Counterfeit money" means an imitation of "money" which is intended to deceive and to be taken as genuine.
4. "Custodian" means you, or any of your partners or "members", or any "employee" while having care and custody of property inside the "premises", excluding any person while acting as a "watchperson" or janitor.
5. "Discover" or "discovered" means the time when you first become aware of facts which would cause a reasonable person to assume that a loss of a type covered by this insurance has been or will be incurred, regardless of when the act or acts causing or contributing to such loss occurred, even though the exact amount or details of loss may not then be known.
6. "Electronic data" means information, facts, images or sounds stored as or on, created or used on, or transmitted to or from computer software (including systems and applications software) on data storage devices, including hard or floppy disks, CD-ROMs, tapes, drives, cells, data processing devices or any other media which are used with electronically controlled equipment.
7. "Employee":
  - a. Means:
    - (1) Any natural person:
      - (a) While in your service and for the first 30 days immediately after termination of service, unless such termination is due to "theft" or any dishonest act committed by the "employee";
      - (b) Whom you compensate directly by salary, wages or commissions; and
      - (c) Whom you have the right to direct and control while performing services for you;
    - (2) Any natural person who is furnished temporarily to you:
      - (a) To substitute for a permanent "employee", as defined in Paragraph 7.a.(1), who is on leave; or
      - (b) To meet seasonal or short-term work load conditions; while that person is subject to your direction and control and performing services for you;
    - (3) Any natural person who is leased to you under a written agreement between you and a labor leasing firm, to perform duties related to the conduct of your business, but does not mean a temporary "employee" as defined in Paragraph 7.a.(2);
    - (4) Any natural person who is:
      - (a) A trustee, officer, employee, administrator or manager, except an administrator or manager who is an independent contractor, of any "employee benefit plan"; or

- (b) Your director or trustee while that person is engaged in handling "money", "securities" or "other property" of any "employee benefit plan";
- (5) Any natural person who is a former "employee", partner, "member", "manager", director or trustee retained by you as a consultant while performing services for you;
- (6) Any natural person who is a guest student or intern pursuing studies or duties;
- (7) Any natural person employed by an entity merged or consolidated with you prior to the effective date of this insurance; and
- (8) Any natural person who is your "manager", director or trustee while:
  - (a) Performing acts within the scope of the usual duties of an "employee"; or
  - (b) Acting as a member of any committee duly elected or appointed by resolution of your board of directors or board of trustees to perform specific, as distinguished from general, directorial acts on your behalf.
- b. Does not mean:  
Any agent, broker, factor, commission merchant, consignee, independent contractor or representative of the same general character not specified in Paragraph 7.a.
- 8. "Employee benefit plan" means any welfare or pension benefit plan shown in the Declarations that you sponsor and that is subject to the Employee Retirement Income Security Act of 1974 (ERISA) and any amendments thereto.
- 9. "Financial institution" means:
  - a. With regard to Insuring Agreement A.3.:
    - (1) A bank, savings bank, savings and loan association, trust company, credit union or similar depository institution; or
    - (2) An insurance company.
  - b. With regard to Insuring Agreement A.6.:
    - (1) A bank, savings bank, savings and loan association, trust company, credit union or similar depository institution;
    - (2) An insurance company; or
    - (3) A stock brokerage firm or investment company.
- c. Other than Insuring Agreements A.3. and A.6., any financial institution.
- 10. "Financial institution premises" means the interior of that portion of any building occupied by a "financial institution" as defined in Paragraph F.9.a.
- 11. "Forgery" means the signing of the name of another person or organization with intent to deceive; it does not mean a signature which consists in whole or in part of one's own name signed with or without authority, in any capacity, for any purpose.
- 12. "Fraudulent instruction" means:
  - a. With regard to Insuring Agreement A.6.a.(2):
    - (1) A computer, telefacsimile, telephone or other electronic instruction directing a "financial institution" to debit your "transfer account" and to transfer, pay or deliver "money" or "securities" from that "transfer account", which instruction purports to have been issued by you, but which in fact was fraudulently issued by someone else without your knowledge or consent; or
    - (2) A written instruction (other than those covered under Insuring Agreement A.2.) issued to a "financial institution" directing the "financial institution" to debit your "transfer account" and to transfer, pay or deliver "money" or "securities" from that "transfer account", through an electronic funds transfer system at specified times or under specified conditions, which instruction purports to have been issued by you, but which in fact was issued, forged or altered by someone else without your knowledge or consent.
  - b. With regard to Insuring Agreement A.6.b.:  
A computer, telefacsimile, telephone or other electronic, written or voice instruction directing an "employee" to enter or change "electronic data" or "computer programs" within a "computer system" covered under the Insuring Agreement, which instruction in fact was fraudulently issued by your computer software contractor.
- 13. "Manager" means a natural person serving in a directorial capacity for a limited liability company.
- 14. "Member" means an owner of a limited liability company represented by its membership interest who, if a natural person, may also serve as a "manager".



15. "Messenger" means you, or your relative, or any of your partners or "members", or any "employee" while having care and custody of property outside the "premises".
16. "Money" means:
- a. Currency, coins and bank notes in current use and having a face value;
  - b. Traveler's checks and money orders held for sale to the public; and
  - c. In addition, includes:
    - (1) Under Insuring Agreements **A.1.** and **A.2.**, deposits in your account at any "financial institution"; and
    - (2) Under Insuring Agreement **A.6.**, deposits in your account at a "financial institution" as defined in Paragraph **F.9.b.**
17. "Occurrence" means:
- a. Under Insuring Agreement **A.1.:**
    - (1) An individual act;
    - (2) The combined total of all separate acts whether or not related; or
    - (3) A series of acts whether or not related; committed by an "employee" acting alone or in collusion with other persons, during the Policy Period shown in the Declarations, except as provided under Condition **E.1.k.** or **E.1.l.**
  - b. Under Insuring Agreement **A.2.:**
    - (1) An individual act;
    - (2) The combined total of all separate acts whether or not related; or
    - (3) A series of acts whether or not related; committed by a person acting alone or in collusion with other persons, involving one or more instruments, during the Policy Period shown in the Declarations, except as provided under Condition **E.1.k.** or **E.1.l.**
  - c. Under all other Insuring Agreements:
    - (1) An individual act or event;
    - (2) The combined total of all separate acts or events whether or not related; or
    - (3) A series of acts or events whether or not related; committed by a person acting alone or in collusion with other persons, or not committed by any person, during the Policy Period shown in the Declarations, except as provided under Condition **E.1.k.** or **E.1.l.**
18. "Other property" means any tangible property other than "money" and "securities" that has intrinsic value. "Other property" does not include "computer programs", "electronic data" or any property specifically excluded under this insurance.
19. "Premises" means the interior of that portion of any building you occupy in conducting your business.
20. "Robbery" means the unlawful taking of property from the care and custody of a person by one who has:
- a. Caused or threatened to cause that person bodily harm; or
  - b. Committed an obviously unlawful act witnessed by that person.
21. "Safe burglary" means the unlawful taking of:
- a. Property from within a locked safe or vault by a person unlawfully entering the safe or vault as evidenced by marks of forcible entry upon its exterior; or
  - b. A safe or vault from inside the "premises".
22. "Securities" means negotiable and nonnegotiable instruments or contracts representing either "money" or property and includes:
- a. Tokens, tickets, revenue and other stamps (whether represented by actual stamps or unused value in a meter) in current use; and
  - b. Evidences of debt issued in connection with credit or charge cards, which cards are not issued by you; but does not include "money".
23. "Theft" means the unlawful taking of property to the deprivation of the Insured.
24. "Transfer account" means an account maintained by you at a "financial institution" from which you can initiate the transfer, payment or delivery of "money" or "securities":
- a. By means of computer, telefacsimile, telephone or other electronic instructions; or
  - b. By means of written instructions (other than those covered under Insuring Agreement **A.2.**) establishing the conditions under which such transfers are to be initiated by such "financial institution" through an electronic funds transfer system.
25. "Watchperson" means any person you retain specifically to have care and custody of property inside the "premises" and who has no other duties.

## COMMERCIAL CRIME COVERAGE FORM (DISCOVERY FORM)

Various provisions in this Policy restrict coverage. Read the entire Policy carefully to determine rights, duties and what is or is not covered.

Throughout this Policy, the words "you" and "your" refer to the Named Insured shown in the Declarations. The words "we", "us" and "our" refer to the company providing this insurance.

Other words and phrases that appear in quotation marks have special meaning. Refer to Section F. Definitions.

### A. Insuring Agreements

Coverage is provided under the following Insuring Agreements for which a Limit Of Insurance is shown in the Declarations and applies to loss that you sustain resulting directly from an "occurrence" taking place at any time which is "discovered" by you during the Policy Period shown in the Declarations or during the period of time provided in the Extended Period To Discover Loss Condition E.1.g.:

#### 1. Employee Theft

We will pay for loss of or damage to "money", "securities" and "other property" resulting directly from "theft" committed by an "employee", whether identified or not, acting alone or in collusion with other persons.

For the purposes of this Insuring Agreement, "theft" shall also include forgery.

#### 2. Forgery Or Alteration

a. We will pay for loss resulting directly from "forgery" or alteration of checks, drafts, promissory notes, or similar written promises, orders or directions to pay a sum certain in "money" that are:

- (1) Made or drawn by or drawn upon you; or
  - (2) Made or drawn by one acting as your agent;
- or that are purported to have been so made or drawn.

For the purposes of this Insuring Agreement, a substitute check as defined in the Check Clearing for the 21st Century Act shall be treated the same as the original it replaced.

b. If you are sued for refusing to pay any instrument covered in Paragraph 2.a., on the basis that it has been forged or altered, and you have our written consent to defend against the suit, we will pay for any reasonable legal expenses that you incur and pay in that defense. The amount that we will pay for such legal expenses is in addition to the Limit of Insurance applicable to this Insuring Agreement.

### 3. Inside The Premises – Theft Of Money And Securities

We will pay for:

a. Loss of "money" and "securities" inside the "premises" or "financial institution premises":

- (1) Resulting directly from "theft" committed by a person present inside such "premises" or "financial institution premises"; or
- (2) Resulting directly from disappearance or destruction.

b. Loss from damage to the "premises" or its exterior resulting directly from an actual or attempted "theft" of "money" and "securities", if you are the owner of the "premises" or are liable for damage to it.

c. Loss of or damage to a locked safe, vault, cash register, cash box or cash drawer located inside the "premises" resulting directly from an actual or attempted "theft" of, or unlawful entry into, those containers.

### 4. Inside The Premises – Robbery Or Safe Burglary Of Other Property

We will pay for:

a. Loss of or damage to "other property":

- (1) Inside the "premises" resulting directly from an actual or attempted "robbery" of a "custodian"; or
- (2) Inside the "premises" in a safe or vault resulting directly from an actual or attempted "safe burglary".

- b. Loss from damage to the "premises" or its exterior resulting directly from an actual or attempted "robbery" or "safe burglary" of "other property", if you are the owner of the "premises" or are liable for damage to it.
- c. Loss of or damage to a locked safe or vault located inside the "premises" resulting directly from an actual or attempted "robbery" or "safe burglary".

## 5. Outside The Premises

We will pay for:

- a. Loss of "money" and "securities" outside the "premises" in the care and custody of a "messenger" or an armored motor vehicle company resulting directly from "theft", disappearance or destruction.
- b. Loss of or damage to "other property" outside the "premises" in the care and custody of a "messenger" or an armored motor vehicle company resulting directly from an actual or attempted "robbery".

## 6. Computer And Funds Transfer Fraud

a. We will pay for:

- (1) Loss resulting directly from a fraudulent:
  - (a) Entry of "electronic data" or "computer program" into; or
  - (b) Change of "electronic data" or "computer program" within;
 any "computer system" owned, leased or operated by you, provided the fraudulent entry or fraudulent change causes, with regard to Paragraphs **6.a.(1)(a)** and **6.a.(1)(b)**:
  - (i) "Money", "securities" or "other property" to be transferred, paid or delivered; or
  - (ii) Your account at a "financial institution" to be debited or deleted.
- (2) Loss resulting directly from a "fraudulent instruction" directing a "financial institution" to debit your "transfer account" and to transfer, pay or deliver "money" or "securities" from that account.

- b. As used in Paragraph **6.a.(1)**, fraudulent entry or fraudulent change of "electronic data" or "computer program" shall include such entry or change made by an "employee" acting, in good faith, upon a "fraudulent instruction" received from a computer software contractor who has a written agreement with you to design, implement or service "computer programs" for a "computer system" covered under this Insuring Agreement.

## 7. Money Orders And Counterfeit Money

We will pay for loss resulting directly from your having, in good faith, accepted in exchange for merchandise, "money" or services:

- a. Money orders issued by any post office, express company or "financial institution" that are not paid upon presentation; or
- b. "Counterfeit money" that is acquired during the regular course of business.

## B. Limit Of Insurance

The most we will pay for all loss resulting directly from an "occurrence" is the applicable Limit Of Insurance shown in the Declarations.

If any loss is covered under more than one Insuring Agreement or coverage, the most we will pay for such loss shall not exceed the largest Limit of Insurance available under any one of those Insuring Agreements or coverages.

## C. Deductible

We will not pay for loss resulting directly from an "occurrence" unless the amount of loss exceeds the Deductible Amount shown in the Declarations. We will then pay the amount of loss in excess of the Deductible Amount, up to the Limit of Insurance.

## D. Exclusions

1. This insurance does not cover:

### a. Acts Committed By You, Your Partners Or Your Members

Loss resulting from "theft" or any other dishonest act committed by:

- (1) You; or
- (2) Any of your partners or "members"; whether acting alone or in collusion with other persons.

**b. Acts Committed By Your Employees Learned Of By You Prior To The Policy Period**

Loss caused by an "employee" if the "employee" had also committed "theft" or any other dishonest act prior to the effective date of this insurance and you or any of your partners, "members", "managers", officers, directors or trustees, not in collusion with the "employee", learned of such "theft" or dishonest act prior to the Policy Period shown in the Declarations.

**c. Acts Committed By Your Employees, Managers, Directors, Trustees Or Representatives**

Loss resulting from "theft" or any other dishonest act committed by any of your "employees", "managers", directors, trustees or authorized representatives:

- (1) Whether acting alone or in collusion with other persons; or
- (2) While performing services for you or otherwise;

except when covered under Insuring Agreement **A.1.**

**d. Confidential Or Personal Information**

Loss resulting from:

- (1) The disclosure or use of another person's or organization's confidential or personal information; or
- (2) The disclosure of your confidential or personal information. However, this Paragraph **1.d.(2)** does not apply to loss otherwise covered under this insurance that results directly from the use of your confidential or personal information.

For the purposes of this exclusion, confidential or personal information includes, but is not limited to, patents, trade secrets, processing methods, customer lists, financial information, credit card information, health information or any other type of nonpublic information.

**e. Data Security Breach**

Fees, costs, fines, penalties and other expenses incurred by you which are related to the access to or disclosure of another person's or organization's confidential or personal information including, but not limited to, patents, trade secrets, processing methods, customer lists, financial information, credit card information, health information or any other type of nonpublic information.

**f. Governmental Action**

Loss resulting from seizure or destruction of property by order of governmental authority.

**g. Indirect Loss**

Loss that is an indirect result of an "occurrence" covered by this insurance including, but not limited to, loss resulting from:

- (1) Your inability to realize income that you would have realized had there been no loss of or damage to "money", "securities" or "other property";
- (2) Payment of damages of any type for which you are legally liable. But, we will pay compensatory damages arising directly from a loss covered under this insurance; or
- (3) Payment of costs, fees or other expenses you incur in establishing either the existence or the amount of loss under this insurance.

**h. Legal Fees, Costs And Expenses**

Fees, costs and expenses incurred by you which are related to any legal action, except when covered under Insuring Agreement **A.2.**

**i. Nuclear Hazard**

Loss or damage resulting from nuclear reaction or radiation or radioactive contamination, however caused.

**j. Pollution**

Loss or damage caused by or resulting from pollution. Pollution means the discharge, dispersal, seepage, migration, release or escape of any solid, liquid, gaseous or thermal irritant or contaminant, including smoke, vapor, soot, fumes, acids, alkalis, chemicals and waste. Waste includes materials to be recycled, reconditioned or reclaimed.

**k. Virtual Currency**

Loss involving virtual currency of any kind, by whatever name known, whether actual or fictitious including, but not limited to, digital currency, crypto currency or any other type of electronic currency.

**l. War And Military Action**

Loss or damage resulting from:

- (1) War, including undeclared or civil war;

- (2) Warlike action by a military force, including action in hindering or defending against an actual or expected attack, by any government, sovereign or other authority using military personnel or other agents; or
- (3) Insurrection, rebellion, revolution, usurped power, or action taken by governmental authority in hindering or defending against any of these.

**2. Insuring Agreement A.1. does not cover:**

**a. Inventory Shortages**

Loss, or that part of any loss, the proof of which as to its existence or amount is dependent upon:

- (1) An inventory computation; or
- (2) A profit and loss computation.

However, where you establish wholly apart from such computations that you have sustained a loss, then you may offer your inventory records and actual physical count of inventory in support of the amount of loss claimed.

**b. Trading**

Loss resulting from trading, whether in your name or in a genuine or fictitious account.

**c. Warehouse Receipts**

Loss resulting from the fraudulent or dishonest signing, issuing, cancelling or failing to cancel, a warehouse receipt or any papers connected with it.

**3. Insuring Agreements A.3., A.4. and A.5. do not cover:**

**a. Accounting Or Arithmetical Errors Or Omissions**

Loss resulting from accounting or arithmetical errors or omissions.

**b. Exchanges Or Purchases**

Loss resulting from the giving or surrendering of property in any exchange or purchase.

**c. Fire**

Loss or damage resulting from fire, however caused, except:

- (1) Loss of or damage to "money" and "securities"; and
- (2) Loss from damage to a safe or vault.

**d. Money Operated Devices**

Loss of property contained in any money operated device unless the amount of "money" deposited in it is recorded by a continuous recording instrument in the device.

**e. Motor Vehicles Or Equipment And Accessories**

Loss of or damage to motor vehicles, trailers or semitrailers or equipment and accessories attached to them.

**f. Transfer Or Surrender Of Property**

- (1) Loss of or damage to property after it has been transferred or surrendered to a person or place outside the "premises" or "financial institution premises":

- (a) On the basis of unauthorized instructions; or

- (b) As a result of a threat including, but not limited to:

- (i) A threat to do bodily harm to any person;

- (ii) A threat to do damage to any property;

- (iii) A threat to introduce a denial of service attack into any "computer system";

- (iv) A threat to introduce a virus or other malicious instruction into any "computer system" which is designed to damage, destroy or corrupt "electronic data" or "computer programs" stored within the "computer system";

- (v) A threat to contaminate, pollute or render substandard your products or goods; or

- (vi) A threat to disseminate, divulge or utilize:

- i. Your confidential information;

- ii. Confidential or personal information of another person or organization; or

- iii. Weaknesses in the source code within any "computer system".

(2) However, this exclusion does not apply under Insuring Agreement **A.5.** to loss of "money", "securities" or "other property" while outside the "premises" in the care and custody of a "messenger" if you:

- (a) Had no knowledge of any threat at the time the conveyance began; or
- (b) Had knowledge of a threat at the time the conveyance began, but the loss was not related to the threat.

**g. Vandalism**

Loss from damage to the "premises" or its exterior, or to any safe, vault, cash register, cash box, cash drawer or "other property" by vandalism or malicious mischief.

**h. Voluntary Parting Of Title To Or Possession Of Property**

Loss resulting from your, or anyone else acting on your express or implied authority, being induced by any dishonest act to voluntarily part with title to or possession of any property.

**4. Insuring Agreement A.6. does not cover:**

**a. Authorized Access**

Loss resulting from a fraudulent:

- (1) Entry of "electronic data" or "computer program" into; or
- (2) Change of "electronic data" or "computer program" within;

any "computer system" owned, leased or operated by you by a person or organization with authorized access to that "computer system", except when covered under Insuring Agreement **A.6.b.**

**b. Credit Card Transactions**

Loss resulting from the use or purported use of credit, debit, charge, access, convenience, identification, stored-value or other cards or the information contained on such cards.

**c. Exchanges Or Purchases**

Loss resulting from the giving or surrendering of property in any exchange or purchase.

**d. Fraudulent Instructions**

Loss resulting from an "employee" or "financial institution" acting upon any instruction to:

- (1) Transfer, pay or deliver "money", "securities" or "other property"; or

(2) Debit or delete your account;

which instruction proves to be fraudulent, except when covered under Insuring Agreement **A.6.a.(2)** or **A.6.b.**

**e. Inventory Shortages**

Loss, or that part of any loss, the proof of which as to its existence or amount is dependent upon:

- (1) An inventory computation; or
- (2) A profit and loss computation.

**E. Conditions**

The following conditions apply in addition to the Common Policy Conditions:

**1. Conditions Applicable To All Insuring Agreements**

**a. Additional Premises Or Employees**

If, while this insurance is in force, you establish any additional "premises" or hire additional "employees", other than through consolidation or merger with, or purchase or acquisition of assets or liabilities of, another entity, such "premises" and "employees" shall automatically be covered under this insurance. Notice to us of an increase in the number of "premises" or "employees" is not required, and no additional premium will be charged for the remainder of the Policy Period shown in the Declarations.

**b. Concealment, Misrepresentation Or Fraud**

This insurance is void in any case of fraud by you as it relates to this insurance at any time. It is also void if you or any other Insured, at any time, intentionally conceals or misrepresents a material fact concerning:

- (1) This insurance;
- (2) The property covered under this insurance;
- (3) Your interest in the property covered under this insurance; or
- (4) A claim under this insurance.

**c. Consolidation – Merger Or Acquisition**

If you consolidate or merge with, or purchase or acquire the assets or liabilities of, another entity:

- (1) You must give us written notice as soon as possible and obtain our written consent to extend the coverage provided by this insurance to such consolidated or merged entity or such purchased or acquired assets or liabilities. We may condition our consent by requiring payment of an additional premium; but
- (2) For the first 90 days after the effective date of such consolidation, merger or purchase or acquisition of assets or liabilities, the coverage provided by this insurance shall apply to such consolidated or merged entity or such purchased or acquired assets or liabilities, provided that all "occurrences" causing or contributing to a loss involving such consolidation, merger or purchase or acquisition of assets or liabilities, must take place after the effective date of such consolidation, merger or purchase or acquisition of assets or liabilities.

**d. Cooperation**

You must cooperate with us in all matters pertaining to this insurance as stated in its terms and conditions.

**e. Duties In The Event Of Loss**

After you "discover" a loss or a situation that may result in loss of or damage to "money", "securities" or "other property", you must:

- (1) Notify us as soon as possible. If you have reason to believe that any loss (except for loss covered under Insuring Agreement **A.1.** or **A.2.**) involves a violation of law, you must also notify the local law enforcement authorities;
- (2) Give us a detailed, sworn proof of loss within 120 days;
- (3) Cooperate with us in the investigation and settlement of any claim;
- (4) Produce for our examination all pertinent records;
- (5) Submit to examination under oath at our request and give us a signed statement of your answers; and

- (6) Secure all of your rights of recovery against any person or organization responsible for the loss and do nothing to impair those rights.

**f. Employee Benefit Plans**

The "employee benefit plans" shown in the Declarations (hereafter referred to as Plan) are included as Insureds under Insuring Agreement **A.1.**, subject to the following:

- (1) If any Plan is insured jointly with any other entity under this insurance, you or the Plan Administrator is responsible for selecting a Limit of Insurance for Insuring Agreement **A.1.** that is sufficient to provide a Limit of Insurance for each Plan that is at least equal to that required under ERISA as if each Plan were separately insured.

- (2) With respect to loss sustained or "discovered" by any such Plan, Insuring Agreement **A.1.** is replaced by the following:

We will pay for loss of or damage to "money", "securities" and "other property" resulting directly from fraudulent or dishonest acts committed by an "employee", whether identified or not, acting alone or in collusion with other persons.

- (3) If the first Named Insured is an entity other than a Plan, any payment we make for loss sustained by any Plan will be made to the Plan sustaining the loss.
- (4) If two or more Plans are insured under this insurance, any payment we make for loss:
  - (a) Sustained by two or more Plans; or
  - (b) Of commingled "money", "securities" or "other property" of two or more Plans;

resulting directly from an "occurrence", will be made to each Plan sustaining loss in the proportion that the Limit of Insurance required under ERISA for each Plan bears to the total of those limits.

- (5) The Deductible Amount applicable to Insuring Agreement **A.1.** does not apply to loss sustained by any Plan.

**g. Extended Period To Discover Loss**

We will pay for loss that you sustained prior to the effective date of cancellation of this insurance, which is "discovered" by you:

- (1) No later than 60 days from the date of that cancellation. However, this extended period to "discover" loss terminates immediately upon the effective date of any other insurance obtained by you, whether from us or another insurer, replacing in whole or in part the coverage afforded under this insurance, whether or not such other insurance provides coverage for loss sustained prior to its effective date.
- (2) No later than one year from the date of that cancellation with regard to any "employee benefit plan".

**h. Joint Insured**

- (1) If more than one Insured is named in the Declarations, the first Named Insured will act for itself and for every other Insured for all purposes of this insurance. If the first Named Insured ceases to be covered, then the next Named Insured will become the first Named Insured.
- (2) If any Insured, or partner, "member", "manager", officer, director or trustee of that Insured has knowledge of any information relevant to this insurance, that knowledge is considered knowledge of every Insured.
- (3) An "employee" of any Insured is considered to be an "employee" of every Insured.
- (4) If this insurance or any of its coverages are cancelled as to any Insured, loss sustained by that Insured is covered only if it is "discovered" by you:
  - (a) No later than 60 days from the date of that cancellation. However, this extended period to "discover" loss terminates immediately upon the effective date of any other insurance obtained by that Insured, whether from us or another insurer, replacing in whole or in part the coverage afforded under this insurance, whether or not such other insurance provides coverage for loss sustained prior to its effective date.

- (b) No later than one year from the date of that cancellation with regard to any "employee benefit plan".

- (5) We will not pay more for loss sustained by more than one Insured than the amount we would pay if all such loss had been sustained by one Insured.
- (6) Payment by us to the first Named Insured for loss sustained by any Insured, or payment by us to any "employee benefit plan" for loss sustained by that Plan, shall fully release us on account of such loss.

**i. Legal Action Against Us**

You may not bring any legal action against us involving loss:

- (1) Unless you have complied with all the terms of this insurance;
- (2) Until 90 days after you have filed proof of loss with us; and
- (3) Unless brought within two years from the date you "discovered" the loss.

If any limitation in this condition is prohibited by law, such limitation is amended so as to equal the minimum period of limitation provided by such law.

**j. Liberalization**

If we adopt any revision that would broaden the coverage under this insurance without additional premium within 45 days prior to or during the Policy Period shown in the Declarations, the broadened coverage will immediately apply to this insurance.

**k. Other Insurance**

If other valid and collectible insurance is available to you for loss covered under this insurance, our obligations are limited as follows:

**(1) Primary Insurance**

When this insurance is written as primary insurance, and:

- (a) You have other insurance subject to the same terms and conditions as this insurance, we will pay our share of the covered loss. Our share is the proportion that the applicable Limit Of Insurance shown in the Declarations bears to the total limit of all insurance covering the same loss.



(b) You have other insurance covering the same loss other than that described in Paragraph **k.(1)(a)**, we will only pay for the amount of loss that exceeds:

(i) The Limit of Insurance and Deductible Amount of that other insurance, whether you can collect on it or not; or

(ii) The Deductible Amount shown in the Declarations;

whichever is greater. Our payment for loss is subject to the terms and conditions of this insurance.

**(2) Excess Insurance**

(a) When this insurance is written excess over other insurance, we will only pay for the amount of loss that exceeds the Limit of Insurance and Deductible Amount of that other insurance, whether you can collect on it or not. Our payment for loss is subject to the terms and conditions of this insurance.

(b) However, if loss covered under this insurance is subject to a deductible, we will reduce the Deductible Amount shown in the Declarations, by the sum total of all such other insurance plus any Deductible Amount applicable to that other insurance.

**I. Ownership Of Property; Interests Covered**

The property covered under this insurance is limited to property:

- (1) That you own or lease;
- (2) That is held by you in any capacity; or
- (3) For which you are legally liable, provided you were liable for the property prior to the time the loss was sustained.

However, this insurance is for your benefit only. It provides no rights or benefits to any other person or organization. Any claim for loss that is covered under this insurance must be presented by you.

**m. Policy Bridge – Discovery Replacing Loss Sustained**

(1) If this insurance replaces insurance that provided you with an extended period of time after cancellation in which to discover loss and which did not terminate at the time this insurance became effective:

(a) We will not pay for any loss that occurred during the policy period of that prior insurance which is discovered by you during such extended period to discover loss, unless the amount of loss exceeds the Limit of Insurance and Deductible Amount of that prior insurance. In that case, we will pay for the excess loss subject to the terms and conditions of this insurance.

(b) However, any payment we make for the excess loss will not be greater than the difference between the Limit of Insurance and Deductible Amount of that prior insurance and the Limit Of Insurance shown in the Declarations. We will not apply the Deductible Amount shown in the Declarations to this excess loss.

(2) **Other Insurance** Condition **E.1.k.** does not apply to this condition.

**n. Records**

You must keep records of all property covered under this insurance so we can verify the amount of any loss.

**o. Recoveries**

(1) Any recoveries, whether effected before or after any payment under this insurance, whether made by us or by you, shall be applied net of the expense of such recovery:

(a) First, to you in satisfaction of your covered loss in excess of the amount paid under this insurance;

(b) Second, to us in satisfaction of amounts paid in settlement of your claim;

(c) Third, to you in satisfaction of any Deductible Amount; and

(d) Fourth, to you in satisfaction of any loss not covered under this insurance.

(2) Recoveries do not include any recovery:

- (a) From insurance, suretyship, reinsurance, security or indemnity taken for our benefit; or
- (b) Of original "securities" after duplicates of them have been issued.

**p. Territory**

This insurance covers loss that you sustain resulting directly from an "occurrence" taking place within the United States of America (including its territories and possessions), Puerto Rico and Canada.

**q. Transfer Of Your Rights Of Recovery Against Others To Us**

You must transfer to us all your rights of recovery against any person or organization for any loss you sustained and for which we have paid or settled. You must also do everything necessary to secure those rights and do nothing after loss to impair them.

**r. Valuation – Settlement**

The value of any loss for purposes of coverage under this insurance shall be determined as follows:

**(1) Money**

Loss of "money" but only up to and including its face value. We will, at your option, pay for loss of "money" issued by any country other than the United States of America:

- (a) At face value in the "money" issued by that country; or
- (b) In the United States of America dollar equivalent, determined by the rate of exchange published in The Wall Street Journal on the day the loss was "discovered".

**(2) Securities**

Loss of "securities" but only up to and including their value at the close of business on the day the loss was "discovered". We may, at our option:

- (a) Pay the market value of such "securities" or replace them in kind, in which event you must assign to us all your rights, title and interest in and to those "securities"; or

- (b) Pay the cost of any Lost Securities Bond required in connection with issuing duplicates of the "securities". However, we will be liable only for the payment of so much of the cost of the bond as would be charged for a bond having a penalty not exceeding the lesser of the:

- (i) Market value of the "securities" at the close of business on the day the loss was "discovered"; or
- (ii) Limit of Insurance applicable to the "securities".

**(3) Property Other Than Money And Securities**

- (a) Loss of or damage to "other property" or loss from damage to the "premises" or its exterior for the replacement cost of the property without deduction for depreciation. However, we will not pay more than the least of the following:

- (i) The Limit of Insurance applicable to the lost or damaged property;
- (ii) The cost to replace the lost or damaged property with property of comparable material and quality and used for the same purpose; or
- (iii) The amount you actually spend that is necessary to repair or replace the lost or damaged property.

- (b) We will not pay on a replacement cost basis for any loss or damage to property covered under Paragraph **r.(3)(a)**:

- (i) Until the lost or damaged property is actually repaired or replaced; and
- (ii) Unless the repair or replacement is made as soon as reasonably possible after the loss or damage.

If the lost or damaged property is not repaired or replaced, we will pay on an actual cash value basis.

- (c) We will, at your option, pay for loss or damage to such property:
  - (i) In the "money" of the country in which the loss or damage was sustained; or

- (ii) In the United States of America dollar equivalent of the "money" of the country in which the loss or damage was sustained, determined by the rate of exchange published in The Wall Street Journal on the day the loss was "discovered".

- (d) Any property that we pay for or replace becomes our property.

## **2. Conditions Applicable To Insuring Agreement A.1.**

### **a. Termination As To Any Employee**

This Insuring Agreement terminates as to any "employee":

- (1) As soon as:

- (a) You; or

- (b) Any of your partners, "members", "managers", officers, directors or trustees not in collusion with the "employee";

learn of "theft" or any other dishonest act committed by the "employee" whether before or after becoming employed by you; or

- (2) On the date specified in a notice mailed to the first Named Insured. That date will be at least 30 days after the date of mailing.

We will mail or deliver our notice to the first Named Insured's last mailing address known to us. If notice is mailed, proof of mailing will be sufficient proof of notice.

### **b. Territory**

We will pay for loss caused by any "employee" while temporarily outside the territory specified in Territory Condition E.1.p. for a period of not more than 90 consecutive days.

## **3. Conditions Applicable To Insuring Agreement A.2.**

### **a. Deductible Amount**

The Deductible Amount does not apply to legal expenses paid under Insuring Agreement A.2.

### **b. Electronic And Mechanical Signatures**

We will treat signatures that are produced or reproduced electronically, mechanically or by other means the same as handwritten signatures.

## **c. Proof Of Loss**

You must include with your proof of loss any instrument involved in that loss or, if that is not possible, an affidavit setting forth the amount and cause of loss.

## **d. Territory**

We will cover loss that you sustain resulting directly from an "occurrence" taking place anywhere in the world. Territory Condition E.1.p. does not apply to Insuring Agreement A.2.

## **4. Conditions Applicable To Insuring Agreements A.4. And A.5.**

### **a. Armored Motor Vehicle Companies**

Under Insuring Agreement A.5., we will only pay for the amount of loss you cannot recover:

- (1) Under your contract with the armored motor vehicle company; and
- (2) From any insurance or indemnity carried by, or for the benefit of customers of, the armored motor vehicle company.

### **b. Special Limit Of Insurance For Specified Property**

We will only pay up to \$5,000 for any one "occurrence" of loss of or damage to:

- (1) Precious metals, precious or semiprecious stones, pearls, furs, or completed or partially completed articles made of or containing such materials that constitute the principal value of such articles; or
- (2) Manuscripts, drawings, or records of any kind, or the cost of reconstructing them or reproducing any information contained in them.

## **5. Conditions Applicable To Insuring Agreement A.6.**

### **a. Special Limit Of Insurance For Specified Property**

We will only pay up to \$5,000 for any one "occurrence" of loss of or damage to manuscripts, drawings, or records of any kind, or the cost of reconstructing them or reproducing any information contained in them.

### **b. Territory**

We will cover loss that you sustain resulting directly from an "occurrence" taking place anywhere in the world. Territory Condition E.1.p. does not apply to Insuring Agreement A.6.

## F. Definitions

1. "Computer program" means a set of related electronic instructions, which direct the operation and function of a computer or devices connected to it, which enable the computer or devices to receive, process, store or send "electronic data".
2. "Computer system" means:
  - a. Computers, including Personal Digital Assistants (PDAs) and other transportable or handheld devices, electronic storage devices and related peripheral components;
  - b. Systems and applications software; and
  - c. Related communications networks;by which "electronic data" is collected, transmitted, processed, stored or retrieved.
3. "Counterfeit money" means an imitation of "money" which is intended to deceive and to be taken as genuine.
4. "Custodian" means you, or any of your partners or "members", or any "employee" while having care and custody of property inside the "premises", excluding any person while acting as a "watchperson" or janitor.
5. "Discover" or "discovered" means the time when you first become aware of facts which would cause a reasonable person to assume that a loss of a type covered by this insurance has been or will be incurred, regardless of when the act or acts causing or contributing to such loss occurred, even though the exact amount or details of loss may not then be known.

"Discover" or "discovered" also means the time when you first receive notice of an actual or potential claim in which it is alleged that you are liable to a third party under circumstances which, if true, would constitute a loss under this insurance.
6. "Electronic data" means information, facts, images or sounds stored as or on, created or used on, or transmitted to or from computer software (including systems and applications software) on data storage devices, including hard or floppy disks, CD-ROMs, tapes, drives, cells, data processing devices or any other media which are used with electronically controlled equipment.

## 7. "Employee":

### a. Means:

- (1) Any natural person:
  - (a) While in your service and for the first 30 days immediately after termination of service, unless such termination is due to "theft" or any other dishonest act committed by the "employee";
  - (b) Whom you compensate directly by salary, wages or commissions; and
  - (c) Whom you have the right to direct and control while performing services for you;
- (2) Any natural person who is furnished temporarily to you:
  - (a) To substitute for a permanent "employee", as defined in Paragraph 7.a.(1), who is on leave; or
  - (b) To meet seasonal or short-term workload conditions;while that person is subject to your direction and control and performing services for you;
- (3) Any natural person who is leased to you under a written agreement between you and a labor leasing firm, to perform duties related to the conduct of your business, but does not mean a temporary "employee" as defined in Paragraph 7.a.(2);
- (4) Any natural person who is:
  - (a) A trustee, officer, employee, administrator or manager, except an administrator or manager who is an independent contractor, of any "employee benefit plan"; or
  - (b) Your director or trustee while that person is engaged in handling "money", "securities" or "other property" of any "employee benefit plan";
- (5) Any natural person who is a former "employee", partner, "member", "manager", director or trustee retained by you as a consultant while performing services for you;
- (6) Any natural person who is a guest student or intern pursuing studies or duties;

- (7) Any natural person employed by an entity merged or consolidated with you prior to the effective date of this insurance; and
- (8) Any natural person who is your "manager", director or trustee while:
- (a) Performing acts within the scope of the usual duties of an "employee"; or
  - (b) Acting as a member of any committee duly elected or appointed by resolution of your board of directors or board of trustees to perform specific, as distinguished from general, directorial acts on your behalf.
- b. Does not mean:
- Any agent, broker, factor, commission merchant, consignee, independent contractor or representative of the same general character not specified in Paragraph 7.a.
8. "Employee benefit plan" means any welfare or pension benefit plan shown in the Declarations that you sponsor and that is subject to the Employee Retirement Income Security Act of 1974 (ERISA) and any amendments thereto.
9. "Financial institution" means:
- a. With regard to Insuring Agreement **A.3.:**
    - (1) A bank, savings bank, savings and loan association, trust company, credit union or similar depository institution; or
    - (2) An insurance company.
  - b. With regard to Insuring Agreement **A.6.:**
    - (1) A bank, savings bank, savings and loan association, trust company, credit union or similar depository institution;
    - (2) An insurance company; or
    - (3) A stock brokerage firm or investment company.
  - c. Other than Insuring Agreements **A.3.** and **A.6.**, any financial institution.
10. "Financial institution premises" means the interior of that portion of any building occupied by a "financial institution" as defined in Paragraph **F.9.a.**
11. "Forgery" means the signing of the name of another person or organization with intent to deceive; it does not mean a signature which consists in whole or in part of one's own name signed with or without authority, in any capacity, for any purpose.
12. "Fraudulent instruction" means:
- a. With regard to Insuring Agreement **A.6.a.(2):**
    - (1) A computer, telefacsimile, telephone or other electronic instruction directing a "financial institution" to debit your "transfer account" and to transfer, pay or deliver "money" or "securities" from that "transfer account", which instruction purports to have been issued by you, but which in fact was fraudulently issued by someone else without your knowledge or consent; or
    - (2) A written instruction (other than those covered under Insuring Agreement **A.2.**) issued to a "financial institution" directing the "financial institution" to debit your "transfer account" and to transfer, pay or deliver "money" or "securities" from that "transfer account", through an electronic funds transfer system at specified times or under specified conditions, which instruction purports to have been issued by you, but which in fact was issued, forged or altered by someone else without your knowledge or consent.
  - b. With regard to Insuring Agreement **A.6.b.:**

A computer, telefacsimile, telephone or other electronic, written or voice instruction directing an "employee" to enter or change "electronic data" or "computer programs" within a "computer system" covered under the Insuring Agreement, which instruction in fact was fraudulently issued by your computer software contractor.
13. "Manager" means a natural person serving in a directorial capacity for a limited liability company.
14. "Member" means an owner of a limited liability company represented by its membership interest who, if a natural person, may also serve as a "manager".
15. "Messenger" means you, or your relative, or any of your partners or "members", or any "employee" while having care and custody of property outside the "premises".
16. "Money" means:
- a. Currency, coins and bank notes in current use and having a face value;
  - b. Traveler's checks and money orders held for sale to the public; and

- c. In addition, includes:
    - (1) Under Insuring Agreements **A.1.** and **A.2.**, deposits in your account at any "financial institution"; and
    - (2) Under Insuring Agreement **A.6.**, deposits in your account at a "financial institution" as defined in Paragraph **F.9.b.**
- 17. "Occurrence" means:**
- a. Under Insuring Agreement **A.1.:**
    - (1) An individual act;
    - (2) The combined total of all separate acts whether or not related; or
    - (3) A series of acts whether or not related; committed by an "employee" acting alone or in collusion with other persons, during the Policy Period shown in the Declarations, before such Policy Period or both.
  - b. Under Insuring Agreement **A.2.:**
    - (1) An individual act;
    - (2) The combined total of all separate acts whether or not related; or
    - (3) A series of acts whether or not related; committed by a person acting alone or in collusion with other persons, involving one or more instruments, during the Policy Period shown in the Declarations, before such Policy Period or both.
  - c. Under all other Insuring Agreements:
    - (1) An individual act or event;
    - (2) The combined total of all separate acts or events whether or not related; or
    - (3) A series of acts or events whether or not related; committed by a person acting alone or in collusion with other persons, or not committed by any person, during the Policy Period shown in the Declarations, before such Policy Period or both.
- 18. "Other property" means any tangible property other than "money" and "securities" that has intrinsic value. "Other property" does not include "computer programs", "electronic data" or any property specifically excluded under this insurance.**
- 19. "Premises" means the interior of that portion of any building you occupy in conducting your business.**
- 20. "Robbery" means the unlawful taking of property from the care and custody of a person by one who has:**
- a. Caused or threatened to cause that person bodily harm; or
  - b. Committed an obviously unlawful act witnessed by that person.
- 21. "Safe burglary" means the unlawful taking of:**
- a. Property from within a locked safe or vault by a person unlawfully entering the safe or vault as evidenced by marks of forcible entry upon its exterior; or
  - b. A safe or vault from inside the "premises".
- 22. "Securities" means negotiable and nonnegotiable instruments or contracts representing either "money" or property and includes:**
- a. Tokens, tickets, revenue and other stamps (whether represented by actual stamps or unused value in a meter) in current use; and
  - b. Evidences of debt issued in connection with credit or charge cards, which cards are not issued by you; but does not include "money".
- 23. "Theft" means the unlawful taking of property to the deprivation of the Insured.**
- 24. "Transfer account" means an account maintained by you at a "financial institution" from which you can initiate the transfer, payment or delivery of "money" or "securities":**
- a. By means of computer, telefacsimile, telephone or other electronic instructions; or
  - b. By means of written instructions (other than those covered under Insuring Agreement **A.2.**) establishing the conditions under which such transfers are to be initiated by such "financial institution" through an electronic funds transfer system.
- 25. "Watchperson" means any person you retain specifically to have care and custody of property inside the "premises" and who has no other duties.**

**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

## **U.S. DEPARTMENT OF LABOR – ERISA PLAN COVERAGE AMENDMENTS**

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This endorsement modifies insurance provided under the following:

COMMERCIAL CRIME COVERAGE FORM  
COMMERCIAL CRIME POLICY  
EMPLOYEE THEFT AND FORGERY POLICY

With regard to coverage provided for "employee benefit plans", the provisions of the Coverage Form or Policy to which this endorsement is attached apply, unless modified by this endorsement.

**A. Under Section D. Exclusions:**

**1. In Section D.1.:**

- a. The **Acts Committed By You, Your Partners Or Your Members** Exclusion is replaced by the following:

**Acts Committed By You, Your Partners Or Your Members**

Loss resulting from "theft" or any other dishonest or fraudulent act committed by:

- (1) You; or
- (2) Any of your partners or "members";  
whether acting alone or in collusion with other persons, except while handling "money", "securities" or "other property" of an "employee benefit plan".

- b. The **Confidential Or Personal Information** Exclusion is replaced by the following:

**Confidential Or Personal Information**

Loss resulting from:

- (1) The disclosure or use of another person's or organization's confidential or personal information, except as provided in Paragraph (2).
- (2) The disclosure of your or an "employee benefit plan" participant's confidential or personal information. However, this Paragraph (2) does not apply to loss otherwise covered under Insuring Agreement A.1. that results directly from the use of your or an "employee benefit plan" participant's confidential or personal information.

For the purposes of this exclusion, confidential or personal information includes, but is not limited to, patents, trade secrets, processing methods, customer lists, financial information, credit card information, health information, retirement or health savings account information or any other type of nonpublic information.

**2. In Section D.2.:**

- a. The **Trading** Exclusion is deleted.
- b. The **Warehouse Receipts** Exclusion is deleted.

**B. Paragraph (2) of the Employee Benefit Plans Condition is replaced by the following:**

- (2) With respect to loss sustained or "discovered" by any such Plan, Insuring Agreement A.1. is replaced by the following:

We will pay for loss of or damage to "money", "securities" and "other property" resulting directly from fraudulent or dishonest acts committed by an "employee" whether identified or not, sole proprietor, partner or "member" acting alone or in collusion with other persons while such "employee", sole proprietor, partner or "member" is handling "money", "securities" or "other property" of an "employee benefit plan".

**C. Paragraph a. of the definition of "occurrence" is replaced by the following:**

- a. Under Insuring Agreement A.1.:
  - (1) An individual act;
  - (2) The combined total of all separate acts whether or not related; or
  - (3) A series of acts whether or not related;

committed by an "employee", sole proprietor, partner or "member" acting alone or in collusion with other persons, during the Policy Period shown in the Declarations, before such Policy Period or both.

SAMPLE





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## Section 4

# **CYBER EXPOSURES AND COVERAGE**



## Cyber Exposures and Coverage

### Section Goal

In this section, participants will be able to correctly identify Cyber exposures and be able to properly analyze a Cyber Insurance Policy to determine whether coverage is provided or not.

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### Learning Objectives

1. Using knowledge of common cyber exposures and loss situations, the participant will be able to distinguish between a cyber liability (third party) loss and a cyber-related first party loss to determine the appropriate Cyber Insurance Coverage to fit a client's needs and/or expectations.
2. Using knowledge of the ISO Commercial Cyber Insurance Policy, including the
  - Declarations,
  - Definitions, and
  - Six Insuring Agreements,the participant will be prepared to explain which insuring agreement will apply to different types of losses.
3. Using knowledge of selected provisions, including
  - Limits of Insurance,
  - Deductible, and
  - Defense and Settlement,the participant will be prepared to describe to a client the application of these provisions in a given claim scenario.

4. Using knowledge of Exclusions found in Cyber Insurance Policies, the participant will be prepared to determine and explain if coverage applies in a loss situation.
5. Using knowledge of selected Conditions found in Cyber Insurance Policies, the participant will be prepared to explain the obligations imposed on an insured and insurer before and during the policy period and/or after a claim or loss.

## The Need for Cyber Insurance Coverage

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### Learning Objective 1:

Using knowledge of common cyber exposures and loss situations, the participant will be able to distinguish between a cyber liability (third party) loss and a cyber-related first party loss to determine the appropriate Cyber Insurance Coverage to fit a client's needs and/or expectations.

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### Sell the Problem First

#### Technology Users

Almost all businesses use technology to conduct or transact business

- Wholesalers/retailers
- Financial institutions
- Medical, health care industry
- Manufacturers
- Offices – attorneys, engineers, accountants, etc.
- Hospitality industry – hotels, conference centers, restaurants
- Construction, repair, service providers
- Technology service and product providers

#### Note:

For purposes of this course, we will refer to cyber-related coverages (first and third party) as Cyber Insurance Coverage

## Cyber Transaction Examples

### Business to Business (B2B)

Manufacturer	↔	Wholesalers, Distributors, or Retailers
Doctor's Office	↔	Labs, Hospitals, Pharmacies, Insurance Companies
Insurance Agency	↔	Insurance Company
Architect/Engineer	↔	General Contractor

### Business to Consumer (B2C)

Online Sales	↔	Consumer
Doctor's Office	↔	Consumer
Insurance Agency	↔	Consumer
Contractor/Service or Repair	↔	Consumer

### Business to Government (B2G)

Law Office	↔	Court System
Insurance Company	↔	Department of Insurance
Contractors	↔	City/State/Federal Offices

## Common Cyber Threats

Most individuals and businesses underestimate or are completely unaware of the common cyber threats that are targeting their personal information across social media sites and through Internet connected devices ranging from laptops, smartphones, tablets, and desktops to voice assistants that include smart refrigerators and thermostats. [Chubb 2018 Survey]

Many businesses have a cyber exposure due to some or all of the following (not an all-inclusive list):

1. Collection of private information on employees, clients, vendors, etc.
2. Data storage both active and at rest
  - Data can be found on computer systems and/or software, including but not limited to hard drives, flash drives, disks, CD-ROMs, tapes, laptops, tablets, personal device accessories, and third-party locations (i.e., Cloud).
3. A web site and/or social media presence
4. Access to the Internet and integration, sharing or transmission of data and/or communications with others via the Internet
5. E-commerce business transactions
6. Credit card transactions
7. Errors and Omissions (E&O) or professional liability cyber exposures
8. Internet Of Things (IOT) and the communication systems through imbedded chips, such as smart homes
9. Subject to state, federal, and foreign laws

## **Cyber Assets**

The value of cyber assets may be greater than the value of business personal property

- Cyber assets – all types of electronic data including intellectual property
- Intellectual property can basically be described as the product of human intelligence that has economic value

## **Limited Coverage Under Traditional Policies**

- Traditional policies (Commercial General Liability, Commercial Property Policies, Crime Policies) are not designed to provide coverage for cyber-related exposures
  - The Commercial General Liability Policy is virtually useless for protecting an insured against cyber liability exposures. There is very limited protection by endorsement. Plus, many insurers will add exclusionary endorsements to further restrict or limit coverage.
  - The Commercial Property Policy (CPP) and/or Businessowners Policy (BOP) only provide limited coverage (a small amount) for electronic data and for interruption of computer operations.
  - Some potential coverage under a Commercial Crime Policy depending on the insuring agreement selected and endorsements.



## Intent of Cyber Insurance Coverage

- Cyber Insurance Coverage is intended for users of computer systems and of other technological products and services, including those businesses that use the Internet or have an Internet presence.
  - Includes, but is not limited to businesses that have a computer system, send or receive e-mails, maintain a web site, use various forms of electronic advertisements, use the Internet to transact business or download information, online sales, conduct webinars, blogging, social media, bulletin boards, contract bidding, etc.
- Cyber Insurance Coverage is also intended for those who have care, custody or control (CCC) of data for others
  - This can include the collection, transmission and storage of private information on consumers, employees, vendors, etc.
- Many Cyber Insurance Policies are designed with various insuring agreements that allow the named insureds flexibility to choose the coverage(s) that fit their business needs.
  - Coverage is needed to protect a business from a variety of exposures, including new and/or evolving exposures.
  - These businesses may have a need for Cyber Insurance Coverage to protect against liability (third party) losses, first party losses, and/or both.

## Situations that Could Result in a Cyber Liability (Third Party) Loss

1. Unintended disclosure of information.
  - Accidentally sent e-mails. Employees make mistakes and send e-mails and data to other than the intended individual(s).
  - Theft or loss of laptops, PDAs, smartphones, tablets, flash drives, and/or other electronic devices that contain personal or confidential client/customer information that is in the care, custody, or control of the business. This can be on both on business-owned devices and employee personal devices. [Should have a Mobile Device Management Plan in place.]
  - Theft or loss of confidential corporate information that is in the care, custody or control of the business, such as tax documents, legal documents, blueprints/plans/designs, trade secrets.
2. Disclosure of incorrect or damaging information, or information that could result in a violation of privacy. Employees intentionally send e-mails to others; however, sometimes the e-mails contain incorrect, damaging information, or information that violates the privacy of others.
3. Infringement of copyright, intellectual property rights. Businesses create web sites that contain unauthorized use (infringement) of images, music, and/or documents belonging to others.
4. Publications that slander, libel, or disparage. Businesses create web pages, bulletin boards, and chatrooms, and/or post testimonials with content that could hurt a person or organization.
5. Transmittal of a virus, malicious code, malware, ransomware. Businesses may receive and transmit information that contains a virus, malicious code, malware, or ransomware that may cause damage to another person's or organization's computer system.
6. Access and disclosure by an unauthorized user. An unauthorized user (hacker), former employee, or a rogue employee may break into a computer system with intent to steal data, steal intellectual property, and/or distribute information that may hurt other people or organizations. Commonly known as a cyber-attack.

7. Denial of Service (DoS) attack. A business that suffers a DoS attack or a Distributed Denial of Services (DDoS) attack can be accused of breach of contract if clients are denied access to the web site.

DoS can basically be described as an attack from one source for the purpose of preventing or disrupting the use of or access to a computer system. DDoS can basically be described as an attack from more than one source and/or more than one location at the same time.

**Note:**

Extortion events may be tied to these attacks. Extortion or ransom payments are first party losses.

8. Programming errors. Bad programming and/or poor-quality control of source coding may result in the release of nonpublic personal information. Resulting machine language errors may cause product or installation failures that result in damages.
9. Data entry errors. An employee can accidentally enter incorrect information to another client's records, which could result in a violation of privacy.
10. Liability claims/lawsuits alleging violation of state, federal and other country's statutes, especially those associated with nonpublic personally identifiable financial, health or other sensitive information

- *Examples of federal statutes:*
  - *Health Insurance Portability and Accountability Act (HIPAA)*
  - *The Health Information Technology for Economic and Clinical Health (HITECH) Act*
  - *Graham-Leach-Bliley Act*
- There are data breach notification laws in all 50 states, the District of Columbia, Guam, Puerto Rico, and the Virgin Islands.
- European Union General Data Protection Regulation (GDPR)

## Situations That Could Result in a Cyber-Related First Party Loss

1. A security breach typically results in costs/expenses to investigate the source of the security breach (forensic investigation) and the costs to repair (find and fix the problem).
2. A virus in a business's computer system can result in a loss of or damage to electronic data. Introduction of a virus can also result in a cost to hire an IT expert to investigate, remove the virus, and research to see what records were damaged or lost. The business can also incur overtime or cost to hire temporary workers to reenter lost or damaged data.
3. A ransomware infection can result in costs to solve the issues of getting data back because of an infection in the computer system. Costs/expenses include potential extortion demand or ransom payment.
4. An unauthorized user (hacker) could make an extortion demand or require a ransom payment in return for not releasing valuable information. Commonly known as cyber extortion.
5. A web site infected with malware can result in the cost/expense to clean up the web site. Malware can slow the computer system down and inhibit business sales.
6. An unauthorized person (hacker) or a rogue employee can cause vandalism or malicious mischief to a web site. This can also result in the cost to investigate, the cost to repair the web site, etc.
7. If personal or confidential files are breached, there is the also the cost to notify the affected parties. This can include:
  - Cost/expenses to notify people and organizations about the breach and to minimize identity theft exposures
  - Regulatory proceeding expenses including court costs and legal fees
  - Expense to hire a public relations firm to protect or restore a business's reputation

8. Security breaches can also result in:

- Loss of income due to a business interruption
- Expenses to minimize a business interruption
- Expenses to recertify the computer system as compliant with the Payment Card Industry Data Security Standard to allow the business to again accept credit cards
- Loss of income due to loss of reputation and brand

**Note:**

Some breaches are done by hackers who just want to breach a system for gratification, for a challenge, to find vulnerabilities, or just to prove they can. Some hackers do not intend to cause damage to a web site or steal or distribute information. HOWEVER, there is still a cost by the business to investigate for possible damage. If personal or confidential records have been breached, then there is a cost to notify the affected parties as required by regulations.

9. Theft of intellectual property. An unauthorized user (hacker), former employee, or a rogue employee may breach a computer system and steal intellectual property owned by the business.
10. Computer fraud. Unauthorized use can result in the theft of money, securities and other tangible property through computer fraud.
11. Losses as a result of “social engineering.” A business loss due to the voluntary parting of money, securities, and other tangible property using a computer system.
12. A denial of service or distributed denial of device attack to a web site or social media platform can result in a loss of income.
13. There are costs/expenses to research and rebuild databases damaged by mechanical breakdown, electrical disturbances, temperature changes, humidity, theft, and other physical causes.

**Note:**

Keep in mind that not all first and third party exposures will be able to be provided insurance protection, or they may need to be coordinated with other insurance coverages.



## Knowledge Check 1

Cyber-related incidents can result in either a liability (third party) loss, first party loss, or both. It is important to know the difference so that the appropriate insurance coverage is addressed. In the following situations, indicate which has the potential to result in a liability claim or a first party claim.

	Liability	First Party
1. Vandalism to a business web site needs to be cleaned up.		
2. Vandalism to a business web site prevents clients from accessing valuable information as promised by contract.		
3. A company has to mail out Security Breach Notifications.		
4. An employee accidentally mails out confidential information to the wrong person.		
5. A fine or penalty imposed on a business by a regulatory authority.		
6. A company designs its web site with copyrighted images found on the Internet without getting permission of the owner.		
7. Employee loses a laptop containing confidential business plans (intellectual property) belonging to the employer. Employer files a claim for the cost of reproduction.		
8. Employee loses a laptop containing confidential business plans (intellectual property) of a client. Client files a claim for damages due to negligence and/or breach of contract.		
9. Loss of income while computer system is down for investigation and repairs.		
10. A forensic expert is hired by the business to investigate the cause of a security breach.		
11. The employer pays a ransom payment to prevent disclosure of confidential information.		

## Various Methods to Provide Coverage

### Insurance Services Office (ISO) Policies

**Commercial Cyber Insurance Policy CY 00 01**  
(designed for small to midsize commercial risks)

**Information Security Protection Cyber Policy CY 00 10**

**Financial Institutions Information Security Protection Cyber Policy CY 00 11**

**Media And Information Security Protection Cyber Policy CY 00 12**  
(Media liability on an occurrence basis)

**Media And Information Security Protection Cyber Policy CY 00 13**  
(Media liability on a claims-made basis)

### Company-Specific Policies

- Even though ISO developed policies designed to provide coverage for businesses with a cyber exposure, many insurers prefer to use their own policy forms with their own brand names and specific coverages.
- Examples of company-specific cyber insurance policy names: CyberEdge, CyberSecurity, NetProtect, CyberChoice, CyberRisk, E-RiskEdge

### Package Policies

- While there are stand-alone Cyber Liability Insurance Policies, many companies have developed package policies with multiple insuring agreements related to cyber coverages. In addition to the third party coverage, these often include first party response insuring agreements.

### Specialized Cyber Insurance Policy Types

- While there are various Cyber Liability Policy types, many insurers have specialized policies, such as Technology Errors and Omissions that are designed specifically for technology service providers and technology product providers.

## **Executive Liability Policies**

- Liability arising from cyber activities may be part of combination policy that includes Directors & Officers Liability, Fiduciary Liability and/or Employment-Related Practices Insurance.

## **Combination with Other Coverage Forms**

- Some EDP Coverage Forms will automatically include \$50,000 per occurrence with \$150,000 policy aggregate for loss from virus or harmful code. Coverage includes cyber business income coverage if business income is purchased.
- Some Commercial Output Coverage Forms like the AAIS Program will provide \$25,000 per occurrence with \$75,000 policy aggregate for loss from virus or hacking. Coverage may include some business income coverage as well.
- Some Specialty Coverage Programs automatically include \$25,000 per occurrence with \$75,000 policy aggregate for virus and harmful code to owned data and third party coverage for breaches of security to \$250,000.
- Some Specialty Equipment Breakdown Coverage Programs automatically include \$25,000 for loss of income from a denial of service attack and also include \$25,000 per occurrence with \$75,000 annual policy aggregate for the cost to restore damaged or corrupted data from virus or harmful code and third party notification costs.
- Some company-specific Businessowners Coverage Programs provide special extension endorsements that cover virus and harmful code damage and the resulting business income loss. Some are working on third party endorsements for cyber liability invasion of privacy and breach of security.

Regardless of the method used to provide coverage, it is important to understand that coverage varies from insurer to insurer. It is crucial to understand the terminology found within the insuring agreement(s) and the policy provisions to recognize what coverage is being provided.



## Declarations

### Learning Objective 2:

Using knowledge of the ISO Commercial Cyber Insurance Policy, including the:

- Declarations,
- Definitions, and
- Six Insuring Agreements,

the participant will be prepared to explain which insuring agreement will apply for different types of losses.

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Declarations vary by insurer. Following is the Declarations page that ISO designed to go with the Commercial Cyber Insurance Policy.

COMMERCIAL CYBER INSURANCE POLICY DECLARATIONS		
In return for the payment of the premium, and subject to all the terms and conditions of this Policy, we agree with you to provide the insurance as stated in this Policy.		
Company Name:		
Producer Name:		
Named Insured:		
Mailing Address:		
Policy Period		
From:		
To: 12:01 AM at the Insured's mailing address shown above		
Web Site Address(es):		
Type Of Business Organization (Check appropriate box.):		
<input type="checkbox"/> Private	<input type="checkbox"/> Public	<input type="checkbox"/> Public Subsidiary
<input type="checkbox"/> Investment Fund	<input type="checkbox"/> Not For Profit	<input type="checkbox"/> Private Formerly Public
<input type="checkbox"/> Government		
Annual Premium:	\$	
Policy Aggregate Limit Of Insurance:	\$	
Policy Deductible Amount:	\$	
Business Income And Extra Expense Time Deductible:		Hours
Aggregate Sublimit(s) Of Insurance		
Insuring Agreement	Percentage	Dollar Amount
2. Extortion Threats – Ransom Payments	%	\$
4. Business Income And Extra Expense	%	\$
5. Public Relations Expense	%	\$
Endorsement(s) Forming Part Of This Policy When Issued:		
CY DS 02 01 18		
© Insurance Services Office, Inc., 2017		
Page 1 & 2 Combined		

*Declarations (cont.)*

Even though Declarations vary by insurer, there are some similarities of key information/ characteristics addressed on the Declarations. They are as follows:

1. Named Insured, Mailing Address, Policy Period
2. Retroactive Date
  - Some Cyber Insurance Policies or certain insuring agreements within a Cyber Insurance Policy may be written on a claims-made basis. If they are, the Declarations would typically have a field for a retroactive date. See example below.

**Information Security Protection Cyber Policy Declarations CY DS 01 01 18**

<b>Retroactive Date</b> (Enter date or "none" if no Retroactive Date applies.):	
Insuring Agreement 1. Web Site Publishing Liability:	
Insuring Agreement 2. Security Breach Liability:	
Insuring Agreement 3. Programming Errors And Omissions Liability:	
Annual Premium:	\$
Policy Aggregate Limit Of Insurance:	\$

- Some Declarations on claims-made policies may not indicate a retroactive date. An endorsement may need to be attached.
3. Insuring Agreement(s) indicated on a Declarations vary by insurer and by the coverages that may be available under that Cyber Insurance Policy

The Declarations may indicate:

- A singular insuring agreement
- A singular insuring agreement with more than one type of coverage and/or sublimit
- Some ISO and company specific forms may have multiple insuring agreements. Coverage only applies to those indicated on the Declarations. Coverage is typically activated by either indicating with an X, a limit, and/or a premium.

*Declarations (cont.)*

- Insuring Agreement examples

**Example 1**

- A. Information Security & Privacy Liability
- B. Privacy Notification Costs
- C. Regulatory Defense and Penalties
- D. Web Site Media Content Liability

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**Example 2**

- A. Security and Privacy Liability Insurance
- B. Security Event Crisis Management Expense Coverage
- C. Regulatory Action Coverage
- D. Computer System Extortion Expense and Loss Coverage

**Example 3 – Some policies may offer a broad range of first party optional coverages:**

- Business Interruption and Extra Expense
- Cyber Theft Loss
- Cyber Communications Loss
- Cyber Extortion Expenses
- Cyber Vandalism Expenses
- Notification Expenses, including notification expenses not required by law
- Crisis Management
- Consequential Reputational Harm loss
- Social Engineering loss
- Breach Response Coaches
- Risk Management Tools

**4. Limit Of Insurance**

- Some Declarations may indicate one Policy Aggregate Limit with Aggregate Sublimit(s) of Insurance
- Other Declarations may have an Aggregate Limit Of Insurance per Insuring Agreement

Declarations (cont.)

5. Deductible Amount

- Some Declarations indicate a one Policy Deductible Amount
- Other Declarations have a Deductible Amount per Insuring Agreement
- Example of an excerpt of a Declarations indicating Aggregate Limit Of Insurance and Deductibles per Insuring Agreement

Information Security Protection Cyber Policy Declarations CY DS 01 01 18

Insuring Agreements, Aggregate Limits Of Insurance And Deductibles		
Insuring Agreement/Coverages	Aggregate Limit Of Insurance	Deductible Amount
1. Web Site Publishing Liability	\$	\$
2. Security Breach Liability	\$	\$
Defense Expenses And Fines Or Penalties (if insurable by law) In Connection With A Regulatory Proceeding – Sublimit: \$		
3. Programming Errors And Omissions Liability	\$	\$
4. Replacement Or Restoration Of Electronic Data	\$	\$
5. Extortion Threats	\$	\$
6. Business Income And Extra Expense	\$	\$
Time Deductible Hours:		
7. Public Relations Expense	\$	\$
8. Security Breach Expense	\$	\$
If "Not Covered" is inserted above opposite any specified Insuring Agreement, such Insuring Agreement and any other reference to it in this Policy are deleted.		
If Added By Endorsement:		
Insuring Agreement(s) Or Coverage(s)	Limit Of Insurance	Deductible Amount
	\$	\$
	\$	\$
	\$	\$
	\$	\$
	\$	\$
Endorsement(s) Forming Part Of This Policy When Issued:		

Note:

Application of limits and deductibles will be discussed later

## Selected Definitions

Since most insurers have their own company-specific cyber policy, excerpts primarily from the ISO **Commercial Cyber Insurance Policy CY 00 01 01 18** will be used for analysis.

Definitions vary by insurer. It is crucial to understand the terminology found within the policy and to read the entire policy carefully to recognize what coverage is being provided. Additional definitions will be addressed later in the material.

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### COMMERCIAL CYBER INSURANCE POLICY

THE SECURITY BREACH LIABILITY INSURING AGREEMENT CONTAINED IN THIS POLICY PROVIDES COVERAGE FOR DEFENSE EXPENSES WHICH ARE PAYABLE WITHIN, AND NOT IN ADDITION TO, THE LIMIT OF INSURANCE. PAYMENT OF DEFENSE EXPENSES UNDER THIS POLICY WILL REDUCE THE LIMIT OF INSURANCE.

#### PLEASE READ THE ENTIRE POLICY CAREFULLY.

Various provisions in this Policy restrict coverage. Read the entire Policy carefully to determine rights, duties and what is and is not covered.

Throughout this Policy, the words "you" and "your" refer to the "named insured" shown in the Declarations. The words "we", "us" and "our" refer to the company providing this insurance.

Other words and phrases that appear in quotation marks have special meaning. Refer to Section I – Insuring Agreements and Section VII – Definitions.

#### SECTION I – INSURING AGREEMENTS

Coverage under the following Insuring Agreements applies to "loss" (and "defense expenses" under Insuring Agreement 6. Security Breach Liability) resulting directly from a "cyber incident", "extortion threat", "security breach" or "claim" which is "discovered" during the policy period shown in the Declarations or during the period of time provided in the Extended Period To Discover Loss Condition 15.

Any "cyber incident", "extortion threat", "security breach" or "claim" that arises out of...

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### "You" and "your" refer to the named insured shown on the Declarations

15. "Named insured" means the entity or entities shown in the Declarations and any "subsidiary".

21. "Subsidiary" means any organization in which more than 50% of the outstanding securities or voting rights representing the present right to vote for the election of directors, trustees, managers (if a limited liability company) or persons serving in a similar capacity is owned, in any combination, by one or more "named insured(s)".

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- "Named insured" also means any "subsidiary" as defined

#### BEWARE!

Not all policies include subsidiaries

## **"Loss"**

14. "Loss" means the definitions set forth in each of the respective Insuring Agreements 1. through 6. of Section I – Insuring Agreements.

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- We will go in-depth on "loss" as we review each Insuring Agreement

## **"Cyber incident"**

4. "Cyber incident" means:

- a. Any:

- (1) "Hacker" attack;
- (2) Malicious code; or
- (3) "Virus";

that is directed at, enacted upon or introduced into a "computer system" (including your "electronic data") and is designed to access, alter, corrupt, damage, delete, destroy, disrupt, encrypt, use or prevent or restrict access to or the use of any part of a "computer system" (including your "electronic data") or otherwise disrupt its normal functioning or operation.

Recurrence of the same "virus" after a "computer system" has been restored shall constitute a separate "cyber incident".

- b. Any denial of service attack specifically directed at you which disrupts, prevents or restricts access to or use of a "computer system", as defined in Paragraph 3.b.(1), (2) or (3), or otherwise disrupts its normal functioning or operation.

10. "Hacker" means a person who accesses a "computer system" (including your "electronic data") who is:

- a. Not authorized to have such access; or
- b. Authorized to have such access but who uses such access in an unauthorized manner.

24. "Virus" means any kind of malicious code designed to damage or destroy any part of a "computer system" (including your "electronic data") or disrupt its normal functioning.

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- a. Cyber incident includes hacker attack, malicious code or virus

- b. Denial of service attack

### **BEWARE!**

Not all Cyber Policies include coverage for DoS attacks

## **“Computer system”**

3. "Computer system" means any computer, including Personal Digital Assistants (PDAs) and other transportable or handheld devices, electronic storage devices and related peripheral components; any systems and applications software, or any related telecommunications networks connected to or used in connection with such computer or devices:
  - a. Which collects, transmits, processes, stores or retrieves your "electronic data"; and
  - b. Which is:
    - (1) Owned by you;
    - (2) Leased by you and operated by any "insured";
    - (3) Owned and operated by an "employee" who has agreed in writing to your personal device use policy; or
    - (4) Operated by an authorized "third party", but only with respect to your "electronic data".
23. "Third party" means any entity that you engage under the terms of a written contract to perform services for you.
7. "Electronic data" means information, facts, images or sounds stored as or on, created or used on, or transmitted to or from computer software (including systems and applications software) on electronic storage devices including, but not limited to, hard or floppy disks, CD-ROMs, tapes, drives, cells, data processing devices or any other media which are used with electronically controlled equipment. "Electronic data" is not tangible property.  
"Electronic data" does not include your "electronic data" that is licensed, leased, rented or loaned to others.

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- a. Any computer or devices used to collect, transmit, process, store, or retrieve the named insured's data
- b. Applies to computer system which is:
  - (1) Owned by the named insured
  - (2) Leased to the named insured and operated by any insured
  - (3) Owned and operated by employees who have agreed in writing to the named insured's personal device use policy
  - (4) Operated by an authorized third party with respects to the named insured's electronic data

### **BEWARE!**

Not all policies have the above broad meaning

## **“Electronic data”**

### **Note:**

The definition does not include electronic data that is licensed, leased, rented or loaned to others

**“Insured” means the named insured and employees as defined**

11. "Insured" means any "named insured" and its "employees".
8. "Employee" means any natural person who was, now is or will be:
- a. Employed on a full- or part-time basis;
  - b. Furnished temporarily to you to substitute for a permanent employee on leave or to meet seasonal or short-term workload conditions;
  - c. Leased to you by a labor leasing firm under an agreement between you and the labor leasing firm to perform duties related to the conduct of your business, but does not mean a temporary employee as defined in Paragraph **8.b.**;
  - d. An officer;
  - e. A director, trustee or manager (if a limited liability company);
  - f. A volunteer worker; or
  - g. A partner or member (if a limited liability company);
- of the "named insured" and those of any organization qualifying as a "subsidiary" under the terms of this Policy, but only while acting within the scope of their duties as determined by the "named insured" or such "subsidiary".

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**Note:**

Some company-specific policies may be broader on who qualifies as an insured

*Examples:*

- *Independent contractors*
- *Additional insureds as required by written contract*

**“Employee” means a named insured’s former, current, or future employee**

- a. Full-time or part-time
- b. Temporary workers
- c. Leased workers
- d. An officer
- e. Director, trustee or LLC manager
- f. Volunteer worker
- g. A partner or a LLC member

**Note:**

This definition also includes employees of a qualified subsidiary but only while acting within the scope of their duties

**BEWARE!**

Not all policies have the above broad meaning



**"Extortion threat"**

9. "Extortion threat" means a threat or series of related threats:
- a. To perpetrate a "cyber incident";
  - b. To disseminate, divulge or utilize:
    - (1) Your proprietary information; or
    - (2) Weaknesses in the source code; within a "computer system" by gaining unauthorized access to such "computer system";
  - c. To destroy, corrupt or prevent normal access to a "computer system" (including your "electronic data") by gaining or having gained unauthorized access to a "computer system";
  - d. To inflict "ransomware" on a "computer system"; or
  - e. To publish your client's or "employee's" "personal information".
- "Extortion threat" does not include a threat or series of threats to any "third party".
19. "Ransomware" means any software that is used to demand a ransom payment by:
- a. Restricting access to a "computer system"; or
  - b. Encrypting your "electronic data" held within a "computer system".

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Pages 12 & 13

**A threat to:**

- a. Perpetrate a cyber incident
- b. Disseminate, divulge information or weaknesses
- c. Destroy, corrupt or prevent access
- d. Inflict ransomware
- e. Publish the named insured's client's or employees' personal information

## **“Personal information”**

16. "Personal information" means any information not available to the general public for any reason through which an individual may be identified including, but not limited to, an individual's:
  - a. Social security number, driver's license number or state identification number;
  - b. Protected health information;
  - c. Financial account numbers;
  - d. Security codes, passwords, PINs associated with credit, debit or charge card numbers which would permit access to financial accounts; or
  - e. Any other nonpublic information as defined in "privacy regulations".
18. "Privacy regulations" means any of the following statutes and regulations, and their amendments, associated with the control and use of personally identifiable financial, health or other sensitive information including, but not limited to:
  - a. The Health Insurance Portability and Accountability Act of 1996 (HIPAA) (Public Law 104-191);
  - b. The Health Information Technology for Economic and Clinical Health Act (HITECH) (American Recovery and Reinvestment Act of 2009);
  - c. The Gramm-Leach-Bliley Act of 1999;
  - d. Section 5(a) of the Federal Trade Commission Act (15 U.S.C. 45(a)), but solely for alleged unfair or deceptive acts or practices in or affecting commerce;
  - e. The Identity Theft Red Flags Rules under the Fair and Accurate Credit Transactions Act of 2003; or
  - f. Any other similar state, federal or foreign identity theft or privacy protection statute or regulation.

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- Nonpublic information through which an individual may be identified

### **BEWARE!**

Some company-specific policy definitions may be restrictive and limit personal information to nonpublic information as defined by certain statutes and regulations

## **“Privacy regulations”**

- Includes, but is not limited to, the statutes and regulations indicated in the definition

### **BEWARE!**

Some policies may NOT include foreign identity theft or foreign privacy protections

**"Security breach"**

20. "Security breach" means the acquisition of "personal information" held within a "computer system" or in non-electronic format while in the care, custody or control of the "insured" or authorized "third party" by a person:
- a. Not authorized to have access to such information; or
  - b. Authorized to have access to such information but whose access results in the unauthorized disclosure of such information.

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**Note:**

This definition includes nonelectronic format. Other policies may not be as broad.

- a. Insured or third person not authorized to have access to personal information
- b. Authorized person, but access results in unauthorized disclosure of personal information

**BEWARE!**

This definition does NOT include confidential corporation information in the CCC of the insured

**“Claim” against any insured for a wrongful act**

2. "Claim" means:
- a. A written demand for monetary or nonmonetary damages, including injunctive relief;
  - b. A civil proceeding commenced by the service of a complaint or similar proceeding; or
  - c. Under Paragraph **a.(2)** of Insuring Agreement **6. Security Breach Liability**, a "regulatory proceeding" commenced by the filing of a notice of charges, formal investigative order, service of summons or similar document;
- against any "insured" for a "wrongful act", including any appeal therefrom.
25. "Wrongful act" means the definition set forth in Insuring Agreement **6.** of Section **I – Insuring Agreements**.

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- a.      Written demand
  
- b.      Civil proceeding
  
- c.      Under Security Breach Liability, a regulatory proceeding against any insured for a wrongful act

**Note:**

Wrongful acts and regulatory proceedings to be discussed later

**“Discovered”**

5. "Discover" or "discovered" means the time when any "insured" first becomes aware of facts which would cause a reasonable person to assume that a "loss" covered by this Policy has been or will be incurred, regardless of when the act or acts causing or contributing to such "loss" occurred, even though the exact amount or details of "loss" may not then be known.

"Discover" or "discovered" also means the time when any "insured" first receives notice of an actual or potential "claim" in which it is alleged that you are liable to a third party under circumstances which, if true, would constitute a "loss" under this Policy.

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- First awareness by any insured even though the exact amount or details are unknown
- Notice of an actual or potential claim received by any insured in which the named insured is alleged to be liable to a third party

## Insuring Agreements

### SECTION I – INSURING AGREEMENTS

Coverage under the following Insuring Agreements applies to "loss" (and "defense expenses" under Insuring Agreement 6. Security Breach Liability) resulting directly from a "cyber incident", "extortion threat", "security breach" or "claim" which is "discovered" during the policy period shown in the Declarations or during the period of time provided in the Extended Period To Discover Loss Condition 15.

Any "cyber incident", "extortion threat", "security breach" or "claim" that arises out of the same facts or circumstances and results in "loss" under one or more of the following Insuring Agreements will be deemed to be related and, as such, will be deemed to have been "discovered" during the earliest policy period that any such related "cyber incident", "extortion threat", "security breach" or "claim" was "discovered".

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### Application of Coverage (varies by insurer)

Applies to loss (and defense expense under Security Breach Liability) resulting from a cyber incident, extortion threat, security breach or claim

Must be discovered during the policy period or during the Extended Period To Discover Loss Condition 15

- Discovery-based trigger

Loss resulting under one or more of the Insuring Agreements will be deemed to have been discovered during the earliest policy period

## Six Insuring Agreements

For the purpose of this course, the six insuring agreements of the ISO **Commercial Cyber Insurance Policy CY 00 01 01 18** will be analyzed.

These six insuring agreements are commonly offered on many company-specific Cyber Insurance Policies. The names of the insuring agreements may differ on company-specific policies along with the coverage, which is why it is important to read the entire policy carefully to recognize what coverage is being provided. Also, some insurers may combine two or more of the following as one insuring agreement. Lastly, some insurers may offer additional insuring agreements to provide even broader cyber insurance protection. We will address a couple of those other insuring agreements later in the presentation.

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### Six Insuring Agreements

1. Security Breach Expense
2. Extortion Threats
3. Replacement Or Restoration Of Electronic Data
4. Business Income And Extra Expense
5. Public Relations Expense
6. Security Breach Liability

## 1. Security Breach Expense

### 1. Security Breach Expense

We will pay for "loss" resulting directly from a "security breach" "discovered" during the policy period.

With respect to this Insuring Agreement:

a. "Loss" means "security breach expenses".

b. "Security breach expenses" means:

#### (1) Forensics

The costs to establish whether a "security breach" has occurred or is occurring.

If a "security breach" has occurred, the following costs are also included:

(a) Costs to investigate the cause, scope and extent of a "security breach" and to identify any affected parties; and

(b) Costs to determine any action necessary to remediate the conditions that led to or resulted from a "security breach" including, but not limited to, fees paid for legal and other professional advice on how to respond to the "security breach";

#### (2) Notification

Costs to notify all parties affected by a "security breach" including, but not limited to, notice to be transmitted through media required by "privacy regulations";

#### (3) Overtime Salaries

Overtime salaries paid to "employees" assigned to handle inquiries from the parties affected by a "security breach";

#### (4) Call Center

Fees and costs of a company hired by you for the purpose of operating a call center to handle inquiries from the parties affected by a "security breach";

#### (5) Post-event Monitoring

Costs to provide credit and identity monitoring services to the affected parties of a "security breach" for up to one year, or longer if required by applicable law, from the date of notification to those affected parties of such "security breach"; and

#### (6) Other Expenses

Any other reasonable expenses incurred by you with our written consent.

"Security breach expenses" do not include any costs or expenses associated with upgrading, maintaining, repairing, remediating or improving a "computer system" as a result of a "security breach".



*Insuring Agreement 1 – Security Breach Expense (cont.)*

- a. Pays for loss resulting directly from a security breach discovered during the policy period
- b. Loss under this Insuring Agreement means security breach expenses
  - (1) Forensics
  - (2) Notification
  - (3) Overtime Salaries
  - (4) Call Centers
  - (5) Post-event Monitoring
  - (6) Other Expenses

**Note:**

Security breach expenses do not include upgrading, maintaining, repairing, remediating or improving a computer system as a result of a security breach

## 2. Extortion Threats

### 2. Extortion Threats

We will pay for "loss" resulting directly from an "extortion threat" "discovered" during the policy period.

With respect to this Insuring Agreement:

- a. "Loss" means "extortion expenses".
- b. "Extortion expenses" means:
  - (1) Fees and costs of:
    - (a) A security firm; or
    - (b) A person or organization;  
hired with our consent to determine the validity and severity of an "extortion threat" made against you;
  - (2) Interest costs paid by you for any loan from a financial institution taken by you to pay a ransom demand;
  - (3) Reward payments paid by you to an "informant" which lead to the arrest and conviction of parties responsible for "loss";
  - (4) Any other reasonable expenses incurred by you with our written consent, including:
    - (a) Fees and costs of independent negotiators; and
    - (b) Fees and costs of a company hired by you, upon the recommendation of the security firm, to determine how to protect your "electronic data" from further threats; and
  - (5) Ransom payments made in the form of cash, or virtual currency such as, but not limited to, Bitcoin.
- c. "Informant" means a person, other than an "employee", providing information not otherwise obtainable, solely in return for a reward offered by you.

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- a. Pays for loss resulting directly from an extortion threat discovered during the policy period
- b. Loss under this Insuring Agreement means extortion expenses:
  - (1) Fees and costs of security firm or a person or organization with hired with the insurer's consent
  - (2) Interest costs for a loan to pay a ransom demand
  - (3) Reward payments to an informant
  - (4) Other reasonable expenses incurred by the named insured with the insurer's written consent
  - (5) Ransom payments made in cash or virtual currency

### 3. Replacement Or Restoration Of Electronic Data

#### 3. Replacement Or Restoration Of Electronic Data

We will pay for "loss" of your "electronic data" or "computer programs" stored within a "computer system" resulting directly from a "cyber incident" "discovered" during the policy period.

With respect to this Insuring Agreement:

- a. "Loss" means the cost to replace or restore your "electronic data" or "computer programs" as well as the cost of data entry, reprogramming and computer consultation services.

"Loss" does not include the cost to duplicate research that led to the development of your "electronic data" or "computer programs". To the extent that any of your "electronic data" cannot be replaced or restored, we will pay the cost to replace the media on which such "electronic data" was stored with blank media of substantially identical type.

- b. "Computer program" means a set of related electronic instructions, which direct the operation and function of a computer or devices connected to it, which enables the computer or devices to receive, process, store or send your "electronic data".

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Pays for loss of the named insured's electronic data or computer programs resulting directly from a cyber incident discovered during the policy period

- a. Loss under this Insuring Agreement is the cost to replace or restore the named insured's electronic data or computer programs
- Also pays the cost of data entry, reprogramming and computer consultation services
  - Does NOT include cost to duplicate research
- b. "Computer program" is defined

#### 4. Business Income And Extra Expense

##### 4. Business Income And Extra Expense

We will pay for "loss" due to an "interruption" resulting directly from a "cyber incident" or an "extortion threat" "discovered" during the policy period.

With respect to this Insuring Agreement: ...

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- Pays for loss due to an interruption resulting directly from a cyber incident OR an extortion threat discovered during the policy
- "Interruption" is a defined term

##### 13. "Interruption" means:

###### a. With respect to a "cyber incident":

- (1) An unanticipated cessation or slowdown of your "e-commerce activities"; or
- (2) Your suspension of your "e-commerce activities" for the purpose of avoiding or mitigating the possibility of transmitting a "virus" or malicious code to another person or organization; and, with regard to Paragraphs **13.a.(1)** and **13.a.(2)**, shall be deemed to begin when your "e-commerce activities" are interrupted and ends at the earliest of:
  - (a) 90 days after the "interruption" begins;
  - (b) The time when your "e-commerce activities" are resumed; or
  - (c) The time when service is restored to you.

###### b. With respect to an "extortion threat", your voluntary suspension of your "e-commerce activities":

- (1) Based upon clear evidence of a credible threat; or
- (2) Based upon the recommendation of a security firm, if any; and, with regard to Paragraphs **13.b.(1)** and **13.b.(2)**, shall be deemed to begin when your "e-commerce activities" are interrupted and ends at the earliest of:
  - (a) 14 days after the "interruption" begins;
  - (b) The time when your "e-commerce activities" are resumed; or
  - (c) The time when service is restored to you.

##### 6. "E-commerce activities" means those activities conducted by you in the normal conduct of your business via your web site or your e-mail system.

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#### 4. Business Income And Extra Expense

We will pay for "loss" due to an "interruption" resulting directly from a "cyber incident" or an "extortion threat" "discovered" during the policy period.

With respect to this Insuring Agreement:

- a. "Loss" means the actual loss of "business income" you sustain and/or "extra expense" you incur.
- b. "Business income" means the:
  - (1) Net income (net profit or loss before income taxes) that would have been earned or incurred; and
  - (2) Continuing normal operating expenses incurred, including payroll.
- c. "Extra expense" means necessary expenses you incur:
  - (1) During an "interruption" that you would not have incurred if there had been no "interruption"; or
  - (2) To avoid or minimize the suspension of your "e-commerce activities"."Extra expense" does not include:
  - (1) Any costs or expenses associated with upgrading, maintaining, repairing, remediating or improving a "computer system" as a result of a "cyber incident" or "extortion threat"; or
  - (2) "Extortion expenses" covered under Insuring Agreement 2. Extortion Threats.

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- a. Loss under this Insuring Agreement is the actual loss of business income the named insured sustains and/or extra expense
- b. Business Income = **Net Income and Continuing normal operating Expenses (NICE)**
- c. Also includes necessary extra expenses incurred
  - (1) During an interruption
  - OR
  - (2) To avoid or minimize the suspension of e-commerce activities

**Note:**

Not all Cyber policies have the above broad meanings

Notice that Extra Expense does NOT include:

- Upgrades, maintenance, repair, remediation or improvements
- Expenses covered under Insuring Agreement 2 – Extortion Threat (in other words, no duplicate payments)

## 5. Public Relations Expense

### 5. Public Relations Expense

We will pay for "loss" due to "negative publicity" resulting directly from a "cyber incident" or a "security breach" "discovered" during the policy period.

With respect to this Insuring Agreement:

- a. "Loss" means "public relations expenses".
- b. "Public relations expenses" means:
  - (1) Fees and costs of a public relations firm; and
  - (2) Any other reasonable expenses incurred by you with our written consent; to protect or restore your reputation solely in response to "negative publicity".
- c. "Negative publicity" means information which has been made public that has caused, or is reasonably likely to cause, a decline or deterioration in the reputation of the "named insured" or of one or more of its products or services.

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Pays for loss due to negative publicity resulting directly from a cyber incident OR a security breach discovered during the policy period

- a. Loss under this insuring agreement is the public relations expense needed to protect or restore the named insured's reputation solely in response to negative publicity
- b. "Public relations expenses" is a defined term
  - (1) Fees and costs of public relations firm
  - (2) Other reasonable expenses incurred by the named insured with the insurer's written consent
- c. Negative publicity is the decline or deterioration of the named insured's reputation or of the named insured's products or services

## 6. Security Breach Liability

### 6. Security Breach Liability

a. We will pay for:

- (1) "Loss" that the "insured" becomes legally obligated to pay and "defense expenses" as a result of a "claim" "discovered" during the policy period for a "wrongful act" or a series of "interrelated wrongful acts" taking place before the end of the policy period.
- (2) "Loss" and "defense expenses" as a result of a "claim" in the form of a "regulatory proceeding" "discovered" during the policy period in response to a "wrongful act" or a series of "interrelated wrongful acts" taking place before the end of the policy period.

b. With respect to this Insuring Agreement:

(1) "Loss" means:

- (a) Compensatory damages, settlement amounts and costs awarded pursuant to judgments or settlements;
- (b) Punitive and exemplary damages to the extent such damages are insurable by law; or
- (c) Under Paragraph 6.a.(2), fines or penalties assessed against the "insured" to the extent such fines or penalties are insurable by law.

"Loss" does not include:

- (i) Civil or criminal fines or penalties imposed by law, except civil fines or penalties as provided under Paragraph (c);
- (ii) The multiplied portion of multiplied damages;
- (iii) Taxes;
- (iv) Royalties;
- (v) The amount of any disgorged profits; or
- (vi) Matters that are uninsurable pursuant to law.

a. Pays loss for:

- (1) The insured's legal obligations **AND** defense expenses as a result of a claim for a wrongful act or a series of interrelated wrongful acts
- (2) Loss **AND** defense expenses as a result of a claim in the form of a regulatory proceeding

**Note:**

The claim must be discovered during the policy period and must take place before the end of the policy period

- b. Under the Security Breach Liability Insuring Agreement, the following are defined terms:

(1) “Loss”

- (a) Compensatory damages, settlement amounts and costs awarded pursuant to judgments or settlements
- (b) Punitive and exemplary damages if insurable by law
- (c) For regulatory proceedings claims, it includes any fines or penalties assessed against the insured if such are insurable by law

Notice that “loss” does not include:

- (i) Civil or criminal fines or penalties imposed by law, except civil fines or penalties as provided for regulatory proceeding as defined
- (ii) The multiplied portion of multiplied damages
- (iii) Taxes
- (iv) Royalties
- (v) The amount of any disgorged profits
- (vi) Matters that are uninsurable pursuant to law



## 6. Security Breach Liability

- a. ...
- b. ...With respect to this Insuring Agreement: ...
  - (1) "Loss" means ...:
  - (2) "Defense expenses" means the reasonable and necessary fees (attorneys' and experts' fees) and expenses incurred in the defense or appeal of a "claim", including the cost of appeal, attachment or similar bonds (without any obligation on our part to obtain such bonds) but excluding wages, salaries, benefits or expenses of your "employees".
  - (3) "Wrongful act" means:  
Any actual or alleged neglect, breach of duty or omission by an "insured" that results in:
    - (a) A "security breach"; or
    - (b) A "computer system" transmitting, by e-mail or other means, a "virus" to another person or organization.
  - (4) "Interrelated wrongful acts" means ...
  - (5) "Regulatory proceeding" means ...

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### (2) "Defense expenses"

- Under the Security Breach Liability Insuring agreement, it is the reasonable and necessary fees and expenses incurred in the defense or appeal of a "claim"
- Includes the cost of appeal, attachment or similar bonds
- Excludes wages, salaries, benefits or expenses of the named insured's employees

### (3) "Wrongful act"

- Wrongful act under the Securing Breach Liability Insuring Agreement is any actual or alleged neglect, breach of duty or omission by an insured that results in:
  - (a) A security breach
  - OR
  - (b) A computer system transmitting a virus to another person or organization by e-mail or other means

[illegible]

## 6. Security Breach Liability

a. ...

b. ...With respect to this Insuring Agreement: ...

(1) "Loss" means ...:

(2) "Defense expenses" means ...

(3) "Wrongful act" means ...

(4) "Interrelated wrongful acts" means all "wrongful acts" that have as a common nexus any:

(a) Fact, circumstance, situation, event, transaction or cause; or

(b) Series of causally connected facts, circumstances, situations, events, transactions or causes.

(5) "Regulatory proceeding" means an investigation, demand or proceeding brought by, or on behalf of, the Federal Trade Commission, Federal Communications Commission or other administrative or regulatory agency, or any federal, state, local or foreign governmental entity in such entity's regulatory or official capacity.

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### (4) "Interrelated wrongful acts"

- Under the Security Breach Liability Insuring Agreement, it applies to all wrongful acts that have as a common nexus:

(a) Any fact, circumstance, situation, event, transaction or cause

OR

(b) Series of causally connected facts, circumstances, situations, events, transactions or causes.

### (5) "Regulatory proceeding"

- Regulatory proceeding under Security Breach Liability Insuring Agreement means an investigation, demand or proceeding brought by, or on behalf of, the FTC, FCC, or other administrative or regulatory agency, or any federal, state, local or foreign governmental entity in such entity's regulatory or official capacity.

## Other Insuring Agreements

Other Insuring Agreements may be available under company-specific Cyber Insurance Policies. These vary by insurer. The following are examples of additional insuring agreements that may be offered.

### **Content Liability** (also known as Web Site Publishing Liability)

- Coverage may be provided due to any actual or alleged error, misstatement or misleading statement posted or published by an insured on its web site
- Some Cyber Insurance Policies may be broader to include wrongful acts that are oral or written in any manner (on paper, not just cyber exposures) via web site, e-mail, webinars, etc.

#### **BEWARE!**

Liability resulting from content posted on certain types of social media platforms may not be covered.

#### *Examples:*

*Facebook or Twitter*

- May provide broader protection than that provided by Coverage B – Personal and Advertising Injury Liability of the CGL Policy
- Coverage may include one or more of the following:
  - Infringement or violation of another's copyright, title, slogan, trademark, trade name, trade dress, service mark or service name;

#### *Example:*

*Unauthorized use of images or music when creating a web site*

- Personal injury claims, such as defamation, libel, slander
- Claims alleging violation of a person's right of privacy

## Programming Errors And Omissions Liability Insuring Agreement

- Coverage may be provided for the insured's legal obligations and defense expenses as a result of a claim due to a programming error and omission
- The policy definition for a programming error and omission varies, but it may be limited to any actual or alleged error in programming that results in the disclosure of a client's personal information held within the computer system
- This type of insuring agreement is NOT intended for professional liability exposures that are typically covered under a Technology Error and Omissions Liability Policy

Technology Errors and Omissions Liability Policies generally do include professional liability exposures

### Learning Objective 3:

Using knowledge of selected provisions, including

- Limits Of Insurance,
- Deductible, and
- Defense and Settlement,

the participant will be prepared to describe to a client the application of these provisions in a given claim scenario.

#### SECTION II – LIMITS OF INSURANCE

##### 1. Policy Aggregate Limit Of Insurance

The most we will pay for all "loss", and "defense expenses" if covered, under this Policy is the Policy Aggregate Limit Of Insurance shown in the Declarations. The Policy Aggregate Limit of Insurance shall be reduced by the amount of any payment made under the terms of this Policy. Upon exhaustion of the Policy Aggregate Limit of Insurance by such payments, we will have no further obligations or liability of any kind under this Policy.

##### 2. Aggregate Sublimit(s) Of Insurance

Subject to the Policy Aggregate Limit of Insurance, the most we will pay for all "loss" covered under:

- Paragraph **b.(5)** of Insuring Agreement **2**. Extortion Threats is the Ransom Payments Aggregate Sublimit Of Insurance, if any, shown in the Declarations;
- Insuring Agreement **4**. Business Income And Extra Expense is the Business Income And Extra Expense Aggregate Sublimit Of Insurance, if any, shown in the Declarations; and
- Insuring Agreement **5**. Public Relations Expense is the Public Relations Expense Aggregate Sublimit Of Insurance, if any, shown in the Declarations.

The Aggregate Sublimit(s) of Insurance in Paragraphs **2.a.**, **2.b.** and **2.c.** are part of, not in addition to, the Policy Aggregate Limit of Insurance. Any such Aggregate Sublimit(s) of Insurance shall be reduced by the amount of any payment for "loss" under the Insuring Agreement to which such Aggregate Sublimit of Insurance applies. Upon exhaustion of any Aggregate Sublimit of Insurance by such payments, we will have no further obligations or liability of any kind with respect to "loss" subject to such Sublimit of Insurance.

## 1. **Policy Aggregate Limit Of Insurance**

- The most paid is the limit shown in the Declarations
- The insurer's obligation or liability of any kind ends when the Policy Aggregate Limit of Insurance has been exhausted

## 2. **Aggregate Sublimit(s) Of Insurance**

- Subject to the Policy Aggregate Limit of Insurance
- The sublimit(s) shown in the Declarations are NOT in addition to the Policy Aggregate Limit of Insurance
- The insurer's obligation or liability of any kind ends when the Aggregate Sublimit has been exhausted

### **Note:**

Other policies may have an aggregate limit per insuring agreement

## Deductible

### SECTION III – DEDUCTIBLE

Subject to Section II – Limits Of Insurance:

1. Under Insuring Agreements **1.** Security Breach Expense, **2.** Extortion Threats, **3.** Replacement Or Restoration Of Electronic Data and **5.** Public Relations Expense:

We will pay only the amount of "loss" which is in excess of the Policy Deductible Amount shown in the Declarations.

2. Under Insuring Agreement **4.** Business Income And Extra Expense:

We will pay only the amount of "loss" which exceeds the greater of the following deductible amounts:

- a. The Policy Deductible Amount shown in the Declarations; or
- b. The amount of "loss" incurred during the Time Deductible shown in the Declarations.

3. Under Insuring Agreement **6.** Security Breach Liability:

We will pay only the amount of "loss" and "defense expenses" which is in excess of the Policy Deductible Amount shown in the Declarations resulting from the same "wrongful act" or "interrelated wrongful acts". Such Policy Deductible Amount will be borne by you, self-insured, and at your own risk.

4. In the event a "loss" is covered under more than one Insuring Agreement, only the highest deductible amount applicable to the "loss" shall be applied.

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1. Under Insuring Agreements **1., 2., 3., and 5.,** pays only the amount of loss in excess of the Policy Deductible Amount shown in the Declarations
2. Under Insuring Agreement **4.** Business Income and Extra Expense, pays only the amount of loss that exceeds the greater of the deductible shown OR the amount of loss incurred the Time Deductible
3. Under Insuring Agreement **6.** Security Breach Liability, pays only the amount of loss AND defense expenses in excess of the Policy Deductible Amount shown in the Declarations
4. Only the highest deductible amount applies in the event a loss is covered under more than one Insuring Agreement

#### Note:

Some policies may have a deductible per insuring agreement or may have one deductible per policy



## Defense and Settlement

### SECTION IV – DEFENSE AND SETTLEMENT

The provisions contained within this section apply only to Insuring Agreement **6. Security Breach Liability**:

1. We shall have the right and duty to select counsel and defend the "insured" against any "claim" covered under Insuring Agreement **6.a.(1) Security Breach Liability**, even if the allegations of such "claim" are groundless, false or fraudulent. However, we shall have the right but not the duty to defend the "insured" against a "claim" covered under Insuring Agreement **6.a.(2) Security Breach Liability**, and we shall have no duty to defend the "insured" against any "claim" which is not covered under this Insuring Agreement.
2. We may, upon the written consent of the "insured", make any settlement of a "claim" which we deem reasonable. If the "insured" withholds consent to such settlement, our liability for all "loss" resulting from such "claim" will not exceed the amount for which we could have settled such "claim", plus "defense expenses" incurred, as of the date we proposed such settlement in writing to the "insured". Upon refusing to consent to a settlement we deem reasonable, the "insured" shall, at its sole expense, assume all further responsibility for its defense, including all additional costs associated with the investigation, defense and/or settlement of such "claim".

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### Only applies to Insuring Agreement 6. Security Breach Liability

1. Insurer has the right and duty to defend for a wrongful act or a series of wrongful acts, as defined.
  - HOWEVER, the insurer has the right, but NOT the duty to defend against a claim in the form of a regulatory proceeding
  - No coverage, no defense
2. Written consent of the insured to make any claim settlement (Hammer Clause)

### Defense expenses are payable WITHIN, and NOT in addition to the limit of insurance

#### Commercial Cyber Insurance Policy

THE SECURITY BREACH LIABILITY INSURING AGREEMENT CONTAINED IN THIS POLICY PROVIDES COVERAGE FOR DEFENSE EXPENSES WHICH ARE PAYABLE WITHIN, AND NOT IN ADDITION TO, THE LIMIT OF INSURANCE. PAYMENT OF DEFENSE EXPENSES UNDER THIS POLICY WILL REDUCE THE LIMIT OF INSURANCE.

PLEASE READ THE ENTIRE POLICY CAREFULLY.

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### Learning Objective 4:

Using knowledge of Exclusions found in Cyber Insurance Policies, the participant will be prepared to determine and explain if coverage applies in a loss situation.

Following are exclusions found in the ISO Commercial Cyber Insurance Policy. Similar exclusions are typically found in other cyber policies; however, other policies may have additional exclusions. Exclusionary wording and any exceptions vary by insurer.

#### SECTION V – EXCLUSIONS

We will not be liable for "loss" or "defense expenses" based upon, attributable to or arising out of:

1. Lightning, earthquake, hail, volcanic action or any other act of nature. However, this exclusion shall not apply to "loss" under Insuring Agreement 1. Security Breach Expense, 5. Public Relations Expense or 6. Security Breach Liability.
2. Any of the following:
  - a. War, including undeclared or civil war or civil unrest;
  - b. Warlike action by military force, including action hindering or defending against an actual or expected attack, by any government, sovereign or other authority using military personnel or other agents; or
  - c. Insurrection, rebellion, revolution, usurped power or action taken by government authority in hindering or defending against any of these.
3. The dispersal or application of pathogenic or poisonous biological or chemical materials, nuclear reaction, nuclear radiation or radioactive contamination, or any related act or incident, however caused.
4. Bodily injury or physical damage to or destruction of tangible property, including loss of use thereof. Bodily injury means bodily injury, sickness or disease sustained by a person, including death resulting from any of these at any time. It also means mental injury, mental anguish, mental tension, emotional distress, pain or suffering or shock sustained by any person.

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1. Lightning, earthquake, hail, volcanic action or other acts of nature
  - Does not apply to loss for insuring Agreements 1. Security Breach Expense, 5. Public Relations Expense or 6. Security Breach Liability
2. War, warlike action, or insurrection
3. Pathogenic, biological or chemical materials, nuclear radiation, etc.
4. Bodily injury or physical damage to or destruction of tangible property, including loss of use.

5. Any unexplained or indeterminable:
  - a. Failure, malfunction or slowdown of a "computer system"; or
  - b. Inability to access or manipulate "electronic data".
6. Any disruption in normal computer function or network service or function due to insufficient capacity to process transactions or due to an overload of activity on a "computer system" or network. However, this exclusion shall not apply if such disruption is caused by a "cyber incident".
7. Any disruption of:
  - a. Internet service; or
  - b. Any external telecommunication network;
 regardless of the cause. However, this exclusion shall not apply if such disruption is caused by a denial of service attack under Paragraph **b.** of Definition **4.** "Cyber incident".
8. Any failure of, reduction in or surge of power, regardless of the cause.

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5. Unexplained or indeterminable failure, malfunction or slowdown of the computer system  
OR inability to access electronic data

*Example:*

*The named insured suffers a slowdown of the computer system and customers cannot access their site. After doing an investigation, it is determined the slowdown was NOT caused by a covered security breach. Cause is unexplained, so the policy will not respond to any claims.*

6. Any disruption due to insufficient capacity to process transactions or due to an overload of activity on the "computer system" or network, other than a cyber incident

*Example:*

*The named insured's computer system does not have enough "storage space" and suffers an interruption of its normal business activities. Policy will not respond to this type of interruption.*

7. Any disruption of Internet service OR external telecommunication network

- Exception for DoS attack

**BEWARE!**

Other policies may not include this exception

8. Failure of, reduction in or surge of power

9. Any actual or alleged violation of the Racketeer Influenced and Corrupt Organizations Act (RICO) and its amendments, or similar provisions of any federal, state or local statutory or common law.
10. Any malfunction or failure of any satellite.
11. Any oral or written publication of material, if done by an "insured" or at an "insured's" direction with knowledge of its falsity.
12. An "insured's" assumption of liability by contract or agreement, whether oral or written. However, this exclusion shall not apply to any liability that an "insured" would have incurred in the absence of such contract or agreement.
13. Any actual or alleged patent or trade secret violation, including any actual or alleged violation of the Patent Act, the Economic Espionage Act of 1996 or the Uniform Trade Secrets Act and their amendments.
14. Any of the following:
  - a. The actual, alleged or threatened discharge, dispersal, seepage, migration, release or escape of "pollutants" at any time;
  - b. Any request, demand, order or statutory or regulatory requirement that any "insured" or others test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to, or assess the effects of, "pollutants"; or
  - c. Any "claim" or "suit" brought by, or on behalf of, any governmental authority for damages because of testing for, monitoring, cleaning up, removing, containing, treating, detoxifying or neutralizing, or in any way responding to, or assessing the effects of, "pollutants".
15. Any "claim", "suit" or other proceeding against an "insured" which was pending or existed prior to the policy period, or arising out of the same or substantially the same facts, circumstances or allegations which are the subject of, or the basis for, such "claim", "suit" or other proceeding.

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9. Violation of RICO and its amendments, or similar law
10. Malfunction or failure of any satellite
11. Oral or written material published with knowledge of falsity
12. Contractual liability
13. Patent or trade secret violations
14. Pollution or pollution related
15. Prior or pending claims

16. Any actions or activities related to an "insured's" practices as an employer including, but not limited to, refusal to employ, termination of employment, coercion, demotion, evaluation, reassignment, discipline, defamation, harassment, humiliation, discrimination or malicious prosecution.

This exclusion applies:

- a. Whether the injury-causing event described above occurs before employment, during employment or after employment of that person;
  - b. Whether the insured may be liable as an employer or in any other capacity; and
  - c. To any obligation to share damages with or repay someone else who must pay damages because of the injury.
17. Any "cyber incident", "extortion threat", "security breach", "wrongful act" or "interrelated wrongful acts" that any "insured" became aware of prior to the effective date of the Policy.
18. The same facts, "cyber incident", "extortion threat", "security breach", "wrongful act" or "interrelated wrongful acts" alleged or contained in any "claim" which has been reported, or in any circumstances of which notice has been given, under any insurance policy of which this Policy is a renewal or replacement.
19. Any criminal, dishonest, malicious or fraudulent act or any willful violation of any statute or regulation committed by an "insured", acting alone or in collusion with others. However, with the exception of "claims" excluded under Exclusion 13., this exclusion shall not apply to dishonest, malicious or fraudulent acts committed by an "employee" which give rise to a "claim" or "loss" covered under Insuring Agreements 1. Security Breach Expense and 6. Security Breach Liability.
- With the exception of "claims" excluded under Exclusion 13., we will defend the "insured" against any "claim" alleging such acts or violations until final adjudication is rendered against that "insured". Final adjudication rendered against one "insured" shall not be imputed to any other "insured".
- We will not provide indemnification for any "claim" to which any "insured" enters a guilty plea or pleads no contest and we will not provide a defense from the time we become aware that any "insured" intends to so plead.

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16. Employment practices related liability

17. Awareness that any insured had prior to the effective date of the policy

18. Same facts, cyber incident, extortion threat, security breach, wrongful act or interrelated wrongful acts alleged or contained in any claim which has been reported, or in any circumstances under any insurance policy of which this policy is a renewal or replacement of

19. Criminal, dishonest, malicious or fraudulent act or any willful violation of any statute or regulation committed by an insured

- Some "giveback" of coverage for certain acts committed by an employee under Insuring Agreements 1. Security Breach Expense and Insuring Agreement and 6. Security Breach Liability.

20. Any action or proceeding brought by, or on behalf of, any governmental authority or regulatory agency including, but not limited to:

- a. The seizure or destruction of property by order of a governmental authority; or
- b. Regulatory actions or proceedings brought by, or on behalf of, the Federal Trade Commission, Federal Communications Commission or other regulatory agency, except when covered under Paragraph a.(2) of Insuring Agreement 6. Security Breach Liability.

However, this exclusion shall not apply to actions or proceedings brought by a governmental authority or a regulatory agency acting solely in its capacity as a customer of the "named insured" or of a "subsidiary".

21. Any costs or expenses associated with upgrading, maintaining, repairing, remediating or improving a "computer system" regardless of the reason.

22. Any "claim" brought or alleged by one "insured" against another, except for a "claim" brought or alleged by an "employee" against an "insured" as a result of a "security breach".

23. Fines, penalties or assessments imposed pursuant to contract or agreement, whether oral or written, including, but not limited to, Payment Card Industry (PCI) fines, penalties or assessments.

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20. Proceeding brought by, or on behalf of, any governmental authority or regulatory agency

- Some “giveback” of coverage under Insuring Agreement 6. Security Breach Liability

21. Costs associated with upgrading, maintaining, etc.

22. Insured vs. insured claims

- Some Cyber Insurance Policies may have an exception for security breach claims brought by an employee against another insured

23. Fines, penalties or assessments imposed pursuant to contract or agreement

#### BEWARE!

Company-specific policies may include additional exclusions or other types of restrictive wording

*Following are some examples of additional exclusions:*

- *Unprotected portable computers and media (unencrypted mobile devices)*
- *Failure to follow minimum required practices*
- *Professional services*

### Learning Objective 5:

Using knowledge of selected Conditions found in Cyber Insurance Policies, the participant will be prepared to explain the obligations imposed on an insured and insurer before and during the policy period and/or after a claim or loss.

Conditions vary by insurer. Following are conditions selected for discussion.

### Subrogation

#### 7. Subrogation

With respect to any payment made under this Policy, we shall be subrogated to the "insured's" rights of recovery to the extent of such payment. The "insured" shall execute all papers required and shall do everything necessary to secure and preserve such rights, including the execution of such documents necessary to enable us to bring suit in the "insured's" name. Any recoveries, less the cost of obtaining them, will be distributed as follows:

- a. To you, until you are reimbursed for any "loss" you sustain that exceeds the sum of the Policy Limit of Insurance and the Deductible Amount, if any;
- b. Then to us, until we are reimbursed for the payment made under this Policy; and
- c. Then to you, until you are reimbursed for that part of the payment equal to the Deductible Amount, if any.

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- Insurer has the rights of recovery
- Insurer will distribute any recoveries accordingly

### Representations

#### 9. Representations

You represent that all information and statements contained in the "application" are true, accurate and complete. All such information and statements are the basis for our issuing this Policy and shall be considered as incorporated into and shall constitute a part of this Policy. Misrepresentation of any material fact may be grounds for the rescission of this Policy.

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- Warranty statement
- Misrepresentation may be grounds for rescission

## Changes In Exposure

### 10. Changes In Exposure

#### a. Acquisition Or Creation Of Another Organization

If before or during the policy period:

(1) You acquire securities or voting rights in another organization or create another organization which, as a result of such acquisition or creation, becomes a "subsidiary"; or

(2) You acquire any organization through merger or consolidation;

then such organization will be covered under this Policy but only with respect to "wrongful acts" or "loss" which occurred after the effective date of such acquisition or creation provided, with regard to Paragraphs 10.a.(1) and 10.a.(2), you:

(a) Give us written notice of the acquisition or creation of such organization within 90 days after the effective date of such action;

(b) Obtain our written consent to extend the coverage provided by this Policy to such organization; and

(c) Upon obtaining our consent, pay us an additional premium.

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#### a. Acquisition Or Creation Of Another Organization

(1) Newly acquired security or voting rights; or subsidiary of a newly created organization

(2) Newly acquired organization through merger or consolidation

Coverage but only for wrongful acts which occur after acquisition or creation

(a) Written notice within 90 days after acquisition or creation

(b) Must obtain insurer's consent to extend coverage

(c) Upon consent, pay additional premium



## 10. Changes In Exposure

### b. Acquisition Of Named Insured

If during the policy period:

- (1) The "named insured" merges into or consolidates with another organization, such that the "named insured" is not the surviving organization; or
- (2) Another organization, or person or group of organizations and/or persons acting in concert, acquires securities or voting rights which result in ownership or voting control by the other organization(s) or person(s) of more than 50% of the outstanding securities or voting rights representing the present right to vote for the election of directors, trustees or managers (if a limited liability company) of the "named insured";

then the coverage afforded under this Policy will continue until the end of the policy period, but only with respect to "claims" arising out of "wrongful acts" or "loss" which occurred prior to the effective date of such merger, consolidation or acquisition.

The full annual premium for the policy period will be deemed to be fully earned immediately upon the occurrence of such merger, consolidation or acquisition of the "named insured".

The "named insured" must give written notice of such merger, consolidation or acquisition to us as soon as practicable, together with such information as we may reasonably require.

### c. Cessation Of Subsidiaries

If, before or during the policy period, an organization ceases to be a "subsidiary", the coverage afforded under this Policy with respect to such "subsidiary" will continue until the end of the policy period but only with respect to "claims" arising out of "wrongful acts" or "loss" which occurred prior to the date such organization ceased to be a "subsidiary".

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### b. Acquisition Of Named Insured

- Coverage continues until the end of the policy period
- Only applies to claims arising out of wrongful acts or loss which occurred prior to such merger, consolidation or acquisition
- Written notice is required as soon as practicable

### c. Cessation Of Subsidiaries

- Coverage continues until the end of the policy period
- Applies only to claims arising out of wrongful acts that occurred prior to the date that organization ceases to be a subsidiary

## Other Insurance

### 11. Other Insurance

- a. If any covered "claim" or "loss" is insured by any other valid policy, then this Policy shall apply only in excess of the amount of any deductible, retention and limit of insurance under such other policy, whether such other policy is stated to be primary, contributory, excess, contingent or otherwise, unless such other policy is written specifically excess of this Policy by reference in such other policy to this Policy's policy number.
- b. When this Policy is excess, we shall have no duty under Insuring Agreement 6. Security Breach Liability to defend the "insured" against any "suit" if any other insurer has a duty to defend the "insured" against that "suit". If no other insurer defends, we will undertake to do so, but we will be entitled to the "insured's" rights against all those other insurers.

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- a. Policy shall be excess over any other valid policy unless the other policy is written specifically excess
- b. Under the Security Breach Liability Insuring Agreement, there is no duty to defend when the policy is excess

## Separation Of Insureds

### 13. Separation Of Insureds

Except with respect to the Policy Aggregate Limit of Insurance, and any rights or duties specifically assigned in Insuring Agreement 6. Security Breach Liability to the first "named insured", this Policy applies separately to each "insured" against whom "claim" is made.

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- Applies separately to each insured against whom a claim is made
- Subject to the Policy Aggregate Limit of Insurance

## Duties In The Event Of Claim Or Loss

### 14. Duties In The Event Of Claim Or Loss

After a situation that results in, or may result in, a "loss" covered under this Policy is "discovered", you must notify us in writing as soon as practicable, but not to exceed 30 days from the date "discovered", and cooperate with us in the investigation and settlement of the "claim" or "loss". Additionally:

- a. Under Insuring Agreements **2. Extortion Threats** and **3. Replacement Or Restoration Of Electronic Data**, you must:

- (1) Notify local law enforcement officials;
  - (2) Submit to examination under oath at our request and give us a signed statement of your answers; and
  - (3) Give us a detailed, sworn proof of loss within 120 days.
- (4) In addition, under Insuring Agreement **2. Extortion Threats**, you must:
- (a) Determine that the "extortion threat" has actually occurred;
  - (b) With respect to "ransomware", make every reasonable effort to access your "electronic data" from backup, if any, and to remediate the cause of the "ransomware";
  - (c) Make every reasonable effort to immediately notify us before making any ransom payment based upon the "extortion threat"; and
  - (d) Approve any ransom payment based upon the "extortion threat".

- b. Under Insuring Agreement **6. Security Breach Liability**, you must:

- (1) Immediately record the specifics of the "claim" and the date "discovered";
- (2) Immediately send us copies of any demands, notices, summonses or legal papers received in connection with the "claim";
- (3) Authorize us to obtain records and other information; and
- (4) Assist us, upon our request, in the enforcement of any right against any person or organization which may be liable to you because of a "loss" to which this Policy may also apply.

You will not, except at your own cost, voluntarily make a payment, assume any obligation or incur any expense without our consent.

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- Once a loss is discovered, written notification is required as soon as practicable, not to exceed 30 days from discovery
- The named insured must cooperate in the investigation and settlement of claims or losses
- Additional duties apply under Insuring Agreements **2. Extortion Threats** and **3. Replacement Or Restoration Of Electronic Data**, and **6. Security Breach Liability**

## Valuation – Settlement

### 16. Valuation – Settlement

- a. All premiums, limit(s) of insurance, deductible amounts, "loss" and any other monetary amounts under this Policy are expressed and payable in the currency of the United States of America. If judgment is rendered, settlement is agreed to or another component of "loss" under this Policy is expressed in any currency other than United States of America dollars, payment under this Policy shall be made in United States dollars at the rate of exchange published in The Wall Street Journal on the date the final judgment is entered, settlement amount is agreed upon or the other component of "loss" is due, respectively.

- b. With respect to "loss" covered under Insuring Agreement 4. Business Income And Extra Expense:

(1) The amount of "business income" will be determined based on consideration of:

- (a) The net income generated from your "e-commerce activities" before the "interruption" occurred;
- (b) The likely net income generated by your "e-commerce activities" if no "interruption" had occurred, but not including any net income that would likely have been earned as a result of an increase in the volume of business due to favorable business conditions caused by the impact of the "cyber incident" on customers or on other businesses;
- (c) The operating expenses, including payroll, necessary to resume your "e-commerce activities" with the same quality of service that existed before the "interruption"; and
- (d) Other relevant sources of information, including your financial records and accounting procedures, bills, invoices and other vouchers, and debts, liens and contracts.

However, the amount of "business income" will be reduced to the extent that the reduction in the volume of business from the affected "e-commerce activities" is offset by an increase in the volume of business from other channels of commerce such as via telephone, mail or other sources.

(2) The amount of "extra expense" will be determined based on:

- (a) Necessary expenses that exceed the normal operating expenses that would have been incurred in the course of your "e-commerce activities" during the period of coverage if no "interruption" had occurred. We will deduct from the total of such expenses the salvage value that remains of any property bought for temporary use during the period of coverage once your "e-commerce activities" are resumed; and
- (b) Necessary expenses that reduce the "business income" "loss" that otherwise would have been incurred during the period of coverage.

- a. Payable in the currency of the United States of America
- b. This condition determines how much is paid under the Business Income And Extra Expense Insuring Agreement

## Confidentiality

### 17. Confidentiality

Under Insuring Agreement 2. Extortion Threats, "insureds" must make every reasonable effort not to divulge the existence of this coverage.

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- Insureds must not divulge the existence of coverage for Extortion Threat

## Territory

### 18. Territory

This Policy covers "wrongful acts" which occurred anywhere in the world. However, "suits" must be brought in the United States of America (including its territories and possessions), Puerto Rico or Canada.

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- Worldwide coverage
- Suit must be brought in the United States of America, including its territories and possessions, Puerto Rico or Canada

#### Note:

Some policies do not have a requirement on where suits are filed



## Knowledge Check 2

### Cyber Declarations *(Sample for illustration only)*

Defense Expenses are Payable Within the Limit of Insurance.

Insuring Agreement	Aggregate Limit of Insurance
Security Breach Liability	\$1,000,000
Business Income and Extra Expenses with a 120-hour deductible	\$100,000
Replacement or Restoration of Electronic Data	
Security Breach Expense	

Coverage is provided for which an Aggregate Limit of Insurance is shown in the Declarations.

An unauthorized person has accessed the named insured's computer system during the policy period including the files containing personal and confidential records. The unauthorized person also replaced some of the named insured's images on the web site with obscene photos. Use the above sample Declarations to answer the following questions.

1. The named insured is required by regulations to notify the affected parties. Will the policy pay the costs/expenses of notification? Yes or No?
2. A lawsuit is filed during the policy period alleging negligence. Defense expenses are \$600,000. The amount to settle the claim is \$800,000. What is the *most* that the cyber policy will pay for this loss and the defense expenses?
3. Will the cyber policy pay for the expenses to hire temporary workers to reenter data that was lost and damaged arising from the security breach? Yes or No?
4. The named insured had to shut down the web site for four days until all obscene images were removed and to make sure no malicious codes had been downloaded. This cost the named insured \$20,000 in online sales. Will the cyber policy pay the named insured's loss of income for this loss? Yes or No?

## Review of Learning Objectives

1. Using knowledge of common cyber exposures and loss situations, the participant will be able to distinguish between a cyber liability (third party) loss and a cyber-related first party loss to determine the appropriate Cyber Insurance Coverage to fit a client's needs and/or expectations.
2. Using knowledge of the ISO Commercial Cyber Insurance Policy, including the
  - Declarations,
  - Definitions, and
  - Six Insuring Agreements,the participant will be prepared to explain which insuring agreement will apply to different types of losses.
3. Using knowledge of selected provisions, including
  - Limits of Insurance,
  - Deductible, and
  - Defense and Settlement,the participant will be prepared to describe to a client the application of limits, deductible, and defense in a given claim scenario.
4. Using knowledge of Exclusions found in Cyber Insurance Policies, the participant will be prepared to determine and explain if coverage applies in a loss situation.
5. Using knowledge of selected conditions found in Cyber Insurance Policies, the participant will be prepared to explain the obligations imposed on an insured and insurer before and during the policy period and/or after a claim or loss.



## Knowledge Check 1 – ANSWERS

Cyber-related incidents can result in either a liability (third party) loss, first party loss, or both. It is important to know the difference so that the appropriate insurance coverage is addressed. In the following situations, indicate which has the potential to result in a liability claim or a first party claim.

	Liability	First Party
1. Vandalism to a business web site needs to be cleaned up.		X
2. Vandalism to a business web site prevents clients from accessing valuable information as promised by contract.	X	
3. A company has to mail out Security Breach Notifications.		X
4. An employee accidentally mails out confidential information to the wrong person.	X	
5. A fine or penalty imposed on a business by a regulatory authority.		X
6. A company designs its web site with copyrighted images found on the Internet without getting permission of the owner.	X	
7. Employee loses a laptop containing confidential business plans (intellectual property) belonging to the employer. Employer files a claim for the cost of reproduction.		X
8. Employee loses a laptop containing confidential business plans (intellectual property) of a client. Client files a claim for damages due to negligence and/or breach of contract.	X	
9. Loss of income while computer system is down for investigation and repairs.		X
10. A forensic expert is hired by the business to investigate the cause of a security breach.		X
11. The employer pays a ransom payment to prevent disclosure of confidential information.		X





## Knowledge Check 2 – ANSWERS

### Cyber Declarations *(Sample for illustration only)*

Defense Expenses are Payable Within the Limit of Insurance.

Insuring Agreement	Aggregate Limit of Insurance
Security Breach Liability	\$1,000,000
Business Income and Extra Expenses with a 120-hour deductible	\$100,000
Replacement or Restoration of Electronic Data	
Security Breach Expense	

4

Coverage is provided for which an Aggregate Limit of Insurance is shown in the Declarations.

An unauthorized person has accessed the named insured's computer system during the policy period including the files containing personal and confidential records. The unauthorized person also replaced some of the named insured's images on the web site with obscene photos. Use the above sample Declarations to answer the following questions.

1. The named insured is required by regulations to notify the affected parties. Will the policy pay the costs/expenses of notification? Yes or No?  
**No**
2. A lawsuit is filed during the policy period alleging negligence. Defense expenses are \$600,000. The amount to settle the claim is \$800,000. What is the *most* that the cyber policy will pay for this loss and the defense expenses?  
**\$1,000,000**
3. Will the cyber policy pay for the expenses to hire temporary workers to reenter data that was lost and damaged arising from the security breach? Yes or No?  
**No**
4. The named insured had to shut down the web site for four days until all obscene images were removed and to make sure no malicious codes had been downloaded. This cost the named insured \$20,000 in online sales. Will the cyber policy pay the named insured's loss of income for this loss? Yes or No?  
**No**

## FORMS

Form Number	Form Name
CY 00 01 01 18	Commercial Cyber Insurance Policy

# COMMERCIAL CYBER INSURANCE POLICY

THE SECURITY BREACH LIABILITY INSURING AGREEMENT CONTAINED IN THIS POLICY PROVIDES COVERAGE FOR DEFENSE EXPENSES WHICH ARE PAYABLE WITHIN, AND NOT IN ADDITION TO, THE LIMIT OF INSURANCE. PAYMENT OF DEFENSE EXPENSES UNDER THIS POLICY WILL REDUCE THE LIMIT OF INSURANCE.

PLEASE READ THE ENTIRE POLICY CAREFULLY.

4

Various provisions in this Policy restrict coverage. Read the entire Policy carefully to determine rights, duties and what is and is not covered.

Throughout this Policy, the words "you" and "your" refer to the "named insured" shown in the Declarations. The words "we", "us" and "our" refer to the company providing this insurance.

Other words and phrases that appear in quotation marks have special meaning. Refer to Section I – Insuring Agreements and Section VII – Definitions.

## SECTION I – INSURING AGREEMENTS

Coverage under the following Insuring Agreements applies to "loss" (and "defense expenses" under Insuring Agreement 6. Security Breach Liability) resulting directly from a "cyber incident", "extortion threat", "security breach" or "claim" which is "discovered" during the policy period shown in the Declarations or during the period of time provided in the Extended Period To Discover Loss Condition 15.

Any "cyber incident", "extortion threat", "security breach" or "claim" that arises out of the same facts or circumstances and results in "loss" under one or more of the following Insuring Agreements will be deemed to be related and, as such, will be deemed to have been "discovered" during the earliest policy period that any such related "cyber incident", "extortion threat", "security breach" or "claim" was "discovered".

### 1. Security Breach Expense

We will pay for "loss" resulting directly from a "security breach" "discovered" during the policy period.

With respect to this Insuring Agreement:

- a. "Loss" means "security breach expenses".
- b. "Security breach expenses" means:

#### (1) Forensics

The costs to establish whether a "security breach" has occurred or is occurring.

If a "security breach" has occurred, the following costs are also included:

- (a) Costs to investigate the cause, scope and extent of a "security breach" and to identify any affected parties; and

- (b) Costs to determine any action necessary to remediate the conditions that led to or resulted from a "security breach" including, but not limited to, fees paid for legal and other professional advice on how to respond to the "security breach";

#### (2) Notification

Costs to notify all parties affected by a "security breach" including, but not limited to, notice to be transmitted through media required by "privacy regulations";

#### (3) Overtime Salaries

Overtime salaries paid to "employees" assigned to handle inquiries from the parties affected by a "security breach";

#### (4) Call Center

Fees and costs of a company hired by you for the purpose of operating a call center to handle inquiries from the parties affected by a "security breach";

#### (5) Post-event Monitoring

Costs to provide credit and identity monitoring services to the affected parties of a "security breach" for up to one year, or longer if required by applicable law, from the date of notification to those affected parties of such "security breach"; and

#### (6) Other Expenses

Any other reasonable expenses incurred by you with our written consent.

"Security breach expenses" do not include any costs or expenses associated with upgrading, maintaining, repairing, remediating or improving a "computer system" as a result of a "security breach".

### 2. Extortion Threats

We will pay for "loss" resulting directly from an "extortion threat" "discovered" during the policy period.

With respect to this Insuring Agreement:

- a. "Loss" means "extortion expenses".

b. "Extortion expenses" means:

(1) Fees and costs of:

(a) A security firm; or

(b) A person or organization;

hired with our consent to determine the validity and severity of an "extortion threat" made against you;

(2) Interest costs paid by you for any loan from a financial institution taken by you to pay a ransom demand;

(3) Reward payments paid by you to an "informant" which lead to the arrest and conviction of parties responsible for "loss";

(4) Any other reasonable expenses incurred by you with our written consent, including:

(a) Fees and costs of independent negotiators; and

(b) Fees and costs of a company hired by you, upon the recommendation of the security firm, to determine how to protect your "electronic data" from further threats; and

(5) Ransom payments made in the form of cash, or virtual currency such as, but not limited to, Bitcoin.

c. "Informant" means a person, other than an "employee", providing information not otherwise obtainable, solely in return for a reward offered by you.

### 3. Replacement Or Restoration Of Electronic Data

We will pay for "loss" of your "electronic data" or "computer programs" stored within a "computer system" resulting directly from a "cyber incident" "discovered" during the policy period.

With respect to this Insuring Agreement:

a. "Loss" means the cost to replace or restore your "electronic data" or "computer programs" as well as the cost of data entry, reprogramming and computer consultation services.

"Loss" does not include the cost to duplicate research that led to the development of your "electronic data" or "computer programs". To the extent that any of your "electronic data" cannot be replaced or restored, we will pay the cost to replace the media on which such "electronic data" was stored with blank media of substantially identical type.

b. "Computer program" means a set of related electronic instructions, which direct the operation and function of a computer or devices connected to it, which enables the computer or devices to receive, process, store or send your "electronic data".

### 4. Business Income And Extra Expense

We will pay for "loss" due to an "interruption" resulting directly from a "cyber incident" or an "extortion threat" "discovered" during the policy period.

With respect to this Insuring Agreement:

a. "Loss" means the actual loss of "business income" you sustain and/or "extra expense" you incur.

b. "Business income" means the:

(1) Net income (net profit or loss before income taxes) that would have been earned or incurred; and

(2) Continuing normal operating expenses incurred, including payroll.

c. "Extra expense" means necessary expenses you incur:

(1) During an "interruption" that you would not have incurred if there had been no "interruption"; or

(2) To avoid or minimize the suspension of your "e-commerce activities".

"Extra expense" does not include:

(1) Any costs or expenses associated with upgrading, maintaining, repairing, remediating or improving a "computer system" as a result of a "cyber incident" or "extortion threat"; or

(2) "Extortion expenses" covered under Insuring Agreement 2. Extortion Threats.

### 5. Public Relations Expense

We will pay for "loss" due to "negative publicity" resulting directly from a "cyber incident" or a "security breach" "discovered" during the policy period.

With respect to this Insuring Agreement:

a. "Loss" means "public relations expenses".

b. "Public relations expenses" means:

(1) Fees and costs of a public relations firm; and

(2) Any other reasonable expenses incurred by you with our written consent;

to protect or restore your reputation solely in response to "negative publicity".

- c. "Negative publicity" means information which has been made public that has caused, or is reasonably likely to cause, a decline or deterioration in the reputation of the "named insured" or of one or more of its products or services.

## 6. Security Breach Liability

### a. We will pay for:

- (1) "Loss" that the "insured" becomes legally obligated to pay and "defense expenses" as a result of a "claim" "discovered" during the policy period for a "wrongful act" or a series of "interrelated wrongful acts" taking place before the end of the policy period.
- (2) "Loss" and "defense expenses" as a result of a "claim" in the form of a "regulatory proceeding" "discovered" during the policy period in response to a "wrongful act" or a series of "interrelated wrongful acts" taking place before the end of the policy period.

### b. With respect to this Insuring Agreement:

#### (1) "Loss" means:

- (a) Compensatory damages, settlement amounts and costs awarded pursuant to judgments or settlements;
- (b) Punitive and exemplary damages to the extent such damages are insurable by law; or
- (c) Under Paragraph 6.a.(2), fines or penalties assessed against the "insured" to the extent such fines or penalties are insurable by law.

"Loss" does not include:

- (i) Civil or criminal fines or penalties imposed by law, except civil fines or penalties as provided under Paragraph (c);
  - (ii) The multiplied portion of multiplied damages;
  - (iii) Taxes;
  - (iv) Royalties;
  - (v) The amount of any disgorged profits; or
  - (vi) Matters that are uninsurable pursuant to law.
- (2) "Defense expenses" means the reasonable and necessary fees (attorneys' and experts' fees) and expenses incurred in the defense or appeal of a "claim", including the cost of appeal, attachment or similar bonds (without any obligation on our part to obtain such bonds) but excluding wages, salaries, benefits or expenses of your "employees".

#### (3) "Wrongful act" means:

Any actual or alleged neglect, breach of duty or omission by an "insured" that results in:

- (a) A "security breach"; or
- (b) A "computer system" transmitting, by e-mail or other means, a "virus" to another person or organization.

#### (4) "Interrelated wrongful acts" means all "wrongful acts" that have as a common nexus any:

- (a) Fact, circumstance, situation, event, transaction or cause; or
- (b) Series of causally connected facts, circumstances, situations, events, transactions or causes.

#### (5) "Regulatory proceeding" means an investigation, demand or proceeding brought by, or on behalf of, the Federal Trade Commission, Federal Communications Commission or other administrative or regulatory agency, or any federal, state, local or foreign governmental entity in such entity's regulatory or official capacity.

## SECTION II – LIMITS OF INSURANCE

### 1. Policy Aggregate Limit Of Insurance

The most we will pay for all "loss", and "defense expenses" if covered, under this Policy is the Policy Aggregate Limit Of Insurance shown in the Declarations. The Policy Aggregate Limit of Insurance shall be reduced by the amount of any payment made under the terms of this Policy. Upon exhaustion of the Policy Aggregate Limit of Insurance by such payments, we will have no further obligations or liability of any kind under this Policy.

### 2. Aggregate Sublimit(s) Of Insurance

Subject to the Policy Aggregate Limit of Insurance, the most we will pay for all "loss" covered under:

- a. Paragraph b.(5) of Insuring Agreement 2. Extortion Threats is the Ransom Payments Aggregate Sublimit Of Insurance, if any, shown in the Declarations;
- b. Insuring Agreement 4. Business Income And Extra Expense is the Business Income And Extra Expense Aggregate Sublimit Of Insurance, if any, shown in the Declarations; and
- c. Insuring Agreement 5. Public Relations Expense is the Public Relations Expense Aggregate Sublimit Of Insurance, if any, shown in the Declarations.

The Aggregate Sublimit(s) of Insurance in Paragraphs **2.a.**, **2.b.** and **2.c.** are part of, not in addition to, the Policy Aggregate Limit of Insurance. Any such Aggregate Sublimit(s) of Insurance shall be reduced by the amount of any payment for "loss" under the Insuring Agreement to which such Aggregate Sublimit of Insurance applies. Upon exhaustion of any Aggregate Sublimit of Insurance by such payments, we will have no further obligations or liability of any kind with respect to "loss" subject to such Sublimit of Insurance.

### SECTION III – DEDUCTIBLE

Subject to Section II – Limits Of Insurance:

1. Under Insuring Agreements **1.** Security Breach Expense, **2.** Extortion Threats, **3.** Replacement Or Restoration Of Electronic Data and **5.** Public Relations Expense:

We will pay only the amount of "loss" which is in excess of the Policy Deductible Amount shown in the Declarations.

2. Under Insuring Agreement **4.** Business Income And Extra Expense:

We will pay only the amount of "loss" which exceeds the greater of the following deductible amounts:

- a. The Policy Deductible Amount shown in the Declarations; or
- b. The amount of "loss" incurred during the Time Deductible shown in the Declarations.

3. Under Insuring Agreement **6.** Security Breach Liability:

We will pay only the amount of "loss" and "defense expenses" which is in excess of the Policy Deductible Amount shown in the Declarations resulting from the same "wrongful act" or "interrelated wrongful acts". Such Policy Deductible Amount will be borne by you, self-insured, and at your own risk.

4. In the event a "loss" is covered under more than one Insuring Agreement, only the highest deductible amount applicable to the "loss" shall be applied.

### SECTION IV – DEFENSE AND SETTLEMENT

The provisions contained within this section apply only to Insuring Agreement **6.** Security Breach Liability:

1. We shall have the right and duty to select counsel and defend the "insured" against any "claim" covered under Insuring Agreement **6.a.(1)** Security Breach Liability, even if the allegations of such "claim" are groundless, false or fraudulent. However, we shall have the right but not the duty to defend the "insured" against a "claim" covered under Insuring Agreement **6.a.(2)** Security Breach Liability, and we shall have no duty to defend the "insured" against any "claim" which is not covered under this Insuring Agreement.
2. We may, upon the written consent of the "insured", make any settlement of a "claim" which we deem reasonable. If the "insured" withholds consent to such settlement, our liability for all "loss" resulting from such "claim" will not exceed the amount for which we could have settled such "claim", plus "defense expenses" incurred, as of the date we proposed such settlement in writing to the "insured". Upon refusing to consent to a settlement we deem reasonable, the "insured" shall, at its sole expense, assume all further responsibility for its defense, including all additional costs associated with the investigation, defense and/or settlement of such "claim".

### SECTION V – EXCLUSIONS

We will not be liable for "loss" or "defense expenses" based upon, attributable to or arising out of:

1. Lightning, earthquake, hail, volcanic action or any other act of nature. However, this exclusion shall not apply to "loss" under Insuring Agreement **1.** Security Breach Expense, **5.** Public Relations Expense or **6.** Security Breach Liability.
2. Any of the following:
  - a. War, including undeclared or civil war or civil unrest;
  - b. Warlike action by military force, including action hindering or defending against an actual or expected attack, by any government, sovereign or other authority using military personnel or other agents; or

- c. Insurrection, rebellion, revolution, usurped power or action taken by government authority in hindering or defending against any of these.
- 3. The dispersal or application of pathogenic or poisonous biological or chemical materials, nuclear reaction, nuclear radiation or radioactive contamination, or any related act or incident, however caused.
- 4. Bodily injury or physical damage to or destruction of tangible property, including loss of use thereof.  
Bodily injury means bodily injury, sickness or disease sustained by a person, including death resulting from any of these at any time. It also means mental injury, mental anguish, mental tension, emotional distress, pain or suffering or shock sustained by any person.
- 5. Any unexplained or indeterminable:
  - a. Failure, malfunction or slowdown of a "computer system"; or
  - b. Inability to access or manipulate "electronic data".
- 6. Any disruption in normal computer function or network service or function due to insufficient capacity to process transactions or due to an overload of activity on a "computer system" or network. However, this exclusion shall not apply if such disruption is caused by a "cyber incident".
- 7. Any disruption of:
  - a. Internet service; or
  - b. Any external telecommunication network; regardless of the cause. However, this exclusion shall not apply if such disruption is caused by a denial of service attack under Paragraph b. of Definition 4. "Cyber incident".
- 8. Any failure of, reduction in or surge of power, regardless of the cause.
- 9. Any actual or alleged violation of the Racketeer Influenced and Corrupt Organizations Act (RICO) and its amendments, or similar provisions of any federal, state or local statutory or common law.
- 10. Any malfunction or failure of any satellite.
- 11. Any oral or written publication of material, if done by an "insured" or at an "insured's" direction with knowledge of its falsity.
- 12. An "insured's" assumption of liability by contract or agreement, whether oral or written. However, this exclusion shall not apply to any liability that an "insured" would have incurred in the absence of such contract or agreement.
- 13. Any actual or alleged patent or trade secret violation, including any actual or alleged violation of the Patent Act, the Economic Espionage Act of 1996 or the Uniform Trade Secrets Act and their amendments.
- 14. Any of the following:
  - a. The actual, alleged or threatened discharge, dispersal, seepage, migration, release or escape of "pollutants" at any time;
  - b. Any request, demand, order or statutory or regulatory requirement that any "insured" or others test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to, or assess the effects of, "pollutants"; or
  - c. Any "claim" or "suit" brought by, or on behalf of, any governmental authority for damages because of testing for, monitoring, cleaning up, removing, containing, treating, detoxifying or neutralizing, or in any way responding to, or assessing the effects of, "pollutants".
- 15. Any "claim", "suit" or other proceeding against an "insured" which was pending or existed prior to the policy period, or arising out of the same or substantially the same facts, circumstances or allegations which are the subject of, or the basis for, such "claim", "suit" or other proceeding.
- 16. Any actions or activities related to an "insured's" practices as an employer including, but not limited to, refusal to employ, termination of employment, coercion, demotion, evaluation, reassignment, discipline, defamation, harassment, humiliation, discrimination or malicious prosecution.  
This exclusion applies:
  - a. Whether the injury-causing event described above occurs before employment, during employment or after employment of that person;
  - b. Whether the insured may be liable as an employer or in any other capacity; and
  - c. To any obligation to share damages with or repay someone else who must pay damages because of the injury.
- 17. Any "cyber incident", "extortion threat", "security breach", "wrongful act" or "interrelated wrongful acts" that any "insured" became aware of prior to the effective date of the Policy.
- 18. The same facts, "cyber incident", "extortion threat", "security breach", "wrongful act" or "interrelated wrongful acts" alleged or contained in any "claim" which has been reported, or in any circumstances of which notice has been given, under any insurance policy of which this Policy is a renewal or replacement.

19. Any criminal, dishonest, malicious or fraudulent act or any willful violation of any statute or regulation committed by an "insured", acting alone or in collusion with others. However, with the exception of "claims" excluded under Exclusion 13., this exclusion shall not apply to dishonest, malicious or fraudulent acts committed by an "employee" which give rise to a "claim" or "loss" covered under Insuring Agreements 1. Security Breach Expense and 6. Security Breach Liability.

With the exception of "claims" excluded under Exclusion 13., we will defend the "insured" against any "claim" alleging such acts or violations until final adjudication is rendered against that "insured". Final adjudication rendered against one "insured" shall not be imputed to any other "insured".

We will not provide indemnification for any "claim" to which any "insured" enters a guilty plea or pleads no contest and we will not provide a defense from the time we become aware that any "insured" intends to so plead.

20. Any action or proceeding brought by, or on behalf of, any governmental authority or regulatory agency including, but not limited to:
- a. The seizure or destruction of property by order of a governmental authority; or
  - b. Regulatory actions or proceedings brought by, or on behalf of, the Federal Trade Commission, Federal Communications Commission or other regulatory agency, except when covered under Paragraph a.(2) of Insuring Agreement 6. Security Breach Liability.
- However, this exclusion shall not apply to actions or proceedings brought by a governmental authority or a regulatory agency acting solely in its capacity as a customer of the "named insured" or of a "subsidiary".
21. Any costs or expenses associated with upgrading, maintaining, repairing, remediating or improving a "computer system" regardless of the reason.
22. Any "claim" brought or alleged by one "insured" against another, except for a "claim" brought or alleged by an "employee" against an "insured" as a result of a "security breach".
23. Fines, penalties or assessments imposed pursuant to contract or agreement, whether oral or written, including, but not limited to, Payment Card Industry (PCI) fines, penalties or assessments.

## SECTION VI – CONDITIONS

### 1. Cancellation

- a. The first "named insured" shown in the Declarations may cancel this Policy by mailing or delivering to us advance written notice of cancellation.
- b. We may cancel this Policy by mailing or delivering to the first "named insured" written notice of cancellation at least:
  - (1) 10 days before the effective date of cancellation if we cancel for nonpayment of premium; or
  - (2) 30 days before the effective date of cancellation if we cancel for any other reason.
- c. We will mail or deliver our notice to the first "named insured's" last mailing address known to us.
- d. Notice of cancellation will state the effective date of cancellation. The policy period will end on that date.
- e. If this Policy is canceled, we will send the first "named insured" any premium refund due. If we cancel, the refund will be prorated. If the first "named insured" cancels, the refund may be less than pro rata. The cancellation will be effective even if we have not made or offered a refund.
- f. If notice is mailed, proof of mailing will be sufficient proof of notice.

### 2. Changes

This Policy contains all the agreements between you and us concerning the insurance afforded. The first "named insured" shown in the Declarations is authorized to make changes in the terms of this Policy with our consent. This Policy's terms can be amended or waived only by endorsement issued by us and made a part of this Policy.

### 3. Examination Of Your Books And Records

We may examine and audit your books and records as they relate to this Policy at any time during the policy period shown in the Declarations and up to three years afterward.



#### 4. Inspections And Surveys

- a. We have the right to:
  - (1) Make inspections and surveys at any time;
  - (2) Give you reports on the conditions we find; and
  - (3) Recommend changes.
- b. We are not obligated to make any inspections, surveys, reports or recommendations, and any such actions we do undertake relate only to insurability and the premiums to be charged. We do not make safety inspections. We do not undertake to perform the duty of any person or organization to provide for the health or safety of workers or the public. And we do not warrant that conditions:
  - (1) Are safe or healthful; or
  - (2) Comply with laws, regulations, codes or standards.
- c. Paragraphs 4.a. and 4.b. of this condition apply not only to us, but also to any rating, advisory, rate service or similar organization which makes insurance inspections, surveys, reports or recommendations.

#### 5. Premiums

The first "named insured" shown in the Declarations:

- a. Is responsible for the payment of all premiums; and
- b. Will be the payee for any return premiums we pay.

#### 6. Transfer Of Your Rights And Duties Under This Policy

Your rights and duties under this Policy may not be transferred without our written consent, except in the case of death of an individual "named insured".

If you are a sole proprietor and you die, your rights and duties will be transferred to your legal representative but only while acting within the scope of duties as your legal representative. Until your legal representative is appointed, anyone having proper temporary custody of your property will have your rights and duties but only with respect to that property.

#### 7. Subrogation

With respect to any payment made under this Policy, we shall be subrogated to the "insured's" rights of recovery to the extent of such payment. The "insured" shall execute all papers required and shall do everything necessary to secure and preserve such rights, including the execution of such documents necessary to enable us to bring suit in the "insured's" name. Any recoveries, less the cost of obtaining them, will be distributed as follows:

- a. To you, until you are reimbursed for any "loss" you sustain that exceeds the sum of the Policy Limit of Insurance and the Deductible Amount, if any;
- b. Then to us, until we are reimbursed for the payment made under this Policy; and
- c. Then to you, until you are reimbursed for that part of the payment equal to the Deductible Amount, if any.

#### 8. Bankruptcy

Your bankruptcy, or the bankruptcy of your estate if you are a sole proprietor, will not relieve us of our obligations under this Policy.

#### 9. Representations

You represent that all information and statements contained in the "application" are true, accurate and complete. All such information and statements are the basis for our issuing this Policy and shall be considered as incorporated into and shall constitute a part of this Policy. Misrepresentation of any material fact may be grounds for the rescission of this Policy.

#### 10. Changes In Exposure

##### a. Acquisition Or Creation Of Another Organization

If before or during the policy period:

- (1) You acquire securities or voting rights in another organization or create another organization which, as a result of such acquisition or creation, becomes a "subsidiary"; or

- (2) You acquire any organization through merger or consolidation;

then such organization will be covered under this Policy but only with respect to "wrongful acts" or "loss" which occurred after the effective date of such acquisition or creation provided, with regard to Paragraphs **10.a.(1)** and **10.a.(2)**, you:

- (a) Give us written notice of the acquisition or creation of such organization within 90 days after the effective date of such action;
- (b) Obtain our written consent to extend the coverage provided by this Policy to such organization; and
- (c) Upon obtaining our consent, pay us an additional premium.

**b. Acquisition Of Named Insured**

If during the policy period:

- (1) The "named insured" merges into or consolidates with another organization, such that the "named insured" is not the surviving organization; or
- (2) Another organization, or person or group of organizations and/or persons acting in concert, acquires securities or voting rights which result in ownership or voting control by the other organization(s) or person(s) of more than 50% of the outstanding securities or voting rights representing the present right to vote for the election of directors, trustees or managers (if a limited liability company) of the "named insured";

then the coverage afforded under this Policy will continue until the end of the policy period, but only with respect to "claims" arising out of "wrongful acts" or "loss" which occurred prior to the effective date of such merger, consolidation or acquisition.

The full annual premium for the policy period will be deemed to be fully earned immediately upon the occurrence of such merger, consolidation or acquisition of the "named insured".

The "named insured" must give written notice of such merger, consolidation or acquisition to us as soon as practicable, together with such information as we may reasonably require.

**c. Cessation Of Subsidiaries**

If, before or during the policy period, an organization ceases to be a "subsidiary", the coverage afforded under this Policy with respect to such "subsidiary" will continue until the end of the policy period but only with respect to "claims" arising out of "wrongful acts" or "loss" which occurred prior to the date such organization ceased to be a "subsidiary".

**11. Other Insurance**

- a. If any covered "claim" or "loss" is insured by any other valid policy, then this Policy shall apply only in excess of the amount of any deductible, retention and limit of insurance under such other policy, whether such other policy is stated to be primary, contributory, excess, contingent or otherwise, unless such other policy is written specifically excess of this Policy by reference in such other policy to this Policy's policy number.
- b. When this Policy is excess, we shall have no duty under Insuring Agreement **6. Security Breach Liability** to defend the "insured" against any "suit" if any other insurer has a duty to defend the "insured" against that "suit". If no other insurer defends, we will undertake to do so, but we will be entitled to the "insured's" rights against all those other insurers.

**12. Legal Action Against Us**

- a. No person or organization has a right:

- (1) To join us as a party or otherwise bring us into a "suit" asking for damages from an "insured"; or
- (2) To sue us under this Policy unless all of its terms have been fully complied with.

A person or organization may sue us to recover on an agreed settlement or on a final judgment against an "insured", but we will not be liable for damages that are not payable under Insuring Agreement **6. Security Breach Liability**, or that are in excess of the Policy Aggregate Limit of Insurance. An agreed settlement means a settlement and release of liability signed by us, the first "named insured" and the claimant or the claimant's legal representative.

- b. You may not bring any legal action against us involving "loss":
  - (1) Unless you have complied with all the terms of this Policy;

- (2) Until 90 days after you have filed proof of loss with us; and
- (3) Unless brought within two years from the date you reported the "loss" to us.

If any limitation in this condition is prohibited by law, such limitation is amended so as to equal the minimum period of limitation provided by such law.

### 13. Separation Of Insureds

Except with respect to the Policy Aggregate Limit of Insurance, and any rights or duties specifically assigned in Insuring Agreement 6. Security Breach Liability to the first "named insured", this Policy applies separately to each "insured" against whom "claim" is made.

### 14. Duties In The Event Of Claim Or Loss

After a situation that results in, or may result in, a "loss" covered under this Policy is "discovered", you must notify us in writing as soon as practicable, but not to exceed 30 days from the date "discovered", and cooperate with us in the investigation and settlement of the "claim" or "loss". Additionally:

- a. Under Insuring Agreements 2. Extortion Threats and 3. Replacement Or Restoration Of Electronic Data, you must:
  - (1) Notify local law enforcement officials;
  - (2) Submit to examination under oath at our request and give us a signed statement of your answers; and
  - (3) Give us a detailed, sworn proof of loss within 120 days.
- (4) In addition, under Insuring Agreement 2. Extortion Threats, you must:
  - (a) Determine that the "extortion threat" has actually occurred;
  - (b) With respect to "ransomware", make every reasonable effort to access your "electronic data" from backup, if any, and to remediate the cause of the "ransomware";
  - (c) Make every reasonable effort to immediately notify us before making any ransom payment based upon the "extortion threat"; and
  - (d) Approve any ransom payment based upon the "extortion threat".

- b. Under Insuring Agreement 6. Security Breach Liability, you must:

- (1) Immediately record the specifics of the "claim" and the date "discovered";
- (2) Immediately send us copies of any demands, notices, summonses or legal papers received in connection with the "claim";
- (3) Authorize us to obtain records and other information; and
- (4) Assist us, upon our request, in the enforcement of any right against any person or organization which may be liable to you because of a "loss" to which this Policy may also apply.

You will not, except at your own cost, voluntarily make a payment, assume any obligation or incur any expense without our consent.

### 15. Extended Period To Discover Loss

We will pay for "loss" (and "defense expenses" under Insuring Agreement 6. Security Breach Liability) resulting directly from any "cyber incident", "extortion threat", "security breach" or "claim" taking place prior to the effective date of cancellation of this Policy, which is "discovered" no later than 60 days from the date of that cancellation. However, this extended period to "discover" such "loss" terminates immediately upon the effective date of any other insurance obtained by you, whether from us or another insurer, replacing in whole or in part the coverage afforded under this Policy, whether or not such other insurance provides coverage for "loss" resulting directly from any "cyber incident", "extortion threat", "security breach" or "claim" taking place prior to its effective date.

### 16. Valuation – Settlement

- a. All premiums, limit(s) of insurance, deductible amounts, "loss" and any other monetary amounts under this Policy are expressed and payable in the currency of the United States of America. If judgment is rendered, settlement is agreed to or another component of "loss" under this Policy is expressed in any currency other than United States of America dollars, payment under this Policy shall be made in United States dollars at the rate of exchange published in The Wall Street Journal on the date the final judgment is entered, settlement amount is agreed upon or the other component of "loss" is due, respectively.

- b. With respect to "loss" covered under Insuring Agreement 4. Business Income And Extra Expense:

(1) The amount of "business income" will be determined based on consideration of:

- (a) The net income generated from your "e-commerce activities" before the "interruption" occurred;
- (b) The likely net income generated by your "e-commerce activities" if no "interruption" had occurred, but not including any net income that would likely have been earned as a result of an increase in the volume of business due to favorable business conditions caused by the impact of the "cyber incident" on customers or on other businesses;
- (c) The operating expenses, including payroll, necessary to resume your "e-commerce activities" with the same quality of service that existed before the "interruption"; and
- (d) Other relevant sources of information, including your financial records and accounting procedures, bills, invoices and other vouchers, and debts, liens and contracts.

However, the amount of "business income" will be reduced to the extent that the reduction in the volume of business from the affected "e-commerce activities" is offset by an increase in the volume of business from other channels of commerce such as via telephone, mail or other sources.

(2) The amount of "extra expense" will be determined based on:

- (a) Necessary expenses that exceed the normal operating expenses that would have been incurred in the course of your "e-commerce activities" during the period of coverage if no "interruption" had occurred. We will deduct from the total of such expenses the salvage value that remains of any property bought for temporary use during the period of coverage once your "e-commerce activities" are resumed; and
- (b) Necessary expenses that reduce the "business income" "loss" that otherwise would have been incurred during the period of coverage.

## 17. Confidentiality

Under Insuring Agreement 2. Extortion Threats, "insureds" must make every reasonable effort not to divulge the existence of this coverage.

## 18. Territory

This Policy covers "wrongful acts" which occurred anywhere in the world. However, "suits" must be brought in the United States of America (including its territories and possessions), Puerto Rico or Canada.

## 19. Policy Bridge – Discovery Replacing Loss Sustained

a. If this Policy replaces insurance that provided you with an extended period of time after cancellation in which to "discover" "loss" resulting directly from any "cyber incident", "extortion threat", "security breach" or "claim" and which did not terminate at the time this Policy became effective:

(1) We will not pay for any "loss" resulting directly from any "cyber incident", "extortion threat", "security breach" or "claim" that occurred during the policy period of that prior insurance which is "discovered" during such extended period of time, unless the amount of that "loss" exceeds the Limit of Insurance and Deductible Amount of that prior insurance. In that case, we will pay for the excess "loss" subject to the terms and conditions of this Policy.

(2) However, any payment we make for the excess "loss" will not be greater than the difference between the Limit of Insurance and Deductible Amount of that prior insurance and the Limit Of Insurance shown in the Declarations. We will not apply the Deductible Amount shown in the Declarations to this excess "loss".

b. Condition 11. Other Insurance does not apply to this condition.

## SECTION VII – DEFINITIONS

1. "Application" means the signed application for this Policy, including any attachments and other materials submitted in conjunction with the signed application.

2. "Claim" means:

- a. A written demand for monetary or nonmonetary damages, including injunctive relief;
- b. A civil proceeding commenced by the service of a complaint or similar proceeding; or

- c. Under Paragraph **a.(2)** of Insuring Agreement **6. Security Breach Liability**, a "regulatory proceeding" commenced by the filing of a notice of charges, formal investigative order, service of summons or similar document;
- against any "insured" for a "wrongful act", including any appeal therefrom.
3. "Computer system" means any computer, including Personal Digital Assistants (PDAs) and other transportable or handheld devices, electronic storage devices and related peripheral components; any systems and applications software, or any related telecommunications networks connected to or used in connection with such computer or devices:
- Which collects, transmits, processes, stores or retrieves your "electronic data"; and
  - Which is:
    - Owned by you;
    - Leased by you and operated by any "insured";
    - Owned and operated by an "employee" who has agreed in writing to your personal device use policy; or
    - Operated by an authorized "third party", but only with respect to your "electronic data".
4. "Cyber incident" means:
- Any:
    - "Hacker" attack;
    - Malicious code; or
    - "Virus";

that is directed at, enacted upon or introduced into a "computer system" (including your "electronic data") and is designed to access, alter, corrupt, damage, delete, destroy, disrupt, encrypt, use or prevent or restrict access to or the use of any part of a "computer system" (including your "electronic data") or otherwise disrupt its normal functioning or operation.

Recurrence of the same "virus" after a "computer system" has been restored shall constitute a separate "cyber incident".
  - Any denial of service attack specifically directed at you which disrupts, prevents or restricts access to or use of a "computer system", as defined in Paragraph **3.b.(1), (2) or (3)**, or otherwise disrupts its normal functioning or operation.
5. "Discover" or "discovered" means the time when any "insured" first becomes aware of facts which would cause a reasonable person to assume that a "loss" covered by this Policy has been or will be incurred, regardless of when the act or acts causing or contributing to such "loss" occurred, even though the exact amount or details of "loss" may not then be known.
- "Discover" or "discovered" also means the time when any "insured" first receives notice of an actual or potential "claim" in which it is alleged that you are liable to a third party under circumstances which, if true, would constitute a "loss" under this Policy.
6. "E-commerce activities" means those activities conducted by you in the normal conduct of your business via your web site or your e-mail system.
7. "Electronic data" means information, facts, images or sounds stored as or on, created or used on, or transmitted to or from computer software (including systems and applications software) on electronic storage devices including, but not limited to, hard or floppy disks, CD-ROMs, tapes, drives, cells, data processing devices or any other media which are used with electronically controlled equipment. "Electronic data" is not tangible property.
- "Electronic data" does not include your "electronic data" that is licensed, leased, rented or loaned to others.
8. "Employee" means any natural person who was, now is or will be:
- Employed on a full- or part-time basis;
  - Furnished temporarily to you to substitute for a permanent employee on leave or to meet seasonal or short-term workload conditions;
  - Leased to you by a labor leasing firm under an agreement between you and the labor leasing firm to perform duties related to the conduct of your business, but does not mean a temporary employee as defined in Paragraph **8.b.**;
  - An officer;
  - A director, trustee or manager (if a limited liability company);
  - A volunteer worker; or
  - A partner or member (if a limited liability company);
- of the "named insured" and those of any organization qualifying as a "subsidiary" under the terms of this Policy, but only while acting within the scope of their duties as determined by the "named insured" or such "subsidiary".

9. "Extortion threat" means a threat or series of related threats:

- a. To perpetrate a "cyber incident";
- b. To disseminate, divulge or utilize:
  - (1) Your proprietary information; or
  - (2) Weaknesses in the source code; within a "computer system" by gaining unauthorized access to such "computer system";
- c. To destroy, corrupt or prevent normal access to a "computer system" (including your "electronic data") by gaining or having gained unauthorized access to a "computer system";
- d. To inflict "ransomware" on a "computer system"; or
- e. To publish your client's or "employee's" "personal information".

"Extortion threat" does not include a threat or series of threats to any "third party".

10. "Hacker" means a person who accesses a "computer system" (including your "electronic data") who is:

- a. Not authorized to have such access; or
- b. Authorized to have such access but who uses such access in an unauthorized manner.

11. "Insured" means any "named insured" and its "employees".

12. "Interrelated wrongful acts" means the definition set forth in Insuring Agreement 6. of Section I – Insuring Agreements.

13. "Interruption" means:

- a. With respect to a "cyber incident":
  - (1) An unanticipated cessation or slowdown of your "e-commerce activities"; or
  - (2) Your suspension of your "e-commerce activities" for the purpose of avoiding or mitigating the possibility of transmitting a "virus" or malicious code to another person or organization;

and, with regard to Paragraphs 13.a.(1) and 13.a.(2), shall be deemed to begin when your "e-commerce activities" are interrupted and ends at the earliest of:

- (a) 90 days after the "interruption" begins;
- (b) The time when your "e-commerce activities" are resumed; or
- (c) The time when service is restored to you.

b. With respect to an "extortion threat", your voluntary suspension of your "e-commerce activities":

- (1) Based upon clear evidence of a credible threat; or
- (2) Based upon the recommendation of a security firm, if any;

and, with regard to Paragraphs 13.b.(1) and 13.b.(2), shall be deemed to begin when your "e-commerce activities" are interrupted and ends at the earliest of:

- (a) 14 days after the "interruption" begins;
- (b) The time when your "e-commerce activities" are resumed; or
- (c) The time when service is restored to you.

14. "Loss" means the definitions set forth in each of the respective Insuring Agreements 1. through 6. of Section I – Insuring Agreements.

15. "Named insured" means the entity or entities shown in the Declarations and any "subsidiary".

16. "Personal information" means any information not available to the general public for any reason through which an individual may be identified including, but not limited to, an individual's:

- a. Social security number, driver's license number or state identification number;
- b. Protected health information;
- c. Financial account numbers;
- d. Security codes, passwords, PINs associated with credit, debit or charge card numbers which would permit access to financial accounts; or
- e. Any other nonpublic information as defined in "privacy regulations".

17. "Pollutants" means any solid, liquid, gaseous or thermal irritant or contaminant, including smoke, vapor, soot, fumes, acids, alkalis, chemicals and waste. Waste includes materials to be recycled, reconditioned or reclaimed.

18. "Privacy regulations" means any of the following statutes and regulations, and their amendments, associated with the control and use of personally identifiable financial, health or other sensitive information including, but not limited to:

- a. The Health Insurance Portability and Accountability Act of 1996 (HIPAA) (Public Law 104-191);
- b. The Health Information Technology for Economic and Clinical Health Act (HITECH) (American Recovery and Reinvestment Act of 2009);

- c. The Gramm-Leach-Bliley Act of 1999;
  - d. Section 5(a) of the Federal Trade Commission Act (15 U.S.C. 45(a)), but solely for alleged unfair or deceptive acts or practices in or affecting commerce;
  - e. The Identity Theft Red Flags Rules under the Fair and Accurate Credit Transactions Act of 2003; or
  - f. Any other similar state, federal or foreign identity theft or privacy protection statute or regulation.
- 19.** "Ransomware" means any software that is used to demand a ransom payment by:
- a. Restricting access to a "computer system"; or
  - b. Encrypting your "electronic data" held within a "computer system".
- 20.** "Security breach" means the acquisition of "personal information" held within a "computer system" or in non-electronic format while in the care, custody or control of the "insured" or authorized "third party" by a person:
- a. Not authorized to have access to such information; or
  - b. Authorized to have access to such information but whose access results in the unauthorized disclosure of such information.
- 21.** "Subsidiary" means any organization in which more than 50% of the outstanding securities or voting rights representing the present right to vote for the election of directors, trustees, managers (if a limited liability company) or persons serving in a similar capacity is owned, in any combination, by one or more "named insured(s)".
- 22.** "Suit" means a civil proceeding in which damages to which this Policy applies are claimed against the "insured". "Suit" includes:
- a. An arbitration proceeding in which such damages are claimed and to which the "insured" submits with our consent; or
  - b. Any other alternative dispute resolution proceeding in which such damages are claimed and to which the "insured" submits with our consent.
- "Suit" does not include a civil proceeding seeking recognition and/or enforcement of a foreign money judgment.
- 23.** "Third party" means any entity that you engage under the terms of a written contract to perform services for you.
- 24.** "Virus" means any kind of malicious code designed to damage or destroy any part of a "computer system" (including your "electronic data") or disrupt its normal functioning.
- 25.** "Wrongful act" means the definition set forth in Insuring Agreement 6. of Section I – Insuring Agreements.







# The Society of Certified Insurance Counselors

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## Section 5

# **EXCESS LIABILITY/COMMERCIAL UMBRELLA COVERAGES**



## Excess Liability/Commercial Umbrella Coverages

### Section Goal

In this section, participants will be able to analyze an Excess Liability and a Commercial Umbrella Policy to determine whether or not the policy provides coverage, and if so, how much the policy will pay for a loss.

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### Learning Objectives

1. Using knowledge of the purpose for Excess Liability and Commercial Umbrella Policies, the participant will be able to describe the distinguishing characteristics between Excess Liability Policies and a Commercial Umbrella Policy to a client.
2. Using the knowledge of the key features of the Declarations including:
  - Self-Insured Retention (SIR), and
  - the need for concurrent dates
  - underlying insurance requirements

the participant will be able to determine and explain to a client the dollar amount, if any, the named insured is responsible for paying before insurance becomes applicable for a covered loss.

3. Using knowledge of the key elements of insuring agreements of an Excess Liability and Commercial Umbrella Policies, including:

- Dual insuring agreements
- Pay on behalf vs. indemnity
- Types of damages, defense costs, ultimate net loss
- Coverage territory

the participant will be prepared to compare and contrast the scope of the insurance coverage provided by various coverage forms, describe whom the policy protects, and explain how the limits of insurance apply for a covered loss.

4. Using knowledge of exclusions in Excess Liability and Commercial Umbrella Policies, the participant will be able to analyze a policy to determine if its coverage for various liability exposures meets the insured's needs and expectations.

5. Using knowledge of structuring Excess Liability and Commercial Umbrella Coverage, including:

- Layering options
- Mixed programs

the participant will be able to negotiate premium and provide solutions in the event of a mixed program.

## The Need for Excess Liability Coverage

### Learning Objective 1:

Using knowledge of the purpose for Excess Liability and Commercial Umbrella Policies, the participant will be able to describe the distinguishing characteristics between Excess Liability Policies and a Commercial Umbrella Policy to a client.

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### Purpose of Excess Liability/Commercial Umbrella Policies

Lawsuits have increased in both number and size of awards. Excess liability coverage provides that extra protection that a business needs in the event of a large loss. Depending on the coverage form, an Excess Liability/Commercial Umbrella Policy provides three primary purposes.

1. Provides additional limits that are excess over underlying limits of insurance

*Example:*

*An auto accident results in a settlement of \$1,800,000. An Excess Liability Policy may pay \$800,000 in excess of the \$1 million accident limit of a Business Auto Policy (BAP).*

**\$2 Million  
Excess**

**Pays \$800,000 excess of the BAP**

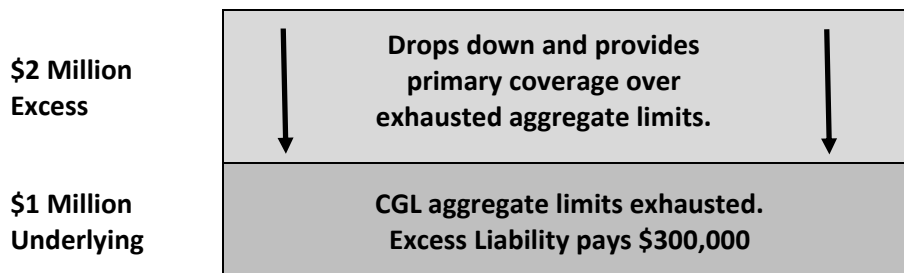
**\$1 Million  
Underlying**

**Business Auto Policy pays \$1 million**

- Provides primary coverage when an underlying policy does not respond because its aggregate limits of insurance are exhausted

**Example:**

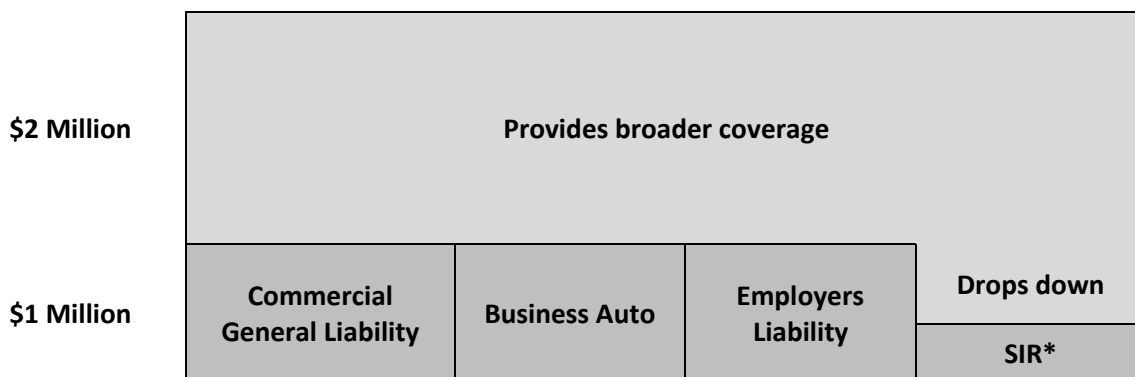
Two liability claims in the amount of \$500,000 each exhaust the General Aggregate Limit of a Commercial General Liability (CGL) Policy. A third liability claim in the same policy period in the amount of \$300,000 occurs. In the event this is a covered claim, an Excess Liability Policy will drop down to provide primary coverage and pay \$300,000.



- Provides broader coverage than the existing underlying insurance.

**Example:**

The named insured drives a company owned auto into Mexico for business and is involved in an at fault accident. The BAP does not provide coverage due to the BAP's definition of coverage territory. An Excess Liability Policy may provide a broader definition of coverage territory.



\* Broader coverage is subject to an SIR

## Excess Liability Policies Vary

Even though Insurance Services Office (ISO) and American Association of Insurance Services (AAIS) have standardized forms, many insurers still use their company specific policies which differ from insurer to insurer.

This course will focus on three types of excess liability policies:

1. Follow Form Excess Liability Insurance Policy
2. Excess Liability Insurance Policy
3. Commercial Umbrella Liability Insurance Policy

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## Distinction Between Excess Liability and Commercial Umbrella Coverage Forms

### Excess Liability Coverage Forms

1. Follow form excess liability policy characteristics
  - Same terms and conditions as the underlying policy
    - Follows the underlying policies' Insuring Agreement, Exclusions, Conditions, Definitions, etc.
    - Does NOT provide broader coverage
  - Provides additional limits excess over underlying insurance
    - Applies only to policies indicated on the Declarations
  - Replaces underlying insurance when aggregates have become exhausted
  - May be used over one or more underlying policies

#### Example of policy language

Coverage hereunder shall attach only after the insurers of the Underlying Insurance shall have paid in legal currency the full amount of the Underlying Limit for such Policy Period. Coverage hereunder shall then apply in conformance with the terms and conditions of the Primary Policy.

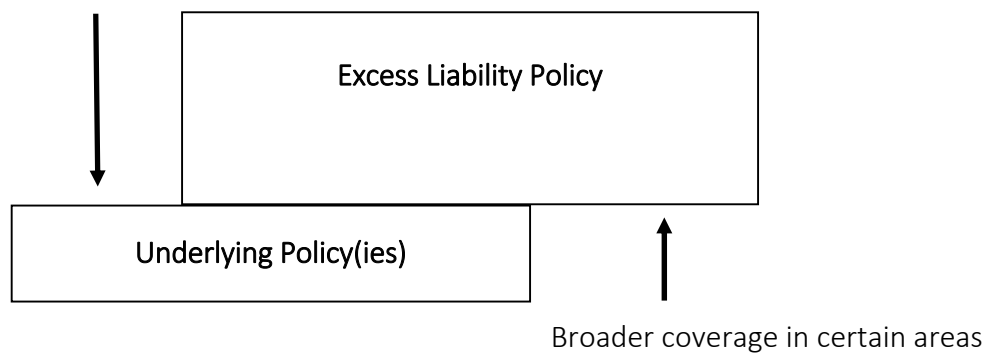
<b>Follow Form Excess Liability</b> <b>Same terms and conditions as the underlying policy(ies)</b>
<b>Underlying Policy(ies)</b>

## 2. Excess liability policy characteristics

- Has its own insuring agreement, terms and conditions
  - May be the same as some of the underlying coverages,  
  
OR
  - May be narrower (less coverage) than some of the underlying coverages,  
  
OR
  - May be broader (more coverage) than some of the underlying coverages AND also narrower in other underlying coverage areas.
- Provides additional limits excess over underlying insurance
- Replaces underlying insurance when aggregates have become exhausted
- May be used over one or more underlying policies

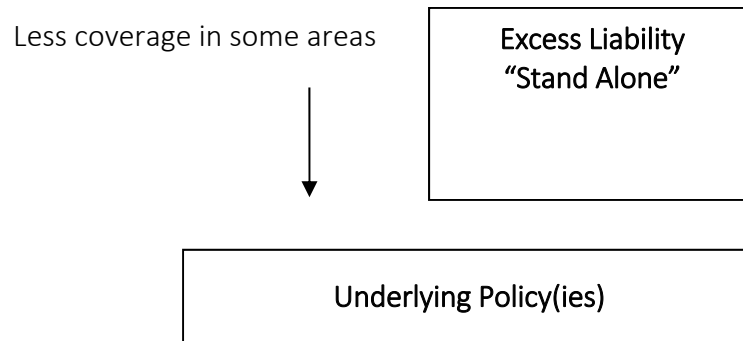


**Exhibit 1:** No coverage over certain areas of the underlying policies



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**Exhibit 2:** Some excess liability policies may not provide broader coverage and may actually be more restrictive (narrower/less coverage) in some areas.



## Commercial Umbrella Liability Policy

- Has its own insuring agreement, terms and conditions
  - Provides additional limits of liability excess over underlying insurance
  - Replaces underlying insurance when aggregates have become exhausted
  - Affords broader coverage for exposures not covered by underlying policies
- Subject to the Self-Insured Retention (SIR)

### *Examples of some areas where coverage may be broader*

*Nonowned watercraft coverage. Coverage may be expanded to nonowned watercraft beyond the size limitations found in the CGL Coverage Form (less than 26 feet) and the Business Liability section of the Businessowners Coverage Form (less than 51 feet).*

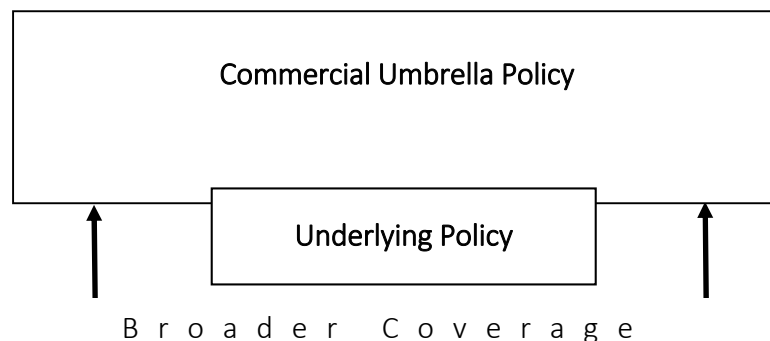
*Coverage territory. May provide worldwide or universe wide coverage.*

*Expected Or Intended Injury exclusion. Reasonable force exception may be expanded to auto situations as well as include reasonable force coverage for property damage.*

*Definition of bodily injury. May include mental anguish and mental injury.*

*Nonowned aircraft coverage. Coverage may be expanded to include nonowned aircraft chartered with a crew.*

**Exhibit:** A Commercial Umbrella Policy typically has broader coverage with fewer exclusions.



## Exhibit: Comparison of Characteristics

Characteristic	Follow Form Excess Liability	Excess Liability	Commercial Umbrella
Additional/increased limits of liability excess of the underlying	Yes	Yes	Yes
Provides primary coverage when underlying aggregate limits are exhausted	Yes	Yes	Yes
Provides broader coverage than the underlying insurance	No	Maybe	Yes
Own insuring agreement, terms and conditions	No	Yes	Yes

## Key Features of the Declarations

The Declarations page identifies important information about the policyholder such as the named insured(s), the limits of insurance, forms/endorsements, and other features. Some of those other features that are key to the application of the coverage provided under the Policy include the Self-Insured Retention, the Policy Period, and Underlying Insurance.

### Learning Objective 2:

Using the knowledge of the key features of the Declarations including:

- Self-Insured Retention (SIR), and
- the need for concurrent dates
- underlying insurance requirements

the participant will be able to determine and explain to a client the dollar amount, if any, the named insured is responsible for paying before insurance becomes applicable for a covered loss.

### Self-Insured Retention (SIR)

**SIR is the dollar amount listed in the Declarations paid by the named insured before the insurance of the Commercial Umbrella Liability Policy becomes applicable.**

**Often confused with the term deductible, but it is different**

Example

#### SECTION V – DEFINITIONS

20. "Self-insured retention" means the dollar amount listed in the Declarations that will be paid by the insured before this insurance becomes applicable only with respect to "occurrences" or offenses not covered by the "underlying insurance". The "self-insured retention" does not apply to "occurrences" or offenses which would have been covered by "underlying insurance" but for the exhaustion of applicable limits.

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**When does the SIR apply?**

The SIR applies only when a Commercial Umbrella Policy provides broader insurance protection on claims not covered by a required underlying insurance policy

**HOWEVER,**

The SIR does not apply when a Commercial Umbrella drops down over exhausted limits or when it is excess over underlying limits

**SIR Amounts Vary**

1. Insurer preference
2. Insured preference

**SIR may be written on a per occurrence basis or on a policy period basis**

## Example of Application of SIR

The named insured has a Commercial Umbrella Policy with a \$5,000,000 occurrence and aggregate limit and a \$25,000 SIR. It has the following requirements:

Schedule of Underlying Insurance:		
Commercial General Liability		
	\$2,000,000	General Aggregate
	\$2,000,000	Products-Completed Operations Aggregate
	\$1,000,000	Personal and Advertising Injury
	\$1,000,000	Each Occurrence
Business Auto Liability		
	\$1,000,000	Each Accident
Employers Liability		
Bodily injury by accident	\$ 500,000	Each Accident
Bodily injury by disease	\$ 500,000	Each Employee
Bodily injury by disease	\$ 500,000	Policy Limit

The named insured suffers a liability claim of \$500,000 that is not covered by any of the underlying policies but is covered by the Commercial Umbrella Policy.

Underlying Policies pay:	\$0
Commercial Umbrella Policy pays:	\$475,000
Named Insured pays:	\$ 25,000 SIR

## Policy Period

### The Need For Concurrency

- Concurrent dates basically mean the policy period (effective date and expiration date) of the Excess Liability/Commercial Umbrella Policy are the same as those of the underlying insurance policies.

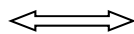
Policies with nonconcurrent dates could have occurred for various reasons, such as:

1. The Excess Liability/Commercial Umbrella was written after the underlying policies were already in force, or
  2. One of the policies may have been cancelled midterm
- The Declarations of the Excess Liability/Commercial Umbrella Policy has a Schedule of Underlying Insurance that indicates the required limits that are to be in effect at its effective date.

These underlying limits shown on the Declarations must be unimpaired at the effective date of the Excess Liability/Commercial Umbrella Policy.

In other words, the underlying limits should not have been reduced or exhausted by BI or PD occurrences that occurred prior to the effective date or by P&A Injury offenses committed prior to the effective date of the Excess Liability/Commercial Umbrella Policy.

Retained limits means  
underlying limits



Required limits must only be  
reduced from losses occurring or  
committed during the Commercial  
Umbrella's policy period

Example: CU 00 01 04 13

#### SECTION III – LIMITS OF INSURANCE

5. If there is "underlying insurance" with a policy period that is nonconcurrent with the policy period of this Commercial Liability Umbrella Coverage Part, the "retained limit(s)" will only be reduced or exhausted by payments for:
  - a. "Bodily injury" or "property damage" which occurs during the policy period of this Coverage Part; or
  - b. "Personal and advertising injury" for offenses that are committed during the policy period of this Coverage Part.

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- Nonconcurrent Dates Could Create A Potential Gap In Coverage.
  1. Required aggregates limits could have been reduced or exhausted prior to the policy period of the Excess Liability/Commercial Umbrella Policy
  2. The excess/umbrella policy will respond only when the named insured has incurred losses exceeding the required limits that occur during the excess/umbrella policy's period

### Example

The named insured has a CGL Policy with an effective date of January 1 and is written with limits of \$1,000,000 per occurrence Limit Of Insurance and a \$2,000,000 General Aggregate Limit Of Insurance. A Commercial Umbrella Policy is purchased on June 1, and it requires the CGL Policy to have a \$1,000,000 Each Occurrence Limit and a \$2,000,000 General Aggregate Limit.

In March, the named insured suffers an \$800,000 premises loss that is paid under the CGL Policy. In April, the named insured suffers a \$700,000 premises loss that is paid under the CGL Policy. In October, the named insured suffers another premises loss of \$600,000.

- The CGL Policy only pays \$500,000 for the October loss which is the remaining General Aggregate Limit.
- The Commercial Umbrella does not respond as it required a \$1,000,000 Each Occurrence Limit and a \$2,000,000 General Aggregate Limit to be in full effect on June 1.
- There is a \$100,000 gap in coverage

CGL Policy January 1	Commercial Umbrella June 1		
	March \$800,000	April \$700,000	October \$600,000



- Some Solutions for Named Insureds Who Have Policies with Nonconcurrent Dates\*
  1. Write the excess/umbrella policy for a short term. Beware: A potential gap still exists in the first policy period
  2. Cancel and rewrite the underlying policy(ies) so that the policies have concurrent dates
  3. Endorse the underlying policy to reinstate any reduced or exhausted aggregate limits – may not be practical
  4. Endorse the excess/umbrella policy with a nonconcurrency endorsement

**Note:**

Some insurers already include this verbiage in their coverage forms

**Note:**

Nonconcurrency of effective dates and expiration dates is most critical for those policies with aggregates!

- Beware of Concurrency Language Problems Between Underlying and Excess
  - Coverage triggers and definitions should be the same or broader in an excess/umbrella policy or else a gap in coverage could occur



## Knowledge Check 1

1. A named insured has an Excess Liability Policy that is written on a follow form basis. An injury occurs on a 60 foot nonowned watercraft that the named insured has rented for business reasons. A claim for bodily injury in the amount of \$25,000 is not covered under the CGL Policy. Will the Excess Liability Policy with a limit of \$1 million limit respond?
  - a. No, as it will only follow the same coverages as the underlying policy.
  - b. Yes, as it will provide broader coverage and will pay the \$25,000.
  - c. Yes, as it will provide broader coverage and will pay the \$25,000 less the SIR.
  
2. The named insured has a Commercial Umbrella Policy with \$10 million limit, a \$10,000 SIR, and the coverage territory is anywhere in the world. An employee commits a personal and advertising injury offense via the Internet against a foreign competitor. The CGL will not provide coverage as the lawsuit is filed in Mexico. Will the Commercial Umbrella Policy respond to a judgement in the amount of \$1,000,000?
  - a. No, as it will only follow the underlying coverage territory definition.
  - b. Yes, as its coverage territory definition provides broader coverage than the CGL's definition and will pay \$990,000.
  - c. Yes, as the coverage territory definition provides broader coverage than the CGL's definition and will pay \$1,000,000.
  
3. The named insured has a Commercial Umbrella Policy with \$ 1 million limit and a \$10,000 SIR. A premises liability claim occurs in the amount of \$1,500,000. The CGL pays \$1 million of this claim under its Each Occurrence Limit. How much will the Commercial Umbrella Policy pay?
  - a. Nothing. It only provides coverage when the CGL Aggregate Limits are exhausted.
  - b. \$490,000, as it provides broader coverage subject to the SIR.
  - c. \$500,000, as it is designed to provide additional limits excess over the underlying policy on a covered claim.

## Underlying Insurance

### SECTION V – DEFINITIONS

24. "Underlying insurance" means any policies of insurance listed in the Declarations under the Schedule of "underlying insurance".

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### Underlying Insurance Requirements

5

#### 1. Coverages

- Most insurers typically require CGL, Business Auto, and Employers Liability
- Other liability policies may be required for other known liability exposures, such as an Aircraft Policy, a Liquor Liability Policy, a Watercraft Policy, etc.

#### 2. Limits Of Insurance

- Limits required varies by insurer
- Some exposures require higher underlying limits
- The required limits must be in full effect at the effective date of the policy period

Schedule of Underlying Insurance:		
Commercial General Liability	\$2,000,000	General Aggregate
	\$2,000,000	Products-Completed Operations Aggregate
	\$1,000,000	Personal and Advertising Injury
	\$1,000,000	Each Occurrence
Business Auto Liability	\$1,000,000	Each Accident
Employers Liability		
Bodily injury by accident	\$ 500,000	Each Accident
Bodily injury by disease	\$ 500,000	Each Employee
Bodily injury by disease	\$ 500,000	Policy Limit

#### Note:

This example is for illustrative purposes. Insurance companies may require higher limits.

## Maintenance of/Changes to Underlying Insurance

### SECTION IV – CONDITIONS

#### 13. Maintenance Of/Changes To Underlying Insurance

Any "underlying insurance" must be maintained in full effect without reduction of coverage or limits except for the reduction of the aggregate limit in accordance with the provisions of such "underlying insurance" that results from payment of claims, settlement or judgments to which this insurance applies.

Such exhaustion or reduction is not a failure to maintain "underlying insurance". Failure to maintain "underlying insurance" will not invalidate insurance provided under this Coverage Part, but insurance provided under this Coverage Part will apply as if the "underlying insurance" were in full effect.

If there is an increase in the scope of coverage of any "underlying insurance" during the term of this policy, our liability will be no more than it would have been if there had been no such increase.

You must notify us in writing, as soon as practicable, if any "underlying insurance" is cancelled, not renewed, replaced or otherwise terminated, or if the limits or scope of coverage of any "underlying insurance" is changed.

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1. How does the Commercial Umbrella Policy respond if underlying limits are not maintained or if the underlying policy is cancelled or nonrenewed?
  - Typically, insurance applies as if the underlying insurance were in full effect
  
2. How does the Commercial Umbrella Policy respond if there is a material change to an underlying policy(ies)?
  - Some insurers require written notification if there is a material change in terms, increase in coverage, change in premium, etc.

Provides the insurance company the opportunity to underwrite any new or increased exposure and possibly charge an additional premium
  - Other insurers may be silent

3. How does the Commercial Umbrella Policy respond if there is a bankruptcy or insolvency of the underlying insurer

#### SECTION IV – CONDITIONS

##### 2. Bankruptcy

###### a. Bankruptcy Of Insured

Bankruptcy or insolvency of the insured or of the insured's estate will not relieve us of our obligations under this Coverage Part.

###### b. Bankruptcy Of Underlying Insurer

Bankruptcy or insolvency of the "underlying insurer" will not relieve us of our obligations under this Coverage Part.

However, this insurance will not replace the "underlying insurance" in the event of bankruptcy or insolvency of the "underlying insurer". This insurance will apply as if the "underlying insurance" were in full effect.

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- Typically, insurance will apply as if the underlying insurance were in full effect

[illegible]

## Exhibit – Application of Limits

Keith Manufacturing, a forklift manufacturer, has a \$10 million Commercial Umbrella Policy with a self-insured retention of \$25,000. The Policy requires unimpaired underlying limits as follows:

Commercial General Liability	\$2,000,000	General Aggregate
	\$2,000,000	Product-Completed Operations Aggregate
	\$1,000,000	Personal and Advertising Injury
	\$1,000,000	Each Occurrence
Business Auto Liability	\$1,000,000	Each Accident
Employers' Liability		
BI by accident	\$ 500,000	Each Accident
BI by disease	\$ 500,000	Each Employee
BI by disease	\$ 500,000	Policy Limit

5

### Loss Situation #1

Admitted liability claim of \$500,000 when the loss is **not covered** by any of the underlying policies and the loss **is covered** by the Commercial Umbrella Policy.

\$475,000 Commercial Umbrella
\$25,000 SIR

The Commercial Umbrella Policy will pay \$475,000 which is the amount of the loss, \$500,000, less the \$25,000 SIR. The **SIR only applies** in a situation where the underlying policy is **not applicable**. This illustrates the coverage-broadening “drop-down” feature of Commercial Umbrellas.

### Loss Situation #2

Keith erroneously maintained \$500,000 rather than the required \$1,000,000 limit on its underlying BAP. An admitted auto liability loss of \$1,250,000 has occurred. How will the loss be settled?

\$250,000 Commercial Umbrella	} \$1,000,000
\$500,000 Named Insured (Keith Manufacturing))	
\$500,000 BAP	

The BAP will pay \$500,000, its limit. The Commercial Umbrella will pay \$250,000, which is the amount of the loss, \$1,250,000, less the required underlying limit of \$1,000,000. The insured is left with \$500,000, the amount which it fell short of the required underlying limits. The Commercial Umbrella penalizes failure to maintain underlying limits, not by denying coverage, but by covering as though the limits had been maintained as required.

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## Key Elements of the Insuring Agreement

Many insurers use their own company specific coverage forms and the policy language varies greatly from insurer to insurer. So it is crucial to read the entire Policy, including the Insuring Agreement, to determine the rights, duties, and what is and is not covered. The intent of the Insuring Agreement is similar to other liability policies in that it indicates the promises the insurer makes to the policyholder and lays the foundation as to the scope of coverage provided and for whom.

### Learning Objective 3:

Using knowledge of the key elements of insuring agreements of an Excess Liability and Commercial Umbrella Policies, including:

- Dual insuring agreements
- Pay on behalf vs. indemnity
- Types of damages, defense costs, ultimate net loss
- Coverage territory

the participant will be prepared to compare and contrast the scope of the insurance coverage provided by various coverage forms, describe whom the policy protects, and explain how the limits of insurance apply for a covered loss.

## Dual Insuring Agreements

**Some carriers use the ISO type of Commercial Umbrella Coverage Form with two insuring agreements.**

1. Coverage A – BI and PD Liability
2. Coverage B – Personal and Advertising Injury Liability

### Example 1

#### Coverage A Insuring Agreement

- a. We will pay on behalf of the insured the "ultimate net loss" in excess of the "retained limit" because of "bodily injury" or "property damage" to which this insurance applies.

#### Coverage B Insuring Agreement

- a. We will pay on behalf of the insured the "ultimate net loss" in excess of the "retained limit" because of "personal and advertising injury" to which this insurance applies.



**Other carriers use a different approach.** Their approach is to differentiate the Umbrella's broader coverage from the Excess coverages.

1. Coverage E – Excess Follow Form – liability relating to underlying policies
2. Coverage U – Umbrella – for those losses not covered by underlying policies

Example 2

**Coverage E – Excess Liability**

- a. "We" will pay on behalf of the "insured" those sums in excess of "underlying insurance" for which an "insured" becomes legally obligated to pay as "damages" to which this insurance applies.

**Coverage U – Umbrella Liability**

- a. "We" will pay on behalf of the "insured" those sums in excess of:
  - 1) the "self-insured retention"; or
  - 2) other insurance, excluding insurance specifically purchased by the "insured" to apply in excess of the insurance afforded by this policy, which is available to the "insured" and provides coverage with respect to injury or damage to which this policy applies;whichever is applicable, for which an "insured" becomes legally obligated to pay as "damages" because of "bodily injury", "property damage", or "personal and advertising injury" to which this insurance applies.

**Note:**

Some policies may still exist that are written with a singular insuring agreement. Example: May cover BI, PD, and P&A Injury liability with coverage provided on both an excess and umbrella basis.

Example 3

**1. Insuring Agreement**

- a. We will pay on behalf of the insured the "ultimate net loss" in excess of the "retained limit" because of "injury or damage" to which insurance provided under this Coverage Part applies.

## Pays on Behalf of vs. Indemnify

Most Excess Liability/Commercial Umbrella Policies are written on a Pay on Behalf basis. A few policies are written on an Indemnity basis.

### Pay on behalf

#### SECTION I – COVERAGES

##### COVERAGE A – BODILY INJURY AND PROPERTY DAMAGE LIABILITY

###### 1. Insuring Agreement

- a. We will pay on behalf of the insured the "ultimate net loss" in excess of the "retained limit" because of "bodily injury" or "property damage" to which this insurance applies. We will have the right and duty to defend the insured against any "suit" seeking damages for such "bodily injury" or "property damage" when the "underlying insurance" does not provide coverage or the limits of "underlying insurance" have been exhausted. When we have no duty to defend, we will have the right to defend, or to participate in the defense of, the insured against any other "suit" seeking damages to which this insurance may apply. However, we will have no duty to defend the insured against any "suit" seeking damages for "bodily injury" or "property damage" to which this insurance does not apply. At our discretion, we may investigate any "occurrence" that may involve this insurance and settle any resultant claim or "suit" for which we have the duty to defend.

But ...

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- The insurer has stricter control of the defense, investigation, or settlements
- The insurer pays damages directly to third party (claimant) on behalf of the insured
- The insurer has the duty to defend when the underlying insurance does not provide coverage OR when the underlying limits have been exhausted BUT no coverage, no defense

## Indemnify

### 1. Strict indemnity

- Insured uses his/her own funds to cover defense costs and pays damages directly to the third party (claimant)
- Insured has control of defense and settlements
- Insurer indemnifies (reimburses) the insured until after judgment or settlement has been paid – should be a provision in the policy that indicates the period of time the insurer must reimburse, e.g., 60 days

#### Example 1

The Company will indemnify the insured for ultimate net loss (as defined herein) in excess of the retained limit because of...

### 2. Indemnity based on legal obligations to pay

- Insured still maintains control
- However, indemnity is based upon legal obligation to pay

#### Example 2

The Company agrees to indemnify the insured for ultimate net loss (as defined) which the insured shall become legally obligated to pay as damages, in excess of the underlying insurance or retained limit, because of...

## Insured Status

The insurer pays on behalf of the insured – Who qualifies as an insured?

### 1. Insuring Agreement

- a. We will pay on behalf of the insured the "ultimate net loss" in excess of the "retained limit" because of "bodily injury" or "property damage" to which this insurance applies. We will have the right and duty to defend the insured against any "suit" seeking damages for such "bodily injury" or "property damage" when the "underlying insurance" does not provide coverage or the limits of "underlying insurance" have been exhausted. When we have no duty to defend, we will have the right to defend, or to participate in the defense of, the insured against any other "suit" seeking damages to which this insurance may apply. However,.

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- Follow Form Excess Liability Policies respond according to the underlying policy terms and conditions
- The Who Is An Insured provision in an Excess Liability or Commercial Umbrella Policy is typically broader than found in the underlying policy(ies). It may expand the definition of insured to include:
  1. Those persons/organizations that are required by written contract or written agreement to have insured status
  2. Additional insureds. Some policies may automatically include any additional insureds covered under any underlying insurance

#### **BEWARE!**

Some policies may require an endorsement in order to provide additional insured status

### SECTION II – WHO IS AN INSURED

...

3. Any additional insured under any policy of "underlying insurance" will automatically be an insured under this insurance.

Subject to Section III – Limits Of Insurance, if coverage provided to the additional insured is required by a contract or agreement, the most we will pay on behalf of the additional insured is the amount of insurance:

- a. Required by the contract or agreement, less any amounts payable by any "underlying insurance"; or
- b. Available under the applicable Limits of Insurance shown in the Declarations; whichever is less.

Additional insured coverage provided by this insurance will not be broader than coverage provided by the "underlying insurance".

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## Damages Paid

**Follow Form Policies follow the underlying policy terms and conditions**

### **Excess Liability/Commercial Umbrella**

1. Pays because of “bodily injury” and “property damage” as defined
  - Definitions vary. They could be broader or narrower than found in the underlying policies.
  - **Caution!** Even a policy called a Commercial Umbrella could have narrower definitions.
  - Examples:
    - Bodily injury may be expanded to include mental anguish or mental injury
    - Property damage may not include loss of use of tangible property that is not physically injured
2. Pays because of “personal and advertising injury” as defined
  - May be on a named peril basis similar to ISO’s CGL Policy definition
  - May be an “all risk” definition
  - May define personal injury and advertising injury separately

#### **BEWARE!**

Some policies may limit the type of damages paid to compensatory damages only

#### Example

We will pay on behalf of the insured the "ultimate net loss" in excess of the "retained limit" to which the insured will become legally obligate to pay as compensatory damages because of...

## Defense

### Insuring Agreement

#### 1. Insuring Agreement

- a. We will pay on behalf of the insured the "ultimate net loss" in excess of the "retained limit" because of "bodily injury" or "property damage" to which this insurance applies. We will have the right and duty to defend the insured against any "suit" seeking damages for such "bodily injury" or "property damage" when the "underlying insurance" does not provide coverage or the limits of "underlying insurance" have been exhausted. When we have no duty to defend, we will have the right to defend, or to participate in the defense of, the insured against any other "suit" seeking damages to which this insurance may apply. However, we will have no duty to defend the insured against any "suit" seeking damages for "bodily injury" or "property damage" to which this insurance does not apply. At our discretion, we may investigate any "occurrence" that may involve this insurance and settle any resultant claim or "suit" for which we have the duty to defend. But: ...

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### Duty to Defend

Many coverage forms indicate when the insurer has the right and duty to defend. This typically applies due to the following:

1. The Excess Liability or Commercial Umbrella Policy provides coverage that the underlying insurance does not
2. The limits of the Excess Liability or Commercial Umbrella Policy underlying insurance have been exhausted

### No Duty to Defend

- There may be times when the insurer has **NO DUTY** to defend, **HOWEVER**, they still may have **THE RIGHT** to defend
- Many policies grant the insurer the right to defend or to participate in the defense of the insured to which the excess insurance may apply

#### *Example:*

*The underlying policy and the Commercial Umbrella may be written through different insurers. In the event of a large claim, the Commercial Umbrella insurer may elect to join with the underlying insurer(s) in the defense of the claim/suit*

## Who pays defense costs/expenses?

- Many Commercial Umbrella Policies provide defense coverage for any claim or suit when the underlying limits have been exhausted.
- Defense coverage included within the SIR, is often referred to as first dollar defense. The insurer will provide first dollar defense when no underlying policy provides coverage, but the Commercial Umbrella Policy does.

### Example

#### COVERAGE A – BODILY INJURY AND PROPERTY DAMAGE LIABILITY

##### 1. Insuring Agreement

- We will pay on behalf of the insured the "ultimate net loss" in excess of the "retained limit" because of "bodily injury" or "property damage" to which this insurance applies. We will have the right and duty to defend the insured against any "suit" seeking damages for such "bodily injury" or "property damage" when the "underlying insurance" does not provide coverage or the limits of "underlying insurance" have been exhausted.

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- Similar to many underlying policies, some policies provide defense coverage in addition to the limits (supplementary payments). Others include defense within the limits.

### Example

#### SUPPLEMENTARY PAYMENTS – COVERAGES A AND B

- We will pay, with respect to any claim we investigate or settle, or any "suit" against an insured we defend, when the duty to defend exists:

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### BEWARE!

Sometimes an underlying policy has defense costs and other expenses included within the limits. This can create a gap in coverage when an excess liability policy indicates that it only provides defense once the retained amounts are exhausted by actual damages paid for BI, PD, P&A Injury.

**Similar to underlying policies, if no coverage applies, no defense.**

## Ultimate Net Loss

**Some policies may use different terminology)**

**Ultimate loss is typically a defined term**

**There are varying ways an insurer will pay an ultimate net loss.**

1. All sums paid or payable in settlement or satisfaction of claims or suits

Example 1: Defense costs inside limits of insurance.

### Insuring Agreement

We will pay on behalf of the insured the "ultimate net loss" in excess of the "retained limit"...

### Definition

Ultimate Net Loss means the total sum which the Insured shall become obligated to pay as Damages and/or Defense Expenses on account of Personal Injury, Property Damage or Advertising Offense, either by final judgment against the Insured after trial or by settlement approved in writing by the Company after making proper deduction for all recoveries and salvages collectible.

- Defense costs included within limits, unless the policy has a separate defense provision.

### BEWARE!

Limits may be exhausted by defense costs leaving little or no limits available to pay a judgment/settlement



2. All sums paid or payable as “damages” in settlement or satisfaction of claims or suits

Example 2: Defense costs paid in addition to the limits.

**Insuring Agreement**

We will pay on behalf of the insured the "ultimate net loss" in excess of the "retained limit"...

**Definitions**

"Ultimate net loss" means the total sum, after reduction for recoveries or salvages collectible, that the insured becomes legally obligated to pay as damages by reason of settlement or judgments or any arbitration or other alternate dispute method entered into with our consent or the "underlying insurer's" consent.

**Supplementary Payments – Coverages A And B**

1. We will pay, with respect to any claim we investigate or settle, or any "suit" against an insured we defend, when the duty to defend exists: ...

These payments will not reduce the limits of insurance.

- Damages could be a separate defined term within the definition of ultimate net loss or within the insuring agreement.
- If the definition of either ultimate net loss or damages does not include defense costs, then defense costs are typically in addition to the limits of insurance. In other words, defense costs do not reduce the limits.

## Limits Of Insurance

The insuring agreement includes the promise to pay according to the described Limits Of Insurance.

### Example

#### 1. Insuring Agreement

...

- (1) The amount we will pay for the "ultimate net loss" is limited as described in Section III – Limits Of Insurance; and ...

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- Follow Form Excess usually tracks underlying policy

#### Note:

If underlying has an aggregate, so will the excess

- Stand-Alone Excess/Commercial Umbrella
  - Each occurrence limit
  - Aggregates limits
    - 1) May have one single-limit policy aggregate
    - 2) May have separate aggregates
    - 3) Each aggregate may apply to selected coverages

### Example: Commercial Liability Umbrella Declarations

IN RETURN FOR THE PAYMENT OF THE PREMIUM, AND SUBJECT TO ALL THE TERMS OF THIS POLICY, WE AGREE WITH YOU TO PROVIDE THE INSURANCE AS STATED IN THIS POLICY

#### LIMITS OF INSURANCE

EACH OCCURRENCE LIMIT  
(LIABILITY COVERAGE)

\$ \_\_\_\_\_

PERSONAL & ADVERTISING INJURY LIMIT

\$ \_\_\_\_\_ Any one person or organization

AGGREGATE LIMIT (LIABILITY COVERAGE)  
(except with respect to "covered autos")

\$ \_\_\_\_\_

OTHER: \_\_\_\_\_

\$ \_\_\_\_\_

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- When do limits apply?
  1. They are excess over underlying limits that have been reduced or exhausted during the policy period

**BEWARE!**  
Some excess policies require the retained underlying limits to be exhausted by actual damages, not defense costs or other supplementary damages
  2. They are excess of the SIR on a loss covered by the Commercial Umbrella Policy for a loss not covered by a required underlying policy

## Coverage Territory

### Example

#### COVERAGE A – BODILY INJURY AND PROPERTY DAMAGE LIABILITY

##### 1. Insuring Agreement

- c. 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";

#### COVERAGE B – PERSONAL AND ADVERTISING INJURY LIABILITY

##### 1. Insuring Agreement

- c. This insurance applies to "personal and advertising injury" caused by an offense arising out of your business but only if the offense was committed in the "coverage territory" during the policy period.

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- Follow Form Policies follow the underlying policy terms and conditions
- Stand-Alone or Commercial Umbrella Policies
  - May expand the definition to anywhere in the universe if policy is silent on coverage territory
  - Some policies may provide worldwide coverage; however, there may be limitations as to where the suit may be brought

### Example 1

- 4. "Coverage territory" means anywhere in the world with the exception of any country or jurisdiction which is subject to trade or other economic sanction or embargo by the United States of America.

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### Example 2

"Coverage territory" means anywhere in the world provided the insured's responsibility to pay damages is determined in a "suit" on the merits, in the United States of America (including its territories and possessions), Puerto Rico or Canada, or in a settlement we agree to.

### Example 3

#### "Coverage Territory"

- a. Under Coverage E -- Excess Liability "coverage territory" means those countries, territories, possessions, international waters, airspace, and other parts of the world that fall within the coverage territory recognized by the applicable "underlying insurance".
- b. Under Coverage U -- Umbrella Liability, "coverage territory" means the world except for any foreign country, nation, or jurisdiction upon which the United States of America has imposed an embargo or other economic sanctions.



## Knowledge Check 2

5

1. The named insured has a \$1 million Commercial Umbrella Policy with a \$10,000 SIR. A \$1,500,000 liability claim arising from completed operations occurs. The CGL is written with a \$500,000 Each Occurrence Limit instead of the required \$1,000,000 Each Occurrence Limit. How much will the Commercial Umbrella Policy pay?
  - a. Nothing, as noncompliance voided the Commercial Umbrella Coverage.
  - b. \$1,000,000, as the Commercial Umbrella will drop down and pay the additional limit owed.
  - c. \$990,000, as the Commercial Umbrella will drop down and pay the additional limits owed less the SIR.
  - d. \$500,000, as it will pay as if the required limits were in effect.
  - e. \$490,000, as it will pay as if the required limits were in effect, less the SIR.
  
2. The named insured has a \$1 million Commercial Umbrella Policy with a \$10,000 SIR. The policy is written with defense costs within the limits. A claim occurs that is not covered under any underlying policy, but it is covered under the Commercial Umbrella Policy. Defense costs are \$500,000 and the court has awarded a judgment in the amount of \$1,500,000 to the claimant. Which of the following is an accurate statement?
  - a. Policy limits will be reduced by the defense costs of \$500,000 leaving only \$500,000 available to pay the judgment.
  - b. Defense costs are in addition to the policy limits, leaving the \$1,000,000 limit to pay on the judgment.

### **Learning Objective 4:**

Using knowledge of exclusions in Excess Liability and Commercial Umbrella Policies, the participant will be able to analyze a policy to determine if its coverage for various liability exposures meets the insured's needs and expectations.

---

Exclusions and exclusionary wording vary significantly from insurer to insurer. It is crucial to understand what exclusions and/or restrictions may apply to determine if the policy provides the necessary protection needed and/or expected by an insured for its liability exposures.

- Follow Form Excess Liability Policies follow the underlying policy terms and conditions
- Where do you find exclusions and/or exclusionary wording in Excess Liability or Commercial Umbrella Policies?
  1. Named/listed in the Exclusions Section
  2. Definitions Section
  3. Insuring Agreement(s)
  4. Endorsements

### **Exclusions Section**

- Some policies provide few exclusions, thereby providing broader protection
- Other policies have similar exclusions with similar wording as found in the underlying policies OR
  - Possibly with fewer restrictions and more exceptions that broaden coverage
- Other policies have exclusions that are similar but may not have the same exceptions as found in the underlying policies, thereby providing narrower coverage than found in the underlying policy

- The Exclusions Section may include exclusions not found in the underlying policy

*Examples:*

*Punitive damages*

*ERISA/Employee benefits*

## Selected Exclusions

Following are selected exclusions that may be included in the coverage form or added by endorsement and may include wording more restrictive than found in the underlying policies. (This is not an all-inclusive list.)

- **Aircraft**
  - Liability for owned aircraft is usually excluded unless there is underlying coverage. If there is an underlying aircraft policy, check the excess to see if any limitations apply, such as size.
  - Nonowned aircraft coverage may be limited or excluded.
  - Unmanned aircraft (drones) may be excluded as part of the aircraft exclusion or may be specifically excluded by an endorsement.

*Example:*

*The ISO exclusionary endorsement CU 21 71 06 15 modifies the aircraft exclusion to include a specific paragraph for “Unmanned Aircraft.” It also adds the definition for “unmanned aircraft” as an “aircraft that is not designed, manufactured or modified after manufacture, to be controlled by a person from within or on the aircraft.”*

- **Watercraft**
  - If there is an underlying watercraft policy, check the excess policy to see if any limitations apply, such as size or body of water.

- Contractual liability
  - May not provide exceptions for “insured contracts” or if there is an exception, it may be limited.
- Liquor liability
  - May be absolute. No exceptions for host liquor or “bring your own” establishments.
- Pollution
  - May be absolute. No exceptions.
- Damage To Property
  - May not have the same exceptions.
- Damage To Your Work
  - May not have the exception for subcontractor’s work.
- Impaired property
  - May be more restrictive.
  - May not give back coverage for loss of use from sudden and accidental injury.
- Electronic data liability
  - May be absolute. No exception for bodily injury.



- Professional
  - Excess Liability or Commercial Umbrella Policies may have a “blanket” professional liability exclusion. Warning: Some insureds that have BOPs endorsed with a professional liability endorsement may incorrectly think the Excess Liability Or Commercial Umbrella automatically provides excess coverage when it may not due to the exclusion
- Uninsured motorists and underinsured motorists
- Employment-related practices

## Structuring Excess Liability/Commercial Umbrella Coverage

### Learning Objective 5:

Using knowledge of structuring Excess Liability and Commercial Umbrella Coverage, including:

- Layering options
- Mixed programs

the participant will be able to negotiate premium and provide solutions in the event of a mixed program.

### Layering Options

1. Single – one insurer writes the excess
2. Layering – insurers write excess over other insurers
3. Quota share
  - Two or more companies share a specified amount of coverage
4. Buffer layer

An excess layer written to increase the underlying policy limits to meet the requirements of an Excess Liability or Commercial Umbrella policy.

#### *Example:*

*An insurer requires \$1,000,000 Business Auto Liability limits. The named insured has difficulty finding a company to write the entire \$1,000,000 underlying. Solution: A separate monoline excess liability policy to go over the BAP.*

Commercial Umbrella Policy		
CGL	Excess Liability Policy (Buffer layer)	Employers Liability
	BAP	

## Price Determination

- Relationship to "burning layer"
  - First million most expensive. Premium typically decreases with each million.
- Underlying requirements
  - If underlying limits exceed the minimum requirements, the better the position to negotiate the premium of the "burning layer"

## Excess Liability/Commercial Umbrella Layering Options

\$19 Million Excess	\$10 Million Excess	\$10 Million Excess		\$15 Million Excess Quota Share				
	\$5 Million Excess	\$5 Million Quota Share		\$5 Million Company A	\$5 Million Company B	\$5 Million Company C		
		\$2.5 Million Company A	\$2.5 Million Company B					
	\$3 Million Excess	\$4 Million Excess		\$4 Million Excess				
	\$1 Million Excess							
\$1 Million Underlying	\$1 Million Underlying	\$1 Million Underlying		\$1 Million Underlying				

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## Review of Learning Objectives

1. Using knowledge of the purpose for Excess Liability and Commercial Umbrella Policies, the participant will be able to describe the distinguishing characteristics between Excess Liability Policies and a Commercial Umbrella Policy to a client.
2. Using the knowledge of the key features of the Declarations including:
  - Self-Insured Retention (SIR), and
  - the need for concurrent dates
  - underlying insurance requirementsthe participant will be able to determine and explain to a client the dollar amount, if any, the named insured is responsible for paying before insurance becomes applicable for a covered loss.
3. Using knowledge of the key elements of insuring agreements of an Excess Liability and Commercial Umbrella Policies, including:
  - Dual insuring agreements
  - Pay on behalf vs. indemnity
  - Types of damages, defense costs, ultimate net loss
  - Coverage territorythe participant will be able to compare and contrast the scope of the insurance coverage provided by various coverage forms, describe whom the policy protects, and explain how the limits of insurance apply for a covered loss.
4. Using knowledge of exclusions in Excess Liability and Commercial Umbrella Policies, the participant will be able to analyze a policy to determine if its coverage for various liability exposures meets the insured's needs and expectations.
5. Using knowledge of structuring Excess Liability and Commercial Umbrella Coverage, including:
  - Layering options
  - Mixed programsthe participant will be able to negotiate premium and provide solutions in the event of a mixed program.



## Knowledge Check 1 – ANSWERS

1. A named insured has an Excess Liability Policy that is written on a follow form basis. An injury occurs on a 60 foot nonowned watercraft that the named insured has rented for business reasons. A claim for bodily injury in the amount of \$25,000 is not covered under the CGL Policy. Will the Excess Liability Policy with a limit of \$1 million limit respond?
  - a. **No, as it will only follow the same coverages as the underlying policy.**
  
2. The named insured has a Commercial Umbrella Policy with \$10 million limit, a \$10,000 SIR, and the coverage territory is anywhere in the world. An employee commits a personal and advertising injury offense via the Internet against a foreign competitor. The CGL will not provide coverage as the lawsuit is filed in Mexico. Will the Commercial Umbrella Policy respond to a judgement in the amount of \$1,000,000?
  - b. **Yes, as its coverage territory definition provides broader coverage than the CGL's definition and will pay \$990,000.**
  
3. The named insured has a Commercial Umbrella Policy with \$ 1 million limit and a \$10,000 SIR. A premises liability claim occurs in the amount of \$1,500,000. The CGL pays \$1 million of this claim under its Each Occurrence Limit. How much will the Commercial Umbrella Policy pay?
  - c. **\$500,000, as it is designed to provide additional limits excess over the underlying policy on a covered claim.**



## Knowledge Check 2 – ANSWERS

1. The named insured has a \$1 million Commercial Umbrella Policy with a \$10,000 SIR. A \$1,500,000 liability claim arising from completed operations occurs. The CGL is written with a \$500,000 Each Occurrence Limit instead of the required \$1,000,000 Each Occurrence Limit. How much will the Commercial Umbrella Policy pay?
  - d. **\$500,000, as it will pay as if the required limits were in effect.**
  
2. The named insured has a \$1 million Commercial Umbrella Policy with a \$10,000 SIR. The policy is written with defense costs within the limits. A claim occurs that is not covered under any underlying policy, but it is covered under the Commercial Umbrella Policy. Defense costs are \$500,000 and the court has awarded a judgment in the amount of \$1,500,000 to the claimant. Which of the following is an accurate statement?
  - a. **Policy limits will be reduced by the defense costs of \$500,000 leaving only \$500,000 available to pay the judgment.**

## Commercial Umbrella/Excess Liability Comparison Checklist

1. Insurance Company

Admitted ☐

Non-admitted ☐

Rating? \_\_\_\_\_

2. Is the Commercial Umbrella/Excess Liability Policy with the same carrier as the underlying policies?

☐ Yes

☐ No

3. Underlying Limits and Coverages as per Application

Appropriate Limits

☐ Yes

☐ No

Are all primary and excess coverages in force?

☐ Yes

☐ No

Have changes in any underlying policies been noted and accepted by excess insurers?

☐ Yes

☐ No

4. Concurrent with Underlying?

☐ Yes

☐ No

5. Self-Insured Retention (SIR) Amount \_\_\_\_\_

Can it be changed?

☐ Yes

☐ No

At what cost or savings? \_\_\_\_\_

6. Insuring Agreement: ☐ "Pay On Behalf Of"

☐ "Indemnify" or

☐ Indemnity Based on Legal  
Obligation

7. How is "Ultimate Net Loss" defined?

Defense costs *in addition to* limits

☐

Defense costs *within* limits

☐

Defense costs *excluded*

☐

Defense *within SIR*

☐

How are defense costs of the underlying treated? \_\_\_\_\_

\_\_\_\_\_



8. If "Following Form," which underlying form does it follow?

---

9. Who Is An Insured:

Same as underlying policies

☐ Yes

☐ No

Subsidiaries of named corporations and

☐ Yes

☐ No

Subsidiaries of subsidiaries

☐ Yes

☐ No

What Newly Acquired organizations are insureds and for how long? \_\_\_\_\_

---

Same Additional Insureds as in underlying

☐ Yes

☐ No

10. What is the definition of "Bodily Injury"? \_\_\_\_\_

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11. What is the definition of "Personal Injury"? \_\_\_\_\_

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12. Coverage territory:

Occurrence in U.S., Canada, U.S. territories

☐

Occurrence anywhere in the world

☐

Suit anywhere in the world

☐

Policy silent

☐

13. Exclusions – anything unusual as compared with most excess forms? \_\_\_\_\_

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14. Does "Maintenance of Underlying Insurance" condition  
require reinstatement of Underlying Aggregates?

☐ Yes

☐ No

15. What is the wording of the "Notice of Occurrence" condition? \_\_\_\_\_

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16. Claims made:

Underlying: If underlying is "Claims Made," is excess "Claims Made"? ☐ Yes ☐ No

If underlying is "Occurrence," is excess "Occurrence"? ☐ Yes ☐ No

If "Claims Made," what is the Retroactive Date? \_\_\_\_\_

If "Claims Made," does extended reporting period correspond with extended reporting period of the Underlying? ☐ Yes ☐ No

17. Is waiver of subrogation permitted? ☐ Yes ☐ No

18. Insolvency of Underlying:

Point of attachment remains the same with insolvency of underlying insurer ☐ Yes ☐ No

Policy silent ☐ Yes ☐ No

19. Endorsements? \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

20. Are punitive damages covered? ☐ Yes ☐ No

21. Is UM/UIM covered? ☐ Yes ☐ No

Is it available? ☐ Yes ☐ No

If so, what is the cost? \_\_\_\_\_

**Disclaimer**

*This comparison checklist is a sample to be used to identify and compare important features, characteristics, and provisions of Excess Liability policies. It is not intended to be a complete list of areas of comparison for umbrella and/or excess umbrella policies.*

*Participants are encouraged to use the checklist and to modify it to suit their needs.*

## FORMS

Form Number	Form Name
CU DS 01	Commercial Liability Umbrella Declarations
CU 00 01	Commercial Liability Umbrella Coverage Form

**COMMERCIAL LIABILITY UMBRELLA DECLARATIONS**

<b>Company Name:</b>	
<b>Producer Name:</b>	
<b>Named Insured(s):</b>	
<b>Mailing Address:</b>	
<b>Policy Period</b>	
<b>From:</b>	
<b>To:</b>	At 12:01 AM (Standard Time at your mailing address shown above)

IN RETURN FOR THE PAYMENT OF THE PREMIUM, AND SUBJECT TO ALL THE TERMS OF THIS POLICY, WE AGREE WITH YOU TO PROVIDE THE INSURANCE AS STATED IN THIS POLICY.

Limits Of Insurance		
<b>Each Occurrence Limit (Liability Coverage)</b>	\$	
<b>Personal And Advertising Injury Limit</b>	\$	<b>Any One Person Or Organization</b>
<b>Aggregate Limit (Liability Coverage)</b> (except with respect to "covered autos")	\$	
<b>Other:</b>	\$	

Description Of Business	
<b>Form Of Business:</b>	
<input type="checkbox"/> Individual	<input type="checkbox"/> Partnership
<input type="checkbox"/> Limited Liability Company	<input type="checkbox"/> Joint Venture
<input type="checkbox"/> Organization, Including A Corporation (But Not Including A Partnership, Joint Venture Or Limited Liability Company)	
<b>Business Description:</b>	

All Premises You Own, Rent Or Occupy	
Location Number	Address Of All Premises You Own, Rent Or Occupy

Premium				
Subject Premium Of Employers Liability Coverage	\$	x Umbrella Factor	\$	
Subject Premium Of Commercial General Liability Coverage	\$	x Umbrella Factor	\$	
Subject Premium Of Commercial Auto (Including Auto Dealers) Coverage	\$	x Umbrella Factor	\$	
Subject Premium Of Other Coverages	\$	x Umbrella Factor	\$	
Other Premium	\$	x Umbrella Factor	\$	
Subtotal Premium			\$	
State Tax Or Other (if applicable)			\$	
Total Premium (Subject To Audit)			\$	
Premium Shown Is Payable:	At Inception		\$	
	At Each Anniversary		\$	
(If policy period is more than one year and premium is paid in annual installments.)				
Audit Period (If Applicable)	<input type="checkbox"/> Annually	<input type="checkbox"/> Semiannually	<input type="checkbox"/> Quarterly	<input type="checkbox"/> Monthly

Endorsements
Endorsements Attached To The Excess Policy

Retained Limit		
<b>1. Self-insured Retention</b>	\$	
<b>2. Schedule Of Underlying Insurance</b>		
Employers Liability		
Company:		
Policy Number:		
Policy Period:		
Minimum Applicable Limits		
Bodily Injury By Accident	\$	Each Accident
Bodily Injury By Disease	\$	Each Employee
Bodily Injury By Disease	\$	Policy Limit
	or	Each
	\$	Accident/Occurrence
<div style="display: flex; justify-content: space-between; align-items: center;"> <div> <b>Commercial General Liability</b>  Company:  Policy Number:  Policy Period:  Minimum Applicable Limits  General Aggregate \$  Products-Completed Operations Aggregate \$  Personal And Advertising Injury \$  Each Occurrence \$ </div> <div style="text-align: right;"> <input type="checkbox"/> Occurrence    <input type="checkbox"/> Claims-made </div> </div>		
<b>Commercial Auto Liability (Other Than Auto Dealers Liability)</b> Company: Policy Number: Policy Period: Minimum Applicable Limits Each Accident \$		
<b>Auto Dealers Liability</b> Company: Policy Number: Policy Period: Minimum Applicable Limits Covered Autos Liability \$ Each Accident General Liability Bodily Injury And Property Damage Liability \$ Each Accident Personal And Advertising Injury \$ Any One Person Or Organization General Liability Aggregate \$ Products And Work You Performed Aggregate \$		



# COMMERCIAL LIABILITY UMBRELLA COVERAGE FORM

Various provisions in this policy restrict coverage. Read the entire policy carefully to determine rights, duties and what is and is not covered.

Throughout this policy the words "you" and "your" refer to the Named Insured shown in the Declarations, and any other person or organization qualifying as a Named Insured under this policy. The words "we", "us" and "our" refer to the company providing this insurance.

The word "insured" means any person or organization qualifying as such under Section II – Who Is An Insured.

Other words and phrases that appear in quotation marks have special meaning. Refer to Section V – Definitions.

## SECTION I – COVERAGES

### COVERAGE A – BODILY INJURY AND PROPERTY DAMAGE LIABILITY

#### 1. Insuring Agreement

- a. We will pay on behalf of the insured the "ultimate net loss" in excess of the "retained limit" because of "bodily injury" or "property damage" to which this insurance applies. We will have the right and duty to defend the insured against any "suit" seeking damages for such "bodily injury" or "property damage" when the "underlying insurance" does not provide coverage or the limits of "underlying insurance" have been exhausted. When we have no duty to defend, we will have the right to defend, or to participate in the defense of, the insured against any other "suit" seeking damages to which this insurance may apply. However, we will have no duty to defend the insured against any "suit" seeking damages for "bodily injury" or "property damage" to which this insurance does not apply. At our discretion, we may investigate any "occurrence" that may involve this insurance and settle any resultant claim or "suit" for which we have the duty to defend. But:

- (1) The amount we will pay for the "ultimate net loss" is limited as described in Section III – Limits Of Insurance; and
- (2) Our right and duty to defend ends when we have used up the applicable limit of insurance in the payment of judgments or settlements under Coverages A or B.

No other obligation or liability to pay sums or perform acts or services is covered unless explicitly provided for under Supplementary Payments – Coverages A and B.

- b. This insurance applies to "bodily injury" or "property damage" that is subject to an applicable "retained limit". If any other limit, such as a sublimit, is specified in the "underlying insurance", this insurance does not apply to "bodily injury" or "property damage" arising out of that exposure unless that limit is specified in the Declarations under the Schedule of "underlying insurance".
- c. 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";
  - (2) The "bodily injury" or "property damage" occurs during the policy period; and
  - (3) Prior to the policy period, no insured listed under Paragraph 1.a. of Section II – Who Is An Insured and no "employee" authorized by you to give or receive notice of an "occurrence" or claim, knew that the "bodily injury" or "property damage" had occurred, in whole or in part. If such a listed insured or authorized "employee" knew, prior to the policy period, that the "bodily injury" or "property damage" occurred, then any continuation, change or resumption of such "bodily injury" or "property damage" during or after the policy period will be deemed to have been known prior to the policy period.
- d. "Bodily injury" or "property damage" which occurs during the policy period and was not, prior to the policy period, known to have occurred by any insured listed under Paragraph 1.a. of Section II – Who Is An Insured or any "employee" authorized by you to give or receive notice of an "occurrence" or claim, includes any continuation, change or resumption of that "bodily injury" or "property damage" after the end of the policy period.



- e. "Bodily injury" or "property damage" will be deemed to have been known to have occurred at the earliest time when any insured listed under Paragraph 1.a. of Section II – Who Is An Insured or any "employee" authorized by you to give or receive notice of an "occurrence" or claim:

- (1) Reports all, or any part, of the "bodily injury" or "property damage" to us or any other insurer;
- (2) Receives a written or verbal demand or claim for damages because of the "bodily injury" or "property damage"; or
- (3) Becomes aware by any other means that "bodily injury" or "property damage" has occurred or has begun to occur.

- f. Damages because of "bodily injury" include damages claimed by any person or organization for care, loss of services or death resulting at any time from the "bodily injury".

## 2. Exclusions

This insurance does not apply to:

### a. Expected Or Intended Injury

"Bodily injury" or "property damage" expected or intended from the standpoint of the insured. This exclusion does not apply to "bodily injury" resulting from the use of reasonable force to protect persons or property.

### b. Contractual Liability

"Bodily injury" or "property damage" for which the insured is obligated to pay damages by reason of the assumption of liability in a contract or agreement. This exclusion does not apply to liability for damages:

- (1) That the insured would have in the absence of the contract or agreement; or
- (2) Assumed in a contract or agreement that is an "insured contract", provided the "bodily injury" or "property damage" occurs subsequent to the execution of the contract or agreement. Solely for the purposes of liability assumed in an "insured contract", reasonable attorneys' fees and necessary litigation expenses incurred by or for a party other than an insured are deemed to be damages because of "bodily injury" or "property damage", provided:
  - (a) Liability to such party for, or for the cost of, that party's defense has also been assumed in the same "insured contract"; and

- (b) Such attorneys' fees and litigation expenses are for defense of that party against a civil or alternative dispute resolution proceeding in which damages to which this insurance applies are alleged.

### c. Liquor Liability

"Bodily injury" or "property damage" for which any insured may be held liable by reason of:

- (1) Causing or contributing to the intoxication of any person;
- (2) The furnishing of alcoholic beverages to a person under the legal drinking age or under the influence of alcohol; or
- (3) Any statute, ordinance or regulation relating to the sale, gift, distribution or use of alcoholic beverages.

This exclusion applies even if the claims against any insured allege negligence or other wrongdoing in:

- (a) The supervision, hiring, employment, training or monitoring of others by that insured; or
- (b) Providing or failing to provide transportation with respect to any person that may be under the influence of alcohol;

if the "occurrence" which caused the "bodily injury" or "property damage" involved that which is described in Paragraph (1), (2) or (3) above.

However, this exclusion applies only if you are in the business of manufacturing, distributing, selling, serving or furnishing alcoholic beverages. For the purposes of this exclusion, permitting a person to bring alcoholic beverages on your premises, for consumption on your premises, whether or not a fee is charged or a license is required for such activity, is not by itself considered the business of selling, serving or furnishing alcoholic beverages.

This exclusion does not apply to the extent that valid "underlying insurance" for the liquor liability risks described above exists or would have existed but for the exhaustion of underlying limits for "bodily injury" and "property damage". To the extent this exclusion does not apply, the insurance provided under this Coverage Part for the liquor liability risks described above will follow the same provisions, exclusions and limitations that are contained in the applicable "underlying insurance", unless otherwise directed by this insurance.

**d. Workers' Compensation And Similar Laws**

Any obligation of the insured under a workers' compensation, disability benefits or unemployment compensation law or any similar law.

**e. ERISA**

Any obligation of the insured under the Employee Retirement Income Security Act of 1974 (ERISA), and any amendments thereto or any similar federal, state or local statute.

**f. Auto Coverages**

- (1) "Bodily injury" or "property damage" arising out of the ownership, maintenance or use of any "auto" which is not a "covered auto"; or
- (2) Any loss, cost or expense payable under or resulting from any first-party physical damage coverage; no-fault law; personal injury protection or auto medical payments coverage; or uninsured or underinsured motorist law.

**g. Employer's Liability**

"Bodily injury" to:

- (1) An "employee" of the insured arising out of and in the course of:
  - (a) Employment by the insured; or
  - (b) Performing duties related to the conduct of the insured's business; or
- (2) The spouse, child, parent, brother or sister of that "employee" as a consequence of Paragraph (1) above.

This exclusion applies whether the insured may be liable as an employer or in any other capacity, and to any obligation to share damages with or repay someone else who must pay damages because of the injury.

This exclusion does not apply to liability assumed by the insured under an "insured contract".

With respect to injury arising out of a "covered auto", this exclusion does not apply to "bodily injury" to domestic "employees" not entitled to workers' compensation benefits. For the purposes of this insurance, a domestic "employee" is a person engaged in household or domestic work performed principally in connection with a residence premises.

This exclusion does not apply to the extent that valid "underlying insurance" for the employer's liability risks described above exists or would have existed but for the exhaustion of underlying limits for "bodily injury". To the extent this exclusion does not apply, the insurance provided under this Coverage Part for the employer's liability risks described above will follow the same provisions, exclusions and limitations that are contained in the applicable "underlying insurance", unless otherwise directed by this insurance.

**h. Employment-related Practices**

"Bodily injury" to:

- (1) A person arising out of any:
  - (a) Refusal to employ that person;
  - (b) Termination of that person's employment; or
  - (c) Employment-related practices, policies, acts or omissions, such as coercion, demotion, evaluation, reassignment, discipline, defamation, harassment, humiliation, discrimination or malicious prosecution directed at that person; or
- (2) The spouse, child, parent, brother or sister of that person as a consequence of "bodily injury" to that person at whom any of the employment-related practices described in Paragraph (a), (b), or (c) above is directed.

This exclusion applies whether the injury-causing event described in Paragraph (a), (b) or (c) above occurs before employment, during employment or after employment of that person.

This exclusion applies whether the insured may be liable as an employer or in any other capacity, and to any obligation to share damages with or repay someone else who must pay damages because of the injury.

**i. Pollution**

- (1) "Bodily injury" or "property damage" which would not have occurred in whole or part but for the actual, alleged or threatened discharge, dispersal, seepage, migration, release or escape of "pollutants" at any time; or
- (2) "Pollution cost or expense".

This exclusion does not apply if valid "underlying insurance" for the pollution liability risks described above exists or would have existed but for the exhaustion of underlying limits for "bodily injury" and "property damage". To the extent this exclusion does not apply, the insurance provided under this Coverage Part for the pollution risks described above will follow the same provisions, exclusions and limitations that are contained in the applicable "underlying insurance", unless otherwise directed by this insurance.

**j. Aircraft Or Watercraft**

"Bodily injury" or "property damage" arising out of the ownership, maintenance, use or entrustment to others of any aircraft or watercraft owned or operated by or rented or loaned to any insured. Use includes operation and "loading or unloading".

This exclusion applies even if the claims against any insured allege negligence or other wrongdoing in the supervision, hiring, employment, training or monitoring of others by that insured, if the "occurrence" which caused the "bodily injury" or "property damage" involved the ownership, maintenance, use or entrustment to others of any aircraft or watercraft that is owned or operated by or rented or loaned to any insured.

This exclusion does not apply to:

- (1) A watercraft while ashore on premises you own or rent;
- (2) A watercraft you do not own that is:
  - (a) Less than 50 feet long; and
  - (b) Not being used to carry persons or property for a charge;
- (3) Liability assumed under any "insured contract" for the ownership, maintenance or use of aircraft or watercraft;
- (4) The extent that valid "underlying insurance" for the aircraft or watercraft liability risks described above exists or would have existed but for the exhaustion of underlying limits for "bodily injury" or "property damage". To the extent this exclusion does not apply, the insurance provided under this Coverage Part for the aircraft or watercraft risks described above will follow the same provisions, exclusions and limitations that are contained in the "underlying insurance", unless otherwise directed by this insurance; or

(5) Aircraft that is:

- (a) Chartered by, loaned to, or hired by you with a paid crew; and
- (b) Not owned by any insured.

**k. Racing Activities**

"Bodily injury" or "property damage" arising out of the use of "mobile equipment" or "autos" in, or while in practice for, or while being prepared for, any prearranged professional or organized racing, speed, demolition, or stunting activity or contest.

**l. War**

"Bodily injury" or "property damage", however caused, arising, directly or indirectly, out of:

- (1) War, including undeclared or civil war;
- (2) Warlike action by a military force, including action in hindering or defending against an actual or expected attack, by any government, sovereign or other authority using military personnel or other agents; or
- (3) Insurrection, rebellion, revolution, usurped power, or action taken by governmental authority in hindering or defending against any of these.

**m. Damage To Property**

"Property damage" to:

- (1) Property:
  - (a) You own, rent, or occupy, including any costs or expenses incurred by you, or any other person, organization or entity, for repair, replacement, enhancement, restoration or maintenance of such property for any reason, including prevention of injury to a person or damage to another's property; or
  - (b) Owned or transported by the insured and arising out of the ownership, maintenance or use of a "covered auto".
- (2) Premises you sell, give away or abandon, if the "property damage" arises out of any part of those premises;
- (3) Property loaned to you;
- (4) Personal property in the care, custody or control of the insured;
- (5) That particular part of real property on which you or any contractors or subcontractors working directly or indirectly on your behalf are performing operations, if the "property damage" arises out of those operations; or

- (6) That particular part of any property that must be restored, repaired or replaced because "your work" was incorrectly performed on it.

Paragraph (2) of this exclusion does not apply if the premises are "your work" and were never occupied, rented or held for rental by you.

Paragraphs (1)(b), (3), (4), (5) and (6) of this exclusion do not apply to liability assumed under a sidetrack agreement.

Paragraphs (3) and (4) of this exclusion do not apply to liability assumed under a written Trailer Interchange agreement.

Paragraph (6) of this exclusion does not apply to "property damage" included in the "products-completed operations hazard".

**n. Damage To Your Product**

"Property damage" to "your product" arising out of it or any part of it.

**o. Damage To Your Work**

"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.

**p. Damage To Impaired Property Or Property Not Physically Injured**

"Property damage" to "impaired property" or property that has not been physically injured, arising out of:

- (1) A defect, deficiency, inadequacy or dangerous condition in "your product" or "your work"; or
- (2) A delay or failure by you or anyone acting on your behalf to perform a contract or agreement in accordance with its terms.

This exclusion does not apply to the loss of use of other property arising out of sudden and accidental physical injury to "your product" or "your work" after it has been put to its intended use.

**q. Recall Of Products, Work Or Impaired Property**

Damages claimed for any loss, cost or expense incurred by you or others for the loss of use, withdrawal, recall, inspection, repair, replacement, adjustment, removal or disposal of:

- (1) "Your product";
- (2) "Your work"; or

- (3) "Impaired property";

if such product, work, or property is withdrawn or recalled from the market or from use by any person or organization because of a known or suspected defect, deficiency, inadequacy or dangerous condition in it.

**r. Personal And Advertising Injury**

"Bodily injury" arising out of "personal and advertising injury".

**s. Professional Services**

"Bodily injury" or "property damage" due to rendering of or failure to render any professional service. This includes but is not limited to:

- (1) Legal, accounting or advertising services;
- (2) Preparing, approving, or failing to prepare or approve, maps, shop drawings, opinions, reports, surveys, field orders, change orders or drawings or specifications;
- (3) Inspection, supervision, quality control, architectural or engineering activities done by or for you on a project on which you serve as construction manager;
- (4) Engineering services, including related supervisory or inspection services;
- (5) Medical, surgical, dental, X-ray or nursing services treatment, advice or instruction;
- (6) Any health or therapeutic service treatment, advice or instruction;
- (7) Any service, treatment, advice or instruction for the purpose of appearance or skin enhancement, hair removal or replacement, or personal grooming or therapy;
- (8) Any service, treatment, advice or instruction relating to physical fitness, including service, treatment, advice or instruction in connection with diet, cardiovascular fitness, bodybuilding or physical training programs;
- (9) Optometry or optical or hearing aid services including the prescribing, preparation, fitting, demonstration or distribution of ophthalmic lenses and similar products or hearing aid devices;
- (10) Body piercing services;
- (11) Services in the practice of pharmacy;
- (12) Law enforcement or firefighting services; and
- (13) Handling, embalming, disposal, burial, cremation or disinterment of dead bodies.

This exclusion applies even if the claims against any insured allege negligence or other wrongdoing in the supervision, hiring, employment, training or monitoring of others by that insured, if the "occurrence" which caused the "bodily injury" or "property damage", involved the rendering of or failure to render any professional service.

**t. Electronic Data**

Damages arising out of the loss of, loss of use of, damage to, corruption of, inability to access or inability to manipulate electronic data.

However, this exclusion does not apply to liability for damages because of "bodily injury".

As used in this exclusion, electronic data means information, facts or programs stored as or on, created or used on, or transmitted to or from computer software, including systems and applications software, hard or floppy disks, CD-ROMs, tapes, drives, cells, data processing devices or any other media which are used with electronically controlled equipment.

This exclusion does not apply if valid "underlying insurance" for the electronic data risks described above exists or would have existed but for the exhaustion of underlying limits for "bodily injury" and "property damage". The insurance provided under this Coverage Part will follow the same provisions, exclusions and limitations that are contained in the applicable "underlying insurance", unless otherwise directed by this insurance.

**u. Recording And Distribution Of Material Or Information In Violation Of Law**

"Bodily injury" or "property damage" arising directly or indirectly out of any action or omission that violates or is alleged to violate:

- (1) The Telephone Consumer Protection Act (TCPA), including any amendment of or addition to such law;
- (2) The CAN-SPAM Act of 2003, including any amendment of or addition to such law;
- (3) The Fair Credit Reporting Act (FCRA), and any amendment of or addition to such law, including the Fair and Accurate Credit Transactions Act (FACTA); or
- (4) Any federal, state or local statute, ordinance or regulation, other than the TCPA, CAN-SPAM Act of 2003 or FCRA and their amendments and additions, that addresses, prohibits, or limits the printing, dissemination, disposal, collecting, recording, sending, transmitting, communicating or distribution of material or information.

**COVERAGE B – PERSONAL AND ADVERTISING INJURY LIABILITY**

**1. Insuring Agreement**

- a. We will pay on behalf of the insured the "ultimate net loss" in excess of the "retained limit" because of "personal and advertising injury" to which this insurance applies. We will have the right and duty to defend the insured against any "suit" seeking damages for such "personal and advertising injury" when the "underlying insurance" does not provide coverage or the limits of "underlying insurance" have been exhausted. When we have no duty to defend, we will have the right to defend, or to participate in the defense of, the insured against any other "suit" seeking damages to which this insurance may apply. However, we will have no duty to defend the insured against any "suit" seeking damages for "personal and advertising injury" to which this insurance does not apply. At our discretion, we may investigate any offense that may involve this insurance and settle any resultant claim or "suit" for which we have the duty to defend. But:

- (1) The amount we will pay for the "ultimate net loss" is limited as described in Section III – Limits Of Insurance; and
- (2) Our right and duty to defend end when we have used up the applicable limit of insurance in the payment of judgments or settlements under Coverages A or B.

No other obligation or liability to pay sums or perform acts or services is covered unless explicitly provided for under Supplementary Payments – Coverages A and B.

- b. This insurance applies to "personal and advertising injury" that is subject to an applicable "retained limit". If any other limit, such as a sublimit, is specified in the "underlying insurance", this insurance does not apply to "personal and advertising injury" arising out of that exposure unless that limit is specified in the Declarations under the Schedule of "underlying insurance".
- c. This insurance applies to "personal and advertising injury" caused by an offense arising out of your business but only if the offense was committed in the "coverage territory" during the policy period.

## 2. Exclusions

This insurance does not apply to:

### a. "Personal and advertising injury":

#### (1) Knowing Violation Of Rights Of Another

Caused by or at the direction of the insured with the knowledge that the act would violate the rights of another and would inflict "personal and advertising injury".

#### (2) Material Published With Knowledge Of Falsity

Arising out of oral or written publication, in any manner, of material, if done by or at the direction of the insured with knowledge of its falsity.

#### (3) Material Published Prior To Policy Period

Arising out of oral or written publication, in any manner, of material whose first publication took place before the beginning of the policy period.

#### (4) Criminal Acts

Arising out of a criminal act committed by or at the direction of the insured.

#### (5) Contractual Liability

For which the insured has assumed liability in a contract or agreement. This exclusion does not apply to:

- (a) Liability for damages that the insured would have in the absence of the contract or agreement.
- (b) Liability for false arrest, detention or imprisonment assumed in a contract or agreement.

#### (6) Breach Of Contract

Arising out of a breach of contract, except an implied contract to use another's advertising idea in your "advertisement".

#### (7) Quality Or Performance Of Goods – Failure To Conform To Statements

Arising out of the failure of goods, products or services to conform with any statement of quality or performance made in your "advertisement".

#### (8) Wrong Description Of Prices

Arising out of the wrong description of the price of goods, products or services stated in your "advertisement".

#### (9) Infringement Of Copyright, Patent, Trademark Or Trade Secret

Arising out of the infringement of copyright, patent, trademark, trade secret or other intellectual property rights. Under this exclusion, such other intellectual property rights do not include the use of another's advertising idea in your "advertisement".

However, this exclusion does not apply to infringement, in your "advertisement", of copyright, trade dress or slogan.

#### (10) Insureds In Media And Internet Type Businesses

Committed by an insured whose business is:

- (a) Advertising, broadcasting, publishing or telecasting;
- (b) Designing or determining content of web sites for others; or
- (c) An Internet search, access, content or service provider.

However, this exclusion does not apply to Paragraphs 14.a., b. and c. of "personal and advertising injury" under the Definitions section.

For the purposes of this exclusion, the placing of frames, borders or links, or advertising, for you or others anywhere on the Internet, is not by itself, considered the business of advertising, broadcasting, publishing or telecasting.

#### (11) Electronic Chatrooms Or Bulletin Boards

Arising out of an electronic chatroom or bulletin board the insured hosts, owns, or over which the insured exercises control.

#### (12) Unauthorized Use Of Another's Name Or Product

Arising out of the unauthorized use of another's name or product in your e-mail address, domain name or metatag, or any other similar tactics to mislead another's potential customers.

#### (13) Pollution

Arising out of the actual, alleged or threatened discharge, dispersal, seepage, migration, release or escape of "pollutants" at any time.

**(14) Employment-related Practices**

To:

- (a) A person arising out of any:
  - (i) Refusal to employ that person;
  - (ii) Termination of that person's employment; or
  - (iii) Employment-related practices, policies, acts or omissions, such as coercion, demotion, evaluation, reassignment, discipline, defamation, harassment, humiliation, discrimination or malicious prosecution directed at that person; or
- (b) The spouse, child, parent, brother or sister of that person as a consequence of "personal and advertising injury" to that person at whom any of the employment-related practices described in Paragraph (i), (ii) or (iii) above is directed.

This exclusion applies whether the injury-causing event described in Paragraph (i), (ii) or (iii) above occurs before employment, during employment or after employment of that person.

This exclusion applies whether the insured may be liable as an employer or in any other capacity, and to any obligation to share damages with or repay someone else who must pay damages because of the injury.

**(15) Professional Services**

Arising out of the rendering of or failure to render any professional service. This includes but is not limited to:

- (a) Legal, accounting or advertising services;
- (b) Preparing, approving, or failing to prepare or approve, maps, shop drawings, opinions, reports, surveys, field orders, change orders or drawings or specifications;
- (c) Inspection, supervision, quality control, architectural or engineering activities done by or for you on a project on which you serve as construction manager;
- (d) Engineering services, including related supervisory or inspection services;
- (e) Medical, surgical, dental, X-ray or nursing services treatment, advice or instruction;

(f) Any health or therapeutic service treatment, advice or instruction;

(g) Any service, treatment, advice or instruction for the purpose of appearance or skin enhancement, hair removal or replacement, or personal grooming or therapy;

(h) Any service, treatment, advice or instruction relating to physical fitness, including service, treatment, advice or instruction in connection with diet, cardiovascular fitness, bodybuilding or physical training programs;

(i) Optometry or optical or hearing aid services including the prescribing, preparation, fitting, demonstration or distribution of ophthalmic lenses and similar products or hearing aid devices;

(j) Body piercing services;

(k) Services in the practice of pharmacy;

(l) Law enforcement or firefighting services; and

(m) Handling, embalming, disposal, burial, cremation or disinterment of dead bodies.

This exclusion applies even if the claims against any insured allege negligence or other wrongdoing in the supervision, hiring, employment, training or monitoring of others by that insured, if the offense which caused the "personal and advertising injury", involved the rendering of or failure to render any professional service.

**(16) War**

However caused, arising, directly or indirectly, out of:

(a) War, including undeclared or civil war;

(b) Warlike action by a military force, including action in hindering or defending against an actual or expected attack, by any government, sovereign or other authority using military personnel or other agents; or

(c) Insurrection, rebellion, revolution, usurped power, or action taken by governmental authority in hindering or defending against any of these.

**(17) Recording And Distribution Of Material Or Information In Violation Of Law**

Arising directly or indirectly out of any action or omission that violates or is alleged to violate:

- (a)** The Telephone Consumer Protection Act (TCPA), including any amendment of or addition to such law;
- (b)** The CAN-SPAM Act of 2003, including any amendment of or addition to such law;
- (c)** The Fair Credit Reporting Act (FCRA), and any amendment of or addition to such law, including the Fair and Accurate Credit Transactions Act (FACTA); or
- (d)** Any federal, state or local statute, ordinance or regulation, other than the TCPA, CAN-SPAM Act of 2003 or FCRA and their amendments and additions, that addresses, prohibits, or limits the printing, dissemination, disposal, collecting, recording, sending, transmitting, communicating or distribution of material or information.

**b.** "Pollution cost or expense".

**SUPPLEMENTARY PAYMENTS – COVERAGES A AND B**

- 1.** We will pay, with respect to any claim we investigate or settle, or any "suit" against an insured we defend, when the duty to defend exists:
  - a.** All expenses we incur.
  - b.** Up to \$2,000 for cost of bail bonds (including bonds for related traffic law violations) required because of an "occurrence" we cover. We do not have to furnish these bonds.
  - c.** The cost of bonds to release attachments, but only for bond amounts within the applicable limit of insurance. We do not have to furnish these bonds.
  - d.** All reasonable expenses incurred by the insured at our request to assist us in the investigation or defense of the claim or "suit", including actual loss of earnings up to \$250 a day because of time off from work.
  - e.** All court costs taxed against the insured in the "suit". However, these payments do not include attorneys' fees or attorneys' expenses taxed against the insured.

**f.** Prejudgment interest awarded against the insured on that part of the judgment we pay. If we make an offer to pay the applicable limit of insurance, we will not pay any prejudgment interest based on that period of time after the offer.

- g.** All interest on the full amount of any judgment that accrues after entry of the judgment and before we have paid, offered to pay, or deposited in court the part of the judgment that is within the applicable limit of insurance.

These payments will not reduce the limits of insurance.

- 2.** When we have the right but not the duty to defend the insured and elect to participate in the defense, we will pay our own expenses but will not contribute to the expenses of the insured or the "underlying insurer".
- 3.** If we defend an insured against a "suit" and an indemnitee of the insured is also named as a party to the "suit", we will defend that indemnitee if all of the following conditions are met:

- a.** The "suit" against the indemnitee seeks damages for which the insured has assumed the liability of the indemnitee in a contract or agreement that is an "insured contract";
- b.** This insurance applies to such liability assumed by the insured;
- c.** The obligation to defend, or the cost of the defense of, that indemnitee, has also been assumed by the insured in the same "insured contract";
- d.** The allegations in the "suit" and the information we know about the "occurrence" are such that no conflict appears to exist between the interests of the insured and the interests of the indemnitee;
- e.** The indemnitee and the insured ask us to conduct and control the defense of that indemnitee against such "suit" and agree that we can assign the same counsel to defend the insured and the indemnitee; and
- f.** The indemnitee:

**(1)** Agrees in writing to:

- (a)** Cooperate with us in the investigation, settlement or defense of the "suit";
- (b)** Immediately send us copies of any demands, notices, summonses or legal papers received in connection with the "suit";
- (c)** Notify any other insurer whose coverage is available to the indemnitee; and



- (d) Cooperate with us with respect to coordinating other applicable insurance available to the indemnitee; and
- (2) Provides us with written authorization to:
  - (a) Obtain records and other information related to the "suit"; and
  - (b) Conduct and control the defense of the indemnitee in such "suit".

So long as the above conditions are met, attorneys' fees incurred by us in the defense of that indemnitee, necessary litigation expenses incurred by us and necessary litigation expenses incurred by the indemnitee at our request will be paid as Supplementary Payments. Notwithstanding the provisions of Paragraph 2.b.(2) of Section I – Coverage A – Bodily Injury And Property Damage Liability, such payments will not be deemed to be damages for "bodily injury" and "property damage" and will not reduce the limits of insurance.

Our obligation to defend an insured's indemnitee and to pay for attorneys' fees and necessary litigation expenses as Supplementary Payments ends when we have used up the applicable limit of insurance in the payment of judgments or settlements or the conditions set forth above, or the terms of the agreement described in Paragraph f. above, are no longer met.

## SECTION II – WHO IS AN INSURED

1. Except for liability arising out of the ownership, maintenance or use of "covered autos":
  - a. If you are designated in the Declarations as:
    - (1) An individual, you and your spouse are insureds, but only with respect to the conduct of a business of which you are the sole owner.
    - (2) A partnership or joint venture, you are an insured. Your members, your partners, and their spouses are also insureds, but only with respect to the conduct of your business.
    - (3) A limited liability company, you are an insured. Your members are also insureds, but only with respect to the conduct of your business. Your managers are insureds, but only with respect to their duties as your managers.
    - (4) An organization other than a partnership, joint venture or limited liability company, you are an insured. Your "executive officers" and directors are insureds, but only with respect to their duties as your officers or directors. Your stockholders are also insureds, but only with respect to their liability as stockholders.

- (5) A trust, you are an insured. Your trustees are also insureds, but only with respect to their duties as trustees.

### b. Each of the following is also an insured:

- (1) Your "volunteer workers" only while performing duties related to the conduct of your business, or your "employees", other than either your "executive officers" (if you are an organization other than a partnership, joint venture or limited liability company) or your managers (if you are a limited liability company), but only for acts within the scope of their employment by you or while performing duties related to the conduct of your business. However, none of these "employees" or "volunteer workers" are insureds for:

- (a) "Bodily injury" or "personal and advertising injury":

- (i) To you, to your partners or members (if you are a partnership or joint venture), to your members (if you are a limited liability company), to a co-"employee" in the course of his or her employment or performing duties related to the conduct of your business or to your other "volunteer workers" while performing duties related to the conduct of your business;

- (ii) To the spouse, child, parent, brother or sister of that co-"employee" or "volunteer worker" as a consequence of Paragraph (a)(i) above; or

- (iii) For which there is any obligation to share damages with or repay someone else who must pay damages because of the injury described in Paragraph (a)(i) or (ii) above.

- (b) "Property damage" to property:

- (i) Owned, occupied or used by;

- (ii) Rented to, in the care, custody or control of, or over which physical control is being exercised for any purpose by;

you, any of your "employees", "volunteer workers", any partner or member (if you are a partnership or joint venture), or any member (if you are a limited liability company).

- (2) Any person (other than your "employee" or "volunteer worker"), or any organization while acting as your real estate manager.

- (3) Any person or organization having proper temporary custody of your property if you die, but only:
    - (a) With respect to liability arising out of the maintenance or use of that property; and
    - (b) Until your legal representative has been appointed.
  - (4) Your legal representative if you die, but only with respect to duties as such. That representative will have all your rights and duties under this Coverage Part.
  - c. Any organization you newly acquire or form, other than a partnership, joint venture or limited liability company, and over which you maintain ownership or majority interest, will qualify as a Named Insured if there is no other similar insurance available to that organization. However:
    - (1) Coverage under this provision is afforded only until the 90th day after you acquire or form the organization or the end of the policy period, whichever is earlier;
    - (2) Coverage **A** does not apply to "bodily injury" or "property damage" that occurred before you acquired or formed the organization; and
    - (3) Coverage **B** does not apply to "personal and advertising injury" arising out of an offense committed before you acquired or formed the organization.
2. Only with respect to liability arising out of the ownership, maintenance or use of "covered autos":
    - a. You are an insured.
    - b. Anyone else while using with your permission a "covered auto" you own, hire or borrow is also an insured except:
      - (1) The owner or anyone else from whom you hire or borrow a "covered auto". This exception does not apply if the "covered auto" is a trailer or semitrailer connected to a "covered auto" you own.
      - (2) Your "employee" if the "covered auto" is owned by that "employee" or a member of his or her household.
      - (3) Someone using a "covered auto" while he or she is working in a business of selling, servicing, repairing, parking or storing "autos" unless that business is yours.
    - (4) Anyone other than your "employees", partners (if you are a partnership), members (if you are a limited liability company), or a lessee or borrower or any of their "employees", while moving property to or from a "covered auto".
    - (5) A partner (if you are a partnership), or a member (if you are a limited liability company) for a "covered auto" owned by him or her or a member of his or her household.
    - (6) "Employees" with respect to "bodily injury" to:
      - (a) Any fellow "employee" of the insured arising out of and in the course of the fellow "employee's" employment or while performing duties related to the conduct of your business; or
      - (b) The spouse, child, parent, brother or sister of that fellow "employee" as a consequence of Paragraph (a) above.
    - c. Anyone liable for the conduct of an insured described above is also an insured, but only to the extent of that liability.
  3. Any additional insured under any policy of "underlying insurance" will automatically be an insured under this insurance.
 

Subject to Section III – Limits Of Insurance, if coverage provided to the additional insured is required by a contract or agreement, the most we will pay on behalf of the additional insured is the amount of insurance:

    - a. Required by the contract or agreement, less any amounts payable by any "underlying insurance"; or
    - b. Available under the applicable Limits of Insurance shown in the Declarations; whichever is less.

Additional insured coverage provided by this insurance will not be broader than coverage provided by the "underlying insurance".

No person or organization is an insured with respect to the conduct of any current or past partnership, joint venture or limited liability company that is not shown as a Named Insured in the Declarations.

### SECTION III – LIMITS OF INSURANCE

1. The Limits of Insurance shown in the Declarations and the rules below fix the most we will pay regardless of the number of:
  - a. Insureds;
  - b. Claims made, "suits" brought, or number of vehicles involved; or
  - c. Persons or organizations making claims or bringing "suits".
2. The Aggregate Limit is the most we will pay for the sum of all "ultimate net loss" under:
  - a. Coverage A, except "ultimate net loss" because of "bodily injury" or "property damage" arising out of the ownership, maintenance or use of a "covered auto"; and
  - b. Coverage B.
3. Subject to Paragraph 2. above, the Each Occurrence Limit is the most we will pay for the sum of all "ultimate net loss" under Coverage A because of all "bodily injury" and "property damage" arising out of any one "occurrence".
4. Subject to Paragraph 2. above, the Personal And Advertising Injury Limit is the most we will pay under Coverage B for the sum of all "ultimate net loss" because of all "personal and advertising injury" sustained by any one person or organization.
5. If there is "underlying insurance" with a policy period that is nonconcurrent with the policy period of this Commercial Liability Umbrella Coverage Part, the "retained limit(s)" will only be reduced or exhausted by payments for:
  - a. "Bodily injury" or "property damage" which occurs during the policy period of this Coverage Part; or
  - b. "Personal and advertising injury" for offenses that are committed during the policy period of this Coverage Part.

However, if any "underlying insurance" is written on a claims-made basis, the "retained limit(s)" will only be reduced or exhausted by claims for that insurance that are made during the policy period, or any Extended Reporting Period, of this Coverage Part.

The Aggregate Limit, as described in Paragraph 2. above, applies separately to each consecutive annual period and to any remaining period of less than 12 months, starting with the beginning of the policy period shown in the Declarations, unless the policy period is extended after issuance for an additional period of less than 12 months. In that case, the additional period will be deemed part of the last preceding period for purposes of determining the Limits of Insurance.

### SECTION IV – CONDITIONS

#### 1. Appeals

If the "underlying insurer" or insured elects not to appeal a judgment in excess of the "retained limit", we may do so at our own expense. We will also pay for taxable court costs, pre- and postjudgment interest and disbursements associated with such appeal. In no event will this provision increase our liability beyond the applicable Limits of Insurance described in Section III – Limits Of Insurance.

#### 2. Bankruptcy

##### a. Bankruptcy Of Insured

Bankruptcy or insolvency of the insured or of the insured's estate will not relieve us of our obligations under this Coverage Part.

##### b. Bankruptcy Of Underlying Insurer

Bankruptcy or insolvency of the "underlying insurer" will not relieve us of our obligations under this Coverage Part.

However, this insurance will not replace the "underlying insurance" in the event of bankruptcy or insolvency of the "underlying insurer". This insurance will apply as if the "underlying insurance" were in full effect.

#### 3. Duties In The Event Of Occurrence, Offense, Claim Or Suit

- a. You must see to it that we are notified as soon as practicable of an "occurrence" or an offense, regardless of the amount, which may result in a claim. To the extent possible, notice should include:

- (1) How, when and where the "occurrence" or offense took place;
- (2) The names and addresses of any injured persons and witnesses; and
- (3) The nature and location of any injury or damage arising out of the "occurrence" or offense.

- b. If a claim is made or "suit" is brought against any insured, you must:

- (1) Immediately record the specifics of the claim or "suit" and the date received; and
- (2) Notify us as soon as practicable.

You must see to it that we receive written notice of the claim or "suit" as soon as practicable.

- c. You and any other involved insured must:

- (1) Immediately send us copies of any demands, notices, summonses or legal papers received in connection with the claim or "suit";

- (2) Authorize us to obtain records and other information;
- (3) Cooperate with us in the investigation or settlement of the claim or defense against the "suit"; and
- (4) Assist us, upon our request, in the enforcement of any right against any person or organization which may be liable to the insured because of injury or damage to which this insurance may also apply.

d. No insured will, except at that insured's own cost, voluntarily make a payment, assume any obligation, or incur any expense, other than for first aid, without our consent.

#### **4. Legal Action Against Us**

No person or organization has a right under this Coverage Part:

- a. To join us as a party or otherwise bring us into a "suit" asking for damages from an insured; or
- b. To sue us on this Coverage Part unless all of its terms have been fully complied with.

A person or organization may sue us to recover on an agreed settlement or on a final judgment against an insured; but we will not be liable for damages that are not payable under the terms of this Coverage Part or that are in excess of the applicable limit of insurance. An agreed settlement means a settlement and release of liability signed by us, the insured and the claimant or the claimant's legal representative.

#### **5. Other Insurance**

- a. This insurance is excess over, and shall not contribute with any of the other insurance, whether primary, excess, contingent or on any other basis. This condition will not apply to insurance specifically written as excess over this Coverage Part.

When this insurance is excess, we will have no duty under Coverages **A** or **B** to defend the insured against any "suit" if any other insurer has a duty to defend the insured against that "suit". If no other insurer defends, we will undertake to do so, but we will be entitled to the insured's rights against all those other insurers.

- b. When this insurance is excess over other insurance, we will pay only our share of the "ultimate net loss" that exceeds the sum of:

- (1) The total amount that all such other insurance would pay for the loss in the absence of the insurance provided under this Coverage Part; and

- (2) The total of all deductible and self-insured amounts under all that other insurance.

#### **6. Premium Audit**

- a. We will compute all premiums for this Coverage Part in accordance with our rules and rates.
- b. Premium shown in this Coverage Part as advance premium is a deposit premium only. At the close of each audit period we will compute the earned premium for that period and send notice to the first Named Insured. The due date for audit and retrospective premiums is the date shown as the due date on the bill. If the sum of the advance and audit premiums paid for the policy period is greater than the earned premium, we will return the excess to the first Named Insured.
- c. The first Named Insured must keep records of the information we need for premium computation, and send us copies at such times as we may request.

#### **7. Representations Or Fraud**

By accepting this policy, you agree:

- a. The statements in the Declarations are accurate and complete;
- b. Those statements are based upon representations you made to us;
- c. We have issued this policy in reliance upon your representations; and
- d. This policy is void in any case of fraud by you as it relates to this policy or any claim under this policy.

#### **8. Separation Of Insureds**

Except with respect to the Limits of Insurance, and any rights or duties specifically assigned in this Coverage Part to the first Named Insured, this insurance applies:

- a. As if each Named Insured were the only Named Insured; and
- b. Separately to each insured against whom claim is made or "suit" is brought.

#### **9. Transfer Of Rights Of Recovery Against Others To Us**

If the insured has rights to recover all or part of any payment we have made under this Coverage Part, those rights are transferred to us. The insured must do nothing after loss to impair them. At our request, the insured will bring "suit" or transfer those rights to us and help us enforce them.

## 10. When We Do Not Renew

If we decide not to renew this Coverage Part, we will mail or deliver to the first Named Insured shown in the Declarations written notice of the nonrenewal not less than 30 days before the expiration date.

If notice is mailed, proof of mailing will be sufficient proof of notice.

## 11. Loss Payable

Liability under this Coverage Part does not apply to a given claim unless and until:

- a. The insured or insured's "underlying insurer" has become obligated to pay the "retained limit"; and
- b. The obligation of the insured to pay the "ultimate net loss" in excess of the "retained limit" has been determined by a final settlement or judgment or written agreement among the insured, claimant and us.

## 12. Transfer Of Defense

When the underlying limits of insurance have been used up in the payment of judgments or settlements, the duty to defend will be transferred to us. We will cooperate in the transfer of control to us of any outstanding claims or "suits" seeking damages to which this insurance applies which would have been covered by the "underlying insurance" had the applicable limit not been used up.

## 13. Maintenance Of/Changes To Underlying Insurance

Any "underlying insurance" must be maintained in full effect without reduction of coverage or limits except for the reduction of the aggregate limit in accordance with the provisions of such "underlying insurance" that results from payment of claims, settlement or judgments to which this insurance applies.

Such exhaustion or reduction is not a failure to maintain "underlying insurance". Failure to maintain "underlying insurance" will not invalidate insurance provided under this Coverage Part, but insurance provided under this Coverage Part will apply as if the "underlying insurance" were in full effect.

If there is an increase in the scope of coverage of any "underlying insurance" during the term of this policy, our liability will be no more than it would have been if there had been no such increase.

You must notify us in writing, as soon as practicable, if any "underlying insurance" is cancelled, not renewed, replaced or otherwise terminated, or if the limits or scope of coverage of any "underlying insurance" is changed.

## 14. Expanded Coverage Territory

- a. If a "suit" is brought in a part of the "coverage territory" that is outside the United States of America (including its territories and possessions), Puerto Rico or Canada, and we are prevented by law, or otherwise, from defending the insured, the insured will initiate a defense of the "suit". We will reimburse the insured, under Supplementary Payments, for any reasonable and necessary expenses incurred for the defense of a "suit" seeking damages to which this insurance applies, that we would have paid had we been able to exercise our right and duty to defend.

If the insured becomes legally obligated to pay sums because of damages to which this insurance applies in a part of the "coverage territory" that is outside the United States of America (including its territories and possessions), Puerto Rico or Canada, and we are prevented by law, or otherwise, from paying such sums on the insured's behalf, we will reimburse the insured for such sums.

- b. All payments or reimbursements we make for damages because of judgments or settlements will be made in U.S. currency at the prevailing exchange rate at the time the insured became legally obligated to pay such sums. All payments or reimbursements we make for expenses under Supplementary Payments will be made in U.S. currency at the prevailing exchange rate at the time the expenses were incurred.
- c. Any disputes between you and us as to whether there is coverage under this policy must be filed in the courts of the United States of America (including its territories and possessions), Canada or Puerto Rico.
- d. The insured must fully maintain any coverage required by law, regulation or other governmental authority during the policy period, except for reduction of the aggregate limits due to payments of claims, judgments or settlements.

Failure to maintain such coverage required by law, regulation or other governmental authority will not invalidate this insurance. However, this insurance will apply as if the required coverage by law, regulation or other governmental authority was in full effect.

## SECTION V – DEFINITIONS

1. "Advertisement" means a notice that is broadcast or published to the general public or specific market segments about your goods, products or services for the purpose of attracting customers or supporters. For the purposes of this definition:
  - a. Notices that are published include material placed on the Internet or on similar electronic means of communication; and
  - b. Regarding web sites, only that part of a web site that is about your goods, products or services for the purposes of attracting customers or supporters is considered an advertisement.
2. "Auto" means:
  - a. A land motor vehicle, trailer or semitrailer designed for travel on public roads, including any attached machinery or equipment; or
  - b. Any other land vehicle that is subject to a compulsory or financial responsibility law or other motor vehicle insurance law where it is licensed or principally garaged.However, "auto" does not include "mobile equipment".
3. "Bodily injury" means bodily injury, disability, sickness or disease sustained by a person, including death resulting from any of these at any time. "Bodily injury" includes mental anguish or other mental injury resulting from "bodily injury".
4. "Coverage territory" means anywhere in the world with the exception of any country or jurisdiction which is subject to trade or other economic sanction or embargo by the United States of America.
5. "Covered auto" means only those "autos" to which "underlying insurance" applies.
6. "Employee" includes a "leased worker". "Employee" does not include a "temporary worker".
7. "Executive officer" means a person holding any of the officer positions created by your charter, constitution, bylaws or any other similar governing document.
8. "Impaired property" means tangible property, other than "your product" or "your work", that cannot be used or is less useful because:
  - a. It incorporates "your product" or "your work" that is known or thought to be defective, deficient, inadequate or dangerous; or
  - b. You have failed to fulfill the terms of a contract or agreement;

if such property can be restored to use by the repair, replacement, adjustment or removal of "your product" or "your work", or your fulfilling the terms of the contract or agreement.

9. "Insured contract" means:
  - a. A contract for a lease of premises. However, that portion of the contract for a lease of premises that indemnifies any person or organization for damage by fire to premises while rented to you or temporarily occupied by you with permission of the owner is not an "insured contract";
  - b. A sidetrack agreement;
  - c. Any easement or license agreement, except in connection with construction or demolition operations on or within 50 feet of a railroad;
  - d. An obligation, as required by ordinance, to indemnify a municipality, except in connection with work for a municipality;
  - e. An elevator maintenance agreement;
  - f. That part of any contract or agreement entered into, as part of your business, pertaining to the rental or lease, by you or any of your "employees", of any "auto". However, such contract or agreement shall not be considered an "insured contract" to the extent that it obligates you or any of your "employees" to pay for "property damage" to any "auto" rented or leased by you or any of your "employees".
  - g. That part of any other contract or agreement pertaining to your business (including an indemnification of a municipality in connection with work performed for a municipality) under which you assume the tort liability of another party to pay for "bodily injury" or "property damage" to a third person or organization. Tort liability means a liability that would be imposed by law in the absence of any contract or agreement.

Paragraphs **f.** and **g.** do not include that part of any contract or agreement:

- (1) That indemnifies a railroad for "bodily injury" or "property damage" arising out of construction or demolition operations, within 50 feet of any railroad property and affecting any railroad bridge or trestle, tracks, road-beds, tunnel, underpass or crossing;
- (2) That pertains to the loan, lease or rental of an "auto" to you or any of your "employees", if the "auto" is loaned, leased or rented with a driver; or

(3) That holds a person or organization engaged in the business of transporting property by "auto" for hire harmless for your use of a "covered auto" over a route or territory that person or organization is authorized to serve by public authority.

10. "Leased worker" means a person leased to you by a labor leasing firm under an agreement between you and the labor leasing firm, to perform duties related to the conduct of your business. "Leased worker" does not include a "temporary worker".

11. "Loading or unloading" means the handling of property:

- a. After it is moved from the place where it is accepted for movement into or onto an aircraft, watercraft or "auto";
- b. While it is in or on an aircraft, watercraft or "auto"; or
- c. While it is being moved from an aircraft, watercraft or "auto" to the place where it is finally delivered;

but "loading or unloading" does not include the movement of property by means of a mechanical device, other than a hand truck, that is not attached to the aircraft, watercraft or "auto".

12. "Mobile equipment" means any of the following types of land vehicles, including any attached machinery or equipment:

- a. Bulldozers, farm machinery, forklifts and other vehicles designed for use principally off public roads;
- b. Vehicles maintained for use solely on or next to premises you own or rent;
- c. Vehicles that travel on crawler treads;
- d. Vehicles, whether self-propelled or not, maintained primarily to provide mobility to permanently mounted:
  - (1) Power cranes, shovels, loaders, diggers or drills; or
  - (2) Road construction or resurfacing equipment such as graders, scrapers or rollers;
- e. Vehicles not described in Paragraph a., b., c. or d. above that are not self-propelled and are maintained primarily to provide mobility to permanently attached equipment of the following types:
  - (1) Air compressors, pumps and generators, including spraying, welding, building cleaning, geophysical exploration, lighting and well servicing equipment; or
  - (2) Cherry pickers and similar devices used to raise or lower workers;

f. Vehicles not described in Paragraph a., b., c. or d. above maintained primarily for purposes other than the transportation of persons or cargo.

However, self-propelled vehicles with the following types of permanently attached equipment are not "mobile equipment" but will be considered "autos":

(1) Equipment designed primarily for:

- (a) Snow removal;
- (b) Road maintenance, but not construction or resurfacing; or
- (c) Street cleaning;

(2) Cherry pickers and similar devices mounted on automobile or truck chassis and used to raise or lower workers; and

(3) Air compressors, pumps and generators, including spraying, welding, building cleaning, geophysical exploration, lighting and well servicing equipment.

However, "mobile equipment" does not include land vehicles that are subject to a compulsory or financial responsibility law or other motor vehicle insurance law where it is licensed or principally garaged. Land vehicles subject to a compulsory or financial responsibility law or other motor vehicle insurance law are considered "autos".

13. "Occurrence" means an accident, including continuous or repeated exposure to substantially the same general harmful conditions.

14. "Personal and advertising injury" means injury, including consequential "bodily injury", arising out of one or more of the following offenses:

- a. False arrest, detention or imprisonment;
- b. Malicious prosecution;
- c. The wrongful eviction from, wrongful entry into, or invasion of the right of private occupancy of a room, dwelling or premises that a person occupies, committed by or on behalf of its owner, landlord or lessor;
- d. Oral or written publication, in any manner, of material that slanders or libels a person or organization or disparages a person's or organization's goods, products or services;
- e. Oral or written publication, in any manner, of material that violates a person's right of privacy;
- f. The use of another's advertising idea in your "advertisement"; or
- g. Infringing upon another's copyright, trade dress or slogan in your "advertisement".

**15.** "Pollutants" mean any solid, liquid, gaseous or thermal irritant or contaminant, including smoke, vapor, soot, fumes, acids, alkalis, chemicals and waste. Waste includes materials to be recycled, reconditioned or reclaimed.

**16.** "Pollution cost or expense" means any loss, cost or expense arising out of any:

- a. Request, demand, order or statutory or regulatory requirement that any insured or others test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to, or assess the effects of, "pollutants"; or
- b. Claim or suit by or on behalf of a governmental authority for damages because of testing for, monitoring, cleaning up, removing, containing, treating, detoxifying or neutralizing, or in any way responding to, or assessing the effects of, "pollutants".

**17.** "Products-completed operations hazard":

- a. Includes all "bodily injury" and "property damage" occurring away from premises you own or rent and arising out of "your product" or "your work" except:

**(1)** Products that are still in your physical possession; or

**(2)** Work that has not yet been completed or abandoned. However, "your work" will be deemed completed at the earliest of the following times:

**(a)** When all of the work called for in your contract has been completed.

**(b)** When all of the work to be done at the job site has been completed if your contract calls for work at more than one job site.

**(c)** When that part of the work done at a job site has been put to its intended use by any person or organization other than another contractor or subcontractor working on the same project.

Work that may need service, maintenance, correction, repair or replacement, but which is otherwise complete, will be treated as completed.

- b. Does not include "bodily injury" or "property damage" arising out of:

**(1)** The transportation of property, unless the injury or damage arises out of a condition in or on a vehicle not owned or operated by you, and that condition was created by the "loading or unloading" of that vehicle by any insured; or

**(2)** The existence of tools, uninstalled equipment or abandoned or unused materials.

**18.** "Property damage" means:

- a. Physical injury to tangible property, including all resulting loss of use of that property. All such loss of use shall be deemed to occur at the time of the physical injury that caused it; or
- b. Loss of use of tangible property that is not physically injured. All such loss of use shall be deemed to occur at the time of the "occurrence" that caused it.

With respect to the ownership, maintenance or use of "covered autos", property damage also includes "pollution cost or expense", but only to the extent that coverage exists under the "underlying insurance" or would have existed but for the exhaustion of the underlying limits.

For the purposes of this insurance, with respect to other than the ownership, maintenance or use of "covered autos", electronic data is not tangible property.

As used in this definition, electronic data means information, facts or programs stored as or on, created or used on, or transmitted to or from computer software (including systems and applications software), hard or floppy disks, CD-ROMs, tapes, drives, cells, data processing devices or any other media which are used with electronically controlled equipment.

**19.** "Retained limit" means the available limits of "underlying insurance" scheduled in the Declarations or the "self-insured retention", whichever applies.

**20.** "Self-insured retention" means the dollar amount listed in the Declarations that will be paid by the insured before this insurance becomes applicable only with respect to "occurrences" or offenses not covered by the "underlying insurance". The "self-insured retention" does not apply to "occurrences" or offenses which would have been covered by "underlying insurance" but for the exhaustion of applicable limits.

**21.** "Suit" means a civil proceeding in which damages because of "bodily injury", "property damage" or "personal and advertising injury" to which this insurance applies are alleged. "Suit" includes:

- a. An arbitration proceeding in which such damages are claimed and to which the insured must submit or does submit with our consent; or



- b. Any other alternative dispute resolution proceeding in which such damages are claimed and to which the insured submits with our consent or the "underlying insurer's" consent.
22. "Temporary worker" means a person who is furnished to you to substitute for a permanent "employee" on leave or to meet seasonal or short-term workload conditions.
23. "Ultimate net loss" means the total sum, after reduction for recoveries or salvages collectible, that the insured becomes legally obligated to pay as damages by reason of settlement or judgments or any arbitration or other alternate dispute method entered into with our consent or the "underlying insurer's" consent.
24. "Underlying insurance" means any policies of insurance listed in the Declarations under the Schedule of "underlying insurance".
25. "Underlying insurer" means any insurer who provides any policy of insurance listed in the Schedule of "underlying insurance".
26. "Volunteer worker" means a person who is not your "employee", and who donates his or her work and acts at the direction of and within the scope of duties determined by you, and is not paid a fee, salary or other compensation by you or anyone else for their work performed for you.
27. "Your product":  
 a. Means:  
 (1) Any goods or products, other than real property, manufactured, sold, handled, distributed or disposed of by:  
 (a) You;  
 (b) Others trading under your name; or  
 (c) A person or organization whose business or assets you have acquired; and  
 (2) Containers (other than vehicles), materials, parts or equipment furnished in connection with such goods or products.
- b. Includes:  
 (1) Warranties or representations made at any time with respect to the fitness, quality, durability, performance or use of "your product"; and  
 (2) The providing of or failure to provide warnings or instructions.
- c. Does not include vending machines or other property rented to or located for the use of others but not sold.
28. "Your work":  
 a. Means:  
 (1) Work or operations performed by you or on your behalf; and  
 (2) Materials, parts or equipment furnished in connection with such work or operations.
- b. Includes:  
 (1) Warranties or representations made at any time with respect to the fitness, quality, durability, performance or use of "your work"; and  
 (2) The providing of or failure to provide warnings or instructions.

