



# **JAMES K. RUBLE SEMINAR**

## **Ruble Graduate Seminar**

IA&B of PA, MD, DE  
July 6-7, 2022



**JAMES K. RUBLE SEMINAR**  
**Ruble Graduate Seminar**  
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## **A Letter from William J. Hold, President/CEO**

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Let's take the first step.

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





# James K. Ruble Seminar

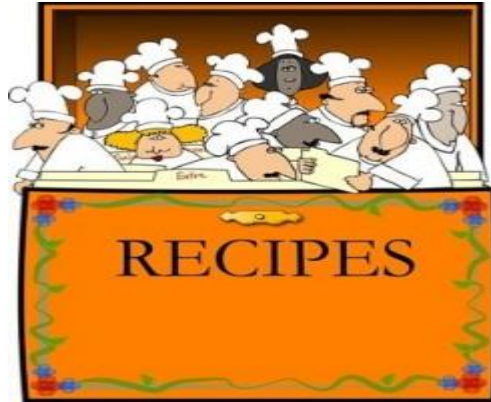
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Section 1

# **Recipes for Commercial Property Coverages for The Food & Beverage Industry**







**Recipes**  
for  
**Commercial Property Coverages**  
for  
**The Food & Beverage Industry**

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# Recipes for Commercial Property Coverages

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- I. Overview
  - A. Types of businesses (discussions could be applicable to other types of risks as well)
    - 1. Restaurants
    - 2. Taverns
    - 3. Private Clubs
  - B. Types of property
    - 1. Owned
    - 2. Rented
    - 3. Leased
    - 4. Otherwise in named insured's care custody or control
      - a. Parking – e.g., operates valet parking service or subcontracts it
      - b. Storing – e.g., valet parking, coat check, musicians' equipment
      - c. On consignment – e.g., displays or sells art of others
      - d. Use interest – e.g., tenant's improvements and betterments
  - C. Types of losses
    - 1. Direct
    - 2. Indirect
      - a. Business income
      - b. Extra Expense
      - c. Other types of consequential loss
        - 1.) Food spoilage
        - 2.) Lease cancellation
  - D. Formal, consistent method of exposure identification
  - E. "Agency standards" for this class of business

# Recipes for Commercial Property Coverages

## II. Building and Personal Property Coverage Form - BUILDING

### A. Remodeling or Renovation (business is just opening)

remodel

To alter the structure of

renovate

To restore to a former, better state (as by cleaning, repairing, or rebuilding)

1. Many Builders Risk Forms/Installation Forms do not cover damage to an existing building – existing building is Property Not Covered
2. Must examine Building And Personal Property Form – Vacancy Condition on existing building policy

#### 6. Vacancy

##### a. Description of Terms

(1) As used in this Vacancy Condition, the term building and the term vacant have the meanings set forth in (1)(a) and (1)(b) below:

(a) When this policy is issued to a tenant, and with respect to that tenant's interest in Covered Property, building means the unit or suite rented or leased to the tenant. Such building is vacant when it does not contain enough business personal property to conduct customary operations.

(b) When this policy is issued to the owner or general lessee of a building, building means the entire building. Such building is vacant unless at least 31% of its total square footage is:

(i) Rented to a lessee or sub-lessee and used by the lessee or sub-lessee to conduct its customary operations; and/or

(ii) Used by the building owner to conduct customary operations.

(2) Buildings under construction or renovation are *not* considered vacant.

##### b. Vacancy Provisions

If the building where loss or damage occurs has been vacant for more than 60 consecutive days before that loss or damage occurs:

(1) We will not pay for any loss or damage caused by any of the following even if they are Covered Causes of Loss:

(a) Vandalism;

(b) Sprinkler leakage, unless you have protected the system against freezing;

(c) Building glass breakage;

(d) Water damage;

(e) Theft; or

(f) Attempted theft.

(2) With respect to Covered Causes of Loss other than those listed in b.(1)(a) through b.(1)(f) above, we will reduce the amount we would otherwise pay for the loss or damage by 15%.

## Recipes for Commercial Property Coverages

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- a. Some insurance company proprietary forms do not allow renovation as an exception to the vacancy provision
  - b. Courts have stated that renovation is different from construction
  - c. What is insurer position regarding remodeling/renovation?
  - d. And how do you ask the question of vacancy for a new business?
- **Vacancy Permit CP 04 50** – waives the application of the vacancy clause for a specific time period shown on the endorsement
- B. Tenant is insuring entire building – required by contract
    1. **Additional Insured – Building Owner - CP 12 19**
      - Adds building owner as a named insured as respects the building coverage
    2. **Loss Payable Provisions - CP 12 18**
      - Used to add building owner under Building Owner Loss Payable Clause
      - Used to add mortgageholder under Lender’s Loss Payable Clause
  - C. Tenant is contractually responsible for maintenance/repairs to a portion of the building – e.g., HVAC, glass, etc.
    1. Building Coverage may be needed
      - Must activate Agreed Value to avoid potential coinsurance “problem”
    2. **Building Glass – Tenant’s Policy - CP 14 70 – withdrawn with 2017 filing**
      - Not needed if there is building coverage – if used, can have its own deductible

But ISO has made it easier – 2017 – new endorsements filed – GO ISO!!!!

- **Scheduled Building Property – Tenant’s Policy - CP 14 01 09 17**
- **Unscheduled Building Property – Tenant’s Policy – CP 14 02 09 17**

We will pay for direct physical loss of or damage to building property at the building shown in the Schedule caused by or resulting from a **Covered Cause of Loss shown in the Schedule**, provided that:

- ❖ You are a tenant of the building shown in the Schedule; and
- ❖ You have a contractual responsibility to insure such property, or a contractual responsibility to pay for loss or damage to such property.

The value of building property covered under this endorsement will be determined in accordance with the terms of the **Valuation Condition indicated in the Schedule**, or at the amount for which you are liable under contract, whichever is less. If required by law, glass is covered at the cost of replacement with safety glazing material. However, the most we will pay for the coverage provided under this endorsement is the applicable Limit Of Insurance shown in the Schedule.

The Coinsurance Condition applies to the property covered under this endorsement ***only if a Coinsurance percentage is shown in the Schedule.***

Any coverage provided under this Coverage Form or Policy for Your Business Personal Property or Personal Property Of Others does not apply to the property covered under this endorsement.

## Recipes for Commercial Property Coverages

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### D. Other “building” considerations for coverage

#### 1. **Increased Cost of Loss and Related Expenses for Green Upgrades – CP 04 02**

- Provides coverage for the increased costs of repairing or replacing covered property damaged by a covered cost of loss with materials that provide enhanced energy efficiency or use of environmentally-preferable, sustainable materials, products or methods in design, construction, manufacture or operations
- Can also provide coverage for related expenses of waste reduction and recycling, design and engineering professional expenses, certification fees and related equipment testing and building air-out and related air testing

#### 2. **Ordinance Or Law Coverage – CP 04 05**

- Can provide coverage for loss to the undamaged portion of the **building**, demolition costs for undamaged portion of the **building**, and increased costs of construction of the **building** to comply with ordinances or laws in effect **at the time of loss**
- **ISO made changes in 2017 - CP 04 05** has been revised to add an option to include an ordinance or law that **is promulgated or revised after the loss but prior to commencement** of reconstruction or repair, provided such ordinance or law requires compliance as a condition precedent to obtaining a building permit or certificate of occupancy

#### 3. **Debris Removal Additional Insurance – CP 04 15**

- Used to increase the additional debris removal coverage granted in the Coverage Form (\$25,000) to the amount specified in the endorsement

#### 4. **Functional Building Valuation – CP 04 38**

- Designed to insure an older building whose architectural style has become obsolete or simply unnecessary to the named insured’s current use (replacement cost unnecessary in a total loss – ACV does not meet needs in a partial loss)
- Coinsurance does not apply
- Ordinance or Law Coverage as part of Limit of Insurance
- **ISO made changes in 2017 – CP 04 38** has been revised to add an option to include an ordinance or law that is promulgated or revised after the loss but prior to commencement of reconstruction or repair, provided such ordinance or law requires compliance as a condition precedent to obtaining a building permit or certificate of occupancy

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## Recipes for Commercial Property Coverages

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### 5. Earthquake and Volcanic Eruption Endorsement – CP 10 40

- Adds the indicated causes of loss – all earthquake shocks or volcanic eruptions occurring within a 168-hour period are a single occurrence – does NOT change Covered Property – need **Additional Covered Property – CP 14 10**

### 6. Flood Coverage Endorsement – CP 10 65

- Designed to **wrap around** (not supplement) coverage provided by the NFIP (allows insurer to waive requirement by specific location) – applies in excess of coverage available under NFIP (even if coverage does not exist) – defines flood under the endorsement as a general and temporary condition of partial or complete inundation of normally dry land areas
- Includes mudslide
- Includes coverage for back up and overflow from sewers, drains and sumps if such discharge occurs within 72 hours after the flood recedes
- Provides coverage for loss to underground foundations and underground pipes/flues/drains
- Excludes coverage for bulkheads/pilings/piers/wharves/docks/retaining walls even if they are covered property
- Covers removal of flood-borne debris of covered property and other property (excluding mud deposits)
- Covers removal of debris of covered property from premises other than the named insured's premises
- An annual aggregate limit applies
- Coinsurance applies unless the NO COINSURANCE OPTION is selected

### 7. Discharge From Sewer, Drain or Sump (Not Flood Related) – CP 10 38

- Includes coverage for discharge of water or waterborne material from a sewer, drain (including a roof drain) or sump located on the described premises, provided such discharge is not induced by flood or flood-related conditions
- Does not apply if discharge results from insured's failure to perform routine maintenance or repairs OR to sump pump failure resulting from power failure unless policy is endorsed to cover power failure affecting the described premises – need **CP 04 17**
- Discharge limit for property damage to Covered Property and business income (if carried) as well as optional Annual Aggregate Limitation

### 8. Equipment Breakdown Cause Of Loss – CP 10 46

- Used to add coverage for causes of loss otherwise excluded/limited
- Deletes exclusions related to artificially generated electrical, magnetic and electromagnetic energy; mechanical breakdown; explosion of steam equipment
- Deletes limitations applicable to steam equipment and water heating equipment
- Add exclusions for pressure or electrical testing as well as wear and tear and inherent vice
- Coverage for Ammonia Contamination and Hazardous Substance is limited to the lesser of 10% of the Limit of Insurance or \$25,000 – higher limits may be selected

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## Recipes for Commercial Property Coverages

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### 9. Additional Covered Property – CP 14 10

- Used to add coverage for otherwise excluded property
- For example, if earthquake added as a cause of loss, then would need to add coverage for foundation, underground pipes/flues/drains, cost of excavations
- If restaurant on water, may want coverage for pilings, piers, wharves or docks
- If there is a fence or retaining wall, will want coverage for “full” perils

### 10. Additional Building Property – CP 14 15

- Adds coverage for fixtures, machinery, and equipment that are not permanently installed under the building coverage - building rate will apply
- For example, would allow walk-in coolers/freezers to be building items
- Could also “add” tenants improvements and betterments **for the tenant** as building

### 11. Outdoor Trees, Shrubs and Plants – CP 14 30

- Adds trees, shrubs, and plants to the definition of Covered Property for Basic, Broad, or Special Causes of Loss
- Limit of Insurance chosen for each tree/shrub/plant as well as all items combined (includes debris removal in Limit of Insurance for All Items)
- In addition to Causes of Loss exclusions/limitations adds exclusions for dampness or dryness of atmosphere, changes in or extremes of temperature, and rain/snow/ice/sleet – option for Vehicle Exclusion

### 12. Outdoor Signs – CP 14 40

- Increases the BPP limitation of \$2500 per occurrence for all outdoor signs to the limits shown for the described signs
- Will want to properly “address” awnings that are signs

### 13. Radio or Television Antennas – CP 14 50

- Adds radio or television antennas (including satellite dishes) and their lead-in wiring, masts or towers, as described in the schedule to the definition of Covered Property for Basic, Broad or Special Causes of Loss
- Limit of Insurance chosen
- In addition to Causes of Loss exclusions/limitations adds exclusions for dampness or dryness of atmosphere, changes in or extremes of temperature, and rain/snow/ice/sleet

### 14. Increase In Rebuilding Expenses Following Disaster (Additional Expense Coverage On Annual Aggregate Basis) – CP 04 09

- The event that caused the covered loss:  
Results in declaration of a state of disaster by federal or state authorities; or  
Occurs in close temporal proximity to the event that resulted in declaration of disaster by federal or state authorities;

## Recipes for Commercial Property Coverages

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### III. Building and Personal Property Coverage Form – YOUR BUSINESS PERSONAL PROPERTY

#### A. Tenant's Improvements & Betterments

**(6)** Your use interest as tenant in improvements and betterments. Improvements and betterments are fixtures, alterations, installations or additions:  
**(a)** Made a part of the building or structure you occupy but do not own; and  
**(b)** You acquired or made at your expense but cannot legally remove;

1. Specifically defined in Coverage Form - may be different from what the named insured thinks these are – **example**
  2. Can be insured as a separate item of YBPP and building rate used in rating
- **Your Business Personal Property – Separation of Coverage – CP 19 10**
    3. Only for direct damage – may need coverage for loss of use interest resulting from lease cancellation and application of ordinances or laws
  - **Leasehold Interest Coverage Form – CP 00 60**
    - Provides coverage for unamortized portion of use interest in improvements and betterments when lease cancellation results from a Covered Cause of Loss
  - **Additional Building Property – CP 14 15**
    - Can be used to make tenants improvements and betterments for the tenant building in order to provide coverage for destruction due to enforcement of ordinance or law by adding **Ordinance Or Law Coverage – CP 04 05**
  - **Ordinance Or Law Coverage For Tenant's Interest In Improvements And Betterments (Tenant's Policy) – CP 04 26**
    - Provides coverage similar to **Ordinance Or Law Coverage – CP 04 05** for tenant
  - 4. Coverage for improvements and betterments may be needed/provided for both tenant and building owner
- **Additional Property Not Covered – CP 14 20**
    - Tenants improvements and betterments can/should be excluded from landlord's BPP Coverage Form (potential coinsurance issue for landlord) if landlord has a contract where tenant must insure and replace



## Recipes for Commercial Property Coverages

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### B. Leased Personal Property

7. Leased personal property for which you have a contractual responsibility to insure, unless otherwise provided for under Personal Property Of Others.

1. Specifically must have a contractual responsibility to insure
2. A contractual responsibility for loss is not enough

#### • **Leased Property – CP 14 60**

- Provides coverage for leased property as Your Business Personal Property
- Valuation may be on an agreed value (stipulated loss value) basis
- Should be attached to every policy even if no leased property at inception
- Schedule of endorsement should indicate “all leased property”
- Agreed value should indicate “as required by the lease”

### C. Additional Business Personal Property Considerations

1. May want to modify causes of loss

#### • **Utility Services - Direct Damage – CP 04 17**

- Adds coverage for damage to covered property resulting from interruption of any of the utility services identified if the interruption results from a covered cause of loss – overhead transmission lines must be specifically included
- Provides coverage for direct damage only

#### • **Spoilage Coverage – CP 04 40**

- Adds coverage for damage to perishable stock due to breakdown or contamination (mechanical breakdown or mechanical failure of refrigerating, cooling or humidity control apparatus or equipment and contamination by the refrigerant)
- Adds coverage for damage to perishable stock for power outage beyond named insured’s control
- May be written to include selling price
- Has own set of exclusions/limitations applicable – e.g., disconnection from a source of power, turning the power switch off, breaking of glass that is part of unit, etc.
- May receive a credit for a refrigeration maintenance agreement but if declared agreement is voluntarily terminated, coverage is suspended

#### • **Earthquake and Volcanic Eruption Endorsement – CP 10 40**

#### • **Flood Coverage Endorsement – CP 10 65**

#### • **Discharge From Sewer, Drain or Sump (Not Flood Related) – CP 10 38**

#### • **Equipment Breakdown Cause Of Loss – CP 10 46**

## Recipes for Commercial Property Coverages

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2. May not want to include “junk in basement” in coverage as would be included in calculation for compliance with coinsurance

- **Additional Property Not Covered – CP 14 20**

3. Valuation may not meet need

### 3. Replacement Cost

- a. Replacement Cost (without deduction for depreciation) replaces Actual Cash Value in the Valuation Loss Condition of this Coverage Form.
- b. This Optional Coverage does not apply to:
  - (1) *Personal property of others;*
  - (2) *Contents of a residence;*

- Need for specific coverage for personal property of others
- Activate **Extension Of Replacement Cost To Personal Property Of Others – Optional Coverage**

4. May want coverage for business personal property stored in a building for which building coverage is not wanted

**b. Your Business Personal Property** consists of the following property located in or on the building or structure described in the Declarations or in the open (or in a vehicle) within 100 feet of the building or structure or within 100 feet of the premises described in the Declarations, whichever distance is greater:

- Solution - schedule building but show no Limit of Insurance for the building; show Limit of Insurance for Your Business Personal Property

5. May want coverage for business personal property stored in portable storage units

### f. Business Personal Property Temporarily In Portable Storage Units

- (1) **You may extend the insurance that applies to Your Business Personal Property to apply to such property while temporarily stored in a portable storage unit (including a detached trailer) located within 100 feet of the building or structure described in the Declarations or within 100 feet of the premises described in the Declarations, whichever distance is greater.**
- (2) **If the applicable Covered Causes of Loss form or endorsement contains a limitation or exclusion concerning loss or damage from sand, dust, sleet, snow, ice or rain to property in a structure, such limitation or exclusion also applies to property in a portable storage unit.**
- (3) **Coverage under this Extension:**
  - (a) **Will end 90 days after the business personal property has been placed in the storage unit;**

## Recipes for Commercial Property Coverages

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**(b) Does not apply if the storage unit itself has been in use at the described premises for more than 90 consecutive days, even if the business personal property has been stored there for 90 or fewer days as of the time of loss or damage.**

**(4) Under this Extension, the most we will pay for the total of all loss or damage to business personal property is \$10,000 (unless a higher limit is indicated in the Declarations for such Extension) regardless of the number of storage units. Such limit is part of, not in addition to, the applicable Limit of Insurance on Your Business Personal Property. Therefore, payment under this Extension will not increase the applicable Limit of Insurance on Your Business Personal Property.**

**(5) This Extension does not apply to loss or damage otherwise covered under this Coverage Form or any endorsement to this Coverage Form or policy, and does not apply to loss or damage to the storage unit itself.**

6. May want to change valuation for alcoholic beverages

- **Distilled Spirits and Wines Market Value – CP 99 05**
  - Retailers of alcoholic beverages can cover distilled spirits and wine on a market value basis
  - Bottled distilled spirits are valued at the market price as of the time and place of loss or damage
  - Bottled winery products are valued at the market price the case goods could have been sold as of the time and place of loss or damage
  - Establishes that paid and unpaid taxes that are refundable federal excise taxes and customs duties as well as refundable state and local taxes are either deducted from the value or recoverable by the insurer – these are refundable when they are “damaged” by any peril except theft
- **Alcoholic Beverages Tax Exclusion – CP 99 10**
  - Allows insured to exclude value for refundable federal excise taxes and customs duties as well as refundable state and local taxes from value of business personal property held for sale that consist of distilled spirits, wines, rectified products (e.g., Everclear) and beer for all perils other than theft and increase value of this business personal property for the peril of theft

## Recipes for Commercial Property Coverages

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7. Business personal property off premises
  - a. As Coverage Extension in Coverage Form

### **d. Property Off-premises**

- (1) You may extend the insurance provided by this Coverage Form to apply to your Covered Property while it is away from the described premises, if it is:
  - (a) Temporarily at a location you do not own, lease or operate;
  - (b) In storage at a location you lease, provided the lease was executed after the beginning of the current policy term; or
  - (c) At any fair, trade show or exhibition.
- (2) This Extension does not apply to property:
  - (a) In or on a vehicle; or
  - (b) In the care, custody or control of your salespersons, unless the property is in such care, custody or control at a fair, trade show or exhibition.
- (3) The most we will pay for loss or damage under this Extension is \$10,000.

- b. As Coverage Extension in Causes of Loss – Special Form

### **1. Property In Transit**

This Extension applies only to your personal property to which this form applies.

- a. You may extend the insurance provided by this Coverage Part to apply to your personal property (other than property in the care, custody or control of your salespersons) in transit more than 100 feet from the described premises. Property must be in or on a motor vehicle you own, lease or operate while between points in the coverage territory.
- b. Loss or damage must be caused by or result from one of the following causes of loss:
  - (1) Fire, lightning, explosion, windstorm or hail, riot or civil commotion, or vandalism.
  - (2) Vehicle collision, upset or overturn. Collision means accidental contact of your vehicle with another vehicle or object. It does not mean your vehicle's contact with the roadbed.
  - (3) Theft of an entire bale, case or package by forced entry into a securely locked body or compartment of the vehicle. There must be visible marks of the forced entry.
- c. The most we will pay for loss or damage under this Extension is \$5,000.

- Not the best method for insuring this exposure
- **Specified Business Personal Property Temporarily Away From Premises - CP 04 04**
  - Schedule shows Limit Of Insurance as well as type(s) or item(s) of business personal property
  - Not intended to apply to stock or salespersons samples unless at fair, trade show, or exhibit and theft from a vehicle must be visible signs of forced entry
- **BUT** potential for wine, etc., shipped at named insured's risk – need to check purchase orders, shipping documents, etc. – may need inland marine coverage such as a Transportation Policy

## Recipes for Commercial Property Coverages

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### IV. Building and Personal Property Coverage Form – PERSONAL PROPERTY OF OTHERS

#### A. As a Coverage Extension

##### **b. Personal Effects And Property Of Others**

You may extend the insurance that applies to Your Business Personal Property to apply to:

- (1) Personal effects owned by you, your officers, your partners or members, your managers or your employees. This Extension does not apply to loss or damage by theft.
- (2) Personal property of others in your care, custody or control.

The most we will pay for loss or damage under this Extension is \$2,500 at each described premises. Our payment for loss of or damage to personal property of others will only be for the account of the owner of the property.

1. Limited to \$2,500 and would not apply to Property NOT Covered
2. Previously stated - valuation is also limited

##### **3. Replacement Cost**

a. Replacement Cost (without deduction for depreciation) replaces Actual Cash Value in the Valuation Loss Condition of this Coverage Form.

b. This Optional Coverage does not apply to:

- (1) **Personal property of others;**
- (2) Contents of a residence;
- (3) Works of art, antiques or rare articles, including etchings, pictures, statuary, marbles, bronzes, porcelains and bric-a-brac; or

#### B. Covered Property - Personal Property of Others

##### **C. Personal Property Of Others** that is:

- (1) In your care, custody or control; and
- (2) Located in or on the building or structure described in the Declarations or in the open (or in a vehicle) within 100 feet of the building or structure or within 100 feet of the premises described in the Declarations, whichever distance is greater.

However, our payment for loss of or damage to personal property of others will only be for the account of the owner of the property.

1. Still subject to Property NOT Covered
2. Still subject to Causes of Loss Exclusions/Limitations

#### Causes of Loss – Special Form

**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 (unless a higher limit is shown in the Declarations):

- a. \$2,500 for furs, fur garments and garments trimmed with fur.

## Recipes for Commercial Property Coverages

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3. Valuation under CPP may be Replacement Cost, if extended

### 4. Extension Of Replacement Cost To Personal Property Of Others

- a. If the Replacement Cost Optional Coverage is shown as applicable in the Declarations, then this Extension may also be shown as applicable. If the Declarations show this Extension as applicable, then Paragraph **3.b.(1)** of the Replacement Cost Optional Coverage is deleted and all other provisions of the Replacement Cost Optional Coverage apply to replacement cost on personal property of others.

- b. With respect to replacement cost on the personal property of others, the following limitation applies:

If an item(s) of personal property of others is subject to a written contract which governs your liability for loss or damage to that item(s), then valuation of that item(s) will be based on the amount for which you are liable under such contract, but not to exceed the lesser of the replacement cost of the property or the applicable Limit of Insurance.

- C. Other types of coverages are needed

1. Types of property

- a. Destruction of food due to contamination/cleaning of equipment
- b. Automobiles – valet parking
- c. Contents of these automobiles
- d. Coat check, etc.
- e. Art on consignment/loaned to named insured
- f. Real and personal property for equipment breakdown
- g. Money & securities

2. Types of coverages for these exposures

- a. “Food Contamination”

- **Food Contamination (Business Interruption And Extra Expense) – CP 15 05**

- Ordered closed by Board of Health or any other governmental authority as the result of or suspicion of food contamination, as defined
- Expenses to clean equipment as required, cost to replace contaminated or alleged contaminated food, vaccinations of workers potentially infected if not covered by work comp, loss of Business Income (24 hour waiting period deductible) and advertising expenses to restore reputation
- One annual aggregate limit for all expenses except advertising – separate annual aggregate limit for advertising -
  - b. Garagekeepers – direct primary only – does NOT cover contents
  - c. Bailees Customers Coverage – direct primary only – may want replacement cost valuation
  - d. Equipment Breakdown Policy/Endorsement
  - e. Money & Securities/Employee Dishonesty – Commercial Crime

3. Alternatives

- a. Exculpatory agreements
- b. Limitation of liability clauses

## Recipes for Commercial Property Coverages

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- **Garagekeepers Coverage - CA 99 37**
  - Exposure exists whether named insured is providing or provided by independent contractor
  - But only covers auto and auto equipment with some exclusions – **but not “stuff” inside (e.g., golf clubs)**
  - And excludes theft by employees – might want Employee Theft
  - Need **Bailee’s Customers Coverage** – again, looking for payment without regard to legal liability
    - Again, usually excludes theft by employees
    - Valuation may be ACV – want Replacement Cost for goodwill
- **Other personal property in named insured’s care, custody or Control**
  - **Coat check**
  - **Art on consignment**
  - **Musicians’ equipment**
- **Additional Property Considerations (real and personal property)**
  - Causes of Loss Forms do not cover boiler explosion, artificially generated electric current, mechanical breakdown
  - These risks have exposure for power surge and mechanical breakdown
  - Need **Equipment Breakdown Coverage Form**
  - Need **Equipment Breakdown Cause Of Loss – CP 10 46**
- **Commercial Crime Considerations**
  - **Employee Theft**
  - **Money & Securities**
  - **Fraudulent Impersonation**
- D. Watch out for
  - 1. Protective safeguards endorsements
    - **Protective Safeguards Endorsement – CP 04 11**
      - Specific provision for Automatic Commercial Cooking Exhaust And Extinguishing System
      - **ISO 2017** ... “actively engage and maintain in the "on" position at all times any automatic fire alarm or other automatic system listed in the Schedule”
    - **Burglary And Robbery Protective Safeguards – CP 12 11**
      - **ISO 2017** ... “actively engage any automatic burglary alarm or other automatic system listed in the Schedule and maintain it in the "on" position during all non-work hours and whenever the premises are unoccupied”
  - 2. Warranty endorsements that may void coverage

# Recipes for Commercial Property Coverages

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## V. Business Income Coverage Form

### A. Business Income Defined

#### A. Coverage

##### 1. Business Income

Business Income means the:

- a. Net Income (Net Profit or Loss before income taxes) that would have been earned or incurred; and
- b. Continuing normal operating expenses *incurred, including payroll*.  
For manufacturing risks, Net Income includes the net sales value of production.

1. Profit not required
2. Net loss subtracted from continuing normal operating expenses incurred in determining amount of business income
3. While payroll is included in this definition, Loss Determination Loss Condition states that payroll is included only to the extent that it is necessary to resume operations with the same quality of service that existed just before the loss
  - And, will tips be included in definition of payroll?

#### Loss Condition

##### 3. Loss Determination

- a. The amount of Business Income loss will be determined based on:
  - (3) The operating expenses, including payroll expenses, necessary to resume "operations" *with the same quality of service that existed just before the direct physical loss or damage*; and

- Possibility of insurer/insured disagreement as to what payroll is necessary
- **Discretionary Payroll Expenses – CP 15 04** eliminates any possibility of dispute
  - Job Classifications or Employees are shown in schedule
  - Includes this payroll if paid for period of restoration/extension of period of restoration (any/all) unless otherwise limited by schedule in endorsement

### B. Options

Coverage is provided as described and limited below for one or more of the following options for which a Limit Of Insurance is shown in the Declarations:

- (1) Business Income Including "Rental Value".
- (2) Business Income Other Than "Rental Value".
- (3) "Rental Value".

- Named insured could have tenant occupancy – e.g., rents upstairs apartment – and would need to include “rental value” – CAUTION: options create opportunity for errors



## Recipes for Commercial Property Coverages

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### C. Coverage "trigger"

We will pay for the actual loss of Business Income you sustain due to the necessary "suspension" of your "operations" during the "period of restoration". The "suspension" must be caused by direct physical loss of or damage to property at premises which are described in the Declarations and for which a Business Income Limit Of Insurance is shown in the Declarations. The loss or damage must be caused by or result from a Covered Cause of Loss. With respect to loss of or damage to personal property in the open or personal property in a vehicle, the described premises include the area within 100 feet of such premises.

With respect to the requirements set forth in the preceding paragraph, if you occupy only part of a building, your premises means:

- (a)** The portion of the building which you rent, lease or occupy;
- (b)** Any area within 100 feet of the building or within 100 feet of the premises described in the Declarations, whichever distance is greater (with respect to loss of or damage to personal property in the open or personal property in a vehicle); and
- (c)** Any area within the building or at the described premises, if that area services, or is used to gain access to, the portion of the building which you rent, lease or occupy.

#### 1. Suspension

**6.** "Suspension" means:

- a.** The slowdown or cessation of your business activities; or
- b.** That a part or all of the described premises is rendered untenable, if coverage for Business Income Including "Rental Value" or "Rental Value" applies.

#### 2. Operations

**2.** "Operations" means:

- a.** Your business activities occurring at the described premises; and
- b.** The tenantability of the described premises, if coverage for Business Income Including "Rental Value" or "Rental Value" applies.

## Recipes for Commercial Property Coverages

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### 3. Period of Restoration

3. "Period of restoration" means the period of time that:

a. Begins:

(1) **72 hours after** the time of direct physical loss or damage for Business Income Coverage; or

(2) Immediately after the time of direct physical loss or damage for Extra Expense Coverage;

caused by or resulting from any Covered Cause of Loss at the described premises; and

b. Ends on the earlier of:

(1) The date when the property at the described premises should be repaired, rebuilt or replaced with reasonable speed and similar quality; or

(2) The date when business is resumed at a new permanent location.

"Period of restoration" **does not include any increased period required due to the enforcement of or compliance with any ordinance or law** that:

(1) Regulates the construction, use or repair, or requires the tearing down, of any property; or

(2) Requires any insured or others to test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to, or assess the effects of "pollutants".

The expiration date of this policy will not cut short the "period of restoration".

- 72 hours may be too long as a waiting period deductible – endorsement needed
- **Business Income Changes – Beginning Period of the Period of Restoration – CP 15 56** - to change to 24 hours or eliminate entirely
- **Note:** when period of restoration ends
- Remember ordinance or law exposure – if endorsed to policy for direct damage, should endorse to policy for time element coverage
- **Ordinance or Law – Increased Period of Restoration - CP 15 31 - ISO made changes in 2017 - CP 15 31** has been revised to add an option to include an ordinance or law that is **promulgated or revised after the loss but prior to commencement** of reconstruction or repair, provided such ordinance or law requires compliance as a condition precedent to obtaining a building permit or certificate of occupancy
- For most food and beverage risks this time period will not be sufficient – need to extend period for payment of business income loss beyond “period of restoration”

# Recipes for Commercial Property Coverages

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- **Additional Coverage – Extended Business Income** – gives 60 days coverage

## **C. Extended Business Income**

### **(1) Business Income Other Than "Rental Value"**

If the necessary "suspension" of your "operations" produces a Business Income loss payable under this policy, we will pay for the actual loss of Business Income you incur during the period that:

**(a)** Begins on the date property (except "finished stock") is actually repaired, rebuilt or replaced and "operations" are resumed; and

**(b)** Ends on the earlier of:

**(i)** The date you could restore your "operations", with reasonable speed, to the level which would generate the business income amount that would have existed if no direct physical loss or damage had occurred; or

**(ii)** 60 consecutive days after the date determined in **(1)(a)** above.

However, Extended Business Income does not apply to loss of Business Income incurred as a result of unfavorable business conditions caused by the impact of the Covered Cause of Loss in the area where the described premises are located.

Loss of Business Income must be caused by direct physical loss or damage at the described premises caused by or resulting from any Covered Cause of Loss.

### **(2)"Rental Value"**

If the necessary "suspension" of your "operations" produces a "Rental Value" loss payable under this policy, we will pay for the actual loss of "Rental Value" you incur during the period that:

**(a)** Begins on the date property is actually repaired, rebuilt or replaced and tenantability is restored; and

**(b)** Ends on the earlier of:

**(i)** The date you could restore tenant occupancy, with reasonable speed, to the level which would generate the "Rental Value" that would have existed if no direct physical loss or damage had occurred; or

**(ii)** 60 consecutive days after the date determined in **(2)(a)** above.

However, Extended Business Income does not apply to loss of "Rental Value" incurred as a result of unfavorable business conditions caused by the impact of the Covered Cause of Loss in the area where the described premises are located.

Loss of "Rental Value" must be caused by direct physical loss or damage at the described premises caused by or resulting from any Covered Cause of Loss.

- Should be extended beyond 60 days
- Available as one of the **Optional Coverages**

## **4. Extended Period Of Indemnity**

Under Paragraph **A.5.c.**, **Extended Business Income**, the number 60 in Subparagraphs **(1)(b)** and **(2)(b)** is replaced by the number shown in the Declarations for this Optional Coverage.

- Should be extended for period needed for exposure

## Recipes for Commercial Property Coverages

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### 4. Described premises

- Losses may occur at other than the described premises that will affect named insured's business income
  - a. Policy may provide automatically

### 5. Additional Coverages

#### a. Civil Authority

In this Additional Coverage, Civil Authority, the described premises are premises to which this Coverage Form applies, as shown in the Declarations.

When a Covered Cause of Loss causes damage to property other than property at the described premises, we will pay for the actual loss of Business Income you sustain and necessary Extra Expense caused by action of civil authority that prohibits access to the described premises, provided that both of the following apply:

- (1) Access to the area immediately surrounding the damaged property is prohibited by civil authority as a result of the damage, and the described premises are within that area but are not more than one mile from the damaged property; and
- (2) The action of civil authority is taken in response to dangerous physical conditions resulting from the damage or continuation of the Covered Cause of Loss that caused the damage, or the action is taken to enable a civil authority to have unimpeded access to the damaged property.

Civil Authority Coverage for Business Income will begin 72 hours after the time of the first action of civil authority that prohibits access to the described premises and will apply for a period of up to four consecutive weeks from the date on which such coverage began.

Civil Authority Coverage for Extra Expense will begin immediately after the time of the first action of civil authority that prohibits access to the described premises and will end:

- (1) Four consecutive weeks after the date of that action; or
- (2) When your Civil Authority Coverage for Business Income ends; whichever is later.

- Must be caused by action of civil authority
- Proximity to described premises limited
  - May need to endorse – **Civil Authority Changes – CP 15 32** – increase radius
- Covered Cause of Loss required
- Duration of coverage limited
  - May need to endorse – **Civil Authority Changes – CP 15 32** – increase duration

## Recipes for Commercial Property Coverages

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b. Endorsements may be attached

- **Off-Premises Interruption of Business – Vehicles and Mobile Equipment – CP 15 06**
  - Adds coverage for business income loss, extra expense loss, or both, resulting from loss or damage to vehicles and mobile equipment on which the business depends
- **Business Interruption Coverage – CA 99 05**
  - Adds coverage for business income and extra expense or business income only resulting from loss or damage to vehicles and mobile equipment on which the business depends
- **Business Income from Dependent Properties – Broad Form – CP 15 08**
  - Extends named insured's business income limits to dependent property locations listed on endorsement – may extend coverage as well to secondary contributing or secondary recipient locations (neither named)
- **Business Income from Dependent Properties – Limited Form – CP 15 09**
  - Shows business income limits applicable to dependent property locations listed on endorsement - may extend coverage as well to secondary contributing or secondary recipient locations (neither named)

5. Covered Cause of Loss

a. Many of the same concerns as for building/business personal property

- But special need for **Utility Services – Time Element – CP 15 45**
  - Need to be sure to properly address overhead transmission lines
  - 2017 ISO changes allow for multiple options in waiting period deductible
  - Need for loss of business income due to “shut down” of business by Board of Health or any other governmental authority due to discovery or suspicion of “food contamination” – tainted food purchased - food which has been improperly stored, handled or prepared – a communicable disease transmitted through one or more of the employees
  - **Food Contamination (Business Interruption And Extra Expense) – CP 15 05**
- May have need for **DIC** (Difference In Conditions) for additional causes of loss

## Recipes for Commercial Property Coverages

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- b. But **Causes of Loss – Special Form - CP 10 30** has specific exclusions applicable

### 4. Special Exclusions

The following provisions apply only to the specified Coverage Forms.

#### a. **Business Income (And Extra Expense) Coverage Form, Business Income (Without Extra Expense) Coverage Form, Or Extra Expense Coverage Form**

We will not pay for:

(1) Any loss caused by or resulting from:

- (a) Damage or destruction of "finished stock"; or
- (b) The time required to reproduce "finished stock".

This exclusion does not apply to Extra Expense.

(2) Any loss caused by or resulting from direct physical loss or damage to radio or television antennas (including satellite dishes) and their lead-in wiring, masts or towers.

(3) Any increase of loss caused by or resulting from:

- (a) Delay in rebuilding, repairing or replacing the property or resuming "operations", due to interference at the location of the rebuilding, repair or replacement by strikers or other persons; or
- (b) Suspension, lapse or cancellation of any license, lease or contract. But if the suspension, lapse or cancellation is directly caused by the "suspension" of "operations", we will cover such loss that affects your Business Income during the "period of restoration" and any extension of the "period of restoration" in accordance with the terms of the Extended Business Income Additional Coverage and the Extended Period Of Indemnity Optional Coverage or any variation of these.

(4) Any Extra Expense caused by or resulting from suspension, lapse or cancellation of any license, lease or contract beyond the "period of restoration".

(5) Any other consequential loss.

- No coverage for business income or extra expense losses resulting from loss or damage to radio or television antennas (including satellite dishes) and their lead-in wiring, masts or towers – delete exclusion – **Radio or Television Antennas – Business Income or Extra Expense - CP 15 50**
- No coverage for cancellation of any contract beyond “period of restoration”, Extended Business Income Additional Coverage, and Extended Period Of Indemnity Optional Coverage
  - May have a need for Extended Period Of Indemnity for more than a year

# Recipes for Commercial Property Coverages

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## D. Additional Business Income Considerations

1. **Business Income – Landlord as Additional Insured (Rental Value) – CP 15 03** - "rental value" is defined as the net income that would have been earned as rental income from the occupancy of the rented premises by the named insured, plus the continuing normal operating expenses that are the legal obligation of the insured tenant and would otherwise be the obligation of the additional insured landlord
  - Mortgageholder may want to be added as additional insured as well – no standard endorsement available from ISO – mortgage is not BI
2. **Payroll Limitation Or Exclusion – CP 15 10** - the endorsement is used to exclude or limit coverage for the payroll of all employees payroll may be limited to a specific number of days or excluded in its entirety – may now exclude all employees and job classifications including officers, executives, management personnel and contract employees **OR** may exclude all employees and job classifications other than officers, executives, management personnel and contract employees **OR** may exclude all employees and job classifications (including officers, executives, management personnel and contract employees), **except OR** may excluded only the job classifications and/or employees listed **AND** may do this by premises and building
3. Disparagement of reputation and loss of business income
  - Nonstandard coverage - difficult to prove loss – difficult to establish “trigger” of coverage
4. Ingress/egress and loss of business income
  - Nonstandard coverage

## VI. Other Considerations

- A. Waivers of Subrogation
- B. Exculpatory Agreements
- C. Notice of Cancellation Requirements

## Recipes for Commercial Property Coverages

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### VII. Leasehold Interest Coverage Form

#### A. Exposure

- Lease provisions that cancel the lease when property is damaged at or near the named insured's premises

#### B. Coverage

#### ***Leasehold Interest Coverage Form - CP 00 60***

##### **A. COVERAGE**

We will pay for loss of Covered Leasehold Interest you sustain due to the cancellation of your lease. The cancellation must result from direct physical loss or damage to property at the premises described in the Declarations caused by or resulting from any Covered Cause of Loss.

##### **1. Covered Leasehold Interest**

Covered Leasehold Interest means the following for which an amount of "net leasehold interest" at inception is shown in the Leasehold Interest Coverage Schedule:

##### **a. Tenant's Lease Interest**, meaning the difference between the:

- (1) Rent you pay at the described premises; and
- (2) Rental value of the described premises that you leased.

##### **b. Bonus Payments**, meaning the unamortized portion of cash bonus that will not be refunded to you. A cash bonus is money you paid to acquire your lease. It does not include:

- (1) Rent, whether or not prepaid; or
- (2) Security.

##### **c. Improvements and Betterments**, meaning the unamortized portion of payments made by you for improvements and betterments. It does not include the value of improvements and betterments recoverable under any other insurance, but only to the extent of such other insurance. Improvements and betterments are fixtures, alterations, installations, or additions:

- (1) Made a part of the building or structure you occupy but do not own; and
- (2) You acquired or made at your expense but cannot legally remove.

##### **d. Prepaid Rent**, meaning the unamortized portion of any amount of advance rent you paid that will not be refunded to you. This does not include the customary rent due at:

- (1) The beginning of each month; or
- (2) Any other rental period.

- CAUTION: - care must be exercised when showing "described premises" – NOT suite #



# Recipes for Commercial Property Coverages

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## ***Causes of Loss – Special Form - CP 10 30***

### **b. Leasehold Interest Coverage Form**

- (1) Paragraph **B.1.a.**, Ordinance Or Law, does not apply to insurance under this Coverage Form.
- (2) We will not pay for any loss caused by:
  - (a) Your cancelling the lease;
  - (b) The suspension, lapse or cancellation of any license; or
  - (c) Any other consequential loss.

## VIII. Legal Liability Coverage Form

### A. The Exposure

- Named insured can be legally liable for more than just fire – but jurisdiction may follow “Sutton Rule” and named insured is considered a co-insured under landlord’s policy

### B. The Coverage

## ***Legal Liability Coverage Form CP 00 40***

### **A. Coverage**

We will pay those sums that you become legally obligated to pay as damages because of direct physical loss or damage, including loss of use, to Covered Property caused by accident and arising out of any Covered Cause of Loss. We will have the right and duty to defend any "suit" seeking those damages. However, we have no duty to defend you against a "suit" seeking damages for direct physical loss or damage to which this insurance does not apply. We may investigate and settle any claim or "suit" at our discretion. But:

- (1) The amount we will pay for damages is limited as described in Section **C. Limits Of Insurance**; and
- (2) Our right and duty to defend end when we have used up the Limit of Insurance in the payment of judgments or settlements.

#### **1. Covered Property And Limitations**

Covered Property, as used in this Coverage Form, means tangible property of others in your care, custody or control that is described in the Declarations or on the Legal Liability Coverage Schedule.

Covered Property does not include electronic data. Electronic data means information, facts or computer programs stored as or on, created or used on, or transmitted to or from computer software (including systems and applications software), on hard or floppy disks, CD-ROMs, tapes, drives, cells, data processing devices or any other repositories of computer software which are used with electronically controlled equipment. The term computer programs, referred to in the foregoing description of electronic data, means a set of related electronic instructions which direct the operations and functions of a computer or device connected to it, which enable the computer or device to receive, process, store, retrieve or send data. This paragraph does not apply to electronic data which is integrated in and operates or controls the building’s elevator, lighting, heating, ventilation, air conditioning or security system

- Tort liability only – no coverage for liability assumed under contract

## Recipes for Commercial Property Coverages

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### ***Causes of Loss – Special Form - CP 10 30***

#### **c. Legal Liability Coverage Form**

**(1)** The following exclusions do not apply to insurance under this Coverage Form:

- (a)** Paragraph **B.1.a.**, Ordinance Or Law;
- (b)** Paragraph **B.1.c.**, Governmental Action;
- (c)** Paragraph **B.1.d.**, Nuclear Hazard;
- (d)** Paragraph **B.1.e.**, Utility Services; and
- (e)** Paragraph **B.1.f.**, War And Military Action.

**(2)** The following additional exclusions apply to insurance under this Coverage Form:

#### **(a) Contractual Liability**

We will not defend any claim or "suit", or pay damages that you are legally liable to pay, solely by reason of your assumption of liability in a contract or agreement. But this exclusion does not apply to a written lease agreement in which you have assumed liability for building damage resulting from an actual or attempted burglary or robbery, provided that:

- (i)** Your assumption of liability was executed prior to the accident; and
- (ii)** The building is Covered Property under this Coverage Form.

#### **(b) Nuclear Hazard**

We will not defend any claim or "suit", or pay any damages, loss, expense or obligation, resulting from nuclear reaction or radiation, or radioactive contamination, however caused.

IX. Recap - conclusion



# James K. Ruble Seminar

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

Section 2

## **Commercial Casualty Do's and Don'ts**



# Commercial Casualty



## CGL Policy – BAP

**Workers Compensation & Employers Liability  
Insurance Policy**

as well as some legal concepts  
(if time permits)

BUT EXCLUDING WHO IS AN INSURED PROVISIONS

**Allen Messer**

Insurance Concepts & Services

[AllenMesser24@gmail.com](mailto:AllenMesser24@gmail.com)

830-481-7997

# Introductory Comments

## In my opinion!

- Agency should have a **formal method for exposure identification**
- **Agency** should establish “**standards**” when **providing insurance protection** – for example:
  - Minimum liability limits
  - Specific endorsements on every policy
  - Do your best to avoid certain endorsements

# **Formal Method For Identification**

**Survey for Particular Niche**

**Website Review**

**Flowchart**

**Insurance Policy Review**

**Physical Inspections**

**Compliance Review**

**Policies & Procedures Review**

**Contract Review**

**Financial Statement Analysis**

**Loss Data Analysis**

**Experts**

# **EARLIER NOTICE OF CANCELLATION PROVIDED BY US – CG 02 24**

## **SCHEDULE**

**Number of Days' Notice** \_\_\_\_\_

For any statutorily permitted reason other than nonpayment of premium, the number of days required for notice of cancellation, as provided in paragraph 2. of either the CANCELLATION Common Policy Condition or as amended by an applicable state cancellation endorsement, is increased to the number of days shown in the Schedule above.



# DEDUCTIBLE LIABILITY INSURANCE – CG 03 00

## SCHEDULE

Coverage	Amount and Basis of Deductible PER CLAIM or PER OCCURRENCE	
Bodily Injury Liability	\$	\$
OR		
Property Damage Liability	\$	\$
OR		
Bodily Injury Liability and/or Property Damage Liability Combined	\$	\$

**APPLICATION OF ENDORSEMENT** (enter below any limitations on the application of this endorsement. If no limitation is entered, the deductibles apply to damages for all “bodily injury” and “property damage”, however caused):

e.g., **SPRAY PAINTING OPERATIONS**

# COVERAGE FOR INJURY TO LEASED WORKERS – CG 04 24

With respect to the Employer's Liability exclusion (Section I) only, the definition of "employee" in the **DEFINITIONS** Section is replaced by the following:

"Employee" does not include a "leased worker" or a "temporary worker".

# EMPLOYEE BENEFITS LIABILITY COVERAGE

## – CG 04 35

- Adds insurance protection on a claims made basis for those sums that the insured becomes legally obligated to pay as damages because of any act, error or omission, of the insured, or of any other person for whose acts the insured is legally liable, to which this insurance applies.
- Insurance applies to damages only if:
  - (1) The act, error or omission, is negligently committed in the "administration" of the named insured's "employee benefit program";
  - (2) The act, error or omission, did not take place before the Retroactive Date, if any, shown in the Schedule nor after the end of the policy period; and
  - (3) A "claim" for damages, because of an act, error or omission, is first made against any insured, in accordance with Paragraph c. below, during the policy period or an Extended Reporting Period we provide under Paragraph F. of this endorsement.
- Exclusions for Dishonest, Fraudulent, Criminal Or Malicious Act ; Bodily Injury, Property Damage, Or Personal And Advertising Injury; Failure To Perform A Contract ; Insufficiency Of Funds; Inadequacy Of Performance Of Investment/Advice Given With Respect To Participation; Workers' Compensation And Similar Laws; ERISA; Available Benefits; Taxes, Fines Or Penalties ; Employment-Related Practices
- Limit Of Insurance applies each employee with an aggregate
- Deductible applies each employee

# CGL Policy Definition

**17. "Property damage" means: (revised with 2001 edition)**

- 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.

For the purposes of this insurance, 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.

## **NEED AN OPTION FOR BUYING BACK LIABILITY COVERAGE FOR DAMAGE TO ELECTRONIC DATA – CG 04 37**

# ELECTRONIC DATA LIABILITY – CG 04 37

allows the chance to buy back limited coverage

## SCHEDULE

Loss Of Electronic Data Limit: \$ \_\_\_\_\_

.....*in part*

**E. For the purposes of the coverage provided by this endorsement, the definition of "property damage" in the Definitions section is replaced by the following:**

**17. "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;
- 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; or
- c. Loss of, loss of use of, damage to, corruption of, inability to access, or inability to properly manipulate "electronic data", resulting from physical injury to tangible property.** All such loss of "electronic data" shall be deemed to occur at the time of the "occurrence" that caused it.

For the purposes of this insurance, "electronic data" is not tangible property.

## ❖ **Electronic Data Liability Coverage Form – CG 00 65**

covers actual loss of data without requiring associated "physical injury to tangible property"

# PRIMARY AND NONCONTRIBUTORY – OTHER INSURANCE CONDITION – CG 20 01

The following is added to the **Other Insurance** Condition and supersedes any provision to the contrary:

## **Primary And Noncontributory Insurance**

This insurance is primary to and will not seek contribution from any other insurance available to an additional insured under your policy provided that:

- (1) **The additional insured is a Named Insured under such other insurance;** and
- (2) You have agreed in writing in a contract or agreement that this insurance would be primary and would not seek contribution from any other insurance available to the additional insured.

## **Sample Umbrella Wording – Other Insurance**

### **Other Insurance**

If valid and collectible **Other Insurance** Applies to damages that are also covered by this policy, this policy will apply excess of, and will not contribute with, that **Other Insurance**, whether it is primary, excess, contingent or on any other basis.

However, if you specifically agree in a written contract or agreement that the insurance provided to any person or organization as an **Insured** under paragraph IV.O.3 above, must apply on a primary basis or a primary and non-contributory basis, this policy will apply to **Bodily Injury, Property Damage, Personal Injury or Advertising Injury** as if **Other Insurance** available to such person or organization under which that person or organization qualifies as a named insured does not exist, and we will not share with that **Other Insurance**, provided that such **Bodily Injury, Property Damage, Personal Injury or Advertising Injury** is caused by an **Occurrence** that commences subsequent to the execution of such contract or agreement. But this insurance is still excess over any **Other Insurance**, whether such insurance is primary, excess, contingent or on any other basis, which covers that person or organization as an additional insured or as any other insured that does not qualify as a named insured.

## **ADDITIONAL INSURED – CLUB MEMBERS – CG 20 02**

WHO IS AN INSURED (Section II) is amended to include as an insured any of your members, but only with respect to their liability for your activities or activities they perform on your behalf.

## **ADDITIONAL INSURED – CHURCH MEMBERS AND OFFICERS - CG 20 22**

**A. Paragraph 2.a., Exclusions of Section I – Coverage C – Medical Payments** is replaced by the following:

We will not pay expenses for "bodily injury":

- a. To any insured, except church members who are not paid a fee, salary or other compensation.

**B. Section II – Who Is An Insured** is amended to include the following as insureds:

1. Any of your church members, but only with respect to their liability for your activities or activities they perform on your behalf.
2. Any:
  - a. Trustee, official or member of the board of governors of the church; or
  - b. Members of the clergybut only with respect to their duties as such.

# EXCLUSION – ALL HAZARDS IN CONNECTION WITH DESIGNATED PREMISES – CG 21 00

## SCHEDULE

### Description And Location Of Premises:

The following exclusion is added to Paragraph 2., Exclusions of Section I – Coverage A – Bodily Injury And Property Damage Liability and Paragraph 2., Exclusions Of Section I – Coverage B – Personal And Advertising Injury Liability:

This insurance does not apply to "bodily injury", "property damage" or "personal and advertising injury" arising out of:

1. The ownership, maintenance or use of the premises shown in the Schedule or any property located on these premises;
2. Operations on those premises or elsewhere **which are necessary or incidental to the ownership, maintenance or use of those premises**; or
3. Goods or products manufactured at or distributed from those premises.



# **EXCLUSION – ATHLETIC OR SPORTS PARTICIPANTS – CG 21 01**

## **SCHEDULE**

### **Description of Operations:**

The following is added to Paragraph 2. Exclusions of Section I – Coverage A – Bodily Injury And Property Damage Liability:

With respect to any operations shown in the Schedule, this insurance does not apply to "bodily injury" to any person arising out of practicing for or participating in any sports or athletic contest or exhibition that you sponsor.

This exclusion applies even if the claims against any insured allege negligence or other wrong doing in the supervision, hiring, employment, training or monitoring of others by that insured, if the "occurrence" which caused the "bodily injury" involving practicing for or participating in any sports or athletic contest or exhibition that you sponsor.

# **EXCLUSION – ATHLETIC OR SPORTS PARTICIPANTS – ALL CONTESTS OR EXHIBITIONS – CG 40 03**

### **Description of Operations:**

The following is added to Paragraph 2. Exclusions of Section I – Coverage A – Bodily Injury And Property Damage Liability:

With respect to any operations shown in the Schedule, this insurance does not apply to "bodily injury" to any person arising out of practicing for or participating in any sports or athletic contest or exhibition.

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" involved practicing for or participating in any sports or athletic contest or exhibition.

# EXCLUSION – ACCESS OR DISCLOSURE OF CONFIDENTIAL OR PERSONAL INFORMATION AND DATA-RELATED LIABILITY – WITH LIMITED BODILY INJURY EXCEPTION – CG 21 06

A. Exclusion 2.p. of Section I – Coverage A – Bodily Injury And Property Damage Liability is replaced by the following:

## 2. Exclusions

This insurance does not apply to:

### p. Access Or Disclosure Of Confidential Or Personal Information And Data-related Liability

Damages arising out of:

- (1) Any access to or disclosure of any person's or organization's confidential or personal information, including patents, trade secrets, processing methods, customer lists, financial information, credit card information, health information or any other type of nonpublic information; or
- (2) The loss of, loss of use of, damage to, corruption of, inability to access, or inability to manipulate electronic data.

This exclusion applies even if damages are claimed for notification costs, credit monitoring expenses, forensic expenses, public relations expenses or any other loss, cost or expense incurred by you or others arising out of that which is described in Paragraph (1) or (2) above.

However, unless Paragraph (1) above applies, this exclusion does not apply to 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.

B. The following is added to Paragraph 2. Exclusions of Section I – Coverage B – Personal And Advertising Injury Liability:

## 2. Exclusions

This insurance does not apply to:

### Access Or Disclosure Of Confidential Or Personal Information

"Personal and advertising injury" arising out of any access to or disclosure of any person's or organization's confidential or personal information, including patents, trade secrets, processing methods, customer lists, financial information, credit card information, health information or any other type of nonpublic information.

This exclusion applies even if damages are claimed for notification costs, credit monitoring expenses, forensic expenses, public relations expenses or any other loss, cost or expense incurred by you or others arising out of any access to or disclosure of any person's or organization's confidential or personal information.

# **EXCLUSION - UNMANNED AIRCRAFT – CG 21 09**

## ***In part***

**A. Exclusion 2.g. Aircraft, Auto Or Watercraft under Section I – Coverage A – Bodily Injury And Property Damage Liability** is replaced by the following:

### **2. Exclusions**

This insurance does not apply to:

#### **g. Aircraft, Auto Or Watercraft**

##### **(1) Unmanned Aircraft**

**“Bodily injury” or “property damage” arising out of the ownership, maintenance, use or entrustment to others of any aircraft that is an “unmanned aircraft”. Use includes operation and Loading or unloading”. .....**

**B. The following is added to Paragraph 2. Exclusions of Coverage B- Personal And Advertising Injury Liability:**

### **2. Exclusions**

This insurance does not apply to:

#### **Unmanned Aircraft**

**“Personal and advertising injury” arising out of the ownership, maintenance, use or entrustment to others of any aircraft that is an “unmanned aircraft”. Use includes operation and Loading or unloading. ....**

**C. The following definition is added to the **Definitions** section:**

**“Unmanned aircraft: means an aircraft that is not:**

- 1. Designed;**
- 2. Manufactured; or**
- 3. Modified after manufacture:**

**to be controlled directly by a person from within or on the aircraft.**

## **CG 21 09 AND OTHER ENDORSEMENTS**

- Exclusion g. under Coverage A. in the CGL Policy already excludes any coverage for drones if ... “owned or operated by or rented or loaned to any insured”... BUT does not exclude exposure if operated by a third party on behalf of the insured
  - **CG 21 09 excludes this third party exposure**
- No exclusion under Coverage B in the unendorsed CGL Policy
  - **CG 21 09 adds this exclusion to Coverage B**
- **CG 21 10 - EXCLUSION - UNMANNED AIRCRAFT (Coverage A Only)**
- **CG 21 11 - EXCLUSION - UNMANNED AIRCRAFT (Coverage B Only)**
- **CG 24 50 – LIMITED COVERAGE FOR DESIGNATED UNMANNED AIRCRAFT**
  - Schedule – Description of Unmanned Aircraft/Description of Operation(s) Or Project(s)
  - Optional Unmanned Aircraft Liability Aggregate Limit

# LIMITED EXCLUSION – DESIGNATED OPERATIONS COVERED BY A CONTROLLED (WRAP-UP) INSURANCE PROGRAM – CG 21 31 SCHEDULE

## Description And Location Of Operation(s):

### A. The following exclusion is added to Paragraph 2. Exclusions of Section I – Coverage A – Bodily Injury And Property Damage Liability:

1. This insurance does not apply to "bodily injury" or "property damage":
  - a. Arising out of your ongoing operations; or
  - b. Included in the "products-completed operations hazard" at the location described in the Schedule of this endorsement, but only if you are enrolled in as a "controlled (wrap-up) insurance program" with respect to the "bodily injury" or "property damage" described in Paragraphs 1.a. and 1.b. above at such location(s).
2. This exclusion applies whether or not the consolidated (wrap-up) insurance program:
  - a. Provides coverage identical to that provided by this Coverage Part; or
  - b. Has limits adequate to cover all claims.
3. However, this exclusion does not apply if the "controlled (wrap-up) insurance program" in which you are enrolled with respect to the "bodily injury" or "property damage described in Paragraph A.1 above at the locations described in the Schedule of this endorsement has been cancelled, nonrenewed or otherwise no longer applies for reasons other than the exhaustion of all available limits, whether such limits are available on a primary, excess or on any other basis. You must advise us of such cancellation, nonrenewal or termination as soon as practicable.

## Watch out for – CG 21 54 - EXCLUSION—DESIGNATED OPERATIONS COVERED BY A CONTROLLED (WRAP-UP) INSURANCE PROGRAM

# COMMUNICABLE DISEASE EXCLUSION

## – CG 21 32

### **A. The following exclusion is added to Paragraph 2. Exclusions of Section I – Coverage A – Bodily Injury And Property Damage Liability:**

#### 2. Exclusions

This insurance does not apply to:

#### **Communicable Disease**

"Bodily injury" or "property damage" arising out of the actual or alleged transmission of a communicable disease.

This exclusion applies even if the claims against any insured allege negligence or other wrongdoing in the:

- a. Supervising, hiring, employing, training or monitoring of others that may be infected with and spread a communicable disease;
- b. Testing for a communicable disease;
- c. Failure to prevent the spread of the disease; or
- d. Failure to report the disease to authorities.

### **B. The following exclusion is added to Paragraph 2. Exclusions of Section I – Coverage B – Personal And Advertising Injury Liability:**

#### 2. Exclusions

This insurance does not apply to:

#### **Communicable Disease**

"Personal and advertising injury" arising out of the actual or alleged transmission of a communicable disease.

This exclusion applies even if the claims against any insured allege negligence or other wrongdoing in the:

- a. Supervising, hiring, employing, training or monitoring of others that may be infected with and spread a communicable disease;
- b. Testing for a communicable disease;
- c. Failure to prevent the spread of the disease; or
- d. Failure to report the disease to authorities.

**EXCLUSION – DESIGNATED PRODUCTS  
– CG 21 33  
SCHEDULE**

**Designated Product(s):**

This insurance does not apply to "bodily injury" or "property damage" included in the "products-completed operations hazard" and arising out of any of "your products" shown in the Schedule.

**EXCLUSION – DESIGNATED WORK – CG 21 34  
SCHEDULE**

**Description of your work:**

This insurance does not apply to "bodily injury" or "property damage" included in the "products-completed operations hazard" and arising out of "your work" shown in the Schedule.

# **EXCLUSION - COVERAGE C – MEDICAL PAYMENTS – CG 21 35 SCHEDULE**

## **Description and Location of Premises or Classification:**

With respect to any premises or classification shown in the Schedule:

1. Section I – Coverage C – Medical Payments does not apply and none of the references to it in the Coverage Part apply: and
2. The following is added to Section I – Supplementary Payments:
  - h. Expenses incurred by the insured for first aid administered to others at the time of an accident for "bodily injury" to which this insurance applies.

## **FROM CGL Insuring Agreement**

- (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** or medical expenses under Coverage **C**.



# CONTRACTUAL LIABILITY LIMITATION

## – CG 21 39

The definition of "insured contract" in the DEFINITIONS Section is replaced by the following:

"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.

➤ eliminates Paragraph f. from definition

**f. 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.**

# CGL Policy Conditions

## 7. 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.

## EXCLUSION – INTERCOMPANY PRODUCTS SUITS – CG 21 41

This insurance does not apply to any claim for damages by **any Named Insured against another Named Insured** because of "bodily injury" or "property damage" arising out of "your products" and included within the "products-completed operations hazard."

## EXCLUSION – CROSS SUITS LIABILITY – CG 40 10

- A. The following exclusion is added to Paragraph 2. Exclusions of Section I – Coverages – Coverage A – Bodily Injury And Property Damage Liability:

This insurance does not apply to:

### Cross Suits

Any claim made or "suit" brought by any Named Insured under this Policy against another Named Insured under this Policy for damages because of "bodily injury" or "property damage".

- B. The following is added to Paragraph 2. Exclusions of Section I – Coverages – Coverage B – Personal And Advertising Injury Liability:

This insurance does not apply to:

### Cross Suits

Any claim made or "suit" brought by any Named Insured under this Policy against another Named Insured under this Policy for damages because of "personal and advertising injury".

# LIMITATION OF COVERAGE TO DESIGNATED PREMISES OR PROJECT – CG 21 44 SCHEDULE

**Premises:**

**Project:**

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

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

**Just how ambiguous the limitation of liability coverage to specific premises can be was illustrated** in the case of *Brewer & Co. v. Marine Indem. Ins. Co. of Am.*, 347 P.3d 163 (Hawaii 2015). Following the collapse of a dam in 2006 and resulting claims for bodily injury and property damage, the owner of the dam brought suit **against the corporation that had sold the dam and surrounding property to him**. The allegations contained in this suit were that the seller had been **negligent in arranging maintenance and repair work on the dam** and, therefore, was legally responsible for the collapse. At the time of the injury and damage, the **seller was insured under a general liability policy that had been endorsed to limit coverage to injury or damage "arising out of the ownership, maintenance or use of the premises shown in the above Schedule"**. **Listed as a scheduled premises was the seller's business headquarters**. The dam itself and the land it was on were not in the schedule. On that basis, the seller's liability insurer denied coverage. The resulting litigation ultimately made its way on appeal to the **Hawaii Supreme Court, which ruled that the seller's negligence in maintaining the dam before it was sold caused injury and damage "arising out of the ownership, maintenance or use" of the seller's business office.**

The **court emphasized** that no "designated premises" endorsement (other than one, perhaps, that specifically limits coverage to liability for injury or damage that occurs at the designated premises) **can convert a CGL policy into a premises liability policy**. That principle, enunciated by the Hawaii court in interpreting the phrase "arising out of the ownership, maintenance or use of the premises," would seem to be even more applicable in interpreting the scope of liability that arises out of "operations necessary or incidental" to the scheduled premises.

## As a result, LIMITATION OF COVERAGE TO DESIGNATED PREMISES, PROJECT OR OPERATION – CG 21 44 04 17

# EMPLOYMENT-RELATED PRACTICES EXCLUSION – CG 21 47

## A. The following exclusion is added to Paragraph 2., Exclusions of Section I – Coverage A – Bodily Injury And Property Damage Liability:

This insurance does not apply to:

"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 Paragraphs (a), (b), or (c) above is directed.

This exclusion applies:

- (1) Whether the injury-causing event described in Paragraphs (a), (b) or (c) above occurs before employment, during employment or after employment of that person;
- (2) Whether the insured may be liable as an employer or in any other capacity; and
- (3) To any obligation to share damages with or repay someone else who must pay damages because of the injury.

## B. The following exclusion is added to Paragraph 2., Exclusions of Section I – Coverage B – Personal And Advertising Injury Liability:

This insurance does not apply to:

"Personal and advertising 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 "personal and advertising injury" to that person at whom any of the employment-related practices described in Paragraphs (a), (b), or (c) above is directed.

This exclusion applies:

- (1) Whether the injury-causing event described in Paragraphs (a), (b) or (c) above occurs before employment, during employment or after employment of that person;
- (2) Whether the insured may be liable as an employer or in any other capacity; and
- (3) To any obligation to share damages with or repay someone else who must pay damages because of the injury.

# CGL Policy – Pollution Exclusion

**This insurance does not apply to:**

(1) “Bodily injury” or “property damage” arising out of the actual, alleged or threatened discharge, dispersal, seepage, migration, release, or escape of “pollutants”:

**Paragraph (a)** - at or from any **premises**, site, or location which is or was at any time owned or occupied by, or rented or loaned to, **any** insured.

However, this subparagraph **does NOT** apply to:

**Let’s look at exceptions to premises exclusion!**

- bodily injury caused by smoke, fumes, vapor or soot from the building’s heating or cooling system or equipment used to heat water for personal use
- bodily injury or property damage if named insured is a contractor and:
  - The owner or lessee of the premises, site or location has been added to named insured’s policy as an additional insured for ongoing operations with respect to that additional insured at that premises, site or location; and
  - That premises, site or location is not and never was owned or occupied by, or rented or loaned to, any insured, other than that additional insured
- bodily injury or property damage arising out of heat, smoke or fumes from a “hostile fire” (premises)

# **CGL POLLUTION EXCLUSION**

**This insurance does not apply to:**

**Paragraph (b)** - at or from any premises, site or location which is was at any time used by or for any insured or others for the handling, storage, disposal, processing or treatment of waste – **“landfill exclusion”**

**Paragraph (c)** - which are or were at any time transported, handled, stored, treated, disposed of, or processed as waste for any insured or any person or organization for whom you may be legally responsible – **“transporter exclusion”**

**These two paragraphs involve waste treatment and disposal – both premises and operations exposures are excluded!**

# CGL POLLUTION EXCLUSION

**This insurance does not apply to:**

**Paragraph (d)** - at or from any premises, site or location on which any insured or any contractors or subcontractors working directly or indirectly on any insured's behalf **are performing operations** if the "pollutants" **are brought** on or to the premises, site or location in connection with such operations by such insured, contractor or subcontractor. However, this subparagraph **does NOT apply to:**

**Let's look at operations exceptions to exclusions!**

- BI – Do not take pollutants to site – no intentional discharge – not there to work on - ***implied exception***
- BI/PD – Fuels/Lubricants mobile equipment – no intentional discharge
- BI/PD – Take pollutants to site – within building – release of gases/fumes/vapors
- BI/PD – Hostile Fire

# **CGL Policy POLLUTION EXCLUSION**

## **This insurance does not apply to:**

**Paragraph (e)** - at or from premises, site or location on which any insured or any contractors or subcontractors working directly or indirectly on any insured's behalf are performing operations if the operations are to test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to, or assess the effects of, "pollutants". –  
**"environmental remediation exclusion"**

**This paragraph involves the "hazardous materials" contractor – must be endorsed to provide coverage – not usually available in standard market**

## **HAZARDOUS MATERIAL CONTRACTORS – CG 22 78**

With respect to the removal, replacement, repair, enclosure or encapsulation of any hazardous material or substance from a building or structure, Paragraph **(1)(e)** under **Exclusion f. of Section I—Coverage A—Bodily Injury and Property Damage Liability** is deleted.

# **CGL POLLUTION EXCLUSION**

**Products-completed operations exception**



# **TOTAL POLLUTION EXCLUSION ENDORSEMENT – CG 21 49**

Exclusion f. under Paragraph 2., Exclusions of Section I – Coverage A – **Bodily Injury And Property Damage Liability** is replaced by the following:  
This insurance does not apply to:

## **f. 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.
- (2)** 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".

# **TOTAL POLLUTION EXCLUSION WITH A BUILDING HEATING, COOLING AND DEHUMIDIFYING EQUIPMENT EXCEPTION AND A HOSTILE FIRE EXCEPTION – CG 21 65**

# **TOTAL POLLUTION EXCLUSION WITH A HOSTILE FIRE EXCEPTION – CG 21 55**

# CGL Policy Exclusions

## 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.

## **AMENDMENT OF LIQUOR LIABILITY EXCLUSION – CG 21 50**

The following replaces Exclusion c. under Paragraph 2. **Exclusions of Section I – Coverage A – Bodily Injury And Property Damage Liability:**

.....*in part*

This exclusion applies only if you:

- (1) Manufacture, sell or distribute alcoholic beverages;
- (2) Serve or furnish alcoholic beverages for a charge whether or not such activity:
  - (a) Requires a license;
  - (b) Is for the purpose of financial gain or livelihood;
- (3) Serve or furnish alcoholic beverages without a charge, if a license is required for such activity;  
or
- (4) Permit any person to bring any alcoholic beverages on your premises, for consumption on your premises.

## **AMENDMENT OF LIQUOR LIABILITY EXCLUSION – EXCEPTION FOR SCHEDULED PREMISES OR ACTIVITIES – CG 21 51 SCHEDULE**

**Description Of Premises Or Activities:**

.....*in part*

However, this exclusion does not apply to "bodily injury" or "property damage" arising out of:

- (i) The selling, serving or furnishing of alcoholic beverages at the specified activity described in the Schedule; or
- (ii) Permitting any person to bring any alcoholic beverages on the premises described in the Schedule, for consumption on the premises described in the Schedule.

## **AMENDMENT OF LIQUOR LIABILITY EXCLUSION – LIMITED EXCEPTION FOR BRING YOUR OWN ALCOHOL – CG 40 09**

.....(in part) May be used instead of CG 21 50 or 21 51

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 selling, serving or furnishing alcoholic beverages.

# **EXCLUSION – DESIGNATED ONGOING OPERATIONS – CG 21 53**

## **SCHEDULE**

### **Description of Designated Ongoing Operation(s):**

#### **Specified Location (If Applicable):**

The following exclusion is added to paragraph 2., Exclusions of COVERAGE A—BODILY INJURY AND PROPERTY DAMAGE LIABILITY (Section I —Coverages):

This insurance does not apply to "bodily injury" or "property damage" arising out of the ongoing operations described in the Schedule of this endorsement, regardless of whether such operations are conducted by you or on your behalf or whether the operations are conducted for yourself or for others.

Unless a "location" is specified in the Schedule, this exclusion applies regardless of where such operations are conducted by you or on your behalf. If a specific "location" is designated in the Schedule of this endorsement, this exclusion applies only to the described ongoing operations conducted at that "location".

For the purpose of this endorsement, "location" means premises involving the same or connecting lots, or premises whose connection is interrupted only by a street, roadway, waterway or right-of-way of a railroad.

# PESTICIDE OR HERBICIDE APPLICATOR— LIMITED POLLUTION COVERAGE – CG 22 64

With respect to the operations shown in the Schedule, Paragraph (1)(d) of Exclusion f. of Section I – Coverage A – Bodily Injury And Property Damage Liability does not apply *if the operations meet all standards of any statute, ordinance, regulation or license requirement of any federal, state or local government which apply to those operations.*

**CLM** rules mandate the use of endorsement CG 22 64 on the CGL Policy of any named insured in one of the following classifications:

- 43470** Pest Control Services
- 43860** Fumigating
- 91606** Crop Spraying—by contractors
- 98257** Orchards and Vineyards—operation by contractors
- 99777** Tree Pruning, Dusting, Spraying, Repairing, Trimming or Fumigating

# MISDELIVERY OF LIQUID PRODUCTS COVERAGE – CG 22 66

Exclusion **g.** of COVERAGE A (Section I) does not apply to "bodily injury" or "property damage" arising out of:

1. The delivery of any liquid product into a wrong receptacle or to a wrong address; or
2. The erroneous delivery of one liquid product for another by an "auto";

if the "bodily injury" or "property damage" occurs after such operations have been completed or abandoned at the site of such delivery.

Operations which may require further service, maintenance, correction, repair or replacement of performance at the wrong address or because of any error, defect or deficiency, but which are otherwise completed, will be deemed completed.

# OPERATION OF CUSTOMERS' AUTOS ON PARTICULAR PREMISES – CG 22 68

- A. Exclusion g. of paragraph 2., Exclusions of COVERAGE A—BODILY INJURY AND PROPERTY DAMAGE LIABILITY (Section I —Coverages) does not apply to any "customer's auto" while on or next to those premises you own, rent or control that are used for any of the following businesses:
1. Auto Repair or Service Shops;
  2. Car Washes;
  3. Gasoline Stations;
  4. Tire Dealers;
  5. Automobile Quick Lubrication Services.
- B. The following definition is added to the DEFINITIONS Section:
- "Customer's auto" means an "auto" on those premises for the purpose of receiving the services normally provided in connection with those businesses but does not include an "auto" owned by or rented or loaned to any insured.

# LIMITED CONTRACTUAL LIABILITY COVERAGE FOR PERSONAL AND ADVERTISING INJURY – CG 22 74 SCHEDULE

## Designated Contract Or Agreement:

*In part....*

A. With respect to the contract or agreement designated in the Schedule above, Subparagraph e. of Paragraph 2. Exclusions of Section I – Coverage B – Personal And Advertising Injury Liability is replaced by the following:

### 2. Exclusions

This insurance does not apply to:

#### e. Contractual Liability

"Personal and advertising injury" for which the insured has assumed liability in a contract or agreement.

This exclusion does not apply to:

- (1) Liability for damages that the insured would have in the absence of the contract or agreement; or
- (2) Liability for "personal and advertising injury" if:
  - (a) The liability pertains to your business and is assumed in the designated contract or agreement shown in the Schedule in which you assume the tort liability of another. Tort liability means a liability that would be imposed by law in the absence of any contract or agreement;
  - (b) The "personal and advertising injury" occurs subsequent to the execution of the designated contract or agreement shown in the Schedule; and
  - (c) The "personal and advertising injury" arises out of the offenses of false arrest, detention or imprisonment.



# EXCLUSION – CONTRACTORS – PROFESSIONAL LIABILITY – CG 22 79

The following exclusion is added to Paragraph 2. Exclusions of Section I – Coverage A – Bodily Injury And Property Damage Liability and Paragraph 2. Exclusions of Section I – Coverage B – Personal And Advertising Injury Liability:

1. This insurance does not apply to "bodily injury", "property damage" or "personal and advertising injury" arising out of the rendering of or failure to render any professional services by you or on your behalf, but only with respect to either or both of the following operations:
  - a. Providing engineering, architectural or surveying services to others in your capacity as an engineer, architect or surveyor; and
  - b. Providing, or hiring independent professionals to provide, engineering, architectural or surveying services in connection with construction work you perform.

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", or the offense which caused the "personal and advertising injury", involved the rendering of or failure to render any professional services by you or on your behalf with respect to the operations described above.

2. Subject to Paragraph 3. below, professional services include:
  - a. Preparing, approving, or failing to prepare or approve, maps, shop drawings, opinions, reports, surveys, field orders, change orders, or drawings and specifications; and
  - b. Supervisory or inspection activities performed as part of any related architectural or engineering activities.
3. Professional services do not include services within construction means, methods, techniques, sequences and procedures employed by you in connection with your operations in your capacity as a construction contractor.

# SNOW PLOW OPERATIONS COVERAGE

## – CG 22 92

Within the "*products-completed operations hazard*", Exclusion **g.** under **Section I – Coverage A – Bodily Injury And Property Damage Liability** does not apply to any "auto" used for snow plow operations.

# LAWN CARE SERVICES – LIMITED POLLUTION COVERAGE – CG 22 93

Paragraph **(1)(d)** of Exclusion **f.** under **Section I – Coverage A – Bodily Injury And Property Damage Liability** does not apply to the application of herbicides or pesticides by an insured on lawns under your regular care.

For use with Class Code 97050—Lawn Care Services

# **EXCLUSION – DAMAGE TO WORK PERFORMED BY SUBCONTRACTORS ON YOUR BEHALF – CG 22 94**

Exclusion I. of **Section I – Coverage A – Bodily Injury And Property Damage Liability** is replaced by the following:

## **2. Exclusions**

This insurance does not apply to:

### **I. 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".

❖ Watch out for **EXCLUSION – DAMAGE TO WORK  
PERFORMED BY SUBCONTRACTORS ON YOUR  
BEHALF – DESIGNATED SITES OR OPERATIONS  
- CG 22 95**

# WAIVER OF TRANSFER OF RIGHTS OF RECOVERY AGAINST OTHERS TO US – CG 24 04 SCHEDULE

## Name Of Person(s) Or Organization(s):

The following is added to Paragraph 8. Transfer Of Rights Of Recovery Against Others To Us of Section IV – Conditions:

We waive any right of recovery against the person(s) or organization(s) shown in the Schedule above because of payments we make under this Coverage Part. Such waiver by us applies only to the extent that the insured has waived its right of recovery against such person(s) or organization(s) prior to loss. This endorsement applies only to the person(s) or organization(s) shown in the Schedule above.

# WAIVER OF TRANSFER OF RIGHTS OF RECOVERY AGAINST OTHERS TO US (WAIVER OF SUBROGATION) – AUTOMATIC – CG 24 53

The following is added to Paragraph 8. Transfer Of Rights Of Recovery Against Others To Us of Section IV – Conditions:

We waive any right of recovery against any person or organization, because of any payment we make under this Coverage Part, to whom the insured has waived its right of recovery in a written contract or agreement. Such waiver by us applies only to the extent that the insured has waived its right of recovery against such person or organization prior to loss.

# CGL Policy Definitions

## *In part*

16. "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.

# PRODUCTS/COMPLETED OPERATIONS HAZARD REDEFINED – CG 24 07

## SCHEDULE

### Description of Premises and Operations:

With respect to "bodily injury" or "property damage" arising out of "your products" manufactured, sold, handled or distributed:

1. On, from or in connection with the use of any premises described in the Schedule, or
2. In connection with the conduct of any operation described in the Schedule, when conducted by you or on your behalf,

Paragraph a. of the definition of "Products—completed operations hazard" in the DEFINITIONS Section is replaced by the following:

"Products-completed operations hazard":

- a. Includes all "bodily injury" and "property damage" that arises out of "your products" *if the "bodily injury" or "property damage" occurs after you have relinquished possession of those products.*

# BOATS – CG 24 12

## SCHEDULE

### **Description of Watercraft:**

### **Additional Premium:**

1. Exclusion g. of **COVERAGE A** (Section I) does not apply to any watercraft owned or used by or rented to the insured shown in the Schedule.
2. **WHO IS AN INSURED** (Section II) is amended to include as an insured any person or organization legally responsible for the use of any such watercraft you own, provided the actual use is with your permission.



# AMENDMENT OF PERSONAL AND ADVERTISING INJURY DEFINITION – CG 24 13

With respect to Coverage B Personal And Advertising Injury Liability, Paragraph 14.e. of the Definitions section does not apply.

## FROM CGL POLICY DEFINITIONS

**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".

# CONTRACTUAL LIABILITY – RAILROADS

## – CG 24 17

### SCHEDULE

#### **Scheduled Railroad:**

#### **Designated Job Site:**

With respect to operations performed for, or affecting, a Scheduled Railroad at a Designated Job Site, the definition of "insured contract" in the Definitions section is replaced by the following:

#### **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;
- 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 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.

Paragraph f. does not include that part of any contract or agreement:

- (1) That indemnifies an architect, engineer or surveyor for injury or damage arising out of:
  - (a) Preparing, approving or failing to prepare or approve maps, shop drawings, opinions, reports, surveys, field orders, change orders or drawings and specifications; or
  - (b) Giving directions or instructions, or failing to give them, if that is the primary cause of the injury or damage;
- (2) Under which the insured, if an architect, engineer or surveyor, assumes liability for an injury or damage arising out of the insured's rendering or failure to render professional services, including those listed in Paragraph (1) above and supervisory, inspection, architectural or engineering activities.

❖ **Watch out for LIMITED CONTRACTUAL LIABILITY – RAILROADS - CG 24 27 – does not apply to sole negligence of railroad**

# AMENDMENT OF INSURED CONTRACT

## DEFINITION – CG 24 26

The definition of "insured contract" in the Definitions section is replaced by the following:

"Insured contract" means:

.....*in part*

f. 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, **provided the "bodily injury" or "property damage" is caused, in whole or in part, by you or by those acting on your behalf.** However, such part of a contract or agreement shall only be considered an "insured contract" to the extent your assumption of the tort liability is permitted by law. Tort liability means a liability that would be imposed by law in the absence of any contract or agreement.

# DESIGNATED CONSTRUCTION PROJECT(S) GENERAL AGGREGATE LIMIT – CG 25 03 SCHEDULE

## Designated Construction Project(s): ALL

- A. For all sums which the insured becomes legally obligated to pay as damages caused by "occurrences" under Section I – Coverage A, and for all medical expenses caused by accidents under Section I – Coverage C, which can be attributed only to ongoing operations at a single designated construction project shown in the Schedule above:
1. A separate Designated Construction Project General Aggregate Limit applies to each designated construction project, and that limit is equal to the amount of the General Aggregate Limit shown in the Declarations.
  2. The Designated Construction Project General Aggregate Limit is the most we will pay for the sum of all damages under Coverage A, except damages because of "bodily injury" or "property damage" included in the "products-completed operations hazard", and for medical expenses under Coverage C regardless of the number of:
    - a. Insureds;
    - b. Claims made or "suits" brought; or
    - c. Persons or organizations making claims or bringing "suits".
  3. Any payments made under Coverage A for damages or under Coverage C for medical expenses shall reduce the Designated Construction Project General Aggregate Limit for that designated construction project. Such payments shall not reduce the General Aggregate Limit shown in the Declarations nor shall they reduce any other Designated Construction Project General Aggregate Limit for any other designated construction project shown in the Schedule above.
  4. The limits shown in the Declarations for Each Occurrence, Damage To Premises Rented To You and Medical Expense continue to apply. However, instead of being subject to the General Aggregate Limit shown in the Declarations, such limits will be subject to the applicable Designated Construction Project General Aggregate Limit.
- B. For all sums which the insured becomes legally obligated to pay as damages caused by "occurrences" under Section I – Coverage A, and for all medical expenses caused by accidents under Section I – Coverage C, which cannot be attributed only to ongoing operations at a single designated construction project shown in the Schedule above:
1. Any payments made under Coverage A for damages or under Coverage C for medical expenses shall reduce the amount available under the General Aggregate Limit or the Products-completed Operations Aggregate Limit, whichever is applicable; and
  2. Such payments shall not reduce any Designated Construction Project General Aggregate Limit.
- C. When coverage for liability arising out of the "products-completed operations hazard" is provided, any payments for damages because of "bodily injury" or "property damage" included in the "products-completed operations hazard" will reduce the Products-completed Operations Aggregate Limit, and not reduce the General Aggregate Limit nor the Designated Construction Project General Aggregate Limit.
- D. If the applicable designated construction project has been abandoned, delayed, or abandoned and then restarted, or if the authorized contracting parties deviate from plans, blueprints, designs, specifications or timetables, the project will still be deemed to be the same construction project.
- E. The provisions of Section III – Limits Of Insurance not otherwise modified by this endorsement shall continue to apply as stipulated.

# DESIGNATED LOCATION(S) GENERAL AGGREGATE LIMIT - CG 25 04 SCHEDULE

## Designated Location(s): ALL

- A. For all sums which the insured becomes legally obligated to pay as damages caused by "occurrences" under Section I – Coverage A, and for all medical expenses caused by accidents under Section I – Coverage C, which can be attributed only to operations at a single designated "location" shown in the Schedule above:
1. A separate Designated Location General Aggregate Limit applies to each designated "location", and that limit is equal to the amount of the General Aggregate Limit shown in the Declarations.
  2. The Designated Location General Aggregate Limit is the most we will pay for the sum of all damages under Coverage A, except damages because of "bodily injury" or "property damage" included in the "products-completed operations hazard", and for medical expenses under Coverage C regardless of the number of:
    - a. Insureds;
    - b. Claims made or "suits" brought; or
    - c. Persons or organizations making claims or bringing "suits".
  3. Any payments made under Coverage A for damages or under Coverage C for medical expenses shall reduce the Designated Location General Aggregate Limit for that designated "location". Such payments shall not reduce the General Aggregate Limit shown in the Declarations nor shall they reduce any other Designated Location General Aggregate Limit for any other designated "location" shown in the Schedule above.
  4. The limits shown in the Declarations for Each Occurrence, Damage To Premises Rented To You and Medical Expense continue to apply. However, instead of being subject to the General Aggregate Limit shown in the Declarations, such limits will be subject to the applicable Designated Location General Aggregate Limit.
- B. For all sums which the insured becomes legally obligated to pay as damages caused by "occurrences" under Section I – Coverage A, and for all medical expenses caused by accidents under Section I – Coverage C, which cannot be attributed only to operations at a single designated "location" shown in the Schedule above:
1. Any payments made under Coverage A for damages or under Coverage C for medical expenses shall reduce the amount available under the General Aggregate Limit or the Products-completed Operations Aggregate Limit, whichever is applicable; and
  2. Such payments shall not reduce any Designated Location General Aggregate Limit.
- C. When coverage for liability arising out of the "products-completed operations hazard" is provided, any payments for damages because of "bodily injury" or "property damage" included in the "products-completed operations hazard" will reduce the Products-completed Operations Aggregate Limit, and not reduce the General Aggregate Limit nor the Designated Location General Aggregate Limit.
- D. For the purposes of this endorsement, the Definitions Section is amended by the addition of the following definition:  
"Location" means premises involving the same or connecting lots, or premises whose connection is interrupted only by a street, roadway, waterway or right-of-way of a railroad.
- E. The provisions of Section III – Limits Of Insurance not otherwise modified by this endorsement shall continue to apply as stipulated.

# DESIGNATED PROJECT(S) PRODUCTS- COMPLETED OPERATIONS AGGREGATE LIMIT – CG 25 45

## Designated Project(s): ALL

- A. For all sums which the insured becomes legally obligated to pay as damages caused by "occurrences" under Section I – Coverage A because of "bodily injury" and "property damage" included in the "products-completed operations hazard" which can be attributed only to "your work" at a single designated project shown in the Schedule above:
1. A separate Designated Project Products-Completed Operations Aggregate Limit applies to each designated project, and that limit is equal to the amount of the Products-Completed Operations Aggregate Limit shown in the Declarations.
  2. The Designated Project Products-Completed Operations Aggregate Limit is the most we will pay for the sum of all damages under Coverage A because of "bodily injury" and "property damage" included in the "products-completed operations hazard", regardless of the number of:
    - a. Insureds;
    - b. Claims made or "suits" brought; or
    - c. Persons or organizations making claims or bringing "suits".
  3. Any payments made under Coverage A for damages shall reduce the Designated Project Products-Completed Operations Aggregate Limit for that designated project. Such payments shall not reduce the Products-Completed Operations Aggregate Limit shown in the Declarations nor shall they reduce any other Designated Project Products-Completed Operations Aggregate Limit for any other designated project shown in the Schedule above.
  4. The limits shown in the Declarations for Each Occurrence continue to apply. However, instead of being subject to the Products-Completed Operations Aggregate Limit shown in the Declarations, such limits will be subject to the applicable Designated Project Products-Completed Operations Aggregate Limit.
- B. For all sums which the insured becomes legally obligated to pay as damages caused by "occurrences" under Section I – Coverage A because of "bodily injury" and "property damage" included in the "products-completed operations hazard" which cannot be attributed only to "your work" at a single designated project shown in the Schedule above:
1. Any payments made under Coverage A for damages because of "bodily injury" and "property damage" included in the "products-completed operations hazard" shall reduce the amount available under the Products-Completed Operations Aggregate Limit; and
  2. Such payments shall not reduce any Designated Project Products-Completed Operations Aggregate Limit.
- C. Any payments for damages under Coverage A, except damages because of "bodily injury" or "property damage" included in the "products-completed operations hazard", will reduce the General Aggregate Limit, and will not reduce the Products-Completed Operations Aggregate Limit nor any Designated Project Products-Completed Operations Aggregate Limit.
- D. If the applicable designated project has been abandoned, delayed, or abandoned and then restarted, or if the authorized contracting parties deviate from plans, blueprints, designs, specifications or timetables, the project will still be deemed to be the same project.
- E. The provisions of Section III – Limits Of Insurance not otherwise modified by this endorsement shall continue to apply as stipulated.

# DESIGNATED LOCATIONS(S) PRODUCTS- COMPLETED OPERATIONS AGGREGATE LIMIT – CG 25 46

## Designated Location(s): ALL

- A. For all sums which the insured becomes legally obligated to pay as damages caused by "occurrences" under Section I – Coverage A because of "bodily injury" and "property damage" included in the "products-completed operations hazard" which can be attributed only to:
- Operations at; or
  - "Your products" manufactured, sold, handled or distributed at, from or in connection with;
- a single designated project shown in the Schedule above:
- A separate Designated Location Products-Completed Operations Aggregate Limit applies to each designated "location", and that limit is equal to the amount of the Products-Completed Operations Aggregate Limit shown in the Declarations.
  - The Designated Location Products-Completed Operations Aggregate Limit is the most we will pay for the sum of all damages under Coverage A because of "bodily injury" and "property damage" included in the "products-completed operations hazard", regardless of the number of:
    - Insureds;
    - Claims made or "suits" brought; or
    - Persons or organizations making claims or bringing "suits".
  - Any payments made under Coverage A for damages shall reduce the Designated Location Products-Completed Operations Aggregate Limit for that designated "location". Such payments shall not reduce the Products-Completed Operations Aggregate Limit shown in the Declarations nor shall they reduce any other Designated Location Products-Completed Operations Aggregate Limit for any other designated "location" shown in the Schedule above.
  - The limit shown in the Declarations for Each Occurrence continue to apply. However, instead of being subject to the Products-Completed Operations Aggregate Limit shown in the Declarations, such limit will be subject to the applicable Designated Location Products-Completed Operations Aggregate Limit.
- B. For all sums which the insured becomes legally obligated to pay as damages caused by "occurrences" under Section I – Coverage A because of "bodily injury" and "property damage" included in the "products-completed operations hazard" which cannot be attributed only to:
- Operations at; or
  - "Your products" manufactured, sold, handled or distributed at, from or in connection with;
- at a single designated project shown in the Schedule above:
- Any payments made under Coverage A for damages shall reduce the amount available under the Products-Completed Operations Aggregate Limit; and
  - Such payments shall not reduce any Designated Location Products-Completed Operations Aggregate Limit.
- C. Any payments for damages under Coverage A, except damages because of "bodily injury" or "property damage" included in the "products-completed operations hazard", will reduce the General Aggregate Limit, and will not reduce the Products-Completed Operations Aggregate Limit nor any Designated Location Products-Completed Operations Aggregate Limit.
- D. For the purposes of this endorsement, the **Definitions** section is amended by the addition of the following definition:  
"Location" means premises involving the same or connecting lots, or premises whose connection is interrupted only by a street, roadway, waterway or right-of-way of a railroad.
- E. The provisions of Section III – Limits Of Insurance not otherwise modified by this endorsement shall continue to apply as stipulated.

## **EXCLUSION – EARTH MOVEMENT – CG 40 04**

**A. The following exclusion is added to Paragraph 2. Exclusions of Section I – Coverage A – Bodily Injury And Property Damage Liability:**

This insurance does not apply to "bodily injury" or "property damage" arising out of "earth movement" that is:

1. Caused by or alleged to have been caused by, in whole or in part; or
2. Aggravated by or alleged to have been aggravated by;  
"your work".

**B. The following definition is added to the Definitions section:**

"Earth movement" means:

1. Earthquake, including tremors and aftershocks and any earth sinking, rising or shifting related to such event;
2. Landslide, including any earth sinking, rising or shifting related to such event;
3. Mine subsidence, meaning subsidence of a man-made mine whether or not mining activity has ceased; or
4. Earth sinking, rising or shifting including soil conditions which cause settling, cracking or other disarrangement of foundations or other parts of realty. Soil conditions include contraction, expansion, freezing, thawing, erosion, improperly compacted soil and the action of water under the ground surface.

## **EXCLUSION – EARTH MOVEMENT – COMPLETED OPERATIONS – CG 40 05**

## **EARTH MOVEMENT – EXCLUSION FOR DESIGNATED OPERATION(S) OR PROJECTS(S) – CG 40 06**



# EXCLUSION – HIRED AUTO LIABILITY – CG 40 11

With respect to “hired autos”, the following provisions supersede any provisions to the contrary:

- A. The following exclusion is added to Paragraph **g. Aircraft, Auto Or Watercraft**, Paragraph 2.  
**Exclusions of Section I – Coverages, Coverage A – Bodily Injury And Property Damage Liability:**

This insurance does not apply to:

**g. Aircraft, Auto Or Watercraft**

“Bodily injury” or “property damage” arising out of the maintenance, use or entrustment to others of any “hired auto”.

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 maintenance, use or entrustment to others of any “hired auto”.

- B. For the purposes of this endorsement, the following definition is added:

“Hired auto” means any “auto”:

1. Leased to, for or by any insured; or
2. Hired or borrowed for or by any insured.

# PREMIUM AUDIT NONCOMPLIANCE CHARGE – CG 99 09

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART  
ELECTRONIC DATA LIABILITY COVERAGE PART  
LIQUOR LIABILITY COVERAGE PART  
POLLUTION LIABILITY COVERAGE PART  
PRODUCTS/COMPLETED OPERATIONS LIABILITY COVERAGE PART  
UNDERGROUND STORAGE TANK LIABILITY COVERAGE PART

### SCHEDULE

<b>Total Advance Premium:</b>	\$
<b>Audit Noncompliance Charge Factor:</b>	
<b>Number Of Written Attempts To Obtain Audit Information:</b>	
<b>Reassessment Charge:</b>	\$

Information required to complete this Schedule, if not shown above, will be shown in the Declarations.

Paragraph 5.c. of the Premium Audit Condition under Section IV – Conditions is replaced by the following:

- 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. If the first Named Insured fails to comply with this request at the close of an audit period, an Audit Noncompliance Charge will be assessed, and notice will be sent to the first Named Insured.

The additional charge will be determined by multiplying the Total Advance Premium by the Audit Noncompliance Charge Factor indicated in the Schedule of this endorsement. (The following example is for illustration purposes only.)

Example:

Total Advance Premium: \$25,000  
Audit Noncompliance Charge Factor: 1  
Audit Noncompliance Charge: \$25,000

**(1) We will only assess the Audit Noncompliance Charge:**

- (a) For audits conducted after the end of the policy period; and
- (b) When we have made the number of written attempts indicated in the Schedule of this endorsement to obtain audit information from the first Named Insured.

The due date for the Audit Noncompliance Charge is the date shown as the due date on the bill

**(2) Subsequent Compliance And Reassessment Charge**

- (a) The first Named Insured may notify us in writing, prior to the due date on the bill for the Audit Noncompliance Charge, that the Named Insured agrees to comply with the audit request.
- (b) A Reassessment Charge may apply if this charge is indicated in the Schedule.
- (c) The first Named Insured must comply with the audit within 30 days of our receipt of the written notification described in Paragraph (2)(a) above, and then the Audit Noncompliance Charge will no longer apply. If a Reassessment Charge is indicated in the Schedule of this endorsement, that charge will remain applicable.
- (d) If the first Named Insured fails to comply with the premium audit after 30 days of our receipt of the notification described in Paragraph (2)(a) above, a subsequent notice will be sent to the first Named Insured indicating that the Audit Noncompliance Charge and the Reassessment Charge (if applicable) will be final. The due date for the Audit Noncompliance Charge and the Reassessment Charge is the date shown as the due date on the bill.

# **CGL POLICY – A LAST LOOK!**

## **EXCLUSION j. – Damage To Property**

- Commonly referred to as care, custody or control exclusion  
**Coverage A – Exclusion**

**Damage To Property** excludes “property damage” to:

- Property owned/rented/occupied by named insured...
- Premises named insured sells, gives away or abandons...
- Loaned to named insured...
- Personal property in the CCC of the insured...
- That particular part of real property...
- That particular part of any property.... – faulty work

Paragraphs **(1)**, **(3)** and **(4)** of this exclusion do not apply to "property damage" (other than damage by fire) to premises, including the contents of such premises, rented to you for a period of seven or fewer consecutive days. A separate limit of insurance applies to Damage To Premises Rented To You as described in Section **III** – Limits Of Insurance.

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 **(3)**, **(4)**, **(5)** and **(6)** of this exclusion do not apply to liability assumed under a sidetrack agreement.

Paragraph **(6)** of this exclusion does not apply to "property damage" included in the "products-completed operations hazard".

**Try to secure insurer specific endorsements that modify Exclusion j**

# SUSPENSION OF INSURANCE – CA 02 40

With respect to coverage provided by this endorsement, the provisions of the Coverage Form apply unless modified by the endorsement.

<b>Named Insured:</b> <b>Endorsement Effective Date:</b> <b>Reinstatement Effective Date (optional):</b>
--

## SCHEDULE

Coverage (Check all that apply)	All Covered "Autos"	All Covered "Autos" You Own	Covered "Autos" Listed Below
<b>Covered Autos Liability</b>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<b>Auto Medical Payments</b>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<b>Uninsured Motorists</b>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<b>Underinsured Motorists</b> (Indicate only when coverage is not included in Uninsured Motorists Coverage.)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<b>Collision</b>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<b>Other Auto Coverage</b>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<b>Other Auto Coverage:</b>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
<b>Covered Autos:</b>			
Information required to complete this Schedule, if not shown above, will be shown in the Declarations.			

- A. Except for maintaining or testing covered "autos" on your property, the coverages and "autos" indicated in this endorsement are suspended as of the Endorsement Effective Date indicated in the Schedule.
- B. If you suspended coverage for at least 30 consecutive days, you will be entitled to a refund of premium.
- C. The coverages indicated in the Schedule will remain suspended until the Reinstatement Effective Date if provided in the Schedule or, if no date is provided, the end of the policy period.

**WAIVER OF TRANSFER OF RIGHTS OF RECOVERY  
AGAINST OTHERS TO US  
(WAIVER OF SUBROGATION) – CA 04 44**

**SCHEDULE**

**Name(s) Of Person(s) Or Organization(s):**

The Transfer Of Rights Of Recovery Against Others To Us condition does not apply to the person(s) or organization(s) shown in the Schedule, but only to the extent that subrogation is waived prior to the "accident" or the "loss" under a contract *with that person or organization.*

**WAIVER OF TRANSFER OF RIGHTS OF RECOVERY  
AGAINST OTHERS TO US (WAIVER OF  
SUBROGATION) – AUTOMATIC WHEN  
REQUIRED BY WRITTEN CONTRACT OR  
AGREEMENT – CA 04 43**

With respect to coverage provided by this endorsement, the provisions of the Coverage Form apply unless modified by the endorsement.

The Transfer Of Rights Of Recovery Against Others To Us Condition does not apply to any person(s) or organization(s) for whom you are required to waive subrogation with respect to the coverage provided under this Coverage Form, but only to the extent that subrogation is waived: A. Under a written contact or agreement with such person(s) or organization(s); and B. Prior to the "accident" or the "loss."

# Golf Carts and Low-Speed Vehicles - CA 04 45

Named Insured:
Endorsement Effective Date:

**SCHEDULE**

Coverages	Covered "Auto" Vehicle Numbers	Limit of Insurance	Premium
Covered Autos Liability		\$ _____ Each "Accident"	\$
Auto Medical Payments		\$ _____ Each Person	\$
Personal Injury Protection Or Equivalent No-fault Coverage		Separately Stated In Each P.I.P. Endorsement	\$
Uninsured Motorists		\$ _____ Each "Accident"	\$
Underinsured Motorists (When Not Included In Uninsured Motorists Coverage)		\$ _____ Each "Accident"	\$

Vehicle No.	Description Of Vehicles That Are Covered "Autos"

- A.** This endorsement provides only those coverages where a premium is shown in the Schedule. Each of these coverages applies only to the vehicles shown as covered "autos" in the Schedule.
- B.** The vehicles described in the Schedule will be considered covered "autos".

**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

## **PRIMARY AND NONCONTRIBUTORY – OTHER INSURANCE CONDITION**

This endorsement modifies insurance provided under the following:

AUTO DEALERS COVERAGE FORM  
BUSINESS AUTOCOVERAGE FORM  
MOTOR CARRIER COVERAGE FORM

With respect to coverage provided by this endorsement, the provisions of the Coverage Form apply unless modified by the endorsement.

- A.** The following is added to the **Other Insurance** Condition in the Business Auto Coverage Form and the **Other Insurance – Primary And Excess Insurance Provisions** in the Motor Carrier Coverage Form and supersedes any provision to the contrary:

This Coverage Form's Covered Autos Liability Coverage is primary to and will not seek contribution from any other insurance available to an "insured" under your policy provided that:

1. Such "insured" is a Named Insured under such other insurance; and
2. You have agreed in writing in a contract or agreement that this insurance would be primary and would not seek contribution from any other insurance available to such "insured".

- B.** The following is added to the **Other Insurance** Condition in the Auto Dealers Coverage Form and supersedes any provision to the contrary:

This Coverage Form's Covered Autos Liability Coverage and General Liability Coverages are primary to and will not seek contribution from any other insurance available to an "insured" under your policy provided that:

1. Such "insured" is a Named Insured under such other insurance; and
2. You have agreed in writing in a contract or agreement that this insurance would be primary and would not seek contribution from any other insurance available to such "insured".

# MOBILE EQUIPMENT – CA 20 15

Named Insured:
Endorsement Effective Date:

## SCHEDULE

Coverages	Covered "Auto" Vehicle Numbers	Limit Of Insurance	Premium
Covered Autos Liability		\$ _____ Each Accident	\$
Auto Medical Payments		\$ _____ Each Person	\$
Personal Injury Protection Or Equivalent No-fault Coverage		Separately Stated in Each P.I.P. Endorsement	\$
Uninsured Motorists		\$ _____ Each "Accident"	\$
Underinsured Motorists (Indicate Only When Coverage Is Not Included in <b>Uninsured Motorists Coverage.</b> )		\$ _____ Each "Accident"	\$
Comprehensive		\$ _____ Deductible For Each Covered Auto, For Loss Caused By Theft Or Mischief Or Vandalism OR \$ _____ Deductible For All Perils For Each Covered Auto	\$
Collision		\$ _____ Deductible For Each Covered Auto	\$
Specified Causes Of Loss		\$ _____ Deductible For Each Covered Auto For Loss Caused By Theft Or Mischief Or Vandalism OR \$ _____ Deductible For All Perils For Each Covered Auto	\$

Vehicle No.	Description Of Vehicles That Are Covered "Autos"

- A.** This endorsement provides only those coverages where a premium is shown in the Schedule. Each of these coverages applies only to the vehicles shown as covered "autos".
- B.** The vehicles described in the Schedule will be considered covered "autos" and not "mobile equipment".
- C.** Covered Autos Liability Coverage does not apply to "bodily injury", "property damage" or "covered cost or expense" resulting from the operation of any machinery or equipment that is on, attached to or part of any of these vehicles.



# SNOWMOBILES – CA 20 21

Named Insured:
Endorsement Effective Date:

## SCHEDULE

Coverages	Vehicle No.	Limit Of Insurance	Premium
Covered Autos Liability		\$ _____ Each Accident	\$ _____
Auto Medical Payments		\$ _____ Each Person	\$ _____
Uninsured Motorists		\$ _____ Each Accident	\$ _____
Underinsured Motorists (When Not Included In Uninsured Motorists Coverage)		\$ _____ Each Accident	\$ _____
Other (Nonphysical Damage) Auto Coverage:		\$ _____	\$ _____
<b>Total Premium</b>			\$ _____

Indicate below with an "X" which, if any, exclusion is deleted.

- Exclusion 1.
- Exclusion 2.
- Exclusion 3.

Vehicle No.	Description Of "Snowmobiles" Which Are Covered "Autos"

- A.** This endorsement provides only those coverages where a premium is shown in the Schedule or in the Declarations. **Each of these coverages applies only to the "snowmobiles" shown as covered "autos".**
- B.** The **following exclusions are added:**  
 For the vehicles shown in the Schedule, this insurance does not apply to:
1. The covered "auto" while rented or leased to others by you.
  2. "Bodily injury", under Covered Autos Liability Coverage, to anyone "occupying" or towed by the covered "auto".
  3. "Loss", under Physical Damage Coverage, to the covered "auto" resulting from breaking through ice.
- C.** **Exclusion 1., 2. or 3. above may be deleted by indicating with an "X" in the above Schedule. Refer to the Schedule or to the Declarations.**
- D.** The premium stated in the Schedule or in the Declarations applies for the period of coverage and will not be refunded if you cancel this insurance.
- E. Additional Definitions**  
 As used in this endorsement:  
 "Occupying" means in, upon, getting in, on, out or off.  
 "Snowmobile" means a land motor vehicle which is:
1. Designed for use on ice and snow, and mainly off public roads; and
  2. Propelled only by mechanical means other than airplane-type propellers or fans.
- "Snowmobile" also includes a trailer designed to be towed by a vehicle described above.

# FELLOW EMPLOYEE COVERAGE – CA 20 55

The **Fellow Employee** Exclusion contained under the **Covered Autos Liability Coverage** does not apply.

## FELLOW EMPLOYEE COVERAGE FOR DESIGNATED EMPLOYEES/POSITIONS – CA 20 56

Named Insured:

Endorsement Effective Date:

SCHEDULE

Name Of Person(s), Job Title(s) Or Position(s):

The **Fellow Employee** Exclusion contained under the **Covered Autos Liability Coverage** does not apply to the "employee(s)", job title(s) or position(s) named or listed in the Schedule.


# COVERAGE FOR CERTAIN OPERATIONS IN CONNECTION WITH RAILROADS – CA 20 70

Named Insured:
Endorsement Effective Date:

## SCHEDULE

Scheduled Railroad	Designated Job Site

With respect to the use of a covered "auto" in operations for or affecting a railroad designated in the Schedule at a Designated Job Site, the two exceptions contained in the definition of "insured contract" relating to construction or demolition operations performed within 50 feet of a railroad do not apply.

 **When using CG 24 17, always use CA 20 70**

# GARAGEKEEPERS COVERAGE – CA 99 37

Named Insured:	
Endorsement Effective Date:	

**SCHEDULE**

Location Number	Address Where You Conduct Garage Operations (Main Location)		
Coverages	Limit Of Insurance And Deductible	Premium	
Comprehensive	\$	Limit Of Insurance	\$
	\$	Deductible For Each Customer's Auto For Loss Caused By Theft Or Mischief Or Vandalism	
	\$	Maximum Deductible For Loss Caused By Theft Or Mischief Or Vandalism In Any One Event	
	OR		
	\$	Limit Of Insurance	
	\$	Deductible For All Perils For Each Customer's Auto	
	\$	Maximum Deductible For All Loss In Any One Event	
Specified Causes Of Loss	\$	Limit Of Insurance	\$
	\$	Deductible For Each Customer's Auto For Loss Caused By Theft Or Mischief Or Vandalism	
	\$	Maximum Deductible For Loss Caused By Theft Or Mischief Or Vandalism In Any One Event	
	OR		
	\$	Limit Of Insurance	
	\$	Deductible For All Perils For Each Customer's Auto	
	\$	Maximum Deductible For All Loss In Any One Event	
Collision	\$	Limit Of Insurance	\$
	\$	Deductible For Each Customer's Auto	
<b>Total Garagekeepers Premium For All Locations</b>		<b>\$</b>	

**Direct Coverage Options**

Indicate below with an "X" which, if any, Direct Coverage Option is selected.

**Excess Insurance**

If this box is checked, Garagekeepers Coverage remains applicable on a legal liability basis. However, coverage also applies without regard to your or any other "insured's" legal liability for "loss" to a "customer's auto" on an excess basis over any other collectible insurance regardless of whether the other insurance covers your or any other "insured's" interest or the interest of the "customer's auto's" owner.

**Primary Insurance**

If this box is checked, Garagekeepers Coverage is changed to apply without regard to your or any other "insured's" legal liability for "loss" to a "customer's auto" and is primary insurance.

**A. This endorsement provides only those coverages:**

1. Where a Limit of Insurance and a premium are shown for that coverage in the Schedule; and
2. For the location shown in the Schedule.

## **B. Coverage**

1. We will pay all sums the "insured" legally must pay as damages for "loss" to a "**customer's auto**" or "**customer's auto**" left in the "insured's" care while the "insured" is attending, servicing, repairing, parking or storing it in your "garage operations" under:
  - a. **Comprehensive Coverage**  
From any cause except:
    - (1) The "customer's auto's" collision with another object; or
    - (2) The "customer's auto's" overturn.
  - b. **Specified Causes Of Loss Coverage**  
Caused by:
    - (1) Fire, lightning or explosion;
    - (2) Theft; or
    - (3) Mischief or vandalism.
  - c. **Collision Coverage**  
Caused by:
    - (1) The "customer's auto's" collision with another object; or
    - (2) The "customer's auto's" overturn.
2. We will have the right and duty to defend any "insured" against a "suit" asking for these damages. However, we have no duty to defend any "insured" against a "suit" seeking damages for "loss" to which this insurance does not apply. We may investigate and settle any claim or "suit" as we consider appropriate. Our duty to defend or settle ends for a coverage when the Limit of Insurance for that coverage has been exhausted by payment of judgments or settlements.

### C. Exclusions

1. This insurance does not apply to any of the following:

**a. Contractual**

Liability resulting from any contract or agreement by which the "insured" accepts responsibility for "loss". But this exclusion does not apply to liability for "loss" that the "insured" would have in the absence of the contract or agreement.

**b. Theft**

"Loss" due to theft or conversion caused in any way by you, your "employees" or by your stockholders.

**c. Defective Parts**

Defective parts or materials.

**d. Faulty Work**

Faulty "work you performed".

2. We will not pay for "loss" to any of the following:

**a.** Tape decks or other sound-reproducing equipment unless permanently installed in a "customer's auto".

**b.** Tape decks or other sound-reproducing equipment unless permanently installed in a "customer's auto".

**c.** Sound-receiving equipment designed for use as a citizens band radio, two-way mobile radio or telephone or scanning monitor receiver, including its antennas and other accessories, unless permanently installed in the dash or console opening normally used by the "customer's auto" manufacturer for the installation of a radio.

**d.** Any device designed or used to detect speed-measuring equipment, such as radar or laser detectors and any jamming apparatus intended to elude or disrupt speed-measuring equipment.

3. We will not pay for "loss" caused by or resulting from the following. Such "loss" is excluded regardless of any other cause or event that contributes concurrently or in any sequence to the "loss":

**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.

### D. Limits Of Insurance And Deductibles

1. Regardless of the number of "customer's autos", "insureds", premiums paid, claims made or "suits" brought, the most we will pay for each "loss" at each location is the Garagekeepers Coverage Limit Of Insurance shown in the Schedule for that location. Prior to the application of this limit, the damages for "loss" that would otherwise be payable will be reduced by the applicable deductibles for "loss" caused by:

**a.** Collision; or

**b.** With respect to Garagekeepers Coverage Comprehensive or Specified Causes Of Loss Coverage:

**(1)** Theft or mischief or vandalism; or

**(2)** All perils.

2. The maximum deductible stated in the Schedule for Garagekeepers Coverage Comprehensive or Specified Causes Of Loss Coverage is the most that will be deducted for all "loss" in any one event caused by:

**a.** Theft or mischief or vandalism; or

**b.** All perils.

3. To settle a claim or "suit", we may pay all or any part of the deductible. If this happens you must reimburse us for the deductible or that part of the deductible that we paid.

### E. Additional Definitions

As used in this endorsement:

1. "Customer's auto" means a land motor vehicle, "trailer" or semitrailer lawfully within your possession for service, repair, storage or safekeeping, with or without the vehicle owner's knowledge or consent. A "customer's auto" also includes any such vehicle left in your care by your "employees" and members of their households who pay for services performed.

2. "Loss" means direct and accidental loss or damage and includes any resulting loss of use.

3. "Garage operations" means the ownership, maintenance or use of locations for the purpose of a business of selling, servicing, repairing, parking or storing "customer's autos" and that portion of the roads or other accesses that adjoin these locations. "Garage operations" also includes all operations necessary or incidental to the performance of garage operations.

4. "Work you performed" includes:

**a.** Work that someone performed on your behalf; and

**b.** The providing of or failure to provide warnings or instructions.

# EXCLUSION OR EXCESS COVERAGE HAZARDS OTHERWISE INSURED – CA 99 40

Named Insured:

Endorsement Effective Date:

## SCHEDULE

Designation Or Description Of Covered "Autos" You Own:

When you do not want **Covered Autos Liability Coverage** to apply to the covered "autos" you own that are designated in this endorsement because you have other insurance, the following provision indicated by an "X" in the [ ]† will apply:

**Covered Autos Liability Coverage** does not apply.

**Covered Autos Liability Coverage** does not apply to "bodily injury" or "property damage" occurring before the other insurance ends.

Date other insurance ends: \_\_\_\_\_

**Covered Autos Liability Coverage** does not apply to "bodily injury" or "property damage" occurring before the other insurance ends except to the extent damages exceed the limits of the other insurance.

However, the most we will pay is the difference between the Limit of Insurance for Covered Autos Liability Coverage in this Coverage Form and the limits of the other insurance, if this Coverage Form's limits are higher.

Date other insurance ends: \_\_\_\_\_ and Limits of Insurance: \$ \_\_\_\_\_

# **POLLUTION LIABILITY — BROADENED COVERAGE FOR COVERED AUTOS — BUSINESS AUTO AND MOTOR CARRIER COVERAGE FORMS - CA 99 48**

With respect to coverage provided by this endorsement, the provisions of the Coverage Form apply unless modified by the endorsement.

A. Covered Autos Liability Coverage is changed as follows:

1. Paragraph a. of the Pollution Exclusion applies only to liability assumed under a contract or agreement.
2. With respect to the coverage afforded by Paragraph A.1. above, Exclusion B.6. Care, Custody Or Control does not apply.

B. Changes In Definitions

For the purposes of this endorsement, Paragraph D. of the Definitions Section is replaced by the following:

D. "Covered pollution cost or expense" means any cost or expense arising out of:

1. 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
2. Any 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".

"Covered pollution cost or expense" does not include any cost or expense arising out of the actual, alleged or threatened discharge, dispersal, seepage, migration, release or escape of "pollutants":

- a. Before the "pollutants" or any property in which the "pollutants" are contained are moved from the place where they are accepted by the "insured" for movement into or onto the covered "auto"; or
- b. After the "pollutants" or any property in which the "pollutants" are contained are moved from the covered "auto" to the place where they are finally delivered, disposed of or abandoned by the "insured".

Paragraphs a. and b. above do not apply to "accidents" that occur away from premises owned by or rented to an "insured" with respect to "pollutants" not in or upon a covered "auto" if:

- (1) The "pollutants" or any property in which the "pollutants" are contained are upset, overturned or damaged as a result of the maintenance or use of a covered "auto"; and
- (2) The discharge, dispersal, seepage, migration, release or escape of the "pollutants" is caused directly by such upset, overturn or damage.



# **COVERED AUTO DESIGNATION SYMBOL – CA 99 54**

Section I – Covered Autos in the Business Auto Coverage Form is amended by adding the following:

Item Two of the Declarations shows the "autos" that are covered "autos" for each of your coverages. The following numerical symbols may be used (in addition to the numerical symbols described in the Coverage Form) to describe the "autos" that may be covered "autos". The entry of one of these symbols next to a coverage on the Declarations will designate the only "autos" that are covered "autos".

## **Symbol Description Of Covered Auto Designation Symbols**

For use with the Business Auto Coverage Form

**10 =**

## BAP – A LAST LOOK!

- I ***suggest*** to you that hired and non-owned coverage not be written as an endorsement to a CGL Policy or a BOP.
- Should be written as a BAP with symbols 8 and 9!
- WHY?
  - May subject the coverage to aggregate limits when written as an endorsement
  - May not permit you to “tailor” significant coverages
    - **Hired Auto Physical Damage Coverage**
    - **Employee Hired Autos – CA 20 54**
    - **Employees As Insureds – CA 99 33**
    - **Volunteer Hired Autos – CA 04 39**
    - **Non-Ownership Liability Coverage For Volunteers – CA 05 24**

And, watch out for:

**PUBLIC OR LIVERY PASSENGER CONVEYANCE  
EXCLUSION – CA 23 44 11 16**

**PUBLIC OR LIVERY PASSENGER CONVEYANCE  
AND ON-DEMAND DELIVERY SERVICES  
EXCLUSION – CA 23 45 11 16**

# VOLUNTARY COMPENSATION AND EMPLOYERS LIABILITY COVERAGE ENDORSEMENT – WC 00 03 11

## **A. How This Insurance Applies**

This insurance applies to bodily injury by accident or bodily injury by disease. Bodily injury includes resulting death.

1. The bodily injury must be sustained by an employee included in the group of employees described in the Schedule.
2. The bodily injury must arise out of and in the course of employment necessary or incidental to work in a state listed in the Schedule.
3. The bodily injury must occur in the United States of America, its territories or possessions, or Canada, and may occur elsewhere if the employee is a United States or Canadian citizen temporarily away from those places.
4. Bodily injury by accident must occur during the policy period.
5. Bodily injury by disease must be caused or aggravated by the conditions of your employment. The employee's last day of last exposure to the conditions causing or aggravating such bodily injury by disease must occur during the policy period.

## **B. We Will Pay**

We will pay an amount equal to the benefits that would be required of you if you and your employees described in the Schedule were subject to the workers compensation law shown in the Schedule. We will pay those amounts to the persons who would be entitled to them under the law.

## **C. Exclusions**

This insurance does not cover:

1. any obligation imposed by a workers compensation or occupational disease law, or any similar law.
2. bodily injury intentionally caused or aggravated by you.

## **D. Before We Pay**

Before we pay benefits to the persons entitled to them, they must:

1. Release you and us, in writing, of all responsibility for the injury or death.
2. Transfer to us their right to recover from others who may be responsible for the injury or death.
3. Cooperate with us and do everything necessary to enable us to enforce the right to recover from others.

If the persons entitled to the benefits of this insurance fail to do those things, our duty to pay ends at once. If they claim damages from you or from us for the injury or death, our duty to pay ends at once.

## **E. Recovery From Others**

If we make a recovery from others, we will keep an amount equal to our expenses of recovery and the benefits we paid. We will pay the balance to the persons entitled to it. If the persons entitled to the benefits of this insurance make a recovery from others, they must reimburse us for the benefits we paid them.

## **F. Employers Liability Insurance**

Part Two (Employers Liability Insurance) applies to bodily injury covered by this endorsement as though the State of Employment shown in the Schedule were shown in Item 3.A. of the Information Page.

### **Schedule**

Employees

State of Employment

Designated Workers  
Compensation Law

# **WORKERS COMPENSATION FOR WORKERS IN FOREIGN COUNTRIES Permanent OR Temporary**

Even though Workers Compensation Insurance is provided, this coverage does not provide for:



Endemic Diseases



Repatriation Expenses

**Endemic diseases are defined as those diseases indigenous to a particular geographic area.**

**Repatriation expenses are those expenses incurred to transport an injured employee back to the USA for treatment.**

# WAIVER OF OUR RIGHT TO RECOVER FROM OTHERS ENDORSEMENT – WC 00 03 13

We have the right to recover our payments from anyone liable for an injury covered by this policy. We will not enforce our right against the person or organization named in the Schedule. **(This agreement applies only to the extent that you perform work under a written contract that requires you to obtain this agreement from us.)**

This agreement shall not operate directly or indirectly to benefit anyone not named in the Schedule.

## Schedule

# ALLOCATING FAULT AND DAMAGES

Every state employs one of four basic systems for allocating fault and damages:

1. Pure Contributory Negligence Rule/Defense
2. Pure Comparative Fault System
3. Modified Comparative Fault System
4. Slight/Gross Negligence Comparative Fault System

“Contributory negligence” refers to the negligent conduct of the plaintiff.

# JOINT AND SEVERAL LIABILITY

The rule of “joint and several liability” makes each of multiple defendants liable for the entirety of the plaintiff’s loss, regardless of each defendant’s degree of fault. For example, a defendant who is only 5 percent at fault might end up paying the entirety of the plaintiff’s damages – especially if the other defendants are insolvent. **States follow one of three approaches to joint and several liability.**

- 1. Pure Joint and Several Liability**
- 2. Modified Joint and Several Liability**
- 3. Pure Several Liability**

# CONTRIBUTION

Contribution is a method distributing loss among tortfeasors by requiring others to pay a proportionate share to one who has discharged their joint liability.

❖ **If there is joint and several liability, there is a right of contribution if a tortfeasor must pay the share of another – usually established by statute**

Example: right of contribution; accrual; pro rata share.

- (a) The right of contribution exists among joint tortfeasors.
- (b) A joint tortfeasor is not entitled to a money judgment for contribution until he or she has by payment discharged the common liability or has paid more than his or her pro rata share thereof.
- (c) A joint tortfeasor who enters into a settlement with the injured person is not entitled to recover contribution from another joint tortfeasor whose liability to the injured person is not extinguished by the settlement.
- (d) When there is such a disproportion of fault among joint tortfeasors as to render inequitable an equal distribution among them of the common liability by contribution, the relative degrees of fault of the joint tortfeasors shall be considered in determining their pro rata shares.

❖ **May not apply to certain causes of action**



# INDEMNIFICATION

**Indemnity** is an obligation by a person (**indemnitor**) to provide compensation for a particular loss suffered by another person (**indemnatee**).

- ❖ May be implied or expressed
- ❖ May vary by degree of responsibility
- ❖ May not be enforceable – varies by jurisdiction
  - Common law
  - Statutes

## **STATUTES OF LIMITATIONS**

A statute of limitations is the deadline for filing a lawsuit. Most lawsuits **MUST** be filed within a certain amount of time following the accrual of a right of action against another. In general, once the statute of limitations on a case “runs out”, the legal claim is not valid any longer. The period of time during which a lawsuit can be filed varies depending on the type of legal claim.

## **STATUTES OF REPOSE**

A statute of repose provides a date upon which the action no longer exists, whether it has accrued by that date or not; it entirely cuts off a person's right of action even before it accrues. It is a stricter deadline than a statute of limitations because it may not be tolled by fraud, discovery of injury, etc. A statute of repose is neither an avoidance nor a defense to a cause of action because the cause of action does not exist once the period of duration is passed. While a statute of limitations allows a party to avoid suit, a statute of limitations does not affect the validity of the claim; however, once the period of duration under a statute of repose is expired, there is no suit to avoid, because the statute of repose extinguishes the cause of action, and failure to plead the statute of repose as an affirmative defense could not resurrect a cause of action that no longer exists. A statute of repose bars an action after a specified period of time has run from the occurrence of some event other than the injury or damage which gave rise to the claim.

# PUNITIVE DAMAGES

- Insurance professional's "need to know":
  - Three questions
    - Are they recoverable?
      - Statutory limitations?
    - Are they insurable?
      - Directly assessed?
      - Vicariously assessed?
    - Are they covered?

# CONCLUSION

## IDEAS/COMMENTS/QUESTIONS





# James K. Ruble Seminar

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

Section 3

## **Personal Lines Issues for Today**



# **PERSONAL LINES ISSUES FOR TODAY**

**PATRICK A. DEEM, SR., CIC, CRIS  
RISK MANAGEMENT & INSURANCE EDUCATION  
AUSTIN, TEXAS**

## OVERVIEW

- I. Homeowners
  - A. Residence Premises
    - 1. Where “you” reside
    - 2. Vacancy
  - B. Personal and Business Liability Issues
    - 1. Business Definition
    - 2. Contractual Liability Coverage
    - 3. Products/Completed Operations
    - 4. Subrogation
  - C. Other Liability Issues
    - 1. Animals
    - 2. Invasion of Privacy through Social Media and Drones
  - D. Home-sharing
- II. Personal Auto Coverages
  - A. UBER/LYFT and other “ride-sharing” issues
  - B. Other vehicles in the household



## I. WHERE YOU RESIDE, VACANCY, AND OTHER ISSUES

A. Is there coverage under the ISO HO-3 for the following?

1. An elderly customer moves to an assisted living center.  
Yes \_\_\_\_\_ No \_\_\_\_\_
2. Your insured relocates and puts her home on the market.  
Yes \_\_\_\_\_ No \_\_\_\_\_
3. The insured moves out of the residence because of foreclosure.  
Yes \_\_\_\_\_ No \_\_\_\_\_
4. The insured moves to a new location and a child occupies the home.  
Yes \_\_\_\_\_ No \_\_\_\_\_
5. The insured moves to a rehabilitation facility after surgery.  
Yes \_\_\_\_\_ No \_\_\_\_\_
6. The insured sells the home but stays for a few weeks after closing.  
Yes \_\_\_\_\_ No \_\_\_\_\_
7. The insured purchases a new home but does not move in until renovations are completed.  
Yes \_\_\_\_\_ No \_\_\_\_\_
8. The insured moves out and rents the home to another person.  
Yes \_\_\_\_\_ No \_\_\_\_\_
9. Your client's grandson who lives there with his grandparents has a meth lab in the basement of your client's home, which explodes causing a total loss to the dwelling and contents.  
Yes \_\_\_\_\_ No \_\_\_\_\_
10. What are the qualifications for a dwelling to be vacant under the ISO HO 00 03 policy?  
\_\_\_\_\_

B. Where you Reside problem

1. Policy Language

a. ISO HO 00 03 Special Form

(1) Insuring agreement

SECTION I – PROPERTY COVERAGES

A. Coverage A – Dwelling

1. We cover:

- a. The dwelling on the “**residence premises**” shown in the Declarations.

(2) Definitions

“**Residence Premises**” means

- a. The one family dwelling **where you reside**
- b. The two, three or four family dwelling where you reside in at least one of the family units
- c. That part of any other building where you reside and which is shown as the “residence premises” in the Declarations.  
“Residence premises” also includes other structures and grounds at that location.

In this policy “**you**” and “**your**” refer to the named insured shown in the Declarations and the spouse if a **resident of the same household**.

b. Defining “Reside” and “Residence”

(1) Webster

**Reside** – to dwell **permanently or continuously**

**Residence** – the place where one actually lives as distinguished from one’s domicile or a place of temporary sojourn

(2) Black’s Law

**Reside** – live, dwell, abide, sojourn, stay, remain, lodge. To settle oneself or a thing in a place to be stationed, to remain or stay, to dwell permanently or continuously, to have a settled abode for a long time, to have one’s residence or domicile; specifically to be present in residence, to have an abiding place.

**Residence** – place where one actually lives or has his home; a person’s dwelling place or place of habitation... Personal presence at some place of abode **with not present intention of definite and early removal...** The terms “resident” and “residence” **have no precise legal meaning**; sometimes they mean domicile plus physical presences; sometimes they mean domicile; and sometime they mean something less than domicile.

(3) American Heritage

**Reside** – to live in a place permanently or for an extended period

c. Case Law – No Coverage

(1) Shepard v. Keystone (Maryland 1990)

The insured was unable to make mortgage payments so she transferred title to her son. The house had not been occupied for two years when it burned.

US District Court ruled that **“residence” requires “bodily presence as an inhabitant of a given place”**. **Claim denied**

(2) Georgia Farm Bureau Mutual v. Kephart (Georgia 1993)

During a divorce, the insured removes her husband’s name from the policy. The divorce decree granted him the house, but the policy was never changed.

**Georgia Supreme Court ruled that coverage was lacking due to the named insured’s lack of occupancy at the time of loss. Claim denied**

(3) Ivanov v. Phoenix Mutual Insurance Co. (Maine 2007)

Ivanov’s father in law purchased a home for him which required extensive renovation before Ivanov was to move from Russia to home. The property burned down.

**The court ruled that the residency requirement was not ambiguous and the loss was not covered. Claim denied**

d. Case Law – Covered losses

(1) Reid v. Hardware Mutual Ins. Co. (South Carolina 1969)

The Reid’s purchased a homeowners policy for an “owner occupied one family dwelling”. They sold the house but remained on the mortgage. The house burned and the company denied the claim because it was not longer owner occupied.

The South Carolina Supreme Court found that “owner occupied” was only an affirmative warranty at the time the policy was issued. **The term was a description and not an agreement that the insured should continue in occupation of it. There is no provision in the policy contract that the dwelling would be owner occupied during the term of the insurance contract nor a requirement that the owner give notice of change in occupancy to the insurer.**

(2) Insurance Co. of North America v Howard

The insured split time between two residences. She rented the dwelling in question because she was planning a trip and didn't want the house to be vacant for an extended period of time.

**The U.S. Court of Appeals opined: "If an insurance company wishes to have a homeowner's policy terminate upon the rental of the home, it must so provide explicitly and unambiguously in the policy of insurance..."**

(3) Farmers Ins. Co. v. Trutanick (Oregon 1993)

The insured rented the dwelling to successive tenants. The last one sublet the lower floor to someone who ran a meth lab. Claim denied based on the "where you reside" language and other reasons.

The Oregon Court of Appeals ruled the **"where you reside" language "is a description and not an agreement that the insured should continue in occupation of it."**

(4) Hill v. Nationwide Mutual Ins. Co (Georgia 1994)

The insureds moved out of their house two months before it was damaged by a fire. The insurer contended that the "where you reside" language meant that coverage will cease when the premises are not longer used as the residence of the insured.

The Georgia Court of Appeals said "in construing an insurance policy the test is not what the insurer intended its words to mean, but what a reasonable person in the position of the insured would understand them to mean." The phrase **"where you reside" does not impose residency requirements but rather "may be viewed as relating only to identification of the covered premises."**

The court also said that **removing all coverage for the dwelling would make other parts of the policy ineffectual such as exclusions for certain perils due to vacancy or unoccupancy.**

- e. Reasons for coverage in cases listed in d.
  - “Where you reside” is a description, not a warranty of occupancy
  - The language is not clear and conspicuous
  - Insureds have a reasonable expectation of coverage
  - Owner occupancy is an eligibility issue and not a coverage issue
  
- f. What to do in the interim
  - (1) Should you encounter the following exposures:
    - Nursing homes
    - Relocations
    - Foreclosures
    - Rentals
    - Child occupies parent’s home
    - Parent occupies child’s home
    - Divorce
    - Illness or infirmity of insured
    - Death of insured
    - Trusts
    - Seller remains after closing
    - Seller moves out before closing
    - Buyer is painting or remodeling before moving into home
    - Buyer moves in before closing
    - Renovations/Homes under construction
    - Vacancy or Unoccupancy

- (2) Verify coverage with Company
  - (a) Confirm coverage **in writing**
  - (b) Begin discussions with your companies now to see how they will handle these situations.  
**Confirm their decisions in writing**
- (3) Tell your customers (new and renewal) to notify you if residency changes

Sample Wording:

Please notify us immediately if you no longer occupy or are planning to move from your residence. Your policy includes language that may adversely affect coverage if you no longer occupy the dwelling.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY

**RESIDENCE PREMISES  
DEFINITION ENDORSEMENT**

**DEFINITIONS**

Definition **B.11.** is replaced by the following:

11. "Residence premises" means:
- a. The one-family dwelling where you reside;
  - b. The two-, three- or four-family dwelling where you reside in at least one of the family units; or
  - c. That part of any other building where you reside;

on the inception date of the policy period shown in the Declarations and which is shown as the "residence premises" in the Declarations.

"Residence premises" also includes other structures and grounds at that location.

All other provisions of this Policy apply.



2. Residence Premises Endorsements

a. HO 06 48 10 15 – Residence Premises Definition Endorsement

- (1) Mandatory Endorsement – amends definitions of “Residence Premises”
- (2) Adds phrase “on the inception date of the policy period shown in the Declarations”
- (3) Broadens coverage in the event of a change in residency during the current policy period  
Example: Elderly parent moves into Assisted Living Facility **during policy period**

**OR**

- (4) Reduces coverage in the event of non-residency of Named Insured at renewal  
Example: Elderly parent moves into Assisted Living Facility **during previous policy period**, at renewal agent/company not notified of move, therefore not the “residence premises” of the Named Insured on the renewal policy
- (5) However, liability exclusion for renting on other than an occasional basis still applies

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY

**BROADENED RESIDENCE PREMISES  
DEFINITION ENDORSEMENT**

Inception Date	Termination Date
Information required to complete this Schedule, if not shown above, will be shown in the Declarations.	

**DEFINITIONS**

Definition **B.11.** is replaced by the following:

**11.** "Residence premises" means:

**a.** With respect to the period shown in the above Schedule:

- (1)** The one-family dwelling;
- (2)** The two-, three- or four-family dwelling; or
- (3)** That part of any other building; which is shown as the "residence premises" in the Declarations; and

**b.** With respect to any portion of the policy period not shown in the above Schedule:

- (1)** The one-family dwelling;
- (2)** The two-, three- or four-family dwelling; or
- (3)** That part of any other building; where you reside and which is shown as the "residence premises" in the Declarations.

"Residence premises" also includes other structures and grounds at that location.

All other provisions of this Policy apply.

b. HO 06 49 10 15 – Broadened Residence Premises  
Definition Endorsement

- (1) Used when Named Insured **will not** be residing in the dwelling on the effective date of the policy  
Example: insured purchases home but making renovations before moving into premises
- (2) Residency requirement temporarily removed for period of time shown in schedule

**E. Coverage E – Personal Liability And Coverage F – Medical Payments To Others**

Coverages E and F do not apply to the following:

**2. "Business"**

- a. "Bodily injury" or "property damage" arising out of or in connection with a "business" conducted from an "insured location" or engaged in by an "insured", whether or not the "business" is owned or operated by an "insured" or employs an "insured".

This Exclusion E.2. applies but is not limited to an act or omission, regardless of its nature or circumstance, involving a service or duty rendered, promised, owed, or implied to be provided because of the nature of the "business".

- b. This Exclusion E.2. does not apply to:
- (1) The rental or holding for rental of an "insured location";
- (a) On an occasional basis if used only as a residence;

- (b) In part for use only as a residence, unless a single-family unit is intended for use by the occupying family to lodge more than two roomers or boarders; or

- (c) In part, as an office, school, studio or private garage; and

- (2) An "insured" under the age of 21 years involved in a part-time or occasional, self-employed "business" with no employees;

**3. Professional Services**

"Bodily injury" or "property damage" arising out of the rendering of or failure to render professional services;

**4. "Insured's" Premises Not An "Insured Location"**

"Bodily injury" or "property damage" arising out of a premises:

- a. Owned by an "insured";
- b. Rented to an "insured"; or
- c. Rented to others by an "insured"; that is not an "insured location";

**HO 00 03 05 11. Page 19 of 24.**

B. Liability and Medical Payments exclusions for “Business”

1. Liability and Medical payments

a. “Business” activities excluded, except for:

(1) Rental or holding for rental part of the premises

(a) Occasional rental as a residence

(b) Rented to no more than two roomers or boarders

(c) In part as an office, school, studio or private garage

(2) Part-time or occasional self-employed business of an insured under the age of 21

3. "Business" means:
- a. A trade, profession or occupation engaged in on a full-time, part-time or occasional basis; or
  - b. Any other activity engaged in for money or other compensation, except the following:
    - (1) One or more activities, not described in (2) through (4) below, for which no "insured" receives more than \$2,000 in total compensation for the 12 months before the beginning of the policy period;
    - (2) Volunteer activities for which no money is received other than payment for expenses incurred to perform the activity;
    - (3) Providing home day care services for which no compensation is received, other than the mutual exchange of such services; or
    - (4) The rendering of home day care services to a relative of an "insured".

**HO 00 03 05 11. Page 1 of 24.**

2. What's a "Business" to the Homeowners Policy
  - a. Policy definition of "business"
    - (1) Trade, profession or occupation – full-time, part-time or occasional
    - (2) Any other activity engaged in for money or other compensation except:
      - (a) No more than \$2,000 in compensation in the 12 months before the policy period
      - (b) Volunteer activities – no money received except expense reimbursement
      - (c) Home day care service – no compensation other than mutual exchange of services
      - (d) Day care service to a relative of an "insured"

- b. Courts definition of business:
  - (1) Continuity
  - (2) Profit motive
  - (3) Anything that occupies time, effort or attention
  - (4) Gaining an economic advantage
- c. Other business activities on the residence premises
  - (1) Hobbies
  - (2) Social activities related to business
  - (3) Workplace activities
  - (4) Farming/vacant land
  - (5) Rental of premises to others
  - (6) Outside directors
  - (7) Political activities
- d. Do all Homeowners policies in your agency define “Business” the same as ISO?



**NOTES**

A series of horizontal lines intended for handwritten notes, consisting of 18 parallel lines spaced evenly down the page.

## **F. Coverage E – Personal Liability**

Coverage E does not apply to:

### **1. Liability:**

- a.** For any loss assessment charged against you as a member of an association, corporation or community of property owners, except as provided in **D. Loss Assessment** under **Section II – Additional Coverages**;
- b.** Under any contract or agreement entered into by an "insured". However, this exclusion does not apply to written contracts:
  - (1)** That directly relate to the ownership, maintenance or use of an "insured location"; or
  - (2)** Where the liability of others is assumed by you prior to an "occurrence";unless excluded in **a.** above or elsewhere in this policy;

**HO 00 03 05 11. Page 20 of 24.**

### 3. Contractual Liability Coverage

- a. Coverage granted as an exception to an exclusion for **written contracts** entered into by an “insured” relating to the ownership, maintenance or use of an “insured location”

#### **OR**

where liability of others is assumed by the “**you**” (**Named Insured**) prior to an occurrence unless excluded within the policy.

- b. No definition of “insured contract” as in Commercial Lines, so coverage is for all written contracts that qualify.
- c. Examples:
  - (1) You hold a birthday party for your granddaughter and rent a “bouncy house” and a petting zoo for entertainment. If a child or adult is injured on either the “bouncy house” or at the petting zoo, have you agreed to hold the owners of the “bouncy house” and petting zoo harmless for their liability? How would you know?
  - (2) For Thanksgiving dinner, you need some extra chairs, so you rent six chairs from a local rental operation. When you pick them up you sign the standard rental agreement, which you did not read. While at dinner, one of your guests (sitting in a rented chair) falls as the chair collapses on them. It is determined that the chair is faulty, but you have agreed in the rental agreement to hold the owner of the chair harmless, even for their sole negligence. Does your policy apply for coverage for you and/or the owner of the rented chairs?

4. Product/Completed Operations

- a. Neither term is defined in the policy
- b. Neither is specifically excluded in the policy
- c. What could be the problem?

Examples:

- (1) Your wife wants new kitchen cabinets, in fact, what she really wants is the whole kitchen renovated. She has a plan to run a garage sale or two to see if she can defray some of the costs. In getting ready for the sale, you decide to sell the old Briggs and Stratton lawn mower, which hasn't worked in some time. So, you work on the motor, get the motor running, you take off the blades, sharpen them, reinstall them and generally clean up the mower. When you put it out for sale, it sells very quickly. Unfortunately, the first time it is used, the blades become detached and injure the operator of the mower. When he looks to you for his medical claims, would those claims be covered by your Homeowners policy?

Would it make a difference if you have had two garage sales a month at your house from spring through fall for the last two years, ever since you were laid off?

Answer: If either scenario meets the definition of "Business", there is **no** coverage.

- (2) You are a plumber by trade. You are employed by one of the local plumbing companies. Your next door neighbor, who is an elderly widow, is having problems with one of the commodes in her house. She asks you to take a look at it and give her your opinion on the problem. It doesn't take long for you to see the issues and you recommend she replaces the commode with a new one. You tell her if she will buy the parts, you will do the installation. She does, and you install it and test it. She wants to pay you, but you don't accept the money. Instead, she makes lunch for you, which you agree to and accept. Unfortunately, one of the fittings was installed improperly causing a slow water leak behind the commode in the wall and the floor. Over time, this causes serious damage. She is looking to you to be responsible for the costs. Would your Homeowners policy respond to the claim?

Would it make a difference if you accepted the money she offered and kept it for yourself?

Answer: If either scenario meets the definition of "Business", there is **no** coverage.

5. Subrogation: Condition F – HO 00 03 05 11

- a. An “insured” may waive in writing before a loss all rights against recovery against any person.

If not waived, we may require an assignment of rights of recovery for a loss to the extent that payment is made by us.

If an assignment is sought, an "insured" must sign and deliver all related papers and cooperate with us.

Subrogation does not apply to Coverage F or Paragraph C. Damage to Property Of Others Under Section II - Additional Coverages.

**HO 00 03 05 11 Page 23**

- b. In scenario (2) on page 23, if the elderly widow gave her neighbor a written waiver of subrogation for his plumbing work, would **her** insurance company pay the water damage covered claim but be unable (estopped) to recover their payments from the neighbor, the plumber.

Answer: Yes



POLICY NUMBER:

HOMEOWNERS  
HO 24 77 05 11

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY

**CANINE LIABILITY EXCLUSION ENDORSEMENT**

**SCHEDULE**

Name And Description Of Canine(s):

Information required to complete this Schedule, if not shown above, will be shown in the Declarations.

**SECTION II – EXCLUSIONS**

**E. Coverage E – Personal Liability And  
Coverage F – Medical Payments To  
Others**

The following exclusion is added:

Coverages **E** and **F** do not apply to the following:

**Canines**

"Bodily injury" or "property damage" arising out of direct physical contact with a canine described in the Schedule that is owned by or in the care, custody or control of an "insured".

All other provisions of the policy apply.



## C. Other Liability Issues

### 1. Animals/Dogs

a. ISO HO 24 77 05 11 – Canine Liability Exclusion Endorsement – Excludes bodily injury and property damage from **direct physical contact** by “canine described in schedule” owned by or in the care, custody or control of an insured

b. Written agreement required – Rule 617, paragraph A

“The policy may be endorsed, subject to written agreement between the named insured and the insurer, to exclude Coverage E (Personal Liability) and Coverage F (Medical Payments to Others) on a policy with respect to liability arising out of direct physical contact with a specifically described canine, that is owned by or in the care, custody or control of an insured.”

c. What if there is no “direct physical contract”?

Example: Your insured is walking their dog. Their dog sees another dog across the street, also being walked by its owner. The insured’s dog begins barking at the other dog who runs, pulling its owner, who falls to the ground and is injured. Would the Canine Liability Exclusion Endorsement apply in the event of a claim?

Answer: No, how could it apply if there is no physical contact?

d. Dog Owner Liability

- (1) Dog bite statute – owner absolutely liable for bodily injury or property damage caused by dog without provocation
- (2) One-Bite rule – where dog owner is responsible for an injury caused by a dog if the owner knew the dog was likely to cause that type of injury. However, the victim must prove the owner knew the dog was dangerous
- (3) Negligence – dog owner is liable if the injury occurred because the dog owner was unreasonably careless in controlling the dog
- (4) Liability will vary between state, county and municipality

e. Estimated number of claims and cost of dog bite

	<b>Claims</b>	<b>Average Cost</b>
<b>2012</b>	16,459	29,752
<b>2013</b>	17,359	27,862
<b>2014</b>	16,550	32,072
<b>2015</b>	15,352	37,214
<b>2016</b>	18,123	33,320

Source: Insurance Information Institute, State Farm

f. Top 5 states average cost of claim – 2015

New York	\$55,670
New Jersey	\$53,685
Illinois	\$42,837
California	\$39,452
Florida	\$37,339

Source: Insurance Information Institute, State Farm

g. Ways Insurer may limit exposure

- (1) Cap liability limits for dog bite
- (2) Have insured sign waiver for dog bite
- (3) Increase premium for certain breed
- (4) Exclude all liability for all animals

**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY****PERSONAL INJURY COVERAGE****DEFINITIONS**

The following definitions are added:

"Personal injury" means injury arising out of one or more of the following offenses, but only if the offense was committed during the policy period:

1. False arrest, detention or imprisonment;
2. Malicious prosecution;
3. 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;
4. 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; or
5. Oral or written publication, in any manner, of material that violates a person's right of privacy.

"Fungi" means any type or form of fungus, including mold or mildew, and any mycotoxins, spores, scents or by-products produced or released by fungi.

However, this does not include any fungi that are, are on, or are contained in, a good or product intended for consumption.

**SECTION II – LIABILITY COVERAGES****A. Coverage E – Personal Liability**

The following is added to **Coverage E – Personal Liability**

**Personal Injury Coverage**

If a claim is made or suit is brought against an "insured" for damages resulting from an offense, defined under "personal injury", to which this coverage applies, we will:

1. Pay up to our limit of liability for the damages for which an "insured" is legally liable. Damages include prejudgment interest awarded against an "insured"; and
2. Provide a defense at our expense by counsel of our choice, even if the suit is groundless, false or fraudulent. We may investigate and settle any claim or suit that we decide is appropriate. Our duty to settle or defend ends when our limit of liability for the offense has been exhausted by payment of a judgment or settlement.

**SECTION II – EXCLUSIONS**

With respect to the coverage provided by this endorsement, **Section II – Exclusions** is replaced by the following:

This insurance does not apply to:

1. "Personal injury":
  - a. Caused by or at the direction of an "insured" with the knowledge that the act would violate the rights of another and would inflict "personal injury";
  - b. Arising out of oral or written publication of material, if done by or at the direction of an "insured" with knowledge of its falsity;
  - c. Arising out of oral or written publication of material whose first publication took place before the beginning of the policy period;
  - d. Arising out of a criminal act committed by or at the direction of an "insured";
  - e. Arising out of liability assumed by an "insured" under any contract or agreement except any indemnity obligation assumed by an "insured" under a written contract directly relating to the ownership, maintenance or use of the premises;
  - f. Sustained by any person as a result of an offense directly or indirectly related to the employment of this person by an "insured";
  - g. Arising out of or in connection with a "business" conducted from an "insured location" or engaged in by an "insured", whether or not the "business" is owned or operated by an "insured" or employs an "insured". This exclusion applies but is not limited to an act or omission, regardless of its nature or circumstance, involving a service or duty rendered, promised, owed, or implied to be provided because of the nature of the "business".  
This exclusion does not apply to:
    - (1) The rental or holding for rental of an "insured location";
      - (a) On an occasional basis if used only as a residence;

## 2. Invasion of Privacy

a. Does the definition of Personal Injury in the ISO form cover invasion of privacy?

1. False arrest, detention or imprisonment;
2. Malicious prosecution;
3. 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;
4. 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; or
5. Oral or written publication, in any manner, of material that violates a person's right of privacy.

b. Where is Invasion of Privacy? No.3? No.5?

c. How is Personal Injury defined in the other Homeowners policies in your agency?

(1) Is the coverage added by endorsement?

(2) Or is it embedded in the policy?

(3) Are there additional named offenses such as: shock, humiliation, emotional distress, or invasion of privacy in general, none of which are specifically named in ISO?

### 3. Invasion of Privacy Defined

#### a. Definition from Black's Law Dictionary

The unwarranted appropriation or exploitation of one's personality, publicizing one's private affairs with which public has no legitimate concern, or wrongful intrusion into one's private activities, in such a manner as to cause humiliation to person of ordinary sensibilities. Violation of right which one has to be left alone and unnoticed if he so chooses. Such invasion may constitute an actionable tort.

**Black's Law Dictionary, 5<sup>th</sup> Edition**

#### b. Classes of tort actions for invasion of privacy

1. **Appropriation** – consisting of appropriation, for the defendant's benefit or advantage, of the plaintiff's name or likeness

**Example** – identify theft via social media

2. **Intrusion** – consisting of intrusion upon the plaintiff's solitude or seclusion, as by invading his home; eavesdropping as well as persistent and unwanted telephone calls

**Example** – a neighbor using a drone with a camera to "spy" in windows, backyard, or anywhere on another's premises

3. **Public disclosure of private facts** – consisting of a cause of action in publicity, of a highly objectionable kind, given to private information about the plaintiff, even though it is true and no action would lie for defamation

**Example** – classmates of insured's child post personal information on social media

4. **False light in the public eye** – consisting of publicity which places the plaintiff in a false light in the public eye

**Example** – posting information of a neighbor on social media which is not true

**Black's Law Dictionary, 5<sup>th</sup> Edition**

#### c. Not defined in ISO's Homeowner Policy

#### 4. Social Media and Invasion of Privacy

##### a. Definition of Personal Injury

"Personal injury" means injury arising out of one or more of the following offenses, but only if the offense was committed during the policy period:

1. False arrest, detention or imprisonment;
2. Malicious prosecution;
3. 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;
4. 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; or
5. Oral or written publication, in any manner, of material that violates a person's right of privacy.

**HO 24 82 05 11.** Page 28 of 66.

##### b. What are the potentially applicable exclusions for Invasion of Privacy?

1. "Personal injury":
  - a. Caused by or at the direction of an "insured" with the knowledge that the act would violate the rights of another and would inflict "personal injury";
  - b. Arising out of oral or written publication of material, if done by or at the direction of an "insured" with knowledge of its falsity;
  - c. Arising out of oral or written publication of material whose first publication took place before the beginning of the policy period;
  - d. Arising out of a criminal act committed by or at the direction of an "insured";

**HO 24 82 05 11.** Page 28 of 66.

##### c. Exclusions a. and b. above relate directly to “public disclosure of private facts” and “false light in public eye” in classes of tort actions for Invasion of Privacy

##### d. How are you approaching the potential coverage issue in your agency?

##### e. What is your standard?

5. Drones and Invasion of Privacy

a. What is a Drone?

FAA Modernization & Reform Act of 2012 – See 331

“An aircraft that is operated without a possibility of direct human intervention from within or on the aircraft.”

b. “Aircraft Liability” – defined in Homeowners policy as “bodily injury” or “property damage” arising out of the:

- (1) Ownership of such vehicle or craft by an "insured";
- (2) Maintenance, occupancy, operation, use, loading or unloading of such vehicle or craft by any person;
- (3) Entrustment of such vehicle or craft by an "insured" to any person;
- (4) Failure to supervise or negligent supervision of any person involving such vehicle or craft by an "insured"; or
- (5) Vicarious liability, whether or not imposed by law, for the actions of a child or minor involving such vehicle or craft.

**HO 00 03 05 11. Page 1 of 24.**

c. How is aircraft defined in the Homeowners policy?

b. For the purpose of this definition as a sub-definition in the definition of "Aircraft Liability:

- (1) Aircraft means any contrivance used or designed for flight except model or hobby aircraft not used or designed to carry people or cargo;

**HO 00 03 05 11. Page 1 of 24.**

d. Where is coverage excluded for an aircraft?

Section II Exclusions

**C. "Aircraft Liability"**

This policy does not cover "aircraft liability".

**HO 00 03 05 11. Page 18 of 24.**



- e. Liability for “bodily injury” and “property damage” arising from the operation of drones is covered as drones meet the exception to the definition of “aircraft” for model and hobby aircraft
- f. What if Personal Injury Coverage Endorsement is added to the policy?

- (1) Personal Injury Coverage

**Section II – Exclusions**

With respect to the coverage provided by this endorsement, Section II – Exclusions **is replaced** (my emphasis) by the following...

HO 24 82 05 11. Page 1 of 3.

- (2) There are 11 exclusions in the endorsement that apply to the coverage provided, none of which specifically exclude “aircraft liability”

- g. ISO Action – effective March 1, 2017.

- (1) Aircraft Liability Definition Revised to Remove Exception for Model and Hobby Aircraft  
Endorsement: HO 34 02 02 17

This optional endorsement will exclude liability for “bodily injury” or “property damage” with respect to model or hobby aircraft

- (2) Personal Injury For Aircraft Liability Excluded  
Endorsement: HO 34 03 02 17

This optional endorsement will exclude the revised definition of “aircraft liability” from Personal Injury Coverage endorsements HO 24 82 – Personal Injury Coverage and HO 24 10 – Personal Injury Coverage (Aggregate Limit of Liability), there by removing coverage for the potential exposure of Invasion of Privacy by a drone with a camera

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

## AIRCRAFT LIABILITY DEFINITION REVISED TO REMOVE EXCEPTION FOR MODEL OR HOBBY AIRCRAFT

### DEFINITIONS

Definition **B.1.** is replaced by the following:

**B.** In addition, certain words and phrases are defined as follows:

**1.** "Aircraft Liability", "Hovercraft Liability", "Motor Vehicle Liability" and "Watercraft Liability", subject to the provisions in **b.** below, mean the following:

**a.** Liability for "bodily injury" or "property damage" arising out of the:

- (1)** Ownership of such vehicle or craft by an "insured";
- (2)** Maintenance, occupancy, operation, use, loading or unloading of such vehicle or craft by any person;
- (3)** Entrustment of such vehicle or craft by an "insured" to any person;
- (4)** Failure to supervise or negligent supervision of any person involving such vehicle or craft by an "insured"; or

**(5)** Vicarious liability, whether or not imposed by law, for the actions of a child or minor involving such vehicle or craft.

**b.** For the purpose of this definition:

**(1)** Aircraft means any contrivance used or designed for flight including but not limited to unmanned aircraft, whether or not model or hobby;

**(2)** Hovercraft means a self-propelled motorized ground effect vehicle and includes, but is not limited to, flarecraft and air cushion vehicles;

**(3)** Watercraft means a craft principally designed to be propelled on or in water by wind, engine power or electric motor; and

**(4)** Motor vehicle means a "motor vehicle" as defined in **7.** below.

All other provisions of this Policy apply.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

## PERSONAL INJURY FOR AIRCRAFT LIABILITY EXCLUDED

### SECTION II – EXCLUSIONS

With respect to the Personal Injury Coverage provided by Endorsements **HO 24 82** and **HO 24 10**, the following is added to **Section II – Exclusions** in Endorsements **HO 24 82** and **HO 24 10**:

This insurance does not apply to:

"Aircraft liability".

For the purposes of this exclusion, "aircraft liability" means:

a. Liability for "personal injury" arising out of the:

- (1) Ownership of such aircraft by an "insured";
- (2) Maintenance, occupancy, operation, use, loading or unloading of such aircraft by any person;

(3) Entrustment of such aircraft by an "insured" to any person;

(4) Failure to supervise or negligent supervision of any person involving such aircraft by an "insured"; or

(5) Vicarious liability, whether or not imposed by law, for the actions of a child or minor involving such aircraft.

b. For the purpose of this definition, aircraft means any contrivance used or designed for flight including but not limited to unmanned aircraft, whether or not model or hobby.

All other provisions of this Policy apply.

h. What about the Personal Umbrella?

- Policies vary, but aircraft is almost always excluded

Example #1:

any **personal injury** or **property damage** arising out of:  
a. ownership;  
b. maintenance; or  
c. use (including loading or unloading); of an aircraft of an **insured**.

Example #2:

to the ownership, maintenance or use including loading or unloading, of any, aircraft... except to the extent that coverage therefore is provided by underlying insurance specified in Schedule A.

i. How is Personal Injury defined in the Personal Umbrella?

(1) “Follow Form” over the primary

(2) Or does the policy have its own definition?

**Personal injury** means:

a. bodily injury; b. shock; c. mental anguish; or d. sickness or death; including death resulting from any of the above.

**Personal injury** also means:

e. false arrest;

f. detention or imprisonment;

g. malicious prosecution;

h. wrongful entry or eviction;

i. humiliation;

j. libel or slander;

k. defamation of character; or invasion of privacy.

⇒ Definition of “Personal Injury”

✓ Most Umbrella/Excess forms have separate definitions for “personal injury” and “bodily injury”

✓ Some Umbrella/Excess forms broaden the definition of “personal injury” to include “bodily injury” which is the “insured’s” personal liability

✓ Many Umbrella/Excess policies include named personal injury offenses in the definition of “bodily injury”

✓ Carefully read the policy exclusions which can affect the interpretation of the definition of “personal injury” (check for intentional injury exclusions)

(3) Does your client even have a Personal Umbrella Policy?

(4) Exclusions

✓ Remember that Umbrella policies do not have a standardized set of exclusions; however, many are similar to the exclusions found in the underlying policy

D. Home-Sharing – Filing effective March 1, 2017

1. Possible users of Home-Sharing online service

- a. Tenants – potential profit from renting apartment for extra income
- b. Retirees – potential additional income, above retirement savings, from rental of spare rooms
- c. Homeowners – potential additional income from renting entire home for extended period while they are away from premises
- d. Travelers – not willing to stay at higher-priced hotels

2. Key definitions to all endorsements

(taken from HO 06 53 02 17 – Home Sharing Host Activities Amendatory Endorsement )

a. Home-sharing host activities:

1. "Home-sharing host activities" means:

a. The:

- (1) Rental or holding for rental; or
- (2) Mutual exchange of services; of the "residence premises", in whole or in part, by an "insured" to a "home-sharing occupant" through the use of a "home-sharing network platform"; and

b. Any other related property or services made available by an "insured" for use during such:

- (1) Rental; or
- (2) Mutual exchange of services; except those property or services provided by another party.

b. Home-sharing network platform:

2. "Home-sharing network platform" means an online-enabled application, web site or digital network that:
  - a. Is used for the purpose of facilitating, for money, mutual exchange of services or other compensation, the rental of a dwelling or other structure, in whole or in part; and
  - b. Allows for the agreement and compensation with respect to such rental to be transacted through such online-enabled application, web site or digital network.

c. Home-sharing occupant:

3. "Home-sharing occupant" means a person, other than an "insured", who:
  - a. Has entered into an agreement or arranged compensation with an "insured" through the use of a "home-sharing network platform" for "home-sharing host activities"; or
  - b. Is accompanying or staying with a person described in Paragraph 3.a. of this provision under such "home-sharing host activities".

d. Adds new definition of "Business" to include Home-Sharing host activities

3. "Business" means:
  - a. A trade, profession or occupation engaged in on a full-time, part-time or occasional basis;
  - b. "Home-sharing host activities"; or
  - c. Any other activity engaged in for money or other compensation, except the following:
    - (1) One or more activities, not described in (2) through (4) below, for which no "insured" receives more than \$2,000 in total compensation for the 12 months before the beginning of the policy period;
    - (2) Volunteer activities for which no money is received other than payment for expenses incurred to perform the activity;
    - (3) Providing home day care services for which no compensation is received, other than the mutual exchange of such services; or
    - (4) The rendering of home day care services to a relative of an "insured".

3. Coverages affected on Homeowners Policy by HO 06 53 02 17 Home-Sharing Host Activities Amendatory Endorsement
- Coverage A.-Dwelling and Coverage B.-Other Structures: No Coverage for loss arising from the perils of Theft or Vandalism or Malicious Mischief if loss arises from “Home-Sharing Host Activities”
  - Coverage C.-Personal Property:
    - No coverage for personal property of “Home-Sharing Occupant”
    - No coverage for property of any other person occupying “Residence Premises” as a result of “Home-Sharing Host Activities”
    - No coverage for property in a space rented to or held for rental to a “Home-Sharing Occupant”
    - No coverage for any property used primarily for ‘Home-Sharing Host Activities’
    - No coverage for loss arising from the perils of Theft or Vandalism or Malicious Mischief if loss arises from “Home-Sharing Host Activities”
  - Coverage D.-Fair Rental Value: No coverage for any fair rental value arising out of or in connection with “Home-Sharing Host Activities”.
  - Coverage E.-Personal Liability: As definition of “Business” is amended to include “Home-Sharing Host Activities”, there is no liability coverage arising out of or in connection with “Home-Sharing Host Activities”.
  - Coverage F.-Medical Payments to Others: Same issue as Coverage E.-Personal Liability relating to definition of “Business”, Specifically excludes coverage for a “Home-Sharing Occupant”
  - Personal Injury Coverage: If endorsement is added to policy, no coverage will apply due to the revised definition of “Business” as it now includes “Home-Sharing Host Activities”



4. Broadened Home-Sharing Host Activities Coverage Endorsements

- Used to buy back coverage, either restricted or excluded by other endorsements. Not all coverage is given back to insured.

Example: Perils of theft and vandalism or malicious mischief from Coverage A Dwelling and Coverage B Other Structures are still excluded with addition of Broadened Home-Sharing Host Activities Coverage Endorsement – HO 06 63 02 17.

- Be careful concerning exposure from activities that may be included in Home-Sharing Host Activities  
Examples – use of watercraft or ATVs – is there use part of the agreement?

- Additional Premium charge

- Will also provide coverage for Home-Sharing Host Activities Damage to Property of Others, \$1,000.00 or additional limits chosen shown in the schedule of Broadened Home-Sharing Host Activities Coverage Endorsement – HO 06 63 02 17 - May be used to provide additional coverage limits for renters' liability (Occupant) for the property of owner (Host).

- Coverage D.-Fair Rental Value: Limits coverage for loss resulting from property being untenable due to a covered peril or hurricane.

- Coverage F.-Medical Payments to Others: Coverage still may be excluded for “Home-Sharing Occupant”

5. Coverages affected on the Homeowners Policy of the “Home-Sharing Occupant”

- a. Property of Others in their care, custody or control  
HO 06 51 02 17
- b. Liability possibly assumed by the rental contract

## II. PERSONAL AUTO COVERAGES

### A. Ride Sharing Issues

1. Transportation Network Companies – Points of Discussion
  - a. Are they Public or Livery Conveyance?
  - b. Do they have their own insurance and when is it triggered?
  - c. Whose insurance is primary, the TNC or the insureds?
  - d. Who is the insured's passenger, a paying customer or a guest?
  - e. Result is ISO Filing Effective 10 15.
2. Public or Livery Conveyance
  - a. In general, a “public” conveyance would transport people, a city bus, where a “livery” conveyance would transport people or property, a taxi or UPS, FedEx, etc., all indiscriminately
  - b. Specifically excluded in Personal Auto Policy  
PP 00 01 01 05
    - (1) Liability – exclusion A.5
    - (2) Medical Payments – exclusion 2
    - (3) Uninsured Motorist – exclusion B.2
    - (4) Damage To Your Auto – exclusion 1
  - c. Is UBER/LYFT, etc. “Public” or “Livery” conveyance or do they discriminate?

3. Transportation Network Platforms – ISO Definition

"Transportation network platform" means an online-enabled application or digital network used to connect passengers with drivers using vehicles for the purpose of providing prearranged transportation services for compensation.

**PP 23 40 10 15. Page 1 of 1.**

**PP 23 41 10 15. Page 1 of 3.**

**PP 23 45 10 15. Page 1 of 3.**

4. Three phases of Operation

- a. Driver logged into application awaiting a ride request
- b. Driver accepts ride request, however, has no passenger as of yet, but will move to pick up print
- c. Driver picks up passenger to provide ride service

## 5. Endorsements

- a. PP 23 40 10 15 – Public or Livery Conveyance Exclusion Endorsement  
Amends policy to include “Transportation Network Platform” within scope of exclusion for Liability, Medical Payments and Damage to Your Auto – excludes all three phases
- b. PP 23 41 10 15 – Transportation Network Driver Coverage (No Passengers)  
Amends policy to now exclude only the third phase. In other words, once passenger is occupying the vehicle coverage terminates
- c. PP 23 45 10 15 – Limited Transportation Network Driver Coverage (No Passenger)  
Amends policy to exclude the second and third phases, only. Once driver accepts request for transportation, coverage ceases.
- d. Company Specific Endorsements – be sure to read
- e. PP 23 16 10 13 – Personal Vehicle Sharing Program Exclusion  
Amends policy to exclude liability coverage for others when “your covered auto” is rented to others through a personal vehicle sharing program under the terms of a written agreement.  
Amends policy to exclude Physical Damage Coverage to “non-owned auto” if either the personal vehicle sharing program or the applicable state law precludes recovery from the named insured or “family member”  
Exclusion applies to Liability, Medical Payments, UM/UIM (where allowed) and Damage To Your Auto.

B. Other Vehicles in the Household

1. Auto Policy Language – ISO PAP

We do not provide Liability Coverage for any insured:  
For **property damage to Property**

- a. rented to;
- b. **used by**; or
- c. **in the care of that insured**

B. We **do not provide liability coverage** for the ownership, maintenance or use of:

- 2. any vehicle other than your covered auto which is:
  - (a) owned by you; or
  - (b) **furnished or available for your regular use**

2. Key Terms

a. Furnished

“to provide with what is needed; especially: to equip with”

**Merriam-Webster on-line dictionary**

b. Available

“present or ready for immediate use”

**Merriam-Webster on-line dictionary**

c. Regular

(1) orderly, methodical

(2) recurring, attending, or functioning at fixed or uniform intervals

**Merriam-Webster on-line dictionary**

3. Case studies

Apply the terms **furnished, available, and regular** to each of the following scenarios. Is there coverage?

- a. Your customer is keeping an aunt's car while she is hospitalized for continuing physical therapy after surgery. He uses the car once a week to visit her.
- b. Two college roommates have a common hook where they hang their car keys. They have agreed to allow each to drive the other's car without asking permission.
- c. An employee is not assigned a specific company car but has permission to use any car in the company fleet if there is one available.
- d. A retired customer rents a vehicle for 30 days to take a cross country trip. He may rent it for an extra 30 days if he hasn't finished the trip or if he just doesn't feel like coming home.

4. Issues of fact for judicial interpretation

- a. The general availability of the vehicle (access to keys being a test)
- b. The frequency of use (habitual, frequent, occasional)
- c. Restrictions placed on the vehicles use
- d. Nature of the use

5. Court Cases

a. Factory Mutual v. Continental Casualty

A 3 week Florida rental was deemed not to be regular use

b. Hughes v. State Farm

The insured used a car about six or eight times during a period of eight or nine months. Each time, the insured had to request permission and was denied on several occasions. Because permission had to be granted, the Tennessee Supreme Court found that the vehicle was not available for regular use.

c. American States v. Tanner (West Virginia)

Tanner's auto was insured by State Farm and her husband's by American States. Because of a prior not at fault accident her car was in the shop for repairs. She was given a rental car (a Range Rover) that she had been driving for 22 days when she caused a fatal accident. State Farm paid policy limits as did the rental car policy. The plaintiffs sued looking for coverage under her husband's policy.

**Do you think coverage applies?**

d. The Court's decision

(1) General availability

We must determine whether the Range Rover was generally available to Mrs. Tanner. We find that it was not. The Range Rover was rented to Mrs. Tanner after her Astrovan had been rendered undrivable... Therefore, the Range Rover was available to Mrs. Tanner only for a finite period of time

(2) Frequency of Use

Assuming...that Mrs. Tanner made frequent, habitual, or even principal use of this vehicle, this factor alone is not solely determinative of the regular use issue. Rather, all facts and circumstances must be considered when addressing such an inquiry

(3) Restrictions on Use

...the contract permitted Mrs. Tanner to drive...for only 100 miles per day; she was not permitted to drive the vehicle out of state...; and other motorists could not drive...until...granted permission for them to do so. These limitations on use are hardly consistent with an insured's unfettered ability to regularly use a vehicle according to his/her whims, needs, or desires

(4) Nature of Use

It is clear that Mrs. Tanner's use...was for a specific, limited purpose. This result is consistent with the decisions of other courts that have determined that temporary use of a rental car does not constitute regular use thereof

(5) Avoiding the problem, and the confusion

ISO PAP – PP 03 06 – Extended Non-Owned Coverage

- ✓ The 01 05 edition provides coverage only for vehicles furnished or available for regular use of named individual



6. What if the carrier will not add or does not have available the endorsement
  - a. You **must** advise the client
  - b. You **must** have documentation of your action
  - c. Quote a separate non-owned policy
  - d. Have a procedure

**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

## **HOME-SHARING HOST ACTIVITIES AMENDATORY ENDORSEMENT**

### **DEFINITIONS**

**A.** The following definitions are added:

1. "Home-sharing host activities" means:
  - a. The:
    - (1) Rental or holding for rental; or
    - (2) Mutual exchange of services; of the "residence premises", in whole or in part, by an "insured" to a "home-sharing occupant" through the use of a "home-sharing network platform"; and
  - b. Any other related property or services made available by an "insured" for use during such:
    - (1) Rental; or
    - (2) Mutual exchange of services; except those property or services provided by another party.
2. "Home-sharing network platform" means an online-enabled application, web site or digital network that:
  - a. Is used for the purpose of facilitating, for money, mutual exchange of services or other compensation, the rental of a dwelling or other structure, in whole or in part; and
  - b. Allows for the agreement and compensation with respect to such rental to be transacted through such online-enabled application, web site or digital network.
3. "Home-sharing occupant" means a person, other than an "insured", who:
  - a. Has entered into an agreement or arranged compensation with an "insured" through the use of a "home-sharing network platform" for "home-sharing host activities"; or
  - b. Is accompanying or staying with a person described in Paragraph 3.a. of this provision under such "home-sharing host activities".

**B.** Definition **B.3.** "Business" is replaced by the following:

**3.** "Business" means:

- a. A trade, profession or occupation engaged in on a full-time, part-time or occasional basis;
- b. "Home-sharing host activities"; or
- c. Any other activity engaged in for money or other compensation, except the following:
  - (1) One or more activities, not described in (2) through (4) below, for which no "insured" receives more than \$2,000 in total compensation for the 12 months before the beginning of the policy period;
  - (2) Volunteer activities for which no money is received other than payment for expenses incurred to perform the activity;
  - (3) Providing home day care services for which no compensation is received, other than the mutual exchange of such services; or
  - (4) The rendering of home day care services to a relative of an "insured".

**C.** In this Policy, the terms:

1. Roomer;
2. Boarder;
3. Tenant; or
4. Guest;

do not include a "home-sharing occupant".

### **SECTION I – PROPERTY COVERAGES**

#### **C. Coverage C – Personal Property**

Paragraphs **f.** and **g.** of **4. Property Not Covered** are replaced by the following:

We do not cover:

- f. Property of:
  - (1) A "home-sharing occupant";

- (2) Any other person occupying the "residence premises" as a result of any "home-sharing host activities"; and
- (3) Roomers, boarders and other tenants, except property of roomers and boarders related to an "insured";

**g. Property in:**

- (1) A space while rented or primarily held for rental to a "home-sharing occupant"; or
- (2) Subject to Paragraph **C.4.g.(1)**, property in an apartment regularly rented or held for rental to others by an "insured" except as provided in **E.10**. Landlord's Furnishings under Section **I – Property Coverages**;

The following provision is added to **4. Property Not Covered**:

We do not cover property used primarily for "home-sharing host activities".

**D. Coverage D – Loss Of Use**

Paragraph **D.2. Fair Rental Value** is replaced by the following:

**2. Fair Rental Value**

If a loss covered under Section **I** makes that part of the "residence premises" rented to others or held for rental by you not fit to live in, we cover the fair rental value of such premises less any expenses that do not continue while it is not fit to live in.

However, we do not cover any fair rental value arising out of or in connection with "home-sharing host activities".

Payment will be for the shortest time required to repair or replace such premises.

**SECTION I – PERILS INSURED AGAINST**

**A. Coverage A – Dwelling And Coverage B – Other Structures**

Paragraph **A.2.c.(3)** is replaced by the following:

**(3) Theft:**

- (a) If such loss arises out of or results from "home-sharing host activities"; or
- (b) In or to a dwelling under construction, or of materials and supplies for use in the construction until the dwelling is finished and occupied;

Paragraph **A.2.c.(4)** is replaced by the following:

- (4) Vandalism and malicious mischief, and any ensuing loss caused by any intentional and wrongful act committed in the course of the vandalism or malicious mischief, if:
  - (a) The loss arises out of or results from "home-sharing host activities"; or
  - (b) The dwelling has been vacant for more than 60 consecutive days immediately before the loss. A dwelling being constructed is not considered vacant;

**B. Coverage C – Personal Property**

Paragraph **B.8.** is replaced by the following:

**8. Vandalism Or Malicious Mischief**

This peril does not include loss caused by vandalism or malicious mischief to property arising out of or resulting from "home-sharing host activities".

Paragraph **B.9.** is replaced by the following:

**9. Theft**

- a. This peril includes attempted theft and loss of property from a known place when it is likely that the property has been stolen.
- b. This peril does not include loss caused by theft:
  - (1) Committed by an "insured";
  - (2) In or to a dwelling under construction, or of materials and supplies for use in the construction until the dwelling is finished and occupied;
  - (3) From that part of a "residence premises" rented by an "insured" to someone other than another "insured";
  - (4) That occurs off the "residence premises" of:
    - (a) Trailers, semitrailers and campers;
    - (b) Watercraft of all types, and their furnishings, equipment and outboard engines or motors; or
    - (c) Property while at any other residence owned by, rented to, or occupied by an "insured", except while an "insured" is temporarily living there. Property of an "insured" who is a student is covered while at the residence the student occupies to attend school as long as the student has been there at any time during the 90 days immediately before the loss; or

- (5) If such loss arises out of or results from "home-sharing host activities".

## SECTION II – EXCLUSIONS

Exclusion **E.2.** is replaced by the following:

Coverages **E** and **F** do not apply to the following:

### 2. "Business"

- a. "Bodily injury" or "property damage" arising out of or in connection with a "business" conducted from an "insured location" or engaged in by an "insured", whether or not the "business" is owned or operated by an "insured" or employs an "insured".

This Exclusion **E.2.** applies but is not limited to an act or omission, regardless of its nature or circumstance, involving a service or duty rendered, promised, owed, or implied to be provided because of the nature of the "business".

- b. With respect to other than "home-sharing host activities", this Exclusion **E.2.** does not apply to:

- (1) The rental or holding for rental of an "insured location":

- (a) On an occasional basis if used only as a residence;
- (b) In part for use only as a residence, unless a single-family unit is intended for use by the occupying family to lodge more than two roomers or boarders; or
- (c) In part, as an office, school, studio or private garage; and

- (2) An "insured" under the age of 21 years involved in a part-time or occasional, self-employed "business" with no employees;

Exclusion **G.4.** is replaced by the following:

Coverage **F** does not apply to "bodily injury":

### 4. To:

- a. A "home-sharing occupant"; or
- b. Any person, other than a "residence employee" of an "insured", regularly residing on any part of the "insured location".

The following provision is added:

### Personal Injury Coverage

If the Personal Injury Coverage endorsement is made a part of this Policy, Exclusion **1.g.** is replaced by the following:

This insurance does not apply to:

### 1. "Personal injury":

- g. Arising out of or in connection with a "business" conducted from an "insured location" or engaged in by an "insured", whether or not the "business" is owned or operated by an "insured" or employs an "insured". This exclusion applies but is not limited to an act or omission, regardless of its nature or circumstance, involving a service or duty rendered, promised, owed, or implied to be provided because of the nature of the "business".

With respect to other than "home-sharing host activities", this exclusion does not apply to:

- (1) The rental or holding for rental of an "insured location":

- (a) On an occasional basis if used only as a residence;
- (b) In part for use only as a residence, unless a single-family unit is intended for use by the occupying family to lodge more than two roomers or boarders; or
- (c) In part, as an office, school, studio or private garage; and

- (2) An "insured" under the age of 21 years involved in a part-time or occasional, self-employed "business" with no employees;

All other provisions of this Policy apply.

**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

## BROADENED HOME-SHARING HOST ACTIVITIES COVERAGE ENDORSEMENT

### SCHEDULE

<b>Home-sharing Host Activities Damage To Property Of Others</b>	
<b>Limit Of Liability: \$</b>	<b>Per Occurrence</b>
Information required to complete this Schedule, if not shown above, will be shown in the Declarations.	

**DEFINITIONS**

**A.** The following definitions are added:

**1.** "Home-sharing host activities" means:

**a.** The:

- (1)** Rental or holding for rental; or
- (2)** Mutual exchange of services;

of the "residence premises", in whole or in part, by an "insured" to a "home-sharing occupant" through the use of a "home-sharing network platform"; and

**b.** Any other related property or services made available by an "insured" for use during such:

- (1)** Rental; or
- (2)** Mutual exchange of services;

except those property or services provided by another party.

**2.** "Home-sharing network platform" means an online-enabled application, web site or digital network that:

- a.** Is used for the purpose of facilitating, for money, mutual exchange of services or other compensation, the rental of a dwelling or other structure, in whole or in part; and
- b.** Allows for the agreement and compensation with respect to such rental to be transacted through such online-enabled application, web site or digital network.

**3.** "Home-sharing occupant" means a person, other than an "insured", who:

- a.** Has entered into an agreement or arranged compensation with an "insured" through the use of a "home-sharing network platform" for "home-sharing host activities"; or

**b.** Is accompanying or staying with a person described in Paragraph **3.a.** of this provision under such "home-sharing host activities".

**B. Definition B.3.** "Business" is replaced by the following:

**3.** "Business" means:

**a.** A trade, profession or occupation engaged in on a full-time, part-time or occasional basis;

**b.** "Home-sharing host activities"; or

**c.** Any other activity engaged in for money or other compensation, except the following:

- (1)** One or more activities, not described in **(2)** through **(4)** below, for which no "insured" receives more than \$2,000 in total compensation for the 12 months before the beginning of the policy period;
- (2)** Volunteer activities for which no money is received other than payment for expenses incurred to perform the activity;
- (3)** Providing home day care services for which no compensation is received, other than the mutual exchange of such services; or
- (4)** The rendering of home day care services to a relative of an "insured".

**C.** In this Policy, the terms:

- 1.** Roomer;
- 2.** Boarder;
- 3.** Tenant; or
- 4.** Guest;

do not include a "home-sharing occupant".

## SECTION I – PROPERTY COVERAGES

### B. Coverage B – Other Structures

With respect to the coverage provided by this endorsement, Paragraphs **B.2.b.** and **B.2.c.** are replaced by the following:

2. We do not cover:

- b. Other structures rented or held for rental to any person other than a:
  - (1) "Home-sharing occupant"; or
  - (2) Tenant of the dwelling;  
unless used solely as a private garage;
- c. Other structures from which any "business" is conducted, except structures used primarily for "home-sharing host activities"; or

### C. Coverage C – Personal Property

Paragraph **f.** of **4. Property Not Covered** is replaced by the following:

We do not cover:

- f. Property of:
  - (1) A "home-sharing occupant";
  - (2) Any other person occupying the "residence premises" as a result of any "home-sharing host activities"; and
  - (3) Roomers, boarders and other tenants, except property of roomers and boarders related to an "insured";

### D. Coverage D – Loss Of Use

With respect to the coverage provided by this endorsement, Paragraph **D.2. Fair Rental Value** is replaced by the following:

#### 2. Lost Rental Value Of "Home-sharing Host Activities"

If an "insured" has entered into a contract or agreement with another person through the use of a "home-sharing network platform" for "home-sharing host activities" for a specified period of time, and either:

- a. A loss covered under Section **I** makes that part of the "residence premises" used for such "home-sharing host activities" not fit to live in during the period of time specified in such contract or agreement; or

- b. The "insured" or such other person cancels such contract or agreement, provided such cancellation takes place:

(1) During the period of time a National Weather Service hurricane watch or hurricane warning is in effect for any part of the state in which the:

- (a) "Residence premises" is located; or
- (b) Person entering into such contract or agreement with the "insured" resides; or

(2) Within 24 hours of the termination of such hurricane watch or hurricane warning described in Paragraph **b.(1)** of this provision;

we cover the lost rental value of the "home-sharing host activities" specified under such contract or agreement, less any expenses that do not continue while it is not fit to live in.

Payment will be for the shortest period of time agreed upon for "home-sharing host activities" under such contract or agreement.

### E. Additional Coverages

Paragraph **E.10. Landlord's Furnishings** is replaced by the following:

#### 10. Landlord's Furnishings

We will pay up to \$2,500 for your appliances, carpeting and other household furnishings, in each apartment on the "residence premises" regularly rented or held for rental to others by an "insured", for loss caused by a Peril Insured Against in Coverage **C**, other than Theft.

This coverage includes, but is not limited to, loss to appliances, carpeting and other household furnishings which results from "home-sharing host activities".

This limit is the most we will pay in any one loss regardless of the number of appliances, carpeting or other household furnishings involved in the loss.

This coverage does not increase the limit of liability applying to the damaged property.

## SECTION I – PERILS INSURED AGAINST

### B. Coverage C – Personal Property

With respect to the coverage provided by this endorsement, Paragraph **9.b.(3)** is replaced by the following:

#### 9. Theft

**b.** This peril does not include loss caused by theft:

**(3)** From that part of a "residence premises" rented by an "insured" to someone other than:

**(a)** Another "insured"; or

**(b)** A "home-sharing occupant".

However, we will not pay, under this Provision **b.(3)(b)**, for loss by theft of:

**(i)** Money, bank notes, bullion, gold, goldware, gold-plated ware, silver, silverware, silver-plated ware, pewterware, platinum, platinumware, platinum-plated ware, coins, medals, scrip, stored value cards and smart cards;

**(ii)** Securities, accounts, deeds, evidences of debt, letters of credit, notes other than bank notes, manuscripts, personal records, passports, tickets and stamps regardless of the medium (such as paper or computer software) on which the material exists; or

**(iii)** Jewelry, watches, furs, precious and semiprecious stones; or

## SECTION I – CONDITIONS

With respect to the coverage provided by this endorsement, Paragraph **G. Other Insurance And Service Agreement** is replaced by the following:

### G. Other Insurance And Service Agreement

1. If a loss covered by this Policy is also covered by:

**a.** Other insurance, except insurance provided by a "home-sharing network platform", we will pay only the proportion of the loss that the limit of liability that applies under this Policy bears to the total amount of insurance covering the loss; or

**b.** A service agreement, protection plan or guarantee, except a service agreement, protection plan or guarantee provided by a "home-sharing network platform", this insurance is excess over any amounts payable under any such agreement.

2. Subject to Paragraph **G.1.**, if, at the time of loss, there is:

**a.** Other insurance;

**b.** A service agreement;

**c.** A protection plan; or

**d.** A guarantee;

provided by, on behalf of, or through a "home-sharing network platform" covering the same property covered by this Policy, this insurance is primary with respect to the amount due under such other insurance, service agreement, protection plan or guarantee.

3. As used in this Paragraph **G.:**

**a.** A service agreement means a service plan, property restoration plan, home warranty or other similar service warranty agreement, even if it is characterized as insurance.

**b.** A protection plan or guarantee means a product provided by a "home-sharing network platform" which provides property damage protection for "home-sharing host activities", even if it is characterized as insurance.

## SECTION II – EXCLUSIONS

With respect to the coverage provided by this endorsement, Exclusion **E.2.** is replaced by the following:

### 2. "Business"

**a.** "Bodily injury" or "property damage" arising out of or in connection with a "business" conducted from an "insured location" or engaged in by an "insured", whether or not the "business" is owned or operated by an "insured" or employs an "insured".

This Exclusion **E.2.** applies but is not limited to an act or omission, regardless of its nature or circumstance, involving a service or duty rendered, promised, owed, or implied to be provided because of the nature of the "business".

**b.** This Exclusion **E.2.** does not apply to:

**(1)** "Home-sharing host activities";

**(2)** With respect to other than "home-sharing host activities":

**(a)** The rental or holding for rental of an "insured location":

**(i)** On an occasional basis if used only as a residence;

- (ii) In part for use only as a residence, unless a single-family unit is intended for use by the occupying family to lodge more than two roomers or boarders; or
- (iii) In part, as an office, school, studio or private garage; and
- (b) An "insured" under the age of 21 years involved in a part-time or occasional, self-employed "business" with no employees;

**SECTION II – ADDITIONAL COVERAGES**

With respect to the coverage provided by this endorsement, Paragraph **C. Damage To Property Of Others** is replaced by the following:

**C. Home-sharing Host Activities Damage To Property Of Others**

1. We will pay, at replacement cost, up to:
  - a. \$1,000; or
  - b. The Home-sharing Host Activities Damage To Property Of Others Limit Of Liability shown in the Schedule;
 whichever is greater, per "occurrence", for "property damage" to property of others:
  - a. Caused by an "insured"; and
  - b. Arising out of "home-sharing host activities".
2. We will not pay for "property damage":
  - a. To the extent of any amount recoverable under Section I;
  - b. Caused intentionally by an "insured" who is 13 years of age or older;
  - c. To property owned by an "insured";
  - d. To property owned by or rented to a tenant of an "insured" or a resident in your household; or
  - e. Arising out of:
    - (1) A "business", other than "home-sharing host activities", engaged in by an "insured";
    - (2) Any act or omission in connection with a premises owned, rented or controlled by an "insured", other than the "insured location"; or
    - (3) The ownership, maintenance, occupancy, operation, use, loading or unloading of aircraft, hovercraft, watercraft or "motor vehicles".

This Exclusion **e.(3)** does not apply to a "motor vehicle" that:

- (a) Is designed for recreational use off public roads;
- (b) Is not owned by an "insured"; and
- (c) At the time of the "occurrence", is not required by law, or regulation issued by a government agency, to have been registered for it to be used on public roads or property.

**SECTION II – CONDITIONS**

With respect to the coverage provided by this endorsement, Paragraph **H. Other Insurance** is replaced by the following:

**H. Other Insurance**

This insurance is:

1. Primary with respect to:
  - a. Other insurance;
  - b. A protection plan; or
  - c. A guarantee;
 provided by, on behalf of, or through a "home-sharing network platform" covering "home-sharing host activities".
2. Subject to Paragraph **H.1.**, excess over other valid and collectible insurance except insurance written specifically to cover as excess over the limits of liability that apply in this Policy.
3. As used in this Paragraph **H.**, a protection plan or guarantee means a product provided by, on behalf of, or through a "home-sharing network platform" which provides liability protection for "home-sharing host activities", even if it is characterized as insurance.

**SECTIONS I AND II – CONDITIONS**

The following provision is added:

**Home-sharing Host Activities Verification Requirements**

With respect to "home-sharing host activities", we must be provided, as often as we reasonably require, with information concerning the number of:

1. Rental agreements or contracts entered into by an "insured"; and
2. Nights the "residence premises" was occupied, in whole or in part, by "home-sharing occupants".



The following provision is added:

**Personal Injury Coverage**

If the Personal Injury Coverage endorsement is made a part of this Policy, Exclusion 1.g. is replaced by the following:

This insurance does not apply to:

1. "Personal injury":
  - g. Arising out of or in connection with a "business" conducted from an "insured location" or engaged in by an "insured", whether or not the "business" is owned or operated by an "insured" or employs an "insured". This exclusion applies but is not limited to an act or omission, regardless of its nature or circumstance, involving a service or duty rendered, promised, owed, or implied to be provided because of the nature of the "business".

This exclusion does not apply to:

- (1) "Home-sharing host activities";
- (2) With respect to other than "home-sharing host activities":
  - (a) The rental or holding for rental of an "insured location":
    - (i) On an occasional basis if used only as a residence;
    - (ii) In part for use only as a residence, unless a single-family unit is intended for use by the occupying family to lodge more than two roomers or boarders; or
    - (iii) In part, as an office, school, studio or private garage; and
  - (b) An "insured" under the age of 21 years involved in a part-time or occasional, self-employed "business" with no employees;

All other provisions of this Policy apply.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

## PUBLIC OR LIVERY CONVEYANCE EXCLUSION ENDORSEMENT

The provisions of the Policy apply unless modified by the endorsement.

### I. Definitions

The following definition is added:

"Transportation network platform" means an online-enabled application or digital network used to connect passengers with drivers using vehicles for the purpose of providing prearranged transportation services for compensation.

### II. Part A – Liability Coverage

Exclusion **A.5.** is replaced by the following:

We do not provide Liability Coverage for any "insured":

5. For that "insured's" liability arising out of the ownership or operation of a vehicle while it is being used as a public or livery conveyance. This includes but is not limited to any period of time a vehicle is being used by any "insured" who is logged into a "transportation network platform" as a driver, whether or not a passenger is "occupying" the vehicle.

This exclusion (**A.5.**) does not apply to a share-the-expense car pool.

### III. Part B – Medical Payments Coverage

Exclusion **2.** is replaced by the following:

We do not provide Medical Payments Coverage for any "insured" for "bodily injury":

2. Sustained while "occupying" "your covered auto" when it is being used as a public or livery conveyance. This includes but is not limited to any period of time "your covered auto" is being used by any "insured" who is logged into a "transportation network platform" as a driver, whether or not a passenger is "occupying" the vehicle.

This exclusion (**2.**) does not apply to a share-the-expense car pool.

### IV. Part D – Coverage For Damage To Your Auto

Exclusion **1.** is replaced by the following:

We will not pay for:

1. Loss to "your covered auto" or any "non-owned auto" which occurs while it is being used as a public or livery conveyance. This includes but is not limited to any period of time "your covered auto" or any "non-owned auto" is being used by any person who is logged into a "transportation network platform" as a driver, whether or not a passenger is "occupying" the vehicle.

This exclusion (**1.**) does not apply to a share-the-expense car pool.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

**TRANSPORTATION NETWORK DRIVER COVERAGE (NO PASSENGER)**

**SCHEDULE**

Transportation Network Platform(s)			
Description Of Vehicle			
1.			
2.			
3.			
Coverage is provided where a premium is shown for the coverage.			
Coverages	Premium		
	Vehicle 1	Vehicle 2	Vehicle 3
<b>Liability</b>	\$	\$	\$
<b>Medical Payments</b>	\$	\$	\$
<b>Uninsured Motorists Coverage</b>	\$	\$	\$
<b>Collision</b>	\$	\$	\$
<b>Other Than Collision</b>	\$	\$	\$
<b>Underinsured Motorists Coverage</b>	\$	\$	\$

The provisions of the Policy apply unless modified by this endorsement.

**I. Definitions**

The following definition is added:

"Transportation network platform" means an online-enabled application or digital network used to connect passengers with drivers using vehicles for the purpose of providing prearranged transportation services for compensation.

**II. Part A – Liability Coverage**

Exclusion **A.5.** is replaced by the following:

We do not provide Liability Coverage for any "insured":

- 5. For that "insured's" liability arising out of the ownership or operation of a vehicle while it is being used as a public or livery conveyance. This includes but is not limited to any period of time a vehicle is being used by any "insured" who is logged into a "transportation network platform" as a driver, whether or not a passenger is "occupying" the vehicle.

This exclusion (**A.5.**) does not apply to:

- a. A share-the-expense car pool; or
- b. The ownership or operation of a vehicle during any period of time such vehicle is being used by an "insured" who is logged into a "transportation network platform" described in the Schedule or in the Declarations as a driver and a passenger is not "occupying" the vehicle if:
  - (1) Such vehicle is described in the Schedule or in the Declarations; and
  - (2) A specific premium charge indicates that coverage under this Part is provided for such vehicle.

### III. Part B – Medical Payments Coverage

Exclusion 2. is replaced by the following:

We do not provide Medical Payments Coverage for any "insured" for "bodily injury":

2. Sustained while "occupying" "your covered auto" when it is being used as a public or livery conveyance. This includes but is not limited to any period of time "your covered auto" is being used by any "insured" who is logged into a "transportation network platform" as a driver, whether or not a passenger is "occupying" the vehicle.

This exclusion (2.) does not apply:

- a. To a share-the-expense car pool; or
- b. While "occupying" "your covered auto" during any period of time such vehicle is being used by an "insured" who is logged into a "transportation network platform" described in the Schedule or in the Declarations as a driver and a passenger is not "occupying" the vehicle if:
  - (1) Such vehicle is described in the Schedule or in the Declarations; and
  - (2) A specific premium charge indicates that coverage under this Part is provided for such vehicle.

### IV. Part C – Uninsured Motorists Coverage

The Uninsured Motorists Coverage Exclusion for "bodily injury" sustained by any "insured" while "occupying" "your covered auto" when it is being used as a public or livery conveyance, is replaced by the following:

We do not provide Uninsured Motorists Coverage for "bodily injury" sustained by any "insured":

While "occupying" "your covered auto" when it is being used as a public or livery conveyance. This includes but is not limited to any period of time "your covered auto" is being used by any "insured" who is logged into a "transportation network platform" as a driver, whether or not a passenger is "occupying" the vehicle.

This exclusion does not apply:

- a. To a share-the-expense car pool; or

- b. While "occupying" "your covered auto" during any period of time such vehicle is being used by an "insured" who is logged into a "transportation network platform" described in the Schedule or in the Declarations as a driver and a passenger is not "occupying" the vehicle if:

- (1) Such vehicle is described in the Schedule or in the Declarations; and
- (2) A specific premium charge indicates that coverage under this Part is provided for such vehicle.

### V. Part D – Coverage For Damage To Your Auto

Exclusion 1. is replaced by the following:

We will not pay for:

1. Loss to "your covered auto" or any "non-owned auto" which occurs while it is being used as a public or livery conveyance. This includes but is not limited to any period of time "your covered auto" or any "non-owned auto" is being used by any person who is logged into a "transportation network platform" as a driver, whether or not a passenger is "occupying" the vehicle.

This exclusion (1.) does not apply:

- a. To a share-the-expense car pool; or
- b. While such vehicle is being used during any period of time a person is logged into a "transportation network platform" described in the Schedule or in the Declarations as a driver and a passenger is not "occupying" the vehicle if:
  - (1) Such vehicle is described in the Schedule or in the Declarations; and
  - (2) A specific premium charge indicates that coverage under this Part is provided for such vehicle.

**VI. Underinsured Motorists Coverage Endorsement**

If the Underinsured Motorists Coverage Endorsement is attached to the Policy, the Underinsured Motorists Coverage Exclusion for "bodily injury" sustained by any "insured" while "occupying" "your covered auto" when it is being used as a public or livery conveyance, is replaced by the following:

We do not provide Underinsured Motorists Coverage for "bodily injury" sustained by any "insured":

While "occupying" "your covered auto" when it is being used as a public or livery conveyance. This includes but is not limited to any period of time "your covered auto" is being used by any "insured" who is logged into a "transportation network platform" as a driver, whether or not a passenger is "occupying" the vehicle.

This exclusion does not apply:

- a. To a share-the-expense car pool; or
- b. While "occupying" "your covered auto" during any period of time such vehicle is being used by an "insured" who is logged into a "transportation network platform" described in the Schedule or in the Declarations as a driver and a passenger is not "occupying" the vehicle if:
  - (1) Such vehicle is described in the Schedule or in the Declarations; and
  - (2) A specific premium charge indicates that Underinsured Motorists Coverage is provided for such vehicle.

SAMPLE

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

**LIMITED TRANSPORTATION NETWORK DRIVER COVERAGE (NO PASSENGER)**

**SCHEDULE**

Transportation Network Platform(s)			
Description Of Vehicle			
1.			
2.			
3.			
Coverage is provided where a premium is shown for the coverage.			
Coverages	Premium		
	Vehicle 1	Vehicle 2	Vehicle 3
<b>Liability</b>	\$	\$	\$
<b>Medical Payments</b>	\$	\$	\$
<b>Uninsured Motorists Coverage</b>	\$	\$	\$
<b>Collision</b>	\$	\$	\$
<b>Other Than Collision</b>	\$	\$	\$
<b>Underinsured Motorists Coverage</b>	\$	\$	\$

The provisions of the Policy apply unless modified by this endorsement.

**I. Definitions**

The following definition is added:

"Transportation network platform" means an online-enabled application or digital network used to connect passengers with drivers using vehicles for the purpose of providing prearranged transportation services for compensation.

**II. Part A – Liability Coverage**

Exclusion **A.5.** is replaced by the following:

We do not provide Liability Coverage for any "insured":

- 5. For that "insured's" liability arising out of the ownership or operation of a vehicle while it is being used as a public or livery conveyance. This includes but is not limited to any period of time a vehicle is being used by any "insured" who is logged into a "transportation network platform" as a driver, whether or not a passenger is "occupying" the vehicle.

This exclusion (**A.5.**) does not apply to:

- a. A share-the-expense car pool; or
- b. The ownership or operation of a vehicle during any period of time such vehicle is being used by an "insured" who is logged into a "transportation network platform" described in the Schedule or in the Declarations as a driver, a passenger is not "occupying" the vehicle and that driver has not accepted a request through the "transportation network platform" to transport a passenger if:
  - (1) Such vehicle is described in the Schedule or in the Declarations; and
  - (2) A specific premium charge indicates that coverage under this Part is provided for such vehicle.

### III. Part B – Medical Payments Coverage

Exclusion 2. is replaced by the following:

We do not provide Medical Payments Coverage for any "insured" for "bodily injury":

2. Sustained while "occupying" "your covered auto" when it is being used as a public or livery conveyance. This includes but is not limited to any period of time "your covered auto" is being used by any "insured" who is logged into a "transportation network platform" as a driver, whether or not a passenger is "occupying" the vehicle.

This exclusion (2.) does not apply:

- a. To a share-the-expense car pool; or
- b. While "occupying" "your covered auto" during any period of time such vehicle is being used by an "insured" who is logged into a "transportation network platform" described in the Schedule or in the Declarations as a driver, a passenger is not "occupying" the vehicle and that driver has not accepted a request through the "transportation network platform" to transport a passenger if:

- (1) Such vehicle is described in the Schedule or in the Declarations; and
- (2) A specific premium charge indicates that coverage under this Part is provided for such vehicle.

### IV. Part C – Uninsured Motorists Coverage

The Uninsured Motorists Coverage Exclusion for "bodily injury" sustained by any "insured" while "occupying" "your covered auto" when it is being used as a public or livery conveyance, is replaced by the following:

We do not provide Uninsured Motorists Coverage for "bodily injury" sustained by any "insured":

While "occupying" "your covered auto" when it is being used as a public or livery conveyance. This includes but is not limited to any period of time "your covered auto" is being used by any "insured" who is logged into a "transportation network platform" as a driver, whether or not a passenger is "occupying" the vehicle.

This exclusion does not apply:

- a. To a share-the-expense car pool; or

- b. While "occupying" "your covered auto" during any period of time such vehicle is being used by an "insured" who is logged into a "transportation network platform" described in the Schedule or in the Declarations as a driver, a passenger is not "occupying" the vehicle and that driver has not accepted a request through the "transportation network platform" to transport a passenger if:

- (1) Such vehicle is described in the Schedule or in the Declarations; and
- (2) A specific premium charge indicates that coverage under this Part is provided for such vehicle.

### V. Part D – Coverage For Damage To Your Auto

Exclusion 1. is replaced by the following:

We will not pay for:

1. Loss to "your covered auto" or any "non-owned auto" which occurs while it is being used as a public or livery conveyance. This includes but is not limited to any period of time "your covered auto" or any "non-owned auto" is being used by any person who is logged into a "transportation network platform" as a driver, whether or not a passenger is "occupying" the vehicle

This exclusion (1.) does not apply:

- a. To a share-the-expense car pool; or
- b. While such vehicle is being used during any period of time a person is logged into a "transportation network platform" described in the Schedule or in the Declarations as a driver, a passenger is not "occupying" the vehicle and that driver has not accepted a request through the "transportation network platform" to transport a passenger if:

- (1) Such vehicle is described in the Schedule or in the Declarations; and
- (2) A specific premium charge indicates that coverage under this Part is provided for such vehicle.

## **VI. Underinsured Motorists Coverage Endorsement**

If the Underinsured Motorists Coverage Endorsement is attached to the Policy, the Underinsured Motorists Coverage Exclusion for "bodily injury" sustained by any "insured" while "occupying" "your covered auto" when it is being used as a public or livery conveyance, is replaced by the following:

We do not provide Underinsured Motorists Coverage for "bodily injury" sustained by any "insured":

While "occupying" "your covered auto" when it is being used as a public or livery conveyance. This includes but is not limited to any period of time "your covered auto" is being used by any "insured" who is logged into a "transportation network platform" as a driver, whether or not a passenger is "occupying" the vehicle.

This exclusion does not apply:

- a. To a share-the-expense car pool; or
- b. While "occupying" "your covered auto" during any period of time such vehicle is being used by an "insured" who is logged into a "transportation network platform" described in the Schedule or in the Declarations as a driver, a passenger is not "occupying" the vehicle and that driver has not accepted a request through the "transportation network platform" to transport such passenger if:
  - (1) Such vehicle is described in the Schedule or in the Declarations; and
  - (2) A specific premium charge indicates that Underinsured Motorists Coverage is provided for such vehicle.





# James K. Ruble Seminar

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Section 4

# **The Ins and Outs of Cyber Insurance**



# The Ins and Outs of Cyber Insurance

By:  
Patrick A. Deem, Sr.  
CIC, CRIS

## **Overview**

- I. What is happening – some facts and statistics
  
- II. A look at exposures (NOT Coverage)
  
- III. Why all the other traditional policies you sell do not solve your clients ‘cyber’ problems, both from a third party and first party standpoint
  
- IV. Cyber Insurance
  
- V. Dissection of a Cyber Insurance Policy’s Definitions, Insuring Agreement, Conditions and Exclusions
  
- VI. Conclusion

## **I. WHAT IS HAPPENING – SOME FACTS AND STATISTICS**

### **A. Basic Problems from the Insurer's viewpoint**

1. Lack of Data
2. Cyber attacks keep evolving
3. Potential catastrophic accumulation  
(What monetary exposure do I really have?)
4. Tunnel vision on Coverage

### **B. Basic problems from the Insured's viewpoint**

1. Do not understand the risk or their insurance options: Internet of things
2. Cyber risk spread over a wide range of coverages
3. No legal precedence

## Top 10 States by Number of Cybercrime Victims, 2016

Rank	State	Number
1	California	39,547
2	Texas	21,441
3	Florida	21,068
4	New York	16,426
5	Illinois	9,177
6	Maryland	8,361
7	Pennsylvania	8,265
8	Virginia	8,068
9	Ohio	7,052
10	Washington	6,874

(1) Based on the total number of complaints submitted to the Internet Crime Complaint Center via its website from each state and the District of Columbia where the complainant provided state information.

Source: Crime Complaint Center

<https://www.iii.org/fact-statistic/facts-statistics-identity-theft-and-cybercrime>

## Top 10 Writers of Cybersecurity Insurance By Direct Premiums Written, 2016(1)

(\$000)

Rank	Group/Company	Direct premiums written	As a percent of total
1	American International Group	\$228,325	17.0%
2	XL Group Ltd.	\$160,809	12.0%
3	Chubb Ltd.	\$133,599	10.0%
4	Travelers Companies, Inc.	\$92,189	6.9%
5	Beazley Insurance Co.	\$83,908	6.3%
6	CNA Financial Corp.	\$68,476	5.1%
7	BCS Insurance Co.	\$55,411	4.1%
8	AXIS Capital Holdings Ltd.	\$50,273	3.7%
9	Liberty Mutual	\$34,343	2.6%
10	Allied World Assurance Co.	\$32,533	2.4%
	<b>Total, Top 10</b>	<b>\$939,866</b>	<b>70.1%</b>
	<b>Total (2)</b>	<b>\$1,340,976</b>	<b>100.0%</b>

(1) Includes stand-alone policies and the cybersecurity portion of package policies. Does not include premiums from companies that cannot report premiums for cybersecurity coverage provided as part of package policies.

(2) Direct premium written in the U.S. and its territories, Canada and other foreign territories.

Source: NAIC data, sourced from S&P Global Market Intelligence, Insurance Information Institute.

<https://www.iii.org/fact-statistic/facts-statistics-identity-theft-and-cybercrime>

## Top 10 Writers of Identity Theft Insurance By Direct Premiums Written, 2016(1)

(\$000)

Rank	Group/Company	Direct premiums written	As a percent of total
1	Nationwide Mutual Group	\$36,511	15.9%
2	State Farm Mutual Automobile Ins.	\$28,311	12.3%
3	Travelers Companies, Inc.	\$24,424	10.6%
4	State National Companies Inc.	\$15,697	6.8%
5	Allstate Corp.	\$11,816	5.1%
6	American Family Insurance Group	\$10,576	4.6%
7	Hanover Insurance Group Inc.	\$10,494	4.6%
8	Liberty Mutual	\$10,490	4.6%
9	Erie Insurance Group	\$8,131	3.5%
10	American International Group	\$7,649	3.3%
	<b>Total, Top 10</b>	<b>\$164,100</b>	<b>71.4%</b>
	<b>Total (2)</b>	<b>\$229,708</b>	<b>100.0%</b>

(1) Includes stand-alone policies and the identity theft portion of package policies. Does not include premiums from companies that cannot report premiums for identity theft coverage provided as part of package policies.  
 (2) Direct premium written in the U.S. and its territories, Canada and other foreign territories.

<https://www.iii.org/fact-statistic/facts-statistics-identity-theft-and-cybercrime>

The Center says there have been 1,339 breaches in 2017 so far (as of December 27), surpassing 2016 record of 1,093 breaches. There were 174 million records exposed so far in 2017. The business sector accounted for 51 percent of the 2017 breaches and 91 percent of records exposed. These figures do not include the many attacks that go unreported. In addition, many attacks go undetected.





## C. Common attack breaches

1. Advanced Persistent Threat (APT) – a single concentrated attack by allied hackers focused on a single target. It infects a system and lays dormant and leaves few traces when done. These attacks are generally after intellectual property of technology companies
2. Distributed Denial of Service (DDoS) – typically an attack on an Internal Domain. Huge amounts of data flood a system until it is brought to its knees. Legitimate site requests are lost, or the site becomes too slow to function properly. This may not necessarily involve a loss of data, but the cost to its victims is substantial.
3. Cross Platform Malware (CPM) – most malware was targeting Windows operating systems, but CPM attacks target Java, Linux, and OSX operating systems too.
4. Metamorphic and Polymorphic Malware – this malware has the ability to change code as it works its way through a system. Each version of the code makes permanent changes to its code. But each succeeding version functions the same way as the original. The longer it resides on the system, the more difficult it becomes.
5. Phishing – a perpetrator tries to fool someone by sending an email that appears it is from the bank, ISP, Investment Broker, Insurance Broker, or Credit Card Company. They ask the person to visit their website. The URL is false. They have trapped the person once their personal information is entered.

6. Insider and Privilege Misuses and Miscellaneous Errors – These are combined because they have the same application of intent.  
Misuse of privilege can be by an employee, vendor, and/or business partner who is granted privileges and they use those privileges for malicious intent  
Errors can occur from the mistaken posting of private information or forwarding protected information (patient files) to a public website or sending to the wrong recipients.
7. Physical Theft and Loss – This is important since mobile devices are so common. Theft of these devices makes the network very vulnerable. If a hacker is able to penetrate a network, the amount of data available to them is dependent on the response time of the security team and the type of attack. With Physical security, once access to a facility's security is compromised, racks of equipment can be removed and accessed.
8. Social Engineering Fraud – this refers to psychological manipulation of people into performing actions or divulging confidential information. Generally, this is a type of confidence trick for the purpose of information gathering, money fraud, or system access. It differs from a traditional “con” in that it is often one of many steps in a more complex fraud scheme. The FBI has estimated that there was a 270% increase in identified victims and losses from October 2013 to August 2015. There were in excess of 7,066 victims for an estimated loss of \$747 million

## II. EXPOSURES – NOT COVERAGES

### A. Exposures - first party or third party

1. Almost all businesses use technology to conduct business.
  - a. Wholesalers/retailers
  - b. Financial institutions
  - c. Medical, healthcare industry
  - d. Manufacturers
  - e. Offices – attorneys, engineers, accountants, etc.
  - f. Hospitality Industry – hotels, conference centers, restaurants
  - g. Construction, repair, service providers
  - h. Technology service providers and technology product providers
2. Many businesses have a cyber exposure due to some or all of the following: (not an all-inclusive list)
  - a. Collection of private information on employees, clients, vendors, etc.
  - b. 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).
  - c. Access to the Internet

- d. Web site or social media presence
  - e. Integration, sharing or transmission of data and/or communications with others via the Internet
  - f. E-commerce business transactions
  - g. Credit card transactions
  - h. E&O or Professional liability
  - i. Internet of Things (IOT) and the communication systems through imbedded chips such as Smart Homes, etc.
  - j. State and Federal laws
3. Coverage intended for users of the Internet and other technological products and services. ....
- a. Includes, but is not limited to businesses that have a computer system, send or receive emails, 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.
  - b. This can also include the collections, transmission and storage of private information on consumers, employees, vendors, etc.
  - c. Care, custody or control of data exposures for others

- B. Examples that could lead to a liability (third party) loss.
1. Employees make mistakes and send emails and data to others than the intended individual(s).
  2. Employees intentionally send emails to others; however, sometimes the emails contain incorrect, damaging information, or information that violates the privacy of others.
  3. Businesses create web sites that contain unauthorized use (infringement) of images, music, and/or documents belonging to others.
  4. Businesses create web pages, bulletin boards, chatrooms, and/or post testimonials with content that defames others.
  5. Businesses may receive and transmit information that contains a virus that may cause damage to *another's* computer system or the business enterprises' computer system may be involved in denial of service attacks on third party computer systems and web sites
  6. Employees lose or have stolen laptops, PDA's, smart phones, tablets, flash drives, and/or other electronic devices that contain personal information or confidential client information both on business owned devices and employee personal devices.  
[Should have a Mobile Device Management Plan in place.]
  7. 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/businesses. Commonly known as a cyber attack.

8. A business that suffers a denial of service (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.

9. Bad programming, poor quality control of source coding, or incorrect data entry may cause the loss of information that triggers the release of non-public private information. It could also cause machine language to fail and cause product or installation failures causing damages.
10. Violation of state, federal and other country statutes, especially those associated with non-public personally identifiable financial, health or other sensitive information
  - a. 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
  - b. There are data breach notification laws in the majority of states.

C. Examples that could lead to a first party loss.

1. Security breaches can result in costly notification expenses, identity theft expenses, defense expenses, regulatory proceeding expenses, fines and penalties, costs to investigate the source of the breach (forensic investigations), cost of public relations, business interruption, extra expenses, and/or costs to repair and replace data, etc.
2. A virus may cause damage to or loss or use of electronic data.
3. An unauthorized user (hacker), a former employee, or a rogue employee may alter, manipulate, damage or destroy data. Commonly known as electronic vandalism.
4. An unauthorized user (hacker), former employee or a rogue employee may breach a computer system and steal valuable data including intellectual property owned by the enterprise.
5. Unauthorized use that results the theft of money, securities and other tangible property through computer fraud by the employee.
6. A Denial of Service or Distributed Denial of Service attack could result in a loss of income generated from the web site or social media platforms.



7. An unauthorized user (hacker) could breach a computer system and demand a ransom in return for not releasing valuable information (cyber extortion)
8. Loss of reputation and brand due to a security breach.
9. Extra Expenses incurred to recertify the computer system as compliant to the Payment Card Industry Data Security Standard to allow the business to again accept credit cards.
10. Extra Expenses to research and rebuild data bases damaged by mechanical breakdown, electrical disturbances, temperature changes, humidity, theft, and other physical causes.
11. Reimbursement for “Social Engineering” business losses for the voluntary parting of money, securities, and other tangible property using a computer system.
12. Extra Expenses to clean up a business enterprise’s web site infected with malware that slows the system down and inhibits business sales.

**Note:** Keep in mind that not all of the above exposures, first and third party, will be able to be provided insurance protection or may need to be coordinated with other insurance coverages

### III. TRADITIONAL POLICIES LIMITATIONS TO CYBER EXPOSURES

#### A. First Party Policies – Electronic Data

##### 1. Commercial Property Policy (CPP) and Businessowners Policy (BOP) – Additional Coverages

###### a. Electronic Data

#### Building and Personal Property Coverage Form

##### 4. Additional Coverages

...

###### f. Electronic Data

- (1) Under this Additional Coverage, electronic data has the meaning described under Property Not Covered, Electronic Data. This Additional Coverage does not apply to your "stock" of prepackaged software, or to electronic data which is integrated in and operates or controls the building's elevator, lighting, heating, ventilation, air conditioning or security system.
- (2) Subject to the provisions of this Additional Coverage, we will pay for the cost to replace or restore electronic data which has been destroyed or corrupted by a Covered Cause of Loss. To the extent that electronic data is not replaced or restored, the loss will be valued at the cost of replacement of the media on which the electronic data was stored, with blank media of substantially identical type.

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- 1) The CPP pays for the cost to replace or restore electronic data which has been destroyed or corrupted by a Covered Cause of Loss.

The BOP has similar wording. A Covered Cause of Loss under an unendorsed ISO BOP is similar to the CP 10 30 Causes of Loss –Special Form.

- 2) If not replaced or restored, the loss will be valued at the cost of replacement of the media on which the electronic data was stored, with blank media of substantially identical type.

## 2. Business Income and Extra Expense – CP 00 30 10 12

### Building and Personal Property Coverage Form

#### 4. Additional Coverages

...

##### f. Electronic Data

- (3) The Covered Causes of Loss applicable to Your Business Personal Property apply to this Additional Coverage, Electronic Data, subject to the following:
- (a) If the Causes Of Loss – Special Form applies, coverage under this Additional Coverage, Electronic Data, is limited to the "specified causes of loss" as defined in that form and Collapse as set forth in that form.
  - (b) If the Causes Of Loss – Broad Form applies, coverage under this Additional Coverage, Electronic Data, includes Collapse as set forth in that form.
  - (c) If the Causes Of Loss form is endorsed to add a Covered Cause of Loss, the additional Covered Cause of Loss does not apply to the coverage provided under this Additional Coverage, Electronic Data.
  - (d) The Covered Causes of Loss include a virus, harmful code or similar instruction introduced into or enacted on a computer system (including electronic data) or a network to which it is connected, designed to damage or destroy any part of the system or disrupt its normal operation. But there is no coverage for loss or damage caused by or resulting from manipulation of a computer system (including electronic data) by any employee, including a temporary or leased employee, or by an entity retained by you or for you to inspect, design, install, modify, maintain, repair or replace that system.
- (4) The most we will pay under this Additional Coverage, Electronic Data, is \$2,500 (unless a higher limit is shown in the Declarations) for all loss or damage sustained in any one policy year, regardless of the number of occurrences of loss or damage or the number of premises, locations or computer systems involved. If loss payment on the first occurrence does not exhaust this amount, then the balance is available for subsequent loss or damage sustained in but not after that policy year. With respect to an occurrence which begins in one policy year and continues or results in additional loss or damage in a subsequent policy year(s), all loss or damage is deemed to be sustained in the policy year in which the occurrence began.

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- a. No coverage for loss or damage caused by any employee, including a temporary or leased employee, or by an entity retained by the named insured to work on that computer system.
  - Any employee includes temporary or leased employees.
- b. Most paid under the CPP is \$2,500 unless a higher limits is shown in the Declarations.

Most paid under the BOP is \$10,000 unless a higher limits is shown in the Declarations.

3. Interruption of Computer Operations – Electronic Data under BOP/Business Income and Extra Expense

a. BOP

**q. Interruption Of Computer Operations**

- (1) Subject to all provisions of this Additional Coverage, you may extend the insurance that applies to Business Income and Extra Expense to apply to a suspension of "operations" caused by an interruption in computer operations due to destruction or corruption of "electronic data" due to a Covered Cause of Loss.
- (2) With respect to the coverage provided under this Additional Coverage, the Covered Causes of Loss are subject to the following:
  - (a) Coverage under this Additional Coverage – Interruption Of Computer Operations is limited to the "specified causes of loss" and Collapse.
  - (b) If the Businessowners Coverage Form is endorsed to add a Covered Cause of Loss, the additional Covered Cause of Loss does not apply to the coverage provided under this Additional Coverage.
  - (c) The Covered Causes of Loss include a computer virus, harmful code or similar instruction introduced into or enacted on a computer system (including "electronic data") or a network to which it is connected, designed to damage or destroy any part of the system or disrupt its normal operation. But there is no coverage for an interruption related to manipulation of a computer system (including "electronic data") by any employee, including a temporary or leased employee, or by an entity retained by you, or for you, to inspect, design, install, modify, maintain, repair or replace that system.

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- (1) The BOP coverage extends Business Income and Extra Expense to apply to:
  - Suspension of operations
  - Caused by interruption of computer operations
  - Due to destruction or corruption of electronic data by a Covered Cause of Loss (Specified Causes of Loss as defined and Collapse. A covered cause of loss includes a computer virus, harmful code or similar instruction).
- (2) No coverage for an interruption related to manipulation of a computer system caused by any employee, including a temporary or leased employee, or by an entity retained by the named insured to work on that computer system.

b. Business Income and Extra Expense

**d. Interruption Of Computer Operations**

- (1) Under this Additional Coverage, electronic data has the meaning described under Additional Limitation – Interruption Of Computer Operations.
- (2) Subject to all provisions of this Additional Coverage, you may extend the insurance that applies to Business Income and Extra Expense to apply to a “suspension” of “operations” caused by an interruption in computer operations due to destruction or corruption of electronic data due to a Covered Cause of Loss. However, we will not provide coverage under this Additional Coverage when the Additional Limitation – Interruption Of Computer Operations does not apply based on Paragraph **A.4.d.** therein.
- (2) With respect to the coverage provided under this Additional Coverage, the Covered Causes of Loss are subject to the following:
  - (a) If the Causes Of Loss – Special Form applies, coverage under this Additional Coverage, Interruption Of Computer Operations, is limited to “specified causes of loss” as defined in that form and Collapse as set forth in that form.
  - (b) If the Causes Of Loss – Broad Form applies, coverage under this Additional Coverage, Interruption Of Computer Operations, includes Collapse as set forth in that form.
  - (c) If the Causes form is endorsed to add a Covered Cause of Loss, the additional Covered Cause of Loss does not apply to the coverage provided under this Additional Coverage, Interruption Of Computer Operations.
  - (d) The Covered Causes of Loss include a virus, harmful code or similar instruction introduced into or enacted on a computer system (including electronic data) or a network to which it is connected, designed to damage or destroy any part of the system or disrupt its normal operation. But there is no coverage for an interruption related to manipulation of a computer system (including electronic data) by any employee, including a temporary or leased employee, or by an entity retained by you or for you to inspect, design, install, maintain, repair or replace that system.

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- (1) No coverage under this Additional Coverage when the Additional Limitation – Interruption Of Computer Operations does not apply – based on paragraph A.4.d of that Limitation
- (2) When Special Causes of Loss is used – “specified causes of loss” plus Collapse plus Virus is provided
- (3) Any other Causes of Loss endorsed to the policy (Earthquake for example) do not apply to this Additional Coverage

#### **d. Interruption Of Computer Operations**

...

- (4) The most we will pay under this Additional Coverage, Interruption Of Computer Operations, is \$2,500 (unless a higher limit is shown on the Declarations) for all loss sustained and expense incurred in any one policy year, regardless of the number of interruptions or the number of premises, locations or computer systems involved. If loss payment relation to the first interruption does not exhaust this amount, then the balance is available for loss or expenses sustained or incurred as a result of subsequent interruptions in that policy year. A balance remaining at the end of a policy year does not increase the amount of insurance in the next policy year. With respect to any interruption which begins in one policy year and continues or results in additional loss or expense in a subsequent policy year(s), all loss and expense is deemed to be sustained or incurred in the policy year in which the interruption began.
- (5) This Additional Coverage, Interruption Of Computer Operations, does not apply to loss sustained or expenses incurred after the end of the "period of restoration", even if the amount of insurance stated in (4) above has not been exhausted.

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- (4) \$2,500 maximum – annual aggregate limit – unless a higher limit is shown in the Declarations
- (5) Amounts available are not available after the end of the "period of restoration"

Caution: Coverage for Computer Operations may be better provided by other coverage forms

4. Commercial Crime Coverage Forms – Loss Sustained Forms and Discovery Forms
  - a. Potential coverage provided by Insuring Agreement Selected
  - b. Employee Theft – Insuring Agreement A.1
  - c. Computer and Funds Transfer Fraud – Insuring Agreement A.6

**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” info; or
    - (b) Change of “electronic data” or “computer program” within:
      - (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.

- (1) Covered property is money, securities and other property
- (2) Two Components to the Coverage
  - (a) Loss resulting from a fraudulent entry of data that causes money, securities or other property to be transferred to another and includes entry by an entry by an employee acting in good faith based on a fraudulent instruction received from the Named Insured’s computer software contractor
  - (b) Loss resulting from a fraudulent instruction to a financial institution to transfer money or securities from the insured’s transfer account

4. Insuring Agreement **A.6.** does not cover:

**a. Authorized Access**

Loss resulting from a fraudulent:

- (1) Entry of "electronic data" or "computer program" info; 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 "employee" or "financial institutions" acting upon any instruction to:

- (1) Transfer, pay or deliver "money", "securities" or "other property"; or
- (2) Debit or delete your account;  
which instruction proved 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

d. Exclusions applicable to Insuring Agreement A.6  
Computer Funds and Transfer Fraud

- (1) Loss from a fraudulent entry by another that has authorized access, not including an employee acting on instructions received from the Named Insured's computer software contractor
- (2) Loss caused by the use of credit, debit or similar cards or the information on them
- (3) Loss from the giving or surrendering of property in any exchange or purchase
- (4) Loss caused by fraudulent instructions except as otherwise provided by this coverage
- (5) Losses based on inventory or profit and loss computations



**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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e. Conditions applicable to Insuring Agreement A.6.  
Computer and Funds Transfer Fraud

(1) Special Limit Of Insurance for Specified Property

(a) Subject to \$5,000 per occurrence sublimit

(b) May be endorsed: **Increase Limit For Specified Property Subject To Special Limit of Insurance – CR 35 04**

(2) Territory (worldwide)

f. **Fraudulent Impersonation – CR 04 17**

- (1) Endorsement adds an additional Insuring Agreement
  - Endorsement provides coverage when the Named Insured in good faith, transfers money, securities or other property in reliance upon a fraudulent transfer instruction
- (2) Fraudulent instruction is purported issued by one or both of the following, as shown on the endorsement's Schedule:
  - (a) The insured, an employee, partner, member, manager, officer, director or trustee of the insured, OR
  - (b) A customer or vendor of the insured, with whom the insured has a written contract
  - (c) **AND** which transfer instruction proves to have been issued by an imposter without the knowledge or consent of the above person
- (3) Insured has a choice of three levels of verification of transactions
  - (a) All transfer instructions must be verified
  - (b) All transactions over a specified amount must be verified
  - (c) Verification is not required
- (4) Coverage territory is anywhere in the world



## IV. CYBER INSURANCE

### A. Purpose

1. Cyber Insurance is designed to protect against liability (third party) and first party claims that occur as a result of damages arising from an insured's cyber exposures.
2. Many Cyber Policies exclude Errors and Omissions due to programming, consulting, and other related services as mentioned in the previous section. It is best to purchase Technology E&O Insurance coverage for those risks in addition to Cyber Insurance.

### B. Cyber Liability Insurance (Third Party)

Liability coverage varies by insurers but many insurers offer coverage in one or more of the three exposure categories plus coverage for expenses related to cyber events that are generally triggered by Limits Of Insurance or Premium on the Declarations

1. **Content Liability** (also known as Web Site Publishing Liability)
  - a. Provides liability coverage due to any actual or alleged error, misstatement or misleading statement posted or published by an insured
    - Beware: Social media may not be covered
  - b. Broader protection than that provided by Coverage B – Personal and Advertising Injury Liability of the CGL
  - c. Coverage may include one or more of the following:
    - (1) Infringement or violation of another's copyright, title, slogan, trademark, trade name, trade dress, service mark or service name
      - (a) Example: Unauthorized use of images or music when creating a web site
      - (b) Coverage is typically not limited to advertisements

(2) Disparagement or defamation (Libel or Slander)

Examples:

- Negative comments are posted on the insured's web site about a competitor's product
- Libelous information or incorrect information is posted on the web site or sent to others via email
- The business owner hosts, owns or exercises control of chatrooms or bulletin boards where disparaging comments about products or other people are posted

**2. Privacy Liability**

- a. Provides liability coverage due to the release of non-public personal information in violation of person's right to privacy
- (1) Could be Personally Identifiable Information (PII), Personal Financial Information (PFI), or Protected Health Information (PHI)
  - (2) Example: Employee accidentally emails personal information to wrong individual(s) [PII, PFI, or PHI]
- b. Coverage may also include liability due to the release of confidential corporate information
- Example: Employee loses laptop containing confidential corporate or client information

3. **Security Breach Liability** (also known as Information Security Liability or Network Breach Liability)

Provides liability coverage ( including fines or penalties assessed against the insured) due to any actual or alleged neglect, breach of duty or omission by an insured that could result in the following:

- a. Security breach of a computer system
  - Example: Theft of credit card information by unauthorized users
- b. Transmittal, by e-mail or other means, of a virus to another person or organization
  - Example: Unauthorized user transmits a malicious code that infects the insured's computer system and spreads to other computer systems
- c. Denial of Service attack
  - Example: Hackers prevent authorized users from gaining access to the insured's computer system. Without access those authorized user's own operations/service may fail or suffer.

C. First-Party Losses related to a Cyber related Event

Name and coverage varies by insurers but typically is intended to cover first party or peripheral losses suffered by the named insured due to a covered cyber related event. Some insurers may include as part of their Cyber Liability Insurance Policy or offer separately as an optional coverage.

1. **Security Breach Expense** (also known as Privacy Notification Expense)

- a. Typically includes the costs to notify affected parties and may also include the costs to investigate the cause of a security breach (may be referred to as forensic investigation costs)
- b. May also provide for other reasonable expenses such as Identify theft protection or credit monitoring. Examples:
  - Hotel offers discounted rates and provides \$1 million in Identify Theft Protection to customers who have been affected by a computer security breach
  - A retail store offers free credit monitoring for a year to customers who have been affected by a computer security breach

2. **Business Income And Extra Expense** (may have a need for Extended Period of Indemnity)
- a. Pays for loss due to an interruption to the named insureds computer system resulting from a cyber-related event
  - b. Examples:
    - An online retailer's computer system is down due to denial of service attack and there is loss of revenue
    - Insured's computer system is shut down for repairs due to damage of files by a virus and there is a loss of revenue
3. **Contingent Business Interruption or Dependent Entity** (not offered by many insurers.)
- a. Pays for loss due to an interruption to the named insured's key supplier's computer system resulting from a cyber-related event
  - b. Examples
    - (1) The named insured suffers a business interruption loss because he/she cannot place his/her order with a key supplier whose computer system is shut down due to a virus.
    - (2) Cloud provider fails to protect at rest data and a breach of data occurs.
    - (3) Web site host fails to maintain security on servers for the hosted web sites and entity losses income do to online sales decrease.



4. **Extortion Threat, Ransom Payment Or Rewards Payment**
  - a. Pays for loss due an extortion threat
  - b. Examples:
    - Hacker demands money in return for not releasing stolen credit card information or for de-encryption of quarantined data
    - An outside person or organization threatens to shut down the insured's computer system if the insured does not comply with their demands
  
5. **Public Relations Expense** (also known as Crisis Management Expense)
  - Pays for the cost of retaining a public relations firm to protect or restore the named insured's reputation due to negative publicity resulting directly from a cyber-related event or security breach
  
6. **Replacement Or Restoration Of Electronic Data** (also known as cyber vandalism coverage)
  - Typically pays for the cost to replace or restore the named insured's electronic data which has been destroyed or corrupted as a result of a cyber-related event
  
7. Other first party coverages are available as a result of a cyber-related event are available, but are beyond the scope of this course.

**V. DISSECTION OF A CYBER INSURANCE POLICY’S DEFINITIONS, INSURING AGREEMENT, CONDITIONS AND EXCLUSIONS**

A. Typically written on claims-made basis

1. Liability claims

a. Claim made during the policy period or during the applicable Extended Reporting Period.

AND

b. Wrongful acts must have occurred after the retroactive date, if any, shown on Declaration and before the end of the policy period

Policy A (new policy) Retroactive Date: 01/01/2015 Effective dates: 01/01/2015 to 01/01/2016	Policy B Retroactive Date: 01/01/2015 Effective: 01/01/2016 to 01/01/2017
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- Example 1:  
A wrongful act takes place on 11/20/2015.  
Claim made on 12/01/2015.  
Policy A responds to a covered claim.
- Example 2:  
A wrongful act takes place on 12/20/2015.  
Claim made on 01/03/2016.  
Policy B responds to covered claim.

2. First party claims, (if applicable)

- Typically pays for actual loss sustained during the policy period.

B. Declarations

<b>Information Security Protection Policy Declarations</b>	
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.	
<b>Company Name:</b>	
<b>Producer Name:</b>	
<b>Named Insured:</b>	
<b>Mailing Address:</b>	
<b>Policy Period</b>	
<b>From:</b>	
<b>To:</b>	12:01 AM at the Insured's mailing address shown above
<b>Web Site Address(es):</b>	
<b>Form Of Business</b> (Check appropriate box.):	
<input type="checkbox"/> Individual	<input type="checkbox"/> Joint Venture
<input type="checkbox"/> Partnership	<input type="checkbox"/> Corporation
	<input type="checkbox"/> Limited Liability Company
	<input type="checkbox"/> Other:
<b>Retroactive Date</b> (Enter date or "none" if no Retroactive Date applies.):	
<b>Insuring Agreement 1. Web Site Publishing Liability:</b>	
<b>Insuring Agreement 2. Security Breach Liability:</b>	
<b>Insuring Agreement 3. Programming Errors And Omissions Liability:</b>	
<b>Annual Premium:</b>	\$
<b>Policy Aggregate Limit Of Insurance:</b>	\$

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1. Named Insured, Mailing Address, Policy Period
2. May or may not include Web Site Address(es)
3. Retroactive Date, if applicable

Note: Retroactive date may not be applicable to all insuring agreements

<b>Insuring Agreements, Aggregate Limits Of Insurance And Deductibles:</b>		
<b>Insuring Agreement/Coverages</b>	<b>Aggregate Limit Of Insurance</b>	<b>Deductible Amount</b>
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 Waiting Period 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 is deleted.		
<b>If Added By Endorsement:</b>		
<b>Insuring Agreement(s) Or Coverage(s)</b>	<b>Limit Of Insurance</b>	<b>Deductible Amount</b>
	\$	\$
	\$	\$
	\$	\$
	\$	\$
	\$	\$
<b>Endorsement(s) Forming Part Of This Policy When Issued:</b>		
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4. May indicate a singular insuring agreement, or a singular insuring agreement with more than one type of coverage, or multiple insuring agreements.

- ISO and many company specific forms have multiple insuring agreements. Coverage only applies to those indicated on the Declarations.

5. Limit Of Insurance and Deductible Amount

- In some policies, may be an aggregate for all insuring agreements.

6. Examples of non-ISO Insuring Agreements that can found on company specific Declarations

Example 1

- 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 2

- A. Information Security & Privacy Liability
- B. Privacy Notification Costs
- C. Regulatory Defense and Penalties
- D. Website Media Content Liability

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

**Note:** Coverage varies by 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.

## C. Insuring Agreements

For the purpose of this course, the eight insuring agreements of the **ISO Information Security Protection Policy EC 00 10** will be addressed

### 1. Web Site Publishing Liability Insuring Agreement

#### 1. Web Site Publishing Liability

We will pay for both "loss" that the "insured" becomes legally obligated to pay and "defense expenses" as a result of a "claim" first made against the "insured" during the "policy period" or during the applicable Extended Reporting Period, for a "wrongful act" or a series of "interrelated wrongful acts" taking place on or after the Retroactive Date, if any, shown in the Declarations and before the end of the "policy period".

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- a. Pays for both loss and defense expenses as a result of a claim for a wrongful act. Watch out for limitations in various policies.
- b. Definition of "loss"

#### 18. "Loss" means:

- a. With respect to Insuring Agreements **1. Web Site Publishing Liability**, **2. Security Breach Liability** and **3. Programming Errors And Omissions Liability**:
  - (1) Compensatory damages, settlement amounts and costs awarded pursuant to judgments or settlements;
  - (2) Punitive and exemplary damages to the extent such damages are insurable by law; or
  - (3) Under Paragraph **b.** of Insuring Agreement **2. Security Breach Liability**, fines or penalties assessed against the "insured" to the extent such fines or penalties are insurable by law.

With regard to Paragraphs **18.a.(1)** through **18.a.(3)**, "loss" does not include:

- (a) Civil or criminal fines or penalties imposed by law, except civil fines or penalties as provided under Paragraph **18.a.(3)**;
- (b) The multiplied portion of multiplied damages;
- (c) Taxes;
- (d) Royalties;
- (e) The amount of any disgorged profits; or
- (f) Matters that are uninsurable pursuant to law.

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- (1) Includes compensatory damages, settlement amounts and costs
- (2) Includes punitive and exemplary damages.
  - Beware: Some policies may not include punitive and exemplary damages
- (3) Notice that the definition of “loss” does not include civil or criminal fines or penalties imposed by law except for Security Breach Liability
- (4) Some policies may define as damages in lieu of “loss”. May or may not include assessments or other monies owed under contracts.

c. Definition of “defense expenses”

6. "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".

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d. Definition of “claim”

3. "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 **b.** of Insuring Agreement **2. 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.

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- (1) A written demand for monetary or nonmonetary damages
- (2) A civil proceeding complaint
- (3) Beware: Some policies may not include nonmonetary damages or any civil proceeding, or regulatory proceeding
- (4) Some policies may have a broader definition to include a demand for arbitration or other alternate dispute resolution. Some may even include a criminal proceeding.



e. Definition of Web Site Publishing Liability “wrongful act”

**35.** "Wrongful act" means:

**a.** With respect to Insuring Agreement 1. Web Site Publishing Liability:

Any actual or alleged error, misstatement or misleading statement posted or published by an "insured" on its web site that results in:

- (1)** Any type of infringement of another's copyright, title, slogan, trademark, trade name, trade dress, service mark or service name;
- (2)** Any form of defamation against a person or organization; or
- (3)** A violation of a person's right of privacy.

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- (1) Infringement of another's copyright, title, slogan, trademark, trade name, trade dress, service mark or service name;
- (2) Defamation
- (3) Violation of a person's right of privacy
- (4) Beware: Some policies may limit what is included
- (5) Some policies may be broader to include wrongful acts that are oral or written, in any manner (not just on a web site) via any e-mail, webinars, etc.

f. Definition of “interrelated wrongful acts”

**16.** "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.

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## 2. Security Breach Liability Insuring Agreement

### 2. Security Breach Liability

- a. We will pay for both "loss" that the "insured" becomes legally obligated to pay and "defense expenses" as a result of a "claim" first made against the "insured" during the "policy period" or during the applicable Extended Reporting Period, for a "wrongful act" or a series of "interrelated wrongful acts" taking place on or after the Retroactive Date, if any, shown in the Declarations and before the end of the "policy period".
- b. We will pay for both "loss" and "defense expenses" as a result of a "claim" in the form of a "regulatory proceeding" first made against the "insured" during the "policy period" or during the applicable Extended Reporting Period, in response to a "wrongful act" or a series of "interrelated wrongful acts" covered under Paragraph **2.a.**

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- a. Pays for both loss and defense expenses as a result of a claim for a wrongful act
  - Definition of “claim” for Security Breach Liability includes regulatory proceeding commenced by the filing of a notice of charges, formal investigative order, service of summons or similar document
- b. Also pays for loss and defense expense as a result of claim in the form of a “regulatory proceeding”
- c. Definition of “regulatory proceedings”

**28.** "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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- Beware: Some policies may not provide coverage for regulatory proceedings.

d. Definition of a Security Breach Liability “wrongful act”

35. "Wrongful act" means:

b. With respect to Insuring Agreement 2. Security Breach Liability:

Any actual or alleged neglect, breach of duty or omission by an "insured" that results in:

(1) A "security breach"; or

(2) A "computer system" transmitting, by e-mail or other means, a "virus" to another person or organization.

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- (1) Includes security breach as defined
- (2) Includes transmission of a virus by email or by other means

e. Definition of “security breach”

29. "Security breach" means the acquisition of "personal information" held within the "computer system" or in nonelectronic format while in the care, custody or control of the "insured" or authorized "third party" by a person:

a. Who is not authorized to have access to such information; or

b. Who is authorized to have access to such information but whose access results in the unauthorized disclosure of such information.

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- (1) Beware: Some policies may not include nonelectronic format
- (2) Beware: Some policies may not extend to personal information in the CCC of an authorized third party
- (3) Beware: Some policies may exclude employees who are not authorized to have access to such information or employees have access to such information but whose access results in the unauthorized disclosure of such information.  
Example: Rogue or disgruntled employees

(4) Some policies have a broader definition including but not limited to:

- Theft, alteration or destruction of electronic data (not just personal information)
- Denial of service attacks
- Accidental release or disclosure of data

f. Definition of “personal information”

21. "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".

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- Beware: Some policies may limit to only those defined by certain statutes

g. Definition of “privacy regulations”

24. "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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h. Definition of “third party”

33. "Third party" means any entity that you engage under the terms of a written contract to perform services for you.

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i. Definition of “computer system”

5. "Computer system" means the following which are owned, leased or operated by you:
- 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.

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- A wrongful act under Security Breach Liability includes an insured’s "computer system" transmitting, by e-mail or other means, a "virus" to another person or organization.

j. Definition of a “virus”

34. "Virus" means any kind of malicious code designed to damage or destroy any part of the "computer system" (including "electronic data") or disrupt its normal functioning.

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- Means any kind of malicious code that damages, destroys any part of the computer system

3. **Programming Errors And Omissions Liability Insuring Agreement**

**3. Programming Errors And Omissions Liability**

We will pay for both "loss" that the "insured" becomes legally obligated to pay and "defense expenses" as a result of a "claim" first made against the "insured" during the "policy period" or during the applicable Extended Reporting Period, for a "wrongful act" or a series of "interrelated wrongful acts" taking place on or after the Retroactive Date, if any, shown in the Declarations and before the end of the "policy period".

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- a. Pays for both loss and defense expenses as a result of a claim for a wrongful act

b. Definition of Programming Errors And Omissions Liability “wrongful act”

35. "Wrongful act" means:

c. With respect to Insuring Agreement 3. Programming Errors And Omissions Liability:

Any actual or alleged programming error or omission that results in the disclosure of your client's "personal information" held within the "computer system".

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- Not intended for professional liability exposures

4. Replacement Or Restoration Of Electronic Data Insuring Agreement

4. Replacement Or Restoration Of Electronic Data

We will pay for "loss" of "electronic data" or "computer programs" stored within the "computer system" resulting directly from an "e-commerce incident" sustained during the "policy period".

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- a. Pays for loss of electronic data or computer programs resulting directly from an e-commerce incident
- b. Definition of “loss”

18. "Loss" means:

b. With respect to Insuring Agreement 4. Replacement Or Restoration Of Electronic Data:

The cost to replace or restore "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 "electronic data" cannot be replaced or restored, we will pay the cost to replace the media on which the "electronic data" was stored with blank media of substantially identical type.

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- Does not include the cost to duplicate research that led to the development of the named insured's “electronic data” or “computer programs”.

c. Definition of “electronic data”

9. "Electronic data" means digital 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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d. Definition of “computer programs”

4. "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 "electronic data".

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e. Definition of “e-commerce incident”

8. "E-commerce incident" means a:

- a. "Virus";
- b. Malicious code; or
- c. Denial of service attack;

introduced into or enacted upon the "computer system" (including "electronic data") or a network to which it is connected, that is designed to damage, destroy, delete, corrupt or prevent the use of or access to any part of the "computer system" or otherwise disrupt its normal operation.

Recurrence of the same "virus" after the "computer system" has been restored shall constitute a separate "e-commerce incident".

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- (1) Includes virus, malicious code, or denial of service attacks
- (2) Beware: Some policies may not include denial of service attacks.
- (3) Some policies may have broader definition to include the theft or loss of electronic data that is contained in any part of the insured's computer system (example: lost or stolen laptops)

## 5. Extortion Threats Insuring Agreement

### 5. Extortion Threats

We will pay for "loss" resulting directly from an "extortion threat" communicated to you during the "policy period".

However, we will not pay for "extortion expenses" or "ransom payments" which are part of a series of related threats that began prior to the "policy period".

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- a. Pays for loss resulting directly from an extortion threat
- b. Does not pay for extortion expenses or ransom payment for threats that began prior to the policy period
- c. Definition of "loss"

### 18. "Loss" means:

- c. With respect to Insuring Agreement 5. Extortion Threats: "Extortion expenses" and "ransom payments".

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- d. Definition of "extortion threat"

### 12. "Extortion threat" means a threat or series of related threats:

- a. To perpetrate an "e-commerce incident";
- b. To disseminate, divulge or utilize:
  - (1) Your proprietary information; or
  - (2) Weaknesses in the source code; within the "computer system" by gaining unauthorized access to the "computer system";
- c. To destroy, corrupt or prevent normal access to the "computer system" by gaining unauthorized access to the "computer system";
- d. To inflict "ransomware" on the "computer system" or a network to which it is connected; or
- e. To publish your client's "personal information".

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e. Definition of “ransomware”

27. "Ransomware" means any software that encrypts "electronic data" held within the "computer system" and demands a "ransom payment" in order to decrypt and restore such "electronic data".

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f. Definition of “extortion expenses”

11. "Extortion expenses" means:

a. Fees and costs of:

(1) A security firm; or

(2) A person or organization;

hired with our consent to determine the validity and severity of an "extortion threat" made against you;

b. Interest costs paid by you for any loan from a financial institution taken by you to pay a ransom demand;

c. Reward money paid by you to an "informant" which leads to the arrest and conviction of parties responsible for "loss"; and

d. Any other reasonable expenses incurred by you with our written consent, including:

(1) Fees and costs of independent negotiators; and

(2) Fees and costs of a company hired by you, upon the recommendation of the security firm, to protect your "electronic data" from further threats.

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g. Definition of “informant”

14. "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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h. Definition of “ransom payments”

26. "Ransom payment" means a payment made in the form of cash.

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Note: Beware this definition does not appear to include virtual currency

## 6. Business Income And Extra Expense Insuring Agreement

### 6. Business Income And Extra Expense

We will pay for "loss" due to an "interruption" resulting directly from an "e-commerce incident" sustained during the "policy period" or an "extortion threat" communicated to you during the "policy period".

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- a. Pays for loss due to an interruption resulting directly from an e-commerce incident or from an extortion threat
  - Beware some policy may not pay for loss from an extortion threat
- b. Definition of "loss"

### 18. "Loss" means:

#### d. With respect to Insuring Agreement 6. Business Income And Extra Expense:

The actual loss of "business income" you sustain and/or "extra expense" you incur.

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### c. Definition of "business income"

### 2. "Business income" means the:

- a. Net income (net profit or loss before income taxes) that would have been earned or incurred; and
- b. Continuing normal operating expenses incurred, including payroll.

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- Net income and continuing normal operating expenses (NICE)

d. Definition of “extra expense”

13. "Extra expense" means necessary expenses you incur:

- a. During an "interruption" that you would not have incurred if there had been no "interruption"; or
- b. To avoid or minimize the suspension of your "e-commerce activities".

"Extra expense" does not include any costs or expenses associated with upgrading, maintaining, improving, repairing or remediating any "computer system".

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e. Definition of “interruption”

17. "Interruption" means:

a. With respect to an "e-commerce 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 17.a.(1) and 17.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 17.b.(1) and 17.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.

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f. Definition of “e-commerce activities”

7. "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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- Some policies may have a broader or limited definition

## 7. Public Relations Expense Insuring Agreement

### 7. Public Relations Expense

We will pay for "loss" due to "negative publicity" resulting directly from an "e-commerce incident" or a "security breach" sustained during the "policy period".

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- a. Pays for loss due to negative publicity resulting directly from an e-commerce incident OR from a security breach
  - Beware: Some policies may limit to certain types of incidents and/or security breaches
- b. Definition of "loss"

### 18. "Loss" means:

- e. With respect to Insuring Agreement 7. Public Relations Expense: "Public relations expenses".

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- c. Definition of "public relations expenses"

### 25. "Public relations expenses" means:

- a. Fees and costs of a public relations firm; and
- b. Any other reasonable expenses incurred by you with our written consent; to protect or restore your reputation solely in response to "negative publicity".

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- (1) Cost of a public relations firm
- (2) Other reasonable expenses incurred with the insurer's written consent

- d. Definition of "negative publicity"

20. "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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- Information which has been made public

## 8. Security Breach Expense Insuring Agreement

### 8. Security Breach Expense

We will pay for "loss" resulting directly from a "security breach" sustained during the "policy period".

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- a. Pays for loss resulting directly from a security breach
- b. Reminder: Definition of "security breach"

29. "Security breach" means the acquisition of "personal information" held within the "computer system" or in nonelectronic format while in the care, custody or control of the "insured" or authorized "third party" by a person:

- a. Who is not authorized to have access to such information; or
- b. Who is authorized to have access to such information but whose access results in the unauthorized disclosure of such information.

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- c. Definition of "loss"

18. "Loss" means:

- f. With respect to Insuring Agreement 8. Security Breach Expense:  
"Security breach expenses".

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d. Definition of “security breach expenses”

**30.** "Security breach expenses" means:

- a.** Costs to establish whether a "security breach" has occurred or is occurring;
- b.** Costs to investigate the cause, scope and extent of a "security breach" and to identify any affected parties;
- c.** Costs to determine any action necessary to correct or remediate the conditions that led to or resulted from a "security breach";
- d.** Costs to notify all parties affected by a "security breach";
- e.** Overtime salaries paid to "employees" assigned to handle inquiries from the parties affected by a "security breach";
- f.** 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";
- g.** Post-event credit monitoring costs for the parties affected by a "security breach" for up to one year from the date of notification to those affected parties of such "security breach"; and
- h.** 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, improving, repairing or remediating any "computer system" as a result of a "security breach".

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- (1) Some policies may be very limited as to what is included as a security breach expense
- (2) Some policies may pay notification costs but only as required by law
- (3) Other policies may or may not include investigative costs, overtime, outside call service, and/or credit monitoring costs, etc.
- (4) Some policies may be broad enough to include indemnification obligations under written contract
- (5) Does not include upgrades

## D. Who Is Insured

### Example 1: ISO EC 00 10

- 15.** "Insured" means any "named insured" and its "employees"
- 19.** "Named insured" means the entity or entities shown in the Declarations and any "subsidiary".
- 10.** "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 **10.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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#### 1. Named insured

- Beware: The ISO definition does not include a spouse. Other policies may do so

#### 2. Employees

Typically, employees are included as “insureds”, but look for limitations

- a.** ISO Definition does include leased employees, temporary, part-time employees, former employees
  - Beware: some policies may not be as broad
- b.** Officers, directors, trustees or managers (if a LLC).
- c.** ISO definition includes volunteer workers. Other policies may not do so.

- d. Partners or LLC members
  - Beware: The ISO definition does not include a spouse. Other policies may do so
- e. All of the above for qualifying subsidiaries
- f. Definition of “subsidiary”

**Example: ISO EC 00 10**

**31.** "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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- 3. Other policies may be broader
  - a. May include independent contractors
  - b. May include coverage for newly acquired business
  - c. May include an additional insured as required by written contract.

**Example 1**

Insured means:

- 1. The Named Insured;
- 2. Subsidiaries of the Named Insured, but only with respect to Wrongful Acts that occur while they are a Subsidiary;
- 3. any past, present or future principal, partner, officer, director, trustee, employee, leased employee, or temporary employee of the Named Insured or a Subsidiary, but only with respect to the commission of a Wrongful Act committed within the scope of such person's duties performed on behalf of the Named Insured or such Subsidiary; and
- 4. independent contractors of the Named Insured or of a Subsidiary who are natural persons, but only with respect to the commission of a Wrongful Act within the scope of such person's duties performed on behalf of the Named Insured or such Subsidiary.



## Example 2

Named Insured; and individual insureds means, individually and collectively:

1. Any Named Insured that is an individual person;
2. Any Named Insured's stockholders for their liability as stockholders;
3. Any Named Insured's and Subsidiaries' partners, officers, directors and employees, but only with respect to their activities within the scope of their duties in such capacity;
4. Any Named Insured's and Subsidiaries' former partners, officers, directors and employees, but only with respect to their activities within the scope of their duties in such capacity;
5. Any legal representatives of an Insured in the event of death, incompetence, insolvency or bankruptcy of the Insured, but only with respect to their activities within the scope of their duties in such capacity; and
6. Any spouse of an Individual Insured, but only with respect to their status as such. For the purposes of this definition, "spouse" shall be any natural person qualifying as a domestic partner of an Individual Insured under the provisions of any applicable federal, state or local law in the United States of America.

**Note:** Some Cyber Liability Policies may provide Spousal Liability Coverage in a separate provision.

## Example: Spousal Liability Coverage

If a Claim made against an Individual Insured includes a Claim against that Individual Insured's lawful spouse solely by reason of:

1. Such spouse's status as the Individual Insured's spouse; or
2. Such spouse's ownership interest in property from which the claimant seeks recovery for the Individual Insured's Wrongful Acts;

All loss, which such spouse becomes legally obligated to pay on account of such Claim, shall be treated for purposes of this Policy as loss that the Individual Insured is legally obligated to pay on account of the Claim made against the Individual Insured. Such loss shall be covered under this Policy only if and to the extent that such loss would be covered under this Policy if incurred by the Individual Insured. The coverage extension afforded by this subsection does not apply to any Claim alleging any Wrongful Act or omission by the Individual Insured's spouse. The term "spouse" as used in this subsection shall include any natural person qualifying as a domestic partner under the provisions of any applicable federal, state or local law in the United States of America.

E. Defense and Settlement Provisions vary

1. Insurer has the right and duty to defend
  - No coverage, no defense
2. Usually within the limits of liability, and NOT in addition to the limit of insurance

Note: Warnings on the Coverage Form may appear

Example 1: ISO EC 00 10

**INSURING AGREEMENTS 1., 2. AND 3. OF THIS POLICY PROVIDE CLAIMS-MADE COVERAGE. DEFENSE EXPENSES 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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Example 2

**THE LIMITS OF LIABILITY AVAILABLE TO PAY INSURED DAMAGES SHALL BE REDUCED BY AMOUNTS INCURRED FOR CLAIMS EXPENSES. FURTHER NOTE THAT AMOUNTS INCURRED FOR DAMAGES AND CLAIMS EXPENSES SHALL BE APPLIED AGAINST THE RETENTION AMOUNT.**

Example 3

**DEFENSE EXPENSES REDUCE AND MAY EXHAUST THE APPLICABLE LIMITS OF LIABILITY AND APPLY TO THE RETENTION.**

Example 4

**Amounts incurred as Claims Expenses under this Policy shall reduce and may exhaust the limit of liability and are subject to retentions.**

3. Defense costs may be excess of the Deductible Amount shown in the Declarations

Example: ISO EC 00 10

- a. Under Insuring Agreements **1. Web Site Publishing Liability**, **2. Security Breach Liability** and **3. Programming Errors And Omissions Liability**:

We will pay only the amount of "loss" and "defense expenses" which are in excess of the applicable Deductible Amount shown in the Declarations resulting from the same "wrongful act" or "interrelated wrongful acts". Such Deductible Amount will be borne by you, self-insured, and at your own risk.

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4. Defense And Settlement provision

Example: ISO EC 00 10

**SECTION IV – DEFENSE AND SETTLEMENT**

The provisions contained within this section apply only to Insuring Agreements **1. Web Site Publishing Liability**, **2. Security Breach Liability** and **3. Programming Errors And Omissions Liability**:

1. We shall have the right and duty to select counsel and defend the "insured" against any "claim" covered under Insuring Agreements **1. Web Site Publishing Liability**, **2. Security Breach Liability** and **3. Programming Errors And Omissions 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 Paragraph **b.** of Insuring Agreement **2. Security Breach Liability**, and we shall have no duty to defend the "insured" against any "claim" which is not covered under any of these Insuring Agreements.
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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## F. Limits Of Insurance

### Example 1: ISO EC 00 01

#### **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. Insuring Agreement Aggregate Limit Of Insurance**

a. Subject to the Policy Aggregate Limit of Insurance, the most we will pay for all "loss", and "defense expenses" if covered, under each Insuring Agreement, is the Insuring Agreement Aggregate Limit Of Insurance shown in the Declarations:

(1) The Insuring Agreement Aggregate Limit of Insurance shall be reduced by the amount of any payment for "loss", and "defense expenses" if covered, under that Insuring Agreement; and

(2) Upon exhaustion of the Insuring Agreement Aggregate Limit of Insurance by such payments, we will have no further obligations or liability of any kind under that Insuring Agreement.

b. If coverage for "regulatory proceedings" is being provided under Paragraph **b.** of Insuring Agreement **2. Security Breach Liability**, the Limit of Insurance shall be part of, not in addition to, the Aggregate Limit of Insurance for the Insuring Agreement.

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1. Policy Aggregate Limit Of Insurance
2. Limit of insurance applies to the per Insuring Agreement indicated in the Declarations subject to the Policy Aggregate Limit Of Insurance

### Example 2

#### Total Limit of Insurance

The Total Limit of Insurance stated in Item 4. of the Declarations is the maximum the Company will pay for all Damages, Claim Expense, Crisis Management Expense, Extortion Expense or Extortion Loss combined for the total of all Claims made and/or Wrongful Acts or Extortion Threats that occur during the Policy Period and any Extended Reporting Period, no matter how many:

a. Insureds this Policy covers;

b. Claims are made;

c. Persons or organizations make Claims; or

d. Wrongful Acts, Security Events, Regulatory Actions or Extortion Threats occur;

## G. Deductible / Retention

1. The deductible/retention may be per loss regardless of the number of claims
2. The deductible/retention may be per insuring agreement
  - Check the policy language to see how the deductible applies if more than one insuring agreement applies to a loss
3. The deductible/retention may be per policy

### Example 1: ISO EC 00 10

#### **SECTION III – DEDUCTIBLE**

##### 1. Subject to Section II – Limits Of Insurance:

- a. Under Insuring Agreements **1. Web Site Publishing Liability**, **2. Security Breach Liability** and **3. Programming Errors And Omissions Liability**:

We will pay only the amount of "loss" and "defense expenses" which are in excess of the applicable Deductible Amount shown in the Declarations resulting from the same "wrongful act" or "interrelated wrongful acts". Such Deductible Amount will be borne by you, self-insured, and at your own risk.

- b. Under Insuring Agreements **4. Replacement Or Restoration Of Electronic Data**, **5. Extortion Threats**, **7. Public Relations Expense** and **8. Security Breach Expense**:

We will pay only the amount of "loss" which is in excess of the applicable Deductible Amount shown in the Declarations.

- c. Under Insuring Agreement **6. Business Income And Extra Expense**:

We will pay only the amount of "loss" which exceeds the greater of:

- (1) The Deductible Amount shown in the Declarations; or
- (2) The amount of "loss" incurred during the Waiting Period shown in the Declarations.

2. 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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### Example 2

The Company's maximum liability shall apply only to that part of each Loss which is excess of the Deductible set forth in the Declarations, and such Deductible shall be borne by the Insured at its own risk and uninsured.

### Example 3

A separate Retention applies to each actual and/or alleged Wrongful Act. For purposes of this provision, a series of related Wrongful Acts, as described in Section II.W., will be considered a single Wrongful Act. The Retention applies to Damages and Claim Expenses combined, and the Company's obligation to pay Damages and Claim Expenses applies only to the amount of Damages and Claim Expenses in excess of the Retention. The amount of the Insured's Retention is stated in Item 6. of the Declarations. The Retention does not deplete the applicable Limit of Insurance.

H. Exclusions are typically numerous and vary by insurer.

Following are exclusions found in the ISO coverage form.

Example: ISO EC 00 10

**SECTION V – EXCLUSIONS**

We will not be liable for "loss" or "defense expenses":

1. Based upon, attributable to or arising out of lightning, earthquake, hail, volcanic action or any other act of nature.
2. Based upon, attributable to or arising out of:
  - 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. Based upon, attributable to or arising out of 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. Based upon, attributable to or arising out of 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.

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1. Lightning, earthquake, hail, volcanic action or other acts of nature
2. War, warlike action, or insurrection
3. Biological or chemical materials, nuclear radiation
4. Bodily injury or physical damage to or destruction of tangible property, including loss of use.

## Example: ISO EC 00 10

### SECTION V – EXCLUSIONS

We will not be liable for "loss" or "defense expenses":

5. Based upon, attributable to or arising out of any unexplained or indeterminable failure, malfunction or slowdown of the "computer system", including "electronic data" and the inability to access or properly manipulate the "electronic data".
6. Based upon, attributable to or arising out of any "interruption" in normal computer function or network service or function due to insufficient capacity to process transactions or due to an overload of activity on the "computer system" or network. However, this exclusion shall not apply if such "interruption" is caused by an "e-commerce incident".
7. Based upon, attributable to or arising out of a complete or substantial failure, disablement or shutdown of the Internet, regardless of the cause.
8. Based upon, attributable to or arising out of any failure of, reduction in or surge of power.

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5. Unexplained or indeterminable failure, malfunction OR slowdown of the computer system
  - 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. An interruption due to insufficient capacity to process transactions or due to an overload of activity on the "computer system" or network, other than an e-commerce 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. Complete or substantial failure, disablement or shutdown of the Internet,
8. Failure of, reduction in or surge of power

## Example: ISO EC 00 10

### **SECTION V – EXCLUSIONS**

We will not be liable for "loss" or "defense expenses":

...

- 9.** Based upon, attributable to or arising out of 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.** Based upon, attributable to or arising out of any malfunction or failure of any satellite.
- 11.** Based upon, attributable to or arising out of any oral or written publication of material, if done by an "insured" or at an "insured's" direction with knowledge of its falsity.
- 12.** Based upon, attributable to or arising out of 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.** Based upon, attributable to or arising out of 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.** Based upon, attributable to or arising out of:
  - 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".

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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 violation
14. Pollution or pollution related



Example: ISO EC 00 10

**SECTION V – EXCLUSIONS**

We will not be liable for "loss" or "defense expenses":

...

15. Based upon, attributable to or arising out of 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. Based upon, attributable to or arising out of an "insured's" employment practices including, but not limited to, termination of employment, demotion, reassignment, discipline, harassment, coercion or refusal to employ regardless of whether the "insured" is liable as an employer or in any other capacity.
17. Based upon, attributable to or arising out of any "wrongful act" or "interrelated wrongful acts" that occurred before the Retroactive Date, if any, shown in the Declarations.
18. Based upon, attributable to or arising out of the same facts, "wrongful acts" 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. Based upon, attributable to or arising out of 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, 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 Agreement 2. Security Breach Liability.

With the exception of "claims" excluded under Exclusion 13., we will defend "claims" first made against an "insured" 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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15. Prior or pending claims\*
  16. Employment practices related liability
  17. Wrongful acts that occurred before the Retroactive Date\*
  18. Same wrongful acts, alleged or contained, in any claim which has been reported under any insurance policy of which this Policy is a renewal of\*
  19. Criminal, dishonest, malicious or fraudulent act or any willful violation of any statute or regulation committed by an insured
- \* Reinforces the claims made aspect of the coverage

## Example: ISO EC 00 10

### **SECTION V – EXCLUSIONS**

We will not be liable for "loss" or "defense expenses":

...

**20.** Based upon, attributable to or arising out of 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 **b.** of Insuring Agreement **2.** Security Breach Liability.

However, this exclusion shall not apply to actions or proceedings brought by a governmental authority or regulatory agency acting solely in its capacity as a customer of the "named insured" or of a "subsidiary".

**21.** Based upon, attributable to or arising out of costs associated with upgrading or improving the "computer system" regardless of the reason for the upgrade.

**22.** Based upon, attributable to or arising out of 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.** Based upon, attributable to or arising out of unintentional errors or omissions in the entry of "electronic data" into the "computer system".

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20. Proceeding brought by, or on behalf of, any governmental authority or regulatory agency
  - There may be a some give back of coverage if covered under Security Breach Liability
21. Costs associated with upgrade or improvements
22. Insured versus insured claims
  - Some Cyber Policies may have an exception for security breach claims brought by an employee against another insured.
23. Electronic data entry errors or omissions

## I. Selected Conditions

### 1. Subrogation

Example: ISO EC 00 10

#### **7. Subrogation**

With respect to any payment made under this Policy on behalf of any "insured", 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 applicable Aggregate 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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### 2. Representation

Example: ISO EC 00 10

#### **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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- a. Warranty statement
- b. Misrepresentation may be grounds for rescission

### 3. 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.

##### 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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- a. Newly acquired or created organization are covered; however, written notice is required within 90 days of acquisition or creation
- b. Coverage continues for the acquisition of the named insured until the end of the policy period; written notice is requires as soon as practicable
- c. Coverage continues for such organizations that ceases to be a subsidiaries until the end of the policy period but only for wrongful acts that occurred prior to the date that such ceased to be a subsidiary

#### 4. Other insurance

Example: ISO EC 00 10

##### 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 **1. Web Site Publishing Liability**, **2. Security Breach Liability** or **3. Programming Errors And Omissions 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 specifically excess
- b. No duty to defend when the Policy is excess

#### 5. Separation of Insureds

Example: ISO EC 00 10

##### 13. Separation Of Insureds

Except with respect to the applicable Aggregate Limit of Insurance, and any rights or duties specifically assigned in Insuring Agreement **1. Web Site Publishing Liability**, **2. Security Breach Liability** or **3. Programming Errors And Omissions Liability** to the first "named insured", this Policy applies separately to each "insured" against whom "claim" is made.

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- Liability coverage applies separately to each insured subject to the applicable Aggregate Limit of Insurance

## 6. Duties In The Event Of Claim Or Loss

Example: ISO EC 00 10

### 14. Duties In The Event Of Claim Or Loss

In the event of either an occurrence or offense that may result in a "claim" against an "insured" or a "loss" or situation that may result in a "loss" covered under this Policy, you must notify us in writing as soon as practicable, but not to exceed 30 days, and cooperate with us in the investigation and settlement of the "claim" or "loss". Additionally:

a. Under Insuring Agreements **1. Web Site Publishing Liability**, **2. Security Breach Liability** and **3. Programming Errors And Omissions Liability**, you must:

- (1) Immediately record the specifics of the "claim" and the date received;
- (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 an occurrence or offense 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.

A "claim" brought by a person or organization seeking damages will be deemed to have been made when the "claim" is received by an "insured".

b. Under Insuring Agreements **4. Replacement Or Restoration Of Electronic Data** and **5. Extortion Threats**, 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 **5. Extortion Threats**, you must:
  - (a) Determine that the "extortion threat" has actually occurred;
  - (b) Make every reasonable effort to immediately notify an associate and the security firm, if any, before making any "ransom payment" based upon the "extortion threat"; and
  - (c) Approve any "ransom payment" based upon the "extortion threat".

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- a. Written notification is required as soon as practicable not to exceed 30 days
- b. The named insured must cooperate in the investigation and settlement of claims or losses
- c. Additional duties for liability claims/losses
- d. Additional duties for first party losses

## 7. Valuation – Settlement

Example: ISO EC 00 10

### 15. Valuation – Settlement

- a. All premiums, Aggregate Limits 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 **6. 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 "e-commerce 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.

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- a. Payable in the currency of the United States of America.
- b. Determines how Business Income losses will be paid
- c. Determines how Extra Expenses losses will be paid

## 8. Confidentiality

Example: ISO EC 00 10

### 17. Confidentiality

Under Insuring Agreement 5. Extortion Threats, "insureds" must make every reasonable effort not to divulge the existence of this coverage.

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## 9. Territory

Example: ISO EC 00 10

### 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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- a. Due to the worldwide reach of the Internet, provides worldwide coverage, but some policies may have some limitations
- b. Suit must be brought in the United States of America, including its territories and possessions, Puerto Rico or Canada

Example: ISO EC 00 10

**32.** "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.

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- c. Some policies do not have a requirement on where suits are filed

Example.

This Insurance applies to Claims made, and acts, errors or omissions committed, or Loss occurring anywhere in the world.



## **VI. CONCLUSION**

