



JAMES K. RUBLE SEMINAR

Ruble Graduate Seminar

Pennsylvania
October 18-19, 2022

JAMES K. RUBLE SEMINAR
Ruble Graduate Seminar
Table of Contents

- 1 General Liability Coverage and Endorsements - The Fine Print**
- 2 Non-Owned Autos Insurance Coverage Available With
Commercial & Personal Auto Policies**
- 3 Contractual Risk Transfer and the CGL**
- 4 WC Funding Options**
- 5 An Exploration of the Property Casualty Side of Farming**
- 6 Captives: What Are They and Do They Work?**



A Letter from William J. Hold, President/CEO

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

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

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

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

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

Let's take the first step.

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



James K. Ruble Seminar

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

Section 1

General Liability Coverage and Endorsements - The Fine Print

General Liability Coverage and Endorsements – The Fine Print

Bettye D. Hutchison, CIC, CRM, CPCU, AAI, ARM, TRIP
centralins@msn.com
Central Insurance Services, Inc.
Beltsville, MD

DISCLAIMER

This is for information purposes only! I am not an attorney and I am not qualified to provide legal advice. You and your clients should always consult a competent attorney for matters of law. The policy and endorsements referred to are issued by Insurance Services Office, Inc.

Introduction

- Today we will be reviewing specific parts of the ISO General Liability Policy and some endorsements that are found on many of them
- To access coverage, limitations and exclusions, and avoid potential errors and omissions, we must coordinate insurance coverage, loss control and other risk financing techniques
- Need to identify exposures using several methods
 - Check List and Surveys
 - Flowchart
 - Insurance Policy Review
 - Physical Inspections
 - Compliance Review
 - Policy and Procedures Review
 - Contract Review
 - Experts
 - Financial Statement Analysis
 - Loss Data Analysis
- CGL Coverage and Endorsements to be discussed
 - Premises Liability
 - Business Operations Liability
 - Product Liability
 - Completed Operations Liability
 - Contractual Liability
 - Contingent Liability
 - Personal Injury Liability
 - Advertising Liability
- Section II – Who Is An Insured / Endorsements
- Section III – Commercial General Liability Conditions

Premises and Business Operations Liability

- Applies to owners, landlords and tenants for liability from the **ownership, maintenance or use of the insured's premises**
- Liability arising from activities involved in the operation of an organization including service and repair activities usually done **on the premise of others**, while the activity is **being accomplished** (includes "Your Work" as being accomplished)

- Exclusion – All Hazards In Connection With Designated Premises
CG 21 00 **BEWARE!**

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

1. The premises shown in the Schedule or any property located on those premises
2. Operations on those premises or elsewhere which are necessary or incidental to those premises
3. Goods or products manufactured at or distributed from those premises

- Limiting Coverage To Designated Premises, Project Or Operation
CG 21 44 **BEWARE!**

This insurance applies only to "bodily injury" or "property damage", "personal and advertising injury" and medical expenses which:

- (a) **Occurs on the premises shown in the Schedule or the grounds and structures appurtenant to those premises; or**
- (b) **Arises out of the project or operation shown in the Schedule;**

- Exclusion – Athletic Or Sports Participants

CG 21 01 **BEWARE!**

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 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 that you sponsor.

- Exclusion – Athletic Or Sports Participants – All Contests Or Exhibitions – CG 40 03 12 19 (NEW) **BEWARE!**

- Excludes any person in **any** sport or athletic contest or exhibition

- Exclusion – Explosion, Collapse, Underground Property Damage Hazard (Specified Operations) – **BEWARE!**

CG 21 42 excludes operations listed on a schedule

CG 21 43 excludes operations **except** those listed on a schedule

1. **Property damage exclusion** eliminating coverage caused by one or more of the identified hazards.
2. **Explosion** exclusion applies to blasting or explosion
3. **Collapse** exclusion applies to structural losses caused by grading, excavating, tunneling, pile driving, operations involving structural support, etc.
4. **Underground** exclusion applies to specific property damaged by or in connection with the use of a mechanical device used in grading, drilling, filing, etc.
5. **Does not apply to bodily injury or completed operations**

- Amendment of Liquor Liability Exclusion

CG 21 50

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**

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.

CG 21 50 or CG 21 51 can create potential coverage problems for many businesses!

- ✓ **Not For Profits**
- ✓ **Private Clubs**
- ✓ **Volunteer Fire Departments**
- ✓ **Charity Events**
- ✓ **B.Y.O.B Restaurants**
 - **Licenses/permit required ABC Regulations**
 - **Liquor Liability**

- Liquor Liability – Bring Your Own Alcohol Establishments
CG 24 06

This endorsement amends the Insuring agreement of the Liquor Liability Coverage Form (CG 00 33 Liquor Liability Coverage Form – Occurrence Version or CG 00 34 Liquor Liability Coverage Form – Claims Made Version) to extend liquor liability coverage to insureds who permit any person to bring any alcoholic beverage on their premises, whether or not a fee is charged

LIQUOR LIABILITY COVERAGE PART

The following is added to Paragraph **1. Insuring Agreement** of **Section I – Liquor Liability Coverage**:

1. Insuring agreement

An insured who permits any person to bring any alcoholic beverage on to their premises, for consumption on the premises, whether or not a fee is charged for such activity, will also be considered selling, serving or furnishing alcoholic beverages.

Can be added to negate the BYO exclusion found in the 2013 edition of CG 21 50 or CG 21 51 (Amendment of Liquor Liability Exclusion endorsements)

- CG 24 08 10 93 – Liquor Liability

The attachment of this endorsement eliminates the exclusion

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

LIQUOR LIABILITY – BRING YOUR OWN ALCOHOL ESTABLISHMENTS

This endorsement modifies insurance provided under the following:

LIQUOR LIABILITY COVERAGE PART

The following is added to Paragraph **1. Insuring Agreement** of **Section I – Liquor Liability Coverage**:

1. Insuring Agreement

An insured who permits any person to bring any alcoholic beverage on their premises, for consumption on the premises, whether or not a fee is charged for such activity, will also be considered selling, serving or furnishing alcoholic beverages.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

LIQUOR LIABILITY

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

Exclusion **c.** – Liquor Liability of COVERAGE A – BODILY INJURY AND PROPERTY DAMAGE LIABILITY
(Section **I**) – Coverages does not apply.

SAMPLE

- Total Pollution Exclusion Endorsement
CG 21 49 **BEWARE!**

This insurance does not apply to:

f. Pollution

(1) “Bodily injury” or “property damage” which would not have occurred in whole or in 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 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 Exception And A Hostile Fire Exception
CG 21 65
- Total Pollution Exclusion With A Hostile Fire Exception
CG 21 55

- 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 “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 not be deemed completed.

Wrong Delivery Of Liquid Products CA 23 05

Adds exclusion to BAC

CG 22 66 provides this coverage

Need to place both BAC and CGL with the same carrier

- 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.

- 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.

- 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".

- 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.

- **BEWARE!** Exclusion – Hired Auto Liability
- CG 40 11 12 19 (NEW)

Review exclusion “**g. Aircraft, Auto Or Watercraft**” of the CGL

- ✓ Excludes “auto” that is owned or operated by or rented or loaned to **any insured**
- ✓ CG 40 11 added additional language with respect to “hired autos”
- ✓ “Hired auto” defined in the endorsement

Claims alleging negligent hiring or exercising some control over motor carrier/driver/logistics company and others will be affected

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

EXCLUSION – HIRED AUTO LIABILITY

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

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.

N
E
W

- Electronic Data Liability

CG 04 37

Loss Of Electronic Data Limit: \$

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 the 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 loss of data without requiring associated ***physical injury to tangible property.***

Beware of exclusions!

Product and Completed Operations Liability

➤ Product Liability

Coverage begins when the product has left the insured's premises and is no longer in the insured's possession.

Covers design, defect, manufacturing defect and marketing defect.

➤ Completed Operations Liability

Coverage begins when the business operations is completed.

"Your work" and subcontractor work coverage issues

- Products/Completed Operations Hazard Redefined

CG 24 07

Schedule
Description of Premises and Operations
With respect to "bodily injury" and "property damage" arising out of "your products" manufactured, sold, handled or distributed: <ol style="list-style-type: none">1. On, from or in connection with the use of any premises described in the Schedule, or2. 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: <p>"Products-completed operations hazard":</p> <ol style="list-style-type: none">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.

Notes:

- Exclusion – Intercompany Products Suits
CG 21 41

This insurance does not apply to any claim made or “suit” brought 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”.

- **BEWARE!** Exclusion – Cross Suits Liability
CG 40 10 12 19 (NEW)
 - Excludes any cross suit between Named Insureds for:
 - Coverage A and Coverage B

- **BEWARE!** Exclusion – Designated Products
CG 21 33

The endorsement excludes “bodily injury” and “property damage” coverage arising out of the named insured’s products indicated in the endorsement Schedule.

- Exclusion – Damage To Work Performed By Subcontractor 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 and completed operations hazard”.

- **BEWARE!** Exclusion – Damage To Work Performed By Subcontractors On Your Behalf – Designated Sites Or Operations
CG 22 95

The endorsement excludes damage to the named insured's work performed by subcontractors indicated in the endorsement Schedule

- 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.

- Misdelivery Of Liquid Products Coverage
CG 22 66 (previously discussed on page 11)

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 “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 not be deemed completed.

- Total Pollution Exclusion For Designated Products Or Work Endorsement

CG 21 99 **BEWARE!**

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

2. Exclusions

This insurance does not apply to:

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 which arises out of “your product” or “your work” shown in the Schedule.
- (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” which arises out of “your product” or “your work” shown in the Schedule; 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” which arises out of “your product” or “your work” shown in the Schedule

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

“Pollutants” mean any solid, liquid, gaseous, or thermal irritant or contaminant, including smoke, vapor, soot, fumes, acids, alkalis, chemicals and waste. Waste includes materials to be recycled, reconditioned or reclaimed.

Contractual Liability

- Liability arising from an “Insured Contract” or other contractual obligations where covered by the policy
- Incidental contract and Hold Harmless and Indemnification Contracts

First, review the exclusion:

CG 00 01

b. Contractual Liability

“Bodily injury” or “property damage for which the insured is obligated to pay damages by reason of assumption of liability in a contract or agreement. This exclusion does not apply to liability for damages:

- (1) That the insured would have in the absence of the contract or agreement; or
- (2) Assumed in a contract or agreement that is an “insured contract”, provided the “bodily injury” or “property damage” occurs subsequent to the execution of the contract or agreement. Solely for the purposes of liability assumed in an “insured contract”, reasonable attorneys’ fees and necessary litigation expenses incurred by or for a party other than an insured are deemed to be damages because of “bodily injury” or “property damage”, provided:
 - (a) Liability to such party for, or for the cost of, that party’s defense has also been assumed in the same “insured contract”; and
 - (b) Such attorneys’ fees and litigation expenses are for defense of that party against a civil or alternative dispute resolution proceeding in which damages to which this insurance applies are alleged.

- Liability in absence of the contract
- “Insured contract” for BI & PD assumed after contract execution

Are the *indemnatee’s legal fees and litigation expenses* covered under the indemnitor’s CGL?

Yes, if assumed in the same “insured contract”.

Are the indemnitee's legal fees and litigation expenses ***paid in addition to, or within, the indemnitor's limits?***

In addition to limits if:

1. Damages are assumed by the insured in the "insured contract";
2. Insurance applies to the loss;
3. The obligation to defend the indemnitee was assumed in the "insured contract";
4. There is no conflict between the insured and the indemnitee;
5. The indemnitee and the insured request the insurer to defend and agree to the same counsel; **and**
6. The indemnitee agrees to the same loss condition terms as the insured.

IMPORTANT!

If the indemnitee does not agree to all six requirements, then the indemnitee's attorney fees and litigation expenses, indemnitee will be paid within the limits of the indemnitor's policy.

This is found on Page 9 of 16 in the ISO CGL – CG 00 01

SUPPLEMENTARY PAYMENTS – COVERAGE A AND B

- 2.** "If we defend an insured against a "suit" and an indemnitee of the insured is also named as a party to the "suit", we will defend that indemnitee if all of the following conditions are met:

➤ “Insured contract” definition f – CG 00 01:

9. “Insured contract” means:

- 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 a railroad for “bodily injury” or “property damage” arising out of construction or demolition operations within 50 feet of any railroad property and affecting any railroad bridge or trestle, tracks, road-beds, tunnel, underpass or crossing
- (2) That 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 injury or damage; or
- (3) Under which the insured, if an architect, engineer or surveyor, assumes liability for injury or damage arising out of the insured’s rendering or failure to render professional services, including those listed in (2) above and supervisory, inspection, architectural or engineering activities.

- Amendment of Insured Contract Definition

CG 24 26 **BEWARE!**

Eliminates coverage for the sole negligence of the indemnitee under paragraph f.

- Contractual Liability Limitation

CG 21 39 **BEWARE!**

Eliminates paragraph f. of the definition of “insured contract”.

- Contractual Liability – Railroads
CG 24 17

Gives back coverage for construction or demolition operations on or within 50 feet of a railroad subject to:

Scheduled Railroad: Designated Job Site:

- Limited Contractual Liability – Railroads
CG 24 27 **BEWARE!**

Does not apply to **sole negligence** of railroad

Change for CG 24 26 & CG 24 27

f. ...**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.**

Notes:

Contingent Liability

- Arises out of “your work” **performed by someone else**
- It can provide the insured for actions by employees, independent contractors and others acting on behalf of the Named Insured

BEWARE of exclusionary endorsements

- Exclusion – Damage To Work Performed By Subcontractors On Your Behalf
CG 22 94

Removes the exception for subcontractors

- Exclusion – Damage To Work Performed By Subcontractors On Your Behalf – Designated Sites Or Operations
CG 22 95

Removes the exception for work performed by subcontractors at the sites or operations described in the endorsement schedule

Personal And Advertising Injury Liability

- Provides coverage for **named intentional torts against a third party while conducting business on premises and off premises**
- The intentional tort must be named in the definition of “Personal and advertising injury”
- Includes consequential “bodily injury” arising out of one or more of the named offences
- Provides coverage for **intentional torts against a third party while conducting advertising for the business operation and includes web sites advertising the goods and services of the named insured**
- Advertising injury coverage is only for the goods and services of the named insured and numerous exclusions apply

- 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 or 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 libel 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 on another’s copyright, trade dress or slogan in your “advertisement”.

SECTION V – DEFINITIONS

1. “Advertisement” means a notice that is broadcast or published to the general public or specific market segments about your goods, products or services for the purpose of attracting customers or supporters. For the purposes of this definition:
 - a. Notices that are published include material placed on the internet or on similar electronic means of communication; and
 - b. Regarding web sites, only that part of a web site that is about your goods, products or services for the purposes of attracting customers or supporters is considered an advertisement.

- Limited Contractual Liability Coverage For Personal And Advertising Injury CG 22 74

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.

- Amendment Of Personal And Advertising Injury Definition

CG 24 13 **BEWARE!**

Oral or written publication, in any manner, of material that violates a person's right of privacy is removed as a covered offense

This eliminates any social media coverage!

- Exclusion – Access Or Disclosure Of Confidential Or Personal Information And Data-Related Liability – With Limited Bodily Injury Exception CG 21 06 **BEWARE!**

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.

Section II – Who Is An Insured

❖ Three types of Insureds under the Commercial General Liability Coverage Form

- ❖ **Named Insureds**
- ❖ **Automatic Insureds**
- ❖ **Non-Automatic – Additional Insureds added by endorsement**

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

❖ **Named Insured = “You” and “Your”**

Throughout this policy the words “you” and “your” refer to the Named Insured shown in the Declarations, and any other person or organization qualifying as a Named Insured under this policy.

❖ **Automatic Insureds = 1. If you are designated in the Declarations as:**

- Individual, includes your spouse, **but only with respect to the conduct of a business of which you are the sole owner.**
- Partnership or joint venture, includes your partners, members and their spouses, **but only with respect to the conduct of your business.**
- Limited Liability Company, includes your members **but only with respect to the conduct of your business** and your managers, **but only with respect to their duties as managers.**
- Organization other than a partnership, joint venture or LLC includes your “executive officers”, directors, **but only with respect to their duties as your officers and directors** and stockholders, **but only with respect to their liability as stockholders.**
- Trust, includes your trustees, **but only as respect to their duties as trustees**

Important to remember!

Every person is personally liable for their own torts, even if the torts are business torts committed while acting solely on behalf of the business. It is a common misunderstanding of business owners that the “corporate veil” shields the owner from all tort liability.

❖ Automatic Insureds = 2. Each of the following is also an insured

- Your “volunteer workers” **only while performing duties related to the conduct of your business**
- Your “employees”, **but only for the acts within the scope of their employment with you or while performing duties related to the conduct of your business**
 - No BI/PI/AI to NI, Partners, members, spouses, employees, volunteers, consequential BI, or arising out of professional health care services

5. “Employee” includes a “leased worker”. “Employee” does not include a “temporary worker”.

10. “Leased worker” means a person leased to you by a labor leasing firm under an agreement between you and the labor leasing firm, to perform duties related to the conduct of your business. “Leased worker” does not include a “temporary worker”.

19. “Temporary worker” means a person who is furnished to you to substitute for a permanent “employee” on leave or to meet seasonal or short-term workload conditions.

20. “Volunteer worker” means a person who is not your “employee”, and who donates his or her work and acts at the direction of and within the scope of duties determined by you, and is not paid a fee, salary or other compensation by you or anyone else for their work performed for you.

- Any person or organization while acting as your real estate manager
- Any person or organization having proper temporary custody of your property if you die
- Legal representative if you die, but only with respects to duties as such.
That representative will have all your rights and duties under this Coverage Part.
- Newly acquired organization with exceptions
 - 90 days or until policy expires
 - No partnerships, joint ventures or LLCs
 - Coverage does not apply to prior BI or P&AI for offense occurring prior to acquisition

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

- Automatic Insured Status For Newly Acquired Or Formed Limited Liability Companies CG 24 54 12 19 –NEW
 - 90 days or until policy expires
 - Coverage does not apply to prior BI or P & AI for offence occurring prior to acquisition

Notes:

❖ **Non-Automatic – Additional Insured Added by Endorsement**

What is an Additional Insured?

An additional insured could be a person or organization who desires coverage as an insured but is not included in **Section II – Who Is An Insured**. An additional insured endorsement must be added to the policy to afford insured status.

Important!

All of the definitions, limitations, conditions and exclusions contained in the CGL Policy apply. The Additional Insured endorsements contain additional language which may further restrict or limit the coverage provided. It is important to completely read the endorsement

Reasons to add AI endorsements

1. It can assure greater safety in a risk transfer – a “safety net” for a hold harmless agreement (in the event the agreement is not enforceable)
2. It can give those parties who attempt to transfer risk costs direct rights under the other party’s CGL (defense outside of limits)
3. It may protect the AI from subrogation
4. It may provide the indemnitee with personal injury liability coverage
5. It may protect those with a close relationship with the named insured

Problems

1. Sharing/diminution limits
2. Defense conflicts
3. Compliance problems
4. Disputes over coverage

○ Additional Insured – Club Members

CG 20 02

- Adds members of the named insured's club
- Direct and vicarious with respect to your activities or activities they perform on your behalf
- No additional charge

○ Additional Insured – Condominium Unit Owners

CG 20 04

- Adds unit owners protection from claims arising from the common areas
- Unit owner must purchase liability coverage for their use and occupancy

...only with respect to liability arising out of the ownership, maintenance or repair of that portion of the premises which is not reserved for that owner's exclusive use or occupancy.

○ Additional Insured – Unit-Owners Of Townhouse Or Homeowner Associations

CG 20 17

- Adds unit-owners who are members of the association
- Liability as a member of the townhouse association
- Owner must purchase liability for their property

...However, no such unit-owner is an additional insured with respect to its liability arising out of the ownership, maintenance, use or repair of

1. The real property to which the unit-owner has title; or
2. That portion of the premises which is reserved for the unit-owner's exclusive use or occupancy.

ISO Additional Insured endorsements with 04 13 edition dates were amended to add significant language.

For example, in the CG 2010 0413 endorsement...

- **Deleted sole negligence of Additional Insured**

... caused in whole or in part by:

- 1. Your acts or omissions; or**
- 2. The acts or omissions of those acting on your behalf**

However:

- 1. The insurance afforded to such additional insured applies only to the extent permitted by law; and**

- **If there is a contract**

- 2. If coverage provided to the additional insured is required by a contract or agreement, the insurance afforded to such additional insured will not be broader than that which you are required by the contract or agreement to provide for such additional insured.**

CG 2010 1219 revised language

C. With respect to the insurance afforded to these additional insureds, the following is added to **Section III – Limits Of Insurance:**

If coverage provided to the additional insured is required by a contract or agreement, the most we will pay on behalf of the additional insured is the amount of insurance:

- 1. Required by the contract or agreement; or**
- 2. Available under the applicable Limits of Insurance shown in the declarations.**

whichever is less.

This endorsement shall not increase the applicable limits of insurance.

- Additional Insured – Owners, Lessees or Contractors – Scheduled Person Or Organization
CG 20 10
 - Adds person/organization shown in the schedule for Location of Covered Operations shown in the schedule for BI, PD, PI & AI
 - No coverage for
 - Completed operations or
 - That portion of your work put to its intended use
- Additional Insured – Owners. Lessees or Contractors – Completed Operations
CG 20 37
 - Adds persons/organizations shown in Schedule for Location and Description of Completed Operations shown in the schedule
 - Performed for the Additional Insured
 - Included in the products-completed operations hazard
 - No coverage for on-going operations
- Additional Insured – Owners, Lessees Or Contractors – Completed Operations Subject To The General Aggregate CG 20 41 12 19 (NEW)
 - Adds persons/organizations shown in the Schedule for Location and description shown in the Schedule
 - BI, PD, P & AI performed for the Additional Insured for ongoing operations or
 - BI & PD caused by “your work” at the locations described performed for the AI
 - **Broadening of coverage for both Premises Operations and Products-Completed Operations**
 - Subject to the General Aggregate

- Additional Insured – Designated Person Or Organization
CG 20 26
 - Adds person/organization shown in schedule for BI, PD, PI & AI
 - Ongoing operations or
 - In connection with your premises owned by or rented to you
 - Can be used when there is no written lease

○ Additional Insured – Managers Or Lessors Of Premises

GC 20 11

- Adds person/organization shown in the schedule as AI for the ownership, maintenance or use of ***that part of the premises leased*** to the NI **AND** shown in the schedule
- The Schedule should not list the address, should state “as per lease” to cover all possible extensions or addendums to lease
- Not suitable if there is not a written lease
 - ❖ Excludes any occurrence which takes place after you are no longer a tenant
 - ❖ Structural additions, new construction or demolition ***performed by the AI is excluded***

○ Additional Insured – Grantor Of Licenses

CG 20 36

- Adds person/organization shown in the schedule as AI, but only with respect to their liability as grantor of a license to NI

○ Additional Insured – Lessor Of Leased Equipment

CG 20 28

- Adds person/organization shown in the schedule as AI for maintenance, operation or use of equipment leased to the NI
- Does not apply to an occurrence which takes place after lease is terminated

❖ **“Automatic” Additional Insured Endorsements**

- **Caution!** Need to read the endorsements to see what “triggers” coverage
- **Written contract required**

...when you and such person or organization have agreed in writing in a contract or agreement that such person or organization be added as an additional insured on your policy.

CG 20 33 12 19

- **No professional services**
- Reduce administrative burden when faced with numerous contractual requests to add AIs
- Insured’s forget to call or don’t know they need to call
 - Additional Insured – Owners, Lessees or Contractors – Automatic Status When Required In A Written Construction Agreement With You CG 20 33
 - ❖ Ongoing operations
 - ❖ NI must be a signor of the contract
 - Additional Insured – Owners, Lessees Or Contractors – Automatic Status For Other Parties When Required In Written Construction Agreement CG 20 38
 - ❖ Ongoing operations
 - ❖ NI is an “downstream party”
 - Additional Insured – Grantor Of Licenses – Automatic Status When Required By Licensor CG 20 35
 - ❖ Automatic termination for expiration of license; or
 - ❖ Automatic termination when license is terminated or revoked prior to the expiration of the license as stipulated by the contract or agreement
 - Additional Insured – Lessor Of Leased Equipment – Automatic Status When Required In Lease Agreement With You CG 20 34
 - ❖ Automatic termination for expiration of lease with you

- Additional Insured – Owners, Lessees Or Contractors – Automatic Status When Required In Written Construction Agreement With You (Completed Operations) CG 20 39 12 19 (NEW)
 - Caused by “your work” performed for that additional insured
 - Included in the “products-completed operations hazard”

- Additional Insured – Owners, Lessees Or Contractors – Automatic Status For Other Parties When Required In Written Construction Agreement (Completed Operations) CG 20 40 12 19 (NEW)
 - Caused by “your work” performed for that additional insured
 - Included in the “products-completed operations hazard”
 - NI is a “downstream party”

- Additional Insured – Automatic Status For Designated Operations CG 20 42 12 19 (NEW)
 - BI or PD not included in the “products-Completed operations hazard” or P & AI
 - Operations described in the Schedule
 - No professional liability

- Additional Insured – Automatic Status When Required In Written Contract Or Agreement CG 20 43 12 19 (NEW)
 - BI or PD not included in the “products-completed operations hazard” or P & AI
 - No professional liability

Section IV – Commercial General Liability Conditions – CG 00 01

❖ Other Insurance

4. Other Insurance

b. Excess Insurance

(1) This insurance is excess over:

(b) Any other primary insurance available to you covering liability for damages arising out of the premises or operations, or the products and completed operations, for which you have been added as an additional insured.

(2) When this insurance is excess, we will have no duty under Coverage **A** or **B** to defend the insured against any “suit” if any other insurer has a duty to defend the insured against that “suit....

- 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.

❖ **Transfer Of Rights Of Recovery Against Others To Us – CG 00 01**

If the insured has rights to recover all or part of any payment we have made under this Coverage Part, those rights are transferred to us. The insured must do nothing after a loss to impair them. At our request, the insured will bring “suit” or transfer those rights to us and help us enforce them.

- Waiver Of Transfer Of Rights Of Recovery Against Others To Us
CG 24 04

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 Other To Us (Waiver Of Subrogation) – Automatic CG 24 53 12 19 (NEW)
 - Requires a written contract or agreement by the insured
 - Applies only to the insured

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 only applies only to the extent that the insured has waived its right of recovery against such person or organization prior to loss.

❖ Coverage Territory

- Amendment Of Coverage Territory – Worldwide Coverage
CG 34 12 12 19 (NEW)
 - Applies to Products/Completed Operations Coverage Part

C. The definition of “coverage territory” in **Section V – Definitions** is replaced by the following:

“Coverage territory” means anywhere in the world with the exception of any country or jurisdiction which is subject to trade or other economic sanction or embargo by the United States of America.

- If the company is prevented from defending a “suit”, the insured will initiate a defense of the “suit”
 - The company will reimburse the insured, under Supplementary Payments for reasonable and necessary expenses
 - If the insured becomes legally obligated to pay sums a damages and insurer is prevented from paying on behalf of, the company will reimburse the insured
 - Payments will be made in US currency at the prevailing exchange rate at the time of legal obligation
 - Payments made as reimbursement of expenses will be made in US currency at the prevailing exchange rate at the time they were incurred
- Coverage disputes must be filed in the US, territories, possessions or Canada
- Insured must fully maintain any coverage required by law, regulation or other governmental authority
 - Failure to maintain will not invalidate coverage however,
 - Insurer will apply as if the regulated coverage was in full effect

- Excess over ***any other insurance***:
 - Suits brought outside of the US, territories, possessions, Puerto Rico or Canada or
 - That is coverage required by law, regulation or other governmental authority outside of US, territories, possessions or Canada
- Amendment Of Coverage Territory – Additional Scheduled Countries
CG 34 13 12 19 (NEW)
- Applies to Specified Additional Countries Scheduled

C. The definition of “coverage territory” in **Section V – Definitions** is replaced by the following:

“Coverage territory” means:

- a.** The United States of America (including its territories and possessions), Puerto Rico and Canada and any other country specified in the Schedule of this endorsement.
- b.** International waters or airspace, but only if the injury or damage occurs in the course of travel or transportation between any places included in Paragraph **a.** above; or
- c.** All other parts of the world if the injury or damage arises out of goods or products made or sold by you in the territory described in Paragraph **a.** above;

provided that the insured’s responsibility to pay damages is determined in a “suit” on the merits, in a territory described in Paragraph **a.** above or in a settlement we agree to.

- If a “suit” is brought in a part of the “coverage territory” that is outside of the US, its territories and possessions, Puerto Rico or Canada, and the company is prevented from defending a “suit”, the insured will initiate a defense of the “suit”
 - The company will reimburse the insured, under Supplementary Payments for reasonable and necessary expenses
 - If the insured becomes legally obligated to pay sums because of damages and insurer is prevented from paying on behalf of, the company will reimburse the insured
 - Payments will be made in US currency at the prevailing exchange rate at the time of legal obligation
 - Payments made as reimbursement of expenses will be made in US currency at the prevailing exchange rate at the time they were incurred

- Coverage disputes must be filed in the US, territories, possessions or Canada

- Insured must fully maintain any coverage required by law, regulation or other governmental authority
 - Failure to maintain will not invalidate coverage however,
 - Insurer will apply as if the regulated coverage was in full effect

- Excess over ***any other insurance:***
 - Suits brought outside of the US, territories, possessions, Puerto Rico or Canada or
 - That is coverage required by law, regulation or other governmental authority outside of US, territories, possessions or Canada Amendment Of Coverage Territory – Additional Scheduled Countries

Any Questions?

Time to Conclude!

***Thank you for your
participation!***



James K. Ruble Seminar

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

Section 2

Non-Owned Autos Insurance Coverage Available With Commercial & Personal Auto Policies



THE NATIONAL ALLIANCE
for Insurance Education & Research

**Non-Owned Autos
Insurance Coverage Available With
Commercial & Personal Auto Policies**

By

Bettye D. Hutchison

CIC, CPCU, CRM, AAI, ARM, CPIA, TRIP

centralins@msn.com



PERSONAL AUTO POLICY PP 00 01

DEFINITIONS

- C.** For purposes of this Policy, a private passenger type auto, pickup or van shall be deemed to be owned by a person if leased:
1. Under a written agreement to that person; and
 2. For a continuous period of at least six months.
- I.** "Trailer" means a vehicle designed to be pulled by a:
1. Private passenger auto; or
 2. Pickup or van.
- It also means a farm wagon or farm implement while towed by a vehicle listed in **1.** or **2.** above
- J.** "Your covered auto" means:
1. Any vehicle shown in the Declarations;
 2. A "newly acquired auto";
 3. Any "trailer" you own; or
 4. Any auto or "trailer" you do not own while used as a temporary substitute for any other vehicle described in this definition which is out of normal use because of its:
 - a. Breakdown;
 - b. Repair;
 - c. Servicing;
 - d. Loss; or
 - e. Destruction.

This provision (**J.4.**) does not apply to Coverage For Damage To Your Auto.

BUSINESS AUTO COVERAGE CA 00 01

SECTION V - DEFINITIONS

Auto" means a land motor vehicle, "trailer" or semitrailer designed for travel on public roads; or

Any other land vehicle that is subject to compulsory or financial responsibility law or other motor vehicle insurance law where it is licensed or principally garaged.

However, "auto" does not include "mobile equipment"

Insuring Non-Owned Autos

Commercial & Personal Auto Policies

- I. Introduction
 - A. Where will the non-owned auto be used?
 - B. Is the person or entity seeking coverage an “insured”?
 - C. Is the non-owned auto a covered “auto”
 - D. How will the loss to the non-owned auto be determined?

- II. What is a non-owned auto?
 - A. Leased
 - B. Rented
 - C. Borrowed
 - D. Hired
 - E. Available for use
 - 1. Regular use
 - 2. Occasional use

Lease:

1) n. a written agreement in which the owner of property (either real estate or some object like an automobile) allows use of the property for a specified period of time (term) for specific periodic payments (rent), and other terms and conditions.

Rental car:

A **car rental** or **car** hire agency is a company that rents automobiles for short periods of time (generally ranging from a few hours to a few weeks) for a fee. It is often organized with numerous local branches (which allow a user to return a vehicle to a different location), and primarily located near airports or busy city areas and often complemented by a website allowing online reservations.

Contract:

An agreement between two or more parties which creates an obligation to do or not to do a particular thing. Its essentials are competent parties, subject matter, legal consideration, mutuality of agreement and mutuality of obligation.

Indemnification provision:

Contractual provision used to transfer the obligation to pay for the financial consequences of certain losses from one party (indemnitee) to another (indemnitor)

Indemnitee: The person who, in a contract of indemnity, is to be indemnified or protected by the other.

Indemnitor: The person who is bound, by an indemnity contract, to indemnify or protect the other.

Borrow:

BORROWER, contracts. He to whom a thing is lent at his request.

2. The contract of loan confers rights, and imposes duties on the borrower' 1. In general, he has the right to use the thing borrowed, during the time and for the purpose intended between the parties; the right of using the thing bailed, is strictly confined to the use, expressed or implied, in the particular transaction, and by any excess, the borrower will make himself responsible. Jones' Bailment, 58 6 Mass. R. 104; Cro. Jac. 244; 2 Ld. Raym. 909; Ayl. Pand. B. 4, t. 16, p. 517; Domat, B. 1, t. 5, Sec. 2, n. 10, 11, 12; Dio. 13, 6, 18 Poth. Pret a Usage, c. 2, Sec. 1, n. 22; 2 Bulst. 306; Ersk. Pr. Laws of Scotl. B. 3, t. 1, Sec. 9; 1 Const. Rep. So. Car. 121 Bracton, Lib. 3, c. 2, Sec. I, p. 99. The loan is considered strictly personal, unless, from other circumstances, a different intention may be presumed. 1 Mod. Rep. 210; S. C. 3 Salk. 271.

3. - 2. The borrower is bound to take extraordinary care of the thing borrowed; to use it according to the intention of the lender, to restore it in proper time; to restore it in a proper condition. Of these, in their order.

Notes:§

PP 00 01

POLICY PERIOD AND TERRITORY

B. The policy territory is:

1. The United States of America, its territories or possessions;
2. Puerto Rico; or
3. Canada

This policy also applies to loss to, or accidents involving "your covered auto" while being transported between their ports

CA 00 01

7. Policy Period, Coverage Territory

Under this Coverage Form, we cover "accidents" and "losses" occurring:

- a. During the policy period shown in the Declarations; and
- b. Within the coverage territory.

The coverage territory is:

- (1) The United States of America;
- (2) The territories and possessions of the United States of America;
- (3) Puerto Rico;
- (4) Canada; and
- (5) Anywhere else in the world if a covered "auto" of the "private passenger type" is leased, hired, rented or borrowed without a driver for a period of 30 days or less,

provided that the "insured's" responsibility to pay damages is determined in a "suit" on the merits, in the United States of America, the territories and possessions of the United States of America, Puerto Rico or Canada, or in a settlement we agree to.

We also cover "loss" to, or "accidents" involving, a covered "auto" while being transported between any of these places.

III. Where is the auto covered?

Notes:

[illegible]

PP 00 01: PART A LIABILITY COVERAGE

INSURING AGREEMENT

B. "Insured" as used in this Part means:

1. You or any "family member" for the ownership, maintenance or use of any auto or "trailer".
2. Any person using "your covered auto".
3. For "your covered auto", any person or organization but only with respect to legal responsibility for acts or omissions of a person for whom coverage is afforded under this Part.
4. For any auto or "trailer", other than "your covered auto", any other person or organization but only with respect to legal responsibility for acts or omissions of you or any "family member" for whom coverage is afforded under this Part. This provision **(B.4.)** applies only if the person or organization does not own or hire the auto or "trailer".

BUSINESS AUTO COVERAGE CA 00 01

SECTION II – COVERED AUTOS LIABILITY COVERAGE

A. Coverage

1. Who Is An Insured

The following are "insureds":

- a. You for any covered "auto".
- b. Anyone else while using with your permission a covered "auto" you own, hire or borrow except:
 - (1) The owner or anyone else from whom you hire or borrow a covered "auto".
This exception does not apply if the covered "auto" is a "trailer" connected to a covered "auto" you own.
 - (2) Your "employee" if the covered "auto" is owned by that "employee" or a member of his or her household. ...
 - (5) A partner (if you are a partnership) or a member (if you are a limited liability company) for a covered "auto" owned by him or her or a member of his or her household.
- c. Anyone liable the conduct of an "insured" described above but only to the extent of that liability.

IV. Is the person or entity seeking coverage an “insured”?

A. Personal Auto Policy

1. “You” (includes resident spouse) or any “family member” for the use of any auto or “trailer”
2. Other persons and organizations responsible for the use of other than “your covered auto” (Vicarious Liability) other than the owner or one who hired the auto or “trailer”
3. Additional Insured – Lessor PP 03 19

Notes:

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

ADDITIONAL INSURED – LESSOR**SCHEDULE**

Insurance Company:		
Effective Date:	Expiration Date:	
Named Insured:		
Address:		
Additional Insured (Lessor):		
Description Of "Your Leased Auto":		
1.		
2.		
3.		
Coverages		
1. (a) Single Limit Liability	\$	Each Accident
Or		
(b) Bodily Injury Liability	\$	Each Person
	\$	Each Accident
Property Damage Liability	\$	Each Accident
2. No-fault Coverage	\$	Each Person
(Enter "X" to indicate Damage To Your Auto Coverage provided.)		
<input type="checkbox"/> Collision Loss	ACV Minus \$	Deductible
<input type="checkbox"/> Other Than Collision Loss	ACV Minus \$	Deductible
Information required to complete this Schedule, if not shown above, will be shown in the Declarations.		

Any liability and any required no-fault coverages afforded by this Policy for "your leased auto" also apply to the lessor named in this endorsement as an additional insured. This insurance is subject to the following additional provisions:

1. We will pay damages for which the lessor becomes legally responsible only if the damages arise out of acts or omissions of:
 - a. You or any "family member", or

- b. Any other person except the lessor or any employee or agent of the lessor using "your leased auto".

2. "Your leased auto" means:

- a. An auto shown in the Declarations or in this endorsement which you lease for a continuous period of at least six months under a written agreement which requires you to provide primary insurance for the lessor; and

- b. Any substitute or replacement auto furnished by the lessor named in this endorsement.
- 3. If we terminate this Policy, notice will also be mailed to the lessor.
- 4. The lessor is not responsible for payment of premiums.
- 5. The designation of the lessor as an additional insured shall not operate to increase our limits of liability.

SAMPLE

1. Who Is An Insured

The following are “insureds”

- a.** You for any covered “auto”.
- b.** Anyone else while using with your permission a covered “auto you own, hire or borrow except:
 - (1)** The owner or anyone else from whom you hire or borrow a covered “auto”.

This exception does not apply if the covered “auto” is a “trailer” connected to a Covered “auto” you own.
 - (2)** Your “employee” if the covered “auto” is owned by that “employee” or a member of his or her household.
 - (5)** A partner (if you are a partnership) or a member (if you are a limited liability Company) for a covered “auto” owned by him or her or a member of his or her household.
- c.** Anyone liable for the conduct of an “insured” described above but only to the extent of that liability.

Owners must be a You to be an insured for liability!

Throughout this policy the words “you” and “your” refer to the Named Insured shown in the Declarations.

You and Your = Named Insured

B. Business Auto Policy

1. You
2. Permissive user except
 - a. Owner or anyone else from whom you borrow a covered “auto”
 - b. Your “employee” if owned by employee or member of household
 - c. A partner or member if owned by him/her or member of household.
3. Others with vicarious liability for the conduct of an “insured”
4. Endorsements available to modify “insured”
 - a. Lessor – Additional Insured And Loss Payee
CA 20 01
 - 1) “Leased auto” will be considered owned – not hired or borrowed
 - 2) Lessor added as an “insured” for BI and PD resulting from acts or omissions by other than lessor
 - 3) Coverage until the expiration date shown or until lessor takes possession
 - 4) Includes Loss Payable Clause, Cancellation clause and definition for “leased auto”

POLICY NUMBER:

COMMERCIAL AUTO
CA 20 01 11 20

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

LESSOR – ADDITIONAL INSURED AND LOSS PAYEE

This endorsement modifies insurance provided under the following:

AUTO DEALERS COVERAGE FORM
BUSINESS AUTO COVERAGE 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.

This endorsement changes the Policy effective on the inception date of the Policy unless another date is indicated below.

Named Insured:

Endorsement Effective Date:

SCHEDULE

Insurance Company:

Policy Number:

Effective Date:

Expiration Date:

Named Insured:

Address:

Additional Insured (Lessor):

Address:

Designation Or Description Of "Leased Autos":

Coverages	Limit Of Insurance Or Deductible
Covered Autos Liability	\$ Each "Accident"
Comprehensive	\$ Deductible For Each Covered "Leased Auto"
Collision	\$ Deductible For Each Covered "Leased Auto"
Specified Causes Of Loss	\$ Deductible For Each Covered "Leased Auto"
Information required to complete this Schedule, if not shown above, will be shown in the Declarations.	

A. Coverage

- Any "leased auto" designated or described in the Schedule will be considered a covered "auto" you own and not a covered "auto" you hire or borrow.
- For a "leased auto" designated or described in the Schedule, the **Who Is An Insured** provision under **Covered Autos Liability Coverage** is changed to include as an "insured" the lessor named in the Schedule. However, the lessor is an "insured" only for "bodily injury" or "property damage" resulting from the acts or omissions by:
 - You;
 - Any of your "employees" or agents; or
 - Any person, except the lessor or any "employee" or agent of the lessor, operating a "leased auto" with the permission of any of the above.
- The coverages provided under this endorsement apply to any "leased auto" described in the Schedule until the expiration date shown in the Schedule, or when the lessor or his or her agent takes possession of the "leased auto", whichever occurs first.

B. Loss Payable Clause

- We will pay, as interest may appear, you and the lessor named in this endorsement for "loss" to a "leased auto".

- The insurance covers the interest of the lessor unless the "loss" results from fraudulent acts or omissions on your part.
- If we make any payment to the lessor, we will obtain his or her rights against any other party.

C. Cancellation

- If we cancel the Policy, we will mail notice to the lessor in accordance with the Cancellation Common Policy Condition.
- If you cancel the Policy, we will mail notice to the lessor.
- Cancellation ends this agreement.

- The lessor is not liable for payment of your premiums.

E. Additional Definition

As used in this endorsement:

"Leased auto" means an "auto" leased or rented to you, including any substitute, replacement or extra "auto" needed to meet seasonal or other needs, under a leasing or rental agreement that requires you to provide direct primary insurance for the lessor.

POLICY NUMBER:

COMMERCIAL AUTO
CA 99 47 10 13

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

EMPLOYEE AS LESSOR

This endorsement modifies insurance provided under the following:

AUTO DEALERS COVERAGE FORM
BUSINESS AUTO COVERAGE 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.

This endorsement changes the policy effective on the inception date of the policy unless another date is indicated below.

Named Insured:

Endorsement Effective Date:

SCHEDULE

Description Of "Auto":

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

A. Any "auto" described in the Schedule will be considered a covered "auto" you own and not a covered "auto" you hire, borrow or lease.

B. While any covered "auto" described in the Schedule is leased to you by one of your "employees", the **Who Is An Insured** provision under **Covered Autos Liability Coverage** is changed to include that "employee" as an "insured".

b. Employee As Lessor CA 99 47

- 1) Description of “auto” in schedule
- 2) Must be leased to **you** by **your** “employee”

“Employee” includes a “leased worker”. “Employee” does not include a “temporary worker”.

“Leased worker” mean a person leased to you by a labor leasing firm under an agreement between you and the labor leasing firm to perform duties related to the conduct of your business. “Leased worker” does not include “temporary worker”.

“Temporary worker” means a person who is furnished to you to substitute for a permanent “employee” on leave or to meet seasonal or short-term workload conditions

- 3) “Auto” will be considered owned
- 4) Adds **that** “employee” is an insured for the scheduled “auto” only
- 5) BEWARE of legitimacy of adding!
 - i. Is the vehicle owned by an “employee”?
 - ii. Is the vehicle owner the listed driver’s **only** driver?
 - iii. What are the employee’s duties?
 - iv. What percentage commercial versus personal use?
 - v. Is the employee closely related to any owner or executive officer?
 - vi. Does the employee have a PAP?
 - vii. Is the lease **“acceptable”**?

Acceptable Lease requirements

1. *Description of the vehicle*
2. *Description of the individual leasing the vehicle*
3. *Agreement by company to provide insurance protection*
4. *Responsibility for loan payments (if any)*
5. *Who is responsible for maintenance and upkeep*
6. *Who is responsible for paying taxes and tags*
7. *Non-permitted use of the vehicle (company policy)*
8. *The period of the lease*
9. *Whether financial consideration is required during the lease*
10. *Who is responsible for payment of traffic fines*
11. *Requirement that the employee have insurance on all other owned vehicles*
12. *Properly notarized signatures*

Warning! Do not provide any “sample” lease agreements. Advise the client to have an attorney write or review the lease.

What about Hired and Non-owned Auto Liability on the Businessowners Policy (BP 04 04 01 10)?

- ✓ Hired Auto Liability - must be used in the course of your business by **you or your employees**
 - Excludes autos owned by employee, partner, executive officer or member of their household
 - No consequential BI
 - No “auto business” unless yours
- ✓ Non-owned Auto Liability – must be used by **any person** in your business
- ✓ Excess over any primary insurance covering the auto
- ✓ Subject to aggregate

POLICY NUMBER:

BUSINESSOWNERS
BP 04 04 01 10

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

HIRED AUTO AND NON-OWNED AUTO LIABILITY

This endorsement modifies insurance provided under the following:

BUSINESSOWNERS COVERAGE FORM

SCHEDULE

Coverage	Additional Premium
A. Hired Auto Liability	\$
B. Non-owned Auto Liability	\$
Information required to complete this Schedule, if not shown above, will be shown in the Declarations.	

A. Insurance is provided only for those coverages for which a specific premium charge is shown in the Declarations or in the Schedule.

1. Hired Auto Liability

The insurance provided under Paragraph A.1. **Business Liability** in **Section II – Liability** applies to "bodily injury" or "property damage" arising out of the maintenance or use of a "hired auto" by you or your "employees" in the course of your business.

2. Non-owned Auto Liability

The insurance provided under Paragraph A.1. **Business Liability** in **Section II – Liability** applies to "bodily injury" or "property damage" arising out of the use of any "non-owned auto" in your business by any person.

B. For insurance provided by this endorsement only:

1. The exclusions under Paragraph B.1. Applicable To Business Liability Coverage in Section II – Liability, other than Exclusions a., b., d., f. and i. and the Nuclear Energy Liability Exclusion, are deleted and replaced by the following:

a. "Bodily injury" to:

- (1) An "employee" of the insured arising out of and in the course of:
 - (a) Employment by the insured; or
 - (b) Performing duties related to the conduct of the insured's business; or

(2) The spouse, child, parent, brother or sister of that "employee" as a consequence of Paragraph (1) above.

This exclusion applies:

- (1) Whether the insured may be liable as an employer or in any other capacity; and
- (2) To any obligation to share damages with or repay someone else who must pay damages because of injury.

This exclusion does not apply to:

- (1) Liability assumed by the insured under an "insured contract"; or
- (2) "Bodily injury" arising out of and in the course of domestic employment by the insured unless benefits for such injury are in whole or in part either payable or required to be provided under any workers' compensation law.

b. "Property damage" to:

- (1) Property owned or being transported by, or rented or loaned to the insured; or
- (2) Property in the care, custody or control of the insured.

BP 04 04 01 10

© Insurance Services Office, Inc., 2009

Page 1 of 2 □

2. Paragraph C. Who Is An Insured in Section II – Liability is replaced by the following:

1. Each of the following is an insured under this endorsement to the extent set forth below:

- a. You;
- b. Any other person using a "hired auto" with your permission;
- c. For a "non-owned auto":
 - (1) Any partner or "executive officer" of yours; or
 - (2) Any "employee" of yours; but only while such "non-owned auto" is being used in your business; and
- d. Any other person or organization, but only for their liability because of acts or omissions of an insured under a., b. or c. above.

2. None of the following is an insured:

- a. Any person engaged in the business of his or her employer for "bodily injury" to any co-"employee" of such person injured in the course of employment, or to the spouse, child, parent, brother or sister of that co-"employee" as a consequence of such "bodily injury", or for any obligation to share damages with or repay someone else who must pay damages because of the injury;
- b. Any partner or "executive officer" for any "auto" owned by such partner or officer or a member of his or her household;

c. Any person while employed in or otherwise engaged in duties in connection with an "auto business", other than an "auto business" you operate;

d. The owner or lessee (of whom you are a sublessee) of a "hired auto" or the owner of a "non-owned auto" or any agent or "employee" of any such owner or lessee; or

e. Any person or organization for the conduct of any current or past partnership or joint venture that is not shown as a Named Insured in the Declarations.

C. For the purposes of this endorsement only, Paragraph H. Other Insurance in Section III – Common Policy Conditions is replaced by the following:

This insurance is excess over any primary insurance covering the "hired auto" or "non-owned auto".

D. The following additional definitions apply:

- 1. "Auto business" means the business or occupation of selling, repairing, servicing, storing or parking "autos".
- 2. "Hired auto" means any "auto" you lease, hire, rent or borrow. This does not include any "auto" you lease, hire, rent or borrow from any of your "employees", your partners or your "executive officers" or members of their households.
- 3. "Non-owned auto" means any "auto" you do not own, lease, hire, rent or borrow which is used in connection with your business. This includes "autos" owned by your "employees", your partners or your "executive officers", or members of their households, but only while used in your business or your personal affairs.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

EMPLOYEES AS INSURED

This endorsement modifies insurance provided under the following:

BUSINESS AUTO COVERAGE 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.

The following is added to the **Section II – Covered Autos Liability Coverage, Paragraph A.1. Who Is An Insured** provision:

Any "employee" of yours is an "insured" while using a covered "auto" you don't own, hire or borrow in your business or your personal affairs.

c. Employees As Insureds CA 99 33

- 1) Adds any “employee” of yours as an insured (blanket)

Any “employee of yours is an “insured” while using a covered “auto” you don’t own, hire or borrow in your business or your personal affairs.

- 2) Must have symbol for non-owned autos
- 3) Auto must be used in your business or personal affairs
- 4) Extends liability coverage on an **excess** basis

Notes:

d. Employee Hired Autos CA 20 54

- 1) Changes in covered autos liability coverage

An “employee” of yours is an “insured” while operating an “auto” under a contract or agreement in an “employee’s” name, with your permission, while performing duties related to the conduct of your business.

- 2) Changes in general conditions

For Hired Auto Physical Damage Coverage, the following are deemed to be covered “autos: you own:

1. Any covered “auto” you lease, hire, rent or borrow; and
2. Any covered “auto” hired or rented by your “employee” under a contract in an “employee’s” name, with your permission, while performing duties related to the conduct of your business.

- 3) Must have symbol for Hired Auto
- 4) Employee’s PAP will be primary for liability BAP is excess
- 5) BAP is primary for Physical Damage

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

EMPLOYEE HIRED AUTOS

This endorsement modifies insurance provided under the following:

AUTO DEALERS COVERAGE FORM
BUSINESS AUTO COVERAGE 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. Changes In Covered Autos Liability Coverage

The following is added to the **Who Is An Insured** provision:

An "employee" of yours is an "insured" while operating an "auto" hired or rented under a contract or agreement in an "employee's" name, with your permission, while performing duties related to the conduct of your business.

For Hired Auto Physical Damage Coverage any covered "auto" hired or rented by your "employee" under a contract in an "employee's" name, with your permission, while performing duties related to the conduct of your business is deemed to be a covered "auto" you own.

B. Changes In General Conditions

Paragraph 5.b. of the **Other Insurance** Condition in the Business Auto and Auto Dealers Coverage Forms and Paragraph 5.f. of the **Other Insurance - Primary And Excess Insurance Provisions** Condition in the Motor Carrier Coverage Form are amended by the addition of the following:

[illegible]

e. Volunteer Hired Autos CA 04 39

- 1) Adds “volunteer” of NI as an “insured” while operating an “auto” hired or rented under a contract or agreement in their name with the NI’s permission
- 2) While performing duties related to the conduct of the NI’s business
- 3) Exclusion for BI to “volunteer”, fellow “volunteer” or consequential BI

A “volunteer” of yours is an “insured” while operating an “auto” hired or rented under a contract or agreement in a “volunteer’s” name, with your permission, while performing duties related to the conduct of your business.

- 4) Changes to General Conditions
- 5) Changes in Definitions of “insured contract” and adds definition of “volunteer”
- 6) Must have symbol for Hired Auto
- 7) BAP is primary for Hired Auto Physical Damage

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

VOLUNTEER HIRED AUTOS

This endorsement modifies insurance provided under the following:

AUTO DEALERS COVERAGE FORM
BUSINESS AUTO COVERAGE 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. Changes In Covered Autos Liability Coverage

1. The following is added to the **Who Is An Insured** provision:

A "volunteer" of yours is an "insured" while operating an "auto" hired or rented under a contract or agreement in a "volunteer's" name, with your permission, while performing duties related to the conduct of your business.

2. The following exclusion is added:

This insurance does not apply to:

Volunteer Injury

"Bodily injury" to:

- a. Any "volunteer" or any fellow "volunteer" of the "insured" if sustained while such "volunteer" is performing duties related to the conduct of your business.
- b. The spouse, child, parent, brother or sister of that "volunteer" as a consequence of Paragraph 2.a. above.

B. Changes In General Conditions

Paragraph 5.b. of the **Other Insurance** Condition in the Business Auto and Auto Dealers Coverage Forms and Paragraph 5.f. of the **Other Insurance – Primary And Excess Insurance Provisions** Condition in the Motor Carrier Coverage Form are amended by the addition of the following:

For Hired Auto Physical Damage Coverage, any covered "auto" hired or rented by your "volunteer" under a contract in a "volunteer's" name, with your permission, while performing duties related to the conduct of your business is deemed to be a covered "auto" you own.

C. Changes In Definitions

For the purposes of this endorsement:

1. The "insured contract" definition is amended as follows:

- a. Paragraph 6. is replaced by the following:

That part of any contract or agreement entered into, as part of your business, pertaining to the rental or lease, by you or any of your "employees" or "volunteers", of any "auto". However, such contract or agreement shall not be considered an "insured contract" to the extent that it obligates you or any of your "employees" or "volunteers" to pay for "property damage" to any "auto" rented or leased by you or any of your "employees" or "volunteers".

- b. Exception b. is replaced by the following:

An "insured contract" does not include that part of any contract or agreement that pertains to the loan, lease or rental of an "auto" to you or any of your "employees" or "volunteers", if the "auto" is loaned, leased or rented with a driver.

2. "Volunteer" means a person who is not your "employee" and who donates his or her work and acts at the direction of and within the scope of duties determined by you, and is not paid a fee, salary or other compensation by you or anyone else for their work performed for you.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

INDIVIDUAL NAMED INSURED

This endorsement modifies insurance provided under the following:

BUSINESS AUTO COVERAGE 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.

If you are an individual, the policy is changed as follows:

A. Changes In Covered Autos Liability Coverage

1. The Fellow Employee Exclusion does not apply to "bodily injury" to your or any "family member's" fellow "employees".

2. Personal Auto Coverage

If any "auto" you own of the "private passenger type" is a covered "auto" under **Covered Autos Liability Coverage**:

- a. The following is added to the **Who Is An Insured** provision:

"Family members" are "insureds" for any covered "auto" you own of the "private passenger type" and any other "auto" described in Paragraph **2.b.** of this endorsement.

- b. Any "auto" you don't own is a covered "auto" while being used by you or by any "family member" except:

- (1) Any "auto" owned by any "family members".
- (2) Any "auto" furnished or available for your or any "family member's" regular use.
- (3) Any "auto" used by you or by any of your "family members" while working in a business of selling, servicing, repairing or parking "autos".
- (4) Any "auto", other than an "auto" of the "private passenger type", used by you or any of your "family members" while working in any other business or occupation.

- c. The Pollution Exclusion and, if forming a part of the policy, the Nuclear Energy Liability Exclusion (Broad Form), do not apply to any covered "auto" of the "private passenger type".

- d. The following exclusion is added and applies only to "private passenger type" covered "autos".

This insurance does not apply to:

"Bodily injury" or "property damage" for which an "insured" under the policy is also an "insured" under a nuclear energy liability policy or would be an "insured" but for its termination upon its exhaustion of its limit of liability. A nuclear energy liability policy is a policy issued by the Nuclear Energy Liability Insurance Association, Mutual Atomic Energy Liability Underwriters or any of their successors. This exclusion does not apply to "autos" registered or principally garaged in New York.

B. Changes In Physical Damage Coverage

Personal Auto Coverage

If any "auto" you own of the "private passenger type" is a covered "auto" under Physical Damage Coverage, a "non-owned auto" will also be considered a covered "auto". However, the most we will pay for "loss" to a "non-owned auto" which is a "trailer" is \$500.

C. Additional Definitions

As used in this endorsement:

1. "Family member" means a person related to you by blood, marriage or adoption who is a resident of your household, including a ward or foster child.

f. Individual Named Insured CA 99 17

- 1) Fellow employee exclusion does not apply to you or “family members”

“Family member” means a person related to you by blood, marriage or adoption who is a resident of your household, including a ward or foster child.

- 2) Named insured must be an individual listed on the declarations
- 3) NI owns a PPA that is insured under the BAP
- 4) Named insured and all “family members” are covered
- 5) “You” and “your” include your spouse if a resident of the same household (except for notice of cancellation)
- 6) Provides coverage for rented or borrowed autos not regularly furnished or available for regular use by insured and family members are covered autos. No “auto business” use or business use of non-private passenger type “autos”

“Private passenger type” includes any covered auto you don’t own of the pick-up or van type not used for any business purposes other than farming or ranching.

“Non-owned auto” means any “private passenger type” “auto”, pick-up, van or “trailer” not owned by or furnished or available for the regular use of you or any “family member”, while in the custody of or being operated by you or any “family member”.

- 7) Provides coverage for liability and physical damage (if a covered “auto” on BAP is a PPA). Maximum for non-owned trailer is \$500
- 8) No additional premium

2. The words "you" and "your" include your spouse if a resident of the same household except for notice of cancellation.
3. When the phrase "private passenger type" appears in quotation marks it includes any covered "auto" you own of the pickup or van type not used for business purposes, other than farming or ranching.
4. "Non-owned auto" means any "private passenger type" "auto", pickup, van or "trailer" not owned by or furnished or available for the regular use of you or any "family member", while it is in the custody of or being operated by you or any "family member".

SAMPLE

[illegible]

DRIVE OTHER CAR (DOC) - BROADENED COVERAGE FOR NAMED INDIVIDUALS

CA 99 10

1. List an individual
 - ⇒ Not named on declarations
 - ⇒ Who does not personally own any autos
 - ⇒ Who does not have a Personal Auto Policy
2. Individuals need to be scheduled (spouse is covered if resident of the same household).
3. Non-owned rented or borrowed autos not owned by any member of household are covered. No "auto business" use.
4. Can provide coverage for Liability, Medical Payments, Uninsured Motorists, Underinsured Motorists, and Physical Damage.
5. Additional Premium.

- g. Drive Other Car Coverage – Broadened Coverage For Named Individuals CA 99 10
 - 1) List an individual (or individuals)
 - i. Who does not personally own any vehicles
 - ii. Who does not have a Personal Auto Policy
 - 2) All individuals must be scheduled (includes resident spouse only – does not include family members)
 - 3) Non-owned, rented or borrowed autos are covered
 - i. Not owned by any member of household
 - ii. Auto business use excluded
 - 4) Can provide coverage for Liability, Medical Payments, Comprehensive, Collision, Uninsured Motorists and Underinsured Motorists (as scheduled)
 - 5) Limits/deductibles selected in schedule
 - 6) Additional premium

Notes:

POLICY NUMBER:

COMMERCIAL AUTO
CA 99 10 10 13

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

DRIVE OTHER CAR COVERAGE – BROADENED COVERAGE FOR NAMED INDIVIDUALS

This endorsement modifies insurance provided under the following:

AUTO DEALERS COVERAGE FORM
BUSINESS AUTO COVERAGE 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.

This endorsement changes the policy effective on the inception date of the policy unless another date is indicated below.

Named Insured:

Endorsement Effective Date:

SCHEDULE

Name Of Individual:			
Covered Autos Liability Coverage	Limit:	\$	Premium: \$
Auto Medical Payments	Limit:	\$	Premium: \$
Comprehensive	Deductible:	\$	Premium: \$
Collision	Deductible:	\$	Premium: \$
Uninsured Motorists	Limit:	\$	Premium: \$
Underinsured Motorists	Limit:	\$	Premium: \$
Information required to complete this Schedule, if not shown above, will be shown in the Declarations.			

Note: When Uninsured Motorists Coverage is provided at limits higher than the basic limits required by a financial responsibility law, Underinsured Motorists Coverage is included, unless otherwise noted. If Underinsured Motorists Coverage is provided as a separate coverage, make appropriate entry in the Schedule above.

A. This endorsement changes only those coverages where a premium is shown in the Schedule.

B. Changes In Covered Autos Liability Coverage

1. Any "auto" you don't own, hire or borrow is a covered "auto" while being used by any individual named in the Schedule or by his or her spouse while a resident of the same household except:

- a. Any "auto" owned by that individual or by any member of his or her household.
- b. Any "auto" used by that individual or his or her spouse while working in a business of selling, servicing, repairing or parking "autos".

2. The following is added to **Who Is An Insured:**

Any individual named in the Schedule and his or her spouse, while a resident of the same household, are "insureds" while using any covered "auto" described in Paragraph B.1. of this endorsement.

C. Changes In Auto Medical Payments And Uninsured And Underinsured Motorists Coverages

The following is added to **Who Is An Insured:**

Any individual named in the Schedule and his or her "family members" are "insureds" while "occupying" or while a pedestrian when being struck by any "auto" you don't own except:

Any "auto" owned by that individual or by any "family member".

D. Changes In Physical Damage Coverage

Any private passenger type "auto" you don't own, hire or borrow is a covered "auto" while in the care, custody or control of any individual named in the Schedule or his or her spouse while a resident of the same household except:

1. Any "auto" owned by that individual or by any member of his or her household.
2. Any "auto" used by that individual or his or her spouse while working in a business of selling, servicing, repairing or parking "autos".

E. Additional Definition

As used in this endorsement:

"Family member" means a person related to the individual named in the Schedule by blood, marriage or adoption who is a resident of the individual's household, including a ward or foster child.

POLICY NUMBER:

COMMERCIAL AUTO
CA 99 16 10 13

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

HIRED AUTOS SPECIFIED AS COVERED AUTOS YOU OWN

This endorsement modifies insurance provided under the following:

AUTO DEALERS COVERAGE FORM
BUSINESS AUTO COVERAGE 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.

This endorsement changes the policy effective on the inception date of the policy unless another date is indicated below.

Named Insured:

Endorsement Effective Date:

SCHEDULE

Description Of Auto:

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

A. Any "auto" described in the Schedule will be considered a covered "auto" you own and not a covered "auto" you hire, borrow or lease.

B. Changes In Covered Autos Liability Coverage

The following is added to the **Who Is An Insured** provision:

While any covered "auto" described in the Schedule is rented or leased to you and is being used by or for you, its owner or anyone else from whom you rent or lease it is an "insured" but only for that covered "auto".

CA 99 16 10 13

© Insurance Services Office, Inc., 2011

Page 1 of 1

- h. Hired Autos Specified As Autos You Own CA 99 16
 - 1) Any “auto” described in the Schedule is considered owned
 - 2) Owner of the auto is an insured while being used by or for you (includes sole negligence) for scheduled auto described
 - 3) Primary rating and coverage

Review proprietary endorsements issued by carriers!



PP 00 01 09 18 PERSONAL AUTO POLICY

**PART A – LIABILITY COVERAGE
INSURING AGREEMENT**

- A.** We will pay damages for “bodily injury” or “property damage” for which any “insured” becomes legally responsible because of an auto accident. ...

**PART D – COVERAGE FOR DAMAGE TO YOUR AUTO
INSURING AGREEMENT**

- C.** “Non-owned auto” means”

- 1.** Any private passenger auto, pick-up, van or “trailer” not owned by or furnished or available for the regular use of you or any “family member” while in the custody of or being operated by you or any “family member”, or
- 2.** Any auto or “trailer” you do not own while used as a temporary substitute for “your covered auto” which is out of normal use because of its:
 - a.** Breakdown
 - b.** Repair
 - c.** Servicing
 - d.** Loss or
 - e.** Destruction

V. Is the non-owned auto a covered “auto”?

A. Personal Auto Policy

1. Exclusions for liability and physical damage
 - a. While being maintained or used in any auto business including road testing and delivery
 - b. Maintaining or using any vehicle while that “insured” is employed or otherwise engaged in any “business”
 - 1) Exception for farming and ranching
 - 2) Exception for PPA, pickup or van or “trailer”
 - c. While being used as a public or livery conveyance including while being logged into a “transportation network platform”
2. Liability exclusions
 - a. Any vehicle with fewer than four wheels or
 - b. Designed mainly for use off public roads
 - 1) Exception for medical emergency
 - 2) Exception for “trailer”
 - 3) Exception for non-owned golf cart
 - c. Any vehicle regularly furnished or available to you
 - 1) Extended Non-Owned Coverage For Named Individual PP 03 06
 - 2) Option to include “family members”
 - 3) Named Non-Owner Coverage PP 03 22
 - d. Any vehicle regularly furnished or available to any “family member” (exception for you)
3. Physical Damage exclusions
 - a. Loss to ‘non-owned auto’
 - 1) If used without permission
 - 2) Being maintained or used by any person in the auto business

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

**EXTENDED NON-OWNED COVERAGE – VEHICLES
FURNISHED OR AVAILABLE FOR REGULAR USE****SCHEDULE**

Unless otherwise indicated below or in the Declarations, Extended Non-owned Coverage is applicable only to the individual named in the Schedule or in the Declarations.

Name Of Individual:

If indicated below or in the Declarations, Extended Non-owned Coverage applies to:

☐ Named Individual and "Family Members" (including Named Individual's Spouse)

Coverage is provided where a premium is shown for the coverage.

Extended Non-owned Coverage	Premium
Liability	\$
Medical Payments	\$
Total Premium	\$

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

With respect to the individual(s) and coverages indicated in the Schedule or in the Declarations, the provisions of the Policy apply unless modified by this endorsement.

I. Extended Non-owned Coverage

The Extended Non-owned Coverage provided by this endorsement does not afford coverage under Part A and Part B of the Policy for any accident involving:

- A. A vehicle owned by an individual named in the Schedule or in the Declarations;
- B. A vehicle owned by a "family member" or
- C. A temporary substitute vehicle for such owned vehicle described in A. or B. above.

II. Part A – Liability Coverage

Part A is amended as follows with respect to the individual(s) shown as applicable in the Schedule or in the Declarations:

- A. Exclusion B.2.b. does not apply to the coverages provided by this endorsement.

- B. We will provide Liability Coverage for any vehicle, other than "your covered auto", which is furnished or available for the regular use of the named individual.

III. Part B – Medical Payments Coverage

Part B is amended as follows, if a premium is shown in the Schedule or in the Declarations for Medical Payments Coverage, with respect to the individual(s) shown as applicable in the Schedule or in the Declarations:

- A. Exclusion 5.b. does not apply to the coverages provided by this endorsement.
- B. We will provide Medical Payments Coverage for "bodily injury" sustained while "occupying", or when struck by, any vehicle (other than "your covered auto") which is furnished or available for the regular use of the named individual.

POLICY NUMBER:

PERSONAL AUTO
PP 03 22 09 18

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

NAMED NON-OWNER COVERAGE**SCHEDULE**

Unless otherwise indicated below, or in the Declarations, Named Non-Owner Coverage applies only to the individual named in the Schedule or in the Declarations.

Name Of Individual:

If indicated below, or in the Declarations, Named Non-Owner Coverage applies to:

☐ Named Individual and "Family Members" (including Named Individual's Spouse)

Coverage For Vehicles Furnished Or Available For Regular Use

☐ If indicated to the left, or in the Declarations, the exclusions for vehicles furnished or available for regular use under **Part A – Liability Coverage** and **Part B – Medical Payments Coverage**, and the exception of vehicles furnished or available for regular use in the definition of "non-owned auto" under **Part D – Coverage For Damage To Your Auto**, do not apply.

Coverage is provided where a premium and a limit of liability are shown for the coverage.

Coverages	Limit Of Liability		Premium
Liability			
Bodily Injury	\$	Each Person	\$
	\$	Each Accident	
Property Damage	\$	Each Accident	\$
Medical Payments	\$	Each Person	\$
Uninsured Motorists			
Bodily Injury	\$	Each Person	\$
	\$	Each Accident	
Property Damage	\$	Each Accident	\$
Underinsured Motorists			
Bodily Injury	\$	Each Person	\$
	\$	Each Accident	\$
Property Damage	\$	Each Accident	\$
Collision	\$	Less \$ Deductible	\$
Other Than Collision	\$	Less \$ Deductible	\$
	Total Premium		\$

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

NOTICE

For the Collision and Other Than Collision Coverages, the amount shown in the Schedule or in the Declarations is not necessarily the amount you will receive at the time of loss or damage. PLEASE refer to the Limit Of Liability Provision below.

With respect to the individuals and coverages listed in the Schedule or in the Declarations, the provisions of the Policy apply unless modified by the endorsement.

I. Definitions

- A.** The definitions of "you" and "your" are replaced by the following:

Throughout this Policy, "you" and "your" refer to the individual named in the Schedule or Declarations.

- B.** The definition of "family member" is replaced by the following:

"Family member" means a person related to you by blood, marriage or adoption, including a ward or foster child, if:

1. The person is a resident of your household; and
2. The Schedule or Declarations indicates that coverage is provided for the named individual and "family members".

- C.** The definition of "your covered auto" is replaced by the following:

"Your covered auto" means a "newly acquired auto".

- D.** The definition of "newly acquired auto" is replaced by the following:

"Newly acquired auto" means any of the following types of vehicles on the date you become the owner:

- a. A private passenger auto; or
- b. A pickup or van that:
 - (1) Has a Gross Vehicle Weight Rating of 10,000 lbs. or less; and
 - (2) Is not used for the delivery or transportation of goods and materials unless such use is:
 - (a) Incidental to your "business" of maintaining or repairing furnishings or equipment; or
 - (b) For farming or ranching.

This provision applies only:

- a. If you acquire the vehicle during the policy period; and
- b. For 14 days after you become the owner.

This insurance does not apply if other insurance applies with respect to newly acquired vehicles.

II. Part A – Liability Coverage

- A.** If the Schedule or Declarations indicates that Named Non-owner Coverage applies only to the named individual, the definition of "insured" is amended by deleting reference to "family member".

- B.** The **Exclusions** section is amended as follows:

1. Exclusion **B.2.** is replaced by the following:

We do not provide Liability Coverage for the ownership, maintenance or use of any vehicle, other than "your covered auto", which is owned by you.

2. The following exclusion is added:

We do not provide Liability Coverage for the ownership, maintenance or use of any vehicle, other than "your covered auto", which is furnished or available for your regular use.

However, this exclusion (2.) does not apply if the Schedule or Declarations indicates that the Vehicles Furnished Or Available For Regular Use Exclusion does not apply.

- C.** Paragraph **A.** of the **Limit Of Liability** Provision is replaced by the following:

- A.** The Limit Of Liability shown in the Schedule or in the Declarations for each person for Bodily Injury Liability is our maximum limit of liability for all damages, including damages for care, loss of services or death, arising out of "bodily injury" sustained by any one person in any one auto accident. Subject to this limit for each person, the Limit Of Liability shown in the Schedule or in the Declarations for each accident for Bodily Injury Liability is our maximum limit of liability for all damages for "bodily injury" resulting from any one auto accident.

The Limit Of Liability shown in the Schedule or in the Declarations for each accident for Property Damage Liability is our maximum limit of liability for all "property damage" resulting from any one auto accident.

This is the most we will pay regardless of the number of:

1. "Insureds";
2. Claims made;

3. Vehicles or premiums shown in the Schedule or in the Declarations; or

4. Vehicles involved in the auto accident.

D. The **Out Of State Coverage** Provision is replaced by the following:

Out Of State Coverage

If an auto accident to which this Policy applies occurs in any state or province other than where you reside, we will interpret your policy for that accident as follows:

If the state or province has:

1. A financial responsibility or similar law specifying limits of liability for "bodily injury" or "property damage" higher than the limit shown in the Schedule or in the Declarations, your policy will provide the higher specified limit.

2. A compulsory insurance or similar law requiring a nonresident to maintain insurance whenever the nonresident uses a vehicle in that state or province, your policy will provide at least the required minimum amounts and types of coverage.

No one will be entitled to duplicate payments for the same elements of loss.

III. Part B – Medical Payments Coverage

A. If the Schedule or Declarations indicates that Named Non-owner Coverage applies only to the named individual, the definition of "insured" is amended by deleting reference to "family member".

B. The **Exclusions** section is amended as follows:

1. Exclusion 5. is replaced by the following:

We do not provide Medical Payments Coverage for any "insured" for "bodily injury" sustained while "occupying", or when struck by, any vehicle (other than "your covered auto") which is owned by you.

2. The following exclusion is added:

We do not provide Medical Payments Coverage for any "insured" for "bodily injury" sustained while "occupying", or when struck by, any vehicle, other than "your covered auto", which is furnished or available for your regular use.

However, this exclusion (2.) does not apply if the Schedule or Declarations indicates that the Vehicles Furnished Or Available For Regular Use Exclusion does not apply.

C. Paragraph A. of the **Limit Of Liability** Provision is replaced by the following:

A. The Limit Of Liability shown in the Schedule or in the Declarations for this coverage is our maximum limit of liability for each person injured in any one accident. This is the most we will pay regardless of the number of:

1. "Insureds";

2. Claims made;

3. Vehicles or premiums shown in the Schedule or in the Declarations; or

4. Vehicles involved in the accident.

IV. Part C – Uninsured Motorists Coverage

A. If the Schedule or Declarations indicates that Named Non-owner Coverage applies only to the named individual, the definition of "insured" is amended by deleting reference to "family member".

B. The definition of "uninsured motor vehicle" is amended as follows:

1. Any reference to the state in which "your covered auto" is principally garaged is amended to read the state in which you reside.

2. If the Schedule or Declarations indicates that Named Non-owner Coverage applies to the Named Individual, the hit-and-run vehicle section is amended by deleting reference to "family member".

C. Limit Of Liability

1. Paragraph **A.** of the **Limit Of Liability** Provision is replaced by the following:

A. The Limit Of Liability shown in the Schedule or in the Declarations for each person for Uninsured Motorists Coverage is our maximum limit of liability for all damages, including damages for care, loss of services or death, arising out of "bodily injury" sustained by any one person in any one accident. Subject to this limit for each person, the Limit Of Liability shown in the Schedule or in the Declarations for each accident for Uninsured Motorists Coverage is our maximum limit of liability for all damages for "bodily injury" resulting from any one accident.

This is the most we will pay regardless of the number of:

1. "Insureds";
2. Claims made;
3. Vehicles or premiums shown in the Schedule or in the Declarations; or
4. Vehicles involved in the accident.

2. If the Schedule or Declarations also indicates an each accident limit of liability for Property Damage Uninsured Motorists Coverage, the following is added to Paragraph **A.:**

The Limit Of Liability shown in the Schedule or in the Declarations for each accident for Property Damage Uninsured Motorists Coverage is our maximum limit of liability for all damages to all property resulting from any one accident.

This is the most we will pay regardless of the number of

1. "Insureds";
2. Claims made;
3. Vehicles or premiums shown in the Schedule or in the Declarations; or
4. Vehicles involved in the accident.

V. Part D – Coverage For Damage To Your Auto

- A.** If the Schedule or Declarations indicates that Named Non-owner Coverage applies only to the named individual, the definition of "non-owned auto" is amended by deleting reference to "family member".

- B.** The **Insuring Agreement** is replaced by the following:

Insuring Agreement

A. We will pay for direct and accidental loss to any "non-owned auto", including its equipment, minus any applicable deductible shown in the Schedule or in the Declarations. We will pay for loss to a "non-owned auto" caused by:

1. Other than "collision" only if the Schedule or Declarations indicates that Other Than Collision Coverage is provided.
2. "Collision" only if the Schedule or Declarations indicates that Collision Coverage is provided.

B. "Collision" means the upset of a "non-owned auto" or its impact with another vehicle or object.

Loss caused by the following is considered other than "collision":

1. Missiles or falling objects;
2. Fire;
3. Theft or larceny;
4. Explosion or earthquake;
5. Windstorm;
6. Hail, water or flood;
7. Malicious mischief or vandalism;
8. Riot or civil commotion;
9. Contact with bird or animal; or
10. Breakage of glass.

If breakage of glass is caused by a "collision", you may elect to have it considered a loss caused by "collision".

C. "Non-owned auto" means any private passenger auto, pickup, van or "trailer" not owned by or furnished or available for the regular use of you or any "family member" while in the custody of or being operated by you or any "family member".

However, if the Schedule or Declarations indicates that Coverage For Vehicles Furnished Or Available For Regular Use applies, then "non-owned auto" means any private passenger auto, pickup, van or "trailer" not owned by you or any "family member" while in the custody of or being operated by you or any "family member".

C. The Transportation Expenses Provision is replaced by the following:

Transportation Expenses

1. In addition, we will pay, without application of a deductible, up to a maximum of \$900 for expenses for which you become legally responsible in the event of loss to a "non-owned auto". However, the most we will pay for any expenses for loss of use is \$30 per day.
2. Subject to the provisions of Paragraph 1., if the loss is caused by:
 - a. A total theft of a "non-owned auto", we will pay only expenses incurred during the period:
 - (1) Beginning 48 hours after the theft, and
 - (2) Ending when the "non-owned auto" is returned to use or we pay for its loss.
 - b. Other than theft of a "non-owned auto", we will pay only expenses beginning when the auto is withdrawn from use for more than 24 hours.

Our payment will be limited to that period of time reasonably required to repair or replace the "non-owned auto".

D. The Exclusions section is amended as follows:

Exclusion 7. does not apply.

E. Paragraph A. of the Limit Of Liability Provision is replaced by the following:

- A. Our limit of liability for loss will be the least of the:
 1. Amount shown in the Schedule or in the Declarations;
 2. Actual cash value of the stolen or damaged property; or
 3. Amount necessary to repair or replace the property with other property of like kind and quality.

However, the most we will pay for loss to:

1. Any "non-owned auto" which is a trailer is \$1,500.
2. Electronic equipment that reproduces, receives or transmits audio, visual or data signals, which is permanently installed in the auto in locations not used by the auto manufacturer for installation of such equipment, is \$1,000.

F. The Other Sources Of Recovery Provision is replaced by the following:

Any insurance we provide with respect to a "non-owned auto" shall be excess over any other collectible source of recovery including, but not limited to.

1. Any coverage provided by the owner of the "non-owned auto".
2. Any other applicable physical damage insurance.
3. Any other source of recovery applicable to the loss.

VI. Underinsured Motorists Coverage

If the Schedule or Declarations indicates that Underinsured Motorists Coverage applies, the provisions of the Underinsured Motorists Coverage endorsement made a part of this Policy apply except as follows:

A. If the Schedule or Declarations indicates that Named Non-owner Coverage applies only to the named individual, the definition of "insured" is amended by deleting reference to "family member"

B. The definition of "underinsured motor vehicle" is amended as follows:

Any reference to the state in which "your covered auto" is principally garaged is amended to read the state in which you reside.

C. If the Schedule or Declarations also indicates an each accident limit of liability for Property Damage Underinsured Motorists Coverage, the following is added to Paragraph A.:

The Limit Of Liability shown in the Schedule or in the Declarations for each accident for Property Damage Underinsured Motorists Coverage is our maximum limit of liability for all damages to all property resulting from any one accident.

This is the most we will pay regardless of the number of:

1. "Insureds";
2. Claims made;
3. Vehicles or premiums shown in the Schedule or in the Declarations; or
4. Vehicles involved in the accident.

CA 00 01 Business Auto Coverage Form

Symbol	Description Of Covered Auto Designation Symbols	
1	Any "Auto"	
7	Specifically Described "Autos"	Only those "autos" described in Item Three of the Declarations for which a premium charge is shown (and for Covered "Autos" Liability Coverage any "trailers" you don't own while attached to any power unit describe in Item Three).
8	Hired "Autos" Only	Only those "autos" you lease, hire rent or borrow. This does not include any "auto" you lease, hire, rent or borrow from any of your "employees", partners (if you are a partnership) members (if you are a limited liability company) or members of their households.
9	Non-owned "Autos" Only	Only those "autos" you do not own, lease, hire, rent or borrow that are used in connection with your business. This includes any "auto" you lease, hire, rent or borrow from any of your "employees", partners (if you are a partnership), members (if you are a limited liability company) or members of their households but only while used in your business or your personal affairs.

Beware of using Symbol 7 for non-owned!

Item Three of Declarations is Schedule of Covered Autos You Own

An endorsement changing from hired or borrowed to owned should be added to the policy!

CA 20 01 Lessor - Additional Insured and Loss Payee

CA 99 16 Hired Autos Specified As Autos You Own

CA 99 47 Employee As Lessor

B. BAP SECTION I – COVERED AUTOS

1. Symbol 1 – Any “auto”
 - a. Can only be used for liability
 - b. Includes hired and non-owned
2. Symbol 7 – Specifically described “autos”
 - a. Must be scheduled in Item Three of the Declarations
 - b. Includes liability for non-owned “trailers” while attached to any power unit scheduled
3. Symbol 8 – Hired “autos” only
 - a. **You** lease, hire, rent or borrow
 - b. Does not include any “autos” owned by **your**
 - 1) “Employees”
 - 2) Partners if you are a partnership
 - 3) Members if you are a LC
 - 4) Or members of their households
4. Symbol 9 – Non-owned “autos” only
 - a. **You** do not own, lease, hire, rent or borrow
 - b. Used in connection with **your** business
 - c. Includes “autos” owned by **your**
 - 1) “Employees”
 - 2) Partners if you are a partnership
 - 3) Members if you are a LLC
 - 4) Or members of their households
5. Symbol 10 – Added by endorsement Covered Auto Designation Symbol CA 99 54
 - a. Symbol 10 is *negotiated*
 - b. Used to limit or broaden coverage

POLICY NUMBER:

COMMERCIAL AUTO
CA 99 54 10 13

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

COVERED AUTO DESIGNATION SYMBOL

This endorsement modifies insurance provided under the following:

AUTO DEALERS COVERAGE FORM
BUSINESS AUTO COVERAGE 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.

This endorsement changes the policy effective on the inception date of the policy unless another date is indicated below:

Named Insured:

Endorsement Effective Date:

Section I – Covered Autos in the Business Auto and Motor Carrier Coverage Forms and **Section I – Covered Autos Coverages** in the Auto Dealers Coverage Form are 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	=	
For use with the Auto Dealers Coverage Form		
32	=	

Symbol		Description Of Covered Auto Designation Symbols
For use with the Motor Carrier Coverage Form		
72	=	
73	=	

SAMPLE

- C. Other insurance condition
 - 1. Coverage for non-owned is excess over any other collectible insurance unless other insurance written as excess
 - 2. Pro-rata basis if other insurance is on same basis
 - 3. Business Auto Coverage
 - a. Primary for non-owned “trailer” connected to owned power unit
 - b. Excess if “trailer” connected to non-owned power unit
 - c. Primary for Hired Auto Physical Damage
 - d. Primary for liability assumed under an “insured contract”
- D. Coverage territory
 - 1. Covers accidents and losses within the coverage territory
 - a. USA, its territories and possessions
 - b. Puerto Rico
 - c. Canada
 - d. While being transported between
 - 2. Business Auto Coverage extends to anywhere in the world if
 - a. Covered “auto” is PPA
 - b. Leased, hired, rented or borrowed without a driver for 30 days or less
 - c. “Suit” determined in USA, its territories and possessions, Puerto Rico or Canada or a settlement insurer agrees to

[illegible]

VI. How will the loss to the non-owned auto be determined?

A. Insuring agreement – Physical Damage

1. Insurer option
 - a. ACV
 - b. Repair or replace
 - c. Adjustment for depreciation and physical condition if total loss
 - d. Will not pay for betterment
2. Is the vehicle financed or leased?
 - a. Auto Loan/Lease Coverage PP 03 35
 - b. Auto Loan Lease Gap Coverage CA 20 71
3. PAP
 - a. Other than Collision
 - b. Collision
 - c. If breakage of glass is by collision – option to cover as collision
 - d. Non-owned auto coverage is the broadest applicable to any “your covered auto” shown in the Declarations
 - e. Maximum paid for non-owned “trailer” is \$1,500
 - f. Maximum for AVD in location not used by the auto manufacturer \$1,000
 - g. “Custom equipment” \$1,500 maximum

D. "Custom equipment" means equipment, furnishings and parts in or upon any auto, other than:

- 1.** Original manufacturer equipment, furnishings or parts; or
- 2.** Any replacement of original manufacturer equipment, furnishings or parts with other equipment, furnishings or parts of like kind and quality.

"Custom equipment" includes but is not limited to:

- a.** Special carpeting or insulation;
- b.** Furniture or bars;
- c.** Height-extending roofs;
- d.** Body, engine, exhaust or suspension enhancers;
- e.** Winches, or anti-roll or anti-sway bars;
- f.** Custom grilles, louvers, side pipes, hood scoops or spoilers;
- g.** Custom wheels, tires or spinners;
- h.** Custom chrome, murals, paintwork, decals or other graphics; or
- i.** Caps, covers or bedliners.

"Custom equipment" does not include electronic equipment that reproduces, receives or transmits audio, visual or data signals.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

AUTO LOAN/LEASE COVERAGE**SCHEDULE**

Description Of Your Covered Auto(s)	Other Than Collision Additional Premium	Collision Additional Premium
	\$	\$
	\$	\$
	\$	\$
Information required to complete this Schedule, if not shown above, will be shown in the Declarations.		

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

A. In the event of a covered total loss to a "your covered auto" shown in the Schedule or in the Declarations for which a specific premium charge indicates that Auto Loan/Lease Coverage applies, we will pay any unpaid amount due on the lease or loan for "your covered auto" less:

1. The amount paid under Part **D** of the Policy; and
2. Any:
 - a. Overdue or any deferred lease/loan payments at the time of the loss;
 - b. Financial penalties imposed under a lease for excessive use, abnormal wear and tear or high mileage;

c. Security deposits not refunded by a lessor;

d. Costs for extended warranties, Credit Life Insurance, Health, Accident or Disability Insurance purchased with the loan or lease; and

e. Carry-over balances from previous loans or leases.

B. Any insurance we provide with respect to the Auto Loan/Lease Coverage shall be excess over any other collectible source of recovery including but not limited to any coverage provided by or purchased from the lessor or any financial institution.

POLICY NUMBER:

COMMERCIAL AUTO
CA 20 71 11 20

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

AUTO LOAN/LEASE GAP COVERAGE

This endorsement modifies insurance provided under the following:

AUTO DEALERS COVERAGE FORM
BUSINESS AUTO COVERAGE 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.

This endorsement changes the Policy effective on the inception date of the Policy unless another date is indicated below.

Named Insured:

Endorsement Effective Date:

SCHEDULE

Vehicle Number	Description Of Loan/Lease "Auto(s)" Which Are Covered "Autos"	Other Than Collision Additional Premium	Collision Additional Premium
		\$	\$
		\$	\$
		\$	\$

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

A. Physical Damage Coverage is amended by the addition of the following:

In the event of a total "loss" to a covered "auto" shown in the Schedule or Declarations for which a specific premium charge indicates that Auto Loan/Lease GAP Coverage applies, we will pay any unpaid amount due on the lease or loan for a covered "auto", less:

1. The amount paid under the Policy's Physical Damage Coverage; and
2. Any:
 - a. Overdue or any deferred lease/loan payments at the time of the "loss";
 - b. Financial penalties imposed under a lease for excessive use, abnormal wear and tear or high mileage;
 - c. Security deposits not returned by the lessor;

d. Costs for extended warranties, Credit Life Insurance, Health, Accident or Disability Insurance purchased with the loan or lease; and

e. Carry-over balances from previous loans or leases.

B. For the purposes of this endorsement, the following is added to the **Other Insurance Condition** in the Business Auto and Auto Dealers Coverage Forms and the **Other Insurance – Primary And Excess Insurance Provisions Condition** in the Motor Carrier Coverage Form:

The insurance provided by this Auto Loan/Lease GAP Coverage is excess over any other collectible insurance including but not limited to any coverage provided by or purchased from the lessor or any financial institution.

2. BAC

- a. Comprehensive
- b. Specified Causes Of Loss
 - 1) Fire, lightning or explosion
 - 2) Theft
 - 3) Windstorm, hail or earthquake
 - 4) Flood
 - 5) Mischief or vandalism
 - 6. The sinking, burning, collision or derailment of any conveyance transporting the covered auto
- c. Towing – PPAs only
 - 1) Limit shown in the Declarations
 - 2) Labor must be performed at place of disablement
- d. Glass Breakage – Hitting A Bird or Animal – Falling Objects or Missiles covered under Comprehensive if carried
 - 1) Option if glass breakage to cover under Collision

[illegible]

B. Transportation Expenses

1. PAP Covering OTC and Collision
 - a. Legally responsible
 - b. \$30 per day up to \$900 maximum
 - c. Beginning 48 hour after the theft
 - d. Beginning 24 hours for other covered losses

2. BAP Loss Of Use Expenses if Physical Damage is covered
 - a. Must have hired auto physical damage (symbol 8)
 - b. Legally liable under a written contract or agreement
 - c. \$30 per day up to \$900 maximum
 - d. CA 99 90 Optional Limits – Loss of Use Expenses
 - 1) Schedule amount per day
 - 2) Schedule maximum
 - 3) Additional premium

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

OPTIONAL LIMITS TRANSPORTATION EXPENSES COVERAGE

SCHEDULE

1. Description Of Your Covered Auto:			
2. Description Of Your Covered Auto:			
3. Description Of Your Covered Auto:			
Auto	Limit Per Day For Temporary Transportation Or Loss Of Use Expenses	Maximum Limit Of Liability	Premium
1.	\$ Per Day	\$	\$
2.	\$ Per Day	\$	\$
3.	\$ Per Day	\$	\$

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

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

OPTIONAL LIMITS TRANSPORTATION EXPENSES COVERAGE

When there is a loss to a "your covered auto" described in the Schedule or in the Declarations for which a specific premium charge indicates that Optional Limits Transportation Expenses Coverage is afforded, or to a "non-owned auto":

Coverage for Transportation Expenses provided under Part D of this Policy is increased to the limits shown in the Schedule or in the Declarations.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

OPTIONAL LIMITS – LOSS OF USE EXPENSES

This endorsement modifies insurance provided under the following:

AUTO DEALERS COVERAGE FORM
BUSINESS AUTO COVERAGE 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.

This endorsement changes the policy effective on the inception date of the policy unless another date is indicated below.

Named Insured:

Endorsement Effective Date:

SCHEDULE

Amount Per Day	Maximum	Premium
\$	\$	\$
Information required to complete this Schedule, if not shown above, will be shown in the Declarations.		

Physical Damage Coverage is amended as follows:

The **Coverage Extension for Loss Of Use Expenses** in Paragraph **A.4.b.** in the Business Auto and Motor Carrier Coverage Forms and Paragraph **F.2.** in the Auto Dealers Coverage Form are replaced by the following:

For Hired Auto Physical Damage, we will pay expenses for which an "insured" becomes legally responsible to pay for loss of use of a vehicle rented or hired without a driver under a written rental contract or agreement. We will pay for loss of use expenses caused by:

- (1) Other than collision only if the Declarations indicates that Comprehensive Coverage is provided for any covered "auto";

- (2) Specified Causes Of Loss only if the Declarations indicates that Specified Causes Of Loss Coverage is provided for any covered "auto"; or

- (3) Collision only if the Declarations indicates that Collision Coverage is provided for any covered "auto".

However, the most we will pay under this coverage is the amount shown in the Schedule.

Rental Car Contracts

Hold Harmless / Indemnification Agreement (Hertz)

You and all Authorized Operators will indemnify and hold Hertz, its agents and employees harmless from and against any loss, liability and expense in excess of the limits or beyond the scope of the protection provided for above, arising from the use or possession of the Car by You or any Authorized Operators or with Your, his or her permission.

Damage To The Car (Enterprise)

I am responsible for and agree to pay Owner the fair market value of replacing the Car and /or repairing all losses and damages to the Car. I will pay Owner regardless of fault or negligence by me or any person, and regardless if damages are a result of an act of God. For purposes of this Agreement, the fair market value for the cost of replacing Owner's Car will be retail value. This includes:

- (a) administrative fees, and/or
- (b) diminishment of value; and/or
- (c) "loss of use" during the period the Car is unavailable for rental use.
Loss of use is measured by the reasonable rental value of renting a comparable replacement Car; and
- (d) towing, storage, impound and appraisal fees.

VII. Rental Cars

Business Auto Coverage

SECTION III – PHYSICAL DAMAGE COVERAGE

B. Exclusions

6. We will not pay for “loss” to a covered “auto” due to “diminution in value”

SECTION V – DEFINITIONS

- E. “Diminution in value” means the actual or perceived loss in market value or Resale value which results from a direct and accidental “loss”.

Maximum for non-owned “trailer” is \$500

5. Other insurance

- b. For Hired Auto Physical Damage Coverage, any covered “auto” you lease, hire, rent or borrow is deemed to be a covered “auto” you own. However, any “auto” that is leased, hired, rented or borrowed with a driver is not a covered “auto”.

➤ Other issues to ponder:

Is there a Stated Amount limit for Hired Auto Physical Damage?

What is ACV of the rental car? Who determines?

Notes: _____

Personal Auto Coverage

PART D – COVERAGE FOR DAMAGE TO YOUR AUTO INSURING AGREEMENT

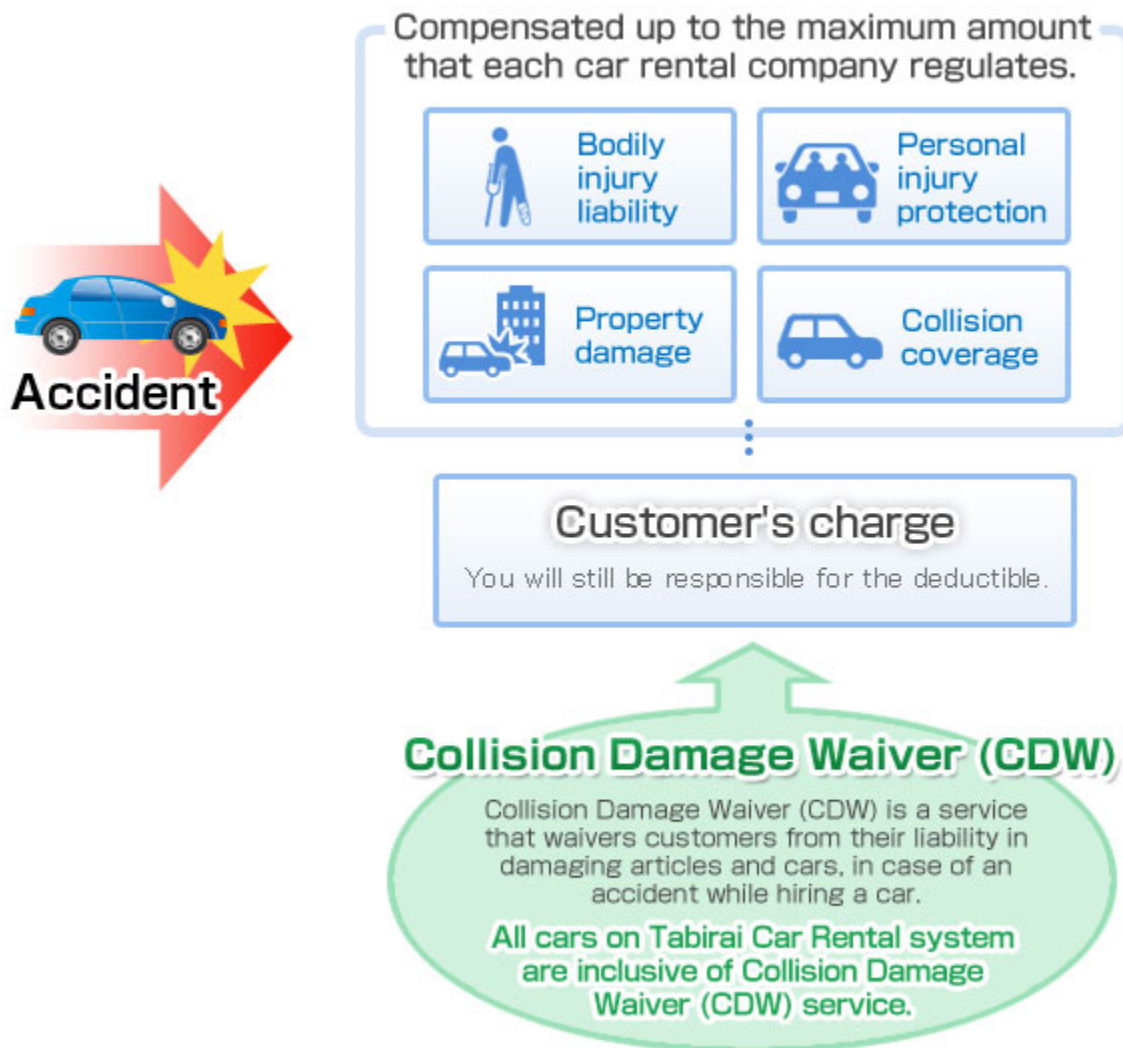
C. “Non-owned auto means:

- 1.** Any private passenger auto, pickup, van or “trailer” not owned or furnished or available for the regular use of you or any “family member” while in the custody of or being operated by you or any “family member”, or
- 2.** Any auto or “trailer” you do not own while used as a temporary substitute for “your covered auto” which is out of normal use because of its:
 - a.** Breakdown;
 - b.** Repair;
 - c.** Servicing;
 - d.** Loss; or
 - e.** Destruction.

Maximum for non-owned “trailer” is \$1,500

Notes:

Loss Damage Waiver - buy or take the risk?



Again, while there are no standard rental agreements or LDWs there are some key items that need to be reviewed:

- ✓ Require **full compliance with all terms and conditions**
- ✓ Statement that LDW is optional and not required
- ✓ Statement LDW is not insurance
- ✓ Cost is for a full day even if vehicle is returned prior to a full day

Loss Damage Waiver. Loss Damage Waiver (LDW) is **not** insurance and **not** mandatory. If you accept full LDW by your initials, on the rental document at the daily rate, each full or partial day that the car is rented to you, and the car is operated in accordance with this agreement, we assume all loss or damage to the car except, if permitted by law, for lost or damaged or stolen keys or remote entry devices, towing or tire service unless related to an accident, or recovery of the car if stolen, and except for your amount of “responsibility”, if any, specified on the rental document.

If you do not accept either LDW or PDW, you owe for all loss or damage to the car. Loss and damage are described in the following paragraph. You acknowledge you have been advised that your own insurance may cover loss or damage to the car. **You also acknowledge reading the notice on loss damage shown on the rental document, or at the end of the terms, or in a separate notice form.**

Renters are not required to purchase Loss Damage Waiver (LDW). It is not mandatory. Before purchasing LDW, renter should check if own insurance covers damage to and loss of the car, the limit of coverage and deductible. If renter declines LDW, renter may be liable for up to the retail fair market value (less salvage) of the car, regardless of fault, unless ordinary negligence is excluded by law. Repairs are at Budget's cost. Read LDW terms on the rental document jacket terms and conditions, including exclusions from LDW.

You'll pay all fines, penalties and court costs for parking, traffic, toll and other violations, including storage liens and charges. You'll also pay a reasonable administrative fee with respect to any violation of this agreement, such as for repossessing or recovering the car for any reason.

✓ **Authorized Operators**

Only You, and with Your permission, the following persons, provided that they meet the qualifications set forth in the following sentence (“Authorized Operators”) may operate the car. Your spouse, your domestic partner (if you are not married), Your employer, employees and fellow employees incidental to their business duties, and any other person who meets Hertz’ qualifications and who signs an Additional Authorized Operator form at the time of rental. Except as provided in the following sentence, all Authorized Operators must be at least 25 years old and have a valid driver’s license from a jurisdiction acceptable to Hertz. Except to the extent necessary for valet parking or in an emergency as permitted by law, no other persons are permitted to operate the Car.

Prohibited Uses Of The Car

1. Use of the car by anyone other than an authorized operator.
2. Intentional damage or aid in the theft of the car.
3. Operation of the car in Mexico.
4. Operation of the car in a reckless manner.
5. Operation of the car on unpaved roads.
6. Leaving the car unlocked or with the keys inside.
7. Use of the car by anyone:
 - Under the influence of alcohol or drugs;
 - In the commission of a crime;
 - To tow or push anything;
 - In a speed contest;
8. If car obtained by fraud or misrepresentation.

- A. Options for rental vehicle coverage
 - 1. Renter's auto policy – PAP or BAC
 - 2. Collision or Loss Damage Waiver
 - 3. Credit card coverage
 - 4. Out of pocket expenses
 - a. Down time
 - b. Loss of use
 - c. Diminution in value
 - d. Loss of turn back
 - e. Administrative costs
 - f. Fees for claims processing
 - g. Coverage territory
 - 5. Combination

- B. Questions to ask
 - 1. What is the purpose of the rental?
 - 2. What is the length of the rental?
 - 3. Who is renting the vehicle?
 - 4. Where is the vehicle being used?
 - 5. What is the type of vehicle being rented?
 - 6. Who will be driving?

- C. Collision or Loss Damage Waiver
 - 1. Not insurance – it is a hold harmless agreement
 - 2. Renter is not responsible for direct or indirect damage
 - 3. Daily charge \$6.99 - \$25.99 or more
 - 4. Contains limitations/exclusions

D. Reasons to recommend purchase of CDW

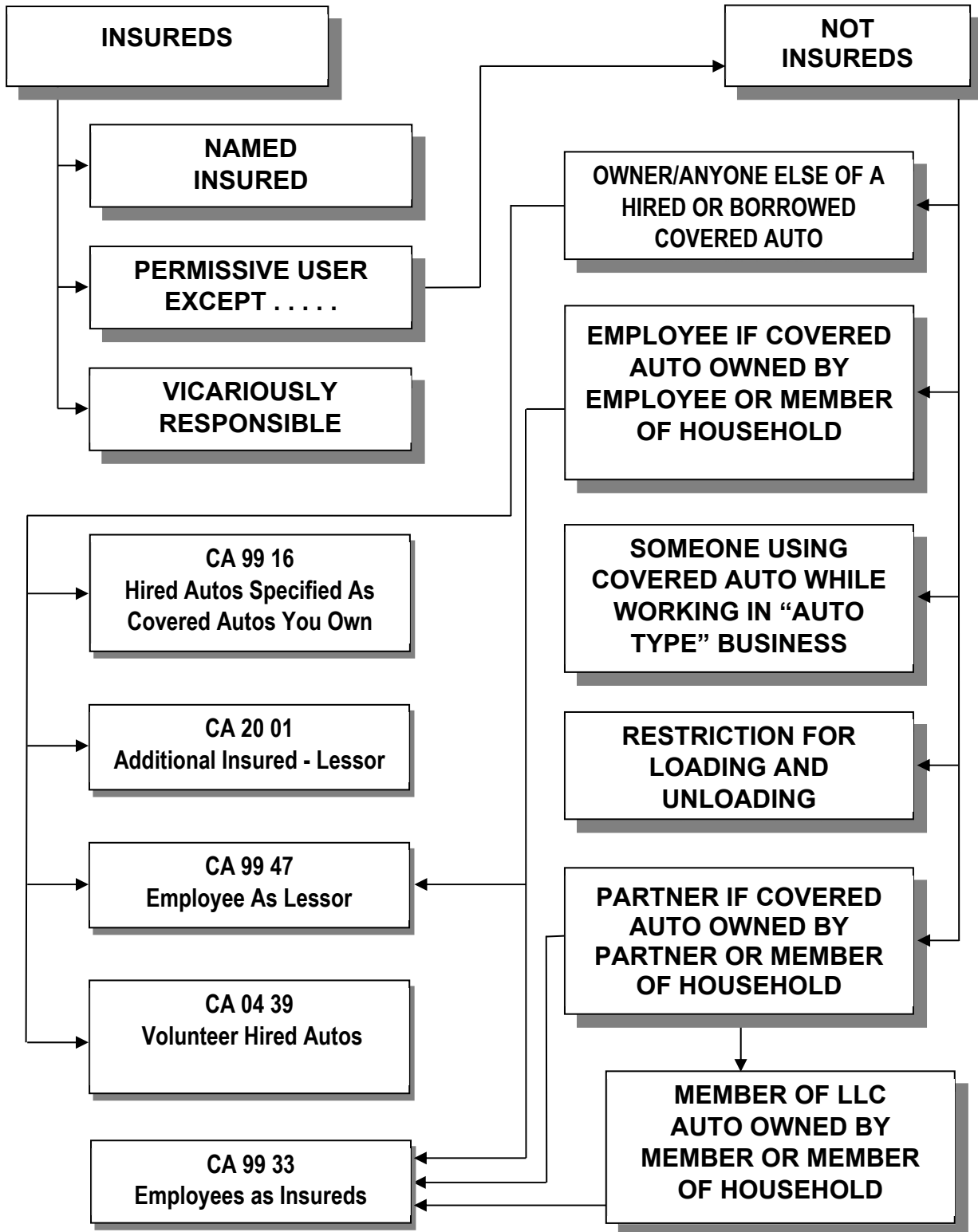
1. PAP and BAC may not cover entire loss
2. Peace of mind
3. Avoid wasting time and energy
4. Avoid issues with rental company
5. Avoid financial hardship

E. Credit Card Coverage

1. Insurance professionals should not counsel client on the coverage provided by the credit card
2. Clients should be advised to call their credit card company to find the coverage provided **and**
3. Clients need to be given enough information to allow them to make an informed decision as to whether to or not they should purchase the CDW

VIII. Conclusion

BAC – WHO IS AN INSURED





James K. Ruble Seminar

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

Section 3

Contractual Risk Transfer and the CGL

CONTRACTUAL RISK TRANSFER AND THE CGL

Robert S. Ford, CIC, CISR, CPIA, CLCS

Po. Box 755

Devils Lake ND 58301

701-662-4051

ford@stellarnet.com

Disclaimer:

The classroom discussion for today's workshop will focus on the topic of Commercial Casualty coverages and Casualty endorsement uses. We will be discussing various ISO forms and endorsements to consider for use when programming insurance policies for your commercial clients. We will not be discussing any company specific or manuscript endorsements.

These discussions are generalized and should not be relied upon completely to determine whether coverage exists for your client in a given situation. You should always follow up with your company underwriter and or claims depts. to determine your company's official position on coverage's placed for your client. You should also provide your client with a copy of any Additional Insured endorsements you use so that your client can have all their contracts and Additional Insured endorsements reviewed by legal counsel.

Coverages outlined in the endorsements are subject to legal opinion.

INTRODUCTION TO A DISCUSSION ON CONTRACTUAL LIABILITY

A. Clients are always signing contracts but do they really know what's in them?.

- Knowingly or unknowingly:

1. The client agrees to indemnify and hold harmless the other parties in the contract.
2. The client often times agrees to provide a waiver of subrogation to the other parties.
3. The client also many times agrees to provide additional insured status to the other parties.
4. The client agrees that their insurance coverages will be primary and in some instances non-contributory.
5. These are typical issues that Producers, Account Managers, and CSR's face daily when working with clients insurance coverage's
6. So what are these things and how do they affect my clients business?

B. The Nitty Gritty of Contractual Risk Transfer

1. Background - Why do others transfer their liability to our clients?
 - a. It may assure greater safety in a risk transfer - a "safety net" for a hold harmless agreement
 - b. Typically a transfer request from an Indemnatee is accompanied by a request to be added to the indemnitor's policy as an Additional Insured.
 - i. By adding an Indemnatee as an additional insured to my policy, I guarantee them a defense under my policy
 - ii. It can give direct rights to the Indemnatee under the indemnitor's policy
 - iii. It may protect the party/ies who attempt the transfer of potential risk from subrogation
 1. Typically courts do not allow an insurance company to subrogate against an Additional Insured as this creates a conflict of interest
2. Either knowingly or unknowingly:
 - a. Many times your client will agree to take on someone else's liability
 1. Why?
 2. Because the Named Insured has a close relationship with another party
 3. I want the job
 4. I don't think it's really all that big of deal
 5. Everybody's doing it
 6. I didn't know I did!

3. Contracts the Agent knows about

- **To Read or Not to Read? That Is the Question ...**

1. Reasons people don't read contracts

- a. I don't know enough about leases / contracts to offer any advice
- b. It's illegal
- c. I don't want to practice law
- d. The lease / contract is already signed
 - i. It won't do any good to review it now. The contract has already been executed
- e. I don't want to create a special relationship with my client

4. Read them

- a. You can increase your perceived value by knowing the issues
 - i. What do the lease provisions demand from your client?
 - ii. The lawyer's statement to you.
 - iii. Why are we here today?
- b. You can bring attention to problems and offer solutions that even their attorney didn't tell them about

5. Need confidence? A few things about contracts
 - a. Leases are drawn up by lawyers not insurance people
 - b. You know a lot more about insurance than they do
 - c. Often what attorneys do know about insurance is outdated
 - d. If you don't advise your clients how to comply with the insurance requirements, who will?
 - i. The Attorney?
 - ii. Your Client?
 - iii. Who?
6. Contracts the Agent doesn't know about
 - a. How can I educate my client about issues concerning contracts?
 - b. Discussion
 - c. Checklist

AMERICAN INSURANCE CENTER — EXPOSURE REVIEW QUESTIONNAIRE

When considering coverage for you operation, it is important that we be kept informed of changes, additions or diversifications in your operation. Please answer the following questions, sign and return this form to us. If you have any comments, please note them in the space provided. *Thank you!*

Account Name:

Date:

	NO	YES	YOUR COMMENTS
Have you changed or are there to be any changes made to the legal name of your company as shown above?	<input type="checkbox"/>	<input type="checkbox"/>	_____
Has your company engaged in any new activities or business?	<input type="checkbox"/>	<input type="checkbox"/>	_____
Have you acquired, sold or discontinued any operation?	<input type="checkbox"/>	<input type="checkbox"/>	_____
Have you had or do you plan any new construction, alterations or acquisitions of property?	<input type="checkbox"/>	<input type="checkbox"/>	_____
Have you paid off or disposed of any major capital asset? (Mortgage or Lienholders)	<input type="checkbox"/>	<input type="checkbox"/>	_____
Are there any new corporations, partnerships, limited partnerships or joint ventures?	<input type="checkbox"/>	<input type="checkbox"/>	_____
Are there any new contractual agreements, including lease agreements for real estate or equipment?	<input type="checkbox"/>	<input type="checkbox"/>	_____
Are there any new locations or purchased/leased real estate?.....	<input type="checkbox"/>	<input type="checkbox"/>	_____
Are there any new products/services planned in the upcoming year or any discontinued products in the past?	<input type="checkbox"/>	<input type="checkbox"/>	_____
Are there any ins requirements you owe to anyone else?	<input type="checkbox"/>	<input type="checkbox"/>	_____
Have there been any unreported legal actions brought against you? .	<input type="checkbox"/>	<input type="checkbox"/>	_____
Higher liability limits may be available. Are you interested in a quote for increased limits or additional information?	<input type="checkbox"/>	<input type="checkbox"/>	_____
Do your property values need to be updated?	<input type="checkbox"/>	<input type="checkbox"/>	_____
Do you have any detached signs that you wish to insure that are not already scheduled?	<input type="checkbox"/>	<input type="checkbox"/>	_____
If so, please advise value(s) _____			
Do you have any foreign travel, operations or sales?	<input type="checkbox"/>	<input type="checkbox"/>	_____
Have you added/deleted vehicles/equipment during the year?	<input type="checkbox"/>	<input type="checkbox"/>	_____
Have you added/deleted drivers?	<input type="checkbox"/>	<input type="checkbox"/>	_____
Do you have a Personal Auto Policy?	<input type="checkbox"/>	<input type="checkbox"/>	_____

7. Building a foundation – Contractual Indemnity and The “Insured Contract”

- CGL
- BAP

a. Insured's enter into a lot of different contracts

1. Leasing Co. – Lessee
2. Owner – Contractor
3. Contractor - Subcontractor
4. Distributor – Manufacturer
5. Distributor - Vendor
6. Seller – Buyer
7. Landlord – Tenant
8. Agency - Principle

b. What is the purpose of these contracts?

1. To guarantee performance
2. To transfer liability
 - Legal Consequences
 - Defense Costs
 - Punitive Damages
 - Fines

c. How does the insured manage the risk of signing a contract?

1. How can they fund the contract?
2. Non Insurance methods

- Savings
- Checking
- 401k
- Sell off assets

3. Insurance methods

- Insured Contract
- Additional Insured Status

d . Insured Contracts

1. But not all contracts are “Insured Contracts”
2. Why not?

a. For example, would we want to cover
Breach of Contract?

e. So what kinds of contracts are Insured? How about a
little background first!

1. We do cover **SOME** contractual indemnity,
so....



2. What is **Contractual Indemnity**?

Definition of Indemnity – Merriam - Webster

1: a. security against hurt, loss, or damage

**b. to make compensation to, for incurred
hurt, loss or damage**

f. So Who Indemnifies Who and for What?

- Indemnitor – one who takes on risk of another
- Indemnatee – one who “Pushes off” risk to another

Indemnity clauses are a contractual device to shift risk from one party to another! One party (Indemnitor) promises to pay the other party's (Indemnatee) attorney fees, Judgments that may result from both party's wrongful conduct, and other things stipulated in the contract.

g. Key Terminologies

1. Hold Harmless

- An agreement to assume the financial consequences of another party's liability

2. Indemnification Clause

- Defines what can happen and you have to defend me

3. Indemnitor

- Party to provide protection for the Indemnatee



4. Indemnatee

- The party who is transferring it's financial burden to another. The party to be protected

5. Indemnify

- Pay on my behalf or to reimburse for defense costs

6. Defend or Reimburse for defense

- If Indemnatee wants to be defended they have to tell you that otherwise defense cost are subject to reimbursement

h. Typical clause is "indemnify and hold harmless"

i. Indemnify means to "pay back"

ii. Sample lease language shown below

9) RELEASE OF LIABILITY:

A. Hold Harmless Provision: Lessee agrees to indemnify and hold lessor harmless from any and all claims, actions, suits, proceeding costs, expenses, damages and liabilities, including reasonable attorney's fees arising by reason of injury, damage, or death to persons or property, in connection with the use of the rented apartment.

i. Contractual language typically dictates one of 3 different levels of Indemnification

- Limited
- Intermediate
- Broad

An example of each follows below. As I present these examples it is important to know they are presented as though you are the Indemnitor. You should read the examples of contractual wording contemplating the scope of the indemnification agreement **as seen through the eyes of the Indemnitor**

3 different levels of Indemnification - Continued

1. Limited

- I did it, I pay.
- You did it, you pay unless you acted on my orders

2. Intermediate

- I did it, I pay
- You did it; I pay if you acted on my orders
- We did it; I pay

3. Broad

- You did it, I pay!

Note:

- **The contract itself between the Indemnitor and the indemnitee does NOT limit the type of Indemnification Clause you have.**
- **Instead, it defines it!**

➤ **Examples:**

Limited

Example of Indemnity Agreement

Subcontractor (Indemnitor) shall defend indemnify and hold harmless General Contractor (Indemnatee), including its officers, directors, agents, employees, affiliates, parents, and subsidiaries, and each of them from any and all claims, demands, causes of action, damages, costs, expenses, actual attorneys fees consultants fees, expert fees, losses or liability, in law or in equity, of every kind and nature whatsoever arising out of or in connection with Sub-contractors operations to be performed under this agreement for, but not limited to, personal injury including, but not limited to, bodily injury, emotional injury, sickness or disease, or death to persons and/or damage to property of anyone (including loss of use thereof) caused or alleged to be caused by an act or omission of the Subcontractor.

Intermediate

Example of Indemnity Agreement

Subcontractor (Indemnitor) shall defend indemnify and hold harmless General Contractor (Indemnatee), including its officers, directors, agents, employees, affiliates, parents, and subsidiaries, and each of them from any and all claims, demands, causes of action, damages, costs, expenses, actual attorneys fees consultants fees, expert fees, losses or liability, in law or in equity, of every kind and nature whatsoever arising out of or in connection with Sub-contractors operations to be performed under this agreement for, but not limited to, personal injury including, but not limited to, bodily injury, emotional injury, sickness or disease, or death to persons and/or damage to property of anyone (including loss of use thereof) caused or alleged to be caused by an act or omission of the Subcontractor or General Contractor from joint operations between the two parties.

Broad – You did it, I pay

Example of Indemnity Agreement

Subcontractor (Indemnitor) shall defend indemnify and hold harmless General Contractor (Indemnatee), including its officers, directors, agents, employees, affiliates, parents, and subsidiaries, and each of them from any and all claims, demands, causes of action, damages, costs, expenses, actual attorneys fees consultants fees, expert fees, losses or liability, in law or in equity, of every kind and nature whatsoever arising out of or in connection with Sub-contractors operations to be performed under this agreement for, but not limited to, personal injury including, but not limited to, bodily injury, emotional injury, sickness or disease, or death to persons and/or damage to property of anyone (including loss of use thereof) caused or alleged to be caused by an act or omission of the Subcontractor or General Contractor

- So the bottom line is, an Indemnatee wants to transfer their:

1. Legal consequences
2. Defense Costs
3. Punitive Damages
4. Fines
5. Penalties.

6. **TO YOU!**

7. **It's really to what degree am I pushing off my liability to you, and how willing you are to take it on!**



Tip to remember “Indemnitor” vs. “Indemnatee”

Indemnatee’s are **PUSHEE** people! They like to Push off their Liab. to others.

j. Enforcement of the Hold Harmless

a. Depends on a bunch of things:

- Court interpretations
- Intent of the parties
- Wording of the contract
- Does the indemnification fit the circumstances of the injury
- Historical court cases
- State statutes

b. A sample of States with some type of Known Anti Indemnification Statute for construction contracts

Alaska	Maryland	Rhode Island
Arkansas	Massachusetts	South Carolina
Arizona	Michigan	South Dakota
California	Minnesota	Tennessee
Colorado	Mississippi	Texas
Connecticut	Missouri	Utah
Delaware	Montana	Virginia
Florida	Nebraska	West Virginia
Georgia	New Hampshire	Washington
Hawaii	New Jersey	Wyoming
Idaho	New York	
Illinois	New Mexico	
Indiana	North Carolina	
Iowa	North Dakota	
Kansas	Ohio	
Kentucky	Oklahoma	
Louisiana	Oregon	

c. The "Savings Clause" - Two purposes for its use:

1. Its wording is used to avoid having a contract considered void and unenforceable because it required a certain kind of indemnity provision that exceeded what was permitted by law in that state.
2. Used in case one section of a contract is deemed unenforceable, it does not affect the enforceability of the rest of the contract provisions

OR DEATH, OR LOSS OF OR DAMAGE TO PROPERTY OF COMPANY GROUP ALLEGEDLY OR ACTUALLY SUSTAINED DURING, OR DIRECTLY OR INDIRECTLY ARISING OUT OF, OR IN ANY WAY CONNECTED WITH OR INCIDENTAL TO, THIS AGREEMENT OR THE OPERATIONS CONTEMPLATED THEREBY, INCLUDING ANY LOADING, UNLOADING, INGRESS, OR EGRESS OF CARGO OR PERSONNEL, REGARDLESS OF NEGLIGENCE OR OTHER FAULT OF CONTRACTOR GROUP

6D. As set forth in Paragraph 17, Company and Contractor have agreed on the law by which this Agreement, including the indemnity obligations contained herein, shall be governed. In the event any other law is required to apply to this Agreement or the indemnity obligations contained herein, and such law prevents enforcement of such obligations, then such indemnity obligations shall be reformed to the minimum extent necessary to make this Agreement comply with such laws.

6E. The Parties agree that the indemnities provided by Contractor under this Agreement shall be supported by insurance carried and maintained by Contractor for the benefit of Company of such types and in amounts equal to or greater than the minimum limits set forth in Exhibit "A" hereto, and the indemnities provided by Company shall also be supported by insurance for the benefit of Contractor in amounts equal to or greater than the minimum limits required to be carried by Contractor. Any deductibles under Contractor's insurance policies shall be for the sole account of Contractor, and Company shall have no liability for same.

6F. For the purposes of this Paragraph 6, the term "employee" of Contractor shall include all employees of Contractor even if one of Contractor's employees is determined to be a borrowed employee or statutory employee of any other entity.

6G. In the event of loss or damage sustained by third parties other than Contractor Group or Company Group as defined above in Paragraph 6A, each Party shall only be liable for such loss and/or damages to the extent of its own proportionate fault or negligence.

7. Contractor (and each subcontractor) shall comply with, and before performing any Services hereunder provide Company certificates of insurance evidencing compliance with, the minimum insurance requirements set forth in Exhibit "A" attached hereto, which are not intended in any way to limit the extent of Contractor's indemnity obligation provided for in Paragraph 6 above unless required by applicable law. Notwithstanding the foregoing, Company's failure to object to an improper or incomplete certificate of insurance, or the Contractor's failure to provide such a certificate, shall not relieve Contractor of any of its insurance obligations under this Agreement. In the event non-maritime Services are to be performed in or offshore Louisiana for which the Louisiana Anti-Indemnity Act would apply, Company agrees that it will, on behalf of Company Group, pay the premium for the extension of Contractor's insurance to cover Company Group as set forth in Exhibit "A".

8. Contractor shall report to Company as soon as practicable all accidents or occurrences resulting in injury, illness or death to any person or entity, or damage to or loss of property of any person or entity, arising out of or during the course of Contractor's providing Services for Company, and when requested shall furnish Company with a copy of reports made by Contractor to Contractor's insurer or to others of such accidents and occurrences.

2. Exclusions

This insurance does not apply to:

a. Expected Or Intended Injury

"Bodily injury" or "property damage" expected or intended from the standpoint of the insured. This exclusion does not apply to "bodily injury" resulting from the use of reasonable force to protect persons or property.

b. Contractual Liability

"Bodily injury" or "property damage" for which the insured is obligated to pay damages by reason of the assumption of liability in a contract or agreement. **This exclusion does not apply to liability for damages:**

(1) That the **insured would have in the absence of the contract or agreement;** or

(2) **Assumed in a contract or agreement that is an "insured contract"**, provided the "bodily injury" or "property damage" occurs subsequent to the execution of the contract or agreement. Solely for the purposes of liability assumed in an "insured contract", reasonable attorney fees and necessary litigation expenses incurred by or for a party other than an insured are deemed to be damages because of "bodily injury" or "property damage", **provided:**

(a) **Liability to such party for, or for the cost of, that party's defense has also been assumed in the same "insured contract"**; and

(b) Such attorney fees and litigation expenses are for defense of that party against a civil or alternative dispute resolution proceeding in which damages to which this insurance applies are alleged

CG 00 01 04 13 Page 2 of 16

9. "Insured contract" means:

a. A contract for **a lease of premises.**

However, that portion of the contract for a lease of premises that indemnifies any person or organization for damage by fire to premises while rented to you or temporarily occupied by you with permission of the owner is not an "insured contract";

b. **A sidetrack agreement;**

c. **Any easement or license agreement, except in connection with construction or demolition operations on or within 50 feet of a railroad;**

d. An obligation, **as required by ordinance, to indemnify a municipality, except in connection with work for a municipality;**

e. An **elevator maintenance agreement;**

f. That part of any 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 a railroad** for "bodily injury" or "property damage" arising out of construction or demolition operations, **within 50 feet of any railroad property** and affecting any railroad bridge or trestle, tracks, road-beds, tunnel, underpass or crossing;

CG 00 01 04 13 Page 13 of 16

✓ **Insured Contracts –**

- a. Should we offer coverage for any and all contracts our insured's enter into?
- b. How do we control the contractual exposure in the CGL policy?
 - i. We start with a total exclusion and then give coverage back for "an insured contract"
 - The contractual liability exclusion takes away coverage for contractually assumed liability **except** for liability assumed in a contract or agreement that is an "insured contract and only then with respect to bodily injury or property damage that occurs after the contract is executed."
- c. The key to what contractual liability is covered is in the policy definition of "insured contract."
- d. Why do we do it that way?

e. A way to remember what is an “Insured Contract”

Acronym = Lease +

L - ease of Premises

E - asement

**A - an obligation according to an ordinance
to Indemnify a Municipality**

S - idetrack agreement

E - levator maintenance agreement

+ - Assumption of Tort Liability

Examples of Insured Contracts:

➤ Lease of Premises

ABC insurance agency leases office space from a landlord. The lease says ABC agrees to provide defense for the landlord for a loss on the premises arising from ABC's operations or use of the premises.

➤ Easement

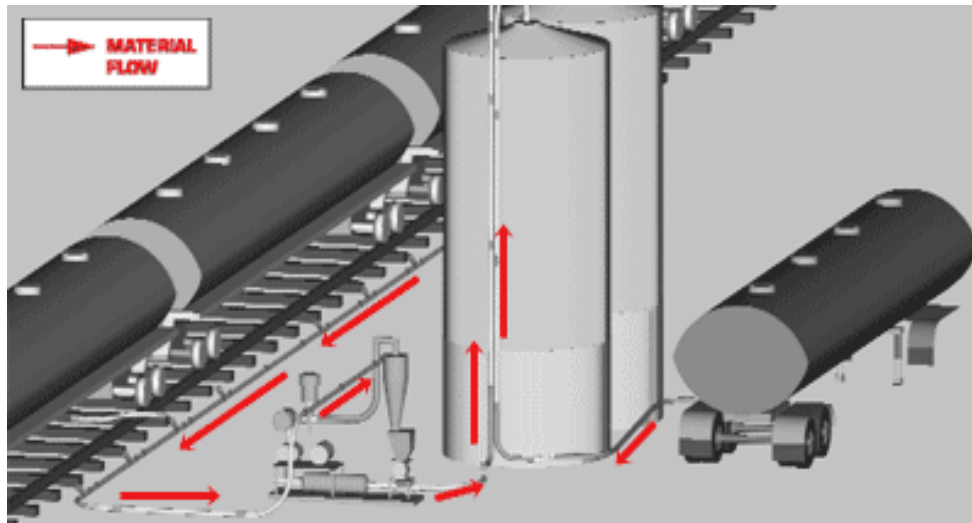
Your property has only one access road and that road is on property owned by your neighbor. You enter into an agreement with your neighbor that states you can have unlimited use of the road to access your property. In return you agree to assume liability for any incident that occurs from your use of that road.

➤ An obligation according to an ordinance to Indemnify a Municipality except in connection with work for that Municipality

You own a retail store in the downtown area of the city. As a pedestrian passes by your store the bricks from the front face of the building give way and hit the pedestrian on the head causing Bodily Injury. The pedestrian brings suit against you the store owner and because the city owned the sidewalk they are also sued.

Unknown to you, the city has an ordinance that states you must defend the city against any action brought from the use of that sidewalk.

➤ Sidetrack Agreement



➤ Elevator Maintenance Agreement

Sam's Elevator Company does the maintenance on your elevators. You signed a service contract with Sam to assume all liability for both you and Sam in the event Sam's work causes an accident.

➤ Sample Elevator Maintenance Agreement

**SECTION FIVE
LIABILITY**

Company will not under any circumstances be liable under or by reason of this Agreement directly or indirectly for any accident, injury, breakage, or damage to the elevator or any machinery, appliances, or property connected with the elevator. Company will not, under any circumstances, be liable under or by reason of this Agreement directly or indirectly for any accident or injury to any person or persons whomsoever, except its employees, while riding on or being in or about the elevator however caused. Company will not be responsible or liable for any loss, damage, detention, or delay in furnishing materials or failure to perform the inspection and maintenance service as provided in this Agreement when caused by fire, flood, strike, acts of civil or military authorities, or by insurrection or riot, or by any other cause that is unavoidable or beyond its control or in any event for consequential damages.

- Liability the Insured would have had if there was no Contract or 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**

CG 00 01 04 13 Page 13 of 16

A roofing contractor accepts a job from a Gen. Contractor to put a shingled roof on a new building under construction. The Roofing Contractor signs a contract containing a Hold Harmless in favor of the Gen. Contractor.

While doing the job an employee of the Roofing contractor drops a hammer from the roof striking a pedestrian passing by on the head causing severe injury. The pedestrian sues the Gen. Contractor under vicarious liab. and sues the roofing contractor for damages.

Because of the hold harmless clause in the construction contract, the Roofing Contractor must now defend the Gen. Contractor. Because this is an assumption of the Gen. Contractors Tort Liability for Bodily Injury, this event would be an insured contract, thus covered on the Roofing Contractor's CGL

Let's change the scenario a bit. In the same situation above, instead of the Roofing Cont. causing Bodily Injury, he use's the wrong style kind of nails and it is found later that all the shingles are working their way up off the roof surface. The roof must be taken off and the work redone.

Nothing was damaged except the Roofing Contractors work. When the owner sues the Gen. Contractor for failing to get the job done correctly, there is no coverage on either contractors policy as this is a "breach of contract" not Bodily Injury or Property Damage.

SUPPLEMENTARY PAYMENTS – COVERAGES A AND B

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

- a. All expenses we incur.

.....
These payments will not reduce the limits of insurance.

2. If we defend an insured against a "suit" and an indemnitee of the insured is also named as a party to the "suit", we will defend that indemnitee if all of the following conditions are met:

- a. The "suit" against the indemnitee seeks damages for which the insured has assumed the liability of the indemnitee in a contract or agreement that is an "insured contract";

- b. This insurance applies to such liability assumed by the insured;

- c. The obligation to defend, or the cost of the defense of, that indemnitee, has also been assumed by the insured in the same "insured contract";

- d. The allegations in the "suit" and the information we know about the "occurrence" are such that no conflict appears to exist between the interests of the insured and the interests of the indemnitee;

- e. The indemnitee and the insured ask us to conduct and control the defense of that indemnitee against such "suit" and agree that we can assign the same counsel to defend the insured and the indemnitee; and

- f. The indemnitee:

- (1) Agrees in writing to:

- (a) Cooperate with us in the investigation, settlement or defense of the "suit";

- (b) Immediately send us copies of any demands, notices, summonses or legal papers received in connection with the "suit";

- (c) Notify any other insurer whose coverage is available to the indemnitee; and

- (d) Cooperate with us with respect to coordinating other applicable insurance available to the indemnitee; and

- (2) Provides us with written authorization to:

- (a) Obtain records and other information related to the "suit"; and

- no (b) Conduct and control the defense of the indemnitee in such "suit".

So long as the above conditions are met, attorneys' fees incurred by us in the defense of that indemnitee, necessary litigation expenses incurred by us and necessary litigation expenses incurred by the indemnitee at our request **will be paid as Supplementary Payments.**

Notwithstanding the provisions of Paragraph 2.b.(2) of Section I – Coverage A – Bodily Injury And Property Damage Liability, such payments will not be deemed to be damages for "bodily injury" and "property damage" and will not reduce the limits of insurance.

Our obligation to defend an insured's indemnitee and to pay for attorneys' fees and necessary litigation expenses as Supplementary Payments ends when we have used up the applicable limit of insurance in the payment of judgments or settlements or the conditions set forth above, or the terms of the agreement described in Paragraph f. above, are no longer met.

✓ **So then 2 ways an Indemnatee can become an insured on the indemnitor's policy:**

1. Ask for Additional Insured Status
2. Automatic coverage under the definition of an insured contract

- We call this situation "an uninsured indemnatee"
- Uninsured Because There Is no additional insured status on the indemnatee's policy

a. Problems created by the "Uninsured Indemnatee" situation

1. Without Additional Insured status, the Indemnatee is subject to a host of conditions found in the supplementary payments section of the CGL form

- a. No coverage for the Indemnatee unless the agreement meets the definition of an insured contract

- b. The contract must obligate defense of the Indemnatee

- c. There must be no conflict between the interest of the insured in the interest of the Indemnatee

- d. The insured AND the indemnatee both must ask the insurance company to

1. Conduct
2. Control
3. Agree to use the same counsel

- e. Indemnatee must agree in writing to:
 - 1. Cooperate with the insurance company
 - 2. Immediately Send demands, summonses etc.
 - 3. Notify any other insurer whose coverage is available to the Indemnatee
 - 4. Cooperate in coordinating the other applicable insurance available to the Indemnatee
 - 5. Conduct and control the defense of the Indemnatee
- f. All of these conditions must be met or else defense costs are **INSIDE** the policy limits

➤ Endorsements that Impact “Insured Contract” coverage’s.

- a. **CG 24 26 – Amendment of Insured Contract Definition**
- b. **CG 21 39 - Contractual Liability Limitation**
- c. **CG 24 17 - Contractual Liability - Railroads**

Items to Do

This image shows a full page of blank, white paper with horizontal blue ruling lines. The lines are evenly spaced and run across the width of the page. There is no handwriting or other markings on the paper.

THIS ENDOREMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY

AMENDMENT OF INSURED CONTRACT DEFINITION

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART
PRODUCTS/COMPLETED OPERATIONS LIABILITY COVERAGE PART

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;
- 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.

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

- (1) That indemnifies a railroad for "bodily injury" or "property damage" arising out of construction or demolition operations, within 50 feet of any railroad property and affecting any railroad bridge or trestle, tracks, road-beds, tunnel, underpass or crossing;
- (2) That 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; or
- (3) 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 (2) above and supervisory, inspection, architectural or engineering activities

a. Paragraph F. – Sole Negligence - Contractual Issue

1. Coverage through contractual

- i. There is still an issue with the CGL providing “Sole Negligence” coverage. This is provided by Paragraph f. in the definition of an insured contract.
- ii. Even though after 2004, ISO Additional Insured endorsements will no longer pay for the Additional Insured’s sole negligence, there is still a matter of the contractual coverage found in paragraph f.
- iii. **Paragraph f does extend “Sole Negligence” as it is inherent within the CGL’s policy definition of an insured contract therefore** providing coverage on that basis anyway!

2. **CG 24 26 Amendment of Insured Contract Definition**

- i. This endorsement makes it clear that the Named Insured’s CGL contractual coverage will **not** cover the indemnitee’s sole negligence by adding the verbage **“provided the “bodily injury” or “property damage” is caused, in whole or in part, by you”**
- ii. Sometimes underwriters may choose to block this coverage with the use of this endorsement
- iii. Agents should seek to avoid this endorsement if at all possible

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY

CONTRACTUAL LIABILITY LIMITATION

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

PRODUCTS/COMPLETED OPERATIONS LIABILITY COVERAGE PART

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.

Paragraph F has been removed in the definition of Insured Contract there by removing blanket contractual coverage!

- b. Eliminating the Automatic Indemnatee contractual liability coverage

Automatic vs. Designated coverage

1. Where the CGL gives contractual coverage in Paragraph F, it is automatically covering it on a blanket basis
2. Can I limit coverage down to a designated contract basis only?

Underwriters sometimes want to do this by the endorsement shown below.

3. Agents should seek to avoid this endorsement if at all possible
4. **CG 21 39 Contractual Liability Limitation**
 - Deletes Paragraph F in the definition of Insured Contract there by removing automatic contractual coverage!
 - This can be a matter of **life and death** for the Named Insured when the "Indemnatee" is not an Additional Insured on the Named Insured's policy!
 - If this endorsement is in use then the CGL offers **only Named Perils** concerning an "Insured Contract"

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY

LIMITED CONTRACTUAL LIABILITY – RAILROADS

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

SCHEDULE

Scheduled Railroad:
Designated Job Site:
Information required to complete this Schedule, if not shown above, will be shown in the Declarations.

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, provided the "bodily injury" or "property damage" is caused, in whole or in part, by you or 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.

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.

c. Contractual liability Railroads

a. 50 ft. rule

b. "Insured Contract does not allow construction within 50ft. of most railroad property"

c. The Fix – CG 24 27 Contractual Liability – Railroads

d. This endorsement removes the second half of paragraph f of the insured contract definition. This is the part of the definition on the CG 00 01 that excludes coverage for construction within 50 ft of most railroad property

9. "Insured contract" means:

a. A contract for a lease of premises. However, that portion of the contract for a lease of premises that indemnifies any person or organization for damage by fire to premises while rented to you or temporarily occupied by you with permission of the owner is not an "insured contract";

b. A sidetrack agreement;

c. Any easement or license agreement, except in connection with construction or demolition operations on or within 50 feet of a railroad;

d. An obligation, as required by ordinance, to indemnify a municipality, except in connection with work for a municipality;

e. An elevator maintenance agreement;

f. That part of any 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 a railroad for "bodily injury" or "property damage" arising out of construction or demolition operations, within 50 feet of any railroad property and affecting any railroad bridge or trestle, tracks, road-beds, tunnel, underpass or crossing;

COVERAGE B PERSONAL AND ADVERTISING INJURY LIABILITY

1. Insuring Agreement

- a. We will pay those sums that the insured becomes legally obligated to pay as damages because of "personal and advertising injury" to which this insurance applies. We will have the right and duty to defend the insured against any "suit" seeking those damages. However, we will have no duty to defend the insured against any "suit" seeking damages for "personal and advertising injury" to which this insurance does not apply. We may, at our discretion, investigate any offense and settle any claim or "suit" that may result. But:

- (1) The amount we will pay for damages is limited as described in Section III – Limits Of Insurance; and
- (2) Our right and duty to defend end when we have used up the applicable limit of insurance in the payment of judgments or settlements under Coverages A or B or medical expenses under Coverage C.

No other obligation or liability to pay sums or perform acts or services is covered unless explicitly provided for under Supplementary Payments – Coverages A and B.

- b. This insurance applies to "personal and advertising injury" caused by an offense arising out of your business but only if the offense was committed in the "coverage territory" during the policy period.

2. Exclusions

This insurance does not apply to:

a. Knowing Violation Of Rights Of Another

"Personal and advertising injury" caused by or at the direction of the insured with the knowledge that the act would violate the rights of another and would inflict "personal and advertising injury".

b. Material Published With Knowledge Of Falsity

"Personal and advertising injury" arising out of oral or written publication, in any manner, of material, if done by or at the direction of the insured with knowledge of its falsity.

c. Material Published Prior To Policy Period

"Personal and advertising injury" arising out of oral or written publication, in any manner, of material whose first publication took place before the beginning of the policy period.

d. Criminal Acts

"Personal and advertising injury" arising out of a criminal act committed by or at the direction of the insured.

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 liability for damages that the insured would have in the absence of the contract or agreement.

f. Breach Of Contract

"Personal and advertising injury" arising out of a breach of contract, except an implied contract to use another's advertising idea in your "advertisement".

g. Quality Or Performance Of Goods – Failure To Conform To Statements

"Personal and advertising injury" arising out of the failure of goods, products or services to conform with any statement of quality or performance made in your "advertisement".

h. Wrong Description Of Prices

"Personal and advertising injury" arising out of the wrong description of the price of goods, products or services stated in your "advertisement".

A mall hires a firm to provide security services for their premises. The security guards detain an individual under suspicion of shoplifting. It is later determined detainee did nothing wrong. The detainee brings suit against the Mall.

Example of Indemnity Agreement

Mall owner, ABC Inc. (Indemnitor) **shall defend indemnify and hold harmless** Sam's Security Services (Indemnitee), including its officers, directors, agents, employees, affiliates, parents, and subsidiaries, and each of them from **any and all claims**, demands, causes of action, damages, costs, expenses, actual attorneys fees consultants fees, expert fees, losses or liability, in law or in equity, of every kind and nature whatsoever arising out of or in connection with Sam's Security Services operations to be performed under this agreement for, but not limited to, **personal injury** including, but not limited to, bodily injury, emotional injury, sickness or disease, or death to persons and/or damage to property of anyone (including loss of use thereof)

➤ Contractual Liability Exclusion

1. The CGL excludes Personal Injury coverage for loss where the insured has assumed liability under a contract or agreement
 - a. Personal Injury is not included in the definition of an "Insured Contract" in Coverage A
 - b. Contractual Liability is also excluded under Personal Injury exclusion E.
2. Possible Solutions
 - a. Some coverage is available by endorsement shown below, however it is limited in that endorsement grants coverage only for the Peril of False Arrest / Detention

CG 22 74 – Limited Contractual Liability Coverage for Personal and Advertising Injury provides coverage for designated contract(s)

- b. Add "Indemnitee" to the CGL as an Add. Insured

POLICY NUMBER:

COMMERCIAL GENERAL LIABILITY
CG 22 74 10 01

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

LIMITED CONTRACTUAL LIABILITY COVERAGE FOR PERSONAL AND ADVERTISING INJURY

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

SCHEDULE

Designated Contract Or Agreement:

(If no entry appears above, information required to complete this endorsement will be shown in the Declarations as applicable to this endorsement.)

- 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.

Solely for the purposes of liability so assumed in such designated contract or agreement, reasonable attorney fees and necessary litigation expenses incurred by or for a party other than an insured are deemed to be damages because of "personal injury" described in Paragraph A.2.e.(2)(c) above, provided:

- (i) Liability to such party for, or for the cost of, that party's defense has also been assumed in the same designated contract or agreement; and
- (ii) Such attorney fees and litigation expenses are for defense of that party against a civil or alternative dispute resolution proceeding in which damages to which this insurance applies are alleged.

B. With respect to the contract or agreement designated in the Schedule above, the following is added to Section I – Supplementary Payments – Coverages A And B:

If we defend an insured against a "suit" and an indemnitee of the insured is also named as a party to the "suit", we will defend that indemnitee if all of the following conditions are met:

1. The "suit" against the indemnitee seeks damages for which the insured has assumed tort liability of the indemnitee in a designated contract or agreement shown in the Schedule, if such liability pertains to your business. Tort liability means a liability that would be imposed by law in the absence of any contract or agreement;
2. This insurance applies to such liability assumed by the insured;
3. The obligation to defend, or the cost of the defense of, that indemnitee, has also been assumed by the insured in the same designated contract or agreement;
4. The allegations in the "suit" and the information we know about the offense are such that no conflict appears to exist between the interests of the insured and the interests of the indemnitee;

5. The indemnitee and the insured ask us to conduct and control the defense of that indemnitee against such "suit" and agree that we can assign the same counsel to defend the insured and the indemnitee; and

6. The indemnitee:

a. Agrees in writing to:

- (1) Cooperate with us in the investigation, settlement or defense of the "suit";
- (2) Immediately send us copies of any demands, notices, summonses or legal papers received in connection with the "suit";
- (3) Notify any other insurer whose coverage is available to the indemnitee; and
- (4) Cooperate with us with respect to coordinating other applicable insurance available to the indemnitee; and

b. Provides us with written authorization to:

- (1) Obtain records and other information related to the "suit"; and
- (2) Conduct and control the defense of the indemnitee in such "suit".

So long as the above conditions are met, attorneys fees incurred by us in the defense of that indemnitee, necessary litigation expenses incurred by us and necessary litigation expenses incurred by the indemnitee at our request will be paid as Supplementary Payments. Notwithstanding the provisions of Paragraph A.2.e.(2) of this endorsement, such payments will not be deemed to be damages for "personal and advertising injury" as described in Paragraph A.2.e.(2)(c) above and will not reduce the limits of insurance.

Our obligation to defend an insured's indemnitee and to pay for attorneys fees and necessary litigation expenses as Supplementary Payments ends when:

1. We have used up the applicable limit of insurance in the payment of judgments or settlements; or
2. The conditions set forth above, or the terms of the agreement described in Paragraph 6. above, are no longer met.


10. Issues to look for when reading contracts

1. Waiver of Subrogation

Company's approval. Contractor's policies shall include at a minimum:

- a) Workers compensation insurance in full compliance with all applicable state and federal laws and regulations and employers' liability insurance in the amount of \$1,000,000.
- b) Commercial general liability insurance in the minimum amount of \$1,000,000 per occurrence for bodily injury, personal injury and property damage. Such insurance shall include contractual liability and completed operations coverage.
- c) Automobile liability insurance covering owned, non-owned, and hired automotive equipment in the minimum amount of \$1,000,000 combined single limit for bodily injury or property damage per accident.
- d) Other Coverage as applicable: Insert Applicable coverage
NONE

All such policies shall be maintained in full force and effect during the term of this Agreement; and

- 
- (1) shall not be cancelled without prior written notice having been furnished to Company;
 - (2) shall waive the right of subrogation against Company, its parent companies or any of its subsidiaries and/or affiliated companies and any of the directors, officers, agents and or employees of such Companies;
 - (3) shall list Company, including all of its directors, officers, agents and employees acting on its behalf, as an additional insured on each of the policies listed above except workers compensation, but only with respect to work being performed by Contractor on behalf of Company; and
 - (4) the insurance afforded to Company, as an additional insured, shall be primary coverage and apply to the full policy limits prior to any other insurance coverage, including any applicable self-insured retentions or deductibles which Company, its parent companies or any of its subsidiaries and/or affiliated Companies, if applicable, may have in the event of a claim made against any of the required policies.

It is further agreed that the additional insured status and subrogation waivers shall be enforceable even if the contractual defense and indemnity obligations assumed by Contractor under this Agreement are invalidated or unenforceable by application of any state or federal law. All premiums and deductibles shall be for the Contractor's account.

4.2 If any insurance required of Contractor or its subcontractors is written on a claims made basis, for a period of six years from the completion of the work contemplated by this Agreement, Contractor shall: (a) maintain a retroactive date that, at a minimum, dates back to the inception of the Agreement; (b) use all reasonable efforts to maintain insurance limits undepleted by losses or reserves for anticipated losses in the minimum amounts specified in this Agreement; and (c) maintain an extended reporting period rider which, at a minimum, dates back to the inception of this Agreement if the

claims made insurance is canceled, not renewed or renewed on a basis other than claims made.

4.3 **Indemnity.** To the fullest extent permitted by law, Contractor agrees to release, indemnify, defend and hold harmless Company, its corporate parents, affiliates and subsidiaries and their officers, directors, agents and employees (collectively referred to as the "Indemnified Party") from and against any and all claims, liabilities, expenses or costs (including reasonable attorneys fees and costs of defense) for injuries, death, property damage or other losses arising out of the services provided under this Agreement whether or not caused by the Indemnified Party's negligence, excepting those claims, liabilities, expenses or costs caused by the gross negligence or willful misconduct of the Indemnified Party.

4.4 If suit is filed on any matter governed by this indemnification provision, Contractor shall immediately notify Company and permit Indemnified Party to participate in the defense of the suit without waiver or impairment of the indemnities that Contractor has provided to the Indemnified Party.

4.5 If equipment or instruments of Contractor are lost in the well, Company shall either recover same without cost to Contractor or pay for such equipment or instruments, unless, however, such loss is caused by the negligence of Contractor.

5. OTHER PROVISIONS

5.1 **Independent Contractor.** The Parties intend by this Agreement that Contractor shall, at all times, be an independent contractor and neither Contractor nor anyone employed by Contractor shall be deemed for any purpose to be the employee, agent, servant, or representative of the Company. Company may inspect the work, but Company shall have no direction or control of Contractor or its employees and agents regarding the work except in the results to be obtained. THE INDEPENDENT CONTRACTOR IS NOT ENTITLED TO WORKER'S COMPENSATION BENEFITS FROM COMPANY, AND THE INDEPENDENT CONTRACTOR IS OBLIGATED TO PAY FEDERAL AND STATE INCOME TAXES ON ANY MONIES EARNED PURSUANT TO THE CONTRACT RELATIONSHIP.

5.2 **Confidentiality.** Contractor shall not divulge information not generally known to the public concerning the work to anyone without Company's prior written permission. Contractor shall obtain similar agreements from persons and subcontractors employed by it. This requirement shall survive the expiration of this Contract.

5.3 **Waiver.** Any failure by Company at any time to enforce or require the strict keeping and performance of any of the terms or conditions of this Agreement shall not constitute a waiver of such terms of conditions or of the right of Company at any time to avail itself of such remedies as it may have for any breach or breaches of such terms or conditions.

5.4 **Assignment.** This Agreement shall inure to and be binding upon the heirs, executors, administrators, successors and assigns of the parties. Notwithstanding the foregoing, Contractor shall not assign this Agreement in whole or in part or subcontract any work without the prior written consent of Company.

5.5 **Bonds.** Company may require Contractor to secure at Contractor's sole expense adequate performance and payment bonds. Company shall have the right to collect upon Contractor's payment bond, if any, to satisfy any claims for wages initiated against Company. Contractor agrees to indemnify and forever hold and save Company harmless from and against any and all liens of subcontractors for nonpayment.

5.6 **Attorneys Fees and Forum.** In any action or proceeding brought in connection with this Agreement, the prevailing party shall be entitled to

➤ **A look at some key components when reading contracts**

1. Waiver of Subrogation

- a. **The example below is one of a lease for property. Notice that when we are dealing with property, the definition of indemnitee and indemnitor are turned around or opposite of that when dealing with liability.**

CG 00 01

SECTION IV - COMMERCIAL GENERAL LIABILITY CONDITIONS

8. Transfer Of Rights Of Recovery Against Others To Us

If the insured has rights to recover all or part of any payment we have made under this Coverage Part, those rights are transferred to us. The insured must do nothing after loss to impair them. At our request, the insured will bring "suit" or transfer those rights to us and help us enforce them.

- a. When the insurance company pays a claim to their policyholder that arose from a third-party, the legal rights of recovery the insured holds are transferred automatically to the insurance company.
- b. The statement "the insured must do nothing after loss to impair them" infers that the insured can waive their subrogation rights before a claim occurs
- c. The insured must cooperate with the insurance company in the subrogation process
- d. Always add the **CG 24 04 Waiver of Transfer of Rights of Recovery Against Others To Us**

That way everybody is on the same page at the time of loss!

POLICY NUMBER:

COMMERCIAL GENERAL LIABILITY
CG 24 04 05 09

WAIVER OF TRANSFER OF RIGHTS OF RECOVERY AGAINST OTHERS TO US

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART
PRODUCTS/COMPLETED OPERATIONS LIABILITY COVERAGE PART

SCHEDULE

Name Of Person Or Organization:
Information required to complete this Schedule, if not shown above, will be shown in the Declarations.

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 we may have against the person or organization shown in the Schedule above because of payments we make for injury or damage arising out of your ongoing operations or "your work" done under a contract with that person or organization and included in the "products-completed operations hazard". This waiver applies only to the person or organization shown in the Schedule above.

This image shows a single sheet of white paper with horizontal ruling lines. The lines are evenly spaced and run across the width of the page. There are no margins, text, or other markings on the paper.

Blank lined paper for writing.

Company's approval. Contractor's policies shall include at a minimum:

- a) Workers compensation insurance in full compliance with all applicable state and federal laws and regulations and employers' liability insurance in the amount of \$1,000,000.
- b) Commercial general liability insurance in the minimum amount of \$1,000,000 per occurrence for bodily injury, personal injury and property damage. Such insurance shall include contractual liability and completed operations coverage.
- c) Automobile liability insurance covering owned, non-owned, and hired automotive equipment in the minimum amount of \$1,000,000 combined single limit for bodily injury or property damage per accident.
- d) Other Coverage as applicable: Insert Applicable coverage
NONE

All such policies shall be maintained in full force and effect during the term of this Agreement; and

- (1) shall not be cancelled without prior written notice having been furnished to Company;
- (2) shall waive the right of subrogation against Company, its parent companies or any of its subsidiaries and/or affiliated companies and any of the directors, officers, agents and or employees of such Companies;
- (3) shall list Company, including all of its directors, officers, agents and employees acting on its behalf, as an additional insured on each of the policies listed above except workers compensation, but only with respect to work being performed by Contractor on behalf of Company; and
- (4) the insurance afforded to Company, as an additional insured, shall be primary coverage and apply to the full policy limits prior to any other insurance coverage, including any applicable self-insured retentions or deductibles which Company, its parent companies or any of its subsidiaries and/or affiliated Companies, if applicable, may have in the event of a claim made against any of the required policies.

It is further agreed that the additional insured status and subrogation waivers shall be enforceable even if the contractual defense and indemnity obligations assumed by Contractor under this Agreement are invalidated or unenforceable by application of any state or federal law. All premiums and deductibles shall be for the Contractor's account.

4.2 If any insurance required of Contractor or its subcontractors is written on a claims made basis, for a period of six years from the completion of the work contemplated by this Agreement, Contractor shall: (a) maintain a retroactive date that, at a minimum, dates back to the inception of the Agreement; (b) use all reasonable efforts to maintain insurance limits undepleted by losses or reserves for anticipated losses in the minimum amounts specified in this Agreement; and (c) maintain an extended reporting period rider which, at a minimum, dates back to the inception of this Agreement if the

claims made insurance is canceled, not renewed or renewed on a basis other than claims made.

4.3 **Indemnity.** To the fullest extent permitted by law, Contractor agrees to release, indemnify, defend and hold harmless Company, its corporate parents, affiliates and subsidiaries and their officers, directors, agents and employees (collectively referred to as the "Indemnified Party") from and against any and all claims, liabilities, expenses or costs (including reasonable attorneys fees and costs of defense) for injuries, death, property damage or other losses arising out of the services provided under this Agreement whether or not caused by the Indemnified Party's negligence, excepting those claims, liabilities, expenses or costs caused by the gross negligence or willful misconduct of the Indemnified Party.

4.4 If suit is filed on any matter governed by this indemnification provision, Contractor shall immediately notify Company and permit Indemnified Party to participate in the defense of the suit without waiver or impairment of the indemnities that Contractor has provided to the Indemnified Party.

4.5 If equipment or instruments of Contractor are lost in the well, Company shall either recover same without cost to Contractor or pay for such equipment or instruments, unless, however, such loss is caused by the negligence of Contractor.

5. OTHER PROVISIONS

5.1 **Independent Contractor.** The Parties intend by this Agreement that Contractor shall, at all times, be an independent contractor and neither Contractor nor anyone employed by Contractor shall be deemed for any purpose to be the employee, agent, servant, or representative of the Company. Company may inspect the work, but Company shall have no direction or control of Contractor or its employees and agents regarding the work except in the results to be obtained. THE INDEPENDENT CONTRACTOR IS NOT ENTITLED TO WORKER'S COMPENSATION BENEFITS FROM COMPANY, AND THE INDEPENDENT CONTRACTOR IS OBLIGATED TO PAY FEDERAL AND STATE INCOME TAXES ON ANY MONIES EARNED PURSUANT TO THE CONTRACT RELATIONSHIP.

5.2 **Confidentiality.** Contractor shall not divulge information not generally known to the public concerning the work to anyone without Company's prior written permission. Contractor shall obtain similar agreements from persons and subcontractors employed by it. This requirement shall survive the expiration of this Contract.

5.3 **Waiver.** Any failure by Company at any time to enforce or require the strict keeping and performance of any of the terms or conditions of this Agreement shall not constitute a waiver of such terms of conditions or of the right of Company at any time to avail itself of such remedies as it may have for any breach or breaches of such terms or conditions.

5.4 **Assignment.** This Agreement shall inure to and be binding upon the heirs, executors, administrators, successors and assigns of the parties. Notwithstanding the foregoing, Contractor shall not assign this Agreement in whole or in part or subcontract any work without the prior written consent of Company.

5.5 **Bonds.** Company may require Contractor to secure at Contractor's sole expense adequate performance and payment bonds. Company shall have the right to collect upon Contractor's payment bond, if any, to satisfy any claims for wages initiated against Company. Contractor agrees to indemnify and forever hold and save Company harmless from and against any and all liens of subcontractors for nonpayment.

5.6 **Attorneys Fees and Forum.** In any action or proceeding brought in connection with this Agreement, the prevailing party shall be entitled to

2. Contractual Risk Transfer by use of Additional Insured

- **Additional Insured status – Why does an indemnitee want to be an Additional Insured?**

- a. Reasons for Requesting Additional Insured Status

- 1. It may assure greater safety in a risk transfer - a “safety net” for a hold harmless agreement

- a. In most cases by adding an Indemnitee as an additional insured to an indemnitor's policy, it guarantees them a defense under that policy

- b. My policy (indemnitor) defends them (indemnitee) immediately

- c. Without additional insured status, defense cost would have to be indemnified at a later date.

- d. Additional Insured status may protect the party/ies who attempt the transfer of risk from subrogation

- e. Typically courts do not allow an insurance company to subrogate against an Additional Insured as this creates a conflict of interest

- f. So even though the Additional Insured has contributed to the loss, the insurance carrier still must

- i. Defend the Additional Insured, and;
 - ii. Pay defense cost on behalf of the Additional Insured
 - iii. However it should be noted that the loss must be a covered cause of loss!

g. 3rd Party Over Protection

- i. Will the hold harmless be honored under state statute?
- ii. States differ on their interpretation of statutory immunity

1. Examples:

- a. Total Waiver
- b. Only if contract is clearly stated

A General Contractor hires a subcontractor to work on a job site. But before work can begin the GC requires the Sub to sign a hold harmless agreement with an indemnification clause in it.

An employee of the subcontractor is injured by a hazard created by the general contractor. He files a workers compensation claim and collects benefits from that policy.

The employee then sues the General Contractor alleging the cause of his injury was the GC's failure to provide a safe work environment.

The GC responds by filing a suit against the subcontractor for protection.

- iii. The agents role in advising their insured should always be to refer them back to their own attorney for local jurisdictions interpretations

1. Why?

- a. The waiver of immunity has nothing to do with the workers compensation policy and everything to do with jurisdictional statute or court case law
- b. Not many insurance agents have a license to practice law

[illegible]

This image shows a vertical strip of white paper with horizontal blue or grey ruling lines. The lines are evenly spaced and run across the width of the strip. There are approximately 20 visible lines. The strip appears to be a portion of a larger sheet of notebook paper.

SUPPLEMENTARY PAYMENTS – COVERAGES A AND B

2. If we defend an insured against a "suit" and an indemnitee of the insured is also named as a party to the "suit", we will defend that indemnitee if all of the following conditions are met:

- a. The "suit" against the indemnitee seeks damages for which the insured has assumed the liability of the indemnitee in a contract or agreement that is an "insured contract";
- b. This insurance applies to such liability assumed by the insured;
- c. The obligation to defend, or the cost of the defense of, that indemnitee, has also been assumed by the insured in the same "insured contract";
- d. The allegations in the "suit" and the information we know about the "occurrence" are such that no conflict appears to exist between the interests of the insured and the interests of the indemnitee;
- e. The indemnitee and the insured ask us to conduct and control the defense of that indemnitee against such "suit" and agree that we can assign the same counsel to defend the insured and the indemnitee; and
- f. The indemnitee:

(1) Agrees in writing to:

- (a) Cooperate with us in the investigation, settlement or defense of the "suit";
- (b) Immediately send us copies of any demands, notices, summonses or legal papers received in connection with the "suit";

(c) Notify any other insurer whose coverage is available to the indemnitee; and

(d) Cooperate with us with respect to coordinating other applicable insurance available to the indemnitee; and

(2) Provides us with written authorization to:

(a) Obtain records and other information related to the "suit"; and

(b) Conduct and control the defense of the indemnitee in such "suit".

So long as the above conditions are met, attorneys' fees incurred by us in the defense of that indemnitee, necessary litigation expenses incurred by us and necessary litigation expenses incurred by the indemnitee at our request will be paid as Supplementary Payments. Notwithstanding the provisions of Paragraph **2.b.(2)** of Section **I – Coverage A – Bodily Injury And Property Damage Liability**, such payments will not be deemed to be damages for "bodily injury" and "property damage" and will not reduce the limits of insurance.

Our obligation to defend an insured's indemnitee and to pay for attorneys' fees and necessary litigation expenses as Supplementary Payments ends when we have used up the applicable limit of insurance in the payment of judgments or settlements or the conditions set forth above, or the terms of the agreement described in Paragraph **f.** above, are no longer met.

SECTION III – LIMITS OF INSURANCE

1. The Limits of Insurance shown in the Declarations and the rules below fix the most we will pay regardless of the number of:
 - a. Insureds;
 - b. Claims made or "suits" brought; or
 - c. Persons or organizations making claims or bringing "suits".
-

SECTION I – COVERAGES

COVERAGE A - BODILY INJURY AND PROPERTY DAMAGE LIABILITY

1. Insuring Agreement

- a. We will pay those sums that the insured becomes legally obligated to pay as damages because of "bodily injury" or "property damage" to which this insurance applies. We will have the right and duty to defend the insured against any "suit" seeking those damages. However, we will have no duty to defend the insured against any "suit" seeking damages for "bodily injury" or "property damage" to which this insurance does not apply. We may, at our discretion, investigate any "occurrence" and settle any claim or "suit" that may result. But:

- (1) The amount we will pay for damages is limited as described in Section III – Limits Of Insurance; and
- (2) Our right and duty to defend ends when we have used up the applicable limit of insurance in the payment of judgments or settlements under Coverages **A** or **B** or medical expenses under Coverage **C**.

No other obligation or liability to pay sums or perform acts or services is covered unless explicitly provided for under Supplementary Payments – Coverages **A** and **B**.

➤ **Problems for named insured**

1. Policy limits will be diluted
 - a. Your client's liability policy contains a bucket of money
 - b. The amount of money contained in the bucket must be shared by all insured parties
2. Loss of defense control
 - a. Since it is not my policy and my insurance carrier defending the claim, the Additional Insured will not have much to say in how the claim will be adjusted
3. "Other Insurance" conflicts
 - a. Mix and match
 - i. More modern CGL forms have "other insurance" provisions. Older forms may contain conflicting provisions.
 - i. This can make the adjustment of a claim very difficult as the involved insurance carrier's may not be able to agree and which policy should pay first, or pay a certain proportion of the claim
4. Increased probability of disputes over coverage
 - a. When two or more carriers are involved, it may not be clear which insurance carrier should cover what.
 - b. Sometimes company's may dispute as to whether their form Covers loss at all!

5. It is not a good idea to depend on someone else's insurance.
 - a. What perils am I covered for?
 - b. How much is their deductible?
 - c. What is the financial stability of the Company?
 - d. Will I be notified if the policy is canceled?
 - e. Will I be notified if the policy is not renewed?
 - f. Will I be notified of a change in **coverage** at renewal time?
 - g. Will I be notified of a change in **limits** at renewal time?
 - h. Do I have any say in how the claim is handled?
 - i. I can't get along with that adjuster. Get me a new one!
 - j. I want to control my own destiny!

Company's approval. Contractor's policies shall include at a minimum:

- a) Workers compensation insurance in full compliance with all applicable state and federal laws and regulations and employers' liability insurance in the amount of \$1,000,000.
- b) Commercial general liability insurance in the minimum amount of \$1,000,000 per occurrence for bodily injury, personal injury and property damage. Such insurance shall include contractual liability and completed operations coverage.
- c) Automobile liability insurance covering owned, non-owned, and hired automotive equipment in the minimum amount of \$1,000,000 combined single limit for bodily injury or property damage per accident.
- d) Other Coverage as applicable: Insert Applicable coverage
NONE

All such policies shall be maintained in full force and effect during the term of this Agreement; and

- (1) shall not be cancelled without prior written notice having been furnished to Company;
- (2) shall waive the right of subrogation against Company, its parent companies or any of its subsidiaries and/or affiliated companies and any of the directors, officers, agents and or employees of such Companies;
- (3) shall list Company, including all of its directors, officers, agents and employees acting on its behalf, as an additional insured on each of the policies listed above except workers compensation, but only with respect to work being performed by Contractor on behalf of Company; and
- (4) the insurance afforded to Company, as an additional insured, shall be primary coverage and apply to the full policy limits prior to any other insurance coverage, including any applicable self-insured retentions or deductibles which Company, its parent companies or any of its subsidiaries and/or affiliated Companies, if applicable, may have in the event of a claim made against any of the required policies.

It is further agreed that the additional insured status and subrogation waivers shall be enforceable even if the contractual defense and indemnity obligations assumed by Contractor under this Agreement are invalidated or unenforceable by application of any state or federal law. All premiums and deductibles shall be for the Contractor's account.

4.2 If any insurance required of Contractor or its subcontractors is written on a claims made basis, for a period of six years from the completion of the work contemplated by this Agreement, Contractor shall: (a) maintain a retroactive date that, at a minimum, dates back to the inception of the Agreement; (b) use all reasonable efforts to maintain insurance limits undepleted by losses or reserves for anticipated losses in the minimum amounts specified in this Agreement; and (c) maintain an extended reporting period rider which, at a minimum, dates back to the inception of this Agreement if the

claims made insurance is canceled, not renewed or renewed on a basis other than claims made.

4.3 *Indemnity.* To the fullest extent permitted by law, Contractor agrees to release, indemnify, defend and hold harmless Company, its corporate parents, affiliates and subsidiaries and their officers, directors, agents and employees (collectively referred to as the "Indemnified Party") from and against any and all claims, liabilities, expenses or costs (including reasonable attorneys fees and costs of defense) for injuries, death, property damage or other losses arising out of the services provided under this Agreement whether or not caused by the Indemnified Party's negligence, excepting those claims, liabilities, expenses or costs caused by the gross negligence or willful misconduct of the Indemnified Party.

4.4 If suit is filed on any matter governed by this indemnification provision, Contractor shall immediately notify Company and permit Indemnified Party to participate in the defense of the suit without waiver or impairment of the indemnities that Contractor has provided to the Indemnified Party.

4.5 If equipment or instruments of Contractor are lost in the well, Company shall either recover same without cost to Contractor or pay for such equipment or instruments, unless, however, such loss is caused by the negligence of Contractor.

5. OTHER PROVISIONS

5.1 *Independent Contractor.* The Parties intend by this Agreement that Contractor shall, at all times, be an independent contractor and neither Contractor nor anyone employed by Contractor shall be deemed for any purpose to be the employee, agent, servant, or representative of the Company. Company may inspect the work, but Company shall have no direction or control of Contractor or its employees and agents regarding the work except in the results to be obtained. THE INDEPENDENT CONTRACTOR IS NOT ENTITLED TO WORKER'S COMPENSATION BENEFITS FROM COMPANY, AND THE INDEPENDENT CONTRACTOR IS OBLIGATED TO PAY FEDERAL AND STATE INCOME TAXES ON ANY MONIES EARNED PURSUANT TO THE CONTRACT RELATIONSHIP.

5.2 *Confidentiality.* Contractor shall not divulge information not generally known to the public concerning the work to anyone without Company's prior written permission. Contractor shall obtain similar agreements from persons and subcontractors employed by it. This requirement shall survive the expiration of this Contract.

5.3 *Waiver.* Any failure by Company at any time to enforce or require the strict keeping and performance of any of the terms or conditions of this Agreement shall not constitute a waiver of such terms or conditions or of the right of Company at any time to avail itself of such remedies as it may have for any breach or breaches of such terms or conditions.

5.4 *Assignment.* This Agreement shall inure to and be binding upon the heirs, executors, administrators, successors and assigns of the parties. Notwithstanding the foregoing, Contractor shall not assign this Agreement in whole or in part or subcontract any work without the prior written consent of Company.

5.5 *Bonds.* Company may require Contractor to secure at Contractor's sole expense adequate performance and payment bonds. Company shall have the right to collect upon Contractor's payment bond, if any, to satisfy any claims for wages initiated against Company. Contractor agrees to indemnify and forever hold and save Company harmless from and against any and all liens of subcontractors for nonpayment.

5.6 *Attorneys Fees and Forum.* In any action or proceeding brought in connection with this Agreement, the prevailing party shall be entitled to

➤ **Other Insurance - Policy language**

1. Commercial General Liability – **The Indemnitee's policy language**

CG 00 01 04 13

SECTION IV –COMMERCIAL GENERAL LIABILITY CONDITIONS

4. Other Insurance

If other valid and collectible insurance is available to the insured for a loss we cover under Coverages **A** or **B** of this Coverage Part, our obligations are limited as follows:

a. Primary Insurance

This insurance is primary except when Paragraph **b.** below applies. If this insurance is primary, our obligations are not affected unless any of the other insurance is also primary. Then, we will share with all that other insurance by the method described in Paragraph **c.** below.

b. Excess Insurance

(1) This insurance is excess over:

- (a) Any of the other insurance, whether primary, excess, contingent or on any other basis:
 - (i) That is Fire, Extended Coverage, Builder's Risk, Installation Risk or similar coverage for "your work";
 - (ii) That is Fire insurance for premises rented to you or temporarily occupied by you with permission of the owner;
 - (iii) That is insurance purchased by you to cover your liability as a tenant for "property damage" to premises rented to you or temporarily occupied by you with permission of the owner; or
 - (iv) If the loss arises out of the maintenance or use of aircraft, "autos" or watercraft to the extent not subject to Exclusion **g.** of Section **I** – Coverage **A** – Bodily Injury And Property Damage Liability.

(b) Any other primary insurance available to you covering liability for damages arising out of the premises or operations, or the products and completed operations, for which you have been added as an additional insured (by attachment of an endorsement.)

(2) When this insurance is excess, we will have no duty under Coverages A or B to defend the insured against any "suit" if any other insurer has a duty to defend the insured against that "suit". If no other insurer defends, we will undertake to do so, but we will be entitled to the insured's rights against all those other insurers.

(3) When this insurance is excess over other insurance, we will pay only our share of the amount of the loss, if any, that exceeds the sum of:

- (a) The total amount that all such other insurance would pay for the loss in the absence of this insurance; and
- (b) The total of all deductible and self-insured amounts under all that other insurance.

(4) We will share the remaining loss, if any, with any other insurance that is not described in this Excess Insurance provision and was not bought specifically to apply in excess of the Limits of Insurance shown in the Declarations of this Coverage Part.

Page 12 of 16 CG 00 01 04 13

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY

PRIMARY AND NONCONTRIBUTORY – OTHER INSURANCE CONDITION

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART
PRODUCTS/COMPLETED OPERATIONS LIABILITY COVERAGE PART

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.

Other Ins. Continued –

- **Contract says Indemnitor's insurance policy should be Primary and Non Contributory**
- a. Primary and Noncontributory means different things to different people
 1. Primary could mean;
 - i. The Additional Insured assumes you're liability will defend them 1st
 - ii. The Additional Insured assumes their insurance will **NEVER** be involved!
 - iii. The Additional Insured is asking you to defend them even for their "sole negligence"
 2. Noncontributory could mean;
 - i. Waiver of subrogation endorsement is desired
 - ii. The Additional Insured's CGL policy will not contribute in any way to a loss even if that policy covers it!
 3. End the controversy
 - i. Use an endorsement to clarify
 - ii. Consider attaching a copy of the endorsement to the Certificate of Insurance that is sent to the Indemnatee

3. So what is the Intent of the current ISO CGL "Other Insurance" language? Primary? Non Contributory?
 - i. Insurance Is primary for any Additional Insured assuming both party's have an ISO post 98 version of the CGL
 - ii. Once the policy limits are exhausted defending the Additional Insured, coverage reverts back to that Additional Insured's primary CGL policy
 - iii. But the insured signed a contract that requires Primary and Noncontributory. What if the Additional Insured refuses to turn it into his carrier?
4. How do I know what an Additional Insured is asking for?
 - i. Ask for clarification!

- IRMI Definition of noncontributory

Noncontributory: Insurance issued on the basis that it will not seek contribution from other insurance policies that apply to a covered loss on the same basis (e.g., primary).

Requests for additional insured status sometimes specify that it be provided on a noncontributing or noncontributory basis. The additional insured in such cases is seeking assurance that its own policy will not be asked to contribute to a covered loss.

Reprinted with permission. Copyright International Risk Management Institute, Inc., Dallas, TX.



Notes

This image shows a single sheet of white paper with horizontal ruling lines. The lines are evenly spaced and run across the width of the page. There are no margins, text, or other markings on the paper.

Items to Do

Blank lined paper for writing.


NOTE:

CGL coverage forms effective PRIOR to 1998 did not have the above (b) paragraph and therefore **would not be primary**. Only 1998 editions and later solve the primary “problem”

Therefore any CGL version prior to 1998 will require an endorsement to comply with the Primary and Noncontributory request by and Additional Insured

Indemnitee requires the right to participate in the defense

4.3 *Indemnity*. To the fullest extent permitted by law, Contractor agrees to release, indemnify, defend and hold harmless Company, its corporate parents, affiliates and subsidiaries and their officers, directors, agents and employees (collectively referred to as the “Indemnified Party”) from and against any and all claims, liabilities, expenses or costs (including reasonable attorneys fees and costs of defense) for injuries, death, property damage or other losses arising out of the services provided under this Agreement whether or not caused by the Indemnified Party’s negligence, excepting those claims, liabilities, expenses or costs caused by the gross negligence or willful misconduct of the Indemnified Party.



4.4 If suit is filed on any matter governed by this indemnification provision, Contractor shall immediately notify Company and permit Indemnified Party to participate in the defense of the suit without waiver or impairment of the indemnities that Contractor has provided to the Indemnified Party.

➤ **Indemnatee requires the right to participate in the defense**

- What does the policy say?
- So what should I do then?
 - Notify your insured they may be in breach of contract

SECTION I – COVERAGES

**COVERAGE A BODILY INJURY AND
PROPERTY DAMAGE LIABILITY**

1. Insuring Agreement

- a. We will pay those sums that the insured becomes legally obligated to pay as damages because of "bodily injury" or "property damage" to which this insurance applies. We will have the right and duty to defend the insured against any "suit" seeking those damages. However, we will have no duty to defend the insured against any "suit" seeking damages for "bodily injury" or "property damage" to which this insurance does not apply. We may, at our discretion, investigate any "occurrence" and settle any claim or "suit" that may result. But:

- (1) The amount we will pay for damages is limited as described in Section III – Limits Of Insurance; and
- (2) Our right and duty to defend ends when we have used up the applicable limit of insurance in the payment of judgments or settlements under Coverages **A** or **B** or medical expenses under Coverage **C**.

No other obligation or liability to pay sums or perform acts or services is covered unless explicitly provided for under Supplementary Payments – Coverages **A** and **B**.

Page 1 of 16 CG 00 01 04 13

SUPPLEMENTARY PAYMENTS – COVERAGES A AND B

1. We will pay, with respect to any claim we investigate or settle, or any "suit" against an insured we defend:
 - a. All expenses we incur.
2. If we defend an insured against a "suit" and an indemnitee of the insured is also named as a party to the "suit", we will defend that indemnitee if all of the following conditions are met:
 - a. The "suit" against the indemnitee seeks damages for which the insured has assumed the liability of the indemnitee in a contract or agreement that is an "insured contract";
 - b. This insurance applies to such liability assumed by the insured;
 - c. The obligation to defend, or the cost of the defense of, that indemnitee, has also been assumed by the insured in the same "insured contract";
 - d. The allegations in the "suit" and the information we know about the "occurrence" are such that no conflict appears to exist between the interests of the insured and the interests of the indemnitee;
 - e. The indemnitee and the insured ask us to conduct and control the defense of that indemnitee against such "suit" and agree that we can assign the same counsel to defend the insured and the indemnitee; and
 - f. The indemnitee:
 - (1) Agrees in writing to:
 - (a) Cooperate with us in the investigation, settlement or defense of the "suit";

- (b) Immediately send us copies of any demands, notices, summonses or legal papers received in connection with the "suit";
 - (c) Notify any other insurer whose coverage is available to the indemnitee; and
 - (d) Cooperate with us with respect to coordinating other applicable insurance available to the indemnitee; and
 - (2) Provides us with written authorization to:
 - (a) Obtain records and other information related to the "suit"; and
 - (b) Conduct and control the defense of the indemnitee in such "suit".

So long as the above conditions are met, attorneys' fees incurred by us in the defense of that indemnitee, necessary litigation expenses incurred by us and necessary litigation expenses incurred by the indemnitee at our request will be paid as Supplementary Payments. Notwithstanding the provisions of Paragraph 2.b.(2) of Section I – Coverage A – Bodily Injury And Property Damage Liability, such payments will not be deemed to be damages for "bodily injury" and "property damage" and will not reduce the limits of insurance.

Our obligation to defend an insured's indemnitee and to pay for attorneys' fees and necessary litigation expenses as Supplementary Payments ends when we have used up the applicable limit of insurance in the payment of judgments or settlements or the conditions set forth above, or the terms of the agreement described in Paragraph f. above, are no longer met.

Items to Do

This image shows a single sheet of white paper with horizontal blue ruling lines. The lines are evenly spaced and run across the width of the page. There is no handwriting or other markings on the paper.

Company's approval. Contractor's policies shall include at a minimum:

- a) Workers compensation insurance in full compliance with all applicable state and federal laws and regulations and employers' liability insurance in the amount of \$1,000,000.
- b) Commercial general liability insurance in the minimum amount of \$1,000,000 per occurrence for bodily injury, personal injury and property damage. Such insurance shall include contractual liability and completed operations coverage.
- c) Automobile liability insurance covering owned, non-owned, and hired automotive equipment in the minimum amount of \$1,000,000 combined single limit for bodily injury or property damage per accident.
- d) Other Coverage as applicable: Insert Applicable coverage
NONE

All such policies shall be maintained in full force and effect during the term of this Agreement; and

- (1) shall not be cancelled without prior written notice having been furnished to Company;
- (2) shall waive the right of subrogation against Company, its parent companies or any of its subsidiaries and/or affiliated companies and any of the directors, officers, agents and or employees of such Companies;
- (3) shall list Company, including all of its directors, officers, agents and employees acting on its behalf, as an additional insured on each of the policies listed above except workers compensation, but only with respect to work being performed by Contractor on behalf of Company; and
- (4) the insurance afforded to Company, as an additional insured, shall be primary coverage and apply to the full policy limits prior to any other insurance coverage, including any applicable self-insured retentions or deductibles which Company, its parent companies or any of its subsidiaries and/or affiliated Companies, if applicable, may have in the event of a claim made against any of the required policies.

It is further agreed that the additional insured status and subrogation waivers shall be enforceable even if the contractual defense and indemnity obligations assumed by Contractor under this Agreement are invalidated or unenforceable by application of any state or federal law. All premiums and deductibles shall be for the Contractor's account.

4.2 If any insurance required of Contractor or its subcontractors is written on a claims made basis, for a period of six years from the completion of the work contemplated by this Agreement, Contractor shall: (a) maintain a retroactive date that, at a minimum, dates back to the inception of the Agreement; (b) use all reasonable efforts to maintain insurance limits undepleted by losses or reserves for anticipated losses in the minimum amounts specified in this Agreement; and (c) maintain an extended reporting period rider which, at a minimum, dates back to the inception of this Agreement if the

claims made insurance is canceled, not renewed or renewed on a basis other than claims made.

4.3 *Indemnity.* To the fullest extent permitted by law, Contractor agrees to release, indemnify, defend and hold harmless Company, its corporate parents, affiliates and subsidiaries and their officers, directors, agents and employees (collectively referred to as the "Indemnified Party") from and against any and all claims, liabilities, expenses or costs (including reasonable attorneys fees and costs of defense) for injuries, death, property damage or other losses arising out of the services provided under this Agreement whether or not caused by the Indemnified Party's negligence, excepting those claims, liabilities, expenses or costs caused by the gross negligence or willful misconduct of the Indemnified Party.

4.4 If suit is filed on any matter governed by this indemnification provision, Contractor shall immediately notify Company and permit Indemnified Party to participate in the defense of the suit without waiver or impairment of the indemnities that Contractor has provided to the Indemnified Party.

4.5 If equipment or instruments of Contractor are lost in the well, Company shall either recover same without cost to Contractor or pay for such equipment or instruments, unless, however, such loss is caused by the negligence of Contractor.

5. OTHER PROVISIONS

5.1 *Independent Contractor.* The Parties intend by this Agreement that Contractor shall, at all times, be an independent contractor and neither Contractor nor anyone employed by Contractor shall be deemed for any purpose to be the employee, agent, servant, or representative of the Company. Company may inspect the work, but Company shall have no direction or control of Contractor or its employees and agents regarding the work except in the results to be obtained. THE INDEPENDENT CONTRACTOR IS NOT ENTITLED TO WORKER'S COMPENSATION BENEFITS FROM COMPANY, AND THE INDEPENDENT CONTRACTOR IS OBLIGATED TO PAY FEDERAL AND STATE INCOME TAXES ON ANY MONIES EARNED PURSUANT TO THE CONTRACT RELATIONSHIP.

5.2 *Confidentiality.* Contractor shall not divulge information not generally known to the public concerning the work to anyone without Company's prior written permission. Contractor shall obtain similar agreements from persons and subcontractors employed by it. This requirement shall survive the expiration of this Contract.

5.3 *Waiver.* Any failure by Company at any time to enforce or require the strict keeping and performance of any of the terms or conditions of this Agreement shall not constitute a waiver of such terms or conditions or of the right of Company at any time to avail itself of such remedies as it may have for any breach or breaches of such terms or conditions.

5.4 *Assignment.* This Agreement shall inure to and be binding upon the heirs, executors, administrators, successors and assigns of the parties. Notwithstanding the foregoing, Contractor shall not assign this Agreement in whole or in part or subcontract any work without the prior written consent of Company.

5.5 *Bonds.* Company may require Contractor to secure at Contractor's sole expense adequate performance and payment bonds. Company shall have the right to collect upon Contractor's payment bond, if any, to satisfy any claims for wages initiated against Company. Contractor agrees to indemnify and forever hold and save Company harmless from and against any and all liens of subcontractors for nonpayment.

5.6 *Attorneys Fees and Forum.* In any action or proceeding brought in connection with this Agreement, the prevailing party shall be entitled to

➤ **Confidentiality clause – uh oh.....**

- b. No Coverage for that!
- c. CGL coverage A is for Bodily Injury and Property Damage
- d. CGL coverage B is for Personal and Advertising Injury

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".

2. Exclusions

This insurance does not apply to:

a. Knowing Violation Of Rights Of Another

"Personal and advertising injury" caused by or at the direction of the insured with the knowledge that the act would violate the rights of another and would inflict "personal and advertising injury".

b. Material Published With Knowledge Of Falsity

"Personal and advertising injury" arising out of oral or written publication of material, if done by or at the direction of the insured with knowledge of its falsity.

c. Material Published Prior To Policy Period

"Personal and advertising injury" arising out of oral or written publication of material whose first publication took place before the beginning of the policy period.

d. Criminal Acts

"Personal and advertising injury" arising out of a criminal act committed by or at the direction of the insured.

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 liability for damages that the insured would have in the absence of the contract or agreement.

➤ **SOME OF MOST COMMON ADDITIONAL INSURED ENDORSEMENTS ADDED TO THE COMMERCIAL GENERAL LIABILITY POLICY**

Before we begin our discussion of specific Additional Insured endorsements we should start out with a general discussion on a couple of very meaningful changes that ISO has made to several 2012 endorsement versions.

1. As indemnification clauses in contracts have grown ever broader over the years many states have enacted laws to help protect their residents. Although not entirely limited to the construction field, construction contracts have played a large role in bringing this problem to the forefront of state legislators.

In an attempt to limit the power of contractual indemnification clauses most states have now enacted some form of "anti-indemnification laws". As you might guess the scope and nature of the protection of these "anti-indemnification laws" vary by state depending on how that state's legislative body sees the problem. To a large degree this debate centers around whether or not to allow broad form indemnity or, in other words, an indemnitor having to pay for the indemnitee's "Sole Negligence." Currently there are only six states which have not adopted some type of "anti-indemnity" statute.

Because these "anti-indemnity laws" vary in scope and nature it can be a minefield trying to figure out the legislative intent from one state to another so ISO has tackled this problem by adding this phrase to many of the new 2012 endorsements.

"The insurance afforded to such additional insured only applies to the extent permitted by law;"

The effect of this change then is to inform the parties that insurance coverage provided to the additional insured will not be broader than that which the named insured is required to provide according to that state/jurisdictions laws.

2. Language has also been added to many of the additional insured endorsements to clarify that the insurer will not have to pay on behalf of the additional insured, anymore than one of 2 things.

- ✓ The amount required by the contract between the indemnitor or in the indemnitee.
- ✓ The amount of insurance proceeds shown in the declarations page
- ✓ Whichever is less!

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

ADDITIONAL INSURED – OWNERS, LESSEES OR CONTRACTORS – SCHEDULED PERSON OR ORGANIZATION

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

SCHEDULE

Name Of Additional Insured Person(s) Or Organization(s)	Location(s) Of Covered Operations
Information required to complete this Schedule, if not shown above, will be shown in the Declarations.	

A. Section II – Who Is An Insured is amended to include as an additional insured the person(s) or organization(s) shown in the Schedule, but only with respect to liability for "bodily injury", "property damage" or "personal and advertising injury" **caused, in whole or in part, by:**

1. **Your acts** or omissions; or
2. The acts or omissions of **those acting on your behalf;**

in the performance of your ongoing operations for the additional insured(s) at the location(s) designated above.

However:

1. The insurance afforded to such additional insured only applies to the extent permitted by law; and
2. If coverage provided to the additional insured is required by a contract or agreement, the insurance afforded to such additional insured will not be broader than that which you are required by the contract or agreement to provide for such additional insured.

B. With respect to the insurance afforded to these additional insureds, the following additional exclusions apply:

This insurance does not apply to "bodily injury" or "property damage" occurring after:

1. All work, including materials, parts or equipment furnished in connection with such work, on the project (other than service, maintenance or repairs) to be performed by or on behalf of the additional insured(s) at the location of the covered operations has been completed; or
2. That portion of "your work" out of which the injury or damage arises has been put to its intended use by any person or organization other than another contractor or subcontractor engaged in performing operations for a principal as a part of the same project.

- C. With respect to the insurance afforded to these additional insureds, the following is added to **Section III – Limits Of Insurance:**

If coverage provided to the additional insured is required by a contract or agreement, the most we will pay on behalf of the additional insured is the amount of insurance:

1. Required by the contract or agreement; or

2. Available under the applicable Limits of Insurance shown in the Declarations;

whichever is less.

This endorsement shall not increase the applicable Limits of Insurance shown in the Declarations.

CG 20 10 04 13 Page 2 of 2

A. Additional Insured – Owners, Lessees or Contractors – Scheduled Person or Organization CG 20 10

1. Purpose
 - a. To extend coverage to an additional insured for "ongoing operations"
 - b. Covers only designated persons/entities
 - c. Must designate a location on the endorsement
 - d. Gives the Additional Insured a right to defense costs and limits of the Named Insured's policy
2. Coverage
 - a. The named insured must be responsible for cover damages either;
 - i. Whole
 - ii. Part
 - b. Coverage also exists if the Additional Insured was acting on the Named Insureds behalf.
3. Limitations or Exclusions
 - a. Although the damages caused by the Additional Insured may be a covered peril by the CGL policy, the Additional Insured cannot be solely at fault.
 - b. The named insured must at least contribute 1% fault to the situation or;
 - c. If the Additional Insured was acting on the Named Insureds behalf.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

ADDITIONAL INSURED – MANAGERS OR LESSORS OF PREMISES

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

SCHEDULE

Designation Of Premises (Part Leased To You):
Name Of Person(s) Or Organization(s) (Additional Insured):
Additional Premium: \$
Information required to complete this Schedule, if not shown above, will be shown in the Declarations.

A. Section II – Who Is An Insured is amended to include as an additional insured the person(s) or organization(s) shown in the Schedule, but only with respect to liability arising out of the ownership, maintenance or use of that part of the premises leased to you and shown in the Schedule and subject to the following additional exclusions:

This insurance does not apply to:

1. Any "occurrence" which takes place after you cease to be a tenant in that premises.
2. Structural alterations, new construction or demolition operations performed by or on behalf of the person(s) or organization(s) shown in the Schedule.

However:

1. The insurance afforded to such additional insured only applies to the extent permitted by law; and

2. If coverage provided to the additional insured is required by a contract or agreement, the insurance afforded to such additional insured will not be broader than that which you are required by the contract or agreement to provide for such additional insured.

B. With respect to the insurance afforded to these additional insureds, the following is added to Section III – Limits Of Insurance:

If coverage provided to the additional insured is required by a contract or agreement, the most we will pay on behalf of the additional insured is the amount of insurance:

1. Required by the contract or agreement; or
2. Available under the applicable Limits of Insurance shown in the Declarations;

whichever is less.

This endorsement shall not increase the applicable Limits of Insurance shown in the Declarations.

B. Additional Insured – Managers or Lessors of Premises – CG 20 11

1. Purpose
 - a. Covers the person or organization named in the endorsement for liability arising out of the ownership, maintenance, or use of the premises;
 - i. Leased to the named insured, and
 - ii. Scheduled in the endorsement
2. Coverage
 - a. The Additional Insured is subject to all of the exclusions of the Named Insureds policy
 - b. Coverage also does not apply to;
 - i. Any occurrence that takes place after the Named Insured ceases to be a tenant at the scheduled location
 - ii. Any structural alterations, new construction, or demolition operations performed by or on the behalf of the Additional Insured

C. Additional Insured – Owners, Lessees or Contractors – Completed Operations CG 20 37

1. Purpose
 - a. To provide Completed Operations coverage for the Additional Insured
2. Coverage
 - a. This endorsement provides Completed Operations coverage only for those Additional Insureds
 - b. Listed on the policy
 - c. Only at listed locations
3. Limitations or Exclusions
 - a. Covers only those claims in which the Named Insured has some negligence
 - b. Also it must be the Named Insureds "work" at listed locations
 - c. Work must be performed for the Additional Insured and included in the "Products/Completed Operations hazard."

2. Commercial General Insurance. shall maintain commercial general liability insurance with a limit of not less than \$1,000,000 each occurrence and \$2,000,000 aggregate. The policy shall cover liability arising from premises, operations, independent contractors, products-completed operations, personal injury and advertising injury, and liability assumed under an insured contract (including the tort liability of another assumed in a business contract). Completed Operations coverage is to extend for two (2) years following the last to occur of the following events:

- (i) termination of this Agreement; or
- (ii) termination of all outstanding services.

ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY

ADDITIONAL INSURED – OWNERS, LESSEES OR CONTRACTORS – COMPLETED OPERATIONS

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART
PRODUCTS/COMPLETED OPERATIONS LIABILITY COVERAGE PART

SCHEDULE

Name Of Additional Insured Person(s) Or Organization(s)	Location And Description Of Completed Operations

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

A. Section II – Who Is An Insured is amended to include as an additional insured the person(s) or organization(s) shown in the Schedule, but only with respect to liability for "bodily injury" or "property damage" caused, in whole or in part, by "your work" at the location designated and described in the Schedule of this endorsement performed for that additional insured and included in the "products-completed operations hazard".

However:

1. The insurance afforded to such additional insured only applies to the extent permitted by law; and
2. If coverage provided to the additional insured is required by a contract or agreement, the insurance afforded to such additional insured will not be broader than that which you are required by the contract or agreement to provide for such additional insured.

B. With respect to the insurance afforded to these additional insureds, the following is added to **Section III – Limits Of Insurance**:

If coverage provided to the additional insured is required by a contract or agreement, the most we will pay on behalf of the additional insured is the amount of insurance:

1. Required by the contract or agreement; or
2. Available under the applicable Limits of Insurance shown in the Declarations;

whichever is less.

This endorsement shall not increase the applicable Limits of Insurance shown in the Declarations.

ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY

ADDITIONAL INSURED – LESSOR OF LEASED EQUIPMENT

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

Name Of Additional Insured Person(s) Or Organization(s):

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

A. Section II – Who Is An Insured is amended to include as an additional insured the person(s) or organization(s) shown in the Schedule, but only with respect to liability for "bodily injury", "property damage" or "personal and advertising injury" caused, in whole or in part, by your maintenance, operation or use of equipment leased to you by such person(s) or organization(s).

However:

1. The insurance afforded to such additional insured only applies to the extent permitted by law; and
2. If coverage provided to the additional insured is required by a contract or agreement, the insurance afforded to such additional insured will not be broader than that which you are required by the contract or agreement to provide for such additional insured.

B. With respect to the insurance afforded to these additional insureds, this insurance does not apply to any "occurrence" which takes place after the equipment lease expires.

C. With respect to the insurance afforded to these additional insureds, the following is added to **Section III – Limits Of Insurance:**

If coverage provided to the additional insured is required by a contract or agreement, the most we will pay on behalf of the additional insured is the amount of insurance:

1. Required by the contract or agreement; or
2. Available under the applicable Limits of Insurance shown in the Declarations;

whichever is less.

This endorsement shall not increase the applicable Limits of Insurance shown in the Declarations

D. Additional Insured – Lessor of Leased Equipment - CG 20 28

1. Purpose
 - a. This endorsement names the owner/lessor of equipment as an Additional Insured for that equipment the Named Insured is leasing
2. Coverage
 - a. Gives the Additional Insured limits and defense coverage for equipment that the Named Insured is leasing and using.
3. Limitations or Exclusions
 - a. Covers the negligence of The Named Insured only
"Caused in whole or in part by the Named Insureds maintenance, operations, or use of equipment leased to the named insured by the person or organization identified in the endorsement."
 - b. Also excludes all coverage for any occurrence that takes place after the lease expires
 - c. This endorsement is on a scheduled basis. You must name the Additional Insured

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY

ADDITIONAL INSURED – LESSOR OF LEASED EQUIPMENT – AUTOMATIC STATUS WHEN REQUIRED IN LEASE AGREEMENT WITH YOU

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

- A. Section II – Who Is An Insured** is amended to include as an additional insured any person(s) or organization(s) from whom you lease equipment when you and such person(s) or organization(s) have agreed in writing in a contract or agreement that such person(s) or organization(s) be added as an additional insured on your policy. Such person(s) or organization(s) is an insured only with respect to liability for "bodily injury", "property damage" or "personal and advertising injury" caused, in whole or in part, by your maintenance, operation or use of equipment leased to you by such person(s) or organization(s).

However, the insurance afforded to such additional insured:

1. Only applies to the extent permitted by law; and
2. Will not be broader than that which you are required by the contract or agreement to provide for such additional insured.

A person's or organization's status as an additional insured under this endorsement ends when their contract or agreement with you for such leased equipment ends.

- B.** With respect to the insurance afforded to these additional insureds, this insurance does not apply to any "occurrence" which takes place after the equipment lease expires.

- C.** With respect to the insurance afforded to these additional insureds, the following is added to **Section III – Limits Of Insurance:**

The most we will pay on behalf of the additional insured is the amount of insurance:

1. Required by the contract or agreement you have entered into with the additional insured; or
2. Available under the applicable Limits of Insurance shown in the Declarations;

whichever is less.

This endorsement shall not increase the applicable Limits of Insurance shown in the Declarations.

E. Additional Insured – Lessor of Leased Equipment - Automatic Status When Required in Lease Agreement with You CG 20 34

1. Purpose
 - a. This endorsement names the owner/lessor of equipment as an Additional Insured for that equipment the Named Insured is leasing
2. Coverage
 - a. Limited to liability for
 - I. Bodily Injury
 - II. Property Damage
 - III. Advertising Injury
3. Limitations or Exclusions
 - a. Covers the negligence of The Named Insured only

"Caused in whole or in part by the Named Insureds maintenance, operations, or use of equipment leased to it by such person or organization."
 - b. Also excludes all coverage for any occurrence that takes place after the lease expires
 - c. This endorsement is written on a blanket basis.
 - d. No need to name the Additional Insured
 - e. Who notifies the Leasing Co. when coverage is canceled?

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY

ADDITIONAL INSURED – OWNERS, LESSEES OR CONTRACTORS – AUTOMATIC STATUS WHEN REQUIRED IN CONSTRUCTION AGREEMENT WITH YOU

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

A. Section II – Who Is An Insured is amended to include as an additional insured any person or organization for whom you are performing operations when you and such person or organization have agreed in writing in a contract or agreement that such person or organization be added as an additional insured on your policy. Such person or organization is an additional insured only with respect to liability for "bodily injury", "property damage" or "personal and advertising injury" caused, in whole or in part, by:

1. Your acts or omissions; or
2. The acts or omissions of those acting on your behalf;

in the performance of your ongoing operations for the additional insured.

However, the insurance afforded to such additional insured:

1. Only applies to the extent permitted by law; and
2. Will not be broader than that which you are required by the contract or agreement to provide for such additional insured.

A person's or organization's status as an additional insured under this endorsement ends when your operations for that additional insured are completed.

B. With respect to the insurance afforded to these additional insureds, the following additional exclusions apply:

This insurance does not apply to:

1. "Bodily injury", "property damage" or "personal and advertising injury" arising out of the rendering of, or the failure to render, any professional architectural, engineering or surveying services, including:
 - a. The preparing, approving, or failing to prepare or approve, maps, shop drawings, opinions, reports, surveys, field orders, change orders or drawings and specifications; or
 - b. Supervisory, inspection, architectural or engineering activities.

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 the failure to render any professional architectural, engineering or surveying services.

2. "Bodily injury" or "property damage" occurring after:

- a. All work, including materials, parts or equipment furnished in connection with such work, on the project (other than service, maintenance or repairs) to be performed by or on behalf of the additional insured(s) at the location of the covered operations has been completed; or
- b. That portion of "your work" out of which the injury or damage arises has been put to its intended use by any person or organization other than another contractor or subcontractor engaged in performing operations for a principal as a part of the same project.

C. With respect to the insurance afforded to these additional insureds, the following is added to **Section III – Limits Of Insurance:**

The most we will pay on behalf of the additional insured is the amount of insurance:

1. Required by the contract or agreement you have entered into with the additional insured; or
2. Available under the applicable Limits of Insurance shown in the Declarations;
whichever is less.

This endorsement shall not increase the applicable Limits of Insurance shown in the Declarations.

CG 20 33 04 13 Page 2 of 2

F. 2 Endorsements that look the same but have one very big difference!

- **ADDITIONAL INSURED – OWNERS, LESSEES OR CONTRACTORS – AUTOMATIC STATUS WHEN REQUIRED IN CONSTRUCTION AGREEMENT WITH YOU - CG 20 33 04 13**

- **ADDITIONAL INSURED – OWNERS, LESSEES OR CONTRACTORS – AUTOMATIC STATUS FOR OTHER PARTIES WHEN REQUIRED IN WRITTEN CONSTRUCTION AGREEMENT - CG 20 38 04 13**

1. The purpose of the CG 20 33 is to add to a named insured's policy an additional insured for whom that named insured is performing operations but only when the two parties have agreed to the additional insured status in writing in a contract or agreement.

2. However, we often times we see an insured enter into a contract whereby agreeing to take on not only the liability of an indemnitee but other parties referenced by the contract that the indemnitee must also answer to. Because these parties are not specifically named by the contract but are referred to in general, these parties are sometimes referenced as "upstream parties."

The CG 20 33 may not be sufficient to accommodate these scenarios. For example, suppose the insured, a Subcontractor enters into an agreement with a General Contractor and agrees to indemnify that general contractor for damages on the jobsite. A closer inspection of the contract reveals that the General Contractor has not only passed his liability to the Subcontractor but the contract wording also reveals that the Subcontractor has also agreed to indemnify other parties that the General Contractor is responsible for. A prime example would be the project owner. The CG 2033 may not provide coverage for the Subcontractor to indemnify the "Upstream Parties" because the contract is between the Subcontractor and the General Contractor not between the Subcontractor and the "Upstream Party."

3. In order to remedy this situation ISO has introduced a new endorsement for 2013.

**ADDITIONAL INSURED – OWNERS, LESSEES OR
CONTRACTORS – AUTOMATIC STATUS FOR OTHER PARTIES WHEN
REQUIRED IN WRITTEN CONSTRUCTION AGREEMENT - CG 20 38 04 13**

The CG 20 38 remedies the "Upstream Party" problem by adding an additional paragraph stating that;

- 2. Any other person or organization you are required to add as an additional insured under the contract or agreement described in Paragraph 1. above.***

4. One further note. The CG 20 33 was revised for 2013 adding the these "anti-indemnification" language

"The insurance afforded to such additional insured only applies to the extent permitted by law;"

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY

ADDITIONAL INSURED – OWNERS, LESSEES OR CONTRACTORS – AUTOMATIC STATUS FOR OTHER PARTIES WHEN REQUIRED IN WRITTEN CONSTRUCTION AGREEMENT

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

A. Section II – Who Is An Insured is amended to include as an additional insured:

1. Any person or organization for whom you are performing operations when you and such person or organization have agreed in writing in a contract or agreement that such person or organization be added as an additional insured on your policy; and
2. Any other person or organization you are required to add as an additional insured under the contract or agreement described in Paragraph 1. above.

Such person(s) or organization(s) is an additional insured only with respect to liability for "bodily injury", "property damage" or "personal and advertising injury" caused, in whole or in part, by:

- a. Your acts or omissions; or
- b. The acts or omissions of those acting on your behalf;

in the performance of your ongoing operations for the additional insured.

However, the insurance afforded to such additional insured described above:

- a. Only applies to the extent permitted by law; and
- b. Will not be broader than that which you are required by the contract or agreement to provide for such additional insured.

A person's or organization's status as an additional insured under this endorsement ends when your operations for the person or organization described in Paragraph 1. above are completed.

B. With respect to the insurance afforded to these additional insureds, the following additional exclusions apply:

This insurance does not apply to:

1. "Bodily injury", "property damage" or "personal and advertising injury" arising out of the rendering of, or the failure to render, any professional architectural, engineering or surveying services, including:
 - a. The preparing, approving, or failing to prepare or approve, maps, shop drawings, opinions, reports, surveys, field orders, change orders or drawings and specifications; or
 - b. Supervisory, inspection, architectural or engineering activities.

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 the failure to render, any professional architectural, engineering or surveying services.

2. "Bodily injury" or "property damage" occurring after:
 - a. All work, including materials, parts or equipment furnished in connection with such work, on the project (other than service, maintenance or repairs) to be performed by or on behalf of the additional insured(s) at the location of the covered operations has been completed; or

CG 20 33
does not
have this
paragraph

- b. That portion of "your work" out of which the injury or damage arises has been put to its intended use by any person or organization other than another contractor or subcontractor engaged in performing operations for a principal as a part of the same project.
- c. With respect to the insurance afforded to these additional insureds, the following is added to **Section III – Limits Of Insurance:**

The most we will pay on behalf of the additional insured is the amount of insurance:

1. Required by the contract or agreement described in Paragraph **A.1.**; or
 2. Available under the applicable Limits of Insurance shown in the Declarations;
- whichever is less.

This endorsement shall not increase the applicable Limits of Insurance shown in the Declarations.

F. BLANKET ADDITIONAL INSURED ENDORSEMENTS

A. Why They Are Used?

1. These are endorsements that add Additional Insureds automatically to the CGL liability policy.
2. This makes life easier without having to name each and every one
3. There is less chance of missing someone who wants to be added as an Additional Insured

B. The Challenges and Problems of Using Blanket Additional Insured Endorsements

1. There is less control. No selection process
2. The insured, the agent, and the underwriter, have no say who is to be added to the policy
3. There is no chance to underwrite properly
4. People mistake the purpose for this endorsement as broadening the scope of insurance rather than just providing automatic coverage without having to schedule and Additional Insured
5. These endorsements still do not offer coverage for the "sole negligence" of the Additional Insured
6. Both require a written contract trigger coverage
7. Who notifies the Leasing Co. when coverage is canceled?



James K. Ruble Seminar

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

Section 4

WC Funding Options

WC Funding Options

Kevin J. Brady, CIC
Artex Risk Solutions, Inc
Kevin_Brady@artexrisk.com

WC Funding Options 2022 kjb



1

Definitions

- Alternative** (al-ter'-na-tive) *adj.*
- Providing choice between things
 - One of the things to be chosen
- Financing** (fi-nance') *v.*
- The science of managing money
- Risk** (risk) *v.*
- To expose to risk
 - To incur the risk
- Sharing** (shar'-ing) *v.*
- To distribute
- Control** (con-trol') *v.*
- To regulate or direct
 - To verify by comparison

WC Funding Options 2022 kjb

2

Next Four Hours

- Overview
- Industry results
- Guaranteed cost vs.
- Retro's vs.
- Large deductibles vs.
- Single parent captives vs.
- Self insurance



WC Funding Options 2022 kjb

3

The Marketplace What is going on and why?



4

WC Funding Options 2022 kjb

4

Four Phases of the Insurance Industry



WC Funding Options 2022 kjb

5

50 North American P/C Insurer and Reinsurers Results

Fitch Report Highlights

	Operating ROE		Net Income ROE		Combined Ratio		(Better)/
	2020	2019	2020	2019	2020	2019	Worse
Diversified Commercial	3.5%	6.9%	7.1%	16.6%	97.9	96.8	1.1
Specialty Commercial	6.2%	7.9%	7.4%	13.1%	96.6	96.5	0.1
Regional Commercial	6.1%	8.2%	9.8%	17.8%	98.3	96.5	1.8
Total Commercial	3.7%	7.0%	7.2%	16.4%	97.8	96.6	1.2
Personal Lines (National)	17.9%	20.2%	24.4%	23.6%	88.3	92.1	(3.8)
Reinsurers	-1.5%	5.3%	3.6%	10.9%	105.4	98.9	6.5
Total 50 Companies	4.6%	7.5%	8.1%	16.6%	96.3	95.9	0.4

Source: North American Property/Casualty Insurers' 2020 Results, Fitch Ratings, Mar. 22, 2021

WC Funding Options 2022 kjb

6

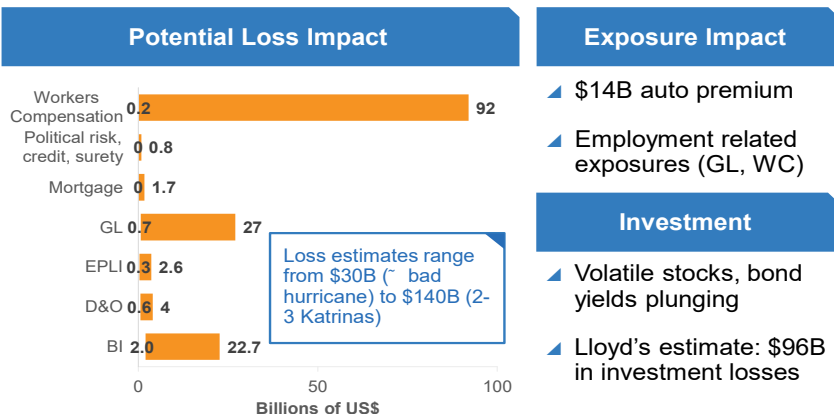
U.S. P/C Insurers 2020 Preliminary Combined Ratios

	2020 Combined Ratio	Points (Better)/ Worse
Fitch	96.3	0.4
Moody's	95.0	(0.1)
AM Best	98.6	(0.3)
Basis of Analysis		
Fitch	50 Insurers & Reinsurers	
Moody's	22 Rated Insurers	
AM Best	95% of Industry NWP	
Note: AM Best figures based on Statutory results as of Mar. 9		

7

COVID-19's Impact

Unprecedented Spread of Loss, Deterioration of Exposure



Source: Willis Towers Watson, Insurance Information Institute..

WC Funding Options 2022 kjb

8

Insurance Issues by Line of Business

Before the Pandemic and Now

2020 Forecast and Reforecast		
Line	Before the Pandemic	Now
Property	Trapped capital, rates	Business interruption
Personal Auto	Lower frequency, rates	Less driving (but faster), premium givebacks
D&O	Event-driven securities class actions, rates	Hindsight litigation of securities filings
Cyber	Public sector ransomware	Hospital ransomware, phishing
Commercial Auto	Continuing deterioration	Less driving, HOS rules suspended
Workers Comp	Falling frequency, solid profits	Fewer exposures, first responders

WC Funding Options 2022 kjb

9

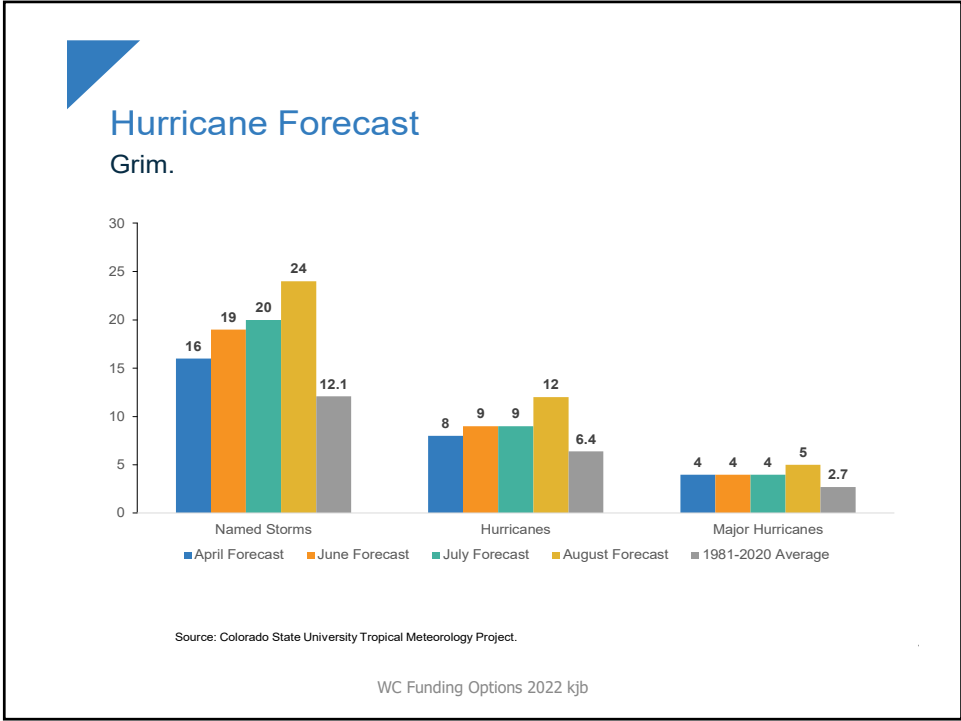
Insurance Issues by Line of Business

What lies ahead?

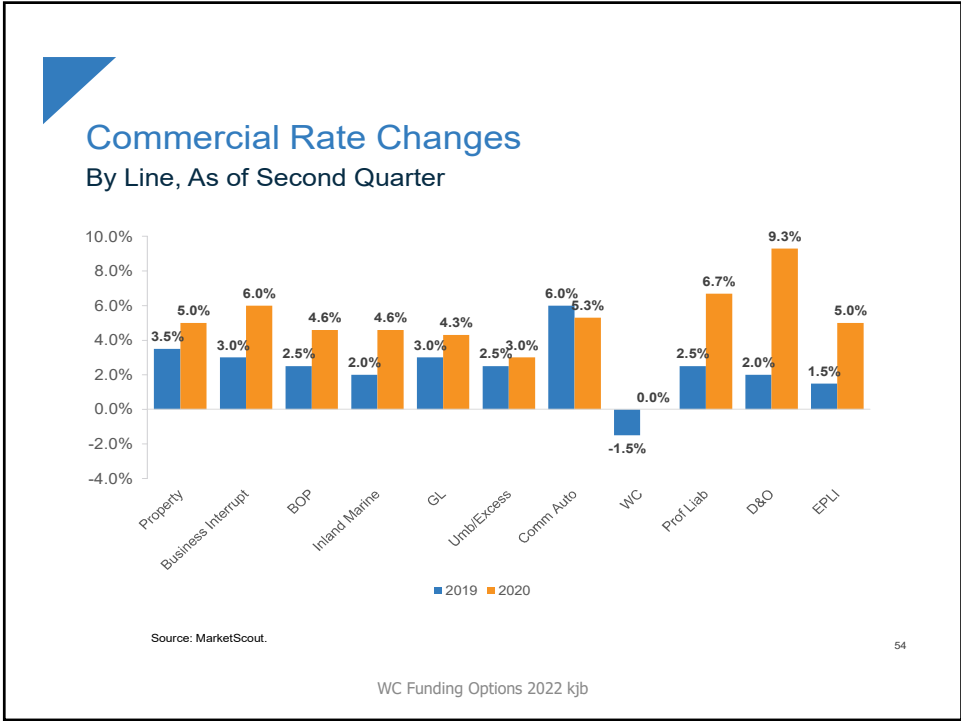
Second Half 2020 and Beyond		
Line	What to Look For	What May Lie Beyond
Property	Impact of social unrest, grim hurricane forecast	Work from home ? less commercial real estate
Personal Auto	Rate cuts vs. additional credits; regulatory pressure	Work from home ? less driving
Workers Comp	Impact of presumptive regulations, limits on rate-setting	Work from home ? fewer injuries
Liability	Legislative proposals to limit liability	Social inflation
Commercial Auto	Social inflation	Social inflation

WC Funding Options 2022 kjb

10



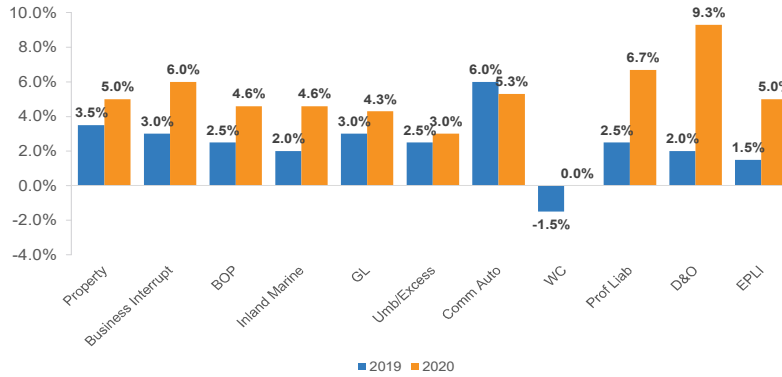
11



12

Commercial Rate Changes

By Line, As of Second Quarter



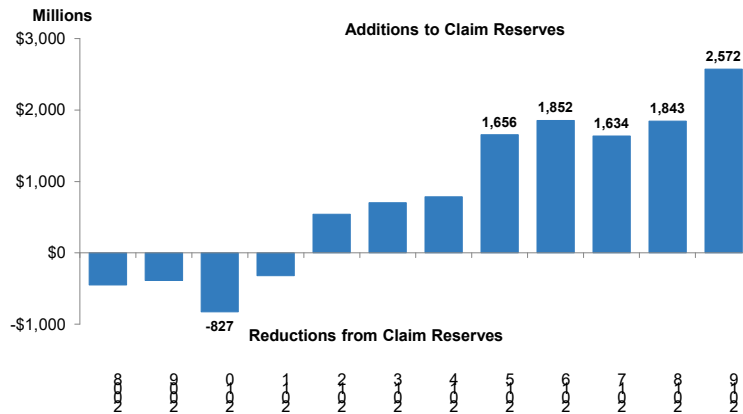
Source: MarketScout.

WC Funding Options 2022 kjb

13

Social Inflation: The Toll

Reserve Development, Commercial Auto Liability



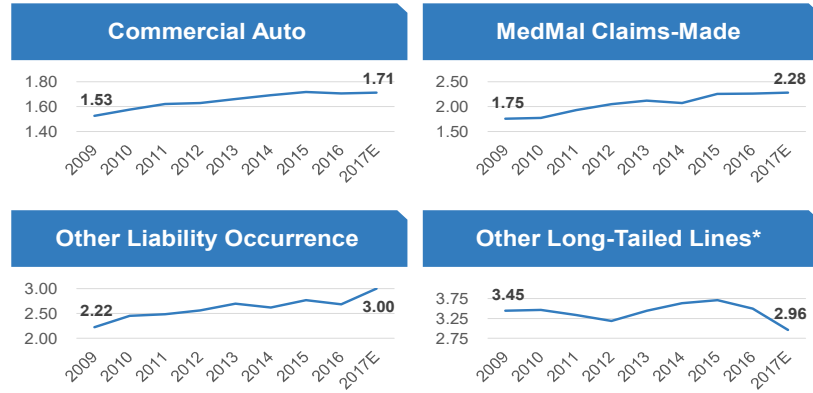
Sources: NAIC data sourced from S&P Market Intelligence; Insurance Information Institute.

WC Funding Options 2022 kjb

14

It's Not Just Auto

12:36 Loss Development Factors by Year, Long-Tailed Lines

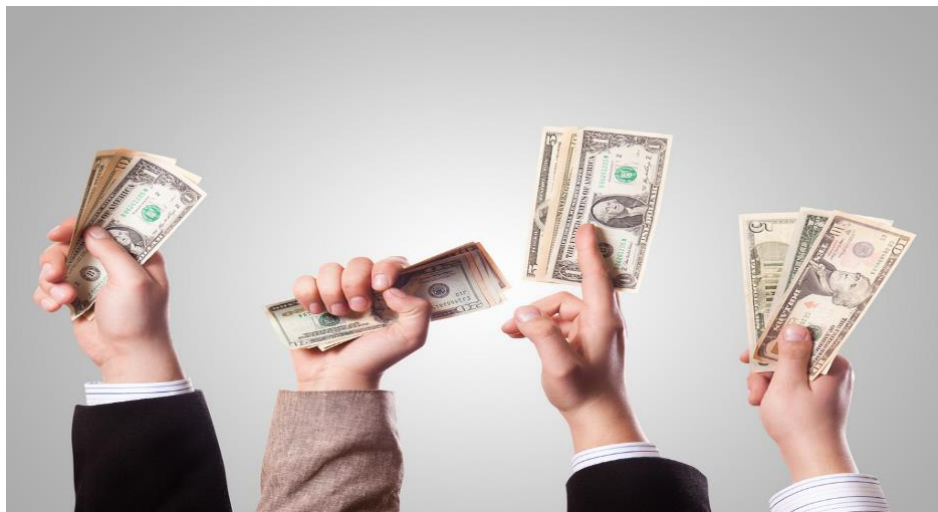


• Medical Malpractice Occurrence, Other Liability Claims-Made, Products Liability Occurrence, Products Liability Claims-Made.
Estimate assumes 24:36 Factor is straight average of previous three years.
Source: NAIC data, sourced from S&P Global Market Intelligence; Insurance Information Institute.

WC Funding Options 2022 kjb

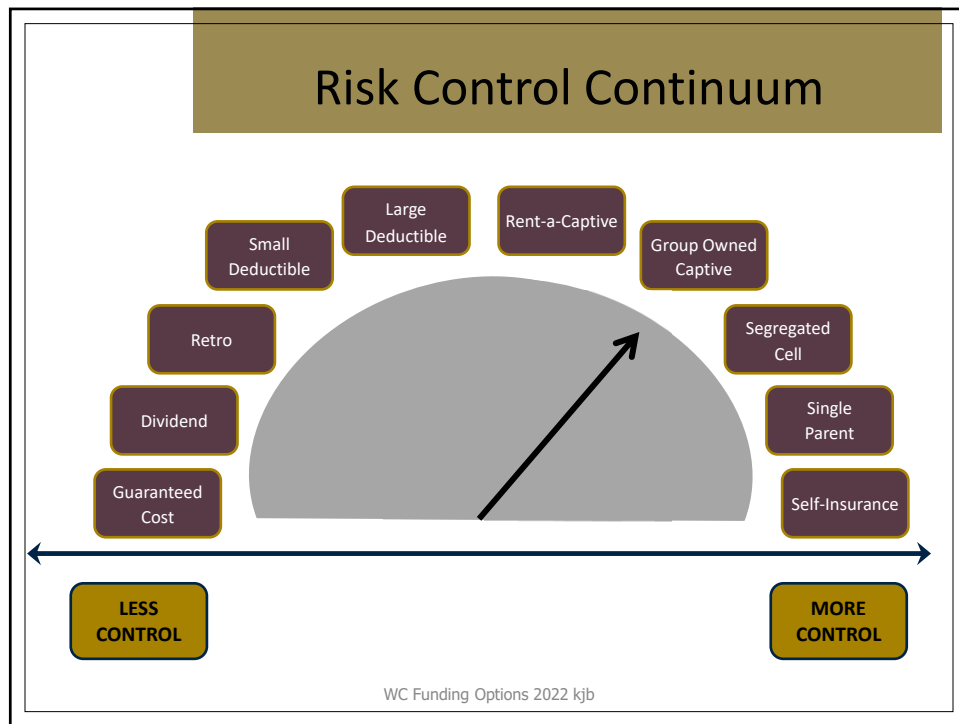
15

Funding Options



WC Funding Options 2022 kjb

16



17

Guaranteed Cost Plans

- Used for any line of coverage
- Termed “**prospective**” rating
- Premium computed at beginning of policy; not subject to adjustment at policy expiration
- Policy rated at inception
 - Experience modifier applied
- Rate charged against exposure base

WC Funding Options 2022 kjb

18

Guaranteed Cost Plans

Funding variables

Premium discounts

Deductibles

Dividends

- Flat
- Sliding scale



WC Funding Options 2022 kjb

19

Guaranteed Cost Plans

Advantages

1. To insured
 - No retro change for poor performance
 - Premium discount guaranteed
2. To carrier
 - Cash flow - prepaid premiums
 - Retains any funds excess of losses
 - Reserve liability interest income



Disadvantages

1. To insured
 - No premium savings for good performance
 - Cash flow - prepaid premiums
 - Loses control of claims handling
2. To carrier
 - No option to recapture costs for poor performance

WC Funding Options 2022 kjb

20

Retro's



What is Retrospective Rating?

- Premium based on **actual losses** incurred during the policy period subject to the retrospective rating plan
- Subject to **maximum** and **minimum** premiums

WC Funding Options 2022 kjb

21

Retrospectively Rated Plans

Loss Sensitive Rating Plan Of **Mutual Agreement**

Available Lines Of Coverage
Workers' Compensation
General Liability
Auto Liability

Retro Rating Determines Premium At **Expiration**

Cost Plus Rating Plan
Based On Losses
Incurred Losses Vs. Paid Losses

WC Funding Options 2022 kjb

22

Formula

Premium Formula =

A collage of various mathematical formulas including vector algebra, trigonometry, calculus, and physics equations.

Basic Premium + Converted Losses X Tax
Multiplier = Retro Premium

Subject to minimum and maximum premium

WC Funding Options 2022 kjb

23

Retro

Basic Premium Components

Expressed as percentage of standard premium
Includes:

- Commission
- Administration/Audit Expenses
- Bureau Expenses
- Loss Control Expenses
- Insurance Charge

WC Funding Options 2022 kjb

24

Retro Loss Conversion Factor (LCF)

Claims handling expenses
Factor of ratable losses
Allocated & unallocated loss adjustment
expenses

NOTE: Higher for good control
Lower for questionable control

WC Funding Options 2022 kjb

25

Retro Breakeven Worksheet

- Standard Premium \$1,000,000
- Minimum Premium \$400,000
- Maximum Premium 125%
- Basic 25% (\$250,000)
- Maximum Premium \$1,250,000
- LCF 1.10
- Minimum Premium 40%
- Tax Multiplier 1.031

WC Funding Options 2022 kjb

26

Retro Expected Performance

Losses To Meet Minimum Premium

$$\$250k + \$150k \times \text{Tax} = \$400,000$$

Losses To Meet Maximum Premium

$$\$250k + \$990k \times \text{Tax} = \$1,250,000$$

Losses To Equal Guaranteed Cost

$$\$250,000 + \$690k \times \text{Tax} = \$1,000,000$$

WC Funding Options 2022 kjb

27

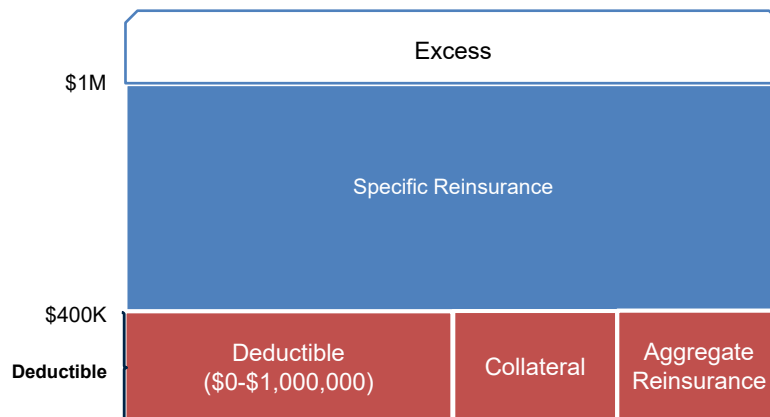
Deductible Funding



WC Funding Options 2022 kjb

28

Deductible Coverage Structure



29
WC Funding Options 2022 kjb

29

Large Deductible

- Designed for medium-larger accounts
- Covers casualty lines, WC, GL, and/or Auto
- Deductible ranges from \$100k to \$1mm
- Carrier assumes full statutory liability
- Insured assumes contractual obligation for reimbursement

WC Funding Options 2022 kjb

30

Why Use a Deductible?

- Push back the cost of insurance
- Reduce frictional cost in the burn layer
- Better control of claim process via outsourcing
- Reduce market fluctuations



WC Funding Options 2022 kjb

31

Two Types of Deductible Programs

1. Insurer Funded

- Carrier will pay all claims within deductible
- Carrier bills insured for reimbursement

WC Funding Options 2022 kjb

32

Two Types of Deductible Programs

2. Policyholder Funded

- Insured funds for its own claims within the deductible
- Insured provides funds to TPA who pays claims

WC Funding Options 2022 kjb

33

Large Deductible Components

Deductible

- Amount insured assumes
- Per claim or per occurrence

Fixed Costs

- Insurance costs to take risk over deductible
- Auditable

WC Funding Options 2022 kjb

34

Large Deductible Components

Surcharges/Assessments

- State mandated fees
- Each state files independently

Claim Handling

- By carrier or TPA
- Priced by expected losses, or by claim

Loss Fund

- Estimate of expected losses
- Billing options, monthly, weekly, daily

WC Funding Options 2022 kjb

35

Collateral

Carrier credit risk in large deductible

- Exposure to loss for claims inside deductible
- Audit premiums

Secured via LOC or cash



WC Funding Options 2022 kjb

36

Collateral Issues

- Stacking LOC can impede line of credit
- Unpredictable timing of claim reimbursements
- Risk of large, unpredictable losses, especially if no aggregate

WC Funding Options 2022 kjb

37

Deductibles Pros vs Cons

- Pros
 - Pushes cost of insurance back
 - Cash flow
 - Leveling out of cost of risk
 - Somewhat reduces market volatility

WC Funding Options 2022 kjb

38

Deductibles Pros vs Cons

- Cons
 - Recurring collateral requirements
 - Tied up collateral
 - Deferral of tax deductions for reserves
 - Forces trapped liabilities onto balance sheet

WC Funding Options 2022 kjb

39

Benefits of Participation in Rent-A-Captive

- Minimize Insurance Costs
 - Loss sensitive program
 - Return of underwriting profit to the insured
 - Premium is based on historical performance
- Long-term stabilization
 - Reduce Volatility
- Transparency
 - Unbundled claims handling
 - Partner with like-minded employers
- Control Risk
 - Greater control over claims
 - Incentives for loss control
 - Leverage with service providers
 - Going to market as one employer of \$8M in premium

40

40

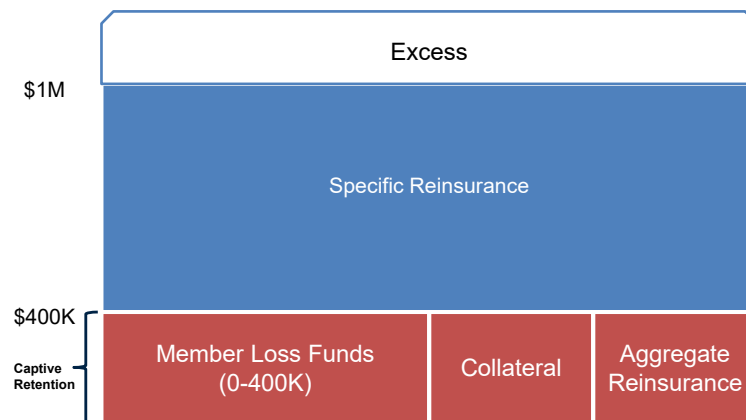
Review of Rent-A-Captive Components

- Premium Development
- Service Providers
- Captive Structure

41

41

Rent-A-Captive Coverage Structure



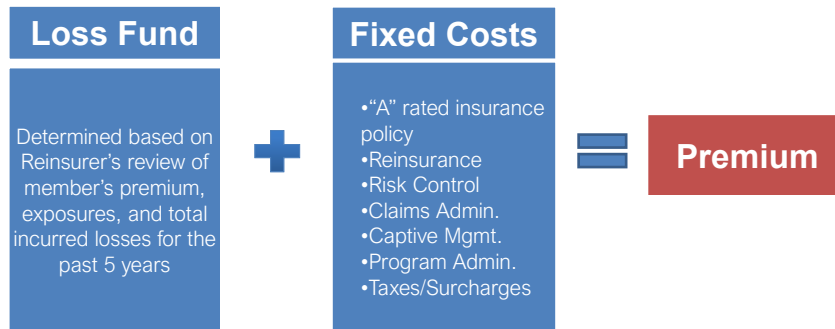
42

WC Funding Options 2022 kjb

42

Premium Development

- Performance driven pricing

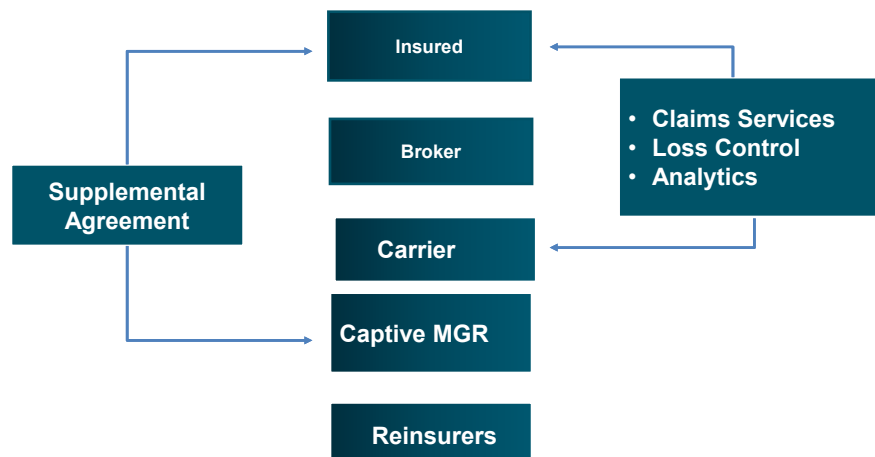


43

WC Funding Options 2022 kjb

43

Unbundled Program Control and Accountability



44

WC Funding Options 2022 kjb

44

Rent-A-Captive

- Same premise as group without ownership
- No capitalization
- Unused surplus returned to participant
- No investment income accrual
- No meetings

WC Funding Options 2022 kjb

45

Rent-A-Captive

	Annual Estimate
Premium Breakout:	
Total Loss Funds:	\$300,000
Fixed Costs:	<u>\$200,000</u>
Captive Premium:	\$500,000
Surcharges:	\$50,000
Brokerage Fee	<u>\$37,500</u>
Total Premium:	\$587,500
Collateral Requirement:	117,500
Minimum Cost:	200,000
Maximum Cost: (Premium+ Collateral)	705,000
Projected Exposure: Workers Compensation	10,000,000

WC Funding Options 2022 kjb

46

Rent-A-Captive

Conceptual Loss Level Exhibit			
Rent-A-Captive			
Annual Premium Estimate:		587,500	
Loss ratio	Loss Level	Captive Cost	
0.00%	0	287,500	Minimum Cost
10.00%	58,750	346,250	
20.00%	117,500	405,000	
21.28%	125,000	412,500	Average
30.00%	176,250	463,750	
40.00%	235,000	522,500	
50.00%	293,750	581,250	
60.00%	352,500	640,000	
71.06%	417,500	705,000	Maximum Cost
Policy Year	Premium	Incurred Losses	
2011	375,000	75,000	historical loss data provided to date.
2012	400,000	125,000	
2013	425,000	200,000	Losses are capped at the captive's retention.
2014	450,000	100,000	
2015	475,000	125,000	

WC Funding Options 2022 kjb

47

Loss Portfolio Transfer

- Structured transactions transferring a portfolio of known and unknown losses to a commercial insurance company in exchange for a premium
- Financially, this can result in:
 - Relief from the liability assigned to a balance sheet
 - Relief from associated collateral in place
 - Posted collateral or balance sheet liabilities

48

WC Funding Options 2022 kjb

48

Who Benefits from LPT?

- Where LPT premiums are less than:
 - Collateral posted
 - Liabilities reserved on balance sheet
- \$2mm accrued liabilities for any one line of self insured loss

Note: Accrued liabilities includes known losses, including case reserves, as well as IBNR.

49

WC Funding Options 2022 kjb

49

Two Ways to Structure LPT

1. Legal Finality

- LPT carrier works directly with historic carriers.
- LPT carrier assumes all actuarial determined outstanding liabilities.
- LPT carrier assumes all historic LOC/Security obligations.

Note:

1. Lengthy process
2. Works best with SIR structure as opposed to deductibles

50

WC Funding Options 2022 kjb

50

Two Ways to Structure LPT

2. Economic Finality

- Insured works directly with LPT carrier
- Actuarial analysis of outstanding liabilities and LOC
- LPT carrier reimburses insured for outstanding liabilities
- LPT carrier puts up corresponding collateral to insured

Results:

- Clean balance sheet
- Elimination of legacy liabilities

51

WC Funding Options 2022 kjb

51



52

Basic Overview of Captives

- Characteristics of Captives
 - Licensed insured company
 - Formed to insure or reinsure the risk of its owners or third parties of their choosing
 - Regulated under special legislation regulating captives
 - Located offshore or onshore
 - Admitted only in its domicile and non-admitted in all other jurisdictions

WC Funding Options 2022 kjb

53

Basic Overview of Captives

- Risk Management Benefits from Utilizing Captive:
 - Formalized insurance program
 - Flexibility in choosing service providers
 - Flexibility in program design
 - Return underwriting profit to member
 - Return investment income to member

WC Funding Options 2022 kjb

54

Number of Captives, 2010-2019

Year	Number of captives
2010	5,587
2011	5,831
2012	6,125
2013	6,420
2014	6,739
2015	6,851
2016	6,700
2017	6,454
2018	6,459
2019	6,359

55
WC Funding Options 2022 kjb

55

Leading Captive Domiciles

Domicile	Number of Captives
1. Bermuda	715
2. Cayman Island	674
3. Vermont	585
4. Utah	435
5. Delaware	366
6. Barbados	294
7. North Carolina	235
8. Hawaii	231
9. Guernsey	199
10. Luxembourg	195
11. South Carolina	179
TOTAL ALL CAPTIVES	6,359

WC Funding Options 2022 kjb

56

56

Captives By State

1.	Vermont	585
2.	Utah	435
3.	Delaware	366
4.	North Carolina	235
5.	Hawaii	231
6.	South Carolina	179
7.	Nevada	174
8.	Tennessee	140
9.	Arizona	128
10.	Montana	123
11.	District of Columbia	104
12.	Kentucky	64
13.	Missouri	52
14.	Georgia	52
15.	New York	49

WC Funding Options 2022 kjb

57

57

Domicile Considerations

- Onshore vs. Offshore
 - Capitalization Requirements
 - Operating Costs
 - Perception/Political Risk

WC Funding Options 2022 kjb

58

Where are Captives Formed?

The domicile of choice depends on the type of business and insurance risks.
Both on and off-shore captives are acceptable to the U.S. and the IRS.

- **Onshore**
 - Examples: Delaware, Utah, Hawaii, Vermont, South Carolina
 - More states adding captive insurance law
 - TN
 - Self-Procurement Tax – 0.4%, up to \$100K max
 - Would be an admitted carrier in TN
 - Local board meetings
 - Great regulatory department
 - Great captive infrastructure – accounting, actuarial, legal, etc.
- **Offshore**
 - Examples: Bermuda, Anguilla, Cayman Islands, Nevis
 - Lower cost
 - Lower regulatory and capital requirements
 - Expedited formation
 - Investments stay in U.S.
 - Foreign Captives File U.S. tax return (if 953(d) election made)



Note: Whether foreign or U.S., the tax benefits are the same
 WC Funding Options 2022 kjb

59

59

Why Companies buy Captives?

Reduce insurance cost
 Capture underwriting profit
 Pricing stability
 Purchase based on need

Minimize Insurance Cost

Greater control over claims
 Increase coverage
 Underwriting flexibility
 Access reinsurance market
 Incentives for loss control
 Tracking cost of risk

Improve Cash Flow

Control Risk

Retain premium dollars
 Investment income
 Additional profit center

Financial Statement Benefits

Asset protection
 Mitigate shock losses
 Manage consolidated costs
 Allocate cost to operating units

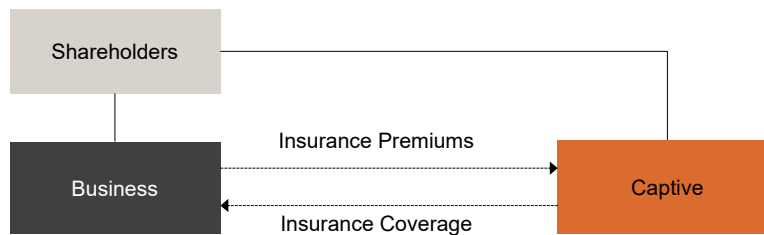
60

60

Captive Insurance Basic Definition

- A captive is an insurance company that insures the risks of its owner, affiliates, or a group of companies. It issues policies, collects premiums, and pays claims.

Basic Captive Diagram

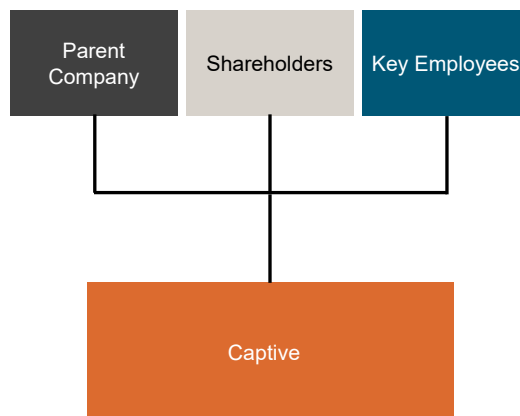


WC Funding Options 2022 kjb

61

61

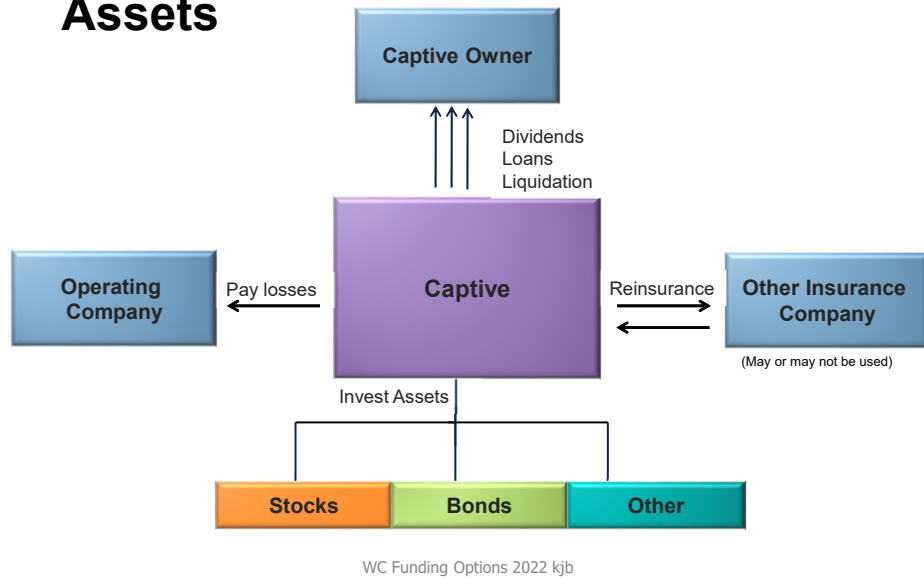
Ownership Options



WC Funding Options 2022 kjb

62

Captive Assets



63

How is premium priced?

- ISO rates www.iso.com
- Underwriters
- Actuaries
- Market quotes from independent carriers
- Actuarial loss pick



WC Funding Options 2022 kjb

64

What Does a Captive Do?

- **Manages a loss fund**
 - The captive manages a loss fund to pay WC, Auto and potentially other losses within a retention/deductible
 - Captive is an overlay to commercial insurance program
- **Adds investment income to it**
 - Funds are paid into the captive in the form of premiums and are invested under insured's control to achieve modest growth during the period held. May be partially used to satisfy collateral requirements, if desired
- **Pays losses from it**
 - Reimburses insured for losses paid or incurred
- **Returns underwriting profit to insured or captive shareholders.**

WC Funding Options 2022 kjb

65

65

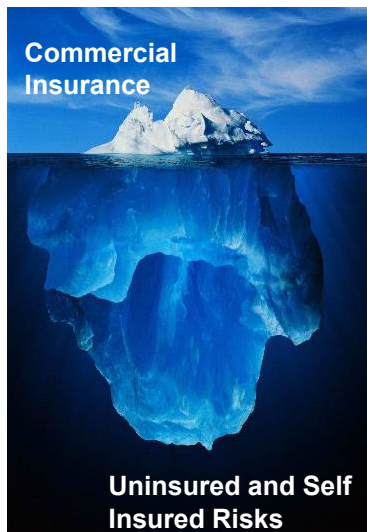
Value a Captive Can Provide

- **Cash Flow**
 - Fund for retained risks and smooth cash flow impact in the event of loss event and protect parent P&L/budget
 - Stabilize financial impact of losses over time through captive loss reserves
 - Fund risk management and loss control activities
- **Flexibility in Program Design**
 - Flexibility to increase or decrease retained limits as warranted by market conditions
 - Ability to insure exposures not insurable or cost prohibitive to insure in the conventional commercial insurance market
 - Direct access to reinsurance markets
 - Manuscript policies and tailor coverage to specific needs

WC Funding Options 2022 kjb

66

Insured vs. Uninsured Risk



Insured Risk

Workers Comp
Property
Auto
General Liability
Professional Liability
Management
Liability

Third Party Coverages

Product Warranty
Tenant Liability
Subcontractor Default

Uninsured Risk

Deductibles
Commercial Exclusions
Operating Risks
A/R Concentration
Regulatory Risk
RAC Audit Defense/Indemnity
Disability
Administrative Actions
Legal Defense Reimbursement
Crisis/Reputation

WC Funding Options 2022 kjb

67

Commonly Placed Policies

Standard Insurance Market / Group Captive Policies

Work Comp | General Liability | Auto Liability

Single Parent Captive Policies

Deductibles

Workers' Comp
General Liability
Auto Liability
Auto Physical Damage
Cyber Liability
Property
Medical Stop Loss
Subcontractor Default

Uninsured

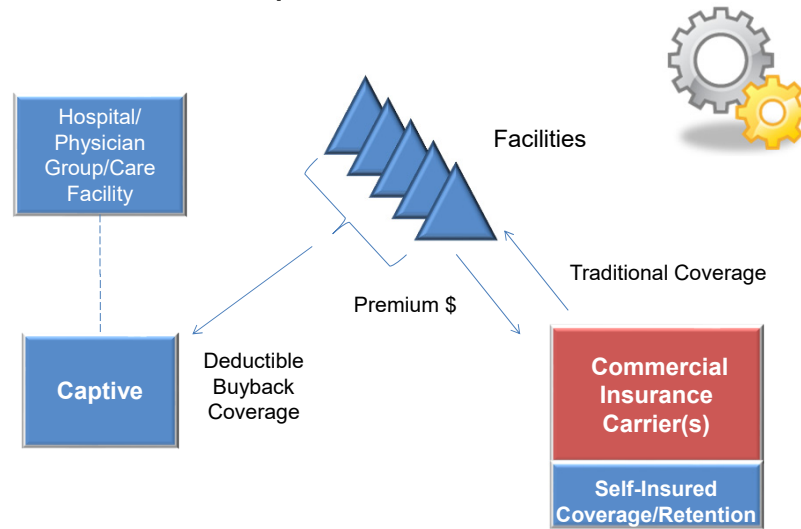
Exclusions
Cyber Liability
Warranty
Collection Risk
D&O/E&O
Mold & Pollution
Construction Defect
Product Rework

WC Funding Options 2022 kjb

68

68

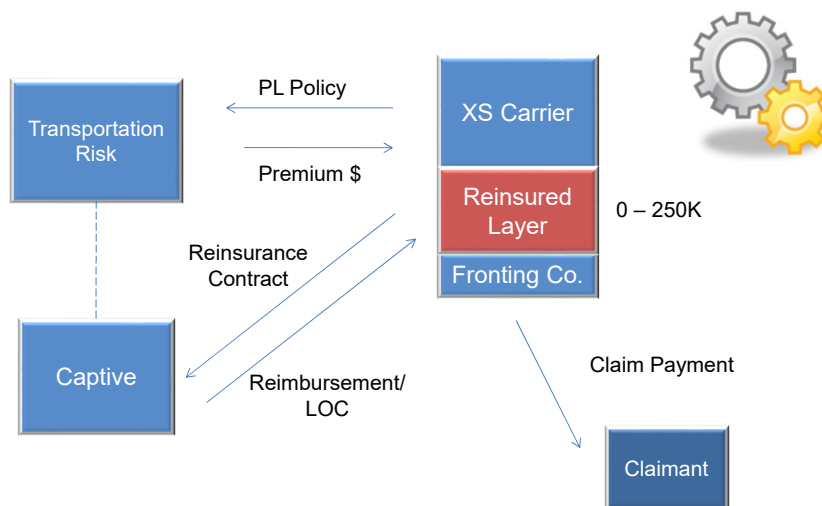
Deductible Reimbursement Captive Model



WC Funding Options 2022 kjb

69

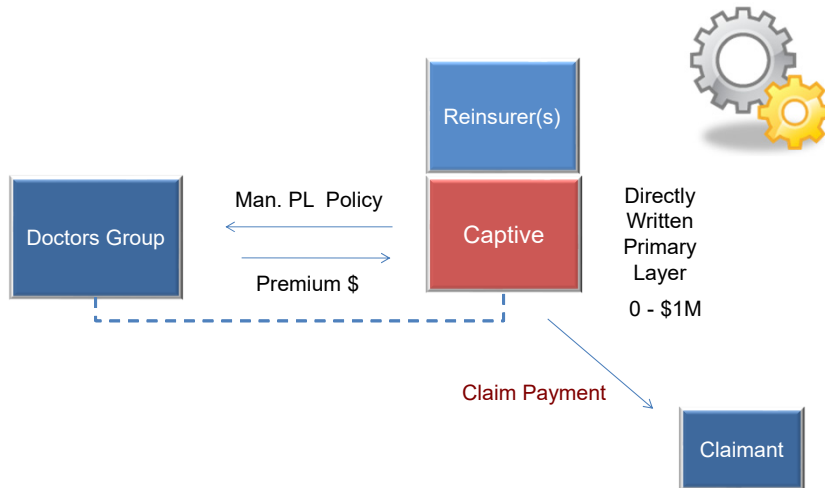
Fronted Reinsurance Captive



WC Funding Options 2022 kjb

70

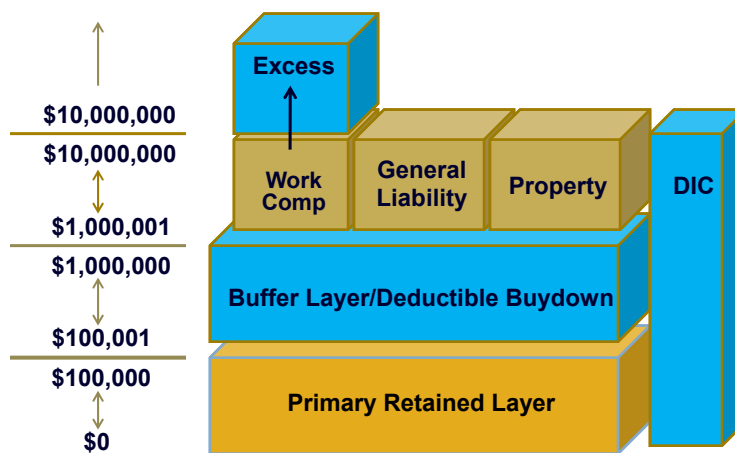
Directly Written Captive



WC Funding Options 2022 kjb

71

Captive Insures One or More Layers of Risk



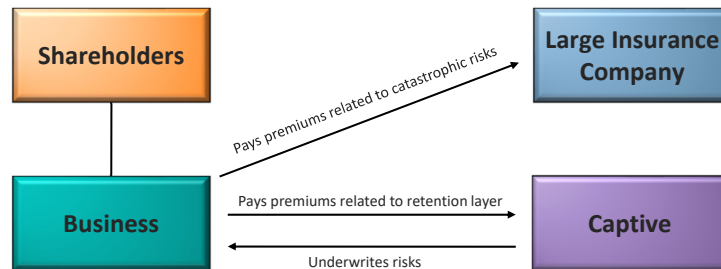
WC Funding Options 2022 kjb

72

72

Single-Parent Captive Overlay

Large insurance program stays in place



73

73

Make a Deductible Better

- Create captive to:
 - Capitalize on good funding mechanism
 - Accelerate deductions in retained layer
 - Remove trapped liabilities from balance sheet
 - Monetize those trapped liabilities and partake of preferential tax treatment afforded by IRC

WC Funding Options 2022 kjb

74

Captive to Enhance Deductible Plan

- Four ways to supplement deductible plan
 - Pre-Fund losses to captive, take the deduction
 - Reposition LOC's
 - Transfer reserves from the balance sheet
 - Write other lines of coverage

WC Funding Options 2022 kjb

75

5 Ways to Enhance Your Customer's Existing Large Deductible Workers' Compensation Plans

- **Pre-Fund losses to a captive, take a tax deduction**
- Large deductible workers' compensation programs (LDWC) are a great way to lower a business' spending on insurance but create inefficiency in funding the retained risk. Owning your own captive insurance company **allows the business to pre-fund losses in the deductible layer to the captive, by means of paying an insurance premium to the captive.**
- Example:
 - An auto-parts manufacturer has a \$250,000 per occurrence deductible in its LDWC program, with estimated losses of \$1 million.
 - The business annually pays a \$1 million premium to the captive.
 - The business takes a \$1 million deduction as business expenses.
 - The business has efficiently funded its risk in a captive and is growing its balance sheet as a result.

WC Funding Options 2022 kjb

76

5 Ways to Enhance Your Customer's Existing Large Deductible Workers' Compensation Plans

- **Transfer reserves from the balance sheet**
- Clients with LDWC programs will have old reserves on their balance sheet—sometimes dating back over 10 years. Depending on the company, these liabilities can range from just a small amount to tens of millions of dollars. These liabilities not only “weaken” the balance sheet—increasing the difficulty of borrowing from a bank—but also represent a trapped asset. By forming a captive, these reserves can now be transferred to the captive, and the customer will receive a current deduction for this transfer—which after all, is an insurance premium paid. **This turns a liability into an asset, strengthens the balance sheet, and reduces the customer's tax liability.**
- Example: A business has \$16 million of old WC reserves on the balance sheet, and transfers those reserves to its captive, taking a \$16 million deduction. The balance sheet regains strength, and the loan covenants with the bank now permit the customer to make significant cash distributions to shareholders.

WC Funding Options 2022 kjb

77

5 Ways to Enhance Your Customer's Existing Large Deductible Workers' Compensation Plans

- **Write other lines of coverage**
- With WC as the cornerstone of the customer's captive strategy, the captive can now write other policies to the customer. **These policies could cover: (a) other retained risk such as GL, AL or property; (b) gaps in the existing commercial insurance policies; or (c) other risks not covered by the customer's existing policies, such as litigation, cyber, product recall or pollution risk.**
- By transferring these risks to the captive, the business accomplishes several important objectives:
- Focuses identification and pricing of these risks, leading to better risk management
 - Smooths out business earnings, (due to insurance-related losses) is now transferred to the captive
 - Takes a deduction for the risks properly transferred to the captive insurance company, in the form of written insurance premiums

WC Funding Options 2022 kjb

78

5 Ways to Enhance Your Customer's Existing Large Deductible Workers' Compensation Plans

- **Reposition carrier Letter of Credit**
- Collateral will be required in LDWC product. The customer's bank may satisfy this requirement by posting a letter of credit to the carrier, and the bank will often require collateral by the customer to support the LOC. **That collateral is provided with after-tax dollars. Assuming a combined federal/state tax rate of 40%, it takes \$5 million of business income (which must be taxed at the assumed 40%) to fund a \$3 million collateral requirement.**
- **By forming a captive, the business can build up surplus in the captive, with mostly pre-tax assets that can be used to fund the LOC. Example: the customer had a \$3 million LOC backed by \$3 million in cash invested with the issuing bank. It took \$5 million of business income to result in \$3 million in cash – after paying combined 40% tax. Then, the customer forms a captive, and starts building up surplus in the captive. Over time, the cash supporting the LOC can be replaced by captive surplus, using pre-tax funds. This means that only \$3 million of business income—and not \$5 million – is required to fund the LOC. The customer now has saved \$2 million. Thus, businesses with existing LOCs can use a captive to gradually replace the cash collateral with cash in the captive, and free up the existing cash.**

WC Funding Options 2022 kjb

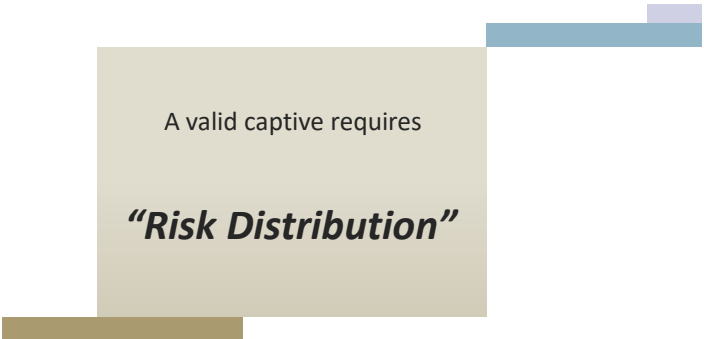
79

5 Ways to Enhance Your Customer's Existing Large Deductible Workers' Compensation Plans

- **Stabilize Workers Compensation Costs in a Pool**
- LDWC programs have significant benefits—chief among them is the reduction in commercial premiums. But with retaining risk comes.....in good years the losses are low, but in bad years the losses can be high, which adversely impacts the business. Guaranteed cost coverage is the other end of the spectrum—the price is higher, but the risk is lower. Can you have the best of both worlds? The answer is “yes.” Businesses with a LDWC program can also join a WC pool, which will help to reduce some of the year-to-year variability of losses. This way, the business (a) keeps all the benefits of the LDWC program, (b) can have all the benefits of its own captive program, and (c) can reduce the variability of insurance losses

WC Funding Options 2022 kjb

80



A valid captive requires

“Risk Distribution”

Risk distribution is a spreading of risk that allows the insurer to reduce the possibility that a single costly claim will exceed the amount available to the insurer for the payment of such a claim.

WC Funding Options 2022 kjb

81

Insurance Company Taxation

- Insurance Companies are taxed in one of two ways:
 - Rule A
 - Insurance company taxed on its profits
 - Premiums in < incurred losses + expenses
 - = Profit = tax liability
 - Rule B
 - Insurance Companies with < \$2,400,000 annual premium can take B election
 - No Federal or State tax to the Captive
 - Distribution to owners at Qualified Dividend Rates

WC Funding Options 2022 kjb

82

IRS Revenue Ruling 2002-90

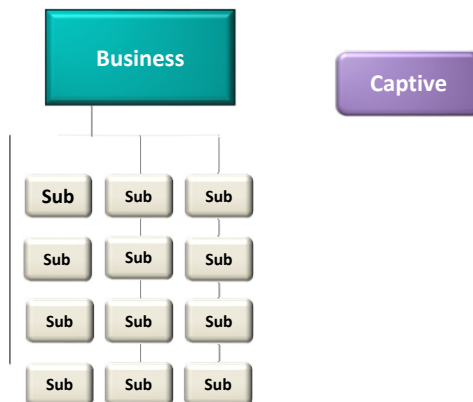
- Single parent provides coverage for 12 subsidiaries constitutes Risk Sharing
- No one subsidiary can be +15% and no one subsidiary can be < %5

WC Funding Options 2022 kjb

83

“Brother-Sister” Rule 2002-90

Multiple Subsidiaries

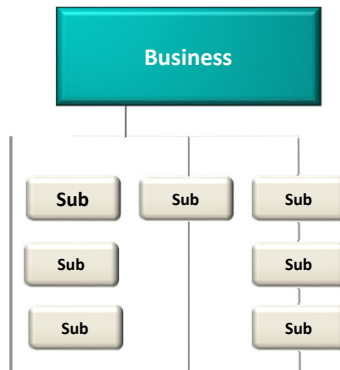


WC Funding Options 2022 kjb

84

Brother-Sister” Rule

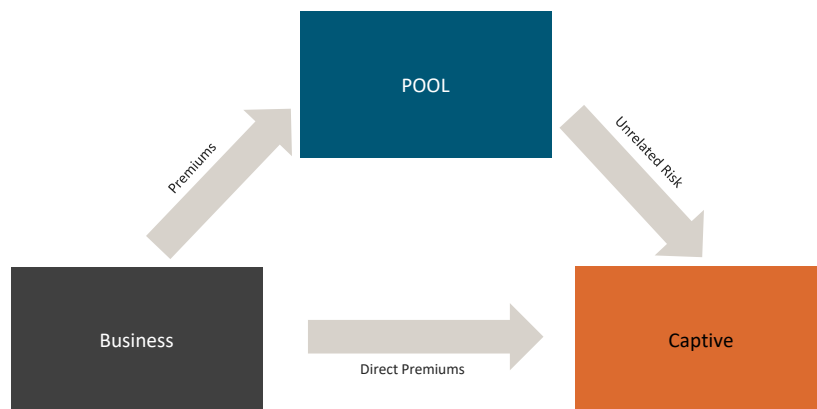
- What if there’s less than 12?



85
WC Funding Options 2022 kjb

85

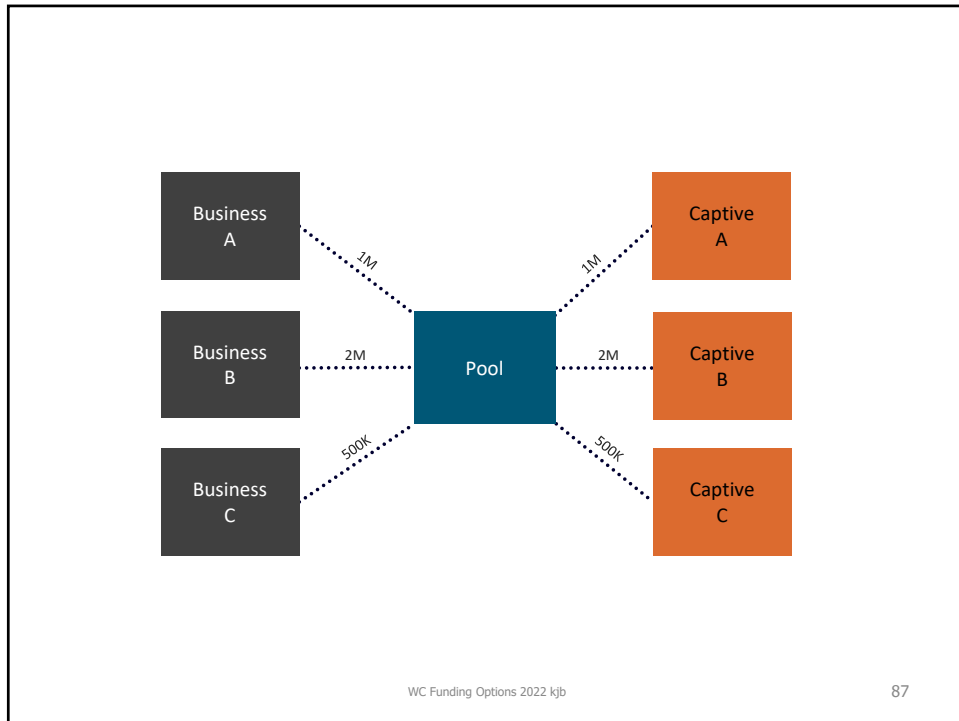
Pooling Can Provide Unrelated Risk to the Captive



WC Funding Options 2022 kjb

86

86



87

Deductible Solutions

Prospect Name	K/N Engineering
831 a or b?	a
Captive Premium (deductible loss pick)	\$2,275,000
Captive Costs	\$100,000
Pooling Fees	\$0
Prospect Tax Rate	48%
Captive Tax Rate	35%
Loss Ratio	75%
Paid Loss Rate	25%
Reserve Loss Rate	75%

WC Funding Options 2022 kjb

88

Deductible Solutions

	End of Year One	
	No Captive	831(a) Captive
Parent Company Pre-Claim Operating Income	2,275,000	
Uninsured Business Claims (75% Loss Ratio / 25% Paid During Year)	426,563	
Parent Company Post-Claim Operating Income	1,848,438	
Parent Company Income Tax (48% Income Tax Rate)	887,250	
Parent Company After-Tax Operating Income	961,188	
Captive Insurance Premium		2,275,000
Claims Paid (75% Loss Ratio / 25% Paid During Year)		426,563
Claim Reserves (75% Loss Ratio / 75% Reserved)		1,279,688
Captive Operating Expenses		100,000
Underwriting Profit/(Loss)		468,750
Investment Income	will vary	will vary
Captive Income Tax (n/a Due to 831(b) Election)		0
Captive After-Tax Operating Income		468,750
After-Tax Operating Income	961,188	468,750
Net Assets Remaining	961,188	1,748,438
One Year Net Cost Benefit by Using Captive		787,250

WC Funding Options 2022 kjb

89

	End of Year One	
	No Captive	831(b) Captive
Parent Company Pre-Claim Operating Income	2,000,000	
Uninsured Business Claims (75% Loss Ratio / 25% Paid During Year)	375,000	
Parent Company Post-Claim Operating Income	1,625,000	
Parent Company Income Tax (40% Income Tax Rate)	650,000	
Parent Company After-Tax Operating Income	975,000	
Captive Insurance Premium		2,000,000
Claims Paid (75% Loss Ratio / 25% Paid During Year)		375,000
Claim Reserves (75% Loss Ratio / 75% Reserved)		1,125,000
Captive Operating Expenses		100,000
Underwriting Profit/(Loss)		400,000
Investment Income	will vary	will vary
Captive Income Tax (n/a Due to 831(b) Election)		0
Captive After-Tax Operating Income		400,000
After-Tax Operating Income	975,000	400,000
Net Assets Remaining	975,000	1,525,000
One Year Net Cost Benefit by Using Captive		550,000

WC Funding Options 2022 kjb

90

Captives as Profit Center Risk Management Tools



91
WC Funding Options 2022 kjb

91

Issue Background

- Multi-family housing industry is moving toward a standard lease requiring tenants to have renter's insurance (HO4 policies)
- Coverage provides, among other things, for indemnification of property owners for tenant related losses (5 perils of fire, smoke, water & sewer overflow, and explosion).
- Coverage usually required in amounts of up to \$100,000 per occurrence



92

What's the Problem?

- Tracking of certificates is an admin nightmare for property managers – certificates, cancellation, etc.
- Absent a renter's policy, losses hit policy and/or deductible of property owner.
- Subrogation is difficult at best and some courts won't allow it at all.

93

Commercial Solutions

- Insurance programs available
- Property owners are inundated with insurance programs looking for access to tenant population in exchange for “marketing fees” (commissions).
- Without a commercial solution, property owners feel like they are left holding the bag.
- With enough critical mass (3,000+ doors), property owners can create a captive solution for this retained risk.
- Insurance vs. Tenant Liability Waiver

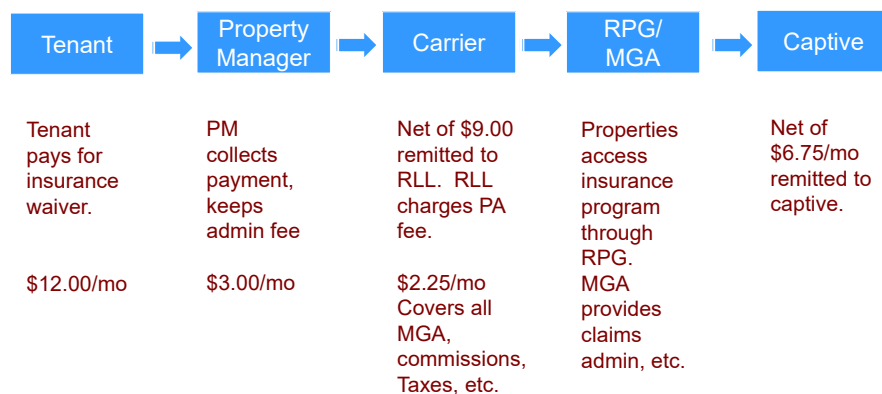
94

The Captive Solution

- At time of lease inception/renewal, tenant is either:
 - Required to provide a certificate of insurance or offered a waiver of the insurance requirement for a fee that is added to the monthly rent payment
 - Compelled to participate in the owners TLW program
- Properties collect TLW fee from tenant
- Properties may keep a nominal portion to cover admin costs.
- Properties purchase indemnity coverage for tenant related losses from captive through a program administrator.

95

Captive Program Administrative Flow



96

Example – 15,000 Doors

Price Per Door		
Gross Charge to Tenant	\$12.00	
PM Fee	(\$3.00)	
RLL/Program Administration	(2.25)	
Net Premium to Captive	\$6.75	

Premium Calculation	Per Month	Annually
Doors	15,000	180,000
Participation Rate	65%	65%
Participating Doors	9,750	117,000
Total Charge to Tenant	\$117,000	\$1,404,000
Net to Property	(\$29,250)	(\$351,000)
RLL/Program Administration	(21,938)	(263,250)
Total Premium to Captive	\$95,063	\$1,140,750

97

Pro Forma – Income Statement

Income Statement	2014	2015	2016	2017	2018
Revenues					
Total Premiums	\$1,140,750	\$1,140,750	\$1,140,750	\$1,140,750	\$1,140,750
Investment Income, net	\$13,767	\$14,042	\$14,323	\$14,609	\$14,902
Total Income	\$1,154,517	\$1,154,792	\$1,155,073	\$1,155,359	\$1,155,652
Loss Expense (Expected 55% Loss Basis)	\$627,413	\$627,413	\$627,413	\$627,413	\$627,413
Underwriting Income	\$527,104	\$527,380	\$527,660	\$527,947	\$528,239
Operating Expenses					
Total G&A Expenses*	\$75,000	\$75,000	\$75,000	\$75,000	\$75,000
Net Income	\$452,104	\$452,380	\$452,660	\$452,947	\$453,239

98

Pro Forma – Balance Sheet

Balance Sheet

Assets

Cash & Investments

Liabilities

Unpaid Loss Reserves

Equity

Initial Contributed Surplus

Additional Contributed Surplus

Total equity

Retained Earnings

Beginning of year

Net Income

Total retained Earnings

Total Equity & Retained Earnings

Total Liabilities & Equities

	2014	2015	2016	2017	2018
Cash & Investments	\$702,104	\$1,154,484	\$1,607,144	\$2,060,091	\$2,513,330
Unpaid Loss Reserves	\$0	\$0	\$0	\$0	\$0
Initial Contributed Surplus	\$250,000	\$250,000	\$250,000	\$250,000	\$250,000
Additional Contributed Surplus	\$0	\$0	\$0	\$0	\$0
Total equity	\$250,000	\$250,000	\$250,000	\$250,000	\$250,000
Beginning of year	\$0	\$452,104	\$904,484	\$1,357,144	\$1,810,091
Net Income	\$452,104	\$452,380	\$452,660	\$452,947	\$453,239
Total retained Earnings	\$452,104	\$904,484	\$1,357,144	\$1,810,091	\$2,263,330
Total Equity & Retained Earnings	\$702,104	\$1,154,484	\$1,607,144	\$2,060,091	\$2,513,330
Total Liabilities & Equities	\$702,104	\$1,154,484	\$1,607,144	\$2,060,091	\$2,513,330

99

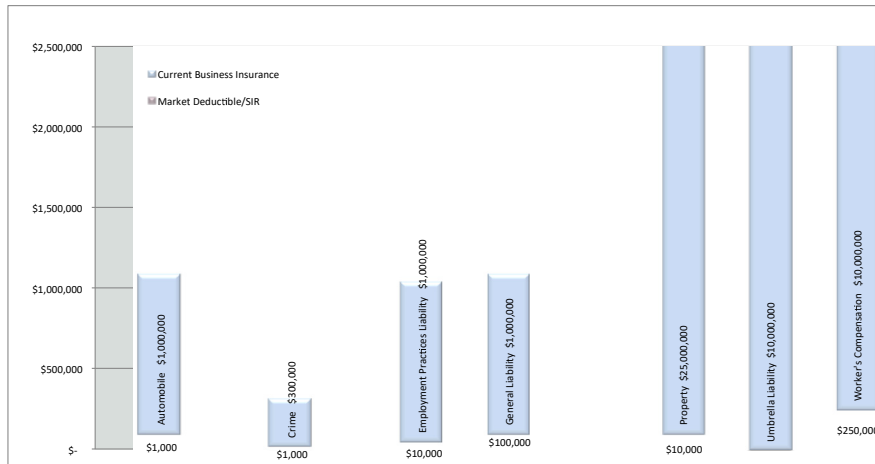
Steps to the Single Parent Captive Process

1. Feasibility Study
2. Formation Process
3. Ongoing Management

100
WC Funding Options 2022 kjb

100

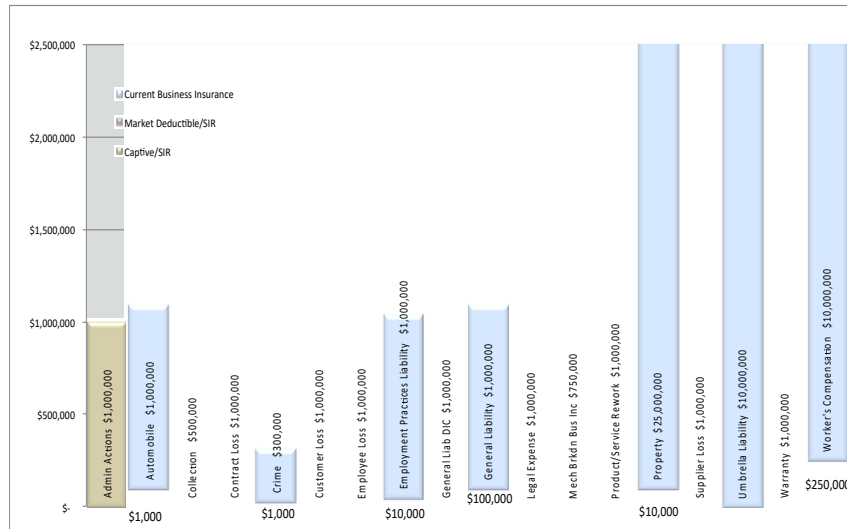
Feasibility Study Identification of Covered Risk



101

101

Feasibility Study Identification of Total Risk Assumption



102

102

Final Feasibility Report Contents

- The feasibility study can provide the following and the consulting agreement should document the expected objectives.
 - Define objectives of both risk transfer and risk financing
 - Analysis on the risk included in the study
 - Forecast ultimate retained loss cost
 - NPV analysis of the captive study vs. alternatives
 - Captive structure
 - Define ownership structure
 - Review tax issues
 - Comparison and recommendation of potential domiciles
 - Captive program structure and design

WC Funding Options 2022 kjb

103

103

Feasibility Study (3-5 Weeks)

- Risk mapping process
- Actuarial analysis of data (provided by independent actuary)
- Show financial impact on company
- Forecast of captive's pro forma income, cash flow, balance sheet
 - Will include expense cost for implementation and on-going operations
- Forms the basis of the domicile-required business plan
- Review domiciles vs. corporate objectives & provide recommendation

104

WC Funding Options 2022 kjb

104

The Captive Formation Process

- Business Plan
 - Forecasts of Annual Expected Losses
 - Program Structure (Premiums, Limits, Capitalization)
 - Proforma Captive Financial Statements
- Selection of Service Providers
 - Captive Manager
 - Legal
 - Auditors
 - Actuarial
- Preliminary meeting with domicile regulators
- Prepare application, bio affidavits, select Directors and Officers
- Incorporate company
- 60 to 90 day process (most major domiciles)
- Open banking accounts
- Capitalize
- Begin operations

WC Funding Options 2022 kjb

105

105

Implementation Process (4-8 Weeks)

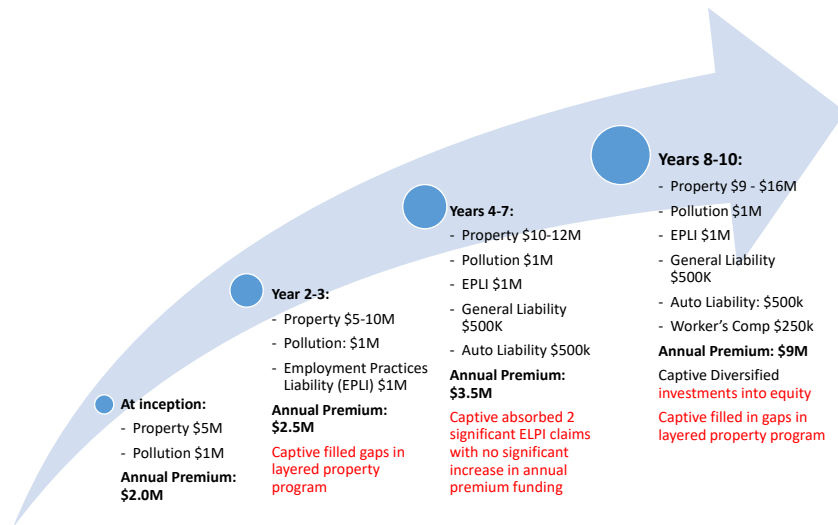
- Business Plan
- Application
- Liaison with Regulators
- Policy language, Investment Policy, etc.
- Corporate Information/Corporate Governance

106

WC Funding Options 2022 kjb

106

The following is a real-life example of a captive's evolution



WC Funding Options 2022 kjb

107

107

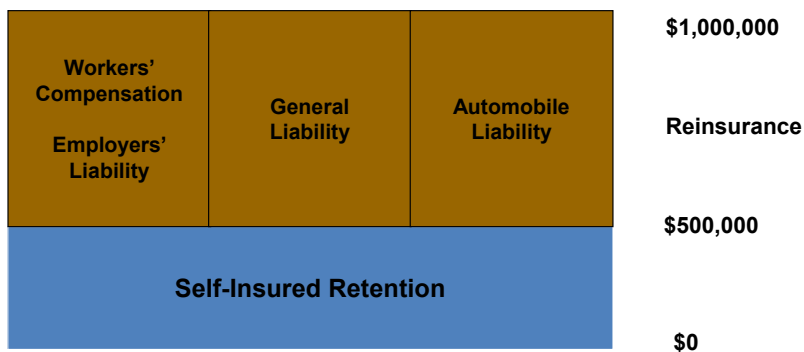
Self Insurance

- Available in 48 states
- Why do it?
- Administration costs are lower than commercial market
- Investment income accrues to insured
- Claims costs is incurred when the claim is paid
- Improved services
- Loss control designed specifically for insured
- Improved claims management
- Individual state regulation/approval

WC Funding Options 2022 kjb

108

Specific & Aggregate Excess Reinsurance



WC Funding Options 2022 kjb

109

Hard Costs

Fixed Costs

- Excess - % of standard premium
- Claims administration - % of standard premium
- Bond premium

Variable Costs

- Claims
- State taxes and assessments

Components for Success

- Standard premium not the measure
- Commitment to reducing claims costs
- Excess coverage
- Administrative expertise



WC Funding Options 2022 kjb

110

Self Insurance Good and Bad

- Pros
 - Control
 - Design
 - Cash flow
 - Market segregation
 - Senior management involvement

111
WC Funding Options 2022 kjb

111

Self Insurance Good and Bad

- Cons
 - Accumulation of balance sheet liabilities
 - Potential tax inefficiencies
 - “Big Brother” is watching (and dictating)
 - Potential for additional admin/oversight costs

112
WC Funding Options 2022 kjb

112

Summary

What's the best option?

You can sell Guaranteed Cost
You should make options available to client
Any risk bearing option is “presented”

OWN the Idea!!!!

WC Funding Options 2022 kjb

113



WC Funding Options 2022 kjb

114



James K. Ruble Seminar

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

Section 5

An Exploration of the Property Casualty Side of Farming

An Exploration of the Property Casualty Side of Farming

Robert S. Ford, CIC, CISR, CPIA, CLCS, MLIS, CRIS

2331 43rd St. S.

Grand Forks, ND 58201

701-662-4051

rford2010@outlook.com

Disclaimer:

The classroom discussion for today's workshop will focus on ISO and AAIS Farmowners forms. These discussions are generalized and should not be relied upon completely to determine whether coverage exists for your client in a given situation. You should always follow up with your company underwriters/adjusters to determine your companies' official position on coverage's placed for your client. Many companies practice extensive use of endorsements that substantially modify coverages from the base policy forms. Coverage as outlined in the policy is subject to legal opinion.

A CHECK LIST OF FARM INSURANCE NEEDS

Prepared for: _____ By: _____ Date: _____

	Has	Needs	Accepted	Rejected	Remarks
DWELLING					
1. Valuation appraisal done (Attach to Chklist)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	_____
2. Replacement Cost ***	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	_____
3. Special Form ***	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	_____
4. Earthquake	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	_____
5. Flood	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	_____
6. Outdoor Radio/T.V. Equip.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	_____
HOUSEHOLD PERSONAL PROPERTY					
1. Increased Valuation	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	_____
2. Replacement Cost Endorsement ***	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	_____
3. Sewer Backup ***	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	_____
4. Secondary Location	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	_____
5. Increased off-premises Coverage	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	_____
6. Credit Card	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	_____
7. Money/Securities Increase	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	_____
8. Scheduled Furs/Jewelry	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	_____
9. Scheduled Camera/Musical Instr.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	_____
10. Scheduled Fine Arts/Antiques	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	_____
11. Scheduled Silverware	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	_____
12. Scheduled Stamp/Coin	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	_____
13. Scheduled Guns	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	_____
14. Scheduled Golf/Recreation Equip.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	_____
15. Snowmobile/Watercraft	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	_____
FARM PERSONAL PROPERTY					
1. Blanket, 80% co-insurance explained	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	_____
2. Scheduled	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	_____
3. Livestock (Always include broad form)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	_____
4. Hay (usually Limited to 10,000/stack)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	_____
5. Irrigation Equip.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	_____
6. Rent/Borrowed Eq./No Dealer Eq	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	_____
7. Extra Expense	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	_____
8. Grain (on or off Blanket)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	_____
9. Cab Glass ***	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	_____
10. Misc. Tools/Equipment ***	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	_____
11. Building, Fencing materials	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	_____
12. Veterinary Supplies	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	_____
13. Commercial Feeds	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	_____
14. Inland Marine	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	_____
15. GPS/Media + Radio Equip.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	_____
16. Plan any New Acquired Equip.?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	_____
17. Foreign Object Coverage	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	_____
FARM OUTBUILDINGS					
1. Increased Valuation	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	_____
2. Special Form/Collapse	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	_____
3. ACV/RC	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	_____
4. Debris Removal Increase Limits	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	_____
5. Appurtenant Private Structures	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	_____
6. Portable Buildings	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	_____
7. Plan New Build Construction?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	_____
8. Deductible Increases	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	_____

FARM LIABILITY	Has	Needs	Accepted	Rejected	Remarks
1. Increased Liability Limits (Should be 500K)***	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
2. Increased Medical Payments	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
3. Additional Acres (Attach List to Chklist)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
4. Additional Farm Premises	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
5. Premises Rented to Others	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
6. Non-Farm Premises/Vacant Land	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
7. Add'l. Insured/Comprehensive	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
8. Borrowed Farm Machinery Limits?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
9. Employers Liability/Workers Compensation	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
10. Custom Farming - What Kind?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
11. Racing/Animals - Machinery?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
12. Business Other Than Farming	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
13. Pollution, If yes, Limits	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
14. Spray Drift, If yes, Limits	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
15. Boat, Jet Ski	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
16. Snowmobile	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
17. 4-Wheeler	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
18. Umbrella Liability	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
Work Comp 8.60/100 max pay \$21,300, Max Premium \$1918 7-07					
AUTOMOBILE COVERAGE					
1. Liability Limits (Should be at least 100/300/100)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
2. Increased PIP	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
3. Uninsured Motorists (Should match BI)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
4. Car Stereo's/CD's	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
5. Comprehensive	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
6. Collision	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
7. Volunteer Use	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
8. Hired and Non-Owned (BAP)***	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
Hired Physical Damage (BAP)***	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
Rented Car Coverage (PAP)***	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
9. Drive Other Car DOC (BAP)***	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
10. Trailer over 2,500 lbs. (BAP)***	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
11. Symbol 1 or 2 (BAP)***	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
12. Radius of Trucking	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
13. Cargo Coverage	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
14. Haul for Others	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
EMPLOYEE PROTECTION					
1. Workers Compensation	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
2. Major Medical	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
3. Hospitalization/Surgical	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
4. Employer Med Pay Endorsement on Farm	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
5. Disability Income	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
FAMILY AND MANAGEMENT					
1. Disability Income	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
2. Major Medical	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
3. Hospitalization/Surgical	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
4. Life	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
5. Retirement Income	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
6. Life-Keyman (Corp./Partner)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
UMBRELLA					
1. Farm Umbrella	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
2. Serve on Non-Profit Board of Directors	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	

Theme for Today's Presentation is "Awareness"

1. As an insurance Agent/Account Manager, if you could describe your job in one sentence, what would that sentence say?

"I exist to solve people's problems and protect their financial future."

- a. When you have a mindset of solving people's problems, it can be both rewarding and fun! Especially when they didn't even know they had a problem until they met you!
- b. When the big disaster happens are you confident that everything will be taken care of on behalf of your client?
- c. How did you go about putting your client's insurance program together?
 - 1) Copy the other guys policy?
 - 2) A set of agency minimum standards?
 - 3) Coverage Checklist?
- d. Today we will go over topics that many agents simply overlook when putting together a farm program for prospects and clients.

I. Topic of Liability:

A. Who Is an Insured?

Many Farm Owner/Operator's are creating multiple legal entities.

1. Sole Proprietorship
2. Corporation
3. LLC
 - a. Series LLC
 - b. Restricted LLC
 - c. L3C Company
 - d. Anonymous LLC
4. Partnership
 - a. General
 - b. Limited
 - c. Limited Liability
 - d. FLP
5. Trust

B. Most Common - Sole Proprietorship

Why is this the most common form of Business for Farmowners?

- Simplest form of business organization
- Easily formed; easily discontinued
- Least regulated
- Most flexible in response to business requirements

Pro's and Con's:

Pro's:

- Legally, and for tax purposes, the **individual owner is the business.**
- A business that is **jointly owned by husband and wife who file a joint tax return** is generally operated as a sole proprietorship.
- The sole proprietor has total control of the business. **When the owner dies, the business ceases to exist with the assets and liabilities passing to the estate.**
- There **are no administrative requirements other than** any required licenses
- Registration of the trade name.

Con's:

The liabilities and profits of a sole proprietorship are personal to the owner.

All of the sole proprietor's personal and business assets are at risk.

C. Trade Name

What is a Tradename?

A name assumed by the sole proprietor that does not include:

- The surname of the individual proprietor; or
- The first name and surname of the individual proprietor when a license is required to transact business.
- In most states a sole proprietor **can't use a trade name unless it is registered** with the Secretary of State.
- Once the name is registered:
 - It gives exclusive right to that name in the State.
 - No other business may file a name with the Secretary of State that is the same as, or deceptively similar, to any registered name.
- Establishes a public record from which the name of the owner of the business can be identified.

D. Why create something other than a Sole Proprietorship?

1. Taxation Issues
 - Varies depending on the legal entity chosen
2. Limited Liability of Personal Assets
 - Shielding of Personal Assets
 - Home
 - Cars
 - Bank Accounts
3. Insulation from Lawsuits

1. Sole Proprietorship
 2. Corporation
 3. LLC
 - a. Series LLC
 - b. Restricted LLC
 - c. L3C Company
 - d. Anonymous LLC
 4. Partnership
 - a. General
 - b. Limited
 - c. Limited Liability
 - d. FLP
 5. Trust

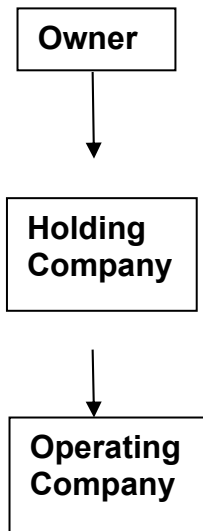
E. What's in a Legal Entity?

An association, corporation, partnership, proprietorship, trust, or individual that has legal standing in the eyes of law. Legal entities have a legal right to enter into agreements and contracts. They have the legal right to take on obligations, incur debts, pay debts, sue and be sued **in its own right**, and **to be held responsible for its actions**.

1. Legal entities are entities that stand alone, of and by themselves.
 - a. They are NOT the individuals who may own them or operate them!
2. While there may be individual stockholders, executive officers, members, of these entities, these individuals are considered "Natural Persons."
3. The entity itself is considered a separate "Legal Person".
4. By law a "Legal Person" is considered a separate and distinct "person" from its owners.
5. The law generally supports a "Protective Wall" around the personal assets of an LLC or Corporate owner
 - a. It's possible to "Pierce the Corporate veil"
 - 1) If it is proven the legal entity is a sham
 - 2) If there is no evidence of formality such as board meetings, annual meetings, boards that make decisions together
 - 3) Keeping corporate and personal asset separated

F. How Common are Multiple Legal Entities?

- Using an LLC or Corporation of and by itself will protect the owner's personal assets but does little to protect the assets of the company.
- What are insured's doing these days to protect both personal and company assets?
 1. Growing more popular is the use of multiple legal entities to take advantage of laws that hold particular entities at risk. Some more than the others



2. This involves the use of holding companies and operating companies.
 - a. An asset protection strategy
 - b. An Operating Company that does not own the equipment
 - c. A Holding Company that does own the assets
 - d. Operating Entity conducts all business and bears all the risk of loss
 - e. Holding Company is not legally responsible for the other company's debts
 - f. The Owner's Liability for personal debts is for the most part shielded because the assets are inside the framework of A Legal Holding Company.
 - g. Usually used in conjunction with LLC

[illegible]

II. A Technical Look at “Who is An Insured”

It's common to see differences in definitions between carriers

ISO

1. We will pay those sums that the “Insured” becomes legally obligated to pay as damages because of “bodily injury” or “property damage” to which this insurance applies.
 - a. You
 - b. Following members of your household:
 1. Your relatives
 2. Any other person under age 21 in your care
 - c. Partnership or joint venture, including members, partners, and their spouses but only with respect to the conduct of “farming” operations.
 - d. A limited liability company, “insured” also means:
 1. Your members, but only with respect to “farming operations”
 2. Your managers, but only with respect to their duties as managers
 - e. An organization other than a partnership, joint venture, or limited liability company, “insured” also means:
 1. Your executive officers and directors, but only with respect to their duties as your officers and directors;
 2. Your stockholders, but only with respect to their liability as stockholders.
2. Not Shown, No Coverage!
 - a. No person or organization is an “insured” with respect to the conduct of **any current** or **past partnership, joint venture or limited liability company** that **is not shown as a Named Insured** in the Declarations.

C. WHO IS AN INSURED

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

a. **An individual**, insured means you and:

- i. Your spouse, if residing at the "residence premises"
- ii. Your "relatives" who are residing at the "residence premises";
- iii. Any other person under the age of 21 who is residing at the "residence premises" and is under the care of you or a person specified in 1) or 2) above.
- iv. A student enrolled in school full-time, as defined by the school, who was a member of your household before moving out to attend school provided the student is under the age of:
 - 1. 24 and your relative; or
 - 2. 21 and in your care or the care of a person specified in a.1) or 2).

b. **A partnership or joint venture**, you are an insured. Your members, your partners, and their spouses are also insureds, but only with respect to the conduct of "farming" operations.

c. **A limited liability company**, you are an insured. Your members are insureds but only with respect to the conduct of your "farming" operations. Your managers are also insureds, but only with respect to their duties as your managers.

d. **A trust**, you are an insured. Your trustee or co-trustees are also insureds, but only with respect to their duties as a trustee in connection with the "insured location" and your "farming operations" and "personal activities".

e. **An organization other than a partnership, joint venture, limited liability company or trust**, you are an insured. Your "executive officers" and directors are insureds, but only with respect to their duties as your officers or directors. Your stockholders, and if any, are also insureds, but only with respect to their liability as stockholders.

4. **Any farming organization you newly acquire** or form, other than a partnership, joint venture or limited liability company, and over which you maintain ownership or majority interest, will qualify as a named insured if there is no other general liability insurance available to that organization. However:

- a. Coverage under this provision is afforded only until the 90th day after you acquire or form the organization, or until the end of the policy period, whichever is earlier;
- b. Coverage H does not apply to "bodily injury" or "property damage" that occurred before you acquired or formed in the organization; and
- c. Coverage I does not apply to personal and advertising injury arising out of an offense committed before you acquired or form the organization.

7. Person or organization is an insured with respect to the conduct **of any current or past corporation, partnership, joint venture or limited liability company that is not shown as a Named Insured in the Declarations.**

Coverage Wording Example A

“Who is An Insured” – continued

3. Who else is “an Insured”?

Any person or organization legally responsible for:

DEFINITIONS

7. "Insured" means you and residents of your household who are:

- a. your relatives; or
- b. other persons under the age of 21 in the care of any person named above.

"Insured" also means "additional insureds" **named in the declarations:**

- c. under Section I, as their interest may appear;
- d. under Section II only for the ownership, maintenance, or use of the insured farm locations and related operations. But coverage for an "additional insured" does not apply to:
 - 1) "bodily injury" to an employee of an additional insured arising out of or in the course of the employee's employment by the additional insured; or
 - 2) "bodily injury" or "property damage" arising out of items owned, manufactured, sold, handled, or distributed by the additional insured, if the "bodily injury" or "property damage" arises from the item itself or reliance upon a representation or warranty with respect to the item.

Coverage Wording Example B

DEFINITIONS

13. "Insured"

a. "Insured" means you, and if you are:

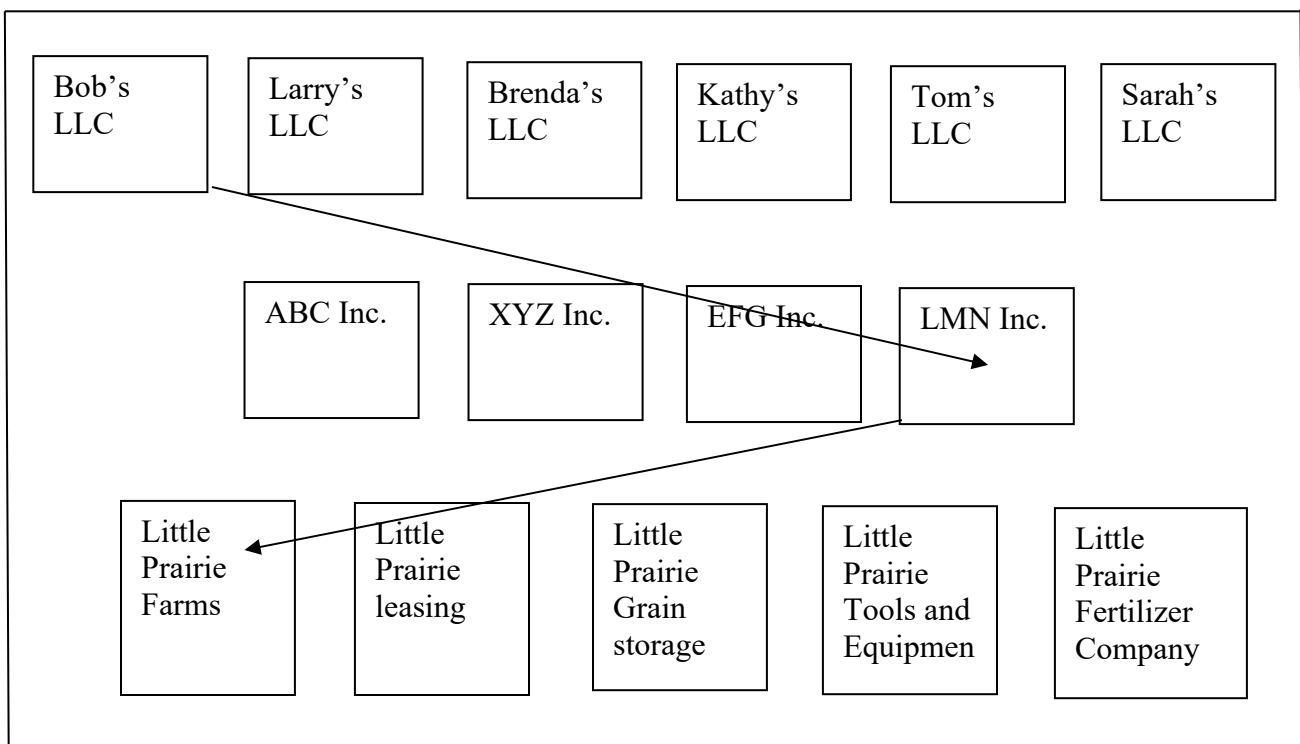
- 1. An individual, ...
- 2. A partnership or joint venture...
- 3. A limited liability company, ...
- 4. And organization other than a partnership, joint venture, or limited liability company, ...

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

Coverage Wording Example C

A Technical Look at “Who is An Insured” – continued

4. Going even deeper
 - a. The insured owns six LLCs, four corporations, and operates under five DBAs
 - b. The purpose of all these companies is to provide a confusing roadmap to any plaintiff attorney who wants to sue
 - c. Leases and rental agreements are used between all entities for the use of equipment and autos
 - d. The named insureds are as follows



A Technical Look at “Who is An Insured” – continued

5. What questions do you ask your insured when setting up an insurance program?
 - Do you operate under a coverage checklist?
 1. Lease's
 - a. Equipment
 - b. Auto's
 - c. Land
 - d. Farm Machinery
 - e. Buildings
 2. Hold Harmless Agreements
 - a. Do any of these scenarios fit in your farmers strategy?
 - b. Hold Harmless vs. Indemnity
 - c. WOS
 - d. Primary Non Contributory
 - e. Advise Farmer to consult an attorney to help interpret State Law
 3. Cross Suit Liability
 - a. Be sure you have no Cross-Suit Liability exclusions on your policy's
 4. Size of Umbrella
 - a. Sharing of Limits between entities vs. separate policies
 - b. Structuring limits between Father/Son operations

A Technical Look at “Who is An Insured” – continued

Who Is an Insured? Liability – AAIS

1. “We” pay all sums which the “insured” becomes legally obligated to pay as “damages” due to “bodily injury” or “property damage” to which this insurance applies.
 - “Insured”
 - a. Shown on the declarations
 - b. “you” – if members of “your” household:
 - 1) “your” spouse
 - 2) “your” or “your” spouse’s relatives under the age of 21
 - c. Partnership or joint venture including “your” partners, members, and their spouses, but only with respect to “you or” farming operations
 - d. An organization other than partnership or joint venture.
Includes:
 - 1) Executive officers, directors, but only acting within the scope of their duties. Also includes “your” stockholders but only for their liability as such.
 - e. Person or organization except your employees, acting as your real estate manager.
 - f. “Your” employees, for acts within the scope of their employment.
 - 1) Employee versus employee lawsuit is excluded
 - 2) Covered a damage to your property by an employee
 - g. Persons or organizations legally liable for:
 - 1) Liability arising out of the use or care of vehicles or animals owned by you
 - 2) This coverage is excess
 - h. Newly formed or acquired organizations
 - 1) If no other insurance exists
 - 2) End of policy period or 90 days whichever is sooner
 - 3) Excludes injury for BI/PD before acquisition/formation of entity

“Who is An Insured” – continued

Who Is an Insured? Company Specific

A. COVERAGES

COVERAGE H – BODILY INJURY AND PROPERTY DAMAGE LIABILITY

1. INSURING AGREEMENT

- a. We will pay those sums that the insured becomes legally obligated to pay as damages because of “bodily injury” or “property damage” to which this insurance applies. We will have the right and duty to defend the insured against any “suit” seeking those damages. However we will have no duty to defend any insured against any claim or “suit” seeking damages to which this insurance does not apply. We may, at our discretion, investigate any accidents and settle any claim or “suit” that may result. But:
 - 1) the amount we pay for damages is limited as described in Section D. LIMITS OF INSURANCE; and
 - 2) our right and duty to defend ends when we have used up the applicable Limit of Insurance in the payment of judgments or settlements under Coverages H or I or medical expenses under Coverage J.

Who is an insured

- 1. If you are designated in the declarations as:
 - a. An individual
 - b. Full-time student enrolled in school age 24 or less and your relative
 - c. A partnership or joint venture
 - d. Limited Liability Company
 - e. Trust
 - f. A Corporation
 - g. Farm Employee **except:**
 - 1) Causing injury to an insured
 - 2) Injury to Employees relative
 - 3) Employee causing property damage to property owned, occupied, or used by or rented to

A Technical Look at “Who is An Insured” – continued

Who is an insured – continued:

- h.** With respect to “mobile equipment” to which the insurance applies, any person is an insured while driving such equipment along a public highway with your permission in connection with a “farming” operation. Any other person or organization responsible for the conduct of such person is also an insured, but only with respect to liability arising out of the operation of the equipment, and only if no other insurance of any kind is available to that person or organization for this liability. However, no person or organization is an insured with respect to:

 - 1) “Bodily Injury” to a co-employee of the person driving the equipment; or
 - 2) “Property Damage” to property owned by, rented to, in the charge of or occupied by you or any person or organization legally responsible for any person or organization Who Is an Insured and described in paragraph 2 above
- i.** Any farming organization you newly acquire or form other than a partnership, joint venture or limited liability company, and over which you maintain ownership for majority interest, will qualify as a Named Insured if there is no other general liability insurance available to that organization. However:

 - 1)** Coverage under this provision is afforded only until the 90th day after you acquire or form the organization, or until the end of the policy period, whichever is earlier;

- 2. Other Typical Issues we see

 - a. Legal Entity must be named
 - b. Almost no coverage for Newly Acquired/Formed Legal Entities
 - c. No coverage for a loss that occurred before the policy period
 - d. Employee vs. Employee
 - e. Are there any cross-suit exclusions?

Insured Location – Potential E+O

1. How do you advise the Underwriter concerning **ALL** locations that the insured is farming?
2. How often do you notify the Underwriter of **ANY** changes to the locations that the insured is farming?

ISO

1. Farm premises (including grounds and private approaches) and “residence premises” **shown in the declarations**;
2. Acquired by you **during the policy period** for your use as a residence
3. Premises not owned by an “insured” but where the “insured” is temporarily residing.
4. Vacant land **owned by or rented** to an “insured”
5. Land rented to or owned by an “insured”, on which;
 - a. A dwelling or farm outbuilding is being constructed on.
6. Cemetery plots
7. Any part of premises occasionally rented to any “insured” for other than “business” purposes; and

Any Farm premises (including its grounds and private approaches) that you or your spouse **acquired during the present annual policy period**.

Insured Location – Potential E+O – continued

“Insured premises” means the location **shown on the “declarations”** and operated or used for “farming” purposes.

DEFINITIONS

17. **“Insured location” means:**

- a. The farm premises (including grounds and private approaches) and "residence premises" **shown in the declarations**;
- f. Land, owned by a rented to an insured, on which:
 - 2. A building or structure is being constructed for use of an insured in "farming" operations
- i. any farm premises (including its grounds and private approaches) that you or your spouse acquired during the present annual policy period.

Coverage Wording Example A

DEFINITIONS

8. **“Insured premises” means** the insured farm locations and residence premises **described in the declarations**. Under Section II, "insured premises" also means:

- a. The part of other premises **acquired by you during the policy period** Which you intend to use as a residence premises or farm;

Coverage Wording Example B

DEFINITIONS

15. **“Insured location” means:**

- a. The farm premises (including grounds and private approaches) and "residence premises" shown **in the declarations** of this policy. Under Section II, "insured premises" also means:
- b. Any farm premises (including its grounds and private approaches) that you or your spouse **acquires during the policy period** Which you intend to use as a residence premises or farm;

Coverage Wording Example C

Insured Location – *continued*

Insured Location – Potential E+O – continued

A. Take Aways:

1. Land descriptions, should they be must be shown in the “declarations”?
 - a. How much room does the average declarations page have to list 20,000 acres?
2. “I gave a list of my land to you last year!”
 - a. Acquired by you during the policy period
3. **Farm premises** (including grounds and private approaches) and “residence premises” shown in the declarations
 - a. Owned Land
 - b. Rented Land
 - c. Land under contract for deed
 - d. Sharecropped Land
 - e. Used Land
4. How are your “Excel” skills?

	A	B	C	D	E
1	2019 List of Farmland Operated				
2					
3	Owned				
4	NW4, NW4	26	157	63	80
5					
6	Contract for Deed				
7	SE	32	158	64	160
8					
9	Rented				
10	NE 2	2	159	64	320

Insured Location – Potential E+O – continued

5. Company Specific Endorsements - Blanket Acreage F) 707 01

“Insured Location” **also means** any other location **you own, rent or occupy, provided that** the location is **used exclusively for “farming” purposes: and any dwelling or other buildings** or structures at that location are **not used** for any **“business” purposes** and are **not used as your** “residence premises”

B. Who is an Insured on the Auto Policy – Potential E+O

- **Moving to a different line of insurance but same topic – Who is an Insured**

1. It depends on which auto policy your talking about

2. Which version does your carrier use?

- a. BAP
- b. PAP

3. How many carriers do you have that use...

- a. BAP? PAP?
- b. Or a combination of the two on the same account?

BUSINESS AUTO COVERAGE FORM

SECTION II – COVERED AUTOS LIABILITY COVERAGE

A. Coverage

1. Who Is An Insured

The following are "insureds":

a. You for any covered "auto".

b. Anyone else while using with your permission a covered "auto" you own, hire or borrow except:

- (1) The owner or anyone else from whom you hire or borrow a covered "auto".

This exception does not apply if the covered "auto" is a "trailer" connected to a covered "auto" you own.

- (2) Your "employee" if the covered "auto" is owned by that "employee" or a member of his or her household.

- (3) Someone using a covered "auto" while he or she is working in a business of selling, servicing, repairing, parking or storing "autos" unless that business is yours.

- (4) Anyone other than your "employees", partners (if you are a partnership), members (if you are a limited liability company) or a lessee or borrower or any of their "employees", while moving property to or from a covered "auto".

- (5) A partner (if you are a partnership) or a member (if you are a limited liability company) for a covered "auto" owned by him or her or a member of his or her household.

c. Anyone liable for the conduct of an "insured" described above but only to the extent of that liability.

PERSONAL AUTO POLICY

PART A – LIABILITY COVERAGE

INSURING AGREEMENT

A. We will pay damages for "bodily injury" or "property damage" for which **any "insured"** becomes **legally responsible because of an auto accident**. Damages include prejudgment interest awarded against the "insured". We will settle or defend, as we consider appropriate, any claim or suit asking for these damages. In addition to our limit of liability, we will pay all defense costs we incur. Our duty to settle or defend ends when our limit of liability for this coverage has been exhausted by payment of judgments or settlements. We have no duty to defend any suit or settle any claim for "bodily injury" or "property damage" not covered under this policy.

B. "Insured" as used in this Part means:

1. **You or any "family member"** for the ownership, maintenance or use of **any auto or "trailer"**.

2. **Any person using "your covered auto"**.

3. For "your covered auto", any person or organization but only with respect to legal responsibility for acts or omissions of a person for whom coverage is afforded under this Part.

4. For any auto or "trailer", other than "your covered auto", any other person or organization but only with respect to legal responsibility for acts or omissions of you or any "family member" for whom coverage is afforded under this Part. This Provision (**B.4.**) applies only if the person or organization does not own or hire the auto or "trailer".

Who is an Insured on the Auto Policy – Potential E+O – continued

- How do I know if I have all the proper insured's named on the policy?

INSURED'S COPY ADDITIONAL NAMED INSURED SCHEDULE

**ABC FARMS LLP
ABC PARTNERSHIP ENTITY ONLY CONSISTING OF:
ABC FARMS LLP-PARTNER
ABC LAND INVESTMENTS LLC
ABC LAND AND CATTLE LLC
ABC ORGANICS LLC
ABC INVESTMENTS LLC
ABC HOLDINGS LLC**

C. That brings up another E+O question. In whose name are the vehicles titled?

1. The concept of Insurable Interest
 - a. Origin dates back to 1746, English law dealing with contracts of what we know now as Inland Marine policies
 - b. Purpose is to prevent gambling
 - c. Acts to protect the interests of the insurer and to guard public policy
 - d. Courts generally consider an insurance contract "Void" if the insured does not have a financial stake in the item they want to insure
 - 1) Are the vehicles all in the farmer's personal name?
 - Add the farmer as a "Named Insured"
 - 2) Are the vehicles all in the name of an LLC or Corp?
 - You may need DOC (Drive Other Car) and or INI (Individual Named Insured)
 - 3) Are some vehicles titled personally while others are not?
 - Make sure to add ALL of the owners as "Named Insured's" on the policy
 - 4) Are there any leased vehicles?

D. More E+O Prevention on the Farm Auto – Endorsements

1. Optional Coverages – Potential Endorsements on a Farm Auto Policy

- Depending on which type of auto policy the carrier uses, some coverages may be automatically included while others need to be added by optional endorsements
- a. Hired and Non Owned (Symbol 8-9, not an endorsement)

BUSINESS AUTO COVERAGE FORM

SECTION I – COVERED AUTOS

Item Two of the Declarations ***shows the "autos" that are covered "autos"*** for each of your coverages. The following numerical symbols describe the "autos" that may be covered "autos". ***The symbols entered next to a coverage on the Declarations designate the only "autos" that are covered "autos"***.

CA 00 01 11 20

b. Employee vs. Employee – Pg. 4

B. Exclusions

5. Fellow Employee

"Bodily injury" to:

- a. Any ***fellow "employee" of the "insured" arising out of and in the course of the fellow "employee's" employment*** or while performing duties related to the conduct of your business;

CA 00 01 11 20

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

FELLOW EMPLOYEE COVERAGE

This endorsement modifies insurance provided under the following:

AUTO DEALERS COVERAGE FORM
BUSINESS AUTO COVERAGE 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.

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

c. Employee as Insured's

- 1) Who do the symbol's trigger coverage for?
- 2) The "you"
- 3) What if the employee uses his own car, rents or **borrow**s a vehicle on behalf of the employer for use in the farming operation? Where is the coverage on the employer's BAP?
- 4) As in most cases under a farm policy on the BAP the underwriter chooses to use a Symbol 7, 8, 9 for Liability

Does the employee have any coverage on the employer's policy? NO!

- 5) PAP of the employee is the primary source of recovery for the employee. But wait, who else is an insured on the employee's PAP? The Employer!

PERSONAL AUTO POLICY

PART A – LIABILITY COVERAGE

INSURING AGREEMENT

B. "Insured" as used in this Part means:

1. You or any "family member" for the ownership, maintenance or use of any auto or "trailer".
2. Any person using "your covered auto".
3. For "your covered auto", **any person or organization** but **only with respect to legal responsibility for acts or omissions of a person for whom coverage is afforded under this Part.**
4. For any auto or "trailer", other than "your covered auto", any other person or organization but only with respect to legal responsibility for acts or omissions of you or any "family member" for whom coverage is afforded under this Part. This Provision (**B.4.**) applies only if the person or organization does not own or hire the auto or "trailer".

THIS ENDORSEMENT CHANGES THE POLICY, PLEASE READ IT CAREFULLY

EMPLOYEES AS INSURED

This endorsement modifies insurance provided under the following:

BUSINESS AUTO COVERAGE 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.

The following is added to the **Section II – Covered Autos Liability Coverage**, Paragraph **A.1. Who Is An Insured** provision:

Any "employee" of yours is an "insured" while using a covered "auto" you don't own, hire or borrow in your business or your personal affairs.

CA 99 33 10 13

Copyright, Insurance Services Office, Inc., 2011

Page 1 of 1

COMMERCIAL AUTO
CA 99 17 10 13

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

INDIVIDUAL NAMED INSURED

This endorsement modifies insurance provided under the following:

BUSINESS AUTO COVERAGE 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.

If you are an individual, the policy is changed as follows:

A. Changes In Covered Autos Liability Coverage

1. The Fellow Employee Exclusion does not apply to "bodily injury" to your or any "family member's" fellow "employees".

2. Personal Auto Coverage

If any "auto" you own of the "private passenger type" is a covered "auto" under **Covered Autos Liability Coverage**:

- a. The following is added to the **Who Is An Insured** provision:

- c. The Pollution Exclusion and, if forming a part of the policy, the Nuclear Energy Liability Exclusion (Broad Form), do not apply to any covered "auto" of the "private passenger type".

- d. The following exclusion is added and applies only to "private passenger type" covered "autos":

This insurance does not apply to:

"Bodily injury" or "property damage" for which an "insured" under the policy is also an "insured" under a nuclear energy liability policy or would be an "insured" but for its

Other Issues with the Auto Policy – Potential E+O

2. Liability

a. PAP – See Page 25

1) Any Auto

b. BAP

1) Symbols – See Page 27

Coverage	Covered Autos	Limit and Deductible - the most we will pay for any one accident or loss	Premium
LIABILITY	7 8 9	1,000,000	4,450.00
PERSONAL INJURY PROTECTION	5	See State Schedule	662.00
UNINSURED MOTORISTS	6	See State Schedule	338.00
UNDERINSURED MOTORISTS (WHEN NOT INCL IN UNINSURED MOTORISTS)	6	See State Schedule	666.00
<hr/>			
COMPREHENSIVE COLLISION	7	Actual Cash Value or Cost of Repair Minus the Deductible	2,521.00
	7	in Item Three or Item Four	4,415.00
<hr/>			
OTHER COVERAGES		See Schedule	653.00

3. Dangers of accepting Symbol 7 on a BAP policy issued for your insured.

a. 7 = Scheduled Auto's Only

b. Symbol 7 must be supplemented with the following but beware of limitations of coverage for ALL parties involved!

1) Be careful to include Symbol 8 + or 9 as well

2) Symbol 8 gives no coverage to the insured **unless the insured takes possession of the vehicle**

1. In other words, the “you” must be the renter / borrower

3) Symbol 9 **does not trigger coverage for the employee** who uses his own vehicle on behalf of the employer or borrows the vehicle

4) If the Employer borrows an employee's vehicle there is still no coverage for the employee! (who is an insured – found in the 5 exceptions)

4. Newly acquired
 - a. BAP Symbol 7 has got to go!

Here's the problem

BUSINESS AUTO COVERAGE FORM

B. Owned Autos You Acquire After The Policy Begins

1. If Symbols **1, 2, 3, 4, 5, 6** or **19** are entered next to a coverage in Item Two of the Declarations, then you have coverage for "autos" that you acquire of the type described for the remainder of the policy period.
2. But, **if Symbol 7** is entered next to a coverage in Item Two of the Declarations, **an "auto" you acquire will be a covered "auto"** for that coverage **only if:**
 - a. We already cover **all "autos" that you own for that coverage** **Or it replaces an "auto" you previously owned that had that coverage;** **and**
 - b. **You tell us within 30 days after you acquire** it that you want us to cover it for that coverage.

- b. Is there anything we can do?
 - c. Most underwriters won't budge, even if a legal entity exists
 - d. Look for a company specific endorsement or wording that will soften the blow

5. PAP the situation is a little better

BUSINESS AUTO EXTENSION ENDORSEMENT

C. CHANGES FOR ADDITIONAL NEWLY ACQUIRED VEHICLES

1. Paragraph B.2 of SECTION 1 - COVERED AUTOS is replaced by the following:
2. **If Symbol 7 is entered** next to the coverage form in Item 2 of the Declarations, **an "auto" you acquire will be a covered "auto"** for that coverage **only if:**
 - a. **we already cover** at **least one "auto"** you own **for that coverage** or it replaces an "auto" you previously own that had that coverage; **and**
 - b. **You tell us within 30 days** after you acquire it that you want us to cover it for that coverage.

The **most we will pay for Physical Damage Coverage for "loss"** under this Coverage Extension **is \$100,000 per "auto", subject to the largest deductible** applicable to any "auto" for that Coverage.

Nationwide

SUMMARY OF THE PERSONAL AUTO COVERAGE FORM

1. “Newly acquired auto” means any of the following types of vehicles you become the owner of during the policy period
2. Private Passenger Vehicle
3. Pickup or Van with No Other Insurance That Has a Gross Vehicle Weight Rating of 10,000 Pounds or Less –
 - a. This is roughly a three-quarter ton pickup
4. Is not used for delivery or transportation of goods unless it's connected with farming or ranching
5. Coverage for “Other Than Collision” and for “Collision” and insured will have 14 days to report the newly acquired vehicle as long as they have at least one vehicle currently on the policy with these coverages on them.
6. If there are no physical damage coverage is to any vehicle currently insured on the policy then the insured must report the vehicle within four days of acquisition and a \$500 deductible will apply.

[illegible]

2. EXCLUSIONS

This insurance does not apply to:

d. Employers Liability

"Bodily Injury" sustained by:

1. Any "employee" (other than a "residence employee") arising out of his or her employment by the insured, or while performing duties related to the conduct of the insureds "farming" operations;
2. Any "residence employee", unless the "employee" makes a written claim or brings "suit" no later than 36 months after the end of the policy period; or
3. The spouse, child, parent, brother or sister of any "employee" as a consequence of "bodily injury" to that "employee".

This exclusion applies whether any insured may be held liable as an employer or in any other capacity and to any obligation to share damages with or repay someone else who must pay damages because of the injury.

This exclusion does not apply to liability assumed by the insured under an "insured contract"

E. Employment Related Practices.....

F. Sexual Molestation, Corporal Punishment or Physical or Mental Abuse

"Bodily Injury" or "Property Damage" Arising Out Of:

1. The actual or threatened sexual molestation, sexual harassment, corporal punishment, or physical or mental abuse; or
2. the negligent:
 - a. employment
 - b. investigation
 - c. supervision....

Of a person for whom any insured is or was legally responsible and whose conduct would be excluded by paragraph 1) above.

Coverage Wording Example A

Exploring the farmers liability issues when an injury occurs to a farm employee.

1. Farm Owners Policies
 - a. So you need some help on the farm? What to do with employees to protect yourself from a lawsuit
 - The base farm liability policy doesn't do much to help you out.
 - See prior page for a typical exclusion.
2. Any employee related injury while working on the farm is generally excluded by most farm policies
3. Some forms define what an employee is but in general it is what you think it would be

(Employee is usually defined to separate a standard farm laborer from domestic help)
4. So how do I take care of this exposure for my client?
5. Add Endorsements!
 - a. Medical Payments
 - b. Farm Employers Liability

FARM EMPLOYERS LIABILITY COVERAGE

"We" agree to provide this coverage based on "your" statement that the information in the following schedule is correct. It discloses the type of "farm employee" insured under this endorsement, and:

1. the maximum number employed at any one time during the policy;
2. the total number of man-days worked; or
3. the wages for all "farm employees".

SCHEDULE

(The entries required to complete this endorsement will be shown below or on the declarations.)

Limit

Coverage V – Farm Employers Liability

\$ _____ each occurrence

Coverage W – Farm Employees Medical Payments

\$ _____ each employee

Man-Day Basis

CLASS	FARM EMPLOYEES	RATE (Per Each)	TOTAL NUMBER OF EMPLOYEES	PREMIUM
A	All full time, working 180 days per year or more			\$
B	Part time, working over 40 days but less than 180 days per year			\$
C	Part time, working 40 days or less per year	RATE (Per 100 Man-Days)	TOTAL NUMBER OF MAN DAYS	\$

Wages

WAGES (Use only if Man-Day Basis Not Applicable)	RATE (Per \$100 of Wages)	PREMIUM BASE (Wages)	MINIMUM PREMIUM	PREMIUM
Farm Employees			\$	\$

TOTAL PREMIUM

\$ _____

The Commercial Liability Coverage is amended as follows:

DEFINITIONS

The following definition applies in addition to the other definitions that apply to the Commercial Liability Coverage:

"Farm employee" means an employee of an "insured" whose duties are in connection with the "farming" operations of the "insured". This does not include an employee while engaged in other business activities of the "insured" or a domestic employee.

PRINCIPAL COVERAGES

The following are added:

Coverage V – Farm Employers Liability

"We" pay all sums which an "insured" becomes legally obligated to pay as damages to a "farm employee" due to "bodily injury" which arises out of and in the course of employment.

The "bodily injury" must be caused by an "occurrence". This coverage applies only to "bodily injury" which:

1. arises out of the ownership, maintenance, or use of the "insured premises", or operations that are necessary or incidental to the "insured premises"; and
2. occurs during the policy period.

Coverage W – Farm Employees Medical Payments

"We" pay the medical expenses defined below for "bodily injury" to a "farm employee" caused by an accident and arising out of and in the course of his/her employment.

"We" pay such expenses, regardless of fault but only if:

1. they arise out of an accident that occurs during the policy period; and
2. they are incurred and reported within one year of the accident.

Medical expenses means the reasonable and necessary expenses for:

1. medical, surgical, x-ray, and dental services, including prosthetic devices and eye glasses;
2. ambulance, hospital, professional nursing, and funeral services; and
3. first aid at the time of an accident.

EXCLUSIONS THAT APPLY TO LIABILITY COVERAGES

The exclusions in the Commercial Liability Coverage form also apply to Coverage V and Coverage W, except:

1. exclusion 8.a. (Exclusions That Apply To Bodily Injury And/Or Property Damage), relating to "bodily injury" to an employee, does not apply to Coverage V or W;
2. exclusion 2. (Additional Exclusions That Apply To Medical Payments), relating to "bodily injury" to a person hired by or on behalf of any "insured" to do work for the "insured" or a tenant of an "insured", does not apply to Coverage W; and
3. exclusion 3. (Additional Exclusions That Apply To Medical Payments), relating to "bodily injury" to a person injured on that part of the premises that the person normally occupies, does not apply to Coverage W.

HOW MUCH WE PAY FOR LOSS OR CLAIM

With respect to Coverages V and W, How Much We Pay For Loss Or Claim in the Commercial Liability Coverage form is deleted and replaced by the following:

HOW MUCH WE PAY FOR LOSS OR CLAIM

1. The "limits" shown in the Schedule for Coverages V and W are subject to the following conditions and are the most "we" will pay, regardless of the number of :
 - a. "insureds" under Coverages V and W;
 - b. persons who sustain injury; or
 - c. claims made or suits brought.

The payment of a claim under Coverage W does not mean there will be a payment of a claim under Coverage V.

2. The Each Occurrence Limit in the Schedule is the most "we" will pay under Coverage V due to "bodily injury" arising out of a single "occurrence".
3. The Each Employee Limit shown in the Schedule for Coverage W is the most "we" will pay for all medical expenses because of "bodily injury" sustained by any one "farm employee".

1. Is Farm Employers Liability Really the Answer?
 - a. Uh Oh! My client's farm employee liability coverage language says I have to be "Legally Obligated" in order to pay a claim!
 - 1) There are two problems to address with this endorsement
 - a) Endorsement requires legal liability
 - b) Endorsement contains several exclusions
 - b. Examples of Uncovered Claims under Farm Employers Liability Endorsements
 - 1) Worker Shortcuts
 - 2) Workers Remove machinery guards
 - 3) Workers failure to use provided fall protection
 - 4) Workers failure to use respirators
 - c. Is there a better solution? How about Workers Compensation?
 - 1) Farmers attitude / thought process may create an uphill battle here
 - 2) But "I don't have to buy Work Comp. The law says so!"
 - d. Many states don't require Work Comp for farm employees what coverage can the farmer count on to protect himself with?
 - a) 15 states do not require Workers Compensation for most non-commercial farm/ag workers.
 - b) Alabama, Arkansas, Delaware, Georgia, Indiana, Kansas, Kentucky, Mississippi, Missouri, Nebraska, Nevada, North Dakota, South Carolina, Tennessee, and Texas.

c) Some states require Work Comp. under certain situations.

Examples:

- Full-time workers
- Employed in specialty jobs
- Farms of a certain size (# of employees)
- Farms where employees work a certain number hours, (Full-time versus part-time)

e. Exclusions are found on the Farm Employers Liability Coverage endorsement in both the liability and medical payments section of the policy

1) Why do you suppose that is?

2) Workers Compensation and Employers Liability

f. Advise the purchase of Workers Compensation - Better safe than sorry!

1) Workers Compensation Requires no negligence on the part of the farmer

2) Workers Compensation = Sole Remedy

3) Some states allow a suit for issues that WC doesn't cover

4) Catastrophic Injury

5) Death

6) WC offers benefits for these types of things

g. Another reason many farmers resist the purchase of Workers Compensation

1) What is a volunteer?

2) What is Neighborly Exchange?

2. Need further examples concerning Workers Compensation?
 - a. Auto Policy's Liability Coverage
 - b. Ramifications of the farm employee operating the employer's automobiles
 - c. Both BAP and PAP exclude employee related injury.
 - 1) Why do you suppose that is?
 - 2) Workers Compensation and Employers Liability

EXCLUSIONS

A. We do not provide Liability Coverage for any "insured":

4. For "bodily injury" to **an employee of that "insured" during the course of employment.**
This exclusion (A.4.) Does not apply to "bodily injury" to a domestic employee unless workers compensation benefits are required or available for that domestic employee

PP 00 01 09 18

B. Exclusions

This insurance does not apply to any of the following:

4. Employee Indemnification And Employer's Liability

"Bodily injury" to:

a. An "employee" of the "insured" arising out of and in the course of:

- (1) **Employment by the "insured";** or
- (2) **Performing the duties related to the conduct of the "insured's" business;** or

b. The spouse, child, parent, brother or sister of that "employee" as a consequence of Paragraph a. above.

This exclusion applies:

- (1) Whether the "insured" may be liable as an employer or in any other capacity; and
- (2) To any obligation to share damages with or repay someone else who must pay damages because of the injury.

But this exclusion does not apply to "bodily injury" to domestic "employees" not entitled to workers' compensation benefits or to liability assumed by the "insured" under an "insured contract". For the purposes of the Coverage Form, a domestic "employee" is a person engaged in household or domestic work performed principally in connection with a residence premises.

5. Fellow Employee

"Bodily injury" to:

a. Any fellow "employee" of the "insured" arising out of and in the course of the fellow "employee's" employment or while performing duties related to the conduct of your business; or

b. The spouse, child, parent, brother or sister of that fellow "employee" as a consequence of Paragraph a. above.

Partial page 4 of 12

CA 00 01 10 13

d. Uninsured/Underinsured Motorist

- 1) Potential coverage offered here?
 - a) Check Exclusions on form and State Law
 - b) Most States make Work Comp primary
- 2) Coverage is Limited in how the accident occurred (Legal Liability)
- 3) Personal Injury Protection
 - a) Potential coverage offered here?
 - b) Subject to state law
 - c) Most states Make Work Comp primary
 - d) Limited in Scope / Limits
 - e) If Um/UIM is collectable any PIP benefits awards are usually subtracted from the UM/UIM payments
- 4) Medical Payments
 - a) Potential coverage offered here?
 - b) Subject to state law
 - c) Most states Make Work Comp primary
 - d) Limited in Scope / Limits

The Farmers Liability issues when Driving or Towing a Farm Implement

1. So many questions:
 - a. So who's driving?
 - b. Who's Towing?
 - c. What are they using to tow with?
 - d. What are they towing?
 - e. In order to answer these questions, we have to follow the trail of bread crumbs sprinkled inside the policy language
2. Starting out on the trail
 - a. The incident must be a covered cause of loss
 - b. The operator of the vehicles must be an insured
 - c. The operator of the vehicles must be performing duties related to a "farming" operation
 - d. The incident must occur on an insured location

Basic liability insuring agreement

A. COVERAGES

COVERAGE H-BODILY INJURY AND PROPERTY DAMAGE LIABILITY

1. INSURING AGREEMENT

- a. We will pay those sums that the insured becomes legally obligated to pay as damages because of "bodily injury" or "property damage" to **which this insurance applies**

Coverage Wording Example A

3. Who is an insured for operating farm equipment?
 - a. The person's shown on the declarations page
 - b. "Farm Employees"
 - c. Anyone with Permission but limited to certain locations

Who is an insured

C. WHO IS AN INSURED

1. If **you are designated** in the declarations as:.....
2. Each of **the following is also an insured:**
 - a. Your "**farm employees**" or "residents employees".... But only for acts that cause "bodily injury", "property damage", or "personal and advertising injury" **to someone other than you.... Or a co-employee**; and are within the scope of the employee's employment by you or **while performing duties related to the conduct of your "farming" operations.**

Coverage Wording Example B

4. Where can the insured operate the machinery and still have coverage?
 - a. On the insured location
 - b. Public highways

Who is an insured – ***continued***

C. WHO IS AN INSURED

6. **Any person using a "recreational vehicle" or "mobile equipment" on the "insured location" with your consent is an insured provided this insurance applies to the "recreational vehicle" or "mobile equipment".** No person is an insured with respect to the use of an "auto".

Coverage Wording Example C

Who is an insured – ***continued***

C. WHO IS AN INSURED

3. With **respect to "mobile equipment" to which this insurance applies, any person is an insured while driving such equipment along a public highway with your permission in connection with a "farming" operation....**
However, no person or organization is an insured with respect to:
 - a. **"bodily injury" to a co-employee** of the person driving the equipment;

Coverage Wording Example B

- c. Anywhere else? What about helping the neighbor at his farm? – Go back to the beginning. “While performing “Farming” Operations.

Who is an insured – *continued*

C. WHO IS AN INSURED

1. If **you are designated** in the declarations as:...
2. Each of **the following is also an insured:**
 - a. Your **"farm employees"** or "residents employees"... But only for acts that cause "bodily injury", "property damage", or "personal and advertising injury" **to someone other than you... Or a co-employee;** and are within the scope of the employee's employment by you or **while performing duties related to the conduct of your "farming"** operations.

Who is an insured – *continued*

F. DEFINITIONS

1. **“Farming”** Means the Operation of Agricultural or Aquacultural Enterprise....

Hence neighborly exchange would fit the definition of farming giving you coverage to operate your machinery while on their land engaged in farming practices.

5. Towing

- a. Most farm policies do not have an exclusion for the towing of farm implements or mobile equipment.
- b. What if I’m towing farm implements or mobile equipment with an auto?
- c. Look to the BAP or PAP to grant coverage for this exposure
 - 1) Beware, with a BAP you will need the proper Symbol on the declarations page
 - 2) With the use of certain symbols, a BAP Nonowned trailers while attached to your insured’s power unit are covered on a primary basis for both the owner of the trailer and the named insured.

Businesses on the Farm – Liability issues concerning Operations Other Than Traditional Farming and Contractual Issues.

1. What do you mean Business? Isn't farming a business?
 - a. Let's split the conversation into Three parts
 - b. Nontraditional income producing events taking place on farms
 - c. "Custom Farming"
 - d. Contractual obligations a farmer assumes when signing a piece of paper
2. More and more farmers are opening their doors to more traditional types of business that we would not consider typical farming
 - a. What's causing this phenomenon?
 - b. Farm Employees - good ones are hard to find
 - c. Seasonal climates make it difficult to keep a good employee busy year-round
 - d. Farms are searching for revenue producing outlets to be able to pay their Employees year-round which turns them into long-term employees
 - 1) What does the Farm Policy have to say about these types of operations?
 - 2) What if anything do we need to do to cover these incidental business exposures?

3. Exploring Policy Language

- Property vs. Liability

- a. Property issues when buildings are used for “business” purposes

Insured has a large shop building that they use for repairing their farm equipment. They also use the shop for maintenance and repair of semi-tractor trailers that are owned and operated by the insured's commercial long-haul trucking company.

- b. Issues that are created by this situation

COVERAGE G-FARM BUILDINGS AND STRUCTURES

1. COVERED PROPERTY

All of the following are Covered Property under Coverage G of This Coverage Form, provided a limit of insurance shown in the Declarations for the specific type of property:

- a. Farm buildings and structures other than "dwellings", including attached sheds and fixtures **used for "farming" purposes.**

Coverage Wording Example A

12. "Farming" means the operation of an agricultural or aquacultural enterprise, and includes the operation of roadside stands, on your farm premises, maintain solely for the sale of farm products produced principally by you. Unless specifically indicated in the declarations, "farming" does not include:

- a. Retail activity other than that described above; or
- b. Mechanized processing operations.

Sales from "farming" operations are primarily wholesale as opposed to retail. Retail marketing is limited to incidental sales of your unprocessed farm production sold by you with the resulting gross income being a minor portion of your combined "farming" gross income.

Coverage Wording Example A

4. Property issues when farm implements are used for “**Business**” purposes
 - 1) Both Coverage for scheduled farm personal property and unscheduled farm personal property refer to the same section of the policy to determine whether business use of this equipment is covered or not

2. PROPERTY NOT COVERED

- b. Farm machinery, farm implements, and all other motorized land conveyances or "recreational vehicles" primarily designed for non-public road use and **used exclusively for "farming" purposes**....

Coverage Wording Example B

5. End result then, no coverage on either buildings or machinery used for non-farming purposes

6. Liability issues when buildings or machinery are used for “business” purposes
- a. The Liability section of the policy reacts a little differently depending on the carrier, but all exclude “business” other than “farming” in one way or another
 - b. Typically, this is found in the “Exclusion” section of the policy form

A. COVERAGES

COVERAGE H-BODILY INJURY AND PROPERTY DAMAGE LIABILITY

1. INSURING AGREEMENT

- a. We will pay those sums that the insured becomes legally obligated to pay as damages because of "bodily injury" or "property damage" to which this insurance applies.....
However, we have no duty to defend any insured against any claim or "suit" seeking damages to which this insurance does not apply.

2. EXCLUSIONS

This insurance does not apply to:

p. Business Pursuits

"Bodily Injury" or "Property Damage" ARISING OUT OF or in connection with a "Business" engaged in by 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".

(An exception is given to an insured under the age of 21 involved in a part-time or occasional self-employed "business" with no employees and receipts less than \$5000.)

Coverage Wording Example A

7. The key in understanding the exclusion is to understand what the definition of a "business" is.

F. DEFINITIONS

4. **"Business"** means trade, profession, occupation, enterprise, or activity, other than "farming" which is engaged in for the purpose of monetary compensation or other compensation.

Coverage Wording Example A

12. **"Farming"** means the operation of an agricultural or aquacultural enterprise, and includes the operation of roadside stands, on your farm premises, maintain solely for the sale of farm products produced principally by you. Unless specifically indicated in the declarations, "farming" does not include:

- c. Retail activity other than that described above; or
- d. Mechanized processing operations.

Sales from "farming" operations are primarily wholesale as opposed to retail. Retail marketing is limited to incidental sales of your unprocessed farm production sold by you with the resulting gross income being a minor portion of your combined "farming" gross income.

Coverage Wording Example A

8. So "business" can be boiled down to this. A way to make money that doesn't involve farming
- a. Beauty shop in the home
 - b. Subcontracting to assemble farm machinery for implement dealerships
 - c. Sales of farm machinery
 - d. Fuel sales
 - e. Fertilizer (anhydrous ammonia) sales
 - f. Seed sales / Chemical sales
 - g. Livestock boarding / Feeding
 - h. Excavation operations (Contracting)
 - i. Sleigh rides
 - j. Rental of property other than the dwelling on a short-term basis

9. Do we have the same problem with all carriers?
- a. Depends on how the definitions are written

8. **"Business"** means a trade, a profession, or an occupation, all whether full-time or part-time. This includes the rental of property to others. It does not include the occasional rental for residential purposes of the part of the "insured premises" normally occupied solely by "your" household. "Business" includes services regularly provided by an "insured" for the care of others and for which an "insured" is compensated.

"Business" does not include:

- a. "Farming";
- b. Part-time or seasonal activities that are performed by minors; or
- c. Activities that are related to "business", but are usually not considered "business" activities

Coverage Wording Example B

9. Do we have the same problem with all carriers? continued
- a. Depends on how the definitions are written
 - b. No Exclusionary language here for business use of buildings

COVERAGE D – FARM BARN, BUILDINGS, AND STRUCTURES

You have this coverage only if the declaration shows it is provided.

We cover only the farm barns, buildings, and structures for which an amount of insurance is stated in the Declarations. When coverage is shown in the Declarations, we cover;

1. Farm barns, buildings, and structures, including attached sheds and permanent fixture

Coverage Wording Example C

SECTION II – EXCLUSIONS

1. **Coverages G – Farmers Personal Liability; H – Medical Payments to Others; I – Farm Employers Liability; and J – Farm Employees Medical Payments do not apply to bodily injury or property damage:**

- b. Arising out of **business** pursuits of an **insured** or the rental or holding for rental of any part of any premises by an **insured**.
- c. Arising out of the rendering of or failure to render professional services.
- d. Arising out of a premises or farming operations from a premises:
 1. Owned by an **insured**;
 2. rented to an **insured** to; or
 3. rented to others by an insured;
 4. that is not an **insured premises**;

“Business” means any full or part-time trade, profession, occupation or service done for monetary or other compensation. **“Business”** does not mean **“farming”**

Coverage Wording Example C

9. Do we have the same problem with all carriers? continued:
- a. Depends on how the definitions are written
 - b. No Exclusionary language here for business use of buildings

SECTION II – EXCLUSIONS

1. **Coverages G – Farm Personal Liability and Coverage H - medical payments to others**, do not apply to "bodily injury" or "property damage":

b. Business Pursuits

Arising out of **or in connection with a "business" engaged in by an "insured"** or the rental or holding for rental of any part of any additional "residence premises" by an "insured". This exclusion does not apply to:

4. Incidental "business" type exposures covered under this policy **whether or not** associated with "farming"

Coverage Wording Example D

- c. Pertaining to #4 above, incidental "business" is the following
- 1) Minors under age 21 engaged in occasional or part-time business activities and self-employed
 - 2) Mutual exchange of home daycare services without monetary compensation
 - 3) Home daycare services for a relative
 - 4) Rental of the residence premises on an occasional basis
 - 5) Incidental business exposures covered under this policy

DEFINITIONS

3. **"Business"** means property, enterprise or activities pertaining to any trade, profession, or occupation for the purpose of **monetary or other compensation.** Business does not mean:

- a. "Farming";
- b. "Custom farming"
- c. Incidental activities that are usually performed by minors; or <21 yrs old)
- d. Roadside stands used solely for the sale of the "insureds" produce.

Coverage Wording Example D

10. The end result then, with some carriers you have problems with insurance when using an outbuilding for business purposes.

On the Liability side of the policy with most carriers, no coverage for any type of Non-Farming Business on the “insured location”.

11. So, if a farmer has an ongoing business that can be linked to farming practices is there coverage for that?

- Seed Dealer
- Chemical Dealer
- Fertilizer Dealer
- Fuel Dealer
- Anhydrous Dealer

- a. While the policy may offer some coverage depending on definitions, all policies I reviewed for this class still have a “Professional Services” exclusion. So, this will still leave substantial uncovered exposures if the farmer relies on a farm owners policy only.

- b. Seed Men’s E+O

- c. Applicators E+O

- d. Products/Completed Operations

- e. Personal and Advertising Injury

- f. Employment Practices Liability

- g. Cyber Insurance

- h. And the big question, did the farmer create a legal entity for this source of income?

- But there’s one more common offshoot of the farming operation that we should make mention of.

“Custom Farming”

1. Performing operations for neighbors has its challenges
2. Questions must be asked:
 - 1) Are you working for another farmer for compensation?
 - What is compensation?
 - Money?
 - An exchange of labor with the party your helping out?
 - 2) Or are you simply volunteering your...
 - Time
 - Talent
 - Treasure
 - Equipment
 - Fuel
 - Labor
3. Most carriers do not exclude coverage for Neighborly Exchange

"Custom Farming" ... does not mean a neighborly exchange of services.

Coverage Wording Example A

"Custom Farming" means "farming" undertaken for others under a contract or agreement....

Coverage Wording Example B

4. How is “Custom Farming addressed? (Is usually allowed on a limited basis but is most often heavily regulated)
 - a) Regulations usually come by way of Maximum receipts allowed by the carrier
 - b) Check with the carrier they will likely have an endorsement available to increase the base policies allowable receipts

- c) Where the **real trouble comes from is not understanding the definition of “Custom Farming”** as this differs widely by carrier by defining acceptable types of farming practices
- 1) Seeding
 - 2) Fertilizer Application
 - 3) Swathing
 - 4) Combining
 - 5) Weed Control Application
 - 6) Livestock Boarding
 - 7) Livestock Feeding

This carrier uses a fairly broad definition of “Custom Farming” but then makes reference to “loading or unloading” in various ways

“Custom Farming” means the performance of one or more agricultural operations by an insured, at a farm that is not an “insured location”, at the direction of the owner or operator of the farm or the authorized representative of the owner or operator.

But “custom farming” does not mean:

- a. Operations conducted at a premises rented to, leased to, or controlled by an insured;
- b. Operations for which no compensation in money or goods is received;
- c. A neighborly exchange of services; or
- d. Custom Feeding”

“Custom Farming” operations include the use of “loading or unloading” of farm tractors, trailers, implements, or other open quote mobile equipment” while used under the “custom farming” agreement.

This carrier excludes custom farming operations and then builds coverage back into the policy if the farmer's receipts are less than \$5000 for the 12 months immediately preceding the date of the “occurrence”.

The carrier also reserves the right to inspect the insured's books or records at any time or as the common policy conditions allow. (3yrs)

Coverage Wording Example A

All appears to be well with this carrier when reading the definition but coverage is restricted once we look at the exclusion section of the policy

"Custom Farming" means "farming" undertaken for others under a contract or agreement and includes the use of farm tractors, farm trailers, implements, draft animals and other farm machinery (other than "motor vehicles") used in performing this work.

In the exclusion section of the policy the carrier excludes chemical application from custom farming with the following statement;

"bodily injury" or "property damage" which results directly or indirectly from the application of pesticides or herbicides for others.

Coverage Wording Example B

This carrier grants coverage by giveback under the exclusion section of the policy

- k. Resulting from "custom farming" unless a premium for "custom farming" is shown in the Declarations.
-

"Custom Farming" means used by an *insured* person of any draft animal, farm tractor, farm implement, or other machinery in *farming* operations for others for a charge. Such use which does not generate more than \$1000 in receipts in any calendar year is not "custom farming"

Coverage Wording Example C

5. Custom Farming Redefined by Endorsement

1) **Company Wording Example A**

1) **Custom Application of Anhydrous Ammonia Exclusion Endorsement FL 706 09**

- Exclusion endorsement
- Excludes coverage for application away from the “insured location”
- Also excludes coverage for movement of anhydrous on public roads unless in connection with your “insured location”.

2) **Extended Custom Farming Operations Coverage Endorsement FL 706**

- Removes exclusions for property in the care custody or control of any insured
- Removes exclusions for particular part of real property which an insured is working on (or subcontractor working on the insured’s behalf)
- Removes exclusion for that part of property that must be restored, repaired or replaced because of “your work” which was incorrectly performed on it
- Endorsement explains the premium basis of receipts is audited
- Refers to the declarations page 4 identifying policy limits (Form 8110)

b. **Coverage Wording Example B**

Custom Farm Work CF-1967

Pays up to the limits shown for Coverage L
For “property damage” due to “Custom Farming”

- To property that is occupied by,
- Used by, or;
- In the care of an “insured” or;

To work performed by an “insured”

- When the “property damage” arises out of such work or part of the work.

Exclusions That Apply:

PD to property rented to, occupied by, used by, or in the caravan
“insured” except property damage caused by fire, smoke, or explosion;
and

PD to work performed by or for an “insured” arising out of

- Raising of livestock
- PD to structures, buildings, farm machinery, or animals
- PD from failure of seed to germinate
- PD to property rented to an insured

c. **Coverage Wording Example C**

Farm Operations Protector Plus Endorsement FPE-0094

- Removes custom farming exclusion however limits coverage grant only if the farmer has \$5000 or less in receipts in any calendar year

d. **Coverage Wording Example D**

Ultra Security Farm and Ranch Endorsement PF852

- Grants coverage for custom farming
- Receipts are limited to \$10,000 in the 12 months immediately preceding the date of the “occurrence”

Custom Farming Liability Coverage PF430

- Coverage appears to be granted for policy limits
- Endorsement requires you to name the type of custom farming performed
- Coverage Is Based on receipts
- Premium is audited

6. Contract Exposure AKA Other Ways to Make Money Off the Farm

a. What piece of paper did your farmer sign now?

- 1) Wind Tower agreement
- 2) Cell Phone Tower agreement
- 3) Equipment Lease
- 4) Equipment Rental
- 5) Grazing Lease
- 6) Mineral Rights

b. So, what's the big deal?

1) Indemnification Agreement

a) Indemnification Clause

- 1) Limited
- 2) Intermediate
- 3) Broad form

b) Hold Harmless – In whose favor?

c) Defense

- 1) Up front or reimbursement
- 2) Who gets to pick the lawyer?

d) Additional Insured or Indemnitee

e) Waiver of Subrogation

f) To which of the farmers policy's do these things apply to?

g) How big of an umbrella would you like?

h) Does insurance cover everything?

i) How do we know if a contract has been signed?

j) Agent's role in determining whether or not coverage exists

- **Sample Language from Contracts:**

- a. **Wind Tower Agreement**

- 1) Exposure
 - a) Construction and Deconstruction
 - b) Operation of turbines
 - c) Pollution
 - d) Noise
 - e) Road construction
 - f) Indemnification
 - g) Length of time for promised indemnification
- 2) Remedies
 - a) Promise to Indemnify
 - b) Mutual Indemnification Depending on Fault

Insurance & Indemnity

Insurance. Operator shall maintain liability insurance insuring Operator against loss by Operators use of the Operator Property under this agreement. The amount of insurance shall not be less than of combined single limit liability coverage. Such insurance policy cannot be canceled without at least 30 days written notice to owner. Upon receiving a written request from the Owner, Operator shall name Owner as additional insured on such insurance policy and provide Owner with a certificate of insurance.

Indemnity by Operator. Operator shall defend, indemnify, protect and hold Owner harmless from and against all liabilities, cost, expenses, obligations, losses, damages, claims, including reasonable attorney's fees, resulting from Improvements, the Windfarm, the operation thereof, or the negligence, willful misconduct, or breach of this Agreement by Operator, its agents, contractors or employees, invitees, licensees, and permittees; **provided, however,** that such Liability is not due to any negligence, willful misconduct, or breach by owner, its agents, contractors or employees, invitees, licensees or permittees.

Indemnity by Owner

Insurance.

Owner shall defend, indemnify, protect and hold Operator harmless from and against **all liability**, gross negligence or willful misconduct by Owner, its agents, contractors or employees, invitees, licensees, provided, however, that such Liability is not due to any negligence, willful misconduct, or breach by Operator, its agents, contractors or employees, invitees, licensees or permittees.

Things to Notice:

- c. Indemnification is not mutual. The terms are quite different
- d. **Operator Indemnification toward farmer**
 - 1) Offers a specific amount of insurance
 - 2) Offers additional insured status
 - 3) Offers 30-day notice of cancellation
 - 4) Offers indemnity for attorney's fees
 - 5) Offers no coverage for joint negligence
 - 6) Does not specify what types of insurance coverage is available
- e. **Owner (Farmer) Indemnification toward Operator**
 - 1) No request for Insurance
 - 2) No request for particular liability limits
 - 3) No request for additional insured status
 - 4) No specific request for defense but rather requires indemnification for "all liability"
 - 5) What type of Liability?
 - a) Farm Liability
 - b) CGL
 - c) Umbrella
 - d) Auto
 - e) Pollution
 - 6) Farmer is responsible to indemnify for acts of its employees and invitees
 - 7) Contract contains a confidentiality clause
 - Note for both parties the terms "Survive the Termination of the Contract"
 - What about Punitive Damages?

- **Sample Language from Contracts continued:**

- b. **Cell Phone Tower agreement**

- 1) Exposure
 - a) Construction and Deconstruction
 - b) Operation of tower
 - c) Pollution
 - d) Road construction
 - e) Indemnification
 - f) Waiver of Subrogation
 - g) Primary and Non Contributory
 - h) Mutual Hold Harmless, Wavier
 - i) Length of time for promised indemnification
 - 2) Remedies
 - a) Promise to Indemnify
 - b) Mutual Indemnification Depending on Fault

Liability and Indemnity

Tenant agrees to indemnify and save Landlord harmless from all claims (including costs and expenses of defending against such claims) arising or alleged to arise from any breach of this Lease by Tenant, or any negligent act, negligent omission, or intentional tort of Tenant or Tenants agents, employees, or contractors, invitees or licensees occurring during the term of this Lease in or about the Leased Premises.

Landlord agrees to indemnify and save Tenant harmless from all claims (including cost and expenses of defending against such claims) arising or alleged to arise from any breach of this Lease by Landlord, or any negligent act, negligent omission or intentional tort of Landlord or Landlord's agents, employees, contractors, invitees, licensees, or other tenants of Landlord occurring during the term of this Lease. The provisions of this section 9 shall survive the termination of this lease.

3) Indemnify Versus Additional Insured

Insurance:

Tenant, at its expense, shall maintain in force during the term of this Lease a combined single limit policy of bodily injury and property damage, with a limit of not less than \$1,000,000 insuring Landlord and Tenant against ***all liability arising out of Tenant's use***, occupancy, or maintenance of the Leased Premises, which policy shall be endorsed to Landlord as additional insured.

4) Is this good enough?

Insurance, of the Lease is amended to add the following sentence: "Tenant shall furnish Landlord with certificates evidencing such insurance, ***as well as evidencing waiver of any rights or claims of subrogation***, and ***stating such coverage shall not be canceled or changed unless Landlord has first been given thirty (30) days prior written notice thereof***, annually upon the normal renewal of Insurance coverage by Tenant. Any blanket policy of insurance maintained by Tenant may be used and endorsed, as necessary, to comply with this paragraph.)

5) Is this good enough?

- a) Primary Non Contributory
- b) Defense Costs up front or reimbursed?

Environmental Matters, Landlord agrees to indemnify and hold Tenant, and Tenants agents, employees, successors and assigns, harmless from any and all claims, damages, fines, penalties, judgments, costs and liabilities ("Losses") **arising out of or related to any breach or inaccuracy of Landlord's representations regarding the presence of Environmental Pollutants on or in the Leased Premises *except* Losses caused solely by Tenants own use**, spill, discharge, release or deposit of Environmental Pollutants on the Leased Premises. **Such Losses shall include**, without limitation: attorney, consultant and laboratory fees and costs; investigation and assessment expenses; cleanup and remediation expenses; expenses associated with discharging any liens; business interruption expenses; and, all expenses associated with the preparation submittal of any plans, reports or other submissions to any governmental entity.

- Getting the right coverage – What are the options?

- **Sample Language from Contracts:**

- c. **Equipment Lease / Rental**

1. Exposure
 - a) Two sides to this Exposure
 - 1) Liability
 - 2) Property
2. Indemnification
3. Pollution

Sample of Liability Requirements

Waiver & Indemnity

You release and agree to indemnify, defend, and keep harmless, us (including any assignee of ours) and our directors, officers, agents and employees (each, and "Indemnatee"), from and against any and all Claims (Defined below) (Other than those directly resulting from the actual gross negligence or willful misconduct of the Indemnatee), "Claims" means all claims, allegations, judgments, settlements, suits, actions, damages, demands, losses, penalties, fines, liabilities (including strict liability), including attorneys fees, of whatever kind or nature, contingent or otherwise, foreseeable or unforeseeable, by or against any person.

You are entitled to control the defense of or to settle Claim, so long as: (a) no Event of Default has occurred and is then continuing; (b) you are financially capable of satisfying your obligations under this section; and (c) we approve your proposed defense counsel.

Sample of Property Requirements

Insurance.

You, at your expense, must keep the Equipment Insured with a commercial insurance policy for our benefit. This insurance will protect the Equipment against all risks for an amount at least equal to the then-applicable Casualty Loss of Value. You will also maintain comprehensive public liability insurance (including product and broad form contractual liability) covering the Equipment for at least \$1 million combined coverage for bodily injury and property damage per occurrence. Insurance must be in a form with companies approved by us. The insurance shall specify both you and us as named insureds and us as loss payee. The insurance shall be primary, without the right of contribution from any insurance carried by us. The insurance must provide that it may not be canceled or altered so as to affect our interest within at least ten (10) days prior written notice to us. You irrevocably appoint us as your attorney-in-fact to receive payment of and to endorse all checks, drafts, and other documents to take any other actions necessary to pursue insurance claims and recover payments. You must promptly notify us of any occurrence that may become the basis of a claim. Upon demand, you must promptly deliver to us evidence of such required insurance coverage.

Things to Notice:

1. Indemnification is not mutual. The terms are quite different
2. **Farmer Indemnification toward Lessee (Equip. Owner)**
 - **Liability**
 - a. One-sided Indemnity (Farmer indemnifies Lessee)
 - b. Indemnity applies to subsidiaries
 - c. Indemnity applies to all “claims” (defined and very broad)
 - d. Indemnity applies to things not covered by insurance such as penalties, fines, strict liability
 - e. Requires prompt notification of any claim to each party
 - f. Gives the farmer limited permission to control the defense
 - g. Requires a \$1 million of insurance
 - h. Requires comprehensive public liability insurance (what’s that?)
 - i. Requires product and broad form contractual liability
 - j. Requires me (equipment owner) be “named insured” on the farmers policy
 - k. Requires primary and non contributory liability coverage
 - l. Requires 10 day notice of cancellation
 - **Property**
 - a. You must keep the equipment insured with a commercial insurance policy for our benefit.
 - b. Insurance protecting the equipment against “all risks”
 - c. Amount of insurance must equal “to the then applicable Casualty Loss Value”.
 - d. Insurance must name both farmer and equipment owner as “named insured’s”
 - e. Requires loss payee clause
 - f. Requires 10 day notice of cancellation
 - g. Requires insured to recognize equipment owner as attorney-in-fact and receive payments of insurance proceeds and the right to endorse all checks and other documents necessary for claim settlement
 - Getting the right coverage – What are the options?

- **Sample Language from Contracts:**

- d. **Grazing Lease**

- 1. Exposure

- Multiple parties using the land
 - Potential misuse of the land
 - Livestock breaking through the fence line
 - Recreation use exposure
 - Care, Custody, or Control exposure
 - Performance of promised duty exposure

- a) Liability
 - b) Property

Sample #1 Grazing Lease Liability Exposure

Insurance/Liability

The Lessee agrees to maintain bodily injury and property damage with responsible company in the amount of not less than \$300,000 for injury to any one person and \$100,000 for property damage covering the Lessee's activities on and use of the property. This insurance protection shall include Land Owner as an additional insured and may be carried under a blanket policy. At least seven days before driving livestock onto the property, the lessee will furnish Landowner with a certificate or other evidence establishing that coverage is in force.

The lessee agrees to bear the full risk of any loss or damage to persons or property, including the loss or damage of the lessee's property or livestock, occurring on the property, or as a result of the lessee's use of or activity on the property. The lessee also agrees to indemnify and hold Land Owner, its employees, successors and assigns harmless from any and all claims, expense, and liabilities in connection with the foregoing.

Things to Notice:

1. Indemnification is not mutual.
2. **Farmer Indemnification toward Land Owner**
 - **Liability**
 - a) Do you think this one's easy?
 - Liability limits = \$300,000 for bodily injury per person.
\$100,000 PD
 - b) Landowner as additional insured
 - c) Farmer "agrees to bear full risk of any loss"
 - This language ignores exclusions on the Farm policy
 - d) Hold Harmless includes subsidiaries whether existing or not
 - Getting the right coverage – What are the options?
 - e) Getting the right coverage – What are the options?
 - Higher Limits
 - Umbrella
 - CGL
 - Tell Rancher / Landlord you can't help them with all of the contract Requirements!

Sample #2 Grazing Lease Liability Exposure

Insurance/Risk of Loss

the Tenant agrees to maintain at its sole cost, a comprehensive general liability insurance policy throughout the term of the Lease with a reliable company covering the Tenants activities on and use of the Property. The policy shall cover both injuries to persons and damages to property, and shall be in the amount of not less than \$1 million coverage per person, \$500,000 coverage for property damage and a \$1 million for each occurrence. The policy shall include the Landowner as an additional insured. The policy shall be primary and require no contribution from any insurance carried by the Landowner. At least 10 days before the start of this lease the tenant shall furnish a certificate establishing that coverage is in force and providing 30 days written notice to the Landowner of any cancellation or material change in the policy.

Indemnification

Tenant shall indemnify and save harmless the Landowner from and against **all** liabilities, damages, claims, fines, penalties, costs and other expenses, including reasonable attorneys fees, which may be imposed upon, incurred by, or asserted against the Landowner by reason of any or all of the following: (a) any personal injury or property damage arising out of the Tenants use of or activities on the Property; (b) any negligence on the part of Tenant, its agents, licensees, or invitees; (c) any failure by Tenant, its agents, licensees or invitees to comply with any requirements of any governmental authority;(f) any litigation commenced by or against Tenant to which the Landowner is made a party without any fault on the part of the Landowner (g) an escape, disposal or release of hazardous materials as defined in paragraph nine of this Lease on or from the property or preserve which was the result of the actions or failures to act of Tenant, its employees, agents, contractors, customers, or invitees;

Compliance with Laws

The Tenant shall comply with all federal, state, and local laws and regulations in connection with Tenants activities on the Property, **including without limitation**, those governing conservation, pollution control, pesticide and herbicide application, and irrigation

Things to Notice:

1. Indemnification is not mutual.
2. **Farmer Indemnification toward Landowner**
 - **Liability**
 - a. What are we responsible for here?
 - CGL
 - Liability limits = \$1,000,000 for bodily injury per person.
\$500,000 PD
 - b. Landowner as additional insured
 - c. Primary and Non Contributory
 - d. 30 days notice of cancelation
 - e. Hold Harmless multiple parties
 - f. Indemnify for things not covered by the farmers insurance policy – fines, penalties, other costs
 - g. Farmer “agrees to bear full risk of any loss”
 - 1) This language ignores exclusions on the Farm policy
 - h. Farmer is responsible to indemnify for “invitees”
 - i. Pollution if the fault of the Farmer
 - j. Farmer must indemnify concerning “Compliance with all Laws”
 - Pesticides
 - Herbicides
 - Conservation
 - Irrigation
 - k. Indemnification survives the termination of the lease

- **Sample Language from Contracts:**

- e. **Mineral Rights Lease**

- 1) Exposure
 - a) Multiple parties using the land
 - b) Potential misuse of the land
 - c) Damage to landowners property including Livestock
 - d) Care, Custody, or Control exposure
 - Exclusion on the Tenants CGL
 - e) Performance of promised duty
 - 1) Liability
 - 2) Property

Sample Mineral Rights Lease Liability Exposure

Indemnification:

Tenant shall be responsible to remedy and clean up any environmental problems or spills on the rented lands during the term of this rental agreement. Any chemical spill must be reported to and cleaned up according to EPA guidelines, the cost to which is the sole remedy of the Tenant in addition, Tenants shall be responsible for and will indemnify and hold the Owners harmless from any claim, loss, or damages of any type, including attorneys fees and cost related to any accident, personal injury, death, property damage or loss associated with the Tenants use of the rented lands.

Things to Notice:

1. Indemnification is not mutual.
2. **Tenants Indemnification toward Landowner**

Everything is now in reverse. Our insured farmer is in the driver's seat!

- **Liability**

- a. What should the Tenant be responsible for?
 - CGL
 - Liability limits = ??
- b. Landowner as additional insured?
- c. Primary and Non-Contributory
- d. 30 days' notice of cancelation
- e. Hold Harmless multiple parties
 - How many legal entities does your farmer have?
- f. Indemnify for things not covered by the farmers insurance policy -Fines, penalties, other costs?
- g. Tenant "agrees to bear full risk of any loss"
 - 1) This language ignores exclusions on the CGL policy
- h. Tenant is responsible to indemnify for multiple parties including "invitees"
- i. Pollution if the fault of the Farmer
 - What is the financial ability for the tenant to indemnify?
- j. Indemnification survives the termination of the lease

3. Property Insurance on Tenants goods should be required in the lease as to avoid a potential for the Tenant to point fingers at land owner

What to do then? Does your carrier offer:

1. Insured Contract indemnification
 - a. If so is Defense inside or outside the policy limits?
2. Additional Insured Endorsements
 - a. If so, does the endorsement offer **ALL** coverages the contract requires?
3. Waiver of Subrogation Endorsements
4. Primary Non contributory Endorsements
5. Allow indemnitee to participate in defense
6. Personal and Advertising Injury?
7. Pollution Coverages

Ramifications:

1. Dilution of limits
2. Dilution of Underlying limits needed to qualify for umbrella
3. If cleared by carrier, this is a great reason to write and umbrella
4. If Farmer has an Umbrella can He / She keep it for themselves? Or do they have to share the Umbrella / Excess policy as well?



James K. Ruble Seminar

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

Section 6

Captives: What Are They and Do They Work?

Captives:

Do they Work????



Presented By:

Kevin J. Brady, CIC
ARTEX Risk Solutions
Kevin_brady@ajg.com

kjb ruble/captives/2022

1

1

Agenda

- Little about the market today/what our buyers **DON'T KNOW**
- Captive Myths
- Domiciles
- Taxes and structure
- Types of captives
 - Group
 - Single Parent
 - 831A
 - 831b
- Captive “Cycle”
 - Premium Components
 - Loss examples
 - Distributions
 - Loss Assessments
 - Collateral Requirements
 - Who qualifies for a captive



kjb ruble/captives/2022

2

2

Four Cycles of the Insurance Industry

Four Phases

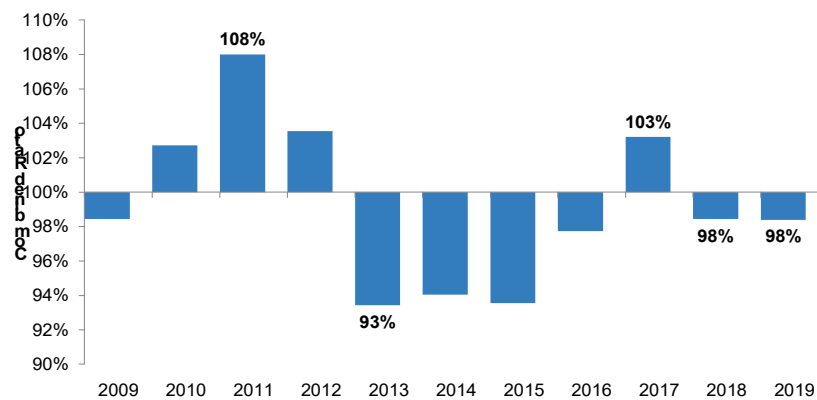


kjb ruble/captives/2022

3

3

Commercial Lines Results



Excellent workers comp results have more than made up for problems in auto, general liability.

Source: NAIC data, sourced from S&P Global Market Intelligence.

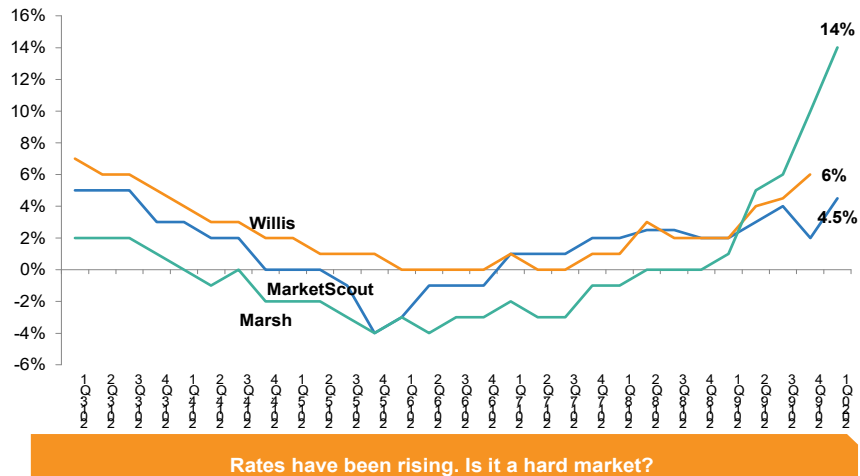
52

kjb ruble/captives/2022

4

4

Commercial Lines Rate Changes



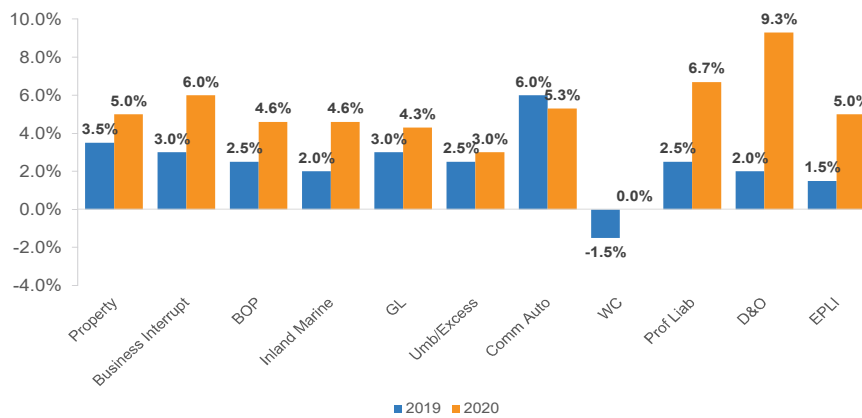
Sources: Willis Towers Watson, MarketScout, Marsh.

53

kjb rubble/captives/2022

5

Commercial Rate Changes By Line, As of Second Quarter



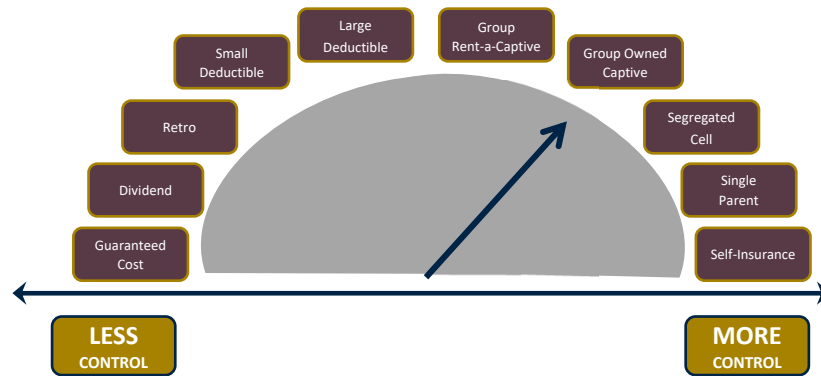
Source: MarketScout.

54

kjb rubble/captives/2022

6

Risk Appetite vs. Reward



kjb ruble/captives/2022



7

Captive “Myths”

- Broker- “I will lose control of the account.”
- Broker- “I will lose revenue.”
- Broker- “Captives blow up.”
- Broker/Buyer- “Captives have to go offshore for some reason.”
- Broker/Buyer- “You’re/I’m not big enough.”
- Buyer- “I don’t want to be in the insurance business.”
- Buyer- “Is it legal?”



kjb ruble/captives/2022

8

8

Captive Facts



- Over 50% of Fortune 500 companies own a captive insurance company
- Worldwide 10,000 captives, over half domiciled in US
- Today, over 30 US States have captive legislation
- IRS Guidance, Safe Harbor Revenue Rulings

kjb ruble/captives/2022

9

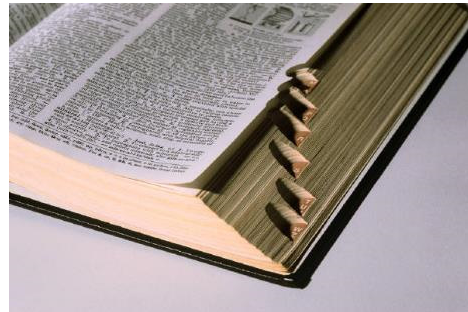
9

What is a captive?

An insurance company

that is *owned* and operated by its members

for the *benefit* of those members .



kjb ruble/captives/2022

10

10

Captive Solution

Captives are targeted to deliver

- Control
- Stability
- Greater protection from the impact of adverse market conditions
- Ability to retain underwriting profit and investment income
- Tax Considerations



kjb ruble/captives/2022

11

11

Captive Domiciles

- What's this Offshore stuff



kjb ruble/captives/2022

12

12

Captive Growth

- +7000 captives in the world
- 3.5% increase over prior year
- Asia +3.4%
- Europe +14.3%
- North America Offshore +41.7%
- USA +48.7%

kjb ruble/captives/2022

13

13

Number of Captives, 2010-2020

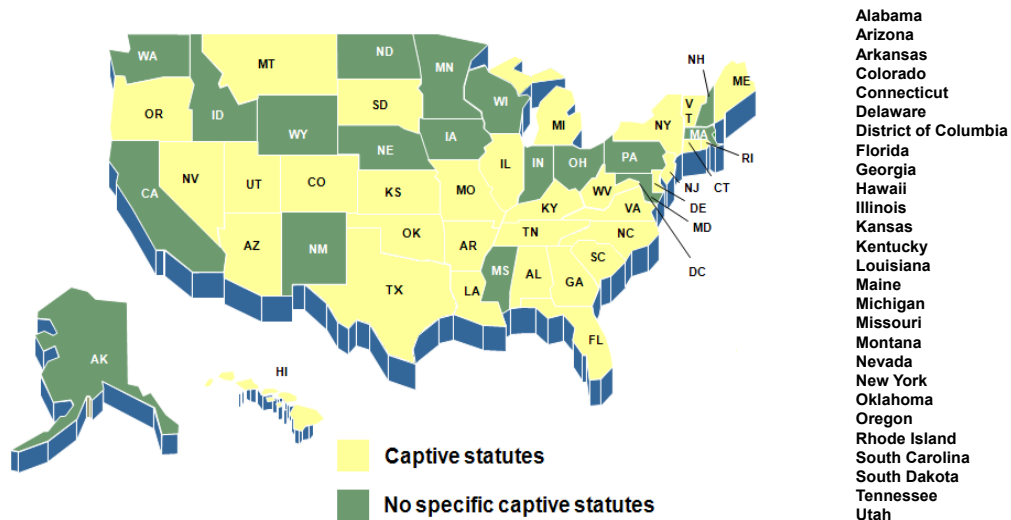
14

Year	Number of captives
2010	5,587
2011	5,831
2012	6,125
2013	6,420
2014	6,739
2015	6,851
2016	6,700
2017	6,454
2018	6,459
2019	6,359
2020	6,900

kjb ruble/captives/2022

14

U.S. Domestic Captive Domiciles



kjb ruble/captives/2022

15

15

Captives By State

16

1.	Vermont	589
2.	Utah	396
3.	Delaware	288
4.	North Carolina	250
5.	Hawaii	242
6.	South Carolina	175
7.	Nevada	156
8.	Tennessee	212
9.	Arizona	131
10.	Montana	114
11.	District of Columbia	106
12.	Kentucky	45
13.	Missouri	51
14.	Georgia	56
15.	New York	49

LAST PLACE = Illinois 3

kjb ruble/captives/2022

16

Considerations in Selecting a Domicile

- Over 30 domestic jurisdictions with enabling legislation
 - Tenure/Infrastructure
 - Parent ownership structure
 - Premium taxes
 - Captive income taxation
 - Restricted classes of business
- Incorporation/annual operating costs
 - Capitalization requirements
 - Regulatory attitudes

kjb ruble/captives/2022

17

17

Domicile Considerations

- Onshore vs. Offshore
 - Capitalization Requirements
 - Operating Costs
 - Perception/Political Risk

kjb ruble/captives/2022

18

18

Where are Captives Formed?

The domicile of choice depends on the type of business and insurance risks. **Both on and off-shore captives are acceptable to the U.S. and the IRS.**

- **Onshore**

- Examples: Delaware, Utah, Hawaii, Vermont, South Carolina
- More states adding captive insurance law
- TN
 - Self-Procurement Tax – 0.4%, up to \$100K max
 - Would be an admitted carrier in TN
 - Local board meetings
 - Great regulatory department
 - Great captive infrastructure – accounting, actuarial, legal, etc.



- **Offshore**

- Examples: Bermuda, Anguilla, Cayman Islands, Nevis
- Lower cost
- Lower regulatory and capital requirements
- Expedited formation
- Investments stay in U.S.
- Foreign Captives File U.S. tax return (if 953(d) election made)



Note: Whether foreign or U.S., the tax benefits are the same

kjb ruble/captives/2022

19

19

Formation Cost Comparison

FORMATION	Delaware SBU	Utah	Hawaii	Montana
Capitalization	\$125,000	\$250,000	\$250,000	\$250,000
Form of Capital	Cash/LOC	Cash/Evergreen LOC	Cash/LOC/US bonds	Cash/LOC
Capital Ratios	3 to 1	5 to 1	5 to 1	5 to 1
App requirements	Medium to Low	Medium-Low	Medium to Low	Medium-Low
	Bios on owners	Bios on owners	Bios on Owners and Directors	Bios on all directors
		Personal statement of net worth		
Annual Operating Expenses				
Licensing/Incorporation	\$400	\$5,335	\$1,050	\$315
Min Prem Tax	\$3,500 n/a	n/a		\$5,000
Direct premium tax %	0.02% n/a		0.25% n/a	
Reinsurance Premium Tax Percentage	0.10% n/a		0.25% n/a	
Actuarial review expenses	\$1,800-\$2,500	\$5,000-\$6,000	\$5,000-\$6,000	\$5,000-\$6,000
Financial Audit expenses	\$1,225-\$1,500	\$5,000-\$8,000	\$5,000-\$7,000	\$5,000-\$7,000
Resident Agent Expenses	\$1,700-\$2,500	\$750-\$1,250		\$5,000-\$7,500-\$1,000
Tax Prep Expenses	\$1,500-\$2,500	\$1,500-\$5,000	\$1,500-\$5,000	\$1,500-\$5,000
Periodic Operating Expenses				
Regulatory Review	\$5,000-\$10,000	\$3,500-\$4,500	\$3,000-\$5,000	\$4,000-\$5,000
Regulatory Review in years		3	5	5

kjb ruble/captives/2022

20

20

Basic Overview of Captives

- Characteristics of Captives
 - Licensed Insured Company
 - Formed to insure or reinsure the risk of its owners or third parties of their choosing
 - Regulated under special legislation regulating captives
 - Located offshore or onshore
 - Admitted only in its domicile and non-admitted in all other jurisdictions

kjb ruble/captives/2022

21

21

Basic Overview of Captives

- Risk Management Benefits from Utilizing Captive:
 - Formalized Insurance Program
 - Flexibility in choosing service providers
 - Flexibility in program design
 - Return underwriting profit to member
 - Return investment income to member

kjb ruble/captives/2022

22

22

Basic Overview of Captives

- Financial reasons for forming a captive
 - Reduce insurance costs
 - Access to reinsurance markets
 - Recapture underwriting profits and investment income
 - Reduce/eliminate insurance company overhead
 - Estate Planning **CAREFUL**

kjb ruble/captives/2022

23

23

Basic Overview of Captives

- Financial reasons for forming a captive
 - Potential tax advantages
 - Deductibility of premium paid to captive
 - Defer or exemption on taxation on captive income
 - Potential profit center

kjb ruble/captives/2022

24

24

Tax Law and Captives

Insurance Risk

Operate as an insurance company

Risk shifting and risk distribution

kjb ruble/captives/2022

25

25

Tax Considerations

Note:

The tax considerations involved in the development and operation of a captive funding mechanism require the individual insured analyze tax implications on a case basis. Professional insurance and tax counsel is recommended. The focus of this section is on select operative terms and examples of consequences of certain elections. Examples are not representative of any particular existing or planned group/situation. Case law is cited for reference purpose only.

kjb ruble/captives/2022

26

26

Taxation

- Insurance Co.'s operate under different tax rules than other companies
- U.S Tax Code recognizes Insurance Companies receive premiums up front but may not pay claims until later
- Taxation should not be primary focus. Business objectives are to be met.
- Insurance taxation is complex....best to include tax advisors in process.

kjb ruble/captives/2022

27

27

The Captive

- C corporations
 - Some jurisdictions will allow LLC or partnership
 - Still taxed as C
- Taxed on accrual basis not cash
- Captive files 1120-PC
- Can be set up as stock or mutual

kjb ruble/captives/2022

28

28

Rule 831 A

- Captive with + \$2.4mm premium
(note change effective 1-1-2019)
- Provides Ins. Co.'s to follow normal C Corp Rules
- Includes earned premium+investment income less losses

kjb ruble/captives/2022

29

29

Rule 831 B

- Applies to Captive < \$2.4mm premium
(increased 1-1-2019)
- No Fed or State Tax
- Taxed only on investment income
- Dividend taxed as and at Qualified Dividend

kjb ruble/captives/2022

30

30



31

IRS Activity

- 2013: *Salty Brine case* – example of sham transaction
- Business took a tax deduction for paying large insurance premiums that indirectly went into life insurance, then funds were withdrawn as policy loans. Few claims were made against the insurance purchased by the business and the transaction failed other important tests. Viewed by the courts as disguised estate planning
- 2013: IRS increases audit activity on 831(b) electing captives and captive managers
 - IRS uses Tax Shelter Promoter audit powers to obtain broad authority to review large numbers of advisors and businesses as part of this investigation.
 - Sheryl Flum, IRS Office of Associate Chief Counsel, speaking to American Bar Conference, "The government is trying to walk a very thin line here because we are not trying to chill legitimate captive entities, ... We recognize that in a lot of cases, there are small businesses where it makes a lot of more economic business sense to do self-insurance through a captive and then do a pooling arrangement."

kjb ruble/captives/2022

32

32

Special Tax Benefits Available to Enterprise Risk Captives

Internal Revenue Code 831(b) Election

- Underwriting Profits EXEMPT from Federal Income Taxation (permanent deferral)
- Captive Only Taxed on its Investment Income (Reduced for Investment Expenses)
- The \$1.2 Million Threshold Applies to all Companies Within Consolidated Group
- Captive Income Not Subject to State Income Tax

kjb ruble/captives/2022

33

33

Enterprise Risk Captive Characteristics:

- Usually \$20MM or more in annual revenue
- Taxable income usually more than \$1.0MM annually
- Helpful if prospect has very large asset base, such as, property developers and transportation industry prospects
- Though not required, privately held businesses are much easier/quicker to form captives for; however, public companies can also participate

kjb ruble/captives/2022

34

34

Tax Treatment

- Will the captive premium transaction be perceived by the IRS as “insurance”? Answer 3 questions:
 - Existence of risk transfer?
 - Presence of risk distribution?
 - Existence of a business purpose?

kjb ruble/captives/2022

35

35

Tax Considerations

- Deductibility of premium
 - Accordance to IRC, premiums paid must be for “insurance”
 - Insurance mechanism must involve element's of “Risk Shifting” and “Risk Distribution”

kjb ruble/captives/2022

36

36

Tax Considerations

- **Risk Shifting** defined
 - Effective when there is transfer of risk of economic loss to an insurer
 - Economic loss to the insured is fixed through payment of a premium
 - Risk shifting must be transferred outside the insured “economic family”

kjb ruble/captives/2022

37

37

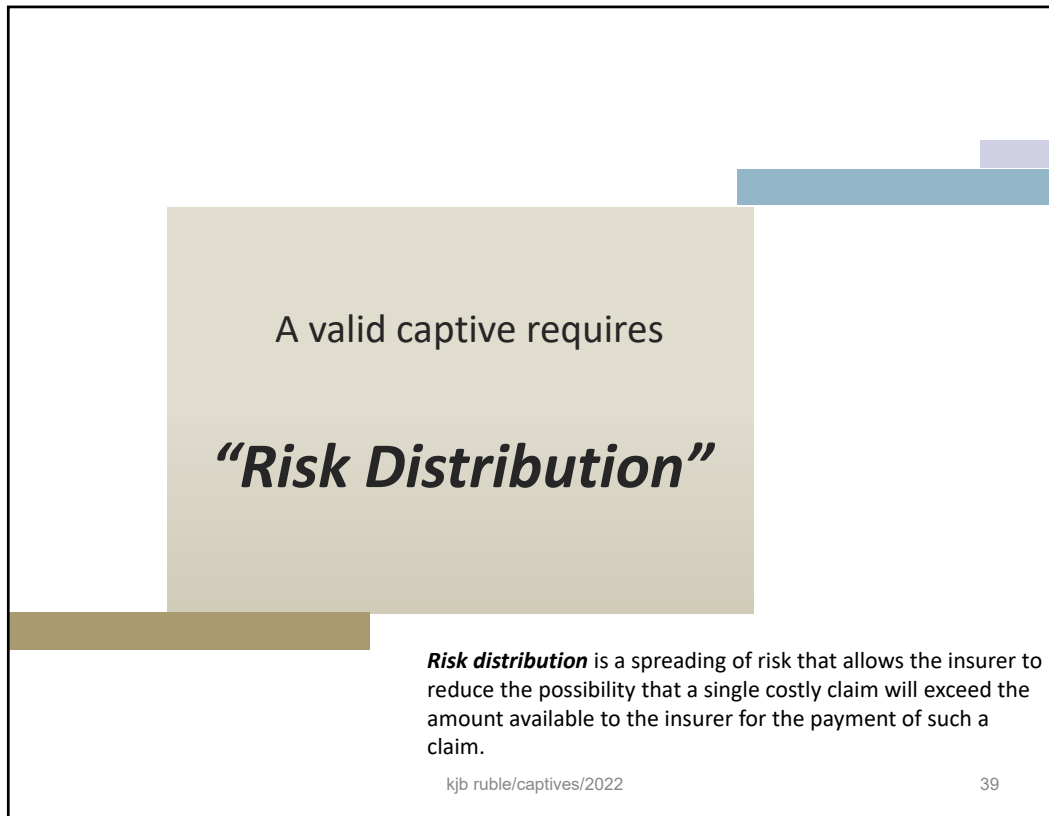
Tax Considerations

- **Risk Distribution** defined
 - The party assuming the risk distributes potential liability, in part, among others
 - Potential exists that an extraordinary or unpredicted loss will be paid from the common fund

kjb ruble/captives/2022

38

38



A valid captive requires

“Risk Distribution”

Risk distribution is a spreading of risk that allows the insurer to reduce the possibility that a single costly claim will exceed the amount available to the insurer for the payment of such a claim.

kjb ruble/captives/2022 39

39

Safe Harbor Trilogy

- 2002 IRS issued three revenue rulings on captive transactions
- Provide roadmap or “safe harbors” for captive transactions
- Captive arrangement that is fully IRS compliant requires adherence

kjb ruble/captives/2022 40

40

Revenue Ruling 2002-89

- More than 50% of the captive risk is with unrelated third parties
- +50% is considered Safe Harbor for Risk Distribution

kjb ruble/captives/2022

41

41

2002-89 Example

- **Scenario 1** Premium paid by parent to wholly owned captive accounted for 90% of income 10% from third parties
- **Scenario 2** Premiums paid by parent to wholly owned captive accounted for <50% of income +51% from third parties
- Risk Shifting is met in scenario 2 under Safe Harbor
- Premiums are for “insurance” and allowed deductible as business expense

kjb ruble/captives/2022

42

42

Revenue Ruling 2002-90

- Single parent provides coverage for 12 subsidiaries constitutes Risk Sharing
- No one subsidiary can be +15% and no one subsidiary can be < %5

kjb ruble/captives/2022

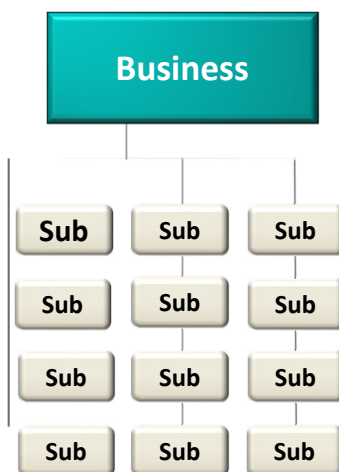
43

43

Multiple Subsidiaries

Brother Sister

2002-90



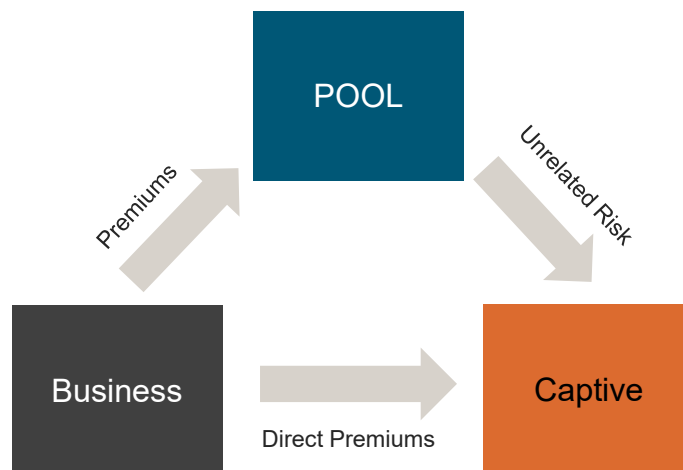
Captive

kjb ruble/captives/2022

44

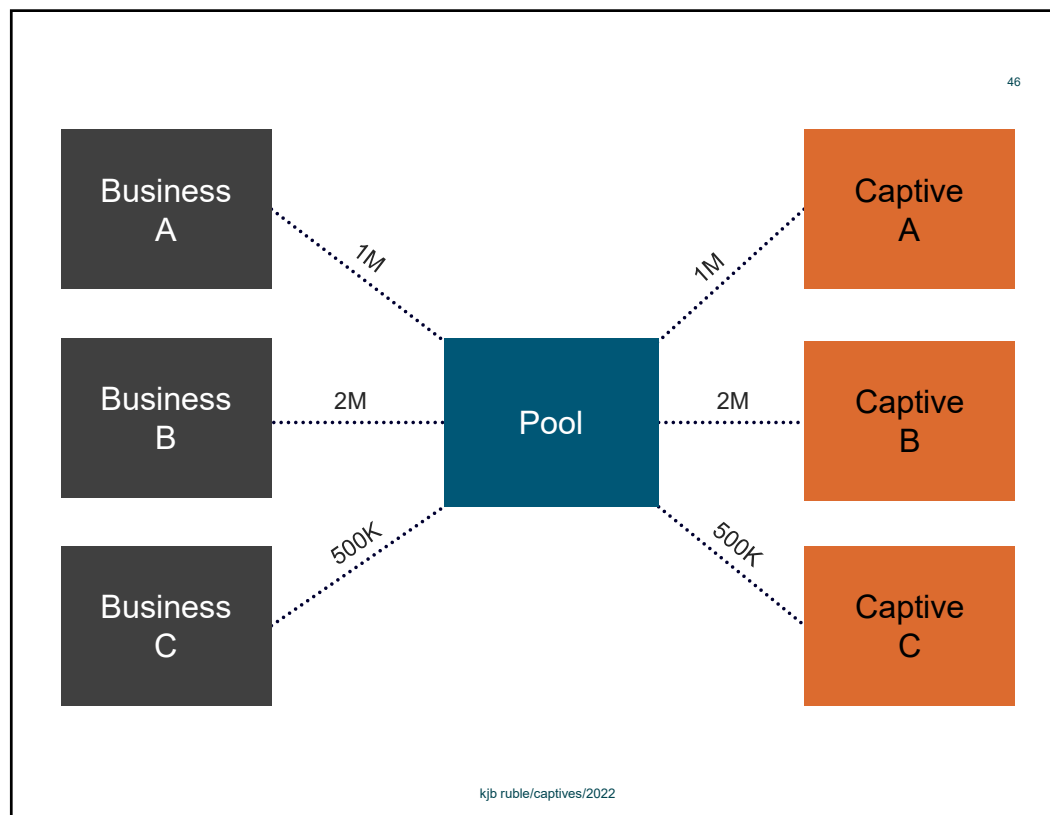
44

Pooling Can Provide Unrelated Risk⁴⁵ to the Captive



kjb ruble/captives/2022

45



kjb ruble/captives/2022

46

Brother/Sister Tax Court Rulings

- Rent a Center
- Securitas
- Two separate cases where the taxpayers did not meet the IRS safe harbor tests for risk distribution. However, courts found sufficient good facts to treat them as good insurance arrangements.

kjb ruble/captives/2022

47

47

Avrahami Decision

- August 21, 2017
- Court ruled against taxpayer
 - Tax Court Opinion Court creates new law with ruling
 - 1. Did not meet risk Distribution test
 - 2. Failure to Satisfy Accepted Notions of Insurance Test
 - Unapproved loans Transferred to Personal Bank Accounts

kjb ruble/captives/2022

48

48

Syzygy Ruling

- US Tax Court ruling April 2019
- Facts
 - Tax Court Memorandum (TCM) applies existing law to new facts
 - Audited years 09-11
 - Similar fact pattern to Avrahami

kjb ruble/captives/2022

49

49

SYZYGY Fact Pattern

- 0 claims filed during audit period
- +50% of captive assets were invested in life insurance and not available to pay claims
- Underwriter testified that pricing was a “guess”
- No independent actuary used
- Taxpayer testified that intent of SCP was to provide warranty cover. That cover wasn’t offered until 2012

kjb ruble/captives/2022

50

50

SYZTGY Finding

- Taxpayer deduction denied
- Captive treated payment as income not premium
- No penalties to taxpayer as there was reasonable reliance on independent tax advisor

kjb ruble/captives/2022

51

51

Cypress (aka Microsoft) v. State of Washington

- Because Washington State does not have captive legislation, companies like Microsoft have been setting up captives outside of the state. Organizations like state sponsored universities and community hospitals have also been setting up these out of state captives.
- The Washington DOI went after Microsoft and said publicly that these companies need to pay their fair share of tax and assessed a tax on the premiums paid to this out-of-state captive.
- Microsoft put forth several legal arguments why the Washington DOI is wrong, but ultimately Microsoft decided to settle to avoid a public fight with a government agency.

kjb ruble/captives/2022

52

52

Cypress (aka Microsoft) v State of Washington

- The settlement terms for Microsoft were a discount from the original amount requested by the DOI. The terms that the DOI offers to other taxpayers appears ad hoc.
- Washington DOI is asking that all captive owners raise their hands and pay this tax by a certain date.

kjb ruble/captives/2022

53

53

Revenue Ruling 2002-91

- Relates to Group Captives
- Populated with “significant number” of unrelated risks
- No one entity +15% of the total

kjb ruble/captives/2022

54

54

2002-91 Example

- Homogenous/Heterogenous composition
- Risks are shifted and shared amongst the members
- Maintain potential of assessment liability

kjb ruble/captives/2022

55

55

Mutual vs. Stock

- **Mutual**
 - Insured's are policyholders
 - Capitalization paid by insured entity
 - Distributions returned to insured entity
 - Distributions taxed at insured entities effective rate

kjb ruble/captives/2022

56

56

Mutual vs. Stock

- **Stock**
 - Individual representing insured entity purchases stock in the captive
 - Dividends returned to the individual
 - 5471 form required to be filed
 - Dividends taxed at individual effective rate

kjb ruble/captives/2022

57

57

Domestic Election



- Offshore domiciled entity can elect to be taxed as US tax payor
- Entity takes IRS 953d election
- Requires captive post LOC to IRS
- Eliminates “trade or business” exposure
- Eliminates need for offshore meetings.

kjb ruble/captives/2022

58

58

Domestic Election



- Pro's
 - Premiums not subject to FET of 1%
 - Assessments not subject to 4% FET
 - No 5471 on personal income tax
 - Eliminates risk of captive being engaged in “trade of business”
 - Can hold meetings in US
 - More flexible with investing

kjb ruble/captives/2022

59

59

Captive Structures

» Fronted

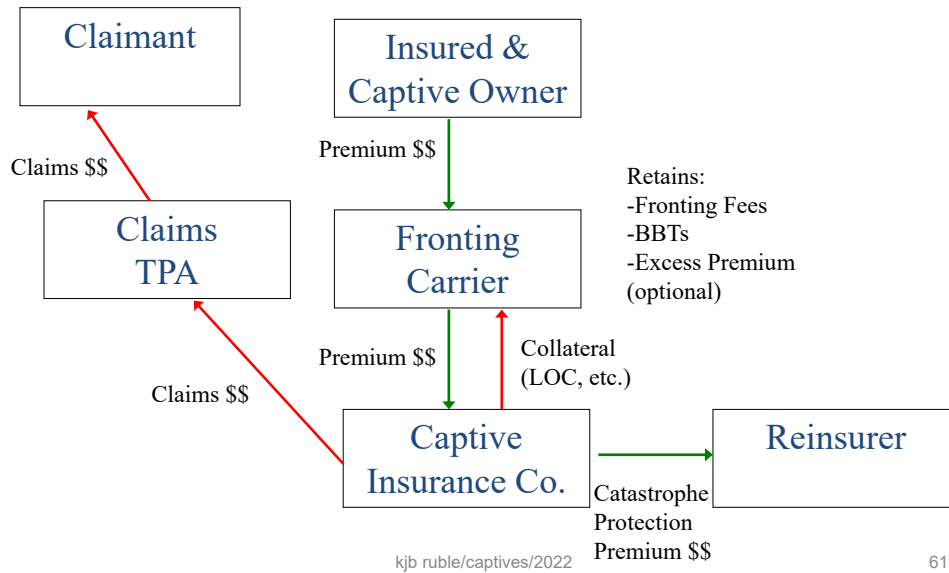
» Direct

kjb ruble/captives/2022

60

60

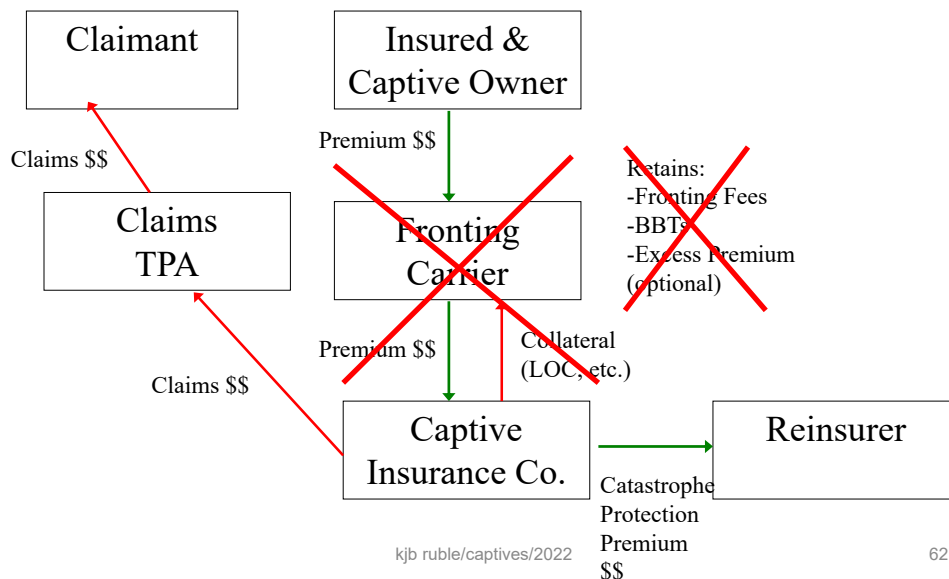
Fronted Captive Structure



61

61

Direct Captive Structure



62

62

Fronted vs. Direct

Fronted

- Higher cost
- Provide collateral to fronting company
- Front issues policy
- Front pays premium taxes
- Satisfies “admitted” carrier requirements

Direct

- Less cost
- No additional collateral required
- Captive issues policy
- Insured may pay direct placement taxes
- Would not satisfy “admitted” carrier requirements

kjb ruble/captives/2022

63

63

Types of Captives

- **Group /Association Captives** – owned & operated by a group of members; 100% of risk and assets pooled
- **Single Parent Captives** – insures the risk of the owner and its subsidiaries, traditionally used by large Fortune 2000 companies

kjb ruble/captives/2022

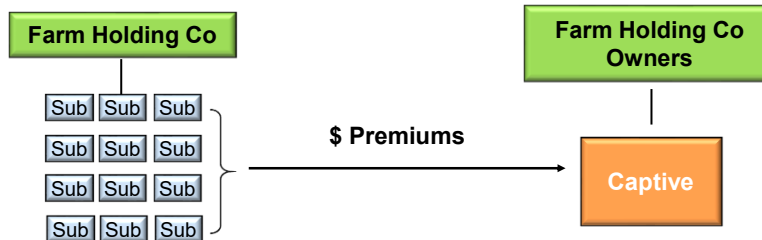
64

64

Example:



- Historic loss ratio below around 25% for these Apple farms
- Captive offered Crop Insurance–like policies and coverage other insured areas



kjb ruble/captives/2022

65

65

Acreage	5,000			
Bushels per acre	400			
Price per bushel	\$15.96			
Total Revenue	\$31,920,000			
Ten Year Loss Ratio	25%			
Premium	\$1,000,000	Year One \$1,000,000	Year Two \$1,000,000	Year Three \$1,000,000
<u>Costs</u>				
Cat coverage (or 55%)		\$3,600	\$3,600	\$3,600
Premium Taxes 3%		\$30,000	\$30,000	\$30,000
Management fee 6%		\$60,000	\$60,000	\$60,000
Miscellaneous 2%		\$20,000	\$20,000	\$20,000
		\$113,600	\$113,600	\$113,600
Net Premium		\$886,400	\$886,400	\$886,400
Loss Average		(\$250,000)	(\$250,000)	(\$250,000)
Year End Gain/Loss		\$636,400	\$636,400	\$636,400
Captive Surplus		\$636,400	\$1,272,800	\$1,909,200



kjb ruble/captives/2022

66

66

Captive to enhance deductible plan

- Four ways to supplement deductible plan
 - Pre-Fund losses to Captive, take the deduction
 - Reposition LOC's
 - Transfer Reserves from the balance sheet
 - Write other lines of coverage

kjb ruble/captives/2022

67

67

831 a or b?	b
Captive Premium (loss pick)	\$2,000,000
Captive Costs	\$100,000
Pooling Fees	\$0
Prospect Tax Rate	40%
Captive Tax Rate	35%
Loss Ratio	75%
Paid Loss Rate	25%
Reserve Loss Rate	75%

kjb ruble/captives/2022

68

68

	End of Year One	
	No Captive	831(b) Captive
Parent Company Pre-Claim Operating Income	2,000,000	
Uninsured Business Claims (75% Loss Ratio / 25% Paid During Year)	375,000	
Parent Company Post-Claim Operating Income	1,625,000	
Parent Company Income Tax (40% Income Tax Rate)	650,000	
Parent Company After-Tax Operating Income	975,000	
Captive Insurance Premium		2,000,000
Claims Paid (75% Loss Ratio / 25% Paid During Year)		375,000
Claim Reserves (75% Loss Ratio / 75% Reserved)		1,125,000
Captive Operating Expenses		100,000
Underwriting Profit/(Loss)		400,000
Investment Income	will vary	will vary
Captive Income Tax (n/a Due to 831(b) Election)		0
Captive After-Tax Operating Income		400,000
After-Tax Operating Income	975,000	400,000
Net Assets Remaining	975,000	1,525,000
One Year Net Cost Benefit by Using Captive		550,000

kjb ruble/captives/2022

69

69

Profit Center Captives

- Employee Benefits
- Renters Legal Liability
- Stop Loss Captive programs
 - Bit of uncertainty in this market
 - Usually handled by HR instead of Risk Mgmt.
 - State Coverage Mandates
 - Obamacare implementation?

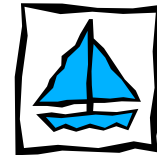
kjb ruble/captives/2022

70

70

Traditional Lines of Coverage Group, Rent, Association Captives

- Typical – high frequency, low severity
 - Workers' compensation
 - Automobile Liability
 - General Liability
 - Marine & Transportation

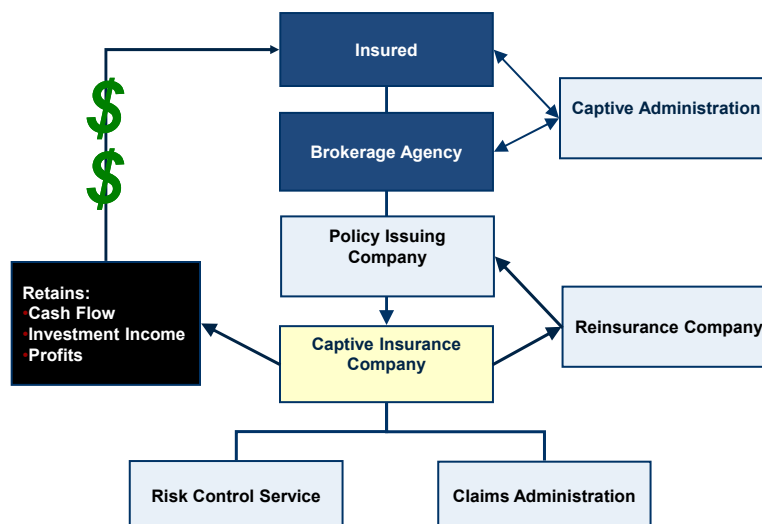


kjb ruble/captives/2022

71

71

Group Captive Company Flow



kjb ruble/captives/2022

72

72

The Captive Thought

“Fund for what you know...
Transfer the Rest.”



kjb ruble/captives/2022

73

73

Captive Insurance Program

Traditional Insurance Dollar



Captive Insurance Dollar



kjb ruble/captives/2022

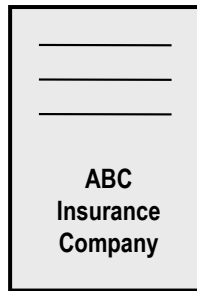
74

74

Traditional Insurance



Insured



Policy

- The insurance company
 - Takes control of handling claims
 - Keeps all profits from unused premiums
 - Determines rating structure

kjb ruble/captives/2022

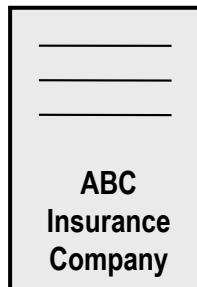
75

75

Traditional Insurance



Insured



\$1,000,000
Policy

Reinsure
→



Reinsure
→



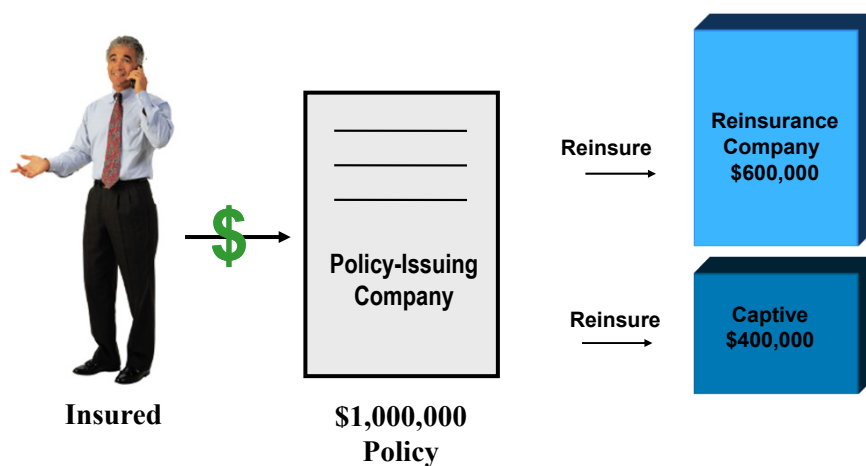
kjb ruble/captives/2022

76

76

Group Captive Funding

Nothing different

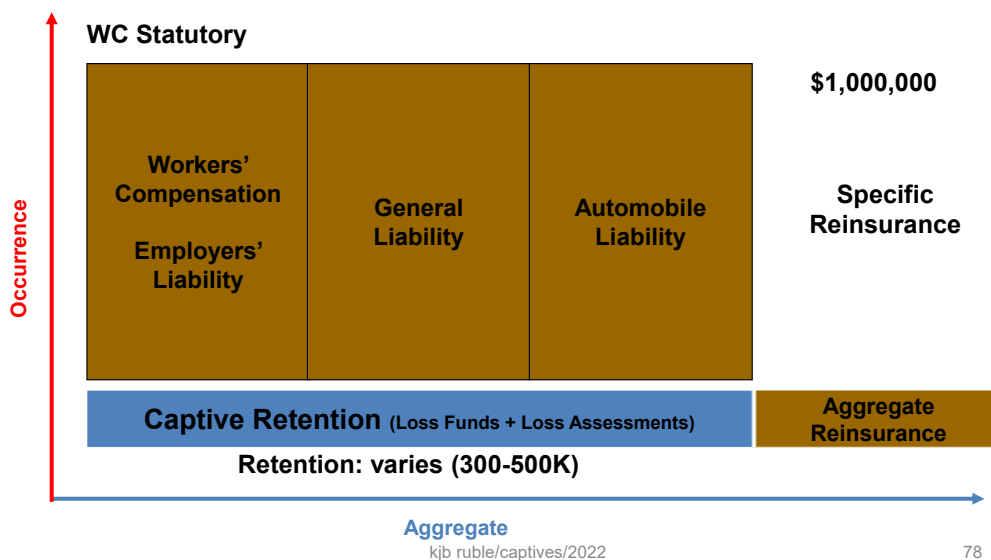


kjb ruble/captives/2022

77

77

Specific & Aggregate Excess Reinsurance



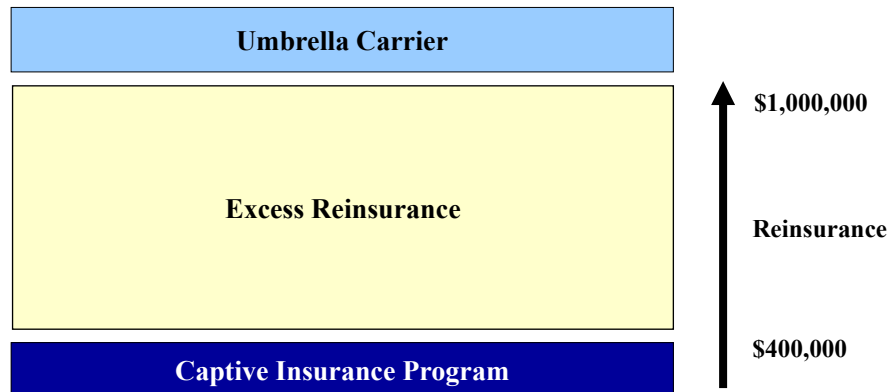
kjb ruble/captives/2022

78

78

Captive Insurance Program

Umbrella Protection

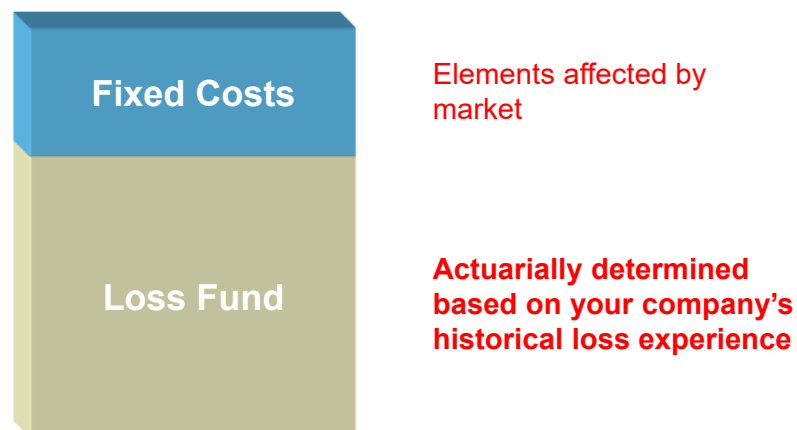


kjb ruble/captives/2022

79

79

Captive Premium



kjb ruble/captives/2022

80

80

Captive Premium vs. Market

- Conventional premium \$1,000,000
- X 20% increase + \$200,000
- Total premium = \$1,200,000

kjb ruble/captives/2022

81

81

Captive premium vs. Market

- Captive Premium \$1,000,000
- Fixed Costs (30%) \$300,000
- Front/Reins costs
- (50% Of Fixed Costs) \$150,000
- X 20% increase = \$ 30,000
- Total Premium \$1,030,000

kjb ruble/captives/2022

82

82

Captive Insurance Program

How are Premiums Developed?



Why is a Captive Premium Different?

- Premium is based on your applicants projected losses, plus fixed costs
- The combined premium purchasing power of all members reduces the fixed costs for all

kjb ruble/captives/2022

83

83

Captive Insurance Program

Sample Member

Loss Pick \$600,000

Actuarially determined based on applicants historical experience i.e., premium, losses and exposures.

kjb ruble/captives/2022

84

84

Captive Insurance Program

- Loss Pick \$600,000
- +
- Fixed Costs
 - Front
 - Reinsurance
 - Claims
 - Loss Control
 - Brokerage
 - Administration
 - Operating Expenses

kjb ruble/captives/2022

85

85

Captive Insurance Program

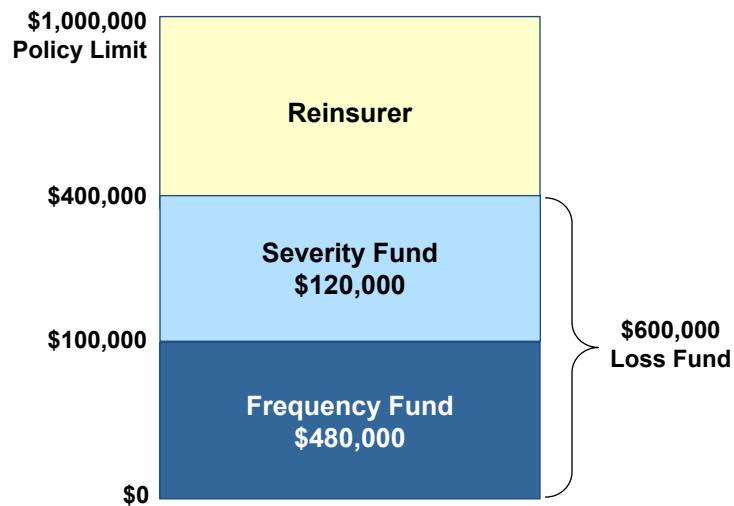
- Loss Pick \$600,000
- Fixed Costs \$400,000
- Premium \$1,000,000

kjb ruble/captives/2022

86

86

Funding Structure

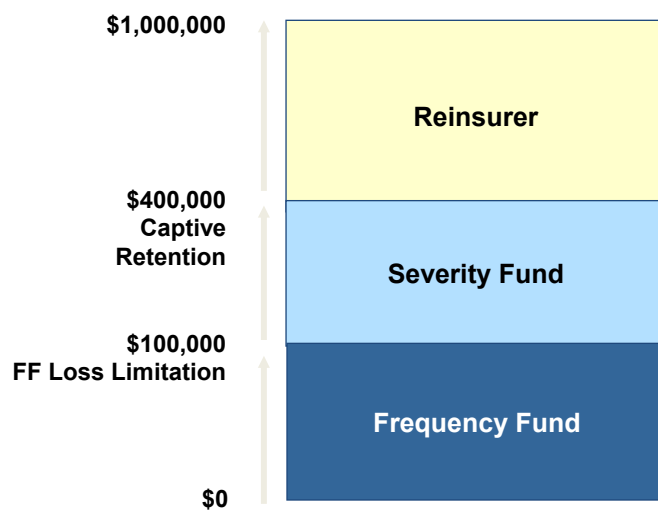


kjb ruble/captives/2022

87

87

Funding Structure

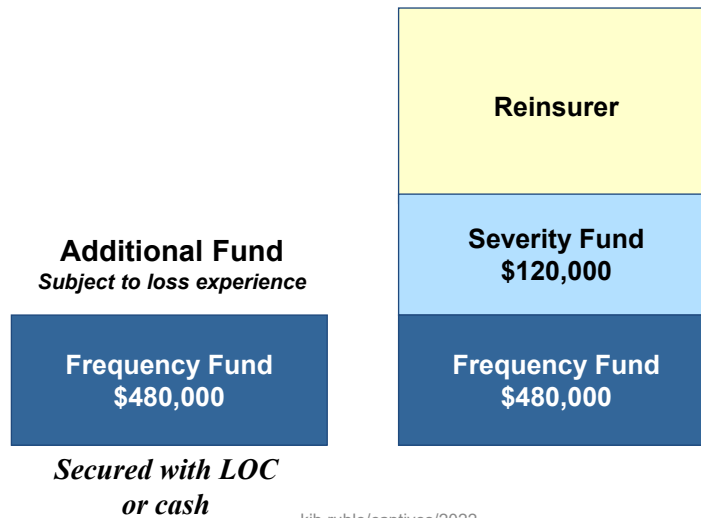


kjb ruble/captives/2022

88

88

Funding Structure



kjb ruble/captives/2022

89

89

Sample Loss Scenarios



kjb ruble/captives/2022

90

90

Captive Insurance Program

Example #1

What happens if our sample member has a year with very limited losses?



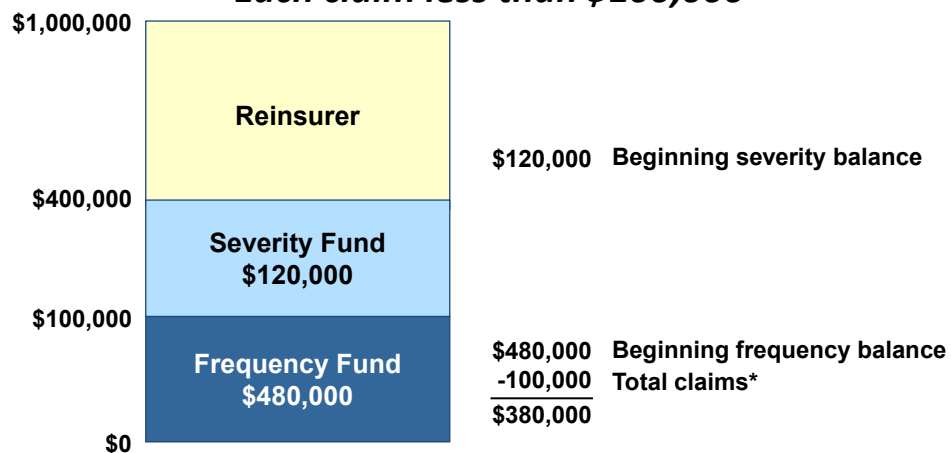
kjb ruble/captives/2022

91

91

Captive Insurance Program

***\$100,000 of Total Claims –
Each claim less than \$100,000****



kjb ruble/captives/2022

92

92

Captive Insurance Program

Schedule for Return of Profits to Sample Member

Year 1	Year 2	Year 3	Year 4
\$500,000 Retained earnings	Retained + Investment Income	Retained + Compounded Investment Income	Retained + Compounded Investment Income

Following Year 4 – Potential payout of retained earnings

kjb ruble/captives/2022

93

93

Captive Insurance Program

Example #2



What happens during a “typical” year
given a loss ratio of from 35% to 40%?

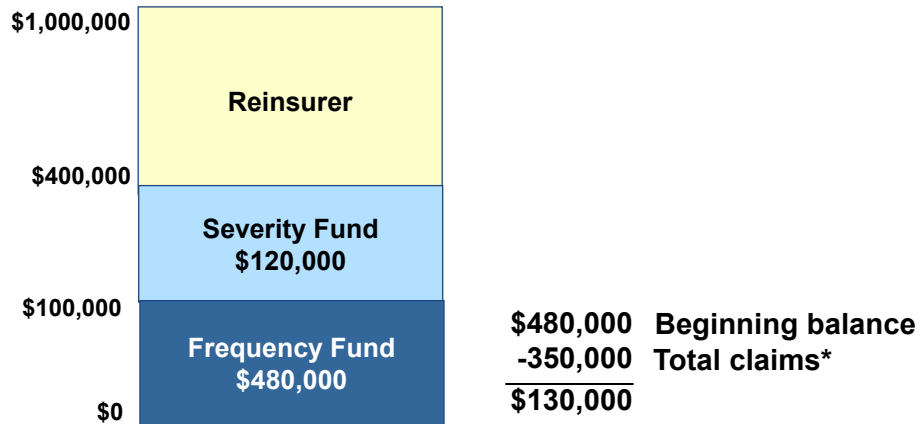
kjb ruble/captives/2022

94

94

Captive Insurance Program

***\$350,000 of Total Claims –
Each claim being less than \$100,000****



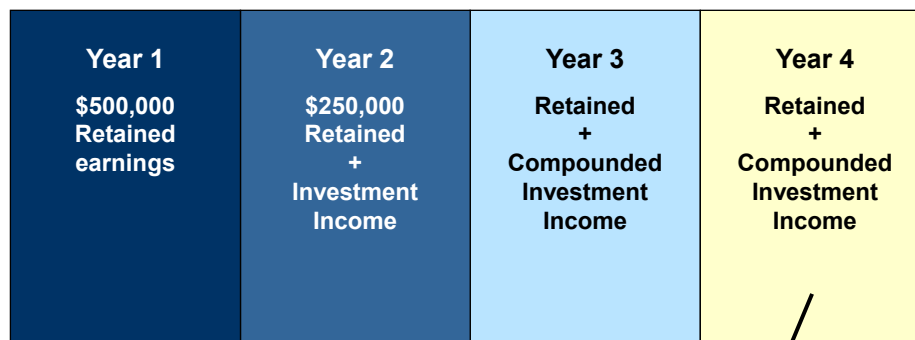
kjb ruble/captives/2022

95

95

Captive Insurance Program

Schedule for Return of Profits to Sample Member



Following Year 4 – Potential payout of retained earnings

kjb ruble/captives/2022

96

96

Captive Insurance Program

Example #3

What happens in a typical year
plus a catastrophic loss?



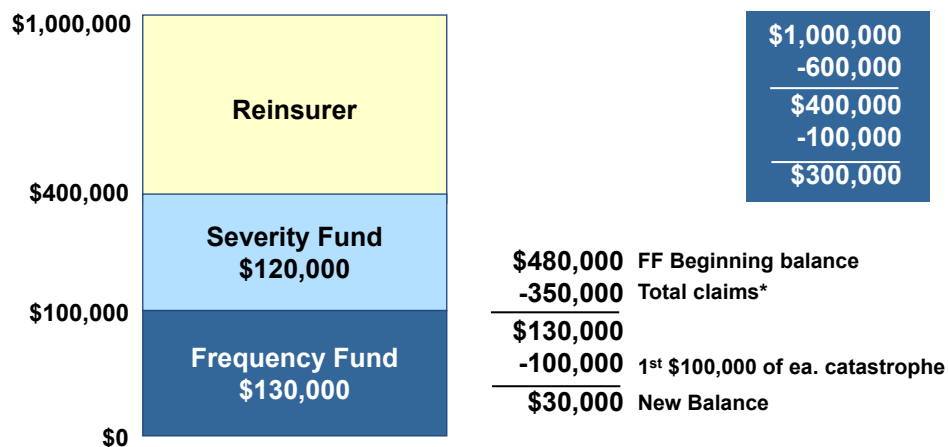
kjb ruble/captives/2022

97

97

Captive Insurance Program

***\$350,000 of Total Claims – Less than \$100,000*
and one \$1,000,000 Catastrophe Claim***



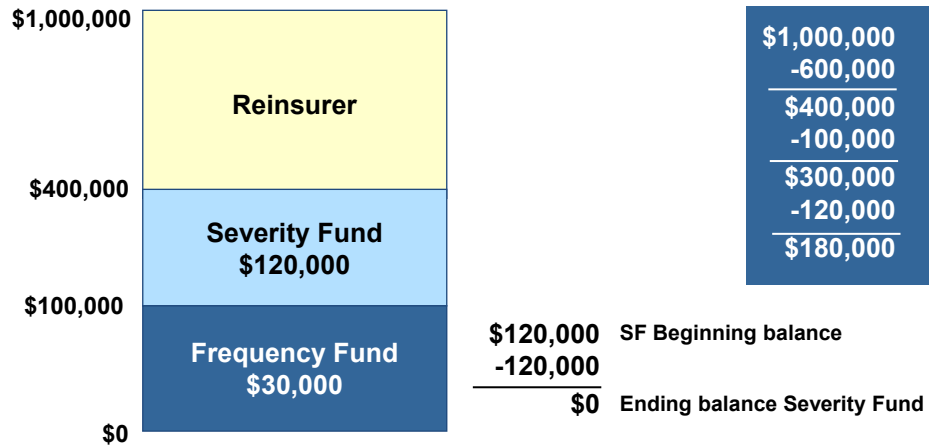
kjb ruble/captives/2022

98

98

Captive Insurance Program

***\$350,000 of Total Claims – Less than \$100,000*
and one \$1,000,000 Catastrophe Claim***



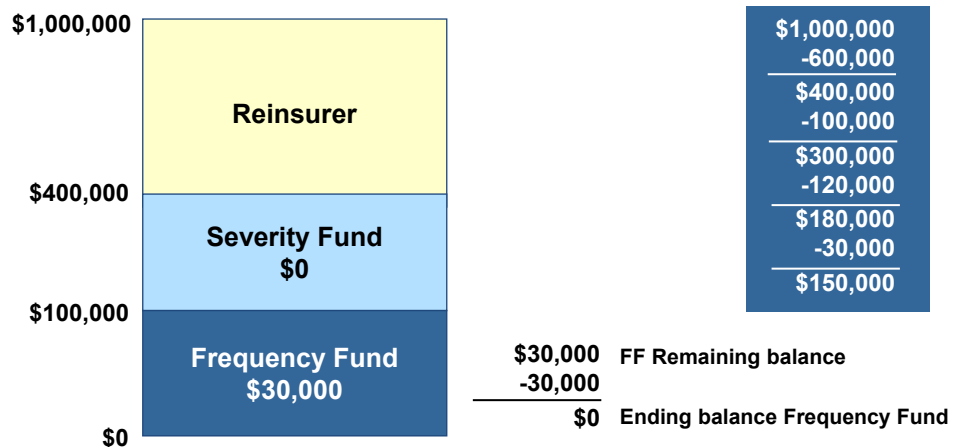
kjb ruble/captives/2022

99

99

Captive Insurance Program

***\$350,000 of Total Claims – Less than \$100,000*
and one \$1,000,000 Catastrophe Claim***



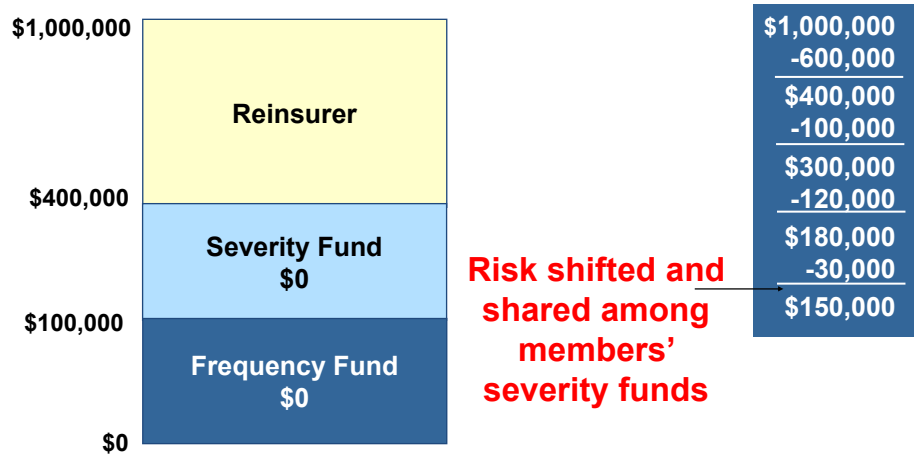
kjb ruble/captives/2022

100

100

Captive Insurance Program

***\$350,000 of Total Claims – Less than \$100,000*
and one \$1,000,000 Catastrophe Claim***



kjb ruble/captives/2022

101

101

Risk Shifting Impact to Other Members

- \$30,000,000 in total captive premium
- Sample member* represents 2.5% of the total captive premium (750,000/30,000,000)
- Risk Shifting and sharing:
 - $2.5\% \times \$150,000 = \$3,750$
 - Taken from the other member's severity fund

kjb ruble/captives/2022

102

102

Captive Insurance Program

Example #4

What happens if a member has
no balance remaining in funds,
but claims continue to occur?

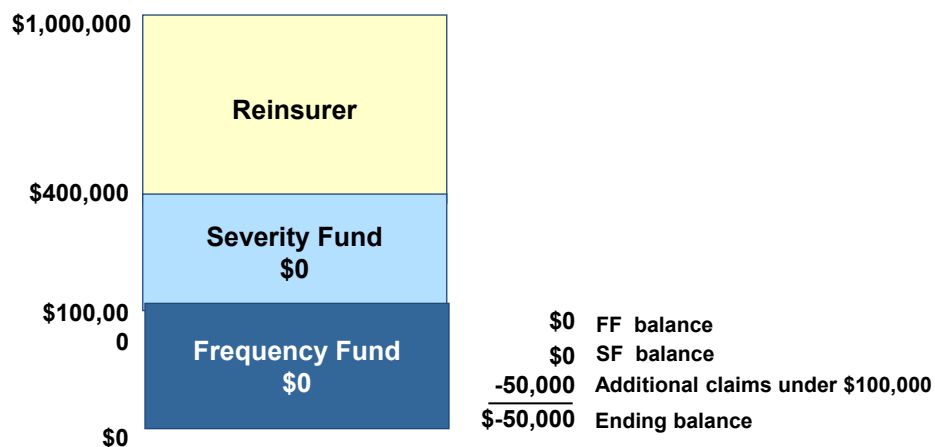
kjb ruble/captives/2022

103

103

Captive Insurance Program

*Total Claims Equal Total Loss Fund
and \$50,000 in Claims Occur Under \$100,000*



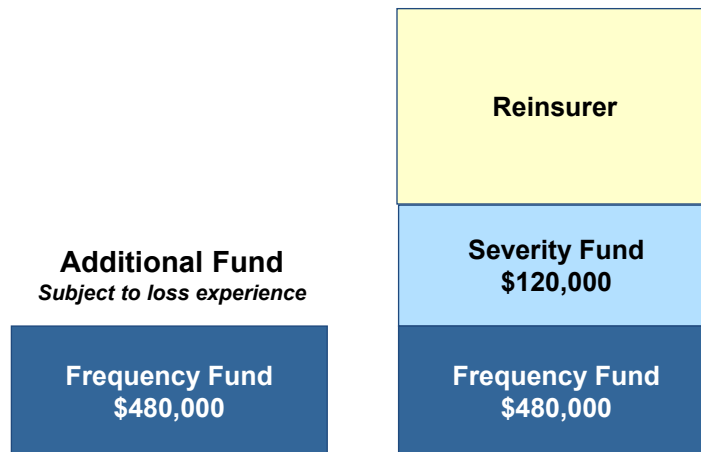
kjb ruble/captives/2022

104

104

Captive Insurance Program

Assessments



kjb ruble/captives/2022

105

105

Captive Insurance Program

Assessment payment schedule

Year 1	Year 2	Year 3	Year 4
Frequency Fund claims exceeded Frequency Fund contributions by \$50,000	50% of Assessment is due	25% of Assessment is due	25% of Assessment is due
	\$25,000	\$12,500	\$12,500

kjb ruble/captives/2022

106

106

Guaranteed Cost vs. Captive

One Year Cost Benefit Analysis
Annual Premium Estimate:

1,000,000

	Loss ratio	Loss Level	Captive Cost	Est. Inv. Income	Captive Net Cost	Guaranteed Cost	Captive Difference	
Minimum Cost	0.00%	0	400,000	36,325	363,675	1,000,000	636,325	← Best Case Scenario
	10.00%	100,000	500,000	30,819	469,181	1,000,000	530,819	} Member's Historical Expected Range
	20.00%	200,000	600,000	23,068	576,932	1,000,000	423,068	
	30.00%	300,000	700,000	15,681	684,319	1,000,000	315,681	
	40.00%	400,000	800,000	12,147	787,853	1,000,000	212,147	
	50.00%	500,000	900,000	10,248	889,752	1,000,000	110,248	
Break-even	60.00%	600,000	1,000,000	9,348	990,652	1,000,000	9,348	
	70.00%	700,000	1,100,000	8,448	1,091,552	1,000,000	(91,552)	
	80.00%	800,000	1,200,000	7,548	1,192,452	1,000,000	(192,452)	
	90.00%	900,000	1,300,000	7,265	1,292,735	1,000,000	(292,735)	
Maximum Cost	105.00%	1,050,000	1,450,000	0	1,450,000	1,000,000	(450,000)	← Worst Case Scenario

Conclusion: The member has an estimated positive cost benefit ranging from \$110K to \$423K if claims fall within the companies historical expected claims range. This range holds true in the incurred loss levels in five of the past five years.

Policy Year	Premium	Losses
2007	\$1,000,000	\$200,000
2008	\$1,000,000	\$400,000
2009	\$1,000,000	\$500,000
2010	\$1,000,000	\$300,000
2011	\$1,000,000	\$200,000

kjb ruble/captives/2022

107

107

Security Requirement

- 2/3 of frequency fund over a three-year period, not to exceed two times the frequency fund in the current year
- Example assuming frequency fund amount did not change going forward
 - 2/3 of \$245,000 = \$163,000

	Year 1	Year 2	Year 3	Year 4	Total
Year 1	\$163,333				\$163,333
Year 2	\$163,333	\$163,333			\$326,666
Year 3	\$163,333	\$163,333	\$163,333		\$489,999

kjb ruble/captives/2022

108

108

Who Qualifies for a Captive

- Spends annually \$100k in deductibles/retentions
- Has a large Workers Compensation Deductible
- Group of Assoc paying +\$3mm premium
- Specific deduct of at least \$25k in its self funded medical plan or pays +\$500k in benefits premium
- \$25k deductible on any P&C line other than workers comp
- Sells or provides Warranty, Service Contracts etc
- Retains +\$2mm of insurable risks on its balance sheets

kjb ruble/captives/2022

109

109

The Captive Feasibility Process

- Defined objectives
 - Financial
 - Business
- Forecast ultimate retained loss costs
- Estimate tax benefits
- Perform NPV/Cash flow analysis of alternatives
- Develop program structure of captive
- Domicile analysis

kjb ruble/captives/2022

110

110

The Captive Formation Process

- Business plan
 - Forecast of annual expected losses
 - Program structure (premiums, limits, capitalization)
 - Proforma captive financial statements
- Selection of service providers
- Tax analysis
 - Determination of premium deductibility
 - Placing of captive within the corporate structure
 - Investment strategy
- Preliminary meeting with domicile regulators
- 45 to 60 day approval process (major domiciles)

kjb ruble/captives/2022

111

111

Captive Operating Expenses

- Annual operating costs:
 - Domicile manager \$60,000-\$90,000
 - Domicile legal/accounting \$15,000-\$25,000
 - Director Expense \$15,000
 - Miscellaneous \$10,000

Total: \$100,000 est

kjb ruble/captives/2022

112

112

Captive Development Expenses

- Formation Costs:
 - Legal \$15,000-\$20,000
 - Actuarial \$15,000-\$20,000
 - Business Plan \$15,000-\$20,000
 - Application \$10,000-\$15,000
 - Filing Fee \$5,000- \$10,000
 - Travel \$5,000- \$10,000
 - Miscellaneous \$5,000- \$10,000
 - Assume \$100,000 to start
 - Doesn't include Capitalization

kjb ruble/captives/2022

113

113

CAPTIVES



- Don't believe the myths.
- Captives grow in any market.
- Long term solution.

kjb ruble/captives/2022

114

114



115

