



# **JAMES K. RUBLE SEMINAR**

## **Ruble Graduate Seminar**

IA&B of PA MD & DE  
March 7-8, 2023



**JAMES K. RUBLE SEMINAR**  
**Ruble Graduate Seminar**  
**Table of Contents**

**1 — COMMERCIAL LIABILITY CONCEPTS YOUR CLIENT WILL BE GLAD YOU UNDERSTAND**

**2 — CONTRACTORS LIABILITY EXPOSURES & COVERAGES**

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**3 — BUSINESS INCOME...THE MYSTERY CONTINUES**

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**4 — CONTRACTS AGENTS SHOULD READ**

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## **A Letter from William J. Hold, President/CEO**

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Let's take the first step.

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





# James K. Ruble Seminar

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

Section 1

# **Commercial Liability Concepts Your Client Will Be Glad You Understand**







# Commercial Liability Concepts Your Client Will Be Glad You Understand

*Catherine Trischan, CIC, CRM, CPCU, ARM, AU, AAI, CRIS, MLIS, TRIP*

*catherine.trischan@gmail.com*

## COURSE OUTLINE

- Bodily Injury vs. Emotional Injury /Mental Anguish
- CGL Duty to Defend
- Subrogation and Contribution
- Coverage Triggers
  - Occurrence Form
  - Claims Made and Claims Made and Reported





Bodily Injury

VS.



Emotional Injury  
/Mental Anguish

3

### CG 00 01 04 13

#### ISO CGL Coverage Form

**"Bodily injury"** means bodily injury, sickness or disease sustained by a person, including death resulting from any of these at any time.

### CU 00 01 04 13

#### ISO Commercial Liability Umbrella Coverage Form

**"Bodily injury"** means bodily injury, **disability**, sickness or disease sustained by a person, including death resulting from any of these at any time. **"Bodily injury" includes mental anguish or other mental injury resulting from "bodily injury"**.

4

## Insurer Modified Definition (CGL)

**"Bodily injury"** means:

- a. Physical harm, including sickness or disease, sustained by a person; or
- b. Mental anguish, injury or illness, or emotional distress, resulting at any time from such physical harm, sickness or disease.

**5**

## Insurer Modified Definition (CGL)

**Bodily injury** means physical:

- injury;
- sickness; or
- disease;

sustained by a person, including resulting death, humiliation, mental anguish, mental injury or shock at any time. All such loss shall be deemed to occur at the time of the physical injury, sickness or disease that caused it.

**6**

## Insurer Modified Definition (CGL)

### **Mental Anguish Amendment**

(This provision does not apply in New York).

Definition...“Bodily injury”... is deleted in its entirety and replaced with the following:

**“Bodily injury”** means bodily injury, sickness or disease sustained by a person, including death resulting from any of these at any time. This includes mental anguish resulting from any bodily injury, sickness or disease sustained by a person. (In New York, mental anguish has been determined to be “bodily injury”).

7

## Does Bodily Injury Include Emotional Injury/Mental Anguish?

### **The Yes Argument**

Pekin Insurance Co. v. Hugh, 501 N.W.2d 508 (Iowa 1993)

*“...Any attempt to distinguish between “physical” and “psychological” injuries just clouds the issue. This is because the medical community now knows that “every emotional disturbance has a physical aspect and every physical disturbance has an emotional aspect.”*

**Note:** Even with the Yes argument, there is normally some requirement for a physical manifestation of the emotional disturbance. What kind of physical manifestation is enough?

8

## **Does Bodily Injury Include Emotional Injury/Mental Anguish?**

### **The No Argument**

Trinity Universal Insurance Co. v. Cowan, 945 S.W.2d 819  
(Tex. 1997)

*"bodily injury' ... does not include purely emotional injuries ... and unambiguously requires an injury to the physical structure of the human body. Our decision comports with the commonly understood meaning of 'bodily,' which implies a physical, and not purely mental, emotional, or spiritual harm."*

**9**

## **Does Bodily Injury Include Emotional Injury/Mental Anguish?**

### **The Yes Because Policy Language is Ambiguous Argument**

#### **Contract of Adhesion**

- A contract offered intact to one party by another under circumstances requiring the second party to accept or reject the contract in total without having the opportunity to bargain over the wording. Insurance policies are contracts of adhesion and, as such, are construed strictly against the party writing them (i.e., the insurer).

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**10**

## Does Bodily Injury Include Emotional Injury/Mental Anguish?

### The Yes Because Policy Language is Ambiguous Argument

Lavanant v. General Accident Ins. Co. of America, 561 N.Y.S.2d 164, 168 (N.Y. App. Div. 1990)

*"We conclude that the key term "bodily injury," as used in the policy before us, is ambiguous...The ambiguity is heightened, not eliminated, by the policy's explicit definition of "bodily injury" as "bodily injury, sickness or disease." The categories "sickness" and "disease" in the insurer's definition not only enlarge the term "bodily injury" but also, to the average reader, may include mental as well as physical sickness and disease."*

11

## Does Bodily Injury Include Emotional Injury/Mental Anguish?

### The Yes Because Policy Language is Ambiguous Argument

Lavanant v. General Accident Ins. Co. of America, 561 N.Y.S.2d 164, 168 (N.Y. App. Div. 1990)

Bodily injury definition:

bodily injury, sickness or disease

vs.

bodily injury, bodily sickness or bodily disease

12

## Who Must Be Injured? Bystander Claims

Allstate Insurance Company v. Terry Wagner-Ellsworth and Tiffany Rusk 2008 MT 240 (2008)  
Montana Supreme Court

### Parties Involved

**Terry Wagner-Ellsworth** – Driver of the vehicle

**Matthew Rusk** – Child who, upon leaving school, was struck by Terry's vehicle

**Brandon Rusk** – Matthew's brother who was crossing the street with Matthew at the time of the accident

**Tiffany Rusk** – Mother of Matthew and Brandon who arrived at the scene after the collision, but while Matthew was still lying in the street

**Allstate** – Terry Wagner-Ellsworth's Personal Auto Insurer (BI limits were 50/100)

13

## Who Must Be Injured? Bystander Claims

Allstate Insurance Company v. Terry Wagner-Ellsworth and Tiffany Rusk 2008 MT 240 (2008)  
Montana Supreme Court

### Damages Claimed

**Matthew Rusk** – Seriously injured with a lengthy hospitalization

**Brandon Rusk** – Became withdrawn and suffered physical and emotional injuries as a result of witnessing the accident

**Tiffany Rusk** – Suffered physical and emotional injuries as a result of witnessing the scene at the accident site. Injuries included stress, migraine headaches, a rapid heartbeat when she hears sirens, physical pain, depression.

14

## Who Must Be Injured? Bystander Claims

Allstate Insurance Company v. Terry Wagner-Ellsworth and Tiffany Rusk 2008 MT 240 (2008)  
Montana Supreme Court

### Issues in this Case

- Must the person seeking damages and the person who sustained bodily injury be the same person?

Allstate policy covered “damages which an insured person is legally responsible to pay because of bodily injury sustained by any person.”

- If not, is a separate limit of liability available for Tiffany and Brandon?

“[t]he limit stated for each person for bodily injury is our total limit of liability for all damages because of bodily injury sustained by one person, including all damages sustained by anyone else as a result of that bodily injury.”

- Are Tiffany and Brandon’s emotional injuries, with resulting physical manifestations, bodily injury?

“Bodily Injury” means physical harm to the body, sickness, disease, or death.

**15**

## Elements of Negligence

- Defendant owed a plaintiff legal duty of care
- Defendant breached the duty
- Plaintiff suffered injury or damage
- Breach of duty caused the injury or damage – proximate cause

**16**



## Negligent Infliction of Emotional Distress

**Negligent infliction of emotional distress** - a personal injury law concept that arises when one person (the defendant) acts so carelessly that he or she must compensate the injured person (the plaintiff) for resulting mental or emotional injury

**In addition to negligent conduct, most states require:**

1. The defendant's conduct must have caused some kind of physical contact or impact (impact rule), OR
2. The plaintiff must have been in the "zone of danger" of the defendant's negligent act (zone of danger rule), OR
3. It must have been foreseeable that the defendant's negligent conduct would have caused the plaintiff emotional harm (foreseeability rule)

In addition, many states require that the emotional harm be severe enough to cause physical symptoms or manifestations.

**17**

## Zone of Danger Rule

### **The zone of danger rule (general)**

A doctrine that limits the liability of persons accused of negligent infliction of emotional distress - If the zone of danger rule applies, plaintiffs suing for negligent infliction of emotional distress may only recover damages if they were:

- 1) "placed in immediate risk of physical harm" by the defendant's negligence, AND
- 2) frightened by the risk of harm.

State positions vary.

**18**

## **New York - example**

To successfully make a claim for negligent infliction of emotional distress based on the zone of danger rule, a plaintiff must prove:

- Defendant's negligent conduct created an unreasonable risk of bodily harm to the plaintiff;
- Plaintiff observed, contemporaneously with the accident, an immediate family member suffer serious physical injury or death as a result of the defendant's conduct; and
- Plaintiff suffered an injury "in consequence of shock or fright" as a direct result of witnessing the accident.

**19**

## **Pennsylvania - example**

Under current Pennsylvania case law, a plaintiff in a negligent infliction case must prove that:

- He or she was nearby when the accident happened.
- His or her emotional distress is the result of observing (hearing and feeling, as well as seeing) the accident.
- He or she and the victim are closely related.

Several decisions have held that this requires a familial relationship between the injured person and the plaintiff seeking emotional distress damages.

**20**

## Duty to Defend in the CGL

21

### When must an insurer defend?

#### ISO CGL Coverage Form – Coverage A

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.

22

## Four Corners/Eight Corners



23

## Four Corners/Eight Corners

a/k/a complaint rule  
a/k/a complaint allegation rule  
a/k/a comparison test  
a/k/a exclusive pleading rule

- Extrinsic evidence (information outside the complaint) can not be considered in determining a duty to defend.
- An insurer is not obligated to investigate to determine the duty to defend.
- Any ambiguities in the complaint should be resolved in favor of the insured.
- This approach can help or hurt the insured.

24

## Four Corners/Eight Corners

*The rule ensures that courts are able to efficiently determine an insurer's duty to defend, which results in less distraction from the merits of the underlying suit. Also, the four-corners rule supports the policy that an insurer's duty to defend is broader than its duty to indemnify. That is because [i]t is the nature of the claim alleged against the insured which is controlling even though the suit may be groundless, false or fraudulent. Adherence to [t]he four-corners rule ensure[s] that insurers do not frustrate the expectations of their insured by [prematurely] resolving the coverage issue in their own favor[.]*

Water Well Solutions Serv. Group Inc. v. Consol. Ins. Co., 881 N.W.2d 285 (Wis. 2016)

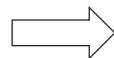
**25**

## Four Corners/Eight Corners

Plaintiff was injured in an auto accident allegedly caused by the insured's delivery driver. The complaint alleged that the vehicle involved was the driver's personal auto which was being used as a substitute for a vehicle covered by the insured's commercial auto policy.

The insured, in a response to the insurer's declaratory judgment complaint, admitted that the statement about the auto being a substitute was untrue and that the accident did not involve a vehicle covered under the commercial auto policy.

MMG Ins. Co. v. Giuro, Inc., No. 1:19-cv-0754, 2020 U.S. Dist. LEXIS 1716, at \*1-2 (M.D. Pa. Jan. 6, 2020).



**26**

## Four Corners/Eight Corners

Court refused to allow the insurer to stop defending.

*"the duty to defend is not limited to meritorious actions; it even extends to actions that are 'groundless, false, or fraudulent' as long as there exists the possibility that the allegations implicate coverage."*

*"we are constrained by the verbiage of the state-court victim-complainant's averments and cannot find — absent further fact-finding before the proper fact-finder — that [the insurer] has no duty to indemnify [the insured] and, therefore, no ongoing duty to defend."*

*[W]e are tasked with either enforcing Pennsylvania's four-corners rule as we understand it or carving out an exception which would, in effect, gut the rule entirely. Absent further guidance, we refuse to do the latter. Such an exception, while perhaps logical and more equitable as applied to the case at bar, would also fly in the face of the aforementioned precedent. It is thus not for this Court to make that leap."*

MMG Ins. Co. v. Giuro, Inc., No. 1:19-cv-0754, 2020 U.S. Dist. LEXIS 1716, at \*1-2 (M.D. Pa. Jan. 6, 2020).

**27**

## Extrinsic Evidence

What if there are facts, not in the complaint, that impact coverage?

Can extrinsic evidence be used to determine the duty to defend?

- Strict four corners states – Extrinsic evidence cannot be used.
- Some states allow extrinsic evidence to be used only to establish coverage.
- Some states allow extrinsic evidence to be used only to negate coverage.
- Some states allow either party to use extrinsic evidence.
- Some states have very limited exceptions as to when extrinsic evidence can be used to deny a defense.

**28**

## Extrinsic Evidence

*“Where the insurer is attempting to shield itself from the responsibility to defend despite its actual knowledge that the lawsuit involves a covered event, wooden application of the four corners of the complaint rule would render the duty to defend narrower than the duty to indemnify – clearly an unacceptable result....the insurer must provide a defense if it has knowledge of facts which potentially bring the claim within the policy’s indemnity coverage.*

Fitzpatrick v. Am. Honda Motor Co., 575 N.E.2d 90,92 (N.Y. 1991)

29

## Defense under Reservation of Rights

To defend adequately, one must defend all allegations in the complaint, even if some are not covered by the policy.

*"[t]o defend meaningfully, the insurer must defend immediately. To defend immediately, it must defend entirely. It cannot parse the claims, dividing those that are at least potentially covered from those that are not."*

Buss v. Superior Court, 65 Cal. Rptr. 2d 366 (Cal. 1997) (citing Montrose Chemical Corp. v. Superior Court, supra, 6 Cal.4th at p. 295, 24 Cal.Rptr.2d 467, 861 P.2d 1153)

**Reservation of Rights** - The insurer reserves its right not to indemnify the insured for damages based on certain allegations in the complaint and/or reserves its right to withdraw from defense of the claim at some time in the future. Such reservations must be stated at the time defense begins.

30

## Right to Independent Counsel

Are there circumstances under which the insured is entitled to choose its own defense counsel? Is there a conflict of interest?

State positions:

- ROR automatically creates a conflict of interest, so insured is entitled to independent counsel.
- ROR does not create a conflict of interest, so insured is not entitled to independent counsel.
- Case by case analysis, so insured may be entitled to independent counsel.

31

## Right to Independent Counsel

### Cumis doctrine/rule

Where a conflict exists between the insurer and insured, the insured has a right to retain independent counsel (Cumis counsel) to be paid for by the insurer,

*"on the advisability of settlement [the insurer-hired attorneys] represented clients with conflicting interests [i.e., the insurer and the insured] ... No matter how honest the intentions, counsel cannot discharge inconsistent duties.*

San Diego Navy Fed. Credit Union v. Cumis Ins. Soc'y, Inc., 162 Cal. App. 3d 358, 208 Cal. Rptr. 494 (1984);

32



## Defense Costs for Uncovered Counts

### **Buss v. Superior Court, 65 Cal. Rptr. 2d 366 (Cal. 1997)**

Suit against Buss et al included 27 counts, only one of which was potentially covered by the CGL policy. (defamation count)

Transamerica (insurer) paid over \$1 million in defense costs - between \$21,720 and \$55,767.50 was to defend the defamation claim. Transamerica reserved its rights to deny coverage and for reimbursement or an allocation of defense costs if the defamation claim proved not to be covered.

Transamerica was entitled to reimbursement of defense costs for the uncovered counts.

*"The 'enrichment' of the insured by the insurer through the insurer's bearing of unbargained-for defense costs is inconsistent with the insurer's freedom under the policy and therefore must be deemed 'unjust.'"*

**33**

## Defense Costs for Uncovered Counts

### **Buss v. Superior Court, 65 Cal. Rptr. 2d 366 (Cal. 1997)**

#### **4 questions asked and answered**

1. May the insurer seek reimbursement from the insured for defense costs?
  - Yes, as to claims that are not even potentially covered, but no, as to those that are
2. For what specific costs may the insurer obtain reimbursement?
  - Those that can be allocated solely to claims that are not even potentially covered
3. When the insurer seeks reimbursement, which party must carry the burden of proof?
  - The insurer
4. What is the burden of proof?
  - Proof by a preponderance of the evidence

**34**

## Defense Costs for Uncovered Counts

- Some states follow Buss.
- Some states do not follow Buss.
- Many states have not expressly decided this issue.
- Some policies have language that addresses this issue.

*"If we initially defend an insured or pay for an insured's defense but later determine that none of the claims, for which we provided a defense or defense costs, are covered under this insurance, we have the right to reimbursement of the defense costs we have incurred."*

35

## Late notice and pre-tender defense costs

CG 00 01 04 13

### SECTION IV – COMMERCIAL GENERAL LIABILITY CONDITIONS

#### 2. Duties In The Event Of Occurrence, Offense, Claim Or Suit

a. You must see to it that we are notified as soon as practicable of an "occurrence" or an offense which may result in a claim. To the extent possible, notice should include:

- (1) How, when and where the "occurrence" or offense took place;
- (2) The names and addresses of any injured persons and witnesses; and
- (3) The nature and location of any injury or damage arising out of the "occurrence" or offense.

b. If a claim is made or "suit" is brought against any insured, you must:

- (1) Immediately record the specifics of the claim or "suit" and the date received; and
- (2) Notify us as soon as practicable.

You must see to it that we receive written notice of the claim or "suit" as soon as practicable.

36

## Late notice and pre-tender defense costs

CG 00 01 04 13

### SECTION IV – COMMERCIAL GENERAL LIABILITY CONDITIONS

#### 2. Duties In The Event Of Occurrence, Offense, Claim Or Suit

c. You and any other involved insured must:

- (1) Immediately send us copies of any demands, notices, summonses or legal papers received in connection with the claim or "suit";
- (2) Authorize us to obtain records and other information;
- (3) Cooperate with us in the investigation or settlement of the claim or defense against the "suit"; and
- (4) Assist us, upon our request, in the enforcement of any right against any person or organization which may be liable to the insured because of injury or damage to which this insurance may also apply.

d. No insured will, except at that insured's own cost, voluntarily make a payment, assume any obligation, or incur any expense, other than for first aid, without our consent.

37

## Late notice and pre-tender defense costs

**Must the insurer reimburse the insured?**

**In most jurisdictions, the insured is responsible for pre-tender defense costs. Why?**

- Policy language supports this view.
- The duty to defend isn't triggered until the insurer receives notice of the claim.
- The insurer has no control over pre-tender defense costs.

*"If the insured does not properly forward the information to the insurance company, the insured cannot demand reimbursement from the insurer for defense costs the insurer had no opportunity to control."*

SL Indus., Inc. v. Am. Motorists Ins. Co., 607 A.2d 1266, 1272 (N.J. 1992)

- Insureds who incur defense costs breach the voluntary payments provision.

38

## Late notice and pre-tender defense costs

**Must the insurer reimburse the insured?**

**The minority view is that the insurer must reimburse pre-tender defense costs, usually unless it can show prejudice.**

*“Where the insurance company’s interests have not been harmed by a late notice...the reason behind the notice condition in the policy is lacking, and it follows neither logic nor fairness to relieve the insurance company of its obligation under the policy in such a situation.”*

Rite Aid Corp. v. Liberty Mut. Fire Ins. Co., No.1:CV-03-1801, 2006 U.S. Dist. LEXIS 57094 (M.D. Pa. Aug. 14, 2006)

**39**

*“It is difficult to think of two legal concepts that have caused more confusion and headache for both courts and litigants than have contribution and subrogation.”* Fireman’s Fund Ins. Co. v. Maryland Cas. Co., 65 Cal. App.4th 1279, 1291 (Cal. App. 1998).

## Subrogation and Contribution

**40**

## **Subrogation**

The principle under which an insurer that has paid a loss under an insurance policy is entitled to all the rights and remedies belonging to the insured against a third party with respect to any loss covered by the policy

Black's Law Dictionary (9<sup>th</sup> edition)

**41**

## **Subrogation**

- Insurer pays a loss.
- Insured's right to recover from the responsible party is transferred to the insurer.
- Insurer initiates a subrogation against the responsible party.
- Insurer's right to recover is derivative of the insured's right to recover.
- Insurer has NO independent right of recovery.

**42**

## Anti-Subrogation Rules

An insurance carrier has no right of subrogation against its own insured for the risk covered by the policy.

Anti-subrogation rule may be statutory or result from common law.

**43**

## Anti-Subrogation Rules

### Statutory Example

Minn. Stat. § 60A.41(a) states that “[a]n insurance company ... may not proceed against its insured in a subrogation action where the loss was caused by the non-intentional acts of the insured.” Minn. Stat. § 60A.41(b) specifically prohibits an insurance company from subrogating “itself to the rights of its insured to proceed against another person ... insured for the same loss by the same company.”

### Common Law Example

An insurer cannot pay a general contractor for its losses and then attempt to recover from a subcontractor who is named, directly, or indirectly, as an additional insured in the same policy. *Keystone Paper Converters, Inc. v Neemar, Inc.*, 562 F. Supp. 1046 (E.D. Pa. 1983).

**44**

## Made Whole Doctrine

“The common law made whole doctrine is an equitable principle which generally limits the ability of an insurer to exercise its right of subrogation until the insured has been fully compensated or made whole. Under this conceptualization, in the event of a subrogation dispute between the insurer and its insured, the insured has priority of rights to collect from the responsible third party. Thus, where the insured’s recovery from both the insurer and tortfeasor is less than or equal to its loss, the insurer forfeits its right to subrogation.”

The Made Whole Doctrine: Unraveling the Enigma  
Wrapped in the Mystery of Insurance Subrogation

45

## Types of Subrogation

**Contractual/Conventional Subrogation** – based on a contract between the parties

**Statutory Subrogation:** Statutory subrogation and/or reimbursement rights established and granted by state or federal statutes (e.g. Workers Compensation, Medicare, Medicaid)

**Equitable/Legal Subrogation:** One party has been compelled to pay a debt which should have been paid by another. It arises from the operation of law and requires no policy language or subrogation contract.

46

## Equitable Contribution

Insurer's independent right to recover from another party that shares the liability

e.g. Several insurers of the same level (primary, excess) are involved in the loss – one insurer has paid more than its fair share in indemnity or defense – that insurer wants others to reimburse or participate

In the case of two insurers, they cover the same thing: same insured, same risk, same insurable interest

**47**

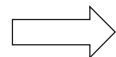
## Equitable Contribution v Equitable Subrogation

Equitable contribution requires that the policies insure:

1. the same entities
2. the same interest
3. the same risks

Home Ins. Co. v. Cincinnati Ins. Co., 213 Ill. 2d 307, 323, 821 N.E.2d 269, 280 (2004)

**48**





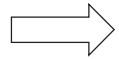
## Equitable Contribution v Equitable Subrogation

Equitable subrogation requires:

1. Defendant carrier is primarily liable to the insured for a loss.
2. Plaintiff carrier is secondarily liability to the insured for the same loss.
3. Plaintiff carrier discharged its liability to the insured and extinguished the liability of the defendant carrier.

Home Ins. Co. v. Cincinnati Ins. Co., 213 Ill. 2d 307, 323, 821 N.E.2d 269, 280 (2004)

49



## Equitable Contribution

GC has a CGL.

GC is additional insured on the sub's CGL.

Both policies say coverage for the GC is excess.

GC's policy pays the claim on behalf of the GC.

GC's insurer will make a claim for **equitable contribution** against the sub's insurer. (same insured, same risk, same insurable interest)

50

## Waiver of Subrogation

An agreement between two parties in which one party agrees to waive subrogation rights against another in the event of a loss. The intent of the waiver is to prevent one party's insurer from pursuing subrogation against the other party. Generally, insurance policies do not bar coverage if an insured waives subrogation against a third party before a loss. However, coverage is excluded from many policies if subrogation is waived after a loss because to do so would violate the principle of indemnity.

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**51**

## CP 00 90 07 08 Commercial Property Conditions

### TRANSFER OF RIGHTS OF RECOVERY AGAINST OTHERS TO US

If any person or organization to or for whom we make payment under this Coverage Part has rights to recover damages from another, those rights are transferred to us to the extent of our payment. That person or organization must do everything necessary to secure our rights and must do nothing after loss to impair them. But you may waive your rights against another party in writing:

1. Prior to a loss to your Covered Property or Covered Income.
2. After a loss to your Covered Property or Covered Income only if, at time of loss, that party is one of the following:
  - a. Someone insured by this insurance;
  - b. A business firm:
    - (1) Owned or controlled by you; or
    - (2) That owns or controls you; or
  - c. Your tenant.

This will not restrict your insurance.

**52**

## Landlord/Tenant Subrogation

Can a tenant be held responsible for damage done to rented space?

1. What does the lease say?
  - Who is responsible for insuring the building?
  - Has landlord waived rights of recovery?
  - Is there waiver of subrogation language?
2. What if the lease is silent or unclear?
  - Can the landlord's carrier subrogate against the tenant?

53

## State Positions Vary

### 1. The tenant is an implied coinsured – The Sutton Rule/Doctrine

Sutton v. Jondahl, 532 P.2d 478 (Okla. 1975)

*.....subrogation should not be available to the insurance carrier because the law considers the tenant as a co-insured of the landlord absent an express agreement between them to the contrary....*

*Basic equity and fundamental justice upon which the equitable doctrine of subrogation is established requires that when fire insurance is provided for a dwelling it protects the insurable interests of all joint owners including the possessory interests of a tenant absent an express agreement by the latter to the contrary.*

54

## State Positions Vary

### 2. Subrogation is permitted – Anti-Sutton

- Tenant should be responsible for its negligence.
- Tenant is not a coinsured unless – e.g.
  - The lease requires that the landlord maintain insurance for the benefit of the tenant.  
OR
  - The lease exculpates the tenant from loss caused by the tenant's wrongdoing.

### 3. Case-by-case

- What does the lease say?
- What are the reasonable expectations of the parties?
- Other factors

55

## Tenant Damages Building with an Auto

### CA 00 01 11 20 Liability Exclusion

This insurance does not apply to any of the following:

#### 6. Care, Custody Or Control

"Property damage" to or "covered pollution cost or expense" involving property owned or transported by the "insured" or in the "insured's" care, custody or control. But this exclusion does not apply to liability assumed under a sidetrack agreement.

56

## Tenant Damages Building with an Auto

CA 00 01 11 20

### 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:

...

### Section V - Definitions

G. "Insured" means any person or organization qualifying as an insured in the Who Is An Insured provision of the applicable coverage. Except with respect to the Limit of Insurance, the coverage afforded applies separately to each insured who is seeking coverage or against whom a claim or "suit" is brought.

57

## Tenant Damages Building

CG 00 01 04 13

### Coverage A Exclusion

This insurance does not apply to:

- j. Damage To Property

"Property damage" to:

- (1) Property you own, rent, or occupy, including any costs or expenses incurred by you, or any other person, organization or entity, for repair, replacement, enhancement, restoration or maintenance of such property for any reason, including prevention of injury to a person or damage to another's property;

58

## Possible Solutions



- Damage to Premises Rented to You
- Carrier-specific enhancements
- Legal Liability Coverage Form

59

## ISO CGL - CG 00 01 04 13

### 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.

60

## **CG 24 04 05 09**

### **Waiver of Transfer of Rights of Recovery Against Others to Us**

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.

**61**

## **CG 24 04 12 19**

### **Waiver of Transfer of Rights of Recovery Against Others to Us (Waiver of Subrogation)**

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.

**62**

## **CG 24 53 12 19**

### **Waiver of Transfer of Rights of Recovery Against Others to Us (Waiver of Subrogation) - Automatic**

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

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

**63**

## **ISO BA - CA 00 01 11 20**

### **Transfer Of Rights Of Recovery Against Others To Us**

If any person or organization to or for whom we make payment under this Coverage Form has rights to recover damages from another, those rights are transferred to us. That person or organization must do everything necessary to secure our rights and must do nothing after "accident" or "loss" to impair them.

**64**



## **CA 04 44 10 13**

### **Waiver of Transfer of Rights of Recovery Against Others to Us (Waiver of Subrogation)**

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

**65**

## **CA 04 43 11 20**

### **Waiver of Transfer of Rights of Recovery Against Others to Us (Waiver of Subrogation) – Automatic When Required by Written Contract or Agreement**

The **Transfer Of Rights Of Recovery Against Others To Us** Condition does not apply to any person(s) or organization(s) for whom you are required to waive subrogation with respect to the coverage provided under this Coverage Form, but only to the extent that subrogation is waived:

- A. Under a written contact or agreement with such person(s) or organization(s); and
- B. Prior to the "accident" or the "loss."

**66**

## Workers Compensation Waiver of Subrogation

A typical WC injury claim without waiver of subrogation

- Employee is injured.
- Employee files WC claim and is compensated for the injury.
- Employee files a third-party claim against the person/entity the employee believes is responsible for the injury.
- WC carrier joins that third-party claim to recover the amounts it paid to the employee.
- When the third-party claim is settled, the WC carrier recovers all or some of the amounts paid, and the injured employee gets the rest.

**67**

## Workers Compensation Waiver of Subrogation

A typical WC injury claim with waiver of subrogation

- Employee is injured.
- Employee files WC claim and is compensated for the injury.
- Employee files a third-party claim against the person/entity the employee believes is responsible for the injury.
- ~~WC carrier joins that third-party claim to recover the amounts it paid to the employee.~~
- When the third-party claim is settled, ~~the WC carrier recovers all or some of the amounts paid,~~ and the injured employee gets the rest it all.

**68**

## **WC 00 00 00C**

### **Workers Compensation and Employers Liability Insurance Policy**

#### **G. Recovery From Others (WC)**

We have your rights, and the rights of persons entitled to the benefits of this insurance, to recover our payments from anyone liable for the injury. You will do everything necessary to protect those rights for us and to help us enforce them.

#### **H. Recovery From Others (EL)**

We have your rights to recover our payment from anyone liable for an injury covered by this insurance. You will do everything necessary to protect those rights for us and to help us enforce them.

**69**

## **Workers Compensation Waiver of Subrogation**

- NCCI's WC 00 03 13 Waiver of Our Right to Recover from Others Endorsement is commonly used.
- Some insurers have automatic endorsements.
- WC Waiver of Subrogation is not permitted in:
  1. Kansas (for private construction contracts)
  2. Kentucky
  3. Missouri (for construction risks)
  4. New Hampshire
  5. New Jersey
  6. North Dakota
  7. Ohio
  8. Wyoming

**70**

**WC 00 03 13**  
**Waiver of Our Right to Recover From Others**  
**Endorsement**

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

**Schedule**

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**71**

**Coverage Triggers**  
**Occurrence**

**72**

## What is an Occurrence?

ISO CGL - CG 00 01 04 13

### 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...

b. This insurance applies to "bodily injury" and "property damage" only if:

(1) The "bodily injury" or "property damage" is caused by an "occurrence" that takes place in the "coverage territory";

(2) The "bodily injury" or "property damage" occurs during the policy period; and

...

73

## What is an Occurrence?

ISO CGL - CG 00 01 04 13

"Occurrence" means an accident, including continuous or repeated exposure to substantially the same general harmful conditions.

Subject to Paragraph 2. or 3. above [aggregate descriptions], whichever applies, the Each Occurrence Limit is the most we will pay for the sum of:

a. Damages under Coverage A; and

b. Medical expenses under Coverage C

because of all "bodily injury" and "property damage" arising out of any one "occurrence".

74

## How Many Occurrences?

### **Doria v. Insurance Co. of North American (NJ 1986)**

Plaintiffs Andrew and Michael Doria, brothers and at the time five and four years old respectively, entered property owned by defendants Richard Orlina and Antonio Macina through a broken and dilapidated fence which enclosed an in-ground swimming pool. The pool had not been used for four to six years and had been left in a state of disrepair. It was uncovered and water had accumulated in it. The water was black and covered with a thick layer of leaves. While the boys were playing near the pool, Michael fell in. Andrew immediately leaned into the pool attempting to hand a stick to his brother to grab and fell in as well. Their companion, Jeffrey Brill, ran home to get help and returned with his mother who pulled Andrew and Michael from the water. Both boys were unconscious and spent an extended period of time in the hospital. Both survived but their present condition is not apparent from the record.

**75**

## How Many Occurrences?

### **Koikos v. Travelers Ins. Co. (FL 2003)**

On April 25, 1997, George Koikos rented his restaurant to a chapter of a fraternity for a graduation party. During the party, Charles Bell and Antonio Anderson attempted to enter the restaurant. They were turned away after a heated exchange with several fraternity members who were collecting an admission charge for the affair. When Bell and Anderson returned a few minutes later, a fight broke out in the restaurant's lobby between Anderson and some of the fraternity members gathered there. After Anderson was knocked to the ground, Bell brandished a handgun and began firing as he helped Anderson to his feet.

Bell fired in two separate-but nearly concurrent-rounds. Brian Armstrong and DeJuan Harris were each hit by a single bullet while standing in the lobby. In addition, three other guests were injured. The record indicates that the shots injuring Armstrong and Harris came from the first round of shots.

The two shooting victims, Harris and Armstrong, filed separate lawsuits in state court against Koikos claiming negligent failure to provide security.

**76**

## How Many Occurrences?

- Cause Test – The number of occurrences is determined by examining the cause or causes of the damage. (This is the majority view.)
- Effect Test – The number of occurrences is determined by examining the effect that an event had. e.g. How many people were injured?
- Unfortunate Event Test – (New York)
  1. A court must identify the “operative incident or occasion giving rise to liability.”
  2. A court must “analyze the temporal and spatial relationships between the incidents and the extent to which they were part of an undisrupted continuum to determine whether they can, nonetheless, be viewed as a single unfortunate event.”

77

## The Occurrence Trigger

### **Sometimes it's easy.**

John replaced the roof on Sam's building in 2018. The roof collapsed in 2023 and injured Sam. The 2023 occurrence form CGL responds to Sam's bodily injury claim against John.

### **Sometimes it's not.**

John replaced the roof on Sam's building in 2018. The roof was not properly constructed, and water entered the building, causing property damage to other parts of the building. The damage occurred over a period of time, starting in 2018 and ending in 2023 when the damage was discovered. Which occurrence form CGL policy responds?

78

## The Occurrence Trigger

Trigger theories

- Manifestation trigger
- Exposure trigger
- Injury-in-Fact trigger
- Continuous trigger

Trigger applied depends on the jurisdiction and the type of claim.

**79**

## Manifestation Trigger

- The CGL policy is triggered when the injury or damage is discovered or manifests itself (or in some cases is capable of being discovered) during the policy period.
- That the injury or damage may have been occurring prior to discovery may not be taken into account.

**80**



## **Exposure Trigger**

- The CGL Policy is triggered if it is in effect during exposure to injurious or harmful conditions.
- Primarily used in asbestos cases, this theory considers bodily injury to begin when a person was first exposed to asbestos, usually at the first inhalation of asbestos fibers.

**81**

## **Injury-in-Fact Trigger**

- All CGL policies are triggered if they are in effect during the time the injury or damage is shown to have actually taken place, even if the injury or damage continues over time.
- Most common application of when BI or PD takes place

**82**

## Continuous Trigger

All CGL policies are triggered if they are in effect during any of the following times:

- exposure to harmful conditions
- actual injury or damage
- and upon and after manifestation of the injury or damage

**83**

## Allocation Theories

What if?

Cathy's Contracting Company installed doors and windows in a new office complex in 2019. Some of the windows were not properly installed and extensive water damage to the buildings happened in 2020, 2021 and 2022. Total damages are \$3,300,000.

The injury in fact theory applies in this state for this type of loss, and damage is considered one occurrence. Policies in effect were as follows:

- 2020 – Insurer A - \$1,000,000 CGL
- 2021 – Insurer B - \$1,000,000 CGL plus \$3,000,000 Umbrella
- 2022 – Insurer C - \$1,000,000 CGL plus \$3,000,000 Umbrella

**84**

## **Allocation Theories**

### **All Sums/Joint and Several**

#### **1973 Comprehensive General Liability Insurance – BI/PD Liability Insuring Agreement**

*The company will pay on behalf of the insured all sums which the insured shall become legally obligated to pay as damages because of*

- A. bodily injury or*
- B. property damage*

*to which this insurance applies, caused by an occurrence..*

**85**

## **Allocation Theories**

### **All Sums/Joint and Several**

An insurer's liability to the insured is joint and several.

Rationale - Each policy promises to indemnify for all sums the insured is legally obligated to pay.

The insured can choose which policy term will respond to the loss and can collect up to the policy limit(s), subject only to policy provisions that govern the allocation of liability when more than one policy covers the loss.

Once the claim has been paid, the insurers allocate the loss among themselves – possible suit for contribution.

**86**

## Allocation Theories All Sums/Joint and Several

Keene Corporation v. Insurance Company of North America,  
667 F.2d 1034 (D.C. Cir. 1981)

*“the problem of indivisible injury is resolved simply by collapsing the continuous injury into one year. Joint - and-several allocation effectively allows a policyholder to simply select one triggered year and exhaust the coverage provided during that period in satisfaction of period in satisfaction of its claim ... requiring the insurers to sue each other for contribution.”*

87

## Allocation Theories All Sums/Joint and Several

Cathy's Contracting Company installed doors and windows in a new office complex in 2019. Some of the windows were not properly installed and extensive water damage to the buildings happened in 2020, 2021 and 2022. Total damages are \$3,300,000.

The injury in fact theory applies in this state for this type of loss, and damage is considered one occurrence. Policies in effect were as follows:

- 2020 – Insurer A - \$1,000,000 CGL
- 2021 – Insurer B - \$1,000,000 CGL plus \$3,000,000 Umbrella
- 2022 – Insurer C - \$1,000,000 CGL plus \$3,000,000 Umbrella

Cathy will likely choose to have Insurer B or Insurer C pay the entire claim. The chosen insurer may look to the other insurers for equitable contribution.

88

## Allocation Theories Pro-Rata (time on risk)

- Each policy covers loss occurring during the policy period.
- Each insurer is liable for the period of time it was on the risk compared to the entire period where damage/injury occurred.
- What if the insured is uninsured for part of this time? Common approaches:
  - If insurance was unavailable, the insured is not required to accept shares for that period of time. (pro-rata, available coverage block)
  - If insurance was not purchased or not enough insurance was purchased, the insured is required to accept shares for that period of time.
  - If the insurer is unidentified and/or policies can't be located or were destroyed, the insured is required to accept shares for that period of time.

89

## Allocation Theories Pro-Rata (time on risk)

Insurance Company of North America v. Forty-Eight Insulations, Inc., 633 F.2d 1212 (6th Cir. 1980)

*Policies provide indemnification for liability incurred as a result of an accident or occurrence during the policy period, not outside that period. Each insurer is liable for that period of time it was on the risk compared to the entire period during which damages occurred.*

90

## Allocation Theories Pro-Rata (by time on risk)

Cathy's Contracting Company installed doors and windows in a new office complex in 2019. Some of the windows were not properly installed and extensive water damage to the buildings happened in 2020, 2021 and 2022. Total damages are \$3,300,000.

The injury in fact theory applies in this state for this type of loss, and damage is considered one occurrence. Policies in effect were as follows:

- 2020 – Insurer A - \$1,000,000 CGL
- 2021 – Insurer B - \$1,000,000 CGL plus \$3,000,000 Umbrella
- 2022 – Insurer C - \$1,000,000 CGL plus \$3,000,000 Umbrella

Insurer A is liable for 1/3, but only has a \$1,000,000 limit. Cathy is likely responsible for the additional \$100,000.

Insurer B is liable for 1/3 - \$1,100,000

Insurer C is liable for 1/3 - \$1,100,000

91

## Allocation Theories Pro-Rata (by limits x years of coverage)

**Owens-Illinois, Inc. v. United Ins. Co. - 138 N.J. 437, 650 A.2d 974 (1994)**

If policy limits are constant over time, this is evidence of a constant level of risk being transferred, and the pro-rata by limits approach is appropriate.

Where policy limits are increasing over time, the Supreme Court said that this should be taken as evidence of an increase in the risk being transferred to the insurers. In this case, total damages should be allocated to a given year in proportion to the policy limits available in that year divided by the total policy limits available in all years.

A pro-rata share can be allocated to the insured for periods of time during which the policyholder intentionally self-insured, but not for periods of time when the policyholder could not prove insurance because of lost policies, or when market conditions prevented the policyholder from buying additional liability insurance.

**Facts:** Insured manufactured insulation containing asbestos. Owens-Illinois was self-insured between 1948 and 1963. Aetna was the insurer between 1963 and 1977.

92

## Allocation Theories

### Pro-Rata (by limits x years of coverage)

Cathy's Contracting Company installed doors and windows in a new office complex in 2019. Some of the windows were not properly installed and extensive water damage to the buildings happened in 2020, 2021 and 2022. Total damages are \$3,300,000.

The injury in fact theory applies in this state for this type of loss, and damage is considered one occurrence. Policies in effect were as follows:

- 2020 – Insurer A - \$1,000,000 CGL
- 2021 – Insurer B - \$1,000,000 CGL plus \$3,000,000 Umbrella
- 2022 – Insurer C - \$1,000,000 CGL plus \$3,000,000 Umbrella

\$9,000,000 total available limits

Insurer A is liable for 1/9 – (approx.) \$366,667

Insurer B is liable for 4/9 – (approx.) \$1,466,667

Insurer C is liable for 4/9 – (approx.) \$1,466,667

93

## Insurer Responses to limit exposure

Insurer may use non-ISO CGL endorsements such as:

- **Batch Clauses/Non-Cumulation Endorsement** (limits policy to pay limit once even if multiple policies are triggered)
- **First Manifestation** endorsement (CGL Policy responds only to BI or PD that first manifests itself during policy period)
- **Prior Work** (excludes BI or PD arising out of any prior work)
- Exclusion for **progressive injury or damage** (if BI or PD commences prior to policy, whether or not known to any insured, BI or PD is excluded)

94

## Batch Clause/Non-Cumulation Endorsement

### Sample Language

#### CLARIFICATION ENDORSEMENT (Non-Cumulation Clause)

##### HOW MUCH WE PAY FOR LOSS OR CLAIM

For the purpose of determining *our* limit of liability, all *bodily injury* and/or *property damage* arising out of continuous or repeated exposure to substantially the same general condition(s) shall be considered as arising out of one *occurrence*.

1. The limit of liability stated on the Declarations page, the Supplemental Declarations page or attached endorsements and the conditions set forth below fix the maximum amounts *we* will pay for loss regardless of the number of:
  - a. persons insured under this policy;
  - b. persons or organizations who sustain *bodily injury* and/or *property damage*;
  - c. ~~claims made or~~ *suits* brought; or
  - d. number of policies.

95

## First Manifestation Endorsement

### Sample Language

This insurance applies to “bodily injury” and “property damage” only if:

- 1) The “bodily injury” or “property damage” is caused by an “occurrence” that takes place in the “coverage territory”; and
- 2) The “bodily injury” or “property damage” first manifests during the policy period.

96



## Prior Work Exclusion

### EXCLUSION – DESIGNATED WORK

This endorsement modifies insurance provided under the following:

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

#### SCHEDULE

Description of your work:

Any operations started prior to xx/xx/xxxx

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

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

97

## The unendorsed CGL (CG 00 01 04 13)

### COVERAGE A – BODILY INJURY AND PROPERTY DAMAGE LIABILITY

#### 1. Insuring Agreement

b. This insurance applies to "bodily injury" and "property damage" only if:

(3) Prior to the policy period, no insured listed under Paragraph 1. of Section II – Who Is An Insured and no "employee" authorized by you to give or receive notice of an "occurrence" or claim, knew that the "bodily injury" or "property damage" had occurred, in whole or in part. If such a listed insured or authorized "employee" knew, prior to the policy period, that the "bodily injury" or "property damage" occurred, then any continuation, change or resumption of such "bodily injury" or "property damage" during or after the policy period will be deemed to have been known prior to the policy period.

98

## The unendorsed CGL (CG 00 01 04 13)

### Whose knowledge can compromise coverage?

Depending on the form of business:

- Individual Named Insured and spouse
- Partners in a partnership (and spouses)
- Members of a joint venture (and spouses)
- Limited liability company (LLC) members and managers
- Executive officers, directors and stockholders of organizations
- Trustees of a trust

Any "employee" authorized by you to give or receive notice of an "occurrence" or claim.

99

## Progressive Injury/Damage Exclusion

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### EXCLUSION - PRE-EXISTING DAMAGE OR INJURY

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The following exclusion is added to the policy:

This insurance does not apply to:

- (1) Any "bodily injury" or "property damage," whether such "bodily injury" or "property damage" is known or unknown:
  - (a) Which first occurred prior to the inception date of this policy (or the retroactive date of this policy, if any, whichever is earlier); or
  - (b) Which is, or alleged to be, in the process of occurring at the inception date of the policy (or the retroactive date of this policy, if any, whichever is earlier) even if the "occurrence" continues during this policy period.
- (2) Any "bodily injury" or "property damage," whether known or unknown, which is in the process of settlement, adjustment or "suit" as of the inception date of this policy (or the retroactive date of this policy, if any, whichever is earlier).

"Bodily injury" or "property damage" which first occurs during this policy period includes any continuation, change or resumption of that "bodily injury" or "property damage" after the end of this policy period.

We have no duty to either defend or indemnify any Insured for any claim or "suit" to which this exclusion applies.

100

## Progressive Injury/Damage Exclusion

Cathy's Contracting Company installed doors and windows in a new office complex in 2019. Some of the windows were not properly installed and extensive water damage to the buildings happened in 2020, 2021 and 2022. Total damages are \$3,300,000.

The injury in fact theory applies in this state for this type of loss, and damage is considered one occurrence. Policies in effect were as follows:

- 2020 – Insurer A - \$1,000,000 CGL
- 2021 – Insurer B - \$1,000,000 CGL plus \$3,000,000 Umbrella
- 2022 – Insurer C - \$1,000,000 CGL plus \$3,000,000 Umbrella

What happens if all policies have the Progressive Injury/Damage exclusion we just saw?

**101**

## Allocation Theories Additional Insured

**ISO CGL - CG 00 01 04 13**

### **Other Insurance Clause**

a. Primary Insurance. This insurance is primary except when Paragraph b. below applies.....

b. Excess Insurance - This insurance is excess over:....(2) 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

**102**

## **Allocation Theories Additional Insured**

### **Primary and Noncontributory Insurance - CG 20 01 12 19**

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.

**103**

## **Allocation Theories Additional Insured**

### **ISO Umbrella - CU 00 01 04 13**

#### **Other Insurance Clause**

This insurance is excess over, and shall not contribute with any of the other insurance, whether primary, excess, contingent or on any other basis. This condition will not apply to insurance specifically written as excess over this Coverage Part.

There is no provision for sharing of limits with another policy

**104**

# Allocation Theories Additional Insured

Example: GC is additional insured on Sub's policies.

**Horizontal Exhaustion**

1<sup>st</sup> – Sub's CGL  
 2<sup>nd</sup> – GC's CGL  
 3<sup>rd</sup> – The Excess Liability policies

**Vertical Exhaustion**

1<sup>st</sup> – Sub's CGL  
 2<sup>nd</sup> – Sub's Excess Liability  
 3<sup>rd</sup> – GC's CGL  
 4<sup>th</sup> – GC's Excess Liability



# Allocation Theories Additional Insured

## Sample Non-Standard Excess Liability Language

### Other Insurance Clause

With respect to Insuring Agreement A only, if you have agreed in a written contract with another...that this policy shall be primary and non-contributory with such other person or entity's coverage...other insurance of that person or organization will apply as excess and non-contributory to the insurance afforded by this policy.

# Coverage Triggers

Claims Made and Claims Made and Reported Policies

## Claims Made Basics

### Retroactive date

- For an act to be covered, it must occur on or after the retroactive date.
- The retroactive date should be maintained on any renewal or replacement policy.
- Full prior acts = no retroactive date.

### Extended Reporting Period (ERP)

- a/k/a tail
- An extended period during which claims can be reported
- Some policies include a short, automatic ERP.
- A longer ERP can usually be purchased within a short time after expiration. (e.g. 30 or 60 days)
- The premium for the ERP is typically a percentage of the annual premium.
- The policy limit is not reinstated by the ERP.

109

## Triggering Claims Made Policies

**Step 1.** Was the claim first made during the policy period (or during the extended reporting period)? If no, coverage does not apply. If yes, proceed to Step 2.

**Step 2.** Did the covered act take place on or after the retroactive date? If no, coverage does not apply. If yes, proceed to Step 3.

**Step 3.** Did the covered act take place before the expiration date of the policy? If no, coverage does not apply. If yes, the claims-made policy has been triggered.

110

## Claim #1

An act of the type covered by the policy occurs on 6/1/2020. A claim against the insured is made on 6/1/2021, and the insured immediately reports it to the insurer.

Claims made policies as follows were in place:

- Policy A - Effective 1/1/19-20 – retroactive date of 1/1/19
- Policy B - Effective 1/1/20-21 – retroactive date of 1/1/19
- Policy C - Effective 1/1/21-22 – retroactive date of 1/1/19

Which policy, if any, would respond to the claim? \_\_\_\_\_ Policy C \_\_\_\_\_

**111**

## Claim #2

An act of the type covered by the policy occurs on 8/1/2018. A claim against the insured is made on 6/1/2020, and the insured immediately reports it to the insurer.

Claims made policies as follows were in place:

- Policy A - Effective 1/1/19-20 – retroactive date of 1/1/19
- Policy B - Effective 1/1/20-21 – retroactive date of 1/1/19
- Policy C - Effective 1/1/21-22 – retroactive date of 1/1/19

Which policy, if any, would respond to the claim? \_\_\_\_\_ None \_\_\_\_\_

**112**



### Claim #3

An act of the type covered by the policy occurs on 8/1/2019. The insured's first notice was a summons and complaint on 6/1/2021. The insured immediately reports the claim to the insurer.

Claims made policies as follows were in place:

- Policy A - Effective 1/1/19-20 – retroactive date of 1/1/19
- Policy B - Effective 1/1/20-21 – retroactive date of 1/1/19

Coverage was not renewed or replaced after Policy B expired, but a three-year Extended Reporting Period was purchased.

**113** Which policy, if any, would respond to the claim? Policy B

### Claim #4

An act of the type covered by the policy occurs on 2/1/2019. The insured's first notice was a summons and complaint on 6/1/2019. The insured immediately reports the claim to the insurer.

Claims made policies as follows were in place:

- Policy A - Effective 1/1/17-18 – retroactive date of 1/1/17
- Policy B - Effective 1/1/18-19 – retroactive date of 1/1/17

Coverage was not renewed or replaced after Policy B expired, but a three-year Extended Reporting Period was purchased.

**114** Which policy, if any, would respond to the claim? None

## Claim #5

An act of the type covered by the policy occurs on 8/1/2019. A claim against the insured is made on 6/1/2021, and the insured immediately reports it to the insurer.

Claims made policies as follows were in place:

- Policy A - Effective 1/1/19-20 – retroactive date of 1/1/19
- Policy B - Effective 1/1/20-21 – retroactive date of 1/1/19
- Policy C - Effective 1/1/21-22 – retroactive date of 1/1/21

Which policy, if any, would respond to the claim? None

**115**

## Claims Made and Reported

### Claims Made PLUS

- Claim must be reported to the insurer during the policy period or during an extended period to report loss.

### Potential problems

- Insured delays in reporting the claim to the insurer.
- Claim is made against the insured late in the policy period, giving the insured little or no time to report it to the insurer.
- Suit is filed against the insured during the policy term, but the insured is not served until after the policy has expired.

**116**

## Claims Made and Reported Reporting Windows

### There may not be one

The Company will pay on behalf of the Insured all sums which the Insured shall become legally obligated to pay as Damages for Claims first made against the Insured and reported to the Company in writing during the Policy Period, arising out of any act, error, omission or Personal Injury in the rendering or failure to render Professional Services by an Insured covered under this policy...

### There may be a short one

If a Claim is made against any Insured, the Insured shall give written notice thereof to the Underwriter as soon as practicable and in no event later than thirty (30) days after the expiration of the Policy Period, and shall immediately forward to the Underwriter every demand, notice, summons, complaint, or other process received by any Insured or his/her/its representatives. Compliance with this notice requirement is a strict condition precedent to coverage under this Policy.

117



Department of  
Financial Services

## Claims Made and Reported

A claims-made and reported policy may not be issued in New York except by an unauthorized insurer through an excess line broker.

Claims-made and reported policies thus would violate Regulation 121. Such policies will not be approved by the New York Insurance Department...Authorized insurers are not permitted to write such policies chiefly because of the **risk of gaps in coverage inherent in such policies.**

N.Y. Comp. Codes R. & Regs. tit. 11, Part 73 (2000) (Regulation 121) establishes minimum standards for claims-made insurance policies issued in New York. 11 NYCRR Part 73.1(a) defines a claims-made policy as ". . . an insurance policy that covers liability for injury or damage that the insured is legally obligated to pay (including injury or damage occurring prior to the effective date of the policy, but subsequent to the retroactive date, if any), arising out of incidents, acts or omissions, as long as the claim is first made during the policy period or any extended reporting period."

118

## Claims Made – Continuity

### Continuity date

- The date of the insured's first warranty application for coverage
- Usually coincides with the effective date of the first policy that is written
- The continuity date should be maintained on any renewal or replacement policy.

The Company will not be liable for **Loss** for any **Claim** for any fact, circumstance, situation or event that is or reasonably would be regarded as the basis for a claim about which any **Executive Officer** had knowledge prior to the applicable Continuity Date set forth in ITEM 5 of the Declarations for this **Liability Coverage**.

119

## Continuity – the application

1. If Liability Coverage is currently purchased, but has been in place for less than 3 years, please answer the following question:  
As of the date the **Applicant** first purchased the Liability Coverage, is the **Applicant** or any person proposed for this insurance aware of any fact, circumstance, situation, event or act that reasonably could give rise to a claim being made against them under the Liability Coverage for which the **Applicant** is applying?  
*If Yes, please attach an explanation.* Yes  No
2. If Liability Coverage is not currently purchased, please answer the following question:  
Is the **Applicant**, or any person proposed for this insurance aware of any fact, circumstance, situation, event or act that reasonably could give rise to a claim against them under the Liability Coverage for which the **Applicant** is applying?  
*If Yes, please attach an explanation.* Yes  No
3. If the Requested Limit exceeds the Expiring Limit, please answer the following question:  
Solely with respect to any higher limits requested or that may ultimately be issued for the proposed insurance, is the **Applicant** or any person proposed for this insurance aware of any fact, circumstance, situation, event or act that reasonably could give rise to a claim against them under the Liability Coverage for which the **Applicant** is applying?  
*If Yes, please attach an explanation.* Yes  No

120

## Claims Made – PPL date

### Prior or pending litigation (PPL) date

- There is no coverage for claims that were first made against the insured prior to the PPL date.
- Usually coincides with the effective date of the first policy that is written
- The PPL date should be maintained on any renewal or replacement policy.

The Company will not be liable for **Loss** for any **Claim** based upon or arising out of any fact, circumstance, situation, event or **Wrongful Act** underlying or alleged in any prior or pending civil, criminal, administrative or regulatory proceeding against any **Insured** as of or prior to the applicable Prior and Pending Proceeding Date set forth in ITEM 5 of the Declarations for this **Liability Coverage**.

121

## Prior and Pending Litigation (PPL) Date

Cathy's Candies had an EPLI policy for three years with insurance company A.

The policy had full prior acts coverage and a PPL date of 1/1/2019. In the fourth year, coverage was moved to insurance company B, and the PPL date was advanced to 1/1/2022.

Late in 2021, an employee initiated a lawsuit for discrimination, but Cathy was not made aware of this until she was served with the summons and complaint in early 2022. Because the suit was pending prior to insurer B's PPL date, coverage will not apply under insurer B's policy. Insurer A's policy may also not apply.

122

## What is a Claim?

### Possibilities (EPLI examples)

- Written demand for monetary relief
- Written demand for non-monetary or injunctive relief (e.g. reinstatement of position)
- Civil proceedings commenced by service of a complaint, summons or similar pleading
- Arbitration, mediation, or similar alternative dispute resolution proceedings
- Criminal proceedings
- Administrative or regulatory proceeding for monetary or non-monetary relief against an Insured for a Wrongful Act, which is commenced by receipt of a notice of charges; or a formal administrative, regulatory, adjudicatory or investigative proceeding commenced by the filing of a notice of charge, formal investigative order or similar document; (e.g. EEOC proceeding)
- A written request to toll or waive a statute of limitations
- Others

123

## Incident Reporting (Discovery Provisions)

If an incident is reported, a subsequent claim will be considered as having been made under the policy in effect when the incident was reported.

### SAMPLE LANGUAGE

Solely at the Insured's option, the Insured may within the Policy Period or within the Extended Reporting Period, if purchased, provide us with notice of circumstances that could give rise to a Claim...Such notice shall include the identity of the person(s) involved and the reason the Insured believes a Claim may be made. If such notice is received by us within the Policy Period, or within the Extended Reporting Period, if purchased, then any Claim subsequently arising from such circumstances shall be deemed made on the date such notice was received.

124



## **Thank You For Attending This Program!**

*Catherine Trischan, CIC, CRM, CPCU, ARM, AU, AAI, CRIS, MLIS, TRIP*

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# James K. Ruble Seminar

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

Section 2

# **Contractors Liability Exposures & Coverages**





# **CONTRACTORS' LIABILITY EXPOSURES AND COVERAGES**

Catherine Trischan, CIC, CRM, CPCU, ARM, AU, AAI, CRIS, MLIS, TRIP  
[catherine.trischan@gmail.com](mailto:catherine.trischan@gmail.com)

## Contractors' Liability Exposures And Coverages

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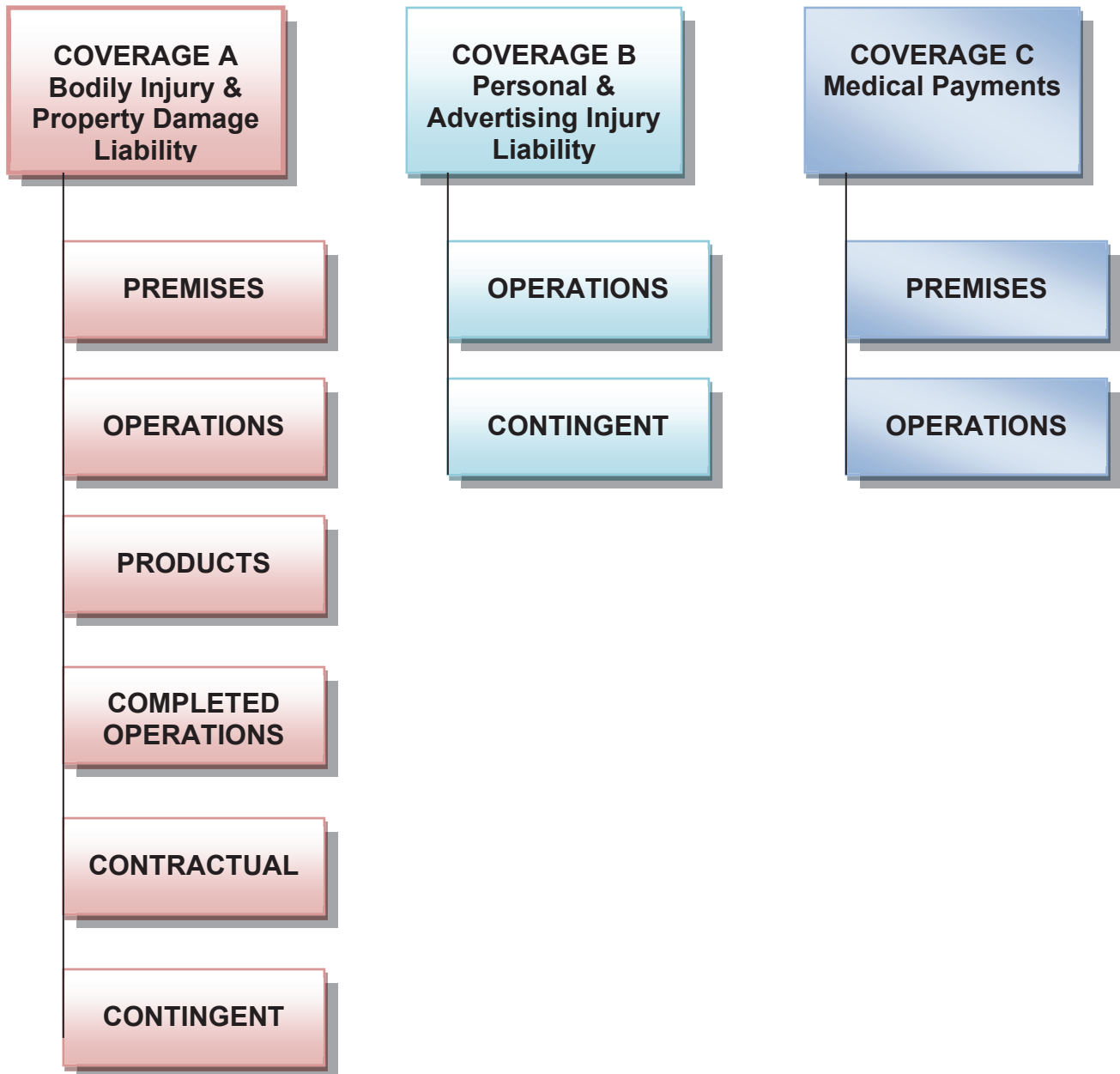
AIA A101 – 2017 Exhibit A (Exhibit A is attached to A201™-2017 General Conditions of the Contract for Construction) © 2017 The American Institute of Architects

### Prohibited Exclusions or Restrictions – AIA 2017 (Article 3 - §A.3.2.2.2 Commercial General Liability)

1. Claims by one insured against another insured, if the exclusion or restriction is based solely on the fact that the claimant is an insured, and there would otherwise be coverage for the claim. **(Insured v. Insured not allowed!)**
2. Claims for property damage to the Contractor's Work arising out of the products-completed operations hazard where the damaged Work or the Work out of which the damage arises was performed by a Subcontractor **(CG 22 94 or CG 22 95 not allowed!)**
3. Claims for bodily injury other than to employees of the insured. **(Excluding employees of any insured prohibited!)**
4. Claims for indemnity under Section 3.18 of the General Conditions arising out of injury to employees of the insured. **(Removing exception to EL exclusion for liability assumed in an "insured contract" not allowed!)**
5. Claims or loss excluded under a prior work endorsement or other similar exclusionary language. **(Prior work limitations not allowed!)**
6. Claims or loss due to physical damage under a prior injury endorsement or similar exclusionary language. **(Exclusions for unknown losses commencing prior to the policy period not allowed!)**
7. Claims related to **residential**, multi-family, or other habitational projects, if the Work is to be performed on such a project.
8. Claims related to **roofing**, if the Work involves roofing.
9. Claims related to exterior insulation finish systems (**EIFS**), synthetic stucco or similar exterior coatings or surfaces, if the Work involves such coatings or surfaces.
10. Claims related to **earth subsidence or movement**, where the work involves such hazards.
11. Claims related to **explosion, collapse, and underground** hazards, where the Work involves such hazards.

**I. OVERVIEW OF COVERAGES PROVIDED - CGL POLICY**

*Section I - Coverages of the Commercial General Liability Coverage Form is divided into three insuring agreements followed by a set of exclusions that apply to that particular insuring agreement.*



II. CGL OCCURRENCE COVERAGE FORM - SECTION I – COVERAGES (CG 00 01 04 13)

A. Coverage A. Bodily Injury And Property Damage Liability

1. Insuring agreement

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:

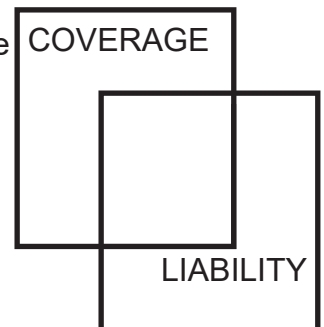
- (1) The amount we will pay for damages is limited as described in Section III – Limits Of Insurance; and
- (2) Our right and duty to defend ends when we have used up the applicable limit of insurance in the payment of judgments or settlements under Coverages A or B or medical expenses under Coverage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

- Outlines insurer's promise to pay - based on insured's **legal obligation**
- Coverage will be subject to the policy terms and conditions.
- Contractual duty of insurer to defend insured extends beyond insured's legal obligation to pay.
  - "Four corners" versus "extrinsic facts"
  - Covered allegations versus uncovered allegations

Is insurer entitled to reimbursement of defense costs for defending uncovered allegations?

- But . . . no possibility or potential for coverage, no defense
- Control of defense/ settlement with insurer
- Amount of insurer's payment limited
  - Payment of judgments
  - Payment of settlements
  - Payment of medical expenses
- Limits types of obligations for which Coverage Form will respond



## Contractors' Liability Exposures And Coverages

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### LET'S LOOK AT FOUR DEFINITIONS

- BODILY INJURY
- PROPERTY DAMAGE
- SUIT
- OCCURRENCE

#### a. Bodily injury defined

3. "Bodily injury" means bodily injury, sickness or disease sustained by a person, including death resulting from any of these at any time.

- Physical harm to the body should be a requirement.
- Might include mental anguish without physical harm

#### b. Property damage defined

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; or
- b. Loss of use of tangible property that is not physically injured. All such loss of use shall be deemed to occur at the time of the "occurrence" that caused it.

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

As used in this definition, electronic data means information, facts or programs stored as or on, created or used on, or transmitted to or from computer software, including systems and applications software, hard or floppy disks, CD-ROMS, tapes, drives, cells, data processing devices or any other media which are used with electronically controlled equipment.

- Stipulates what constitutes property damage
- Direct damage and loss of use (consequential losses) are both included.
- Effectively precludes insurance protection for alleged property damage to any item that is not tangible property
- Specifically states electronic data is not tangible property
  - Exposure(s) for contractor
  - Potential solution(s)
    - ❖ **ELECTRONIC DATA LIABILITY – CG 04 37**

## Contractors' Liability Exposures And Coverages

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### c. Suit defined

**18.** "Suit" means a civil proceeding in which damages because of "bodily injury", "property damage" or "personal and advertising injury" to which this insurance applies are alleged. "Suit" includes:

- a. An arbitration proceeding in which such damages are claimed and to which the insured must submit or does submit with our consent; or
- b. Any other alternative dispute resolution proceeding in which such damages are claimed and to which the insured submits with our consent.

- Clarifies that term includes alternative dispute resolutions that could be required by construction contract

### d. Occurrence defined

**13.** "Occurrence" means an accident, including continuous or repeated exposure to substantially the same general harmful conditions.

- Fortuitous events – may happen over time
- Is construction defect an occurrence?
  - Varies by jurisdiction
  - If faulty workmanship is not an occurrence, the insured has not carried its burden to demonstrate that the claim falls within the insuring agreement – the result of which is no coverage in the CGL Policy - exclusions and exceptions to those exclusions do not create coverage not granted in the first place
  - A few insurers add coverage enhancing endorsement to redefine occurrence.
- Definition of occurrence is important as relates to the application of Limits of Insurance and application of deductibles.



## Contractors' Liability Exposures And Coverages

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NOW BACK  
TO THE  
INSURING  
AGREEMENT

b. This insurance applies to “bodily injury” and “property damage” only if:

- 1) The “bodily injury” or “property damage” is caused by an “occurrence” that takes place in the “coverage territory”; and
- 2) The “bodily injury” or “property damage” occurs during the policy period; and
- 3) Prior to the policy period, no insured listed under Paragraph 1. of Section II - Who Is An Insured and no “employee” authorized by you to give or receive notice of an “occurrence” or claim, knew that the “bodily injury” or “property damage” had occurred, in whole or in part. If such a listed insured or authorized “employee” knew, prior to the policy period, that the “bodily injury” or “property damage” occurred, then any continuation, change or resumption of such “bodily injury” or “property damage” during or after the policy period will be deemed to have been known prior to the policy period.

- Occurrence must take place in a **defined geographic area** - the coverage territory.
- The bodily injury or property damage must occur during the policy period – **does NOT matter when work is done.**
- Known injury or damage exclusion – **(Montrose v. Admiral)**

### Illustration #1

C&S Construction installs a deck on Rich’s house today. The installation is done in a negligent manner – the deck is not properly fastened to the house. Two years after the deck was negligently installed, Rich is seriously injured when the deck collapses. He sues C&S for his BI ONLY (no claim for damage to the deck is made).

- CGL Insurance in effect for C&S:
  - Today (Time Deck is Built) is Travelers
    - \$1,000,000 Each Occurrence Limit
    - January 1<sup>st</sup> to January 1<sup>st</sup> effective dates
  - Two Years Later (When Deck Collapses) is Hartford
    - \$1,000,000 Each Occurrence Limit
    - January 1<sup>st</sup> to January 1<sup>st</sup> effective dates

Who pays for damages caused by the BI to Rich? Why?

## Contractors' Liability Exposures And Coverages

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### Illustration #2

What if it is difficult to determine exactly when BI or PD took place?

- BI or PD may happen over time (progressive, cumulative or continuous injury or damage)
- Does this change the CGL Policy “trigger”?

Courts will determine when BI or PD took place - four “trigger” theories

**Exposure Theory**—The CGL Policy is triggered if it is in effect during *exposure* to injurious or harmful conditions. Primarily used in asbestos cases, this theory considers bodily injury to begin when a person was first exposed to asbestos, usually at the first inhalation of asbestos fibers.

**Manifestation Theory**—The CGL Policy is triggered when the injury or damage is discovered or *manifests* itself (or in some cases is capable of being discovered) during the policy period. That the injury or damage may have been occurring prior to discovery may not be taken into account in this theory.

**Injury-in-Fact Theory**—*All CGL Policies* are triggered if they are in effect during the time the injury or damage is shown to have *actually taken place*, even if the injury or damage continues over time.

**Continuous Trigger Theory**—*All CGL Policies* are triggered if they are in effect during any of the following times: *exposure* to harmful conditions; *actual* injury or damage; and upon and after *manifestation* of the injury or damage.

## Contractors' Liability Exposures And Coverages

### CAUTION!!

Insurer may use non-ISO limitations or exclusionary endorsements such as:

- Prior Work (excludes BI or PD arising out of any prior work)

<b>EXCLUSION – DESIGNATED WORK</b>	
This endorsement modifies insurance provided under the following:	
COMMERCIAL GENERAL LIABILITY COVERAGE PART PRODUCTS/COMPLETED OPERATIONS LIABILITY COVERAGE PART	
<b>SCHEDULE</b>	
Description of your work:	
Any operations started prior to xx/xx/xxxx	
<small>(If no entry appears above, information required to complete this endorsement will be shown in the Declarations as applicable to this endorsement.)</small>	
<small>This insurance does not apply to "bodily injury" or "property damage" included in the "products-completed operations hazard" and arising out of "your work" shown in the Schedule.</small>	
CG 21 34 01 87	

- Exclusion for progressive injury or damage

If BI or PD *commences* prior to policy period, whether or not known to any insured, BI or PD is excluded.)

<b>Sample Language</b>	
The following exclusion is added to the policy:	
This insurance does not apply to:	
(1) Any "bodily injury" or "property damage," whether such "bodily injury" or "property damage" is known or unknown:	
(a) Which first occurred prior to the inception date of this policy (or the retroactive date of this policy, if any, whichever is earlier); or	
(b) Which is, or alleged to be, in the process of occurring at the inception date of the policy (or the retroactive date of this policy, if any, whichever is earlier) even if the "occurrence" continues during this policy period.	
(2) Any "bodily injury" or "property damage," whether known or unknown, which is in the process of settlement, adjustment or "suit" as of the inception date of this policy (or the retroactive date of this policy, if any, whichever is earlier).	
"Bodily injury" or "property damage" which first occurs during this policy period includes any continuation, change or resumption of that "bodily injury" or "property damage" after the end of this policy period.	
We have no duty to either defend or indemnify any Insured for any claim or "suit" to which this exclusion applies.	

## Contractors' Liability Exposures And Coverages

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### ➤ First Manifestation endorsement

CGL Policy responds only to BI or PD that first manifests itself during policy period.

#### Sample Language

This insurance applies to "bodily injury" and "property damage" only if:

- 1) The "bodily injury" or "property damage" is caused by an "occurrence" that takes place in the "coverage territory"; and
- 2) The "bodily injury" or "property damage" first manifests during the policy period.

### ➤ Non-Cumulation Endorsement

Limits policy to pay limit once even if multiple policies are triggered

#### Sample Language

##### CLARIFICATION ENDORSEMENT (Non-Cumulation Clause)

##### HOW MUCH *WE* PAY FOR LOSS OR CLAIM

For the purpose of determining *our* limit of liability, all *bodily injury* and/or *property damage* arising out of continuous or repeated exposure to substantially the same general condition(s) shall be considered as arising out of one *occurrence*.

1. The limit of liability stated on the Declarations page, the Supplemental Declarations page or attached endorsements and the conditions set forth below fix the maximum amounts *we* will pay for loss regardless of the number of:
  - a. persons insured under this policy;
  - b. persons or organizations who sustain *bodily injury* and/or *property damage*;
  - c. claims made or *suits* brought; or
  - d. number of policies.

## Contractors' Liability Exposures And Coverages

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### MORE ON THE INSURING AGREEMENT

c. "Bodily injury" or "property damage" which occurs during the policy period and was not, prior to the policy period, known to have occurred by any insured listed under Paragraph 1. of Section II – Who Is An Insured or any "employee" authorized by you to give or receive notice of an "occurrence" or claim, includes any continuation, change or resumption of that "bodily injury" or "property damage" after the end of the policy period.

- Sets forth the applicability when injury or damage that occurs during the policy period and was not, prior to the policy period, known to have occurred, continues, changes or resumes after the end of the policy period
- Applicability for contractor example

### MORE ON THE INSURING AGREEMENT

d. "Bodily injury" or "property damage" will be deemed to have been known to have occurred at the earliest time when any insured listed under Paragraph 1. of Section II - Who Is An Insured or any "employee" authorized by you to give or receive notice of an "occurrence" or claim:

- 1) Reports all, or any part, of the "bodily injury" or "property damage" to us or any other insurer;
- 2) Receives a written or verbal demand or claim for damages because of the "bodily injury" or "property damage"; or
- 3) Becomes aware by any other means that "bodily injury" or "property damage" has occurred or has begun to occur.

- Delineates the circumstances under which any insured designated in paragraph b.3) will be deemed to know that bodily injury or property damage had occurred or had begun to occur

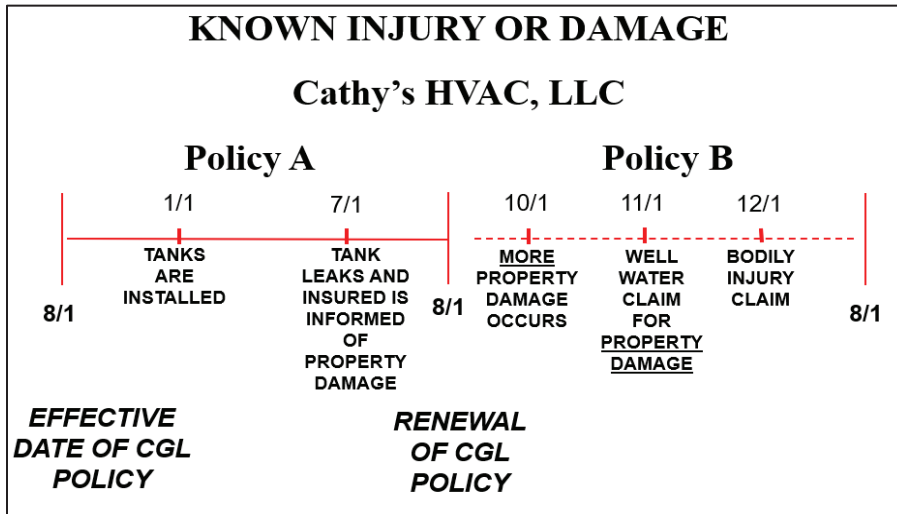
## Contractors' Liability Exposures And Coverages

### Montrose Chemical Corp. v. Admiral Insurance Co., 913 P2d 878

- Montrose manufactured pesticides from 1947-1982 in Torrance CA and deposited chemical waste at Stringfellow acid pits, a state-licensed hazardous waste disposal site.
- EPA notified Montrose it was a “potentially responsible party” (PRP) at Stringfellow for responding to contamination – seeping into the surrounding soil, ground water, and surface water.
- Six weeks later, Montrose purchased the first of 4 one-year CGL Policies from Admiral Insurance.
- Montrose was later sued; there were several claims of BI and PD.
- Montrose tendered lawsuits to Admiral to defend and indemnify.
- Admiral denied coverage for duty to defend or indemnify based on the loss in progress rule it believed applicable.
- Montrose sued Admiral – what constitutes a loss under a liability policy?
- The position taken by a majority of jurisdictions is that the relevant loss in the third-party context is the insured's actual liability, not the underlying damage that results in the insured's liability.
- Montrose Court began its analysis by noting that “insurance” is defined as a “contract whereby one undertakes to indemnify another against loss, damage, or liability arising from a contingent or unknown event”.
  - Thus, even if an insured knows of potential, or even inevitable, damage, the insured still has an insurable risk at policy inception as long as there is some contingency.
- In the context of liability insurance, the loss in progress rule will NOT defeat coverage for a claimed loss where it has yet to be established at the time the insurer entered into the contract of insurance with the policyholder that the insured had a legal obligation to pay damages to a third party in connection with a loss. The EPA only stated “potentially responsible party.”
- The Montrose Court hinted at the fact that its loss in progress analysis would change if the policy at issue contained an express exclusionary clause which barred coverage for losses arising from any known pre-existing condition.
- So, Insurance Services Office (ISO), inserted known injury or damage wording into the CGL Policy via CG 00 57 09 99.

## Contractors' Liability Exposures And Coverages

### Which Policy Responds?



MORE ON  
THE  
INSURING  
AGREEMENT

e. Damages because of "bodily injury" include damages claimed by any person or organization for care, loss of services or death resulting at any time from the "bodily injury".

- Claims by third parties for care, loss of services or death will be included in definition of bodily injury.

## Contractors' Liability Exposures And Coverages

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### ANOTHER DEFINITION

#### e. Coverage territory defined

##### 4. "Coverage territory" means:

- a. The United States of America (including its territories and possessions), Puerto Rico and Canada;
- 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 parts of the world if the injury or damage arises out of:
  - 1) Goods or products made or sold by you in the territory described in Paragraph **a.** above;
  - 2) The activities of a person whose home is in the territory described in Paragraph **a.** above, but is away for a short time on your business; or
  - 3) "Personal and advertising injury" offenses that take place through the Internet or similar electronic means of communication

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

- Outlines where the occurrence must take place for coverage to apply
- Specifies the jurisdiction in which a suit must take place



## Contractors' Liability Exposures And Coverages

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2. Watch for endorsements that limit the scope of the insuring agreement.
  - a. **CG 21 53 – EXCLUSION - DESIGNATED ONGOING OPERATIONS**
  - b. **CG 21 34 – EXCLUSION - DESIGNATED WORK**
    - This is used by some insurers as a prior work exclusion
  - c. Non-standard forms
    - 1) **DESIGNATED OPERATIONS – COVERAGE LIMITATION**

### Sample Language

The “bodily injury” or “property damage” is caused by or results from the business described in the Schedule.....This insurance applies to “personal and advertising injury” caused by an offense in the course of the business described in the Schedule.

### 2) **DESIGNATED CLASSIFICATIONS – COVERAGE LIMITATION**

### Sample Language

Coverage under this contract is strictly limited to the classification(s) and code(s) listed on the policy Declarations page. No coverage is provided for any classification(s) and code(s) not specifically listed on the Declarations page of this policy.

## Contractors' Liability Exposures And Coverages

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3. Selected exclusions applicable to bodily injury and/or property damage

### 2. Exclusions

This insurance does not apply to:

*(exclusions narrow and shape the coverage to be provided)*

#### a. Employer's Liability exclusion

This insurance does not apply to:

##### e. Employer's Liability

"Bodily injury" to:

- (1) An "employee" of the insured arising out of and in the course of:
  - (a) Employment by the insured; or
  - (b) Performing duties related to the conduct of the insured's business; or
- (2) The spouse, child, parent, brother or sister of that "employee" as a consequence of Paragraph (1) above.

This exclusion applies whether the insured may be liable as an employer or in any other capacity and to any obligation to share damages with or repay someone else who must pay damages because of the injury.

**This exclusion does not apply to liability assumed by the insured under an "insured contract".**

#### i. Third-party over-action claim

- Subcontractor's employee is injured and files a WC claim.
- Subcontractor's employee sues the general contractor (GC) in tort.
- GC looks to the subcontractor for indemnification as promised in the contract.
  - There is coverage for the subcontractor as respects the indemnification because of the "insured contract" exception.
- And/or GC tenders the claim to subcontractor's CGL insurer because GC has been added as additional insured.

## Contractors' Liability Exposures And Coverages

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- There is coverage for the GC because the subcontractor's employee is not the GC's employee.
- Separation of Insureds condition

ii. Watch out for

- Any insured vs. any insured cross suits exclusions

**Sample Language**

This insurance does not apply to:  
Any claim or "suit" for damages by any insured  
against another insured.

- Modifications of the Employer's Liability exclusion

**Sample Language**

This insurance does not apply to:

"Bodily injury" to:

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

This exclusion applies...to any liability assumed under any contract or agreement.

b. **Pollution exclusion**

**NOTE: CG 21 49 – TOTAL POLLUTION EXCLUSION may be attached and none of the standard exceptions will apply.**

- Coverage provided for contractor must be read in context of CGL Policy, taking into account all other terms and conditions, including other exclusions.
- Some insurers add additional exclusions for pollutants such as asbestos, lead, silica and others.
- Can we, at a minimum, obtain an exception for hostile fire?

## Contractors' Liability Exposures And Coverages

This insurance does not apply to:

### f. Pollution

- (1) "Bodily injury" or "property damage" arising out of the actual, alleged or threatened discharge, dispersal, seepage, migration, release or escape of "pollutants":
  - (a) At or from any premises, site or location which is or was at any time owned or occupied by, or rented or loaned to, any insured. However, this subparagraph does not apply to:
    - (i) "Bodily injury" if sustained within a building and caused by smoke, fumes, vapor or soot produced by or originating from equipment that is used to heat, cool or dehumidify the building, or equipment that is used to heat water for personal use, by the building's occupants or their guests;
    - (ii) "Bodily injury" or "property damage" for which you may be held liable, if you are a contractor and the owner or lessee of such premises, site or location has been added to your policy as an additional insured with respect to your ongoing operations performed for that additional insured at that premises, site or location and such premises, site or location is not and never was owned or occupied by, or rented or loaned to, any insured, other than that additional insured; or
    - (iii) "Bodily injury" or "property damage" arising out of heat, smoke or fumes from a "hostile fire";
  - (b) At or from any premises, site or location which is or was at any time used by or for any insured or others for the handling, storage, disposal, processing or treatment of waste;
  - (c) Which are or were at any time transported, handled, stored, treated, disposed of, or processed as waste by or for:
    - (i) Any insured; or
    - (ii) Any person or organization for whom you may be legally responsible; or
  - (d) At or from any premises, site or location on which any insured or any contractors or subcontractors working directly or indirectly on any insured's behalf are performing operations if the "pollutants" are brought on or to the premises, site or location in connection with such operations by such insured, contractor or subcontractor. However, this subparagraph does not apply to:
    - (i) "Bodily injury" or "property damage" arising out of the escape of fuels, lubricants or other operating fluids which are needed to perform the normal electrical, hydraulic or mechanical functions necessary for the operation of "mobile equipment" or its parts, if such fuels, lubricants or other operating fluids escape from a vehicle part designed to hold, store or receive them. This exception does not apply if the "bodily injury" or "property damage" arises out of the intentional discharge, dispersal or release of the fuels, lubricants or other operating fluids, or if such fuels, lubricants or other operating fluids are brought on or to the premises, site or location with the intent that they be discharged, dispersed or released as part of the operations being performed by such insured, contractor or subcontractor;
    - (ii) "Bodily injury" or "property damage" sustained within a building and caused by the release of gases, fumes or vapors from materials brought into that building in connection with operations being performed by you or on your behalf by a contractor or subcontractor; or
    - (iii) "Bodily injury" or "property damage" arising out of heat, smoke or fumes from a "hostile fire".
    - (e) At or from any premises, site or location on which any insured or any contractors or subcontractors working directly or indirectly on any insured's behalf are performing operations if the operations are to test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to, or assess the effects of, "pollutants".
- (2) Any loss, cost or expense arising out of any:
  - (a) Request, demand, order or statutory or regulatory requirement that any insured or others test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to, or assess the effects of, "pollutants"; or
  - (b) Claim or "suit" by or on behalf of a governmental authority for damages because of testing for, monitoring, cleaning up, removing, containing, treating, detoxifying or neutralizing, or in any way responding to, or assessing the effects of, "pollutants".However, this paragraph does not apply to liability for damages because of "property damage" that the insured would have in the absence of such request, demand, order or statutory or regulatory requirement, or such claim or "suit" by or on behalf of a governmental authority.

## Contractors' Liability Exposures And Coverages

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

- What is considered a pollutant varies among jurisdictions.
- Has been argued by insureds to be ambiguous

7. "Hostile fire" means one which becomes uncontrollable or breaks out from where it was intended to be .

- As contrasted with a "friendly fire"

### PREMISES GENERAL RULE

No coverage for BI/PD arising out of pollutants at or from premises that are or were an insured's

- **EXCEPTION - coverage provided** for bodily injury if sustained within a building and caused by smoke fumes, vapor or soot from building heating, cooling, dehumidifying, water heating equipment
- **EXCEPTION - coverage provided** if named insured is a contractor and pollution exclusion only applies because of adding "owner" of premises as additional insured to contractor's policy
- **EXCEPTION - coverage provided** for heat, smoke or fumes from a hostile fire (**BOTH PREMISES & OPERATIONS**)

### OPERATIONS GENERAL RULE

No coverage for BI/PD arising out of pollutants at or from a site where operations are being performed

- **EXCEPTION - coverage provided** for accidental release if insured does not bring the pollutant to the site
- **EXCEPTION - coverage provided** for accidental escape of fuels, lubricants or other operating fluids related to the operation of mobile equipment
- **EXCEPTION - coverage provided** for release of gases, fumes or vapors from materials brought into that building in connection with operations
- **EXCEPTION - coverage provided** by inferred exception for most products - completed operations exposures

## Contractors' Liability Exposures And Coverages

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- Excludes premises and operations involving treatment and disposal of waste
- Excludes operations of environmental contractors
- Excludes cleanup costs arising out of regulatory requirements or claims by governmental authority for damages (unless expense is part of covered PD)
- Endorsements may apply.

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

#### **PESTICIDE OR HERBICIDE APPLICATOR – LIMITED POLLUTION COVERAGE**

This endorsement modifies insurance provided under the following:  
COMMERCIAL GENERAL LIABILITY COVERAGE PART  
**SCHEDULE**

##### **Description Of Operations:**

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**

#### **LAWN CARE SERVICES – LIMITED POLLUTION COVERAGE**

This endorsement modifies insurance provided under the following:  
COMMERCIAL GENERAL LIABILITY COVERAGE PART

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.

## Contractors' Liability Exposures And Coverages

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### c. Aircraft, auto or watercraft exclusion

This insurance does not apply to:

#### g. Aircraft, Auto Or Watercraft

"Bodily injury" or "property damage" arising out of the ownership, maintenance, use or entrustment to others of any aircraft, "auto" or watercraft owned or operated by or rented or loaned to any insured. Use includes operation and "loading or unloading".

This exclusion applies even if the claims against any insured allege negligence or other wrongdoing in the supervision, hiring, employment, training or monitoring of others by that insured, if the "occurrence" which caused the "bodily injury" or "property damage" involved the ownership, maintenance, use or entrustment to others of any aircraft, "auto" or watercraft that is owned or operated by or rented or loaned to any insured.

This exclusion does not apply to:

- (1) A watercraft while ashore on premises you own or rent;
- (2) A watercraft you do not own that is:
  - (a) Less than 26 feet long; and
  - (b) Not being used to carry persons or property for a charge;
- (3) Parking an "auto" on, or on the ways next to, premises you own or rent, provided the "auto" is not owned by or rented or loaned to you or the insured;
- (4) Liability assumed under any "insured contract" for the ownership, maintenance or use of aircraft or watercraft; or
- (5) "Bodily injury" or "property damage" arising out of:
  - (a) The operation of machinery or equipment that is attached to, or part of, a land vehicle that would qualify under the definition of "mobile equipment" if it were not subject to a compulsory or financial responsibility law or other motor vehicle insurance law where it is licensed or principally garaged; or
  - (b) The operation of any of the machinery or equipment listed in Paragraph **f.(2)** or **f.(3)** of the definition of "mobile equipment".

#### 1) Auto defined

#### 2. "Auto" means:

- a. A land motor vehicle, trailer or semitrailer designed for travel on public roads, including any attached machinery or equipment; or
- b. Any other land vehicle that is subject to a compulsory or financial responsibility law or other motor vehicle insurance law where it is licensed or principally garaged.

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

## Contractors' Liability Exposures And Coverages

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- The requirement "designed for travel on public roads" helps to differentiate autos from other land motor vehicles.
- Definition includes any attached machinery or equipment.
- Excludes loss arising out of ownership, maintenance, use or entrustment to others of ***specific*** aircraft, "auto" or watercraft. The exclusion applies when the aircraft, "auto" or watercraft is owned or operated by or rented or loaned to any insured.
- **EXCEPTION - coverage provided** for a watercraft while ashore on premises the named insured owns or rents
- **EXCEPTION - coverage provided** for "non-owned watercraft liability" less than 26 ft. long and not used to carry persons or property for a charge
- **EXCEPTION - coverage provided** for liability (not physical damage) for valet parking on or on the ways next to the insured's premises - with limitations
- **EXCEPTION - coverage provided** for liability assumed under an "insured contract" for ownership, maintenance or use of aircraft or watercraft
- **EXCEPTION - coverage provided** for liability for the operation (not locomotion) of vehicles that are autos only because they are subject to financial responsibility and for machinery in f.2 and f.3 of the mobile equipment definition
- **EXCEPTION - coverage provided** by inferred exception for the vicarious liability that may result for the operation of an automobile by an independent contractor who has NOT been named as an additional insured
  - Watch for absolute auto exclusions! e.g.

**1. SECTION I - COVERAGES, COVERAGE A. BODILY INJURY AND PROPERTY DAMAGE LIABILITY, 2. Exclusions, paragraph g. is deleted and replaced with the following:**

**g. Aircraft, Auto or Watercraft**

"Bodily injury" or "property damage" arising out of the ownership, maintenance, use of entrustment to others of any aircraft, "auto" or watercraft. Use includes operation and "loading or unloading" which includes the handling and placing of persons by an insured into, onto or from an "auto".

This exclusion applies even if the claims against any insured allege negligence or other wrongdoing in the supervision, hiring, employment, training or monitoring of others by that insured, if the "occurrence" which caused the "bodily injury" or "property damage" involved the ownership, maintenance, use or entrustment to others of any aircraft, "auto" or watercraft.



## Contractors' Liability Exposures And Coverages

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- Liability resulting from the operation of "autos" is primarily the subject of the Business Auto Coverage Form.

**What about contractor who puts a blade on the front of truck to "push" snow in the winter? Completed operations exposure?**

CG 22 92

### **SNOW PLOW OPERATIONS COVERAGE**

This endorsement modifies insurance provided under the following:

#### **COMMERCIAL GENERAL LIABILITY COVERAGE PART**

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.

- Watch for carrier endorsements that specifically restrict coverage for snow removal activities.

### **Sample Language**

#### **Snow and Ice Removal Exclusion**

This insurance does not apply to "bodily injury", "property damage" or "personal and advertising injury" arising out of snow and ice removal activities that are performed for others by the insured or by any contractors or subcontractors working on the insured's behalf. Snow and Ice Removal includes but is not limited to: snow plowing, snow blowing, snow or ice clearing, shoveling or salting, by any means whether mechanical or by hand.

**What about contractor who owns a drone or has an independent contractor operate a drone on behalf of the contractor?**

**CAUTION: CG 21 09 – EXCLUSION – UNMANNED AIRCRAFT** - eliminates coverage altogether for the ownership, maintenance, use, or entrustment to others of any aircraft that is an "unmanned aircraft" - exclusion also applies to the use of unmanned aircraft by a contractor engaged by the named insured that is not itself an insured under the CGL Policy – exclusion applies to any liability assumed under contract – adds an exclusion to Coverage B - Personal And Advertising Injury Liability for unmanned aircraft

## Contractors' Liability Exposures And Coverages

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### 2) Mobile equipment defined

- 12.** "Mobile equipment" means any of the following types of land vehicles, including any attached machinery or equipment:
- a.** Bulldozers, farm machinery, forklifts and other vehicles designed for use principally off public roads;
  - b.** Vehicles maintained for use solely on or next to premises you own or rent;
  - c.** Vehicles that travel on crawler treads;
  - d.** Vehicles, whether self-propelled or not, maintained primarily to provide mobility to permanently mounted:
    - (1)** Power cranes, shovels, loaders, diggers or drills; or
    - (2)** Road construction or resurfacing equipment such as graders, scrapers or rollers;
  - e.** Vehicles not described in Paragraph **a.**, **b.**, **c.** or **d.** above that are not self-propelled and are maintained primarily to provide mobility to permanently attached equipment of the following types:
    - (1)** Air compressors, pumps and generators, including spraying, welding, building cleaning, geophysical exploration, lighting and well servicing equipment; or
    - (2)** Cherry pickers and similar devices used to raise or lower workers;
  - f.** Vehicles not described in Paragraph **a.**, **b.**, **c.** or **d.** above maintained primarily for purposes other than the transportation of persons or cargo.

## Contractors' Liability Exposures And Coverages

### THESE ARE AUTOS:

(BAP for both locomotion & operations) f.(1)

### THESE ARE AUTOS:

(BAP for locomotion – operations CGL by exception to CGL exclusion) f.(2)

### THESE ARE AUTOS:

(BAP for locomotion – operations CGL by exception to CGL exclusion) f.(3)

### THESE ARE AUTOS:

(BAP for locomotion – operations CGL by exception to CGL exclusion) – **ending paragraph**

However, self-propelled vehicles with the following types of permanently attached equipment are not "mobile equipment" but will be considered "autos":

#### (1) Equipment designed primarily for:

(a) Snow removal;

(b) Road maintenance, but not construction or resurfacing; or

(c) Street cleaning;

(2) Cherry pickers and similar devices mounted on automobile or truck chassis and used to raise or lower workers; and

(3) Air compressors, pumps and generators, including spraying, welding, building cleaning, geophysical exploration, lighting and well servicing equipment.

However, "mobile equipment" does not include any land vehicles that are subject to a compulsory or financial responsibility law or other motor vehicle insurance law where it is licensed or principally garaged. Land vehicles subject to a compulsory or financial responsibility law or other motor vehicle insurance law are considered "autos".

- Definition of "mobile equipment" excludes certain types of vehicles that will be considered "autos."
- Locomotion/operations exposure of paragraph f.(1) must be covered under Business Auto Coverage Form
- Locomotion exposure of paragraphs f.(2.) and f.(3.) must be covered under Business Auto Coverage Form. By specific exception [paragraph (5)] of the aircraft, auto or watercraft exclusion, "bodily injury" or "property damage" arising out of the operation of any of the equipment listed in paragraph f.(2) or f.(3) of the definition of "mobile equipment" is covered under the CGL Coverage Form.
- Locomotion must be covered under Business Auto Coverage Form. By specific exception [paragraph (5)] of the aircraft, auto or watercraft exclusion, "bodily injury" or "property damage" arising out of the operations exposure of "autos" that would otherwise qualify as "mobile equipment" is covered under CGL.

3) Loading or unloading defined

## Contractors' Liability Exposures And Coverages

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### d. Mobile equipment exclusion

This insurance does not apply to:

#### h. Mobile Equipment

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

- (1) The transportation of "mobile equipment" by an "auto" owned or operated by or rented or loaned to any insured; or
- (2) The use of "mobile equipment" in, or while in practice for, or while being prepared for, any prearranged racing, speed, demolition, or stunting activity.

- The liability coverage for the transportation of "mobile equipment" by an "auto" owned or operated by or rented or loaned to any insured should be the subject of the Business Auto Coverage Form.
- **EXCEPTION - coverage provided** by inferred exception for legal liability of the insured for damages for bodily injury or property damage caused by the mobile equipment as a result of the transportation of the mobile equipment on an automobile of an independent contractor
- The use of mobile equipment in, or while in practice for, or while being prepared for extra-hazardous activities is excluded; a special events policy may be needed.

## Contractors' Liability Exposures And Coverages

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### e. Damage to property exclusion

This insurance does not apply to:

#### j. Damage To Property

"Property damage" to:

- (1) Property you own, rent, or occupy, including any costs or expenses incurred by you, or any other person, organization or entity, for repair, replacement, enhancement, restoration or maintenance of such property for any reason, including prevention of injury to a person or damage to another's property;
- (2) Premises you sell, give away or abandon, if the "property damage" arises out of any part of those premises;
- (3) Property loaned to you;
- (4) Personal property in the care, custody or control of the insured;
- (5) That particular part of real property on which you or any contractors or subcontractors working directly or indirectly on your behalf are performing operations, if the "property damage" arises out of those operations; or
- (6) That particular part of any property that must be restored, repaired or replaced because "your work" was incorrectly performed on it.

Paragraphs (1), (3) and (4) of this exclusion do not apply to "property damage" (other than damage by fire) to premises, including the contents of such premises, rented to you for a period of 7 or fewer consecutive days. A separate limit of insurance applies to Damage To Premises Rented To You as described in Section III – Limits Of Insurance.

Paragraph (2) of this exclusion does not apply if the premises are "your work" and were never occupied, rented or held for rental by you.

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

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

## Contractors' Liability Exposures And Coverages

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- Only property damage is excluded.
- Many of the excluded exposures are more appropriately handled by the use of property or inland marine coverage.
- Some exposures such as property damage to alienated premises and faulty workmanship are not supposed to be the subject of this insurance.
- **EXCEPTION - coverage provided** for property damage to premises, including the contents of such premises, rented to the named insured on a short-term basis (7 days or fewer,) subject to a separate limit
- **EXCEPTION - exclusion does not apply** for property damage for a speculative builder who does not occupy, rent or hold for rental his/her work – **Exclusion - Damage To Your Work** may still apply
- **EXCEPTION - coverage provided** for contractual liability for property damage under a sidetrack agreement
- **EXCEPTION - coverage provided** for “broad form property damage” for real property while operations are in progress
  - Note: The phrase “broad form property damage,” although it often appears as a contract requirement, has not appeared in ISO CGL forms since the mid-1980s.
  - What is “that particular part”?
- **EXCEPTION** – j.6 does **not apply to** "products-completed operations hazard"; **Exclusion – Damage To Your Work** may apply
- **EXCEPTION - coverage provided** for resulting damage for faulty workmanship while operations are in progress

### What is “that particular part”?

#### Illustration:

A general contractor has been engaged by the owner to build a school building. During the construction itself (but after the gymnasium floor has been finished), an excavation subcontractor (engaged by the GC) blocks several drains during the grading. During heavy rains, water backed up and flooded the gymnasium floor, causing heavy water

## Contractors' Liability Exposures And Coverages

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damage. The owner demands replacement of the gymnasium floor – the GC tenders the owner's claim to its CGL Policy insurer.

The GC's CGL Policy insurer denies coverage for the GC's liability to replace the gymnasium floor – citing exclusions J(5) and J(6).

The insurer contends the *entire school* was “that particular part” from the perspective of the General Contractor and thus excluded for the property damage. Is this correct?

### ***Mid-Continent Casualty Co. v. JHP Development, Inc. 557 F.3d 207 (5<sup>th</sup> Circuit 2007)***

#### **The exclusion (j.6) applies only to the subject of incorrectly performed work**

The plain meaning of the exclusion—property damage to “[t]hat particular part of any property that must be restored, repaired or replaced because ‘your work’ was incorrectly performed on it”—is that property damage only to parts of the property that were themselves the subjects of the defective work is excluded.

This becomes clear when the exclusion is broken down into its component requirements: the “particular part” referred to is the part of the property that (1) must be restored, repaired or replaced (2) because the insured's work was incorrectly performed on it. The second requirement makes clear that the “particular part” of the property must have been the subject of incorrectly performed work.

The narrowing “that particular part” language is used to distinguish the damaged property that was itself the subject of the defective work from other damaged property that was either the subject of non-defective work by the insured or that was not worked on by the insured at all.

“If work on any part of a property would leave an insured exposed for damages to the entire property, the exclusion should state: ‘Property damage to property that must be restored, repaired or replaced because your work was incorrectly performed on any part of it.’” (Mid-Continent court cited its previous ruling in *Gore Design Completions, Ltd. v. Hartford Fire Insurance Co.*, 538 F.3d 365 (5th Cir.2008))

### ***Transportation Insurance Co. v. Piedmont Construction Group, LLC 686 S.E. 824 (Ga. Ct. App. 2009)***

#### **The exclusions (j.5 and j.6) apply to the entire project – but only to the Work within contract**

Bearing these principles in mind, the trial court correctly concluded that the term “that particular part” in the exclusions referred not to Browning Hall as a whole, but “only to the room and the plumbing on which [the sub-contractor] was working prior to the fire starting. Thus, the court interprets the phrase to mean that Room 143 and the

## Contractors' Liability Exposures And Coverages

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plumbing are 'that particular part' of Browning Hall (which constitutes the whole) on which the work was being performed." The trial court continued:

[T]he damage to the rest of the building clearly resulted from an unpredictable business accident that consequently created additional work outside the original contractual obligations.

- Some insurers provide a small amount of coverage for claims that might otherwise be excluded under j.4, j.5. and/or j.6

### Sample Language

#### PROPERTY DAMAGE CARE, CUSTODY OR CONTROL

The following is added to Exclusion j. under SECTION I — COVERAGE A BODILY INJURY AND PROPERTY DAMAGE LIABILITY: Paragraphs (4) and (5) do not apply for the limited purpose of providing the coverage and sub-limits of liability as set forth below. We will pay those sums that the insured becomes legally obligated to pay as damages arising out of "property damage" to:

- (1) Personal property in the care, custody or control of the insured; and
- (2) That particular part of real property on which you or any contractors or subcontractors working directly or indirectly on your behalf are performing operations, if the "property damage" arises out of those operations.

The most we will pay under (1) and (2) above in any one "occurrence" or for all damages during any one policy period is a sub-limit of \$100,000.

### Sample Language

#### OFF PREMISES PROPERTY DAMAGE INCLUDING CARE, CUSTODY OR CONTROL

Subparagraph j.(4) of Paragraph 2., Exclusions of Section I - Coverage A - Bodily Injury And Property Damage Liability is replaced with the following:

- (4) Personal property of others in the care, custody, or control of an insured at premises owned, occupied by, or rented to an insured;

Subparagraphs j.(5) and (6) of Paragraph 2., Exclusions of Section I - Coverage A - Bodily Injury And Property Damage Liability are deleted.

Note: A sublimit of \$25,000 applies.



## Contractors' Liability Exposures And Coverages

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### 1) Products-completed operations hazard defined

#### 16. "Products-completed operations hazard":

a. Includes all "bodily injury" and "property damage" occurring *away from premises* you own or rent and arising out of "your product" or "your work" except:

- First requirement is that the bodily injury and property damage must occur away from premises the named insured owns or rents.

(1) Products that are still in your physical possession; or  
(2) Work that has not yet been completed or abandoned. However, "your work" will be deemed completed at the earliest of the following times:

- (a) When all of the work called for in your contract has been completed.
- (b) When all of the work to be done at the job site has been completed if your contract calls for work at more than one job site.
- (c) When that part of the work done at a job site has been put to its intended use by any person or organization other than another contractor or subcontractor working on the same project.

Work that may need service, maintenance, correction, repair or replacement, but which is otherwise complete, will be treated as completed.

- Exception applies for products still in physical possession of the named insured or work that has not been completed or abandoned.
- This paragraph also delineates between premises-operations and products-completed operations by establishing the circumstances under which the named insured's work will be considered completed.

## Contractors' Liability Exposures And Coverages

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**b.** Does not include "bodily injury" or "property damage" arising out of:

- (1)** The transportation of property, unless the injury or damage arises out of a condition in or on a vehicle not owned or operated by you, and that condition was created by the "loading or unloading" of that vehicle by any insured;
- (2)** The existence of tools, uninstalled equipment or abandoned or unused materials; or
- (3)** Products or operations for which the classification, listed in the Declarations or in a policy schedule, states that products-completed operations are subject to the General Aggregate Limit.

- Outlines situations that, by definition, will not be considered part of the products-completed operations hazard

**f. Damage to your work exclusion**

- 1) Your work defined

## Contractors' Liability Exposures And Coverages

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### 22. "Your work":

#### a. Means:

- (1) Work or operations performed by you or on your behalf; and
- (2) Materials, parts or equipment furnished in connection with such work or operations.

#### b. Includes:

- (1) Warranties or representations made at any time with respect to the fitness, quality, durability, performance or use of "your work", and
- (2) The providing of or failure to provide warnings or instructions.

- Includes work performed by some other person or organization on behalf of the named insured
- Includes both express and implied warranties

This insurance does not apply to:

### I. **Damage To Your Work**

"Property damage" to "your work" arising out of it or any part of it and included in the "products-completed operations hazard".

This exclusion does not apply if the damaged work or the work out of which the damage arises was performed on your behalf by a subcontractor.

- Only applies to property damage
- Aimed at eliminating from coverage any protection for damage to defective work of contractors or service providers
- **EXCEPTION - coverage provided** for the named insured if the damaged work **OR** the work out of which the damage arises was performed on behalf of the named insured by a subcontractor

Assumptions:

- ❖ The insured is legally liable; and
- ❖ The loss is an occurrence of property damage in the jurisdiction.

- Property damage to the work of a subcontractor resulting

## Contractors' Liability Exposures And Coverages

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### Claim #1

Assumption: The loss is an occurrence of property damage for which the insured is legally liable.

Residential home builder builds a house and does all of the work himself, except for the electrical system and the heating system, which were performed by two separate subcontractors. Two years after the house is sold, a problem with the electrical system causes the house to burn to the ground.

What's covered under the builder's CGL?

### Claim #2

Assumption: The loss is an occurrence of property damage for which the insured is legally liable.

Residential home builder builds a house and does all of the work himself, except for the electrical system and the heating system, which were performed by two separate subcontractors. Two years after the house is sold, a problem with the foundation causes the house to collapse, completely destroying it.

What's covered under the builder's CGL?

- **EXCLUSION ADDED BY ENDORSEMENT – DAMAGE TO WORK PERFORMED BY SUBCONTRACTORS ON YOUR BEHALF – CG 22 94**

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

This endorsement modifies insurance provided under the following:  
COMMERCIAL GENERAL LIABILITY COVERAGE PART

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

#### **2. Exclusions**

This insurance does not apply to:

#### **I. Damage To Your Work**

"Property damage" to "your work" arising out of it or any part of it and included in the "products completed operations hazard."

## Contractors' Liability Exposures And Coverages

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- 2) Residential work concerns
  - Many insurers want to limit exposure to construction defect claims from residential work; as such exclusions are common.
  - How does the exclusion define residential?
  - Does the exclusion apply to BI and PD or PD only?
  - Conversion to Habitational Exclusions

### Sample Language

- |  |  |
|--|--|
| <p>A. The following exclusion is added to Paragraph 2. <b>Exclusions of Section I - Coverage A - Bodily Injury and Property Damage Liability:</b></p> <p><b>2. Exclusions</b><br/>This insurance does not apply to:<br/><b>Condominium or Townhouse Conversion</b><br/>"Bodily injury" or "property damage" arising from "Your work" or "your product" related to any project or structure that is converted, by any party, into a "condominium or townhouse project".</p> | <p>B. The following exclusion is added to Paragraph 2. <b>Exclusions of Section I - Coverage B - Personal and Advertising Injury Liability:</b></p> <p><b>2. Exclusions</b><br/>This insurance does not apply to:<br/><b>Condominium or Townhouse Conversion</b><br/>"Personal and advertising injury" arising from "Your work" or "your product" related to any project or structure that is converted, by any party, into a "condominium or townhouse project".</p> <p>C. The following definition is added to the <b>Definitions</b> Section:</p> <p>"Condominium or townhouse project" means a project that includes or is intended to include structure(s) with two or more habitational units and in which each unit is separately owned and titled. "Condominium or townhouse project" includes site improvements and all related common areas.</p> |
|--|--|

## Contractors' Liability Exposures And Coverages

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f. **Damage to impaired property or property not physically injured exclusion**

1) Impaired property defined

8. "Impaired property" means tangible property, other than "your product" or "your work", that cannot be used or is less useful because:

- a. It incorporates "your product" or "your work" that is known or thought to be defective, deficient, inadequate or dangerous; or
- b. You have failed to fulfill the terms of a contract or agreement;

if such property can be restored to use by the repair, replacement, adjustment or removal of "your product" or "your work" or your fulfilling the terms of the contract or agreement.

- Property must meet two requirements, or it is not impaired property

This insurance does not apply to:

**m. Damage To Impaired Property Or Property Not Physically Injured**

"Property damage" to "impaired property" or property that has not been physically injured, arising out of:

- (1) A defect, deficiency, inadequacy or dangerous condition in "your product" or "your work"; or
- (2) A delay or failure by you or anyone acting on your behalf to perform a contract or agreement in accordance with its terms.

This exclusion does not apply to the loss of use of other property arising out of sudden and accidental physical injury to "your product" or "your work" after it has been put to its intended use.

- Exclusion applies to property damage only.
- Designed to preclude liability coverage for the business risk exposure originated from the failure of the named insured's product or named insured's work to perform or serve the purpose represented by the named insured
- Designed to preclude liability coverage for the business risk exposure originated from the failure of the named insured (or

## Contractors' Liability Exposures And Coverages

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someone acting on behalf of the named insured) to perform contractual obligations in an agreed upon time frame

- Primary exposure excluded is for a loss of use claim or a decrease in value claim where the named insured's product or named insured's work has not actively malfunctioned
- **EXCEPTION - coverage provided** for loss of use of other property arising out of active malfunction after the named insured's product or named insured's work has been put to its intended use

### Contractor Example:

- HVAC Contractor installs heating and cooling system into owner's building. The system simply does not work – “your work” is defective.
- Owner's building is “impaired property.” It is not physically injured but cannot be used because it incorporates “your work” (the HVAC system), and the HVAC system can be restored to use by repair or replacement of the HVAC system.
- Owner's claim against HVAC contractor for loss of use of the building is not covered.
- Exception: If HVAC system had been installed, was fully operational (put to its intended use) and suddenly breaks apart, the exclusion does not apply. (active malfunction)

### h. Recall of products, work or impaired property exclusion

This insurance does not apply to:

#### n. Recall Of Products, Work Or Impaired Property

Damages claimed for any loss, cost or expense incurred by you or others for the loss of use, withdrawal, recall, inspection, repair, replacement, adjustment, removal or disposal of:

- (1) "Your product";
- (2) "Your work"; or
- (3) "Impaired property";

if such product, work, or property is withdrawn or recalled from the market or from use by any person or organization because of a known or suspected defect, deficiency, inadequacy or dangerous condition in it.

## Contractors' Liability Exposures And Coverages

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- This is usually a first party loss, not a liability claim; it is a cost to keep bodily injury or property damage from occurring.
- Attempts are sometimes made to apply the exclusion to construction defect claims, since “your work” is one of the excluded subjects. The intended scope of the exclusion, however, does not encompass defective construction since a building cannot be “withdrawn from the market or from use” in the sense of that phrase as employed in the exclusion.
- Construction defects that result in loss of use of the property may be covered by the standard CGL Policy or they may be excluded by the “damage to your work” or “impaired property” exclusions.

#### 4. Rip and Tear Costs – covered by the CGL?

- a. What are “rip and tear” costs?
  - “Access costs”
  - Rip and tear costs are costs attributable to damaging or destroying non-defective work to obtain access to repair defective work or resulting damage.<sup>1</sup>
- b. Courts mixed on results.
- c. Questions that are raised:
  - Are costs damages *because of* property damage?
  - Are costs the result of an occurrence?
  - Are costs excluded by “your work” or “your product” exclusion?
- d. Insurer may attach and endorsement to address the issue.

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<sup>1</sup> Jeffery D. Masters, J.D., CGL Coverage for Rip and Tear Costs – IRMI Construction Conference © 2015 International Risk Management Institute, Inc.



## Contractors' Liability Exposures And Coverages

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- B. Coverage B. Personal And Advertising Injury Liability
1. Insuring agreement

### 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.

- Outlines insurer's promise to pay
- Coverages will be subject to the policy terms and conditions.
- Contractual duty of the insurer to defend insured extends beyond insurer's legal obligation to pay.
- But no possibility or potential for coverage, no defense
- Control of defense / settlement with insurer
- Amount of insurer's payment limited
- Limits types of obligations for which coverage form responds
- Offense must arise out of named insured's business.
- Offense must be committed in the coverage territory.
- Offense must be committed during the policy period.

## Contractors' Liability Exposures And Coverages

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### a. Personal and advertising injury defined

- 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".

- Definition includes consequential bodily injury arising out of enumerated offenses.
- Enumerates the offenses for which personal and advertising injury liability coverage may respond
- The last two offenses will only apply if committed in the insured's advertisement; advertisement is a defined term.

### b. Advertisement defined

- 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.

- Clarifies the intent of coverage
- Restricts coverage

## Contractors' Liability Exposures And Coverages

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

**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".

**i. Infringement Of Copyright, Patent, Trademark Or Trade Secret**

"Personal and advertising injury" arising out of the infringement of copyright, patent, trademark, trade secret or other intellectual property rights. Under this exclusion, such other intellectual property rights do not include the use of another's advertising idea in your "advertisement".

However, this exclusion does not apply to infringement, in your "advertisement", of copyright, trade dress or slogan.

- Exposures for contractor
- **LIMITED CONTRACTUAL LIABILITY COVERAGE FOR PERSONAL AND ADVERTISING INJURY – CG 22 74**

#### **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:

**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.

## Contractors' Liability Exposures And Coverages

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### C. Supplementary Payments – Coverages

#### **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.
  - b. Up to \$250 for cost of bail bonds required because of accidents or traffic law violations arising out of the use of any vehicle to which the Bodily Injury Liability Coverage applies. We do not have to furnish these bonds.
  - c. The cost of bonds to release attachments, but only for bond amounts within the applicable limit of insurance. We do not have to furnish these bonds.
  - d. All reasonable expenses incurred by the insured at our request to assist us in the investigation or defense of the claim or "suit", including actual loss of earnings up to \$250 a day because of time off from work.
  - e. All court costs taxed against the insured in the "suit". However, these payments do not include attorneys' fees or attorneys' expenses taxed against the insured.
  - f. Prejudgment interest awarded against the insured on that part of the judgment we pay. If we make an offer to pay the applicable limit of insurance, we will not pay any prejudgment interest based on that period of time after the offer.
  - g. All interest on the full amount of any judgment that accrues after entry of the judgment and before we have paid, offered to pay, or deposited in court the part of the judgment that is within the applicable limit of insurance.

These payments will not reduce the limits of insurance.

- Enumerates the types and amounts of payments the insurer will make in addition to the Limits of Insurance
- Court costs does not include plaintiff's attorney fees as Supplementary Payments. If insured is required to pay plaintiff's attorney fees, these attorney fees will be paid as damages.

## Contractors' Liability Exposures And Coverages

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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.

## Contractors' Liability Exposures And Coverages

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- Under certain circumstances, the CGL will defend an indemnitee and pay the assumed defense costs as Supplementary Payments
  - Both insured and indemnitee are named as parties to the suit; must be a covered contract for which insurance applies; obligation for defense must be part of the insured contract
  - Allegations in the suit and the information insurer knows about the occurrence are such that no conflict appears to exist between the interests of the insured and the interests of the indemnitee
  - Indemnitee and insured ask insurer to conduct and control the defense of that indemnitee against such suit and agree that the insurer can assign the same legal counsel to defend the insured and the indemnitee
  - Indemnitee agrees to specific policy conditions, i.e., cooperation, notice, authorization, etc.
- If assumed defense costs qualify as Supplementary Payments, the Limits of Insurance will not be reduced by their payment.

### **III. CGL COVERAGE FORM - SECTION III - LIMITS OF INSURANCE**

#### A. Limits Of Insurance

**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".

- In conjunction with limits shown in Declarations
- To prevent stacking

#### B. General Aggregate Limit

2. The General Aggregate Limit is the most we will pay for the sum of:
  - a. Medical expenses under Coverage C;
  - b. Damages under Coverage A, except damages because of "bodily injury" or "property damage" included in the "products-completed operations hazard"; and
  - c. Damages under Coverage B.

- "Everything" but products-completed operations hazard
- **DESIGNATED CONSTRUCTION PROJECT(S)  
GENERAL AGGREGATE LIMIT – CG 25 03**
  - Watch for insurers that add an overall policy aggregate/cap!
  - Watch for insurers that limit this to projects where the contract requires a per project aggregate!

## Contractors' Liability Exposures And Coverages

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### C. Products - Completed Operations Aggregate Limit

3. The Products-Completed Operations Aggregate Limit is the most we will pay under Coverage A for damages because of "bodily injury" and "property damage" included in the "products-completed operations hazard".

- Coverage A only
- "Products-completed operation hazard" as defined
- **DESIGNATED PROJECT(S) PRODUCTS-COMPLETED OPERATIONS AGGREGATE LIMIT – CG 25 45 12 19**

### D. Personal And Advertising Injury Limit

4. Subject to Paragraph 2. above, the Personal and Advertising Injury Limit is the most we will pay under Coverage B for the sum of all damages because of all "personal and advertising injury" sustained by any one person or organization.

- Per person or organization regardless of the number of claims
- Not subject to Occurrence Limit / Usually equal to Occurrence Limit
- Subject to General Aggregate Limit

### E. Each Occurrence Limit

5. Subject to Paragraph 2. or 3. above, whichever applies, the Each Occurrence Limit is the most we will pay for the sum of:

- a. Damages under Coverage **A**; and
- b. Medical expenses under Coverage **C**

because of all "bodily injury" and "property damage" arising out of any one "occurrence"

- Coverage A and Coverage C only
- Subject to General Aggregate Limit OR Products-Completed Operations Aggregate Limit



## Contractors' Liability Exposures And Coverages

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### F. Damage to Premises Rented To You Limit

6. Subject to Paragraph 5. above, the Damage To Premises Rented To You Limit is the most we will pay under Coverage A for damages because of "property damage" to any one premises, while rented to you, or in the case of damage by fire, while rented to you or temporarily occupied by you with permission of the owner.

- Subject to Occurrence and General Aggregate Limits
- \$100,000 any one premises may be customary but may not be enough

### G. Medical Expense Limit

7. Subject to Paragraph 5. above, the Medical Expense Limit is the most we will pay under Coverage C for all medical expenses because of "bodily injury" sustained by any one person.

- Subject to Occurrence Limit
- Subject to General Aggregate Limit
- \$5,000 maximum any one person is the basic limit - may be increased.

### H. Periods Of Time To Which Limits Apply

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

- Normally each 12 months
- CAUTION: Extending policy period after policy inception

### IV. ADDITIONAL SELECTED ENDORSEMENTS THAT MAY BE ADDED

#### What is a Wrap-Up Insurance Program?

For large construction projects, the liability (and workers' compensation) insurance is sometimes placed centrally, including most contractors and subcontractors as named insured, but only for the liability of each arising out of the project site. This arrangement is called a "wrap-up" insurance program or a consolidated/controlled insurance program or CIP.

The party arranging for and purchasing the insurance for the CIP is the sponsor. If the sponsor is the owner of the project, the wrap-up is called an OCIP, or owner controlled (or consolidated) insurance program. If the general contractor is the sponsor, the wrap-up is called a CCIP, or contractor controlled (or consolidated) insurance program.

#### How is it Different?

The wrap-up approach to purchasing insurance is different from the "traditional" insurance arrangement, in which each contractor or subcontractor purchases its own liability (and workers' compensation) insurance and includes in overhead charges the cost of insurance allocated to the project.

In a wrap-up, the contractors and subcontractors must remove from the cost of their work the portion of the overhead that represents their insurance premium – the "wrap-up" insurance program is to be the sole source of their insurance at the project site. Consequently, the CGL Policies of the contractors and subcontractors that enroll in a wrap-up insurance program typically exclude coverage for losses arising out of the project. Further, the CGL Policy insurers for the contractors or subcontractors enrolled in the project do not charge for the payroll (or receipts or sub costs) attributed to the project. The exclusion attached to the contractors' and subcontractors' policies is typically:

#### **LIMITED EXCLUSION – DESIGNATED OPERATIONS COVERED BY A CONTROLLED (WRAP-UP) INSURANCE PROGRAM CG 21 31 or EXCLUSION – DESIGNATED OPERATIONS COVERED BY A CONTROLLED (WRAP-UP) INSURANCE PROGRAM CG 21 54**

- Important coverage enhancement in the 12/19 edition – Exclusions apply only if Named Insured is *enrolled* in the wrap-up

The primary difference between these two endorsements is whether or not coverage will apply once the insurance protection provided by the wrap-up no longer remains in effect. Therefore, the preferred endorsement is **CG 21 31**.

- Some insurers offer DIC/Excess coverage for contractors who work on wrap-up projects.

## Contractors' Liability Exposures And Coverages

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### Sample DIC/Excess Language

It is hereby agreed and understood:

1. This policy shall apply to the Named Insured's interest in projects insured under a "wrap-up" or similar rating plan, but only to the extent that this policy provides coverage for legal liabilities or hazards which are not covered by the other "wrap-up" insurance. This policy responds only for the differences in conditions and will apply in excess of the other "wrap-up" insurance. This policy excludes any liability which is covered by the other "wrap-up" insurance.....

Two alternate endorsements are available when the contractor must name a person or organization as an additional insured in relationship to the wrap-up and that additional insured is not enrolled in the wrap-up - **EXCLUSION – DESIGNATED OPERATIONS COVERED BY A CONTROLLED (WRAP-UP) INSURANCE PROGRAM – LIMITED EXCEPTION FOR ADDITIONAL INSUREDS – CG 40 07 12 19** (similar to **CG 21 54** with limited exception) and **LIMITED EXCLUSION – DESIGNATED OPERATIONS COVERED BY A CONTROLLED (WRAP-UP) INSURANCE PROGRAM – LIMITED EXCEPTION FOR ADDITIONAL INSUREDS – CG 40 08 12 19** (similar to **CG 21 31** with limited exception)

Nonetheless, a contractor or subcontractor enrolled in a wrap-up insurance program still typically must purchase:

- CGL/Excess Liability Insurance for off-site exposures
- Auto liability insurance

The sponsor of the wrap-up program typically uses a large SIR/deductible or loss sensitive rating plan and thus reduces insurance costs. Therefore, the success of a wrap-up insurance program is generally determined by controlling the losses at the project site.

### MORE SELECTED ENORSEMENTS

- A. **EXCLUSION – EXTERIOR INSULATION AND FINISH SYSTEMS – CG 21 86**
- B. **EXCLUSION – CONSTRUCTION MANAGEMENT ERRORS AND OMISSIONS – CG 22 34**

## Contractors' Liability Exposures And Coverages

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What is a "construction management?"

- Construction management is a professional services discipline applied to the planning, design and construction process of capital improvement projects.
- Professional CMs address the needs of projects and Owners by providing management services and expertise tailored to project needs and independent of the chosen contract format or project delivery method.
- It is this management approach that makes construction management unique. CMs apply and integrate comprehensive project controls to help manage the critical issues of time, cost, scope, quality and safety.
- In "construction management", the CM assumes the position of professional advisor or extension of staff to the Owner.
- When the CM's role includes a construction performance function, it is known as the "CM-at-risk" approach. This approach can often occur under a guaranteed maximum price (GMP) contract format
- In Agency Construction Management, the CM is responsible to the owner to act in the owner's interest at every project stage but does not commit to delivering the project within a GMP.

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**C. EXCLUSION – ENGINEERS, ARCHITECTS OR SURVEYORS  
PROFESSIONAL LIABILITY – CG 22 43**

Complete exclusion for any professional liability with no exception for means, methods or techniques as construction contractor

**D. EXCLUSION – CONTRACTORS – PROFESSIONAL LIABILITY –  
CG 22 79**

Excludes professional services – engineering, architectural or surveying services – BUT does not *exclude means, methods and techniques of named insured in their capacity as a construction contractor*

## **Contractors' Liability Exposures And Coverages**

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**E. LIMITED EXCLUSION – CONTRACTORS – PROFESSIONAL LIABILITY – CG 22 80**

Excludes professional design services ONLY if the design services are provided to others NOT in connection with the named insured's *construction operations*

**F. EXCLUSION – EARTH MOVEMENT – CG 40 04 12 19**

**G. EXCLUSION – EARTH MOVEMENT – COMPLETED OPERATIONA - CG 40 05 12 19**

**H. EARTH MOVEMENT – EXCLUSION FOR DESIGNATED OPERATION(S) OR PROJECT(S) – CG 40 06 12 19**

**I. CANNABIS EXCLUSION – CG 40 14 12 20**

**J. PREMIUM AUDIT NONCOMPLIANCE CHARGE – CG 99 09 12 19**

**K. SUBCONTRACTOR WARRANTY/CONDITIONS ENDORSEMENTS**

Non-standard forms

Coverage may be excluded or restricted if the loss involves a subcontractor and the Named Insured doesn't meet the conditions in the endorsement.

**L. FUNGI OR BACTERIA EXCLUSION – CG 21 67 12 04**

**V. CONCLUSION**

## **Addendum**

**Copies of the following ISO forms mentioned in this section follow – listed in order by form number**

**CG 04 37 05 14 – ELECTRONIC DATA LIABILITY**

**CG 21 09 06 15 – EXCLUSION - UNMANNED AIRCRAFT**

**CG 21 31 12 19 - LIMITED EXCLUSION – DESIGNATED OPERATIONS COVERED BY A CONTROLLED (WRAP-UP) INSURANCE PROGRAM**

**CG 21 34 01 87 – EXCLUSION - DESIGNATED WORK**

**CG 21 49 09 99– TOTAL POLLUTION EXCLUSION**

**CG 21 53 01 96 – EXCLUSION - DESIGNATED ONGOING OPERATIONS**

**CG 21 54 12 19 - EXCLUSION – DESIGNATED OPERATIONS COVERED BY A CONTROLLED (WRAP-UP) INSURANCE PROGRAM**

**CG 21 67 12 04 - FUNGI OR BACTERIA EXCLUSION**

**CG 21 86 12 04 - EXCLUSION – EXTERIOR INSULATION AND FINISH SYSTEMS**

**CG 22 34 04 13 - EXCLUSION – CONSTRUCTION MANAGEMENT ERRORS AND OMISSIONS**

**CG 22 43 04 13 - EXCLUSION – ENGINEERS, ARCHITECTS OR SURVEYORS PROFESSIONAL LIABILITY**

**CG 22 79 04 13 - EXCLUSION – CONTRACTORS – PROFESSIONAL LIABILITY**

**CG 22 80 04 13 - LIMITED EXCLUSION – CONTRACTORS – PROFESSIONAL LIABILITY**

**CG 25 03 05 09 - DESIGNATED CONSTRUCTION PROJECT(S) GENERAL AGGREGATE LIMIT**

**CG 25 45 12 19 - DESIGNATED PROJECT(S) PRODUCTS-COMPLETED OPERATIONS AGGREGATE LIMIT**

**CG 40 04 12 19 - EXCLUSION – EARTH MOVEMENT**

**CG 40 05 12 19 - EXCLUSION – EARTH MOVEMENT – COMPLETED OPERATIONS**

## **Contractors' Liability Exposures And Coverages**

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**CG 40 06 12 19** - EARTH MOVEMENT – EXCLUSION FOR DESIGNATED OPERATION(S) OR PROJECT(S)

**CG 40 07 12 19** - EXCLUSION – DESIGNATED OPERATIONS COVERED BY A CONTROLLED (WRAP-UP) INSURANCE PROGRAM – LIMITED EXCEPTION FOR ADDITIONAL INSUREDS

**CG 40 08 12 19** - LIMITED EXCLUSION – DESIGNATED OPERATIONS COVERED BY A CONTROLLED (WRAP-UP) INSURANCE PROGRAM – LIMITED EXCEPTION FOR ADDITIONAL INSUREDS

**CG 40 14 12 20** - CANNABIS EXCLUSION

**CG 99 09 12 19** - PREMIUM AUDIT NONCOMPLIANCE CHARGE

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

## **ELECTRONIC DATA LIABILITY**

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

### **SCHEDULE**

<b>Loss Of Electronic Data Limit: \$</b>
Information required to complete this Schedule, if not shown above, will be shown in the Declarations.

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

**2. Exclusions**

This insurance does not apply to:

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

Damages arising out of:

- (1)** Any access to or disclosure of any person's or organization's confidential or personal information, including patents, trade secrets, processing methods, customer lists, financial information, credit card information, health information or any other type of nonpublic information; or
- (2)** The loss of, loss of use of, damage to, corruption of, inability to access, or inability to manipulate "electronic data" that does not result from physical injury to tangible property.

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

However, unless Paragraph **(1)** above applies, this exclusion does not apply to damages because of "bodily injury".

**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.

**C. The following paragraph is added to Section III – Limits Of Insurance:**

Subject to **5.** above, the Loss Of Electronic Data Limit shown in the Schedule above is the most we will pay under Coverage **A** for "property damage" because of all loss of "electronic data" arising out of any one "occurrence".



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

"Electronic data" means information, facts or programs stored as or on, created or used on, or transmitted to or from computer software, including systems and applications software, hard or floppy disks, CD-ROMs, tapes, drives, cells, data processing devices or any other media which are used with electronically controlled equipment.

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

17. "Property damage" means:

- a. Physical injury to tangible property, including all resulting loss of use of that property. All such loss of use shall be deemed to occur at the time of the physical injury that caused it;

- b. Loss of use of tangible property that is not physically injured. All such loss of use shall be deemed to occur at the time of the "occurrence" that caused it; or

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

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

SAMPLE

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

## **EXCLUSION – UNMANNED AIRCRAFT**

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

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

### **2. Exclusions**

This insurance does not apply to:

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

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

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

This Paragraph **g.(1)** applies even if the claims against any insured allege negligence or other wrongdoing in the supervision, hiring, employment, training or monitoring of others by that insured, if the "occurrence" which caused the "bodily injury" or "property damage" involved the ownership, maintenance, use or entrustment to others of any aircraft that is an "unmanned aircraft".

##### **(2) Aircraft (Other Than Unmanned Aircraft), Auto Or Watercraft**

"Bodily injury" or "property damage" arising out of the ownership, maintenance, use or entrustment to others of any aircraft (other than "unmanned aircraft"), "auto" or watercraft owned or operated by or rented or loaned to any insured. Use includes operation and "loading or unloading".

This Paragraph **g.(2)** applies even if the claims against any insured allege negligence or other wrongdoing in the supervision, hiring, employment, training or monitoring of others by that insured, if the "occurrence" which caused the "bodily injury" or "property damage" involved the ownership, maintenance, use or entrustment to others of any aircraft (other than "unmanned aircraft"), "auto" or watercraft that is owned or operated by or rented or loaned to any insured.

This Paragraph **g.(2)** does not apply to:

- (a)** A watercraft while ashore on premises you own or rent;
- (b)** A watercraft you do not own that is:
  - (i)** Less than 26 feet long; and
  - (ii)** Not being used to carry persons or property for a charge;
- (c)** Parking an "auto" on, or on the ways next to, premises you own or rent, provided the "auto" is not owned by or rented or loaned to you or the insured;
- (d)** Liability assumed under any "insured contract" for the ownership, maintenance or use of aircraft or watercraft; or

(e) "Bodily injury" or "property damage" arising out of:

(i) The operation of machinery or equipment that is attached to, or part of, a land vehicle that would qualify under the definition of "mobile equipment" if it were not subject to a compulsory or financial responsibility law or other motor vehicle insurance law where it is licensed or principally garaged; or

(ii) The operation of any of the machinery or equipment listed in Paragraph f.(2) or f.(3) of the definition of "mobile equipment".

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

**2. Exclusions**

This insurance does not apply to:

**Unmanned Aircraft**

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

This exclusion applies even if the claims against any insured allege negligence or other wrongdoing in the supervision, hiring, employment, training or monitoring of others by that insured, if the offense which caused the "personal and advertising injury" involved the ownership, maintenance, use or entrustment to others of any aircraft that is an "unmanned aircraft".

This exclusion does not apply to:

a. The use of another's advertising idea in your "advertisement"; or

b. Infringing upon another's copyright, trade dress or slogan in your "advertisement".

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

"Unmanned aircraft" means an aircraft that is not:

1. Designed;

2. Manufactured; or

3. Modified after manufacture;

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

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

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

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

## SCHEDULE

Description And Location(s) Of Operation(s):

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

- A. The following exclusion is added to Paragraph 2. Exclusions of Section I – Coverage A – Bodily Injury And Property Damage Liability:**
  - 1.** This insurance does not apply to "bodily injury" or "property damage":
    - a.** Arising out of your ongoing operations; or
    - b.** Included in the "products-completed operations hazard";

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

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

"Controlled (wrap-up) insurance program" means a centralized insurance program under which one party has secured either insurance or self-insurance covering some or all of the contractors or subcontractors performing work on one or more specific project(s).

SAMPLE

POLICY NUMBER:

COMMERCIAL GENERAL LIABILITY

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

## **EXCLUSION – DESIGNATED WORK**

This endorsement modifies insurance provided under the following:

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

### **SCHEDULE**

**Description of your work:**

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

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

SAMPLE

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

## **TOTAL POLLUTION EXCLUSION ENDORSEMENT**

This endorsement modifies insurance provided under the following:

### COMMERCIAL GENERAL LIABILITY COVERAGE PART

Exclusion f. under Paragraph 2., **Exclusions of Section I – Coverage A – Bodily Injury And Property Damage Liability** is replaced by the following:

This insurance does not apply to:

#### **f. Pollution**

- (1) "Bodily injury" or "property damage" which would not have occurred in whole or part but for the actual, alleged or threatened discharge, dispersal, seepage, migration, release or escape of "pollutants" at any time.

- (2) Any loss, cost or expense arising out of any:

- (a) Request, demand, order or statutory or regulatory requirement that any insured or others test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to, or assess the effects of "pollutants"; or
- (b) Claim or suit by or on behalf of a governmental authority for damages because of testing for, monitoring, cleaning up, removing, containing, treating, detoxifying or neutralizing, or in any way responding to, or assessing the effects of, "pollutants".

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

## **EXCLUSION – DESIGNATED ONGOING OPERATIONS**

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

### **SCHEDULE**

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

**Specified Location (If Applicable):**

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

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

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

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

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



THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

**EXCLUSION – DESIGNATED OPERATIONS COVERED BY  
A CONTROLLED (WRAP-UP) INSURANCE PROGRAM**

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

**SCHEDULE**

<b>Description And Location(s) Of Operation(s):</b>
<p style="text-align: center; font-size: 48px; opacity: 0.3; transform: rotate(-45deg); position: absolute; top: 50%; left: 50%;">SAMPLE</p>
Information required to complete this Schedule, if not shown above, will be shown in the Declarations.

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

This insurance does not apply to "bodily injury" or "property damage":

1. Arising out of your ongoing operations; or
2. Included in the "products-completed operations hazard";

at the location(s) described in the Schedule of this endorsement, but only if you are enrolled in a "controlled (wrap-up) insurance program" with respect to the "bodily injury" or "property damage" described in Paragraphs **A.1.** and **A.2.** above at such location(s).

This exclusion applies whether or not the "controlled (wrap-up) insurance program":

- a. Provides coverage identical to that provided by this Coverage Part;

- b. Has limits adequate to cover all claims; or
- c. Remains in effect.

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

"Controlled (wrap-up) insurance program" means a centralized insurance program under which one party has secured either insurance or self-insurance covering some or all of the contractors or subcontractors performing work on one or more specific project(s).

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

## **FUNGI OR BACTERIA EXCLUSION**

This endorsement modifies insurance provided under the following:

### COMMERCIAL GENERAL LIABILITY COVERAGE PART

- A.** The following exclusion is added to Paragraph 2. **Exclusions of Section I – Coverage A – Bodily Injury And Property Damage Liability:**
- 2. Exclusions**
- This insurance does not apply to:
- Fungi Or Bacteria**
- a.** "Bodily injury" or "property damage" which would not have occurred, in whole or in part, but for the actual, alleged or threatened inhalation of, ingestion of, contact with, exposure to, existence of, or presence of, any "fungi" or bacteria on or within a building or structure, including its contents, regardless of whether any other cause, event, material or product contributed concurrently or in any sequence to such injury or damage.
- b.** Any loss, cost or expenses arising out of the abating, testing for, monitoring, cleaning up, removing, containing, treating, detoxifying, neutralizing, remediating or disposing of, or in any way responding to, or assessing the effects of, "fungi" or bacteria, by any insured or by any other person or entity.
- This exclusion does not apply to any "fungi" or bacteria that are, are on, or are contained in, a good or product intended for bodily consumption.
- B.** The following exclusion is added to Paragraph 2. **Exclusions of Section I – Coverage B – Personal And Advertising Injury Liability:**
- 2. Exclusions**
- This insurance does not apply to:
- Fungi Or Bacteria**
- a.** "Personal and advertising injury" which would not have taken place, in whole or in part, but for the actual, alleged or threatened inhalation of, ingestion of, contact with, exposure to, existence of, or presence of any "fungi" or bacteria on or within a building or structure, including its contents, regardless of whether any other cause, event, material or product contributed concurrently or in any sequence to such injury.
- b.** Any loss, cost or expense arising out of the abating, testing for, monitoring, cleaning up, removing, containing, treating, detoxifying, neutralizing, remediating or disposing of, or in any way responding to, or assessing the effects of, "fungi" or bacteria, by any insured or by any other person or entity.
- C.** The following definition is added to the **Definitions** Section:
- "Fungi" means any type or form of fungus, including mold or mildew and any mycotoxins, spores, scents or byproducts produced or released by fungi.

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

## **EXCLUSION – EXTERIOR INSULATION AND FINISH SYSTEMS**

This endorsement modifies insurance provided under the following:

### COMMERCIAL GENERAL LIABILITY COVERAGE PART

- A.** This insurance does not apply to "bodily injury", "property damage" or "personal and advertising injury" arising out of, caused by, or attributable to, whether in whole or in part, the following:
1. The design, manufacture, construction, fabrication, preparation, distribution and sale, installation, application, maintenance or repair, including remodeling, service, correction or replacement, of any "exterior insulation and finish system" or any part thereof, or any substantially similar system or any part thereof, including the application or use of conditioners, primers, accessories, flashings, coatings, caulking or sealants in connection with such a system; or
  2. "Your product" or "your work" with respect to any exterior component, fixture or feature of any structure if an "exterior insulation and finish system", or any substantially similar system, is used on the part of that structure containing that component, fixture or feature.
- B.** The following definition is added to the **Definitions** Section:
- "Exterior insulation and finish system" means a non-load bearing exterior cladding or finish system, and all component parts therein, used on any part of any structure, and consisting of:
1. A rigid or semi-rigid insulation board made of expanded polystyrene and other materials;
  2. The adhesive and/or mechanical fasteners used to attach the insulation board to the substrate;
  3. A reinforced or unreinforced base coat;
  4. A finish coat providing surface texture to which color may be added; and
  5. Any flashing, caulking or sealant used with the system for any purpose.

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

## **EXCLUSION – CONSTRUCTION MANAGEMENT ERRORS AND OMISSIONS**

This endorsement modifies insurance provided under the following:

### COMMERCIAL GENERAL LIABILITY COVERAGE PART

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

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

1. The preparing, approving, or failure to prepare or approve, maps, shop drawings, opinions, reports, surveys, field orders, change orders or drawings and specifications by any architect, engineer or surveyor performing services on a project on which you serve as construction manager; or
2. Inspection, supervision, quality control, architectural or engineering activities done by or for you on a project on which you serve as construction manager.

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 that which is described in Paragraph 1. or 2.

This exclusion does not apply to "bodily injury" or "property damage" due to construction or demolition work done by you, your "employees" or your subcontractors.

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

## **EXCLUSION – ENGINEERS, ARCHITECTS OR SURVEYORS PROFESSIONAL LIABILITY**

This endorsement modifies insurance provided under the following:

### COMMERCIAL GENERAL LIABILITY COVERAGE PART

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

This insurance does not apply to "bodily injury", "property damage" or "personal and advertising injury" arising out of the rendering of or failure to render any professional services by you or any engineer, architect or surveyor who is either employed by you or performing work on your behalf in such capacity.

Professional services include:

1. The preparing, approving, or failing to prepare or approve, maps, shop drawings, opinions, reports, surveys, field orders, change orders or drawings and specifications; and

2. 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 failure to render any professional services by you or any engineer, architect or surveyor who is either employed by you or performing work on your behalf in such capacity.

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

## **EXCLUSION – CONTRACTORS – PROFESSIONAL LIABILITY**

This endorsement modifies insurance provided under the following:

### COMMERCIAL GENERAL LIABILITY COVERAGE PART

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

1. This insurance does not apply to "bodily injury", "property damage" or "personal and advertising injury" arising out of the rendering of or failure to render any professional services by you or on your behalf, but only with respect to either or both of the following operations:
  - a. Providing engineering, architectural or surveying services to others in your capacity as an engineer, architect or surveyor; and
  - b. Providing, or hiring independent professionals to provide, engineering, architectural or surveying services in connection with construction work you perform.
2. Subject to Paragraph 3. below, professional services include:
  - a. Preparing, approving, or failing to prepare or approve, maps, shop drawings, opinions, reports, surveys, field orders, change orders, or drawings and specifications; and
  - b. Supervisory or inspection activities performed as part of any related architectural or engineering activities.
3. Professional services do not include services within construction means, methods, techniques, sequences and procedures employed by you in connection with your operations in your capacity as a construction contractor.

This exclusion applies even if the claims against any insured allege negligence or other wrongdoing in the supervision, hiring, employment, training or monitoring of others by that insured, if the "occurrence" which caused the "bodily injury" or "property damage", or the offense which caused the "personal and advertising injury", involved the rendering of or failure to render any professional services by you or on your behalf with respect to the operations described above.

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

## **LIMITED EXCLUSION – CONTRACTORS – PROFESSIONAL LIABILITY**

This endorsement modifies insurance provided under the following:

### COMMERCIAL GENERAL LIABILITY COVERAGE PART

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

This insurance does not apply to "bodily injury", "property damage" or "personal and advertising injury" arising out of the rendering of or failure to render any professional services by you, but only with respect to your providing engineering, architectural or surveying services in your capacity as an engineer, architect or surveyor.

Professional services include:

1. Preparing, approving, or failing to prepare or approve, maps, shop drawings, opinions, reports, surveys, field orders, change orders, or drawings and specifications; and
2. Supervisory or inspection activities performed as part of any related 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 failure to render any professional services by you with respect to your providing engineering, architectural or surveying services in your capacity as an engineer, architect or surveyor.

This exclusion does not apply to your operations in connection with construction work performed by you or on your behalf.

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

## **DESIGNATED CONSTRUCTION PROJECT(S) GENERAL AGGREGATE LIMIT**

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

### **SCHEDULE**

**Designated Construction Project(s):**

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

- A.** For all sums which the insured becomes legally obligated to pay as damages caused by "occurrences" under Section I – Coverage **A**, and for all medical expenses caused by accidents under Section I – Coverage **C**, which can be attributed only to ongoing operations at a single designated construction project shown in the Schedule above:
1. A separate Designated Construction Project General Aggregate Limit applies to each designated construction project, and that limit is equal to the amount of the General Aggregate Limit shown in the Declarations.
  2. The Designated Construction Project General Aggregate Limit is the most we will pay for the sum of all damages under Coverage **A**, except damages because of "bodily injury" or "property damage" included in the "products-completed operations hazard", and for medical expenses under Coverage **C** regardless of the number of:
    - a. Insureds;
    - b. Claims made or "suits" brought; or
    - c. Persons or organizations making claims or bringing "suits".
  3. Any payments made under Coverage **A** for damages or under Coverage **C** for medical expenses shall reduce the Designated Construction Project General Aggregate Limit for that designated construction project. Such payments shall not reduce the General Aggregate Limit shown in the Declarations nor shall they reduce any other Designated Construction Project General Aggregate Limit for any other designated construction project shown in the Schedule above.
  4. The limits shown in the Declarations for Each Occurrence, Damage To Premises Rented To You and Medical Expense continue to apply. However, instead of being subject to the General Aggregate Limit shown in the Declarations, such limits will be subject to the applicable Designated Construction Project General Aggregate Limit.



- B.** For all sums which the insured becomes legally obligated to pay as damages caused by "occurrences" under Section I – Coverage **A**, and for all medical expenses caused by accidents under Section I – Coverage **C**, which cannot be attributed only to ongoing operations at a single designated construction project shown in the Schedule above:
1. Any payments made under Coverage **A** for damages or under Coverage **C** for medical expenses shall reduce the amount available under the General Aggregate Limit or the Products-completed Operations Aggregate Limit, whichever is applicable; and
  2. Such payments shall not reduce any Designated Construction Project General Aggregate Limit.
- C.** When coverage for liability arising out of the "products-completed operations hazard" is provided, any payments for damages because of "bodily injury" or "property damage" included in the "products-completed operations hazard" will reduce the Products-completed Operations Aggregate Limit, and not reduce the General Aggregate Limit nor the Designated Construction Project General Aggregate Limit.
- D.** If the applicable designated construction project has been abandoned, delayed, or abandoned and then restarted, or if the authorized contracting parties deviate from plans, blueprints, designs, specifications or timetables, the project will still be deemed to be the same construction project.
- E.** The provisions of Section III – Limits Of Insurance not otherwise modified by this endorsement shall continue to apply as stipulated.

SAMPLE

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

**DESIGNATED PROJECT(S)  
PRODUCTS-COMPLETED OPERATIONS  
AGGREGATE LIMIT**

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

**SCHEDULE**

<b>Designated Project(s):</b>

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

- A.** For all sums which the insured becomes legally obligated to pay as damages caused by "occurrences" under Section I – Coverage A because of "bodily injury" and "property damage" included in the "products-completed operations hazard" which can be attributed only to "your work" at a single designated project shown in the Schedule above:
  - 1. A separate Designated Project Products-Completed Operations Aggregate Limit applies to each designated project, and that limit is equal to the amount of the Products-Completed Operations Aggregate Limit shown in the Declarations.
  - 2. The Designated Project Products-Completed Operations Aggregate Limit is the most we will pay for the sum of all damages under Coverage A because of "bodily injury" and "property damage" included in the "products-completed operations hazard", regardless of the number of:
    - a. Insureds;
    - b. Claims made or "suits" brought; or
    - c. Persons or organizations making claims or bringing "suits".
- 3. Any payments made under Coverage A for damages shall reduce the Designated Project Products-Completed Operations Aggregate Limit for that designated project. Such payments shall not reduce the Products-Completed Operations Aggregate Limit shown in the Declarations nor shall they reduce any other Designated Project Products-Completed Operations Aggregate Limit for any other designated project shown in the Schedule above.
- 4. The limits shown in the Declarations for Each Occurrence continue to apply. However, instead of being subject to the Products-Completed Operations Aggregate Limit shown in the Declarations, such limits will be subject to the applicable Designated Project Products-Completed Operations Aggregate Limit.

- B.** For all sums which the insured becomes legally obligated to pay as damages caused by "occurrences" under Section I – Coverage A because of "bodily injury" and "property damage" included in the "products-completed operations hazard" which cannot be attributed only to "your work" at a single designated project shown in the Schedule above:
1. Any payments made under Coverage A for damages because of "bodily injury" and "property damage" included in the "products-completed operations hazard" shall reduce the amount available under the Products-Completed Operations Aggregate Limit; and
  2. Such payments shall not reduce any Designated Project Products-Completed Operations Aggregate Limit.
- C.** Any payments for damages under Coverage A, except damages because of "bodily injury" or "property damage" included in the "products-completed operations hazard", will reduce the General Aggregate Limit, and will not reduce the Products-Completed Operations Aggregate Limit nor any Designated Project Products-Completed Operations Aggregate Limit.
- D.** If the applicable designated project has been abandoned, delayed, or abandoned and then restarted, or if the authorized contracting parties deviate from plans, blueprints, designs, specifications or timetables, the project will still be deemed to be the same project.
- E.** The provisions of Section III – Limits Of Insurance not otherwise modified by this endorsement shall continue to apply as stipulated.

SAMPLE

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

## **EXCLUSION – EARTH MOVEMENT**

This endorsement modifies insurance provided under the following:

### COMMERCIAL GENERAL LIABILITY COVERAGE PART

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

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

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

"your work".

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

"Earth movement" means:

1. Earthquake, including tremors and aftershocks and any earth sinking, rising or shifting related to such event;

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

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

## **EXCLUSION – EARTH MOVEMENT – COMPLETED OPERATIONS**

This endorsement modifies insurance provided under the following:

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

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

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

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

"your work" and included in the "products-completed operations hazard".

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

"Earth movement" means:

1. Earthquake, including tremors and aftershocks and any earth sinking, rising or shifting related to such event;

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

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

# **EARTH MOVEMENT – EXCLUSION FOR DESIGNATED OPERATION(S) OR PROJECT(S)**

This endorsement modifies insurance provided under the following:

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

### **SCHEDULE**

Description Of Operation(s) Or Project(s)
Information required to complete this Schedule, if not shown above, will be shown in the Declarations.

- A. The following exclusion is added to Paragraph 2. Exclusions of Section I – Coverages – Coverage A – Bodily Injury And Property Damage Liability:**
- With respect to the operation(s) or project(s) described in the Schedule, this insurance does not apply to "bodily injury" or "property damage" arising out of "earth movement" that is:
1. Caused by or alleged to have been caused by, in whole or in part; or
  2. Aggravated by or alleged to have been aggravated by; "your work".
- B. The following definition is added to the Definitions section:**
- "Earth movement" means:
1. Earthquake, including tremors and aftershocks and any earth sinking, rising or shifting related to such event;
  2. Landslide, including any earth sinking, rising or shifting related to such event;
  3. Mine subsidence, meaning subsidence of a man-made mine whether or not mining activity has ceased; or
  4. Earth sinking, rising or shifting including soil conditions which cause settling, cracking or other disarrangement of foundations or other parts of realty. Soil conditions include contraction, expansion, freezing, thawing, erosion, improperly compacted soil and the action of water under the ground surface.

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

# EXCLUSION – DESIGNATED OPERATIONS COVERED BY A CONTROLLED (WRAP-UP) INSURANCE PROGRAM – LIMITED EXCEPTION FOR ADDITIONAL INSURED

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

## SCHEDULE

Description And Location(s) Of Operation(s):

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

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

1. This insurance does not apply to "bodily injury" or "property damage":
  - a. Arising out of your ongoing operations; or
  - b. Included in the "products-completed operations hazard";at the location(s) described in the Schedule of this endorsement, but only if you are enrolled in a "controlled (wrap-up) insurance program" with respect to the "bodily injury" or "property damage" described in Paragraphs 1.a. and 1.b. above at such location(s).
2. This exclusion applies whether or not the "controlled (wrap-up) insurance program":
  - a. Provides coverage identical to that provided by this Coverage Part;
  - b. Has limits adequate to cover all claims; or
  - c. Remains in effect.

3. However, this exclusion does not apply to any person or organization added as an additional insured by attachment of an endorsement to this Coverage Part who is not enrolled in a "controlled (wrap-up) insurance program" with respect to the "bodily injury" or "property damage" described in Paragraph A.1. above at the location(s) described in the Schedule of this endorsement.

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

"Controlled (wrap-up) insurance program" means a centralized insurance program under which one party has secured either insurance or self-insurance covering some or all of the contractors or subcontractors performing work on one or more specific project(s).

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

**LIMITED EXCLUSION – DESIGNATED OPERATIONS COVERED BY A CONTROLLED (WRAP-UP) INSURANCE PROGRAM – LIMITED EXCEPTION FOR ADDITIONAL INSUREDS**

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

SCHEDULE

Description And Location(s) Of Operation(s):

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

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



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

"Controlled (wrap-up) insurance program" means a centralized insurance program under which one party has secured either insurance or self-insurance covering some or all of the contractors or subcontractors performing work on one or more specific project(s).

SAMPLE

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

## **CANNABIS EXCLUSION**

This endorsement modifies insurance provided under the following:

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

**A.** The following exclusion is added:

This insurance does not apply to:

1. "Bodily injury", "property damage" or "personal and advertising injury" arising out of:
  - a. The design, cultivation, manufacture, storage, processing, packaging, handling, testing, distribution, sale, serving, furnishing, possession or disposal of "cannabis"; or
  - b. The actual, alleged, threatened or suspected inhalation, ingestion, absorption or consumption of, contact with, exposure to, existence of, or presence of "cannabis"; or
2. "Property damage" to "cannabis".

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 that which is described in Paragraph **A.1.** or **A.2.** above.

However, Paragraph **A.1.b.** does not apply to "bodily injury" or "property damage" arising out of the actual, alleged, threatened or suspected inhalation, ingestion, absorption or consumption of, or contact with, "cannabis" by:

- (1) An insured; or
- (2) Any other person for whom you are legally responsible;

but only if the "bodily injury" or "property damage" does not arise out of your selling, serving or furnishing of "cannabis" to any person described above.

**B.** The exclusion in Paragraph **A.** does not apply to "personal and advertising injury" arising out of the following offenses:

1. False arrest, detention or imprisonment; or
2. 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.

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

"Cannabis":

**1. Means:**

Any good or product that consists of or contains any amount of Tetrahydrocannabinol (THC) or any other cannabinoid, regardless of whether any such THC or cannabinoid is natural or synthetic.

**2. Paragraph C.1. above includes, but is not limited to, any of the following containing such THC or cannabinoid:**

- a. Any plant of the genus Cannabis L., or any part thereof, such as seeds, stems, flowers, stalks and roots; or
- b. Any compound, by-product, extract, derivative, mixture or combination, such as:
  - (1) Resin, oil or wax;
  - (2) Hash or hemp; or
  - (3) Infused liquid or edible cannabis;

whether or not derived from any plant or part of any plant set forth in Paragraph **C.2.a.**

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

## PREMIUM AUDIT NONCOMPLIANCE CHARGE

This endorsement modifies insurance provided under the following:

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

### SCHEDULE

<b>Total Advance Premium:</b>	\$
<b>Audit Noncompliance Charge Factor:</b>	
<b>Number Of Written Attempts To Obtain Audit Information:</b>	
<b>Reassessment Charge:</b>	\$
Information required to complete this Schedule, if not shown above, will be shown in the Declarations.	

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

- c.** The first Named Insured must keep records of the information we need for premium computation and send us copies at such times as we may request. If the first Named Insured fails to comply with this request at the close of an audit period, an Audit Noncompliance Charge will be assessed, and notice will be sent to the first Named Insured.

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

Example:

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

- (1)** We will only assess the Audit Noncompliance Charge:
  - (a)** For audits conducted after the end of the policy period; and

- (b)** When we have made the number of written attempts indicated in the Schedule of this endorsement to obtain audit information from the first Named Insured.

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

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

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

- (d) If the first Named Insured fails to comply with the premium audit after 30 days of our receipt of the notification described in Paragraph (2)(a) above, a subsequent notice will be sent to the first Named Insured indicating that the Audit Noncompliance Charge and the Reassessment Charge (if applicable) will be final. The due date for the Audit Noncompliance Charge and the Reassessment Charge is the date shown as the due date on the bill.

SAMPLE



# James K. Ruble Seminar

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

Section 3

# **Business Income...The Mystery Continues**



## BUSINESS INCOME...THE MYSTERY CONTINUES

**I – IMPORTANT POLICY PROVISIONS:** Let's take a look at a few policy provisions that may create problems.

1. What "triggers" a business income loss? It is not the same as the property forms we write.

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

With respect to the requirements set forth in the preceding paragraph, if you occupy only part of the site at which the described premises are located, your premises means:

- (i) The portion of the building which you rent, lease or occupy; and
- (ii) Any area within the building or on the site at which the described premises are located, if that area services, or is used to gain access to, the described premises.

- A. Resulting in a necessary suspension of operation. Note the 2000 change.
  - B. For the "Period of Restoration."
  - C. Direct damage to property at the described premises.
  - D. Covered cause of loss! Road construction in front of your insureds retail store is not covered.
  - E. Damage to property includes access routes and areas that service the insureds premises.
2. When the loss occurs, what is my client entitled to receive for payment of Business Income? What do I base my loss on? Does the policy treat manufacturing risks differently? Adjusters do not always agree on this issue.

Business Income means the: a. Net Income (Net Profit or Loss before income taxes) that would have been earned or incurred; and b. Continuing normal operating expenses incurred, including payroll.

For manufacturing risks, Net Income includes the net sales value of production.

Net Income (profit of loss before taxes) + Continuing Expenses = Business Income

25,000 (net income) + 25,000 (continuing expenses) = 50,000

<25,000> (net income) + 25,000 (continuing expenses) = ???

3. What is my client entitled to receive for payment of Extra Expenses? Who determines what decisions are made and how the money will be spent? My clients never know how much insurance to purchase for these expenses.

Extra Expense means necessary expenses you incur during the "period of restoration" that you would not have incurred if there had been no direct physical loss or damage to property caused by or resulting from a Covered Cause of Loss.

- (1) We will pay any Extra Expense to avoid or minimize the "suspension" of business and to continue "operations":
  - (a) At the described premises; or
  - (b) At replacement premises or at temporary locations, including:
    - (i) Relocation expenses; and
    - (ii) Costs to equip and operate the replacement or temporary locations.
- (2) We will pay any Extra Expense to minimize the "suspension" of business if you cannot continue "operations".
- (3) We will pay any Extra Expense to:
  - (a) Repair or replace any property; or
  - (b) Research, replace or restore the lost information on damaged valuable papers and records;to the extent it reduces the amount of loss that otherwise would have been payable under this Coverage Form.

These are expenses that you would **NOT** have incurred if no loss took place and the insured continued in business.

1. Pays to relocate an insured to another location in order to reduce the down time the business may face. Many insureds cannot afford to be out of business for an extended period of time waiting on repairs to be made. In order to meet their clients needs they have to operate from another location. (an insurance agency is a good example of this exposure)
2. Pays to speed up repairs at the current location. Many risks will not be able to find a suitable location to continue their operation. These insureds will want to speed repairs. (Apartments or hotels are a good examples)

*NOTE: The amounts in 1 and 2 above do **NOT** have to result in a reduction of the Business Income loss in order for your client to collect.*

3. Extra expense to repair or replace property, or replace lost information on damaged valuable papers. This is only paid if it reduces the business income loss. This is not a suitable substitution for a Valuable Papers form.



4. How many businesses will be making the same amount of profit the day they re-open following the "Period of Restoration" as they were making the day the loss occurred? Not many, is the answer you are looking for.

Extended Business Income

(1) Business Income Other Than "Rental Value"

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

- (a) Begins on the date property (except "finished stock") is actually repaired, rebuilt or replaced and "operations" are resumed; and
- (b) Ends on the earlier of:
  - (i) The date you could restore your "operations", with reasonable speed, to the level which would generate the business income amount that would have existed if no direct physical loss or damage had occurred; or
  - (ii) 60 consecutive days after the date determined in (1)(a) above.

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

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

The good news is the policy provides 60 days of coverage (lag coverage). The bad news is the policy provides 60 days coverage. Will your client be at pre-loss profit levels in 60 days following the period of restoration? If not, look to an Optional Coverage known as Extended Period Of Indemnity. This Optional Coverage allows an insured to increase the 60 days built into the policy in thirty (30) day increments up to 720 days.

5. When a business income or extra expense claim occurs, how will the adjuster determine the loss?

There is more disagreement over this section of the policy than perhaps any other.

Loss Determination

a. The amount of Business Income loss will be determined based on:

- (1) The Net Income of the business before the direct physical loss or damage occurred;
- (2) The likely Net Income of the business if no physical loss or damage had occurred, but not including any Net Income that would likely have been earned as a result of an increase in the volume of business due to favorable business conditions caused by the impact of the Covered Cause of Loss on customers or on other businesses;
- (3) The operating expenses, including payroll expenses, necessary to resume "operations" with the same quality of service that existed just before the direct physical loss or damage; and
- (4) Other relevant sources of information, including:
  - (a) Your financial records and accounting procedures;
  - (b) Bills, invoices and other vouchers; and
  - (c) Deeds, liens or contracts.

- A. The net income of the business **BEFORE** the loss took place. Is this the day before, the month before, or the year before? The policy does not address this issue. I believe that is by design. What was used to determine the limit of insurance? The adjuster may need some direction here.
  - B. The **LIKELY** net income the business would have earned had no loss occurred. This does NOT include windfall profits due to a catastrophe.
  - C. Operating Expenses necessary to resume operations. The company will only pay to resume operations at the same level of service just prior to the loss. They will not pay to return bigger and better than before.
  - D. Other relevant sources. These sources must be documents that indicate a loss of business income. The list in (4) (a), (b), and (c) is not a complete list. It is a sample list of areas that may generate a compensable expense.
6. What is my client entitled to receive for his extra expense loss? What documentation is required to prove the loss?

- b. The amount of Extra Expense will be determined based on:
  - (1) All expenses that exceed the normal operating expenses that would have been incurred by "operations" during the "period of restoration" if no direct physical loss or damage had occurred. We will deduct from the total of such expenses:
    - (a) The salvage value that remains of any property bought for temporary use during the "period of restoration", once "operations" are resumed; and
    - (b) Any Extra Expense that is paid for by other insurance, except for insurance that is written subject to the same plan, terms, conditions and provisions as this insurance; and
  - (2) All necessary expenses that reduce the Business Income loss that otherwise would have been incurred.

- A. Expenses that **EXCEED** the normal operating expenses the insured would have incurred. Go to the insureds Operating Statement, any expense that increases a line item entry or adds a new line item entry would be compensable. Salvage will be deducted, as it is in most property forms.
- B. Necessary expenses that reduce the business income loss. The adjuster will be happy to pay these items.

7. For what period of time is my client entitled to receive payment? Are there any surprises I should look for?

"Period of Restoration" means the period of time that:

- a. Begins:
  - (1) 72 hours after the time of direct physical loss or damage for Business Income coverage; or
  - (2) Immediately after the time of direct physical loss or damage for Extra Expense coverage; caused by or resulting from any Covered Cause of Loss at the described premises; and
- b. Ends on the earlier of:
  - (1) The date when the property at the described premises should be repaired, rebuilt or replaced with reasonable speed and similar quality: or
  - (2) The date when business is resumed at a new permanent location.

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

- (1) Regulates the construction, use or repair, or requires the tearing down of any property; or
- (2) Requires any insured or others to test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to, or assess the effects of "pollutants".

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

- A. Waiting period – 72 hours for business income losses. There is no waiting period for extra expenses. The client may not be willing to live with a 72 hour time deductible. If not, review the following endorsements.

**CP 15 56 - Business Income Changes - Beginning Of The Period Of Restoration:** This endorsement gives the insured two options.

- 1. Reduces the waiting period from 72 hours to 24 hours
- 2. Eliminates the 72 hour waiting period

- B. Ends when repairs **SHOULD** have been made or operations are resumed at another **PERMANENT** location.
- C. "Period of Restoration" does **NOT** include any increased period required due to the enforcement of or compliance with any law that regulates the construction, use, repair, or requires the tearing down of any property, or requires any testing, monitoring, or removal of pollutants. For manufacturing firms, the Period of Restoration will not include the time required to reproduce finished stock (this exclusion is found in the Causes of Loss Forms).

**II. HOW MUCH LIMIT IS ENOUGH:** This is the million dollar question for both the insured and the agent. Our clients need our assistance in this area, but allow me to warn you not get too involved with this process. We are going to look at some questions that will assist, but the client needs to provide the answers and make the ultimate decision about the amount of coverage they feel they need.

Five (5) questions that should be asked:

1. How long will it take to rebuild? Can you relocate to alternate facilities or temporary facilities? Are there any reciprocal agreements with similar business?

Other factors that may affect the time it takes to rebuild:

- a. Time for loss adjustment.
  - b. Time to draft architectural plans or engineering studies.
  - c. Time for the bidding and permitting phase.
  - d. Seasonal problems that may exist in some parts of the country.
  - e. Catastrophe Factor - How long will it take to rebuild after a catastrophe such as hurricane Andrew? Have you considered the increase in labor cost and material availability?
2. What is the anticipated loss of Business Income? Not the average months but the best months. Seasonal factors of the business need to be taken into consideration. This should include total profits and all expenses that will *CONTINUE* during the interruption. (Peak Season Endorsements may be an indication of seasonal factors.)
  3. How much Extra Expense would be needed? This can be a "fudge" factor. See Exhibit 3, the article entitled "The Two (2) 'F's' Of Catastrophe Planning".
  4. What is the projected net income and operating expenses for the next 12 months? May use BI worksheet (CP 15 15), or a more simplified approach taking last year's sales less cost of goods sold and adjusting by a +/- depending upon the expectation for the next 12 months, or the SWAG method.
  5. Would the insured continue to suffer loss after the operations are resumed? Used to consider the Extended Period of Indemnity option.

How do we turn the answers to the above five (5) questions into a limit of insurance? Consider the following approach:

**(PERIOD OF RESTORATION) #1**

**NET INCOME + CONT. EXPENSES #2 + EXTRA EXP. #3**

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**NET INCOME + ALL OPERATING EXPENSES  
(12 MONTHS OF THE POLICY) #4**

Lets work on an example: See Exhibits 1 & 2, plug the numbers into the formula above and see if it works.

Period Of Restoration: \_\_\_\_\_

Net Income – Time of Loss: \_\_\_\_\_

Continuing Expense: \_\_\_\_\_

Extra Expense: \_\_\_\_\_

Net Income + All Operating Exp. (12 Month): \_\_\_\_\_

Extended Period Of Indemnity: \_\_\_\_\_

$$\frac{98,873 + 841,624 + 100,000 + 50,000}{118,647 + 1,514,487} = \frac{1,090,497}{1,633,134} = 66.7\%$$

**III. HOW IS THE COINSURANCE PERCENTAGE DETERMINED:** Obviously this is a very important process in writing business income. If the insured chooses an amount of insurance there will be a penalty in the event of a loss as well as insufficient dollars to pay the claim. This presents an E&O exposure for us the agent. First the penalty:

LIMIT ON THE	DECLARATIONS PAGE
COINSURANCE PERCENTAGE <b>X</b>	NET INCOME BEFORE TAXES PLUS ALL OPERATING EXPENSES FOR THE 12 MONTHS OF THE POLICY

Is basically the same penalty we see in the Building and Personal Property Coverage Form, but written in financial terms.  $Did / Should \times Loss = Recovery$ .

Now lets look at the previous formula once again:

**(PERIOD OF RESTORATION) #1**

**NET INCOME + CONT. EXPENSES #2 + EXTRA EXP. #3**

**NET INCOME + ALL OPERATING EXPENSES  
(12 MONTHS OF THE POLICY) #4**

This formula also tells us the coinsurance percentage to use for rating purposes. Lets look at the numbers once again:

$$\frac{98,873 + 841,624 + 100,000 + 50,000}{118,647 + 1,514,487} = \frac{1,090,497}{1,633,134} = 66.7\%$$

**Buy 1,091,000 x .58 x .79 (60% coinsurance factor) = \$ 4,998.**

**Buy 1,144,000 x .58 x .75 (70% coinsurance factor) = \$ 4,976.**

**\$ 53,000 more insurance for \$ 22. less**

**Some Limit and Cost factors to Consider**

The coinsurance percentage factor below the result of the division is the coinsurance percentage to use. But because of the rate multipliers you may want to increase the CIC and the limit. Let's go to the numbers!!!

**ASSUME:**

- #1 9 months to reopen  
 Net Income (net profit or loss before taxes) and Continuing Operating Expenses - \$25,000/month  
 Net Income and All Operating Expense - \$400,000/year

$$\frac{[9 \times \$25,000]}{\$400,000} = \frac{\$225,000}{\$400,000} = 56.25\%$$

Buy \$225,000 @ 50% CIC or buy \$240,000 @ 60% CIC.  
 At 50% of \$400,000, \$225,000 complies with the coinsurance condition. At 60% of \$400,000, \$240,000 complies with the coinsurance condition.

- #2 8 months to reopen  
 Net Income and Continuing Expenses - \$40,000/month  
 Estimated Extra Expense \$30,000 for period of shutdown  
 Net Income and operating expenses - \$600,000/year

$$\frac{[8 \times \$40,000] + \$30,000}{\$600,000} = \frac{\$350,000}{\$600,000} = 58.3\%$$

Buy \$350,000 @ 50% CIC or buy \$360,000 @ 60% CIC.

- #3 12 months to reopen  
 Net Income and CE - \$50,000/month  
 Net Income and operating expenses - \$800,000/year

$$\frac{[12 \times \$50,000]}{\$800,000} = \frac{\$600,000}{\$800,000} = 75\%$$

Buy \$600,000 @ 70% CIC or buy \$640,000 @ 80% CIC.

Now consider the cost. Since CIC modifiers are taken from a step-table, funny things can happen. Assuming a non-manufacturing risk generate the need for #1 \$225,000 to comply with a 50% coinsurance, #2 \$350,000 to comply with 50% coinsurance and #3 \$600,000 to comply with 70% coinsurance: Take a look at what the following rate tables produce.

#1 @ 50% CIC  $\$225,000 \times .58 \times .89 = \$1161.$   
 @ 60% CIC  $\$240,000 \times .58 \times .79 = \$1100.$   
 @ 60% CIC  $\$254,000 \times .58 \times .79 = \$1163.$

#2 @ 50% CIC  $\$350,000 \times .58 \times .89 = \$1807.$   
 @ 60% CIC  $\$360,000 \times .58 \times .79 = \$1649.$   
 @ 60% CIC  $\$395,000 \times .58 \times .79 = \$1809.$

#3 @ 70% CIC  $\$600,000 \times .58 \times .75 = \$2610.$   
 @ 80% CIC  $\$652,000 \times .58 \times .69 = \$2610.$

**Comparison of Rate Factors:**

Coinsurance Percentage	Type of Risk		
	Mercantile/Non-Manufacturing	Manufacturing and Mining	Rental Properties
125%	.55	.65	.50
100	.59	.69	.55
90	.65	.75	.59
80	.69	.79	.65
70	.75	.85	.69
60	.79	.89	.75
50	.89	1.05	.85
No Coinsurance	2.28	2.43	2.08



**IV. OPTIONAL COVERAGES – WHEN SHOULD THEY BE USED:** We are going to discuss four (4) Optional Coverages that are available when writing Business Income coverage. They are Maximum Period Of Indemnity, Monthly Limit Of Indemnity, Extended Period Of Indemnity and Agreed Value. With the Agreed Value Optional Coverage we will take a look at the infamous Business Income Worksheet.

1. **Maximum Period Of Indemnity:** This Option Coverage eliminates coinsurance, however, it limits the payout to the earlier of:
  - A. Dollar limit of insurance selected is exhausted, or
  - B. 120 days from the date of loss.

The only time this Optional Coverage should be used is when the “Period Of Restoration” will not exceed 120 days. When the insured runs out of time (120 days) or dollars (the limit of insurance selected) coverage ceases. Keep in mind the changes discussed earlier (#6 on page 1) that was made in the 2000 form. This 120 days applies to business income *AND* extra expense.

This is also the most expensive way to write Business Income coverage.

Example:

An insured has a Maximum Period Of Indemnity Optional Coverage written with a \$100,000 limit. A loss occurs and the following damages take place over a 5 month Period Of Restoration. How will this loss be paid?

MONTH	BUSINESS INCOME LOSS	EXTRA EXPENSE LOSS	TOTAL PAID
# 1	12,000	20,000	
# 2	16,000	10,000	
# 3	22,000	5,000	
# 4	12,000	5,000	
# 5	14,000	5,000	

As you can see, your client will not be happy!

2. **Monthly Limit Of Indemnity:** This Optional Coverage eliminates coinsurance, however, it limits the insured to a fraction (1/3, 1/4, 1/6) of the limit of insurance selected in any given month. The common mistake made with this form is that it limits time (that is the amount of months an insured can collect); this is incorrect. This Optional Coverage limits total dollars and monthly dollars. It does not limit the amount of time over which a loss may be paid.

**Example:**

An insured has a Monthly Limit Of Indemnity Optional Coverage written with a \$100,000 limit with a 1/4 monthly limitation. A loss occurs and the following damages take place over a 7 month Period Of Restoration. How will this loss be paid?

MONTH	BUSINESS INCOME LOSS	EXTRA EXPENSE LOSS	TOTAL PAID
# 1	9,000	10,000	
# 2	12,000	6,000	
# 3	27,000	5,000	
# 4	10,000	3,000	
# 5	7,000	3,000	
#6	11,000	4,000	
#7	14,000	6,000	

This Optional coverage is by far the most popular method of writing Business Income. However, it was originally intended for the insured that fell into one of the following:

- A. Chose not to purchase the amount of insurance required by the coinsurance requirement.
  
- B. Refuses to make available the necessary financial information to adequately determine the correct limit of insurance to satisfy the coinsurance requirement.

3. **Extended Period Of Indemnity:** Will the insured be able to generate the same amount of income the day after the period of restoration as they were making the day the loss occurred? I asked this question earlier. The form gives the insured 60 days of “lag” coverage, if this is not enough this Optional Coverage should be used. This Optional Coverage allows the insured to purchase additional **TIME** in 30 day increments up to 720 days. Do **NOT** forget to adjust your limit of insurance appropriately.
  
4. **Agreed Value:** Essentially works the same as Agreed Value option under Building and Personal Property Coverage form. Business Income Report/Work sheet no longer must be made a part of the policy, but is required to be submitted to the insurance company. Shows financial data for 12 months prior to date of report and projected data for 12 months following work sheet.

The Agreed Value will be equal to the coinsurance percentage multiplied by the amount of net income and operating expenses for the following 12 months you estimate on the Work Sheet. The insured should carry an amount of insurance equal to at least the Agreed Value amount.

Coinsurance is suspended until: Twelve months after the effective date of the policy, or expiration of the policy, whichever comes first.

Loss will be reduced if the amount of insurance is less than the agreed amount. Reduction is by the amount of underinsurance.

Now lets look at the worksheet:

**SEE EXHIBIT** – We will now complete the Business Income Worksheet using the financial data we have already reviewed from “Supermarkets, Inc.”

**V – ENDORSEMENTS TO CONSIDER:** We have set a limit, determined our coinsurance percentage, and completed our Business Income Worksheet. If that wasn't hard enough, now we need to consider a few endorsements that may be needed to modify coverage. The following are a few of the most commonly used or needed endorsements.

**A. Business Income From Dependent Properties Broad Form –**

1. Extends Business Income Coverage to cover loss from damage to the premises of scheduled business with a contributing relationship to the insured.
2. Requires same elements of Business Income loss, as does Business Income Insurance on insured's described premises.
3. Provides same limits for dependent properties as Insured's Business Income Form on described premises.
4. Four dependent types of properties depend on relationships to insured.
  - a) Contributing Locations - supplies parts, materials or services to the insured.
  - b) Recipient Locations - accepts the insured's products or services.
  - c) Manufacturing Locations - manufactures products for delivery to insured's customers.
  - d) Leader Locations - attracts customers to insured's business; e.g., "anchor" store (Sears) in a shopping mall.

**B. Business Income From Dependent Properties Limited Form –**

- a. Business Income coverage at the insured's own premises is not wanted.
- b. Separate limits are desired for dependent properties and the insured's described premises.
- c. Both endorsements rely on the policy form that is used. If Business Income (and Extra Expenses) is used, then the endorsement will indemnify for business income and extra expense losses caused by a suspension of operations at the insured's location for the period of restoration. The suspension must be caused by direct physical loss or damage at the location of the dependent property as a result of a covered cause of loss. When this endorsement is used whatever is covered by the Coverage Form is now covered for the additional locations listed on the endorsement.

**C. Time Element – Utility Services –**

Off Premises damage causing on premises losses. Direct physical loss by a Covered Cause of Loss to scheduled property not on described premises. Off-Premises Services applies to: Water Supply Services, Communications Supply Services, Power Supply Services including failure of power lines, and transformers. Windstorm and earthquake are serious risks. (Hurricane Andrew produced numerous E&O claims for failure to provide this coverage). Coverage for overhead transmission lines are an option triggered on this endorsement.

**D. Ordinance or Law - Increased Period of Restoration -**

1. Modifies "Period Of Restoration" to include time to comply with the minimum standards of any ordinance or law, in force at the time of loss, that regulates the construction or repair, or requires the tearing down of any property. The ordinance or law must be in force at the time of the loss.
2. The coverage is not extended to include loss caused by or resulting from the enforcement of any ordinance or law which requires any insured or others to test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to, or assess the effects of "pollutants." This coverage is available through some of the markets that are writing pollution coverage.
3. The 72 hour time deductible still applies.

**E. Discretionary Payroll – CP 15 04:**

The Loss Determination Clause contained in the Business Income Coverage Forms CP 00 30 and CP 00 32 states that the amount of Business Income loss will be based in part upon "the operating expenses, including payroll expenses, necessary to resume 'operations' with the same quality of service that existed just before the direct physical loss or damage". An insured may wish to continue payroll for certain job classifications or employees, for business reasons such as retention of employees in a tight job market.

Discretionary payroll may be specified in terms of either job classification or individual employees.

Payroll coverage may be provided for the entire period of restoration or limited to a specified maximum number of days.

The days for which coverage applies need not be consecutive.

Job classifications and employees not identified in the Schedule are not affected by the terms of this endorsement.

**F. Payroll Limitation or Exclusion - CP 15 10:**

Purpose: Amount of insurance required to meet coinsurance requirement based on net income plus all expenses including payroll. Some payroll in the ordinary category may not be continued during a suspension and thus could not be recovered by the insured. Therefore, automatically including this expense unnecessarily increases the base required for determining the required amount of insurance.

All payroll may be excluded which would significantly reduce the expense figure in calculating the amount of insurance needed to meet the coinsurance requirement. Insured must understand that if the business is not operating and it has decided to continue any of the payroll, there is no coverage of that expense.

Payroll may be continued during the "Period of Restoration" or any extension (Extended Business Income and/or Extended Period of Indemnity) beyond up to the number of days shown in the schedule. The days do not have to be consecutive.

**G. Business Income – Landlord As Additional Insured (Rental Value) – CP 15 03:**

Rental and lease agreements many times require that the tenant procure insurance for loss of rental income for the benefit of the landlord, for the situation where the premises cannot be used for business purposes because of a covered loss. This endorsement allows the tenant to name the landlord in the schedule and show a limit of insurance that will satisfy the requirements of the lease

**EXHIBIT 1****SUPERMARKETS, INC.**  
**January 1, 20xx Thru December 31, 20xx****INCOME:**

Gross Sales:		\$6,420,963.00
Less: Discounts and Rebates		43,666.00
NET SALES:		6,377,297.00

**COST OF SALES:**

Beginning Inventory (1/1/xx)	\$ 181,662.00	
Purchases:	5,094,463.00	
Less Ending Inventory (12/31/20xx)	<u>324,100.00</u>	
Total Cost of Sales:		\$4,952,025.00

**GROSS PROFIT:**

1,425,272.00

**OPERATING EXPENSES:**

Advertising	\$ 87,363.00
Amortization	5,903.00
Auto & Truck Expense	5,193.00
Bank Charges	1,802.00
Cash Over & Short	1,705.00
Check Cashing Expense	3,666.00
Contract Labor	1,497.00
Contributions	655.00
Depreciation	31,763.00
Dues & Subscriptions	745.00
Equipment Lease	78,508.00
Insurance – General	23,231.00
Insurance – Workers Compensation	28,204.00
Insurance – Group	15,215.00
Insurance – Officers Life	5,184.00
Interest	52,871.00
Inventory Service	3,586.00
Janitorial	4,092.00
Laundry	4,298.00
Legal & Accounting	13,801.00
License & Fees	823.00
Miscellaneous Expense	194.00
Mortgage	36,000.00
Retirement Plan Expense	19,800.00
Repairs & Maintenance	28,052.00
Salaries – Officers	162,100.00
Salaries – General	9,412.00
Salaries – Grocery	358,732.00

Salaries – Market	228,354.00	
Supplies – Market	41,179.00	
Supplies – General	41,033.00	
Taxes – Payroll	50,093.00	
Taxes – Other	79,632.00	
Utilities	<u>60,449.00</u>	
Total Operating Expenses		<u>\$1,442,369.00</u>
<b>OPERATING LOSS:</b>		(17,037.00)
<b>OTHER INCOME:</b>		
Check Cashing Fees		74,875.00
Returned Check Fees		3,942.00
Charge-Off Collecting		11,259.00
License Fee Income		1,467.00
Returned Check Charge-Off		(14,281.00)
Money Order Fees		8,961.00
Gain On Sale Of Assets		2,245.00
Interest Income		25,442.00
Other Income – Grocery		12,372.00
Miscellaneous Income		<u>3,754.00</u>
Total Other Income		130,035.00
<b>NET INCOME:</b>		<u>112,998.00</u>



**EXHIBIT 2****SUPERMARKETS, INC.  
OPERATING STATEMENT**

January 1, 20xx thru December 31, 20xx

<b>OPERATING EXPENSES:</b>	<b>CONTINUING:</b>	<b>NONCONTINUING:</b>	
Advertising	\$ 87,363.00	70,000.00	17,363.00
Amortization	5,903.00	5,903.00	-0-
Auto & Truck Expense	5,193.00	2,500.00	2,693.00
Bank Charges	1,802.00	500.00	1,302.00
Cash Over & Short	1,705.00	-0-	1,705.00
Check Cashing Expense	3,666.00	-0-	3,666.00
Contract Labor	1,497.00	-0-	1,497.00
Contributions	655.00	500.00	155.00
Depreciation	31,763.00	31,763.00	-0-
Dues & Subscriptions	745.00	745.00	-0-
Equipment Lease	78,508.00	57,500.00	21,008.00
Insurance – General	23,231.00	18,500.00	4,731.00
Insurance – Workers Comp.	28,204.00	18,332.00	9,872.00
Insurance – Group	15,215.00	9,889.00	5,326.00
Insurance – Officers Life	5,184.00	5,184.00	-0-
Interest	52,871.00	52,871.00	-0-
Inventory Service	3,586.00	-0-	3,586.00
Janitorial	4,092.00	-0-	4,092.00
Laundry	4,298.00	-0-	4,289.00
Legal & Accounting	13,801.00	7,000.00	6,801.00
License & Fees	823.00	823.00	-0-
Miscellaneous Expense	194.00	194.00	-0-
Mortgage	36,000.00	36,000.00	-0-
Retirement Plan Expense	19,800.00	14,850.00	4,950.00
Repairs & Maintenance	28,052.00	7,000.00	21,052.00
Salaries – Officers	162,100.00	162,000.00	-0-
Salaries – General	9,412.00	7,830.00	1,582.00
Salaries – Grocery	358,732.00	215,240.00	143,492.00
Salaries – Market	228,354.00	142,012.00	85,342.00
Supplies – Market	41,179.00	-0-	41,179.00
Supplies – General	41,033.00	-0-	41,033.00
Taxes – Payroll	50,093.00	32,055.00	18,038.00
Taxes – Other	79,632.00	38,000.00	41,632.00
Utilities	<u>60,449.00</u>	<u>27,500.00</u>	<u>32,949.00</u>
<b>Total Operating Expenses</b>	<b>\$1,442,369.00</b>	<b>\$ 961,856.00</b>	<b>\$ 480,513.00</b>

<b>TOTALS:</b>	<b>Continuing Expense</b>	<b>Non-Continuing Expense</b>
	<b><u>\$ 961,856.00</u></b>	<b><u>\$ 480,513.00</u></b>

### EXHIBIT 3

## The Two (2) “F’s” of Catastrophe Planning

I vividly remember one of my greatest fears in high school was bringing my report card home after finding out that my geometry grade was in fact an “F”. I recall opening my report card hoping against hope that somehow I escaped with a “D” knowing full well I had not even come close. For some strange reason my father didn’t think an “F” was a satisfactory grade. After many years have passed, I now have two children, one is a freshman in college, and the other is a sophomore in high school. I must admit that I have adopted my father’s attitude toward bad grades. The good news about my “F” in geometry was that I got to spend another 9 fun-filled weeks taking geometry again. Unfortunately, in this article we will find out that our clients are not so fortunate. When they make an “F” in catastrophe planning it many times cost them their business.

Before we get to the nuts and bolts of this issue, I would like to make a couple of observations that we need to consider:

1. Every client knows they need a catastrophe plan – I have never discussed this issue with agents or our consulting clients and had them tell me they understand the issue and do not believe they need a plan in the event that a catastrophe hits. Many have not thought about it, or have thought about it, but for a number of reasons have put it off.
2. Every business we insure is exposed to some extent – It never ceases to amaze me that we live in a state surrounded on three (3) sides by warm water and we are surprised when a hurricane hits. “Oh my God, a hurricane hit Florida.” Well, guess what, another one will hit someday. When hurricane Andrew struck Florida, every business in South Florida was impacted. But remember, a catastrophe does not have to be in the form of a hurricane, it could be a fire, or vandalism, or a number of other reasons.
3. Very few insureds know how to get started in developing a plan. Your clients are in business to make money. Very few spend quality time planning for what may never happen. They spend their time and energy in the development of the business, not protecting it. I have heard the term “Value Added” service thrown around a lot lately. My one conclusion is that very few of us have a clue what it means. For the purpose of this article, think of a “value added” as something you provide for your clients that your competition can’t or won’t provide.

Certainly a catastrophe plan has many uses to a business, and affects many areas of coverage, but I feel the most overlooked are is in the area of Business Income. This article will discuss how to use a catastrophe plan to assist us in writing and setting our business income coverage limit. Lets discuss the first “F” (Failure).

**FORMALIZED:**

Businesses need a written well thought out plan for dealing with catastrophe. So many times I have discussed these issues with clients only to be told that they have a good idea what they would do but they have not taken the time to write it down. I ask them if this concerns them, they usually respond to the affirmative. The tragedy of not having a written plan means that the day after the devastation strikes we must start making decisions. Do you really think any of our clients are in the right frame of mind to do this? Ask your clients this simple question. “ If you were to arrive at work tomorrow to find the fire department putting out the ashes of what use to be your business location, what would you do? To compound this issue ask the same question in reference to a devastating hurricane. Make them answer the question. You may want to even offer some assistance such as; can you reopen at another location? If so, where? What about telephone and computer equipment? Is the new location properly wired? The list of questions can go on and on. The fact of the matter is they have no idea where they will go or what they will do.

A couple of years ago I received a call from a large company that wanted their insurance reviewed. This account was not written locally, but through an agency in Louisiana. They simply wanted me to review their coverage and be willing to attend a board meeting and answer any questions that may arise. I agreed and upon review I felt the agency that had written this coverage had done an exceptional job. I was only concerned about one major issue. The client had a small amount of Business Income coverage, but no Extra Expense coverage was written (Business Income without Extra Expense had been used). I asked the CFO of the company if they had a catastrophe plan; his response was that although they did not have it formalized (in writing) they felt they had a good idea what they would do. His plan was to contact other providers of their service locally and rent office space and contract out any service to these other providers that they could not provide. I asked what seemed to be a simple question. If your competition wanted to help you that would be great, but what if they saw this as an opportunity to put you out of business, or at the very least, capture some of your existing market share, could this happen? Needless to say he had never thought about this before. He assumed that they could pay them and they would be happy to make the additional income. The issue may not be income, it may be leverage. I even called the agency that handled the account to see if the coverage was offered. Sure enough the Extra Expense coverage was offered and the insured decided against the coverage due to the price. Does any of this sound familiar?

There are some specific advantages to having your catastrophe plan formalized:

1. Your client will not be put in a position of having to make very difficult decisions at a very emotional time. Most clients are devastated after having a serious loss. This is not the time to be making these tough decisions. Your client can't afford to make mistakes at this stage of the game.
2. It allows for careful thought and proper input from other members of the organization. Mistakes that are made in a spur of the moment decision can be avoided.
3. It allows for other risk management tools to be utilized. The thought the CEO had of using the competition was not a bad idea. A formalized reciprocal agreement that allowed assistance to either company in the event of a loss at a predetermined price is not a bad idea. I have seen this approach used in a group of milk dairies. They each agreed that in the event of a loss to any member of the group the other dairies would meet their contracts at a predetermined price per gallon.

4. It allows the organization to acquire the resources needed before the loss takes place. A good example of this is a power generator in the event of loss of power due to a hurricane. It could also be used to store raw goods or other materials at alternate locations.

Perhaps the biggest advantage to a formalized plan lies in answering the question we asked earlier. “If you were to arrive at work tomorrow to find the fire department putting out the ashes of what used to be your business location, what would you do? The answer we were looking for is: “I would go to my safe deposit box (or some other secure location) and pull out my catastrophe plan and begin implementing it step by step. By the way I have asked this question hundreds of times and I have never gotten that answer. On to the second “F” (failure) of catastrophe planning.

## **FUNDING:**

**You may be thinking by now that all of this sounds like a good idea, but where do we get the money to pay for it? That’s an excellent question, one your client will ask by the way. There are a number of ways to fund a catastrophe plan, let’s look at a few:**

1. Use the current resources of the business. If the business is in a good cash position (which most are not) this may be possible. But even if it is I don’t think it is a wise allocation of the funds. Most businesses want to use the additional revenues to expand or grow the company in some area. To use this money for funding of the catastrophe plan would prevent this possibility.
2. Borrow the money needed using the business or its resources as collateral. Most businesses have good credit and this may be a possibility. But keep in mind you have just had a loss. Depending on its severity there may be little or no revenue coming in. Is this the position we may find ourselves in if the loss is bad enough? One other minor observation on this point. I have noticed that banks love to loan us money when all is going well and there is plenty of revenue coming in, but they hate us when we really need the money because revenues are restricted.
3. The business could start a sinking fund. A sinking fund is simply a savings account designated for a particular purpose. This may not be a bad idea, after all we all need to save a little for a rainy day, or so my dad always told me. The problem presented by the sinking fund is that if the loss occurs prior to enough money being saved to adequately pay all of the costs, we would have to revert back to one of the methods described above.
4. By now you are probably questioning if there are any good ways to fund a catastrophe plan. The answer is, yes. You simply formalize your catastrophe plan and price out the cost associated with funding it. You then use Extra Expense coverage to pay for the plan. This allows the use of discounted dollars (the cost of insurance) in the event a loss occurs. This can be accomplished with the Extra Expense Coverage Form or the Business Income (Including Extra Expense Coverage) Form. I would suggest the later. The Extra Expense Coverage Form has limitations on how much money can be spent in a thirty (30) day period, where the Business Income Coverage Form has no limitations. If you have purchased enough insurance, you can use it any way you choose. This is a win, win scenario.

Now that we understand the importance of not receiving an “F” in our planning for a catastrophe lets discuss some of the tools that may help you and where to find them. Simply pointing out a problem to our client without any possible solutions can not only leave them frustrated, but also looking for a new agent. There are a lot of articles under the heading of “catastrophe” or “disaster” planning on the Internet. It may be worth your while to research some of these for additional information. Some other tools that I have found are as follows:

1. Business applications software. Look at your local software companies in the business section. Many will have software plans specifically, others will have them included in “business plan” software. Look at some of these to see which ones work better for you.
2. The small business administration has what I am told is a free publication called “Open for Business – A disaster planning tool kit for the small business owner.” I did receive a free copy by contacting them at The Small Business Association, 3<sup>rd</sup> Street SW, Washington, DC 20416. Their phone and e-mail address are (202) 205-6734, [www.sba.gov](http://www.sba.gov).

I hope this gives you some information where you can begin to learn more about catastrophe planning. As we learn more that information can be passed on to our clients. Keep in mind what we discussed at the beginning of this article, “Value Added” services are those things we do for our client that our competition can’t or won’t provide. This represents an excellent opportunity for us to separate ourselves from our competition that in turn could lead to greater service and revenues.



# **EXHIBITS**

## BUSINESS INCOME (AND EXTRA EXPENSE) COVERAGE FORM

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

Throughout this policy, the words "you" and "your" refer to the Named Insured shown in the Declarations. The words "we", "us" and "our" refer to the company providing this insurance.

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

### A. Coverage

#### 1. Business Income

Business Income means the:

- a. Net Income (Net Profit or Loss before income taxes) that would have been earned or incurred; and
- b. Continuing normal operating expenses incurred, including payroll.

For manufacturing risks, Net Income includes the net sales value of production.

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

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

If option (1) above is selected, the term Business Income will include "Rental Value". If option (3) above is selected, the term Business Income will mean "Rental Value" only.

If Limits of Insurance are shown under more than one of the above options, the provisions of this Coverage Part apply separately to each.

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

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

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

#### 2. Extra Expense

- a. Extra Expense Coverage is provided at the premises described in the Declarations only if the Declarations show that Business Income Coverage applies at that premises.
- b. Extra Expense means necessary expenses you incur during the "period of restoration" that you would not have incurred if there had been no direct physical loss or damage to property caused by or resulting from a Covered Cause of Loss.

We will pay Extra Expense (other than the expense to repair or replace property) to:

- (1) Avoid or minimize the "suspension" of business and to continue operations at the described premises or at replacement premises or temporary locations, including relocation expenses and costs to equip and operate the replacement location or temporary location.



- (2) Minimize the "suspension" of business if you cannot continue "operations".

We will also pay Extra Expense to repair or replace property, but only to the extent it reduces the amount of loss that otherwise would have been payable under this Coverage Form.

### 3. Covered Causes Of Loss, Exclusions And Limitations

See applicable Causes Of Loss form as shown in the Declarations.

### 4. Additional Limitation – Interruption Of Computer Operations

- a. Coverage for Business Income does not apply when a "suspension" of "operations" is caused by destruction or corruption of electronic data, or any loss or damage to electronic data, except as provided under the Additional Coverage, Interruption Of Computer Operations.
- b. Coverage for Extra Expense does not apply when action is taken to avoid or minimize a "suspension" of "operations" caused by destruction or corruption of electronic data, or any loss or damage to electronic data, except as provided under the Additional Coverage, Interruption Of Computer Operations.
- c. Electronic data means information, facts or computer programs stored as or on, created or used on, or transmitted to or from computer software (including systems and applications software), on hard or floppy disks, CD-ROMs, tapes, drives, cells, data processing devices or any other repositories of computer software which are used with electronically controlled equipment. The term computer programs, referred to in the foregoing description of electronic data, means a set of related electronic instructions which direct the operations and functions of a computer or device connected to it, which enable the computer or device to receive, process, store, retrieve or send data.
- d. This Additional Limitation does not apply when loss or damage to electronic data involves only electronic data which is integrated in and operates or controls a building's elevator, lighting, heating, ventilation, air conditioning or security system.

## 5. Additional Coverages

### a. Civil Authority

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

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

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

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

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

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

## **b. Alterations And New Buildings**

We will pay for the actual loss of Business Income you sustain and necessary Extra Expense you incur due to direct physical loss or damage at the described premises caused by or resulting from any Covered Cause of Loss to:

- (1) New buildings or structures, whether complete or under construction;
- (2) Alterations or additions to existing buildings or structures; and
- (3) Machinery, equipment, supplies or building materials located on or within 100 feet of the described premises and:
  - (a) Used in the construction, alterations or additions; or
  - (b) Incidental to the occupancy of new buildings.

If such direct physical loss or damage delays the start of "operations", the "period of restoration" for Business Income Coverage will begin on the date "operations" would have begun if the direct physical loss or damage had not occurred.

## **c. Extended Business Income**

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

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

- (a) Begins on the date property (except "finished stock") is actually repaired, rebuilt or replaced and "operations" are resumed; and
- (b) Ends on the earlier of:
  - (i) The date you could restore your "operations", with reasonable speed, to the level which would generate the business income amount that would have existed if no direct physical loss or damage had occurred; or
  - (ii) 60 consecutive days after the date determined in (1)(a) above.

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

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

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

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

- (a) Begins on the date property is actually repaired, rebuilt or replaced and tenantability is restored; and
- (b) Ends on the earlier of:
  - (i) The date you could restore tenant occupancy, with reasonable speed, to the level which would generate the "Rental Value" that would have existed if no direct physical loss or damage had occurred; or
  - (ii) 60 consecutive days after the date determined in (2)(a) above.

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

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

## **d. Interruption Of Computer Operations**

- (1) Under this Additional Coverage, electronic data has the meaning described under Additional Limitation – Interruption Of Computer Operations.

- (2) Subject to all provisions of this Additional Coverage, you may extend the insurance that applies to Business Income and Extra Expense to apply to a "suspension" of "operations" caused by an interruption in computer operations due to destruction or corruption of electronic data due to a Covered Cause of Loss. However, we will not provide coverage under this Additional Coverage when the Additional Limitation – Interruption Of Computer Operations – does not apply based on Paragraph **A.4.d.** therein.
- (3) With respect to the coverage provided under this Additional Coverage, the Covered Causes of Loss are subject to the following:
- (a) If the Causes Of Loss – Special Form applies, coverage under this Additional Coverage, Interruption Of Computer Operations, is limited to the "specified causes of loss" as defined in that form and Collapse as set forth in that form.
  - (b) If the Causes Of Loss – Broad Form applies, coverage under this Additional Coverage, Interruption Of Computer Operations, includes Collapse as set forth in that form.
  - (c) If the Causes Of Loss form is endorsed to add a Covered Cause of Loss, the additional Covered Cause of Loss does not apply to the coverage provided under this Additional Coverage, Interruption Of Computer Operations.
  - (d) The Covered Causes of Loss include a virus, harmful code or similar instruction introduced into or enacted on a computer system (including electronic data) or a network to which it is connected, designed to damage or destroy any part of the system or disrupt its normal operation. But there is no coverage for an interruption related to manipulation of a computer system (including electronic data) by any employee, including a temporary or leased employee, or by an entity retained by you or for you to inspect, design, install, maintain, repair or replace that system.
- (4) The most we will pay under this Additional Coverage, Interruption Of Computer Operations, is \$2,500 (unless a higher limit is shown in the Declarations) for all loss sustained and expense incurred in any one policy year, regardless of the number of interruptions or the number of premises, locations or computer systems involved. If loss payment relating to the first interruption does not exhaust this amount, then the balance is available for loss or expense sustained or incurred as a result of subsequent interruptions in that policy year. A balance remaining at the end of a policy year does not increase the amount of insurance in the next policy year. With respect to any interruption which begins in one policy year and continues or results in additional loss or expense in a subsequent policy year(s), all loss and expense is deemed to be sustained or incurred in the policy year in which the interruption began.
- (5) This Additional Coverage, Interruption Of Computer Operations, does not apply to loss sustained or expense incurred after the end of the "period of restoration", even if the amount of insurance stated in (4) above has not been exhausted.

## 6. Coverage Extension

If a Coinsurance percentage of 50% or more is shown in the Declarations, you may extend the insurance provided by this Coverage Part as follows:

### Newly Acquired Locations

- a. You may extend your Business Income and Extra Expense Coverages to apply to property at any location you acquire other than fairs or exhibitions.
- b. The most we will pay under this Extension, for the sum of Business Income loss and Extra Expense incurred, is \$100,000 at each location, unless a higher limit is shown in the Declarations.
- c. Insurance under this Extension for each newly acquired location will end when any of the following first occurs:
  - (1) This policy expires;

- (2) 30 days expire after you acquire or begin to construct the property; or
- (3) You report values to us.

We will charge you additional premium for values reported from the date you acquire the property.

The Additional Condition, Coinsurance, does not apply to this Extension.

## B. Limits Of Insurance

The most we will pay for loss in any one occurrence is the applicable Limit Of Insurance shown in the Declarations.

Payments under the following coverages will not increase the applicable Limit of Insurance:

1. Alterations And New Buildings;
2. Civil Authority;
3. Extra Expense; or
4. Extended Business Income.

The amounts of insurance stated in the Interruption Of Computer Operations Additional Coverage and the Newly Acquired Locations Coverage Extension apply in accordance with the terms of those coverages and are separate from the Limit(s) Of Insurance shown in the Declarations for any other coverage.

## C. Loss Conditions

The following conditions apply in addition to the Common Policy Conditions and the Commercial Property Conditions:

### 1. Appraisal

If we and you disagree on the amount of Net Income and operating expense or the amount of loss, either may make written demand for an appraisal of the loss. In this event, each party will select a competent and impartial appraiser.

The two appraisers will select an umpire. If they cannot agree, either may request that selection be made by a judge of a court having jurisdiction. The appraisers will state separately the amount of Net Income and operating expense or amount of loss. If they fail to agree, they will submit their differences to the umpire. A decision agreed to by any two will be binding. Each party will:

- a. Pay its chosen appraiser; and
- b. Bear the other expenses of the appraisal and umpire equally.

If there is an appraisal, we will still retain our right to deny the claim.

## 2. Duties In The Event Of Loss

a. You must see that the following are done in the event of loss:

- (1) Notify the police if a law may have been broken.
- (2) Give us prompt notice of the direct physical loss or damage. Include a description of the property involved.
- (3) As soon as possible, give us a description of how, when and where the direct physical loss or damage occurred.
- (4) Take all reasonable steps to protect the Covered Property from further damage, and keep a record of your expenses necessary to protect the Covered Property, for consideration in the settlement of the claim. This will not increase the Limit of Insurance. However, we will not pay for any subsequent loss or damage resulting from a cause of loss that is not a Covered Cause of Loss. Also, if feasible, set the damaged property aside and in the best possible order for examination.
- (5) As often as may be reasonably required, permit us to inspect the property proving the loss or damage and examine your books and records.

Also permit us to take samples of damaged and undamaged property for inspection, testing and analysis, and permit us to make copies from your books and records.

- (6) Send us a signed, sworn proof of loss containing the information we request to investigate the claim. You must do this within 60 days after our request. We will supply you with the necessary forms.
  - (7) Cooperate with us in the investigation or settlement of the claim.
  - (8) If you intend to continue your business, you must resume all or part of your "operations" as quickly as possible.
- b. We may examine any insured under oath, while not in the presence of any other insured and at such times as may be reasonably required, about any matter relating to this insurance or the claim, including an insured's books and records. In the event of an examination, an insured's answers must be signed.



### 3. Loss Determination

- a. The amount of Business Income loss will be determined based on:
  - (1) The Net Income of the business before the direct physical loss or damage occurred;
  - (2) The likely Net Income of the business if no physical loss or damage had occurred, but not including any Net Income that would likely have been earned as a result of an increase in the volume of business due to favorable business conditions caused by the impact of the Covered Cause of Loss on customers or on other businesses;
  - (3) The operating expenses, including payroll expenses, necessary to resume "operations" with the same quality of service that existed just before the direct physical loss or damage; and
  - (4) Other relevant sources of information, including:
    - (a) Your financial records and accounting procedures;
    - (b) Bills, invoices and other vouchers; and
    - (c) Deeds, liens or contracts.
- b. The amount of Extra Expense will be determined based on:
  - (1) All expenses that exceed the normal operating expenses that would have been incurred by "operations" during the "period of restoration" if no direct physical loss or damage had occurred. We will deduct from the total of such expenses:
    - (a) The salvage value that remains of any property bought for temporary use during the "period of restoration", once "operations" are resumed; and
    - (b) Any Extra Expense that is paid for by other insurance, except for insurance that is written subject to the same plan, terms, conditions and provisions as this insurance; and
  - (2) Necessary expenses that reduce the Business Income loss that otherwise would have been incurred.

### c. Resumption Of Operations

We will reduce the amount of your:

- (1) Business Income loss, other than Extra Expense, to the extent you can resume your "operations", in whole or in part, by using damaged or undamaged property (including merchandise or stock) at the described premises or elsewhere.
- (2) Extra Expense loss to the extent you can return "operations" to normal and discontinue such Extra Expense.
- d. If you do not resume "operations", or do not resume "operations" as quickly as possible, we will pay based on the length of time it would have taken to resume "operations" as quickly as possible.

### 4. Loss Payment

We will pay for covered loss within 30 days after we receive the sworn proof of loss, if you have complied with all of the terms of this Coverage Part, and:

- a. We have reached agreement with you on the amount of loss; or
- b. An appraisal award has been made.

### D. Additional Condition

#### COINSURANCE

If a Coinsurance percentage is shown in the Declarations, the following condition applies in addition to the Common Policy Conditions and the Commercial Property Conditions.

We will not pay the full amount of any Business Income loss if the Limit of Insurance for Business Income is less than:

- 1. The Coinsurance percentage shown for Business Income in the Declarations; times
- 2. The sum of:
  - a. The Net Income (Net Profit or Loss before income taxes), and
  - b. Operating expenses, including payroll expenses,

that would have been earned or incurred (had no loss occurred) by your "operations" at the described premises for the 12 months following the inception, or last previous anniversary date, of this policy (whichever is later).

Instead, we will determine the most we will pay using the following steps:

- Step (1): Multiply the Net Income and operating expense for the 12 months following the inception, or last previous anniversary date, of this policy by the Coinsurance percentage;
- Step (2): Divide the Limit of Insurance for the described premises by the figure determined in Step (1); and
- Step (3): Multiply the total amount of loss by the figure determined in Step (2).

We will pay the amount determined in Step (3) or the limit of insurance, whichever is less. For the remainder, you will either have to rely on other insurance or absorb the loss yourself.

In determining operating expenses for the purpose of applying the Coinsurance condition, the following expenses, if applicable, shall be deducted from the total of all operating expenses:

- (1) Prepaid freight – outgoing;
- (2) Returns and allowances;
- (3) Discounts;
- (4) Bad debts;
- (5) Collection expenses;
- (6) Cost of raw stock and factory supplies consumed (including transportation charges);
- (7) Cost of merchandise sold (including transportation charges);
- (8) Cost of other supplies consumed (including transportation charges);
- (9) Cost of services purchased from outsiders (not employees) to resell, that do not continue under contract;
- (10) Power, heat and refrigeration expenses that do not continue under contract (if Form CP 15 11 is attached);
- (11) All payroll expenses or the amount of payroll expense excluded (if Form CP 15 10 is attached); and
- (12) Special deductions for mining properties (royalties unless specifically included in coverage; actual depletion commonly known as unit or cost depletion – not percentage depletion; welfare and retirement fund charges based on tonnage; hired trucks).

### Example 1 (Underinsurance)

When: The Net Income and operating expenses for the 12 months following the inception, or last previous anniversary date, of this policy at the described premises would have been: \$ 400,000  
The Coinsurance percentage is: 50%  
The Limit of Insurance is: \$ 150,000  
The amount of loss is: \$ 80,000

Step (1):  $\$400,000 \times 50\% = \$200,000$   
(the minimum amount of insurance to meet your Coinsurance requirements)

Step (2):  $\$150,000 \div \$200,000 = .75$

Step (3):  $\$80,000 \times .75 = \$60,000$

We will pay no more than \$60,000. The remaining \$20,000 is not covered.

### Example 2 (Adequate Insurance)

When: The Net Income and operating expenses for the 12 months following the inception, or last previous anniversary date, of this policy at the described premises would have been: \$ 400,000  
The Coinsurance percentage is: 50%  
The Limit of Insurance is: \$ 200,000  
The amount of loss is: \$ 80,000

The minimum amount of insurance to meet your Coinsurance requirement is \$200,000 ( $\$400,000 \times 50\%$ ). Therefore, the Limit of Insurance in this example is adequate and no penalty applies. We will pay no more than \$80,000 (amount of loss).

This condition does not apply to Extra Expense Coverage.

### E. Optional Coverages

If shown as applicable in the Declarations, the following Optional Coverages apply separately to each item.

#### 1. Maximum Period Of Indemnity

- a. The Additional Condition, Coinsurance, does not apply to this Coverage Form at the described premises to which this Optional Coverage applies.

b. The most we will pay for the total of Business Income loss and Extra Expense is the lesser of:

- (1) The amount of loss sustained and expenses incurred during the 120 days immediately following the beginning of the "period of restoration"; or
- (2) The Limit Of Insurance shown in the Declarations.

**2. Monthly Limit Of Indemnity**

- a. The Additional Condition, Coinsurance, does not apply to this Coverage Form at the described premises to which this Optional Coverage applies.
- b. The most we will pay for loss of Business Income in each period of 30 consecutive days after the beginning of the "period of restoration" is:
  - (1) The Limit of Insurance, multiplied by
  - (2) The fraction shown in the Declarations for this Optional Coverage.

**Example**

When: The Limit of Insurance is: \$ 120,000  
 The fraction shown in the Declarations for this Optional Coverage is: 1/4  
 The most we will pay for loss in each period of 30 consecutive days is: \$ 30,000  
 (\$120,000 x 1/4 = \$30,000)  
 If, in this example, the actual amount of loss is:

Days 1–30:	\$ 40,000
Days 31–60:	\$ 20,000
Days 61–90:	\$ 30,000
	\$ 90,000

We will pay:

Days 1–30:	\$ 30,000
Days 31–60:	\$ 20,000
Days 61–90:	\$ 30,000
	\$ 80,000

The remaining \$10,000 is not covered.

**3. Business Income Agreed Value**

- a. To activate this Optional Coverage:
  - (1) A Business Income Report/Work Sheet must be submitted to us and must show financial data for your "operations":
    - (a) During the 12 months prior to the date of the Work Sheet; and

(b) Estimated for the 12 months immediately following the inception of this Optional Coverage.

(2) The Declarations must indicate that the Business Income Agreed Value Optional Coverage applies, and an Agreed Value must be shown in the Declarations. The Agreed Value should be at least equal to:

- (a) The Coinsurance percentage shown in the Declarations; multiplied by
- (b) The amount of Net Income and operating expenses for the following 12 months you report on the Work Sheet.

b. The Additional Condition, Coinsurance, is suspended until:

- (1) 12 months after the effective date of this Optional Coverage; or
- (2) The expiration date of this policy; whichever occurs first.

c. We will reinstate the Additional Condition, Coinsurance, automatically if you do not submit a new Work Sheet and Agreed Value:

- (1) Within 12 months of the effective date of this Optional Coverage; or
- (2) When you request a change in your Business Income Limit of Insurance.

d. If the Business Income Limit of Insurance is less than the Agreed Value, we will not pay more of any loss than the amount of loss multiplied by:

- (1) The Business Income Limit of Insurance; divided by
- (2) The Agreed Value.

**Example**

When: The Limit of Insurance is: \$ 100,000  
 The Agreed Value is: \$ 200,000  
 The amount of loss is: \$ 80,000  
 Step (1):  $\$100,000 \div \$200,000 = .50$   
 Step (2):  $.50 \times \$80,000 = \$40,000$

We will pay \$40,000. The remaining \$40,000 is not covered.

**4. Extended Period Of Indemnity**

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

## F. Definitions

1. "Finished stock" means stock you have manufactured.

"Finished stock" also includes whiskey and alcoholic products being aged, unless there is a Coinsurance percentage shown for Business Income in the Declarations.

"Finished stock" does not include stock you have manufactured that is held for sale on the premises of any retail outlet insured under this Coverage Part.

2. "Operations" means:
  - a. Your business activities occurring at the described premises; and
  - b. The tenantability of the described premises, if coverage for Business Income Including "Rental Value" or "Rental Value" applies.
3. "Period of restoration" means the period of time that:
  - a. Begins:
    - (1) 72 hours after the time of direct physical loss or damage for Business Income Coverage; or
    - (2) Immediately after the time of direct physical loss or damage for Extra Expense Coverage;  
caused by or resulting from any Covered Cause of Loss at the described premises; and
  - b. Ends on the earlier of:
    - (1) The date when the property at the described premises should be repaired, rebuilt or replaced with reasonable speed and similar quality; or
    - (2) The date when business is resumed at a new permanent location.

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

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

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

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

4. "Pollutants" means any solid, liquid, gaseous or thermal irritant or contaminant, including smoke, vapor, soot, fumes, acids, alkalis, chemicals and waste. Waste includes materials to be recycled, reconditioned or reclaimed.
5. "Rental Value" means Business Income that consists of:
  - a. Net Income (Net Profit or Loss before income taxes) that would have been earned or incurred as rental income from tenant occupancy of the premises described in the Declarations as furnished and equipped by you, including fair rental value of any portion of the described premises which is occupied by you; and
  - b. Continuing normal operating expenses incurred in connection with that premises, including:
    - (1) Payroll; and
    - (2) The amount of charges which are the legal obligation of the tenant(s) but would otherwise be your obligations.
6. "Suspension" means:
  - a. The slowdown or cessation of your business activities; or
  - b. That a part or all of the described premises is rendered untenable, if coverage for Business Income Including "Rental Value" or "Rental Value" applies.



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

## **BUSINESS INCOME CHANGES – BEGINNING OF THE PERIOD OF RESTORATION**

This endorsement modifies insurance provided under the following:

BUSINESS INCOME (AND EXTRA EXPENSE) COVERAGE FORM  
BUSINESS INCOME (WITHOUT EXTRA EXPENSE) COVERAGE FORM

### **SCHEDULE**

**Select Either A. Or B.**

A.  **72-Hour Time Period Is Replaced By 24 Hours**

B.  **72-Hour Time Period Is Eliminated**

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

- |   |   |
|---|---|
| <p><b>A.</b> If the Schedule indicates that the 72-hour time period is replaced by 24 hours, then:</p> <ol style="list-style-type: none"> <li>1. The 72-hour time period in the definition of "period of restoration" is replaced by 24 hours. Therefore, the period of restoration for Business Income Coverage begins 24 hours after the time of direct physical loss or damage, subject to all other provisions of the definition of "period of restoration"; and</li> <li>2. The 72-hour time period in the Civil Authority Additional Coverage is replaced by 24 hours. Therefore, coverage under the Additional Coverage – Civil Authority begins 24 hours after the time of action of civil authority, subject to all other provisions of that Additional Coverage.</li> </ol> | <p><b>B.</b> If the Schedule indicates that the 72-hour time period is eliminated, then:</p> <ol style="list-style-type: none"> <li>1. The 72-hour time period in the definition of "period of restoration" is deleted. Therefore, the period of restoration for Business Income Coverage begins at the time of direct physical loss or damage, subject to all other provisions of the definition of "period of restoration"; and</li> <li>2. The 72-hour time period in the Civil Authority Additional Coverage is deleted. Therefore, coverage under the Additional Coverage – Civil Authority begins at the time of action of civil authority, subject to all other provisions of that Additional Coverage.</li> </ol> |
|---|---|

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

## CIVIL AUTHORITY CHANGE(S)

This endorsement modifies insurance provided under the following:

BUSINESS INCOME (AND EXTRA EXPENSE) COVERAGE FORM  
 BUSINESS INCOME (WITHOUT EXTRA EXPENSE) COVERAGE FORM  
 EXTRA EXPENSE COVERAGE FORM

### SCHEDULE

Premises Number	Building Number	Schedule Part A Coverage Period (Number Of Days)	Schedule Part B Radius (Number Of Miles)

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

**A. Coverage Period**

Under the Additional Coverage – Civil Authority, the four-week coverage period is replaced by the number of days indicated in Part **A** of the Schedule, subject to all other provisions of that Additional Coverage. If there is no entry in Part **A** of the Schedule, the four-week coverage period continues to apply, subject to all other provisions of the Additional Coverage – Civil Authority.

**B. Radius**

The Additional Coverage – Civil Authority includes a requirement that the described premises are not more than one mile from the damaged property. Such one-mile radius is replaced by the number of miles indicated in Part **B** of the Schedule, subject to all other provisions of that Additional Coverage. If there is no entry in Part **B** of the Schedule, the one-mile radius continues to apply, subject to all other provisions of the Additional Coverage – Civil Authority.

**C.** The coverage provided under this endorsement does not increase the applicable Limit of Insurance.



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

## **BUSINESS INCOME FROM DEPENDENT PROPERTIES – BROAD FORM**

This endorsement modifies insurance provided under the following:

- BUSINESS INCOME (AND EXTRA EXPENSE) COVERAGE FORM
- BUSINESS INCOME (WITHOUT EXTRA EXPENSE) COVERAGE FORM

### **SCHEDULE**

<b>Name And Describe Occupancy And Location</b>
<b>Contributing Locations:</b>
<b>Secondary Contributing Locations (Not Named):</b> <input type="checkbox"/>
<b>Recipient Locations:</b>
<b>Secondary Recipient Locations (Not Named):</b> <input type="checkbox"/>
<b>Manufacturing Locations:</b>
<b>Leader Locations:</b>
Information required to complete this Schedule, if not shown above, will be shown in the Declarations.

- A.** We will pay for the actual loss of Business Income you sustain due to the necessary "suspension" of your "operations" during the "period of restoration". The "suspension" must be caused by direct physical loss of or damage to "dependent property" at the premises described in the Schedule caused by or resulting from a Covered Cause of Loss. However, coverage under this endorsement does not apply when the only loss to "dependent property" is loss or damage to electronic data, including destruction or corruption of electronic data. If the "dependent property" sustains loss or damage to electronic data and other property, coverage under this endorsement will not continue once the other property is repaired, rebuilt or replaced. The term electronic data has the meaning set forth in the Coverage Form to which this endorsement applies.
- B.** The provisions of the Business Income Coverage Form respecting direct physical loss or damage at the described premises, including the applicable Limit of Insurance, will apply separately to each "dependent property" described in the Schedule.

**C. Secondary Dependencies – Contributing And Recipient Locations**

- 1.** If the Schedule shows applicability of coverage for a "secondary contributing location", then the following applies, subject to Paragraphs **C.3.** and **C.4.**:

We will pay for the actual loss of Business Income you sustain due to the necessary "suspension" of your "operations" during the "period of restoration". The "suspension" must be caused by direct physical loss of or damage to property at a "secondary contributing location", caused by or resulting from a Covered Cause of Loss, which in turn results in partial or complete interruption of the materials or services provided to you by the "dependent property" described in the Schedule, thereby resulting in the "suspension" of your "operations".

- 2.** If the Schedule shows applicability of coverage for a "secondary recipient location", then the following applies, subject to Paragraphs **C.3.** and **C.4.**:

We will pay for the actual loss of Business Income you sustain due to the necessary "suspension" of your "operations" during the "period of restoration". The "suspension" must be caused by direct physical loss of or damage to property at a "secondary recipient location", caused by or resulting from a Covered Cause of Loss, which in turn results in partial or complete interruption of the acceptance of your materials or services by the "dependent property" described in the Schedule, thereby resulting in the "suspension" of your "operations".

- 3.** Coverage under this endorsement does not apply when the only loss at the "secondary contributing location" or "secondary recipient location" is loss or damage to electronic data, including destruction or corruption of electronic data. If the "secondary contributing location" or "secondary recipient location" sustains loss or damage to electronic data and other property, coverage under this endorsement will not continue once the other property is repaired, rebuilt or replaced. The term electronic data has the meaning set forth in the Coverage Form to which this endorsement applies.
- 4.** With respect to a "suspension" of your "operations" covered under this provision, **C.**, the maximum amount payable is the Business Income Limit of Insurance. This provision, **C.**, does not increase the Business Income Limit of Insurance, as any amount payable under this provision is considered part of, not in addition to, such Limit of Insurance, even if the "suspension" of your "operations" is caused by direct physical loss of or damage to "dependent property" and property at one or more "secondary contributing locations" or "secondary recipient locations".

**D. The following is added to Additional Coverages:**

**Miscellaneous Locations**

We will pay for the actual loss of Business Income you sustain due to direct physical loss or damage at the premises of a "dependent property" not described in the Schedule (miscellaneous location) caused by or resulting from any Covered Cause of Loss. A road, bridge, tunnel, waterway, airfield, pipeline or any other similar area or structure is not a miscellaneous location.

Under this Additional Coverage – Miscellaneous Locations, we will not pay more than .03% of the Business Income Limit of Insurance for each day's "suspension" of "operations" due to loss arising from any one location. This Additional Coverage – Miscellaneous Locations does not increase the Business Income Limit of Insurance; any amount payable under this provision is considered part of, not in addition to, such Limit of Insurance, even if the "suspension" of your "operations" is caused by direct physical loss of or damage to "dependent property" and property at one or more miscellaneous locations.

This Additional Coverage – Miscellaneous Locations does not apply to a "secondary contributing location" or "secondary recipient location" when coverage is provided under this endorsement for such secondary locations.

**E. Under the Loss Determination Loss Condition, the following is added to the Resumption Of Operations Provision:**

We will reduce the amount of your Business Income loss, other than Extra Expense, to the extent you can resume "operations", in whole or in part, by using any other available:

1. Source of materials; or
2. Outlet for your products.

**F. The following is added to the Definitions section:**

1. "Dependent property" means property operated by others whom you depend on to:

- a. Deliver materials or services to you, or to others for your account (Contributing Locations). But any property which delivers any of the following services is not a Contributing Location with respect to such services:

- (1) Water supply services;
- (2) Power supply services;
- (3) Wastewater removal services; or

(4) Communication supply services, including services relating to Internet access or access to any electronic network;

- b. Accept your products or services (Recipient Locations);
- c. Manufacture products for delivery to your customers under contract of sale (Manufacturing Locations); or
- d. Attract customers to your business (Leader Locations).

2. "Period of restoration", with respect to "dependent property" (or "secondary contributing location" or "secondary recipient location"), means the period of time that:

- a. Begins 72 hours after the time of direct physical loss or damage caused by or resulting from any Covered Cause of Loss at the premises of the "dependent property" (or "secondary contributing location" or "secondary recipient location"); and
- b. Ends on the date when the property at the premises of the "dependent property" (or "secondary contributing location" or "secondary recipient location") should be repaired, rebuilt or replaced with reasonable speed and similar quality.

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

- a. Regulates the construction, use or repair, or requires the tearing down, of any property; or
- b. Requires any insured or others to test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to or assess the effects of "pollutants".

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

3. "Secondary contributing location" is an entity which:

- a. Is not identified in the Schedule;
- b. Is not owned or operated by the Contributing Location identified in the Schedule; and
- c. Delivers materials or services to the Contributing Location identified in the Schedule, which in turn are used by that Contributing Location in providing materials or services to you.

A road, bridge, tunnel, waterway, airfield, pipeline or any other similar area or structure is not a "secondary contributing location".

Any property which delivers any of the following services is not a "secondary contributing location" with respect to such services:

- (1) Water supply services;
- (2) Power supply services;
- (3) Wastewater removal services; or
- (4) Communication supply services, including services relating to Internet access or access to any electronic network.

4. "Secondary recipient location" is an entity which:

- a. Is not identified in the Schedule;
- b. Is not owned or operated by the Recipient Location identified in the Schedule; and

c. Accepts materials or services from the Recipient Location identified in the Schedule, which in turn accepts your materials or services.

A road, bridge, tunnel, waterway, airfield, pipeline or any other similar area or structure is not a "secondary recipient location".

G. With respect to the coverage provided under this endorsement, the following supersedes any provision to the contrary:

We do not cover loss of Business Income arising out of loss or damage at the premises of a "dependent property", "secondary contributing location", "secondary recipient location" or miscellaneous location which is located outside the Coverage Territory.

SAMPLE

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

## UTILITY SERVICES – TIME ELEMENT

This endorsement modifies insurance provided under the following:

- BUSINESS INCOME (AND EXTRA EXPENSE) COVERAGE FORM
- BUSINESS INCOME (WITHOUT EXTRA EXPENSE) COVERAGE FORM
- EXTRA EXPENSE COVERAGE FORM

### SCHEDULE

Premises Number	Building Number	Utility Services Limit Of Insurance	Enter "X" for each applicable property.						
			Water Supply Property	Waste-water Removal Property	Communication Supply Property (including overhead transmission lines)	Communication Supply Property (not including overhead transmission lines)	Power Supply Property (including overhead transmission lines)	Power Supply Property (not including overhead transmission lines)	
		\$							
<b>Causes Of Loss Form Applicable:</b>									
		\$							
<b>Causes Of Loss Form Applicable:</b>									
		\$							
<b>Causes Of Loss Form Applicable:</b>									
Information required to complete this Schedule, if not shown above, will be shown in the Declarations.									



## A. Coverage

Your coverage for Business Income and/or Extra Expense, as provided and limited in the applicable Coverage Form, is extended to apply to a "suspension" of "operations" at the described premises caused by an interruption in utility service to that premises. The interruption in utility service must result from direct physical loss or damage by a Covered Cause of Loss (as provided under the applicable Causes of Loss Form indicated in the Schedule) to the property described in Paragraph C. if such property is indicated by an "X" in the Schedule.

## B. Exception

Coverage under this endorsement does not apply to Business Income loss or Extra Expense related to interruption in utility service which causes loss or damage to electronic data, including destruction or corruption of electronic data. The term electronic data has the meaning set forth in the Coverage Form to which this endorsement applies.

## C. Utility Services

1. Water Supply Property, meaning the following types of property supplying water to the described premises:
  - a. Pumping stations; and
  - b. Water mains.
2. Wastewater Removal Property, meaning a utility system for removing wastewater and sewage from the described premises, other than a system designed primarily for draining storm water. The utility property includes sewer mains, pumping stations and similar equipment for moving the effluent to a holding, treatment or disposal facility, and includes such facilities.

Coverage under this endorsement does not apply to interruption in service caused by or resulting from a discharge of water or sewage due to heavy rainfall or flooding.

3. Communication Supply Property, meaning property supplying communication services, including telephone, radio, microwave or television services, to the described premises, such as:

- a. Communication transmission lines, including optic fiber transmission lines;
- b. Coaxial cables; and
- c. Microwave radio relays except satellites.

It does not include overhead transmission lines unless indicated by an "X" in the Schedule.

4. Power Supply Property, meaning the following types of property supplying electricity, steam or gas to the described premises:

- a. Utility generating plants;
- b. Switching stations;
- c. Substations;
- d. Transformers; and
- e. Transmission lines.

It does not include overhead transmission lines unless indicated by an "X" in the Schedule.

- D. As used in this endorsement, the term transmission lines includes all lines which serve to transmit communication service or power, including lines which may be identified as distribution lines.
- E. The **Coinsurance** Additional Condition does not apply to this endorsement.
- F. The Utility Services Limit Of Insurance, as shown in the Schedule, is the only Limit which applies to the coverage provided under this endorsement, and is part of, not in addition to, the Limit Of Insurance stated in the Declarations as applicable to the described premises.



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

## **ORDINANCE OR LAW – INCREASED PERIOD OF RESTORATION**

This endorsement modifies insurance provided under the following:

BUSINESS INCOME (AND EXTRA EXPENSE) COVERAGE FORM  
BUSINESS INCOME (WITHOUT EXTRA EXPENSE) COVERAGE FORM  
EXTRA EXPENSE COVERAGE FORM

- A.** If a Covered Cause of Loss occurs to property at the premises described in the Declarations, coverage is extended to include the amount of actual and necessary loss you sustain during the increased period of "suspension" of "operations" caused by or resulting from a requirement to comply with any ordinance or law that:
1. Regulates the construction or repair of any property;
  2. Requires the tearing down of parts of any property not damaged by a Covered Cause of Loss; and
  3. Is in force at the time of loss.
- However, coverage is not extended under this endorsement to include loss caused by or resulting from the enforcement of or compliance with any ordinance or law which requires:
1. The demolition, repair, replacement, reconstruction, remodeling or remediation of property due to contamination by "pollutants" or due to the presence, growth, proliferation, spread or any activity of "fungus", wet or dry rot or bacteria; or
  2. Any insured or others to test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to, or assess the effects of "pollutants", "fungus", wet or dry rot or bacteria.
- B.** The period of restoration definition is replaced by the following:
- "Period of restoration" means the period of time that:
- a. Begins:
    - (1) 72 hours after the time of direct physical loss or damage for Business Income coverage; or
    - (2) Immediately after the time of direct physical loss or damage for Extra Expense coverage; caused by or resulting from any Covered Cause of Loss at the described premises; and
  - b. Ends on the earlier of:
    - (1) The date when the property at the described premises should be repaired, rebuilt or replaced with reasonable speed and similar quality; or
    - (2) The date when business is resumed at a new permanent location.
- "Period of restoration" includes any increased period required to repair or reconstruct the property to comply with the minimum standards of any ordinance or law, in force at the time of loss, that regulates the construction or repair, or requires the tearing down of any property.
- The expiration date of this policy will not cut short the "period of restoration".
- C.** The following definition is added:
- "Fungus" means any type or form of fungus, including mold or mildew, and any mycotoxins, spores, scents or by-products produced or released by fungi.

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

## DISCRETIONARY PAYROLL EXPENSE

This endorsement modifies insurance provided under the following:

BUSINESS INCOME (AND EXTRA EXPENSE) COVERAGE FORM  
BUSINESS INCOME (WITHOUT EXTRA EXPENSE) COVERAGE FORM

### SCHEDULE

Job Classifications Or Employees	Maximum Number Of Days For Discretionary Payroll Expense

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

- A.** Payroll expenses for the Job Classifications and/or Employees identified in the Schedule will be included as continuing normal operating expenses in determining the amount of Business Income loss, provided that you pay such expenses and regardless of whether such expenses are necessary to resume "operations".

Payroll expenses include:

  1. Payroll;
  2. Employee benefits, if directly related to payroll;
  3. FICA payments you pay;
  4. Union dues you pay; and
  5. Workers' compensation premiums.
- B.** With respect to Job Classifications and/or Employees identified in the Schedule, payroll expenses are included in the Business Income loss for the entire "period of restoration" and any extension of the "period of restoration" if an extension is provided under this policy, unless the Schedule indicates otherwise. With respect to a Job Classification(s) or Employee(s) for which the Schedule shows a maximum number of days, Business Income loss includes payroll expenses for not more than the stated number of days. The number of days need not be consecutive but must fall within the "period of restoration" or extension (if any) of the "period of restoration".

**C.** This endorsement does not affect coverage of payroll expenses for job classifications and employees not identified in the Schedule.

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

## PAYROLL LIMITATION OR EXCLUSION

This endorsement modifies insurance provided under the following:

BUSINESS INCOME (AND EXTRA EXPENSE) COVERAGE FORM  
BUSINESS INCOME (WITHOUT EXTRA EXPENSE) COVERAGE FORM

### SCHEDULE

<b>Premises Number:</b>	<b>Building Number:</b>
<input type="checkbox"/> <b>Payroll Expense Limitation – Number Of Days:</b> <input type="checkbox"/> <b>Payroll Expense Exclusion</b> <p>The following are subject to the provisions of this endorsement if so indicated in this Schedule:</p> <input type="checkbox"/> All employees and job classifications including officers, executives, management personnel and contract employees <input type="checkbox"/> All employees and job classifications other than officers, executives, management personnel and contract employees <input type="checkbox"/> All employees and job classifications (including officers, executives, management personnel and contract employees), <b>except:</b>  <input type="checkbox"/> Only the following job classifications and/or employees:	
<b>Premises Number:</b>	<b>Building Number:</b>
<input type="checkbox"/> <b>Payroll Expense Limitation – Number Of Days:</b> <input type="checkbox"/> <b>Payroll Expense Exclusion</b> <p>The following are subject to the provisions of this endorsement if so indicated in this Schedule:</p> <input type="checkbox"/> All employees and job classifications including officers, executives, management personnel and contract employees <input type="checkbox"/> All employees and job classifications other than officers, executives, management personnel and contract employees <input type="checkbox"/> All employees and job classifications (including officers, executives, management personnel and contract employees), <b>except:</b>	

Only the following job classifications and/or employees:

**Premises Number:**

**Building Number:**

**Payroll Expense Limitation – Number Of Days:**

**Payroll Expense Exclusion**

The following are subject to the provisions of this endorsement if so indicated in this Schedule:

All employees and job classifications including officers, executives, management personnel and contract employees

All employees and job classifications other than officers, executives, management personnel and contract employees

All employees and job classifications (including officers, executives, management personnel and contract employees), **except:**

Only the following job classifications and/or employees:

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

**A.** In the Business Income (And Extra Expense) Coverage Form and the Business Income (Without Extra Expense) Coverage Form, Business Income includes continuing normal operating expenses, including payroll, subject to all applicable policy provisions.

If the Payroll Expense Limitation is indicated in the Schedule, then Business Income includes payroll expense only up to the number of days shown, with respect to the job classifications and/or employees subject to the provisions of this endorsement. The number of days need not be consecutive but must fall within the "period of restoration" or extension of the "period of restoration" if an extension is provided under this policy.

If the Payroll Expense Exclusion is indicated in the Schedule, then payroll expense is excluded from Business Income with respect to the job classifications and/or employees indicated in the Schedule.

**B.** In determining the operating expenses for the policy year for Coinsurance purposes, payroll expenses will include only those incurred during the number of days shown in the Schedule. If payroll expenses for the policy year vary during the year, the period of greatest payroll expenses will be used.

**C.** Payroll expenses include:

1. Payroll;
2. Special compensation such as bonuses and other incentive compensation;
3. Employee benefits, if directly related to payroll;
4. FICA payments you pay;
5. Union dues you pay; and
6. Workers' compensation premiums.

## BUSINESS INCOME REPORT/WORKSHEET

<b>Date:</b>	
<b>Your Name</b>	<b>Location</b>

This worksheet must be completed on an accrual basis.

The beginning and ending inventories in all calculations should be based on the same valuation method.

<b>Applicable When The Agreed Value Coverage Option Applies:</b>
I certify that this is a true and correct report of values as required under this policy for the periods indicated and that the Agreed Value for the period of coverage is \$ _____, based on a Coinsurance percentage of _____%.
<b>Signature:</b>
<b>Official Title:</b>

<b>Applicable When The Premium Adjustment Form Applies:</b>
I certify that this is a true and correct report of values as required under this policy for the 12 months ended:
<b>Signature:</b>
<b>Official Title:</b>
<b>Agent Or Broker:</b>
<b>Mailing Address:</b>

**BUSINESS INCOME REPORT/WORKSHEET  
FINANCIAL ANALYSIS**

Income And Expenses	12-Month Period Ending:		Estimated For 12-Month Period Beginning:	
	Manufacturing	Non- Manufacturing	Manufacturing	Non- Manufacturing
<b>A.</b> Gross Sales	\$	\$	\$	\$
<b>B.</b> Deduct: Finished Stock Inventory (at sales value) At Beginning	-		-	
<b>C.</b> Add: Finished Stock Inventory (at sales value) At End	+		+	
<b>D.</b> Gross Sales Value Of Production	\$		\$	
<b>E.</b> Deduct: Prepaid Freight – Outgoing	-	-	-	-
Returns And Allowances	-	-	-	-
Discounts	-	-	-	-
Bad Debts	-	-	-	-
Collection Expenses	-	-	-	-
<b>F.</b> Net Sales		\$		\$
Net Sales Value Of Production	\$		\$	
<b>G.</b> Add: Other Earnings From Your Business Operations (not investment income or rents from other properties):				
Commissions Or Rents	+	+	+	+
Cash Discounts Received	+	+	+	+
Other	+	+	+	+
<b>H.</b> Total Revenues	\$	\$	\$	\$

Income And Expenses	12-Month Period Ending:		Estimated For 12-Month Period Beginning:	
	Manufacturing	Non-Manufacturing	Manufacturing	Non-Manufacturing
Total Revenues (Line H. from previous page)	\$	\$	\$	\$
<b>I.</b> Deduct:				
Cost Of Goods Sold (See page 5 for instructions.)	-	-	-	-
Cost Of Services Purchased From Outsiders (not your employees) To Resell, That Do Not Continue Under Contract	-	-	-	-
Power, Heat And Refrigeration Expenses That Do Not Continue Under Contract (if CP 15 11 is attached)	-	-	-	-
All Payroll Expenses Or The Amount Of Payroll Expense Excluded (if CP 15 10 is attached)	-	-	-	-
Special Deductions For Mining Properties (See page 6 for instructions.)	-	-	-	-
<b>J.1.</b> Business Income Exposure For 12 Months	\$	\$	\$	\$
<b>J.2.</b> Combined (firms engaged in manufacturing and non-manufacturing operations)	\$		\$	
The Figures In J.1. Or J.2. Represent 100% Of Your Actual And Estimated Business Income Exposure For 12 Months.				

Income And Expenses	12-Month Period Ending:		Estimated For 12-Month Period Beginning:	
	Manufacturing	Non-Manufacturing	Manufacturing	Non-Manufacturing
<b>K. Additional Expenses:</b>				
1. Extra Expenses – Form CP 00 30 Only (expenses incurred to avoid or minimize suspension of business and to continue operations)			\$	\$
2. Extended Business Income and Extended Period Of Indemnity – Form CP 00 30 Or CP 00 32 (loss of Business Income following resumption of operations for up to 60 days or the number of days selected under Extended Period Of Indemnity option)			+	+
3. Combined (all amounts in K.1. and K.2.)			\$	
<b>L. Total Of J. And K.</b>			<b>"Estimated" Column</b>	
			\$	
<p>The figure in L. represents 100% of your estimated Business Income exposure for 12 months, and additional expenses. Using this figure as information, determine the approximate amount of insurance needed based on your evaluation of the number of months needed (may exceed 12 months) to replace your property, resume operations and restore the business to the condition that would have existed if no property damage had occurred.</p> <p>Refer to the agent or company for information on available coinsurance levels and indemnity options. The Limit of Insurance you select will be shown in the Declarations of the policy.</p>				



<b>Supplementary Information</b>				
<b>Calculation Of Cost Of Goods Sold</b>	<b>12-Month Period Ending:</b>		<b>Estimated For 12-Month Period Beginning:</b>	
	<b>Manufacturing</b>	<b>Non-Manufacturing</b>	<b>Manufacturing</b>	<b>Non-Manufacturing</b>
Inventory At Beginning Of Year (including raw material and stock in process, but not finished stock, for manufacturing risks)	\$	\$	\$	\$
Add: The Following Purchase Costs: Cost Of Raw Stock (including transportation charges)	+		+	
Cost Of Factory Supplies Consumed	+		+	
Cost Of Merchandise Sold Including Transportation Charges (for manufacturing risks, means cost of merchandise sold but not manufactured by you)	+	+	+	+
Cost Of Other Supplies Consumed (including transportation charges)	+	+	+	+
Cost Of Goods Available For Sale	\$	\$	\$	\$
Deduct: Inventory At End Of Year (including raw material and stock in process, but not finished stock, for manufacturing risks)	-	-	-	-
Cost Of Goods Sold (Enter this figure in Item I. on page 3.)	\$	\$	\$	\$

<b>Supplementary Information</b>		
<b>Calculation Of Special Deductions – Mining Properties</b>		
	<b>12-Month Period Ending:</b>	<b>Estimated For 12-Month Period Beginning:</b>
Royalties, Unless Specifically Included In Coverage	\$	\$
Actual Depletion, Commonly Known As Unit Or Cost Depletion (not percentage depletion)	+	+
Welfare And Retirement Fund Charges Based On Tonnage	+	+
Hired Trucks	+	+
Enter This Figure In Item I. On Page 3.	\$	\$

SAMPLE



# James K. Ruble Seminar

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

## Section 4

# **Contracts Agents Should Read**



# **CONTRACTS AGENTS SHOULD READ**

Prepared by:  
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# CONTRACTS AGENTS SHOULD READ

## LEARNING OBJECTIVES:

1. Identify provisions found in leases of real property that may impact how property insurance should be written.
2. Discuss when and under what conditions subrogation may be waived in the Commercial Property Coverage Forms.
3. Review the impact of a “Mutual Waiver of Subrogation” clause found in property leases.
4. Discuss the coverage provided in the Legal Liability Coverage Form.
5. Identify how “Tenants Improvements and Betterments” should be written and how losses will be valued at the time of a loss.
6. Briefly look at the Leasehold Interest Coverage Form and discuss how it may fix some problems associated when a lease is terminated.
7. Identify how to insure and value personal property that is leased by your insureds.
8. Review other miscellaneous leases such as contractor’s equipment, automobiles and apartments for kids away at college.

GRADUATE SEMINAR - NOTES	THINGS TO DO



***Situation #1 - The Real Property Lease:***

Bubba's Sporting Emporium is renting space in a local strip center that is owned by Strip Centers, Inc. Bubba has signed a ten (10) year lease at a reduced rate because Bubba is making improvements to the building valued at \$250,000. Bubba (like many of our clients) was so pleased to get this prime location that he signed the lease without reading the fine print. You have written Bubba's insurance on a Building and Personal Property Coverage Form covering his personal property in the amount of \$1,000,000.

***Question #1*** – Four years into the lease the roof collapses in the strip center and damages \$200,000 of Bubba's personal property. The damage to the roof is \$50,000. Your lease states:

*Insurance: Lessor shall pay property insurance premiums on the leased premises including the personal property in a sufficient manner to cover the entire property. Lessee will provide insurance on any personal property that the Lessee moves to the leased premises.*

*Maintenance: The renter shall during the term of the lease keep and maintain the property in good working condition and repair and shall be responsible for any loss, casualty, damage or destruction to said property notwithstanding how caused and Renter agrees to return said property in its present condition, reasonable wear and tear excepted.*

The Insurance Company for Strip Centers, Inc. pays for the damage to the structure and Bubba's insurance company replaces the \$200,000 of damaged personal property. Life is good! Four (4) months later Bubba receives a letter from Strip Centers, Inc. Insurance Company stating: "It has come to our attention that the damage to the roof of Strip Centers, Inc. was due to a water back-up on the flat roof. Our structural engineer has indicated that the collapse was a result of the gutters not being cleaned out in four (4) years. Please find enclosed a bill in the amount of \$50,000. Please pay at your earliest convenience." Bubba's next call is to you, his agent. What is your response?



**Question #2** – Strip Centers, Inc. writes a letter after the claim waiving the rights to subrogate against Bubba for the \$50,000. Is this allowed? How do you think the company will respond?

**Question #3** – If the following language known as a “mutual waiver of subrogation” was in the lease would it have had an impact on the above mentioned loss?

*Lessee shall provide Lessor with a Certificate of Insurance showing Lessor as additional insured. The Certificate shall provide for a ten-day written notice to Lessor in the event of cancellation or material change of coverage. To the maximum extent permitted by insurance policies which may be owned by Lessor or Lessee, for the benefit of each other, waive any and all rights of subrogation which might otherwise exist.*

GRADUATE SEMINAR - NOTES	THINGS TO DO

**Question #4** – In the absence of a “mutual waiver of subrogation,” is there any Insurance policy we can recommend to Bubba that will cover damage to property of others in an insureds care, custody or control?

**Question #5** - After the loss Strip Centers, Inc. sends Bubba a letter asking him to file a claim for the \$50,000 damage to the roof with his insurance company because the lease requires the tenant (Bubba’s Sporting Emporium) to provide insurance on the real property leased for the benefit of Strip Centers, Inc. Does this happen? If so how should this insurance be written?

*Lessee shall provide property insurance on the leased premises including the real and personal property in a sufficient manner to cover the entire property for the interest of Strip Centers, Inc. Lessee will also provide insurance on any personal property that the Lessee moves to the leased premises.*



***Situation #2 – How the Lease Impacts Tenants Improvements and Betterments:***

Bubba has installed at his own expense \$250,000 of improvements and betterments that were needed in the strip center to make his business functional. The improvements are a permanent part of the building and cannot be removed at the termination of the lease. Bubba certainly wants his investment protected for the duration of the lease.

***Question #1*** – What is a Tenant Improvement and Betterment? Who has the right and/or responsibility to insure them? Can the lease affect this issue?

An Endorsement that may help with cost!

**Your Business Personal Property - Separation of Coverage - CP 19 10** used to write separate values on business personal property items. If TIB are separated from other personal property items, they are rated as building. Use with caution since this subdivides coverages. When BPP is written with a single limit, the highest rate is used. Property listed here is not part of the Business Personal Property limit on the declarations.

***Question #2*** – Fire totally destroys the building and Strip Centers, Inc. notifies Bubba’s Sporting Emporium that they plan to rebuild as soon as possible. How will Bubba’s Building and Personal Property Coverage Form respond for his use interest in Tenants Improvements and Betterments?





**Question #3** - Fire totally destroys the building and Strip Centers, Inc. notifies Bubba's Sporting Emporium that they do not plan to rebuild. Strip Centers, Inc. is selling the land. Does Bubba have any recovery for his Tenants Improvements and Betterments?

**Question #4** - Fire totally destroys the building and Strip Centers, Inc. notifies Bubba's Sporting Emporium that they plan to rebuild. Strip Centers, Inc. has filed the claim with their insurance company for payment. How will Bubba's policy respond for the Tenants Improvements and Betterments?

The following is a quick overview of the coverage under the Commercial Property Coverage Forms.

<b>DAMAGE TO TENANTS IMPROVEMENTS AND BETTERTMENTS</b>	<b>VALUE FOR PAYMENT UNDER TENANT'S CPP</b>
Tenant repairs	ACV (RC if option is activated)
Landlord repairs	Nothing paid
Cannot repair or rebuild	Proportional on original cost



**Situation #2 Cont. -** Fire destroys one-half of the strip center owned by Strip Centers, Inc. where Bubbas is a tenant. However, Bubba's Sporting Emporium has not suffered any loss. The lease states:

*13. Destruction of Premises: In the event of a partial destruction of the premises during the term hereof, from any cause, Lessor shall forthwith repair the same, provided that such repairs can be made within sixty (60) days under existing governmental laws and regulations, but such partial destruction shall not terminate this lease, except that Lessee shall be entitled to a proportionate reduction of rent while such repairs are being made, based upon the extent to which the making of such repairs shall interfere with the business of Lessee on the premises.*

*...in the event that Lessor shall not elect to make such repairs which cannot be made within sixty (60) days, this lease may be terminated at the option of either party. In the event that the building in which the demised premises may be situated is destroyed to an extent of not less than one-third of the replacement costs thereof, Lessor may elect to terminate this lease whether the demised premises be injured or not. A total destruction of the building in which the premises may be situated shall terminate this lease.*

Bubba's property has not been damaged at all. Strip Centers, Inc. has mailed him official written notice of their intention to terminate his lease. How will Bubba's policy respond to the following questions?

**Question #5 -** Is Bubba entitled to relief of rent payment while repairs are being made? Bubba is concerned that even if he can have access to his store the construction and lack of walk by traffic will reduce his sales.



**Question #6 -** Bubba is concerned that repairs will take at least 12 months. Can Bubba terminate his lease (based on lease language above)? If so, how will Bubba be compensated for his loss of use interest in his tenant's improvements and betterments?

**Question #7 -** Bubba is having a disagreement with Strip Centers, Inc over last year's tax and maintenance assessment. Bubba's lease states:

*14. Lessor's Remedies on Default: If the Lessee defaults in the performance of any of the other covenants or conditions hereof, Lessor may give Lessee notice of such default and if the Lessee does not cure any such default within 60 days, then the lessor may terminate this lease on not less than 60 days' notice to Lessee.*

Bubba is made aware that if he fails to pay the assessment that his lease will be terminated in 60 days. Bubba continues to refuse and formal written notice of termination is issued. What will happen to Bubba's use interest in his tenants and improvements and betterments?



**Let's go to the numbers...**                      ASSUME: Year 1 of policy.

Present rent of \$10.00 per square foot each year on 7,500 square feet. Cost to relocate in a satisfactory location would result in a rental value of \$16.00 per square foot each year. There are 57 months remaining on lease as of the effective date of policy. The insured spent \$90,000 on Tenants Improvements and Betterments at the inception of the lease. Original lease 10 years.

Policy limit will be present value of gross leasehold interest plus unamortized value of the TIB.

$$\begin{array}{rcl} 7,500 & \times & \$10 = \$ 75,000 \text{ per year} & \$ 6,250 \text{ per month} \\ 7,500 & \times & \$16 = \$120,000 \text{ per year} & \$10,000 \text{ per month} \end{array}$$

**The gross leasehold interest is \$3,750 (\$10,000-\$6250).**

Assuming a present value of money at 6% the gross leasehold interest is:

$$\mathbf{\$3750} \quad \times \quad \mathbf{49.6711 \text{ (PVAF 6\% @57 months)}} \quad = \mathbf{\$186,267}$$

Now let's look at the Tenants Improvements and Betterments...

$$\mathbf{\$90,000} \quad \times \quad \mathbf{57/120} \quad = \mathbf{\$42,750 \text{ unamortized interest in TIB's.}}$$

$$\mathbf{\$186,267 \text{ (interest in lease) + } \$42,750 \text{ (interest in TIB's)} \quad = \mathbf{\$229,017.}}$$

Now let's look at how to arrive at the correct premium...

**Net** leasehold interest for the policy year:

$$\begin{array}{rcl} \$3750 \times 49.6711 \text{ (PVAF 6\%-57 months)} & = & \$186,267 \\ \$3750 \times 40.3249 \text{ (PVAF 6\%-45 months)} & = & \underline{\$151,218} \\ & & \$337,485/2 \quad = \quad \$168,743 \end{array}$$

**Average** TIB for the policy year:

$$\begin{array}{rcl} \$90,000 \times 57/120 & = & \$42,750 \\ \$90,000 \times 45/120 & = & \underline{\$33,750} \\ & & \$76,500/2 \quad = \quad \underline{\$38,250.} \\ \mathbf{Premium basis is \$168,743 + \$38,250} & & \mathbf{= \$206,993} \end{array}$$

**Writing this coverage on the basis of the premium will leave the client underinsured in the first six months of the policy period. Remember the limit and the premium basis are different.**





**Let's go a little further... Same risk year 2 (renewal).**

Present rent of \$10.00 per square foot each year on 7,500 square feet. Cost to relocate in a satisfactory location would result in a rental value of \$16.00 per square foot each year. (In year 2) 45 months are remaining on the lease as of the effective date of policy. The insured spent \$90,000 on Tenants Improvements and Betterments at inception of the lease. Original lease term was for 10 years.

Assuming the present value of money at 6% the value of the gross leasehold interest is:

$$\mathbf{\$3750} \quad \mathbf{x} \quad \mathbf{40.3249 \text{ (PVAF 6\% @45 months)}} \quad \mathbf{= \$151,218}$$

The interest in Tenants Improvements and Betterments is:

$$\mathbf{\$90,000} \quad \mathbf{x} \quad \mathbf{45/120} \quad \mathbf{= \$33,750}$$

**unamortized TIB**

$$\mathbf{\$151,218 \text{ (interest in lease + \$33,750 (interest in TIB's))}} \quad \mathbf{= \$184,968.}$$

The premium will be based as follows:

**Net** leasehold interest for the policy year:

$$\begin{aligned} \$3750 \times 40.3249 \text{ (PVAF 6\%-45 months)} &= \$151,218 \\ \$3750 \times 30.4178 \text{ (PVAF 6\%-33 months)} &= \underline{\$114,067} \\ &\$265,285/2 = \$132,643 \end{aligned}$$

**Average** TIB for the policy year:

$$\begin{aligned} \$90,000 \times 45/120 &= \$33,750 \\ \$90,000 \times 33/120 &= \underline{\$24,750} \\ &\$58,500/2 = \$ 29,250 \end{aligned}$$

$$\mathbf{Premium \text{ basis is:} \quad \mathbf{\$132,643} \quad \mathbf{+} \quad \mathbf{\$29,250} \quad \mathbf{= \$161,893}}$$



**Ok, just a little further... Same risk year 2. Comparable rents \$17.00 per square foot.**

$$\begin{array}{rclclcl}
 \$17.00 & \times & 7500 & = & \$127,500/12 & = \$10,625 \text{ per month} \\
 & & & & & \underline{\$6,250} \text{ current rent} \\
 & & & & & \$4,375 \text{ leasehold interest}
 \end{array}$$

Assuming the present value of money at 6% the value of the gross leasehold interest is:

$$\$4375 \quad \times \quad 40.3249 \text{ (PVAF 6\%-45 months)} \quad = \quad \$176,421$$

$$\$90,000 \quad \times \quad 45/120 \quad = \quad \$33,750 \text{ unamortized TIB}$$

**\$176,421 (interest in lease) + \$33,750 (interest in TIB's) = \$210,171.**

**PREMIUM will be based upon:**

Net leasehold interest for the policy year:

$$\$4375 \times 40.3249 \text{ (PVAF 6\%-45 months)} \quad = \quad \$176,241$$

$$\begin{array}{rcl}
 \$4375 \times 30.4178 \text{ (PVAF 6\%-33 months)} & = & \underline{\$133,078} \\
 & & \$309,499/2 = \$154,749
 \end{array}$$

Average TIB for the policy year:

$$\$90,000 \times 45/120 \quad = \quad \$33,750$$

$$\begin{array}{rcl}
 \$90,000 \times 33/120 & = & \underline{\$24,750} \\
 & & \$58,500/2 = \$29,250
 \end{array}$$

**Premium basis is \$154,749 + \$29,250 = \$183,999**

**EXPLANATION OF DISCOUNT FACTOR FOR LEASEHOLD INTEREST**

1. The discount factor is not used for the first three months of Leasehold Interest based on the assumption that it will take the insurance company that amount of time to adjust the loss. Accordingly, the insured probably would not receive any payment under the insurance prior to the three months period. 2. Loss payment under Leasehold Interest is made in one lump sum which could represent a significant financial advantage to the insured if they were to invest the money at the current interest rate providing them with more money than the loss represented. Accordingly, the insurance is written to discount the amount by the current interest rate thus if the insured were to invest the money they would end up even, 3. The factor is used in arriving at the amount of insurance to be provided and in setting the premium basis.

An EXAMPLE: \$2000 Leasehold Interest per month x 60 (5 years remaining on the lease). \$120,000 (Total Leasehold Interest). With a 6% interest assumption, the insured would purchase \$103,848 which represents a sum that would produce a \$2000 per month annuity for 5 years if invested at 6%. (6%-60 month PVAF is 51.9238)



### ***Situation #3 – The Lease and Personal Property***

Bubba, in attempt to control his capital outlay has decided to lease some office equipment as well as weight lifting equipment from his local supplier. His leased equipment includes:

1. Telephone system
2. Copy Machine
3. Fax Machine
4. Two (2) computers
5. Universal weight lifting machine – value \$40,000
6. Complete free weight dumbbell and barbell set – value \$20,000

Bubba has not read any of his leases (imagine that!), but wants his interest in this property adequately covered.

Bubba's lease states:

*3. The renter shall during the rental term keep and maintain the property in good working condition and repair and shall be responsible for any loss, casualty, damage or destruction to said property notwithstanding how caused and Renter agrees to return said property in its present condition, reasonable wear and tear accepted.*

***Question #1*** - Bubba has a fire that destroys the property listed above. Bubba is devastated. He calls you his agent. You insure Bubba's tenant's improvements and betterments and his business personal property with a Building and Personal Property Coverage Form. Assuming adequate coverage for Business Personal Property, how will this loss be paid?



What if Bubba's lease states:

8. *Insurance: For the lease term set forth above, you will provide and maintain, at your expense, (a) property insurance against the loss or theft of or damage to the Products, for their full replacement value naming us as loss payee and (b) public liability and third party property damage insurance naming us as additional insured. All insurance shall be in the form and amount and with companies satisfactory to us and will provide that we will be given thirty (30) days written notice before cancellation or material change of the policy. At our request, you will deliver the policies or certificates of insurance to us. If you do not give us evidence of insurance acceptable to us we have the right, but not the obligation, to obtain such insurance covering our interest in the Products for the Lease Term. The cost for such insurance will be an additional amount due from you under the lease.*

**Question #2** - Will this lease language change your answer to question 1 above?

**Question #3** - We now have put Bubba's property in the correct "pot." Bubba suffers yet another fire loss that destroys his leased property. How does the Building and Business Personal Property Coverage Form value damage to this type of property.





### ***Situation #4 – The Rental Car Agreement and the Business Auto Policy***

Bubba has two (2) salespersons that travel extensively to trade shows and exhibitions in order to keep up on the latest and greatest sporting goods equipment. Both salespersons rent cars when on business. Bubba has an account with several of the major rental car companies to get discounted rates. This may shock you, but no one has ever read the rental agreement to determine what, if anything, Bubba could be responsible for if the vehicles were involved in an accident. Again, no surprise, but Bubba never told you about the rental of these vehicles.

The rental agreement states:

*...the renter agrees to return the vehicle in the same condition as rented, save normal wear and tear. The renter agrees to repair or replace any and all damage to the vehicle including a reasonable charge for loss of use and other charges such as towing, storage, legal, and/or administrative charges.*

*...said charges will be paid in the same manner and with the same method of payment used at the time of the original rental.*

*Loss Damage Waiver (LDW) LDW is an optional service which relieves you of any responsibility for the loss of or damage to the rental car resulting from any cause, provided the car is used in accordance with the terms of the rental agreement. Cost of LDW may vary depending on location or car type and is charged per each full or partial day of rental. (Exception - California LDW does not extend to theft. A renter is responsible for the theft of the car only if it results from failure to exercise ordinary care. See Loss Damage Waiver in the location index for specific charges.*

***PROHIBITED USE:***

*...protection can be void if any of the following violations occur. (Note-exclusion of protection can vary by location and should be verified at the rental counter).*

- *Permit use of car by anyone other than authorized operators.*
- *Intentionally destroy, damage or aid in car's theft.*
- *Take or attempt to take the car to Mexico or elsewhere out of the U.S. without prior approval from the rental location.*
- *Engaging in any willful or wanton misconduct which may include reckless conduct such as, when overloaded, to carry persons or property for hire, or off regularly maintained roads, or leaving the car and failing to remove keys or close and lock all doors, windows, trunk and car is vandalized or stolen.*
- *Use or permit the use of the car by anyone, under the influence of alcohol or drugs, for purposes that could properly be charged a felony, such as the illegal transportation of persons, drugs or contraband, to tow or push, speed contest, driver training, or is obtained from Hertz by fraud or misrepresentation.*



***Question # 1*** - One of Bubba's employees while in Las Vegas at a national sporting goods convention rented a car in the name of Bubba's Sporting Emporium, Inc. using her company credit card that is in the same name. Unfortunately, she has been involved in an accident causing \$14,000 damage to the rental car not including loss of use. Her dilemma is how to explain the additional charges on the company credit card. What is your advice as Bubba's agent?

***Question # 2*** – The same employee several months later has decided the way to avoid all of this nonsense when renting a car is to rent the vehicle in her own name using her own credit card. She will simply turn in the expense of the car and gas on her monthly expense report. Unfortunately, her next rental experience resulted in an at fault accident totaling a \$30,000 rental car. Her new dilemma is to figure out how to include the \$30,000, plus loss of use in on her next expense report. She has called you before notifying Bubba of this latest tragedy. Does this set of facts change your answer to the question above?

<b>GRADUATE SEMINAR - NOTES</b>	<b>THINGS TO DO</b>

**Situation #5** – Bubba has decided to install a brand new sixty (60) foot sign on the roof of his building. He has the permission of Strip Centers, Inc. However, the prices he has received from the local sign installers are astronomical. But Bubba, being the creative business man that he is has decided to install the sign himself with a little help of his friends. Bubba has rented a crane and two scissor lifts from a local rental company to put the sign in place. Once again, Bubba did not read the rental agreement before taking possession of the equipment.

The rental agreement states:

*Equipment rental*

- *Rental rates do not include applicable sales tax, freight, or fire, theft, and vandalism insurance*
- *All units are covered by 30-day power train warranty*
- *Rental rates are subject to change without prior notice*
- *All damage/Abuse of rental equipment is the customer's responsibility*
- *Fuel tank is to be full when returned to avoid additional costs*

*Required daily on all rentals*

- *Inspect unit for safe operating conditions*
- *Check and maintain all fluid levels*
- *Lubricate/grease all areas and components*

*Required every 250 hours on all rentals:*

- *Take oil samples and send to nearest Ring Power facility*
- *Change oil and filters noting date and hours on service record tag*

**Question # 1-** While lifting the sign into place the boom of the crane collapses because the sign exceeded the lifting capacity of the crane. Bubba is furious with the rental company because of the damage to his sign. He is even more furious when he receives a bill from the rental company for \$ 16,000 for damage to the crane. What, if anything, can you his agent do for him?

**Question # 2** – If your client was a contractor who rented this equipment, how would his Contractors Equipment policy respond?

<b>GRADUATE SEMINAR - NOTES</b>	<b>THINGS TO DO</b>

**Situation #6** - Bubba is pleased to announce the graduation of his oldest daughter from high school. The graduation party is held at the local country club where the announcement is made that his daughter will be attending Florida State University. Bubba could not be happier with his daughter's choice of schools. Bubba flies to Tallahassee with his daughter to pick-out an apartment that his daughter and best friend will be sharing. Bubba signs a one year lease with options to renew each year for five years. Once again, Bubba does not read the lease carefully.

The lease states:

*Repairs and Maintenance: The landlord agrees to be responsible for major repairs to the interior and exterior of the building, provided however, that repairs required through damages caused by the tenant(s) or guests shall be charged to the tenant(s). Tenant(s) agree to immediately notify the landlord of any needed repairs in writing. The cost of repair or replacement of screens, light bulbs, heating and air conditioner filters must be changed each month by the tenant.*

*Insurance: It is agreed that the Landlord/Property Manager shall not be responsible for loss of any personal property or injury to any person coming upon the premises as the licensee or invitee of the tenant(s). The tenant(s) agree to purchase Renters Insurance with liability coverage of not less than \$100,000.*

*Return of Premises to Landlord: At the end of the term of this lease, the tenant(s) shall quit and deliver the premises to the landlord in as good or better condition as they were first leased.*

**Question #1** – Bubba's daughter does not know what an air conditioning filter is must less how to change one. Six months after occupancy Bubba's daughter notifies the property manager that the air conditioner is not working. After a visit from the local air conditioner repairperson, Bubba receives a bill from the property manager for \$1400 which is the cost of a new compressor for the apartment he rented. Does Bubba have any insurance for this unfortunate situation?

**Question #2** – Bubba's daughter and her roommate through an end of the year party after finals before everyone goes home for the summer. During the party some adult beverages were served. A guest had a little too much to drink and fell off of the balcony. The lawsuits are filed and Bubba puts you on notice of the claim. However, Bubba has received a notice from the property management company and the owner of the building asking they be defended and protected from any and all judgments resulting from this unfortunate event. He forwards the letter to you, what is your advice?

<b>GRADUATE SEMINAR - NOTES</b>	<b>THINGS TO DO</b>



# **EXHIBITS**



## COMMERCIAL PROPERTY CONDITIONS

This Coverage Part is subject to the following conditions, the Common Policy Conditions and applicable Loss Conditions and Additional Conditions in Commercial Property Coverage Forms.

### A. CONCEALMENT, MISREPRESENTATION OR FRAUD

This Coverage Part is void in any case of fraud by you as it relates to this Coverage Part at any time. It is also void if you or any other insured, at any time, intentionally conceal or misrepresent a material fact concerning:

1. This Coverage Part;
2. The Covered Property;
3. Your interest in the Covered Property; or
4. A claim under this Coverage Part.

### B. CONTROL OF PROPERTY

Any act or neglect of any person other than you beyond your direction or control will not affect this insurance.

The breach of any condition of this Coverage Part at any one or more locations will not affect coverage at any location where, at the time of loss or damage, the breach of condition does not exist.

### C. INSURANCE UNDER TWO OR MORE COVERAGES

If two or more of this policy's coverages apply to the same loss or damage, we will not pay more than the actual amount of the loss or damage.

### D. LEGAL ACTION AGAINST US

No one may bring a legal action against us under this Coverage Part unless:

1. There has been full compliance with all of the terms of this Coverage Part; and
2. The action is brought within 2 years after the date on which the direct physical loss or damage occurred.

### E. LIBERALIZATION

If we adopt any revision that would broaden the coverage under this Coverage Part without additional premium within 45 days prior to or during the policy period, the broadened coverage will immediately apply to this Coverage Part.

### F. NO BENEFIT TO BAILEE

No person or organization, other than you, having custody of Covered Property will benefit from this insurance.

### G. OTHER INSURANCE

1. You may have other insurance subject to the same plan, terms, conditions and provisions as the insurance under this Coverage Part. If you do, we will pay our share of the covered loss or damage. Our share is the proportion that the applicable Limit of Insurance under this Coverage Part bears to the Limits of Insurance of all insurance covering on the same basis.
2. If there is other insurance covering the same loss or damage, other than that described in 1. above, we will pay only for the amount of covered loss or damage in excess of the amount due from that other insurance, whether you can collect on it or not. But we will not pay more than the applicable Limit of Insurance.

### H. POLICY PERIOD, COVERAGE TERRITORY

Under this Coverage Part:

1. We cover loss or damage commencing:
  - a. During the policy period shown in the Declarations; and
  - b. Within the coverage territory.
2. The coverage territory is:
  - a. The United States of America (including its territories and possessions);
  - b. Puerto Rico; and
  - c. Canada.

**I. TRANSFER OF RIGHTS OF RECOVERY AGAINST OTHERS TO US**

If any person or organization to or for whom we make payment under this Coverage Part has rights to recover damages from another, those rights are transferred to us to the extent of our payment. That person or organization must do everything necessary to secure our rights and must do nothing after loss to impair them. But you may waive your rights against another party in writing:

1. Prior to a loss to your Covered Property or Covered Income.
2. After a loss to your Covered Property or Covered Income only if, at time of loss, that party is one of the following:
  - a. Someone insured by this insurance;
  - b. A business firm:
    - (1) Owned or controlled by you; or
    - (2) That owns or controls you; or
  - c. Your tenant.

This will not restrict your insurance.

SAMPLE

# BUILDING AND PERSONAL PROPERTY COVERAGE FORM

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

Throughout this policy, the words "you" and "your" refer to the Named Insured shown in the Declarations. The words "we", "us" and "our" refer to the company providing this insurance.

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

## A. Coverage

We will pay for direct physical loss of or damage to Covered Property at the premises described in the Declarations caused by or resulting from any Covered Cause of Loss.

### 1. Covered Property

Covered Property, as used in this Coverage Part, means the type of property described in this section, **A.1.**, and limited in **A.2.** Property Not Covered, if a Limit Of Insurance is shown in the Declarations for that type of property.

**a. Building**, meaning the building or structure described in the Declarations, including:

- (1) Completed additions;
- (2) Fixtures, including outdoor fixtures;
- (3) Permanently installed:
  - (a) Machinery; and
  - (b) Equipment;
- (4) Personal property owned by you that is used to maintain or service the building or structure or its premises, including:
  - (a) Fire-extinguishing equipment;
  - (b) Outdoor furniture;
  - (c) Floor coverings; and
  - (d) Appliances used for refrigerating, ventilating, cooking, dishwashing or laundering;
- (5) If not covered by other insurance:
  - (a) Additions under construction, alterations and repairs to the building or structure;
  - (b) Materials, equipment, supplies and temporary structures, on or within 100 feet of the described premises, used for making additions, alterations or repairs to the building or structure.

### b. Your Business Personal Property

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

- (1) Furniture and fixtures;
- (2) Machinery and equipment;
- (3) "Stock";
- (4) All other personal property owned by you and used in your business;
- (5) Labor, materials or services furnished or arranged by you on personal property of others;
- (6) Your use interest as tenant in improvements and betterments. Improvements and betterments are fixtures, alterations, installations or additions:
  - (a) Made a part of the building or structure you occupy but do not own; and
  - (b) You acquired or made at your expense but cannot legally remove;
- (7) Leased personal property for which you have a contractual responsibility to insure, unless otherwise provided for under Personal Property Of Others.

### c. Personal Property Of Others that is:

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

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

## 2. Property Not Covered

Covered Property does not include:

- a. Accounts, bills, currency, food stamps or other evidences of debt, money, notes or securities. Lottery tickets held for sale are not securities;
- b. Animals, unless owned by others and boarded by you, or if owned by you, only as "stock" while inside of buildings;
- c. Automobiles held for sale;
- d. Bridges, roadways, walks, patios or other paved surfaces;
- e. Contraband, or property in the course of illegal transportation or trade;
- f. The cost of excavations, grading, backfilling or filling;
- g. Foundations of buildings, structures, machinery or boilers if their foundations are below:
  - (1) The lowest basement floor; or
  - (2) The surface of the ground, if there is no basement;
- h. Land (including land on which the property is located), water, growing crops or lawns (other than lawns which are part of a vegetated roof);
- i. Personal property while airborne or waterborne;
- j. Bulkheads, pilings, piers, wharves or docks;
- k. Property that is covered under another coverage form of this or any other policy in which it is more specifically described, except for the excess of the amount due (whether you can collect on it or not) from that other insurance;
- l. Retaining walls that are not part of a building;
- m. Underground pipes, flues or drains;
- n. Electronic data, except as provided under the Additional Coverage, Electronic Data. Electronic data means information, facts or computer programs stored as or on, created or used on, or transmitted to or from computer software (including systems and applications software), on hard or floppy disks, CD-ROMs, tapes, drives, cells, data processing devices or any other repositories of computer software which are used with electronically controlled equipment. The term computer programs, referred to in the foregoing description of electronic data, means a set of related electronic instructions which direct the operations and functions of a computer or device connected to it, which enable the computer or device to receive, process, store, retrieve or send data. This paragraph, n., does not apply to your "stock" of prepackaged software, or to electronic data which is integrated in and operates or controls the building's elevator, lighting, heating, ventilation, air conditioning or security system;
  - o. The cost to replace or restore the information on valuable papers and records, including those which exist as electronic data. Valuable papers and records include but are not limited to proprietary information, books of account, deeds, manuscripts, abstracts, drawings and card index systems. Refer to the Coverage Extension for Valuable Papers And Records (Other Than Electronic Data) for limited coverage for valuable papers and records other than those which exist as electronic data;
  - p. Vehicles or self-propelled machines (including aircraft or watercraft) that:
    - (1) Are licensed for use on public roads; or
    - (2) Are operated principally away from the described premises.

This paragraph does not apply to:

- (a) Vehicles or self-propelled machines or autos you manufacture, process or warehouse;

- (b) Vehicles or self-propelled machines, other than autos, you hold for sale;
  - (c) Rowboats or canoes out of water at the described premises; or
  - (d) Trailers, but only to the extent provided for in the Coverage Extension for Non-owned Detached Trailers; or
- q. The following property while outside of buildings:
- (1) Grain, hay, straw or other crops;
  - (2) Fences, radio or television antennas (including satellite dishes) and their lead-in wiring, masts or towers, trees, shrubs or plants (other than trees, shrubs or plants which are "stock" or are part of a vegetated roof), all except as provided in the Coverage Extensions.

### 3. Covered Causes Of Loss

See applicable Causes Of Loss form as shown in the Declarations.

### 4. Additional Coverages

#### a. Debris Removal

- (1) Subject to Paragraphs (2), (3) and (4), we will pay your expense to remove debris of Covered Property and other debris that is on the described premises, when such debris is caused by or results from a Covered Cause of Loss that occurs during the policy period. The expenses will be paid only if they are reported to us in writing within 180 days of the date of direct physical loss or damage.
- (2) Debris Removal does not apply to costs to:
  - (a) Remove debris of property of yours that is not insured under this policy, or property in your possession that is not Covered Property;
  - (b) Remove debris of property owned by or leased to the landlord of the building where your described premises are located, unless you have a contractual responsibility to insure such property and it is insured under this policy;
  - (c) Remove any property that is Property Not Covered, including property addressed under the Outdoor Property Coverage Extension;

- (d) Remove property of others of a type that would not be Covered Property under this Coverage Form;
  - (e) Remove deposits of mud or earth from the grounds of the described premises;
  - (f) Extract "pollutants" from land or water; or
  - (g) Remove, restore or replace polluted land or water.
- (3) Subject to the exceptions in Paragraph (4), the following provisions apply:
- (a) The most we will pay for the total of direct physical loss or damage plus debris removal expense is the Limit of Insurance applicable to the Covered Property that has sustained loss or damage.
  - (b) Subject to (a) above, the amount we will pay for debris removal expense is limited to 25% of the sum of the deductible plus the amount that we pay for direct physical loss or damage to the Covered Property that has sustained loss or damage. However, if no Covered Property has sustained direct physical loss or damage, the most we will pay for removal of debris of other property (if such removal is covered under this Additional Coverage) is \$5,000 at each location.
- (4) We will pay up to an additional \$25,000 for debris removal expense, for each location, in any one occurrence of physical loss or damage to Covered Property, if one or both of the following circumstances apply:
- (a) The total of the actual debris removal expense plus the amount we pay for direct physical loss or damage exceeds the Limit of Insurance on the Covered Property that has sustained loss or damage.
  - (b) The actual debris removal expense exceeds 25% of the sum of the deductible plus the amount that we pay for direct physical loss or damage to the Covered Property that has sustained loss or damage.



Therefore, if (4)(a) and/or (4)(b) applies, our total payment for direct physical loss or damage and debris removal expense may reach but will never exceed the Limit of Insurance on the Covered Property that has sustained loss or damage, plus \$25,000.

**(5) Examples**

The following examples assume that there is no Coinsurance penalty.

**Example 1**

Limit of Insurance:	\$ 90,000
Amount of Deductible:	\$ 500
Amount of Loss:	\$ 50,000
Amount of Loss Payable:	\$ 49,500
	(\$50,000 – \$500)
Debris Removal Expense:	\$ 10,000
Debris Removal Expense Payable:	\$ 10,000
	(\$10,000 is 20% of \$50,000.)

The debris removal expense is less than 25% of the sum of the loss payable plus the deductible. The sum of the loss payable and the debris removal expense (\$49,500 + \$10,000 = \$59,500) is less than the Limit of Insurance. Therefore, the full amount of debris removal expense is payable in accordance with the terms of Paragraph (3).

**Example 2**

Limit of Insurance:	\$ 90,000
Amount of Deductible:	\$ 500
Amount of Loss:	\$ 80,000
Amount of Loss Payable:	\$ 79,500
	(\$80,000 – \$500)
Debris Removal Expense:	\$ 40,000
Debris Removal Expense Payable	
Basic Amount:	\$ 10,500
Additional Amount:	\$ 25,000

The basic amount payable for debris removal expense under the terms of Paragraph (3) is calculated as follows: \$80,000 (\$79,500 + \$500) x .25 = \$20,000, capped at \$10,500. The cap applies because the sum of the loss payable (\$79,500) and the basic amount payable for debris removal expense (\$10,500) cannot exceed the Limit of Insurance (\$90,000).

The additional amount payable for debris removal expense is provided in accordance with the terms of Paragraph (4), because the debris removal expense (\$40,000) exceeds 25% of the loss payable plus the deductible (\$40,000 is 50% of \$80,000), and because the sum of the loss payable and debris removal expense (\$79,500 + \$40,000 = \$119,500) would exceed the Limit of Insurance (\$90,000). The additional amount of covered debris removal expense is \$25,000, the maximum payable under Paragraph (4). Thus, the total payable for debris removal expense in this example is \$35,500; \$4,500 of the debris removal expense is not covered.

**b. Preservation Of Property**

If it is necessary to move Covered Property from the described premises to preserve it from loss or damage by a Covered Cause of Loss, we will pay for any direct physical loss or damage to that property:

- (1) While it is being moved or while temporarily stored at another location; and
- (2) Only if the loss or damage occurs within 30 days after the property is first moved.

**c. Fire Department Service Charge**

When the fire department is called to save or protect Covered Property from a Covered Cause of Loss, we will pay up to \$1,000 for service at each premises described in the Declarations, unless a higher limit is shown in the Declarations. Such limit is the most we will pay regardless of the number of responding fire departments or fire units, and regardless of the number or type of services performed.

This Additional Coverage applies to your liability for fire department service charges:

- (1) Assumed by contract or agreement prior to loss; or
- (2) Required by local ordinance.

No Deductible applies to this Additional Coverage.



**d. Pollutant Clean-up And Removal**

We will pay your expense to extract "pollutants" from land or water at the described premises if the discharge, dispersal, seepage, migration, release or escape of the "pollutants" is caused by or results from a Covered Cause of Loss that occurs during the policy period. The expenses will be paid only if they are reported to us in writing within 180 days of the date on which the Covered Cause of Loss occurs.

This Additional Coverage does not apply to costs to test for, monitor or assess the existence, concentration or effects of "pollutants". But we will pay for testing which is performed in the course of extracting the "pollutants" from the land or water.

The most we will pay under this Additional Coverage for each described premises is \$10,000 for the sum of all covered expenses arising out of Covered Causes of Loss occurring during each separate 12-month period of this policy.

**e. Increased Cost Of Construction**

- (1) This Additional Coverage applies only to buildings to which the Replacement Cost Optional Coverage applies.
- (2) In the event of damage by a Covered Cause of Loss to a building that is Covered Property, we will pay the increased costs incurred to comply with the minimum standards of an ordinance or law in the course of repair, rebuilding or replacement of damaged parts of that property, subject to the limitations stated in e.(3) through e.(9) of this Additional Coverage.
- (3) The ordinance or law referred to in e.(2) of this Additional Coverage is an ordinance or law that regulates the construction or repair of buildings or establishes zoning or land use requirements at the described premises and is in force at the time of loss.
- (4) Under this Additional Coverage, we will not pay any costs due to an ordinance or law that:
  - (a) You were required to comply with before the loss, even when the building was undamaged; and
  - (b) You failed to comply with.

(5) Under this Additional Coverage, we will not pay for:

- (a) The enforcement of or compliance with any ordinance or law which requires demolition, repair, replacement, reconstruction, remodeling or remediation of property due to contamination by "pollutants" or due to the presence, growth, proliferation, spread or any activity of "fungus", wet or dry rot or bacteria; or
- (b) Any costs associated with the enforcement of or compliance with an ordinance or law which requires any insured or others to test for, monitor, clean up, remove, contain, treat, detoxify or neutralize, or in any way respond to, or assess the effects of "pollutants", "fungus", wet or dry rot or bacteria.

(6) The most we will pay under this Additional Coverage, for each described building insured under this Coverage Form, is \$10,000 or 5% of the Limit of Insurance applicable to that building, whichever is less. If a damaged building is covered under a blanket Limit of Insurance which applies to more than one building or item of property, then the most we will pay under this Additional Coverage, for that damaged building, is the lesser of \$10,000 or 5% times the value of the damaged building as of the time of loss times the applicable Coinsurance percentage.

The amount payable under this Additional Coverage is additional insurance.

(7) With respect to this Additional Coverage:

- (a) We will not pay for the Increased Cost of Construction:
  - (i) Until the property is actually repaired or replaced at the same or another premises; and
  - (ii) Unless the repair or replacement is made as soon as reasonably possible after the loss or damage, not to exceed two years. We may extend this period in writing during the two years.

- (b) If the building is repaired or replaced at the same premises, or if you elect to rebuild at another premises, the most we will pay for the Increased Cost of Construction, subject to the provisions of **e.(6)** of this Additional Coverage, is the increased cost of construction at the same premises.
- (c) If the ordinance or law requires relocation to another premises, the most we will pay for the Increased Cost of Construction, subject to the provisions of **e.(6)** of this Additional Coverage, is the increased cost of construction at the new premises.
- (8) This Additional Coverage is not subject to the terms of the Ordinance Or Law Exclusion to the extent that such Exclusion would conflict with the provisions of this Additional Coverage.
- (9) The costs addressed in the Loss Payment and Valuation Conditions and the Replacement Cost Optional Coverage, in this Coverage Form, do not include the increased cost attributable to enforcement of or compliance with an ordinance or law. The amount payable under this Additional Coverage, as stated in **e.(6)** of this Additional Coverage, is not subject to such limitation.

**f. Electronic Data**

- (1) Under this Additional Coverage, electronic data has the meaning described under Property Not Covered, Electronic Data. This Additional Coverage does not apply to your "stock" of prepackaged software, or to electronic data which is integrated in and operates or controls the building's elevator, lighting, heating, ventilation, air conditioning or security system.
  - (2) Subject to the provisions of this Additional Coverage, we will pay for the cost to replace or restore electronic data which has been destroyed or corrupted by a Covered Cause of Loss. To the extent that electronic data is not replaced or restored, the loss will be valued at the cost of replacement of the media on which the electronic data was stored, with blank media of substantially identical type.
- (3) The Covered Causes of Loss applicable to Your Business Personal Property apply to this Additional Coverage, Electronic Data, subject to the following:
    - (a) If the Causes Of Loss – Special Form applies, coverage under this Additional Coverage, Electronic Data, is limited to the "specified causes of loss" as defined in that form and Collapse as set forth in that form.
    - (b) If the Causes Of Loss – Broad Form applies, coverage under this Additional Coverage, Electronic Data, includes Collapse as set forth in that form.
    - (c) If the Causes Of Loss form is endorsed to add a Covered Cause of Loss, the additional Covered Cause of Loss does not apply to the coverage provided under this Additional Coverage, Electronic Data.
    - (d) The Covered Causes of Loss include a virus, harmful code or similar instruction introduced into or enacted on a computer system (including electronic data) or a network to which it is connected, designed to damage or destroy any part of the system or disrupt its normal operation. But there is no coverage for loss or damage caused by or resulting from manipulation of a computer system (including electronic data) by any employee, including a temporary or leased employee, or by an entity retained by you or for you to inspect, design, install, modify, maintain, repair or replace that system.

- (4) The most we will pay under this Additional Coverage, Electronic Data, is \$2,500 (unless a higher limit is shown in the Declarations) for all loss or damage sustained in any one policy year, regardless of the number of occurrences of loss or damage or the number of premises, locations or computer systems involved. If loss payment on the first occurrence does not exhaust this amount, then the balance is available for subsequent loss or damage sustained in but not after that policy year. With respect to an occurrence which begins in one policy year and continues or results in additional loss or damage in a subsequent policy year(s), all loss or damage is deemed to be sustained in the policy year in which the occurrence began.

## 5. Coverage Extensions

Except as otherwise provided, the following Extensions apply to property located in or on the building described in the Declarations or in the open (or in a vehicle) within 100 feet of the described premises.

If a Coinsurance percentage of 80% or more, or a Value Reporting period symbol, is shown in the Declarations, you may extend the insurance provided by this Coverage Part as follows:

### a. Newly Acquired Or Constructed Property

#### (1) Buildings

If this policy covers Building, you may extend that insurance to apply to:

- (a) Your new buildings while being built on the described premises; and
- (b) Buildings you acquire at locations, other than the described premises, intended for:
  - (i) Similar use as the building described in the Declarations; or
  - (ii) Use as a warehouse.

The most we will pay for loss or damage under this Extension is \$250,000 at each building.

## (2) Your Business Personal Property

- (a) If this policy covers Your Business Personal Property, you may extend that insurance to apply to:

- (i) Business personal property, including such property that you newly acquire, at any location you acquire other than at fairs, trade shows or exhibitions; or
- (ii) Business personal property, including such property that you newly acquire, located at your newly constructed or acquired buildings at the location described in the Declarations.

The most we will pay for loss or damage under this Extension is \$100,000 at each building.

- (b) This Extension does not apply to:

- (i) Personal property of others that is temporarily in your possession in the course of installing or performing work on such property; or
- (ii) Personal property of others that is temporarily in your possession in the course of your manufacturing or wholesaling activities.

## (3) Period Of Coverage

With respect to insurance provided under this Coverage Extension for Newly Acquired Or Constructed Property, coverage will end when any of the following first occurs:

- (a) This policy expires;
- (b) 30 days expire after you acquire the property or begin construction of that part of the building that would qualify as covered property; or
- (c) You report values to us.

We will charge you additional premium for values reported from the date you acquire the property or begin construction of that part of the building that would qualify as covered property.

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

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

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

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

**c. Valuable Papers And Records (Other Than Electronic Data)**

- (1) You may extend the insurance that applies to Your Business Personal Property to apply to the cost to replace or restore the lost information on valuable papers and records for which duplicates do not exist. But this Extension does not apply to valuable papers and records which exist as electronic data. Electronic data has the meaning described under Property Not Covered, Electronic Data.
- (2) If the Causes Of Loss – Special Form applies, coverage under this Extension is limited to the "specified causes of loss" as defined in that form and Collapse as set forth in that form.
- (3) If the Causes Of Loss – Broad Form applies, coverage under this Extension includes Collapse as set forth in that form.
- (4) Under this Extension, the most we will pay to replace or restore the lost information is \$2,500 at each described premises, unless a higher limit is shown in the Declarations. Such amount is additional insurance. We will also pay for the cost of blank material for reproducing the records (whether or not duplicates exist) and (when there is a duplicate) for the cost of labor to transcribe or copy the records. The costs of blank material and labor are subject to the applicable Limit of Insurance on Your Business Personal Property and, therefore, coverage of such costs is not additional insurance.

**d. Property Off-premises**

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

**e. Outdoor Property**

You may extend the insurance provided by this Coverage Form to apply to your outdoor fences, radio and television antennas (including satellite dishes), trees, shrubs and plants (other than trees, shrubs or plants which are "stock" or are part of a vegetated roof), including debris removal expense, caused by or resulting from any of the following causes of loss if they are Covered Causes of Loss:

- (1) Fire;
- (2) Lightning;
- (3) Explosion;
- (4) Riot or Civil Commotion; or
- (5) Aircraft.

The most we will pay for loss or damage under this Extension is \$1,000, but not more than \$250 for any one tree, shrub or plant. These limits apply to any one occurrence, regardless of the types or number of items lost or damaged in that occurrence.



Subject to all aforementioned terms and limitations of coverage, this Coverage Extension includes the expense of removing from the described premises the debris of trees, shrubs and plants which are the property of others, except in the situation in which you are a tenant and such property is owned by the landlord of the described premises.

**f. Non-owned Detached Trailers**

- (1) You may extend the insurance that applies to Your Business Personal Property to apply to loss or damage to trailers that you do not own, provided that:
  - (a) The trailer is used in your business;
  - (b) The trailer is in your care, custody or control at the premises described in the Declarations; and
  - (c) You have a contractual responsibility to pay for loss or damage to the trailer.
- (2) We will not pay for any loss or damage that occurs:
  - (a) While the trailer is attached to any motor vehicle or motorized conveyance, whether or not the motor vehicle or motorized conveyance is in motion;
  - (b) During hitching or unhitching operations, or when a trailer becomes accidentally unhitched from a motor vehicle or motorized conveyance.
- (3) The most we will pay for loss or damage under this Extension is \$5,000, unless a higher limit is shown in the Declarations.
- (4) This insurance is excess over the amount due (whether you can collect on it or not) from any other insurance covering such property.

**g. Business Personal Property Temporarily In Portable Storage Units**

- (1) You may extend the insurance that applies to Your Business Personal Property to apply to such property while temporarily stored in a portable storage unit (including a detached trailer) located within 100 feet of the building or structure described in the Declarations or within 100 feet of the premises described in the Declarations, whichever distance is greater.

- (2) If the applicable Covered Causes of Loss form or endorsement contains a limitation or exclusion concerning loss or damage from sand, dust, sleet, snow, ice or rain to property in a structure, such limitation or exclusion also applies to property in a portable storage unit.
- (3) Coverage under this Extension:
  - (a) Will end 90 days after the business personal property has been placed in the storage unit;
  - (b) Does not apply if the storage unit itself has been in use at the described premises for more than 90 consecutive days, even if the business personal property has been stored there for 90 or fewer days as of the time of loss or damage.
- (4) Under this Extension, the most we will pay for the total of all loss or damage to business personal property is \$10,000 (unless a higher limit is indicated in the Declarations for such Extension) regardless of the number of storage units. Such limit is part of, not in addition to, the applicable Limit of Insurance on Your Business Personal Property. Therefore, payment under this Extension will not increase the applicable Limit of Insurance on Your Business Personal Property.
- (5) This Extension does not apply to loss or damage otherwise covered under this Coverage Form or any endorsement to this Coverage Form or policy, and does not apply to loss or damage to the storage unit itself.

Each of these Extensions is additional insurance unless otherwise indicated. The Additional Condition, Coinsurance, does not apply to these Extensions.

**B. Exclusions And Limitations**

See applicable Causes Of Loss form as shown in the Declarations.

**C. Limits Of Insurance**

The most we will pay for loss or damage in any one occurrence is the applicable Limit Of Insurance shown in the Declarations.

The most we will pay for loss or damage to outdoor signs, whether or not the sign is attached to a building, is \$2,500 per sign in any one occurrence.

The amounts of insurance stated in the following Additional Coverages apply in accordance with the terms of such coverages and are separate from the Limit(s) Of Insurance shown in the Declarations for any other coverage:

1. Fire Department Service Charge;
2. Pollutant Clean-up And Removal;
3. Increased Cost Of Construction; and
4. Electronic Data.

Payments under the Preservation Of Property Additional Coverage will not increase the applicable Limit of Insurance.

**D. Deductible**

In any one occurrence of loss or damage (hereinafter referred to as loss), we will first reduce the amount of loss if required by the Coinsurance Condition or the Agreed Value Optional Coverage. If the adjusted amount of loss is less than or equal to the Deductible, we will not pay for that loss. If the adjusted amount of loss exceeds the Deductible, we will then subtract the Deductible from the adjusted amount of loss and will pay the resulting amount or the Limit of Insurance, whichever is less.

When the occurrence involves loss to more than one item of Covered Property and separate Limits of Insurance apply, the losses will not be combined in determining application of the Deductible. But the Deductible will be applied only once per occurrence.

**Example 1**

(This example assumes there is no Coinsurance penalty.)

Deductible:	\$ 250
Limit of Insurance – Building 1:	\$ 60,000
Limit of Insurance – Building 2:	\$ 80,000
Loss to Building 1:	\$ 60,100
Loss to Building 2:	\$ 90,000

The amount of loss to Building 1 (\$60,100) is less than the sum (\$60,250) of the Limit of Insurance applicable to Building 1 plus the Deductible.

The Deductible will be subtracted from the amount of loss in calculating the loss payable for Building 1:

\$ 60,100
<u>– 250</u>
\$ 59,850 Loss Payable – Building 1

The Deductible applies once per occurrence and therefore is not subtracted in determining the amount of loss payable for Building 2. Loss payable for Building 2 is the Limit of Insurance of \$80,000.

Total amount of loss payable:  
\$59,850 + \$80,000 = \$139,850

**Example 2**

(This example, too, assumes there is no Coinsurance penalty.)

The Deductible and Limits of Insurance are the same as those in Example 1.

Loss to Building 1:	\$ 70,000
(Exceeds Limit of Insurance plus Deductible)	
Loss to Building 2:	\$ 90,000
(Exceeds Limit of Insurance plus Deductible)	
Loss Payable – Building 1:	\$ 60,000
(Limit of Insurance)	
Loss Payable – Building 2:	\$ 80,000
(Limit of Insurance)	
Total amount of loss payable:	\$ 140,000

**E. Loss Conditions**

The following conditions apply in addition to the Common Policy Conditions and the Commercial Property Conditions:

**1. Abandonment**

There can be no abandonment of any property to us.

**2. Appraisal**

If we and you disagree on the value of the property or the amount of loss, either may make written demand for an appraisal of the loss. In this event, each party will select a competent and impartial appraiser. The two appraisers will select an umpire. If they cannot agree, either may request that selection be made by a judge of a court having jurisdiction. The appraisers will state separately the value of the property and amount of loss. If they fail to agree, they will submit their differences to the umpire. A decision agreed to by any two will be binding. Each party will:

- a. Pay its chosen appraiser; and
- b. Bear the other expenses of the appraisal and umpire equally.

If there is an appraisal, we will still retain our right to deny the claim.

**3. Duties In The Event Of Loss Or Damage**

a. You must see that the following are done in the event of loss or damage to Covered Property:

- (1) Notify the police if a law may have been broken.

- (2) Give us prompt notice of the loss or damage. Include a description of the property involved.
  - (3) As soon as possible, give us a description of how, when and where the loss or damage occurred.
  - (4) Take all reasonable steps to protect the Covered Property from further damage, and keep a record of your expenses necessary to protect the Covered Property, for consideration in the settlement of the claim. This will not increase the Limit of Insurance. However, we will not pay for any subsequent loss or damage resulting from a cause of loss that is not a Covered Cause of Loss. Also, if feasible, set the damaged property aside and in the best possible order for examination.
  - (5) At our request, give us complete inventories of the damaged and undamaged property. Include quantities, costs, values and amount of loss claimed.
  - (6) As often as may be reasonably required, permit us to inspect the property proving the loss or damage and examine your books and records.  
Also, permit us to take samples of damaged and undamaged property for inspection, testing and analysis, and permit us to make copies from your books and records.
  - (7) Send us a signed, sworn proof of loss containing the information we request to investigate the claim. You must do this within 60 days after our request. We will supply you with the necessary forms.
  - (8) Cooperate with us in the investigation or settlement of the claim.
- b. We may examine any insured under oath, while not in the presence of any other insured and at such times as may be reasonably required, about any matter relating to this insurance or the claim, including an insured's books and records. In the event of an examination, an insured's answers must be signed.

#### 4. Loss Payment

- a. In the event of loss or damage covered by this Coverage Form, at our option, we will either:
  - (1) Pay the value of lost or damaged property;
  - (2) Pay the cost of repairing or replacing the lost or damaged property, subject to **b.** below;
  - (3) Take all or any part of the property at an agreed or appraised value; or
  - (4) Repair, rebuild or replace the property with other property of like kind and quality, subject to **b.** below.

We will determine the value of lost or damaged property, or the cost of its repair or replacement, in accordance with the applicable terms of the Valuation Condition in this Coverage Form or any applicable provision which amends or supersedes the Valuation Condition.
- b. The cost to repair, rebuild or replace does not include the increased cost attributable to enforcement of or compliance with any ordinance or law regulating the construction, use or repair of any property.
- c. We will give notice of our intentions within 30 days after we receive the sworn proof of loss.
- d. We will not pay you more than your financial interest in the Covered Property.
- e. We may adjust losses with the owners of lost or damaged property if other than you. If we pay the owners, such payments will satisfy your claims against us for the owners' property. We will not pay the owners more than their financial interest in the Covered Property.
- f. We may elect to defend you against suits arising from claims of owners of property. We will do this at our expense.
- g. We will pay for covered loss or damage within 30 days after we receive the sworn proof of loss, if you have complied with all of the terms of this Coverage Part, and:
  - (1) We have reached agreement with you on the amount of loss; or
  - (2) An appraisal award has been made.

**h.** A party wall is a wall that separates and is common to adjoining buildings that are owned by different parties. In settling covered losses involving a party wall, we will pay a proportion of the loss to the party wall based on your interest in the wall in proportion to the interest of the owner of the adjoining building. However, if you elect to repair or replace your building and the owner of the adjoining building elects not to repair or replace that building, we will pay you the full value of the loss to the party wall, subject to all applicable policy provisions including Limits of Insurance, the Valuation and Coinsurance Conditions and all other provisions of this Loss Payment Condition. Our payment under the provisions of this paragraph does not alter any right of subrogation we may have against any entity, including the owner or insurer of the adjoining building, and does not alter the terms of the Transfer Of Rights Of Recovery Against Others To Us Condition in this policy.

#### **5. Recovered Property**

If either you or we recover any property after loss settlement, that party must give the other prompt notice. At your option, the property will be returned to you. You must then return to us the amount we paid to you for the property. We will pay recovery expenses and the expenses to repair the recovered property, subject to the Limit of Insurance.

#### **6. Vacancy**

##### **a. Description Of Terms**

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

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

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

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

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

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

##### **b. Vacancy Provisions**

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

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

**(a)** Vandalism;

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

**(c)** Building glass breakage;

**(d)** Water damage;

**(e)** Theft; or

**(f)** Attempted theft.

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

#### **7. Valuation**

We will determine the value of Covered Property in the event of loss or damage as follows:

**a.** At actual cash value as of the time of loss or damage, except as provided in **b.**, **c.**, **d.** and **e.** below.

**b.** If the Limit of Insurance for Building satisfies the Additional Condition, Coinsurance, and the cost to repair or replace the damaged building property is \$2,500 or less, we will pay the cost of building repairs or replacement.



The cost of building repairs or replacement does not include the increased cost attributable to enforcement of or compliance with any ordinance or law regulating the construction, use or repair of any property.

However, the following property will be valued at the actual cash value, even when attached to the building:

- (1) Awnings or floor coverings;
  - (2) Appliances for refrigerating, ventilating, cooking, dishwashing or laundering; or
  - (3) Outdoor equipment or furniture.
- c. "Stock" you have sold but not delivered at the selling price less discounts and expenses you otherwise would have had.
- d. Glass at the cost of replacement with safety-glazing material if required by law.
- e. Tenants' Improvements and Betterments at:
- (1) Actual cash value of the lost or damaged property if you make repairs promptly.
  - (2) A proportion of your original cost if you do not make repairs promptly. We will determine the proportionate value as follows:
    - (a) Multiply the original cost by the number of days from the loss or damage to the expiration of the lease; and
    - (b) Divide the amount determined in (a) above by the number of days from the installation of improvements to the expiration of the lease.

If your lease contains a renewal option, the expiration of the renewal option period will replace the expiration of the lease in this procedure.

- (3) Nothing if others pay for repairs or replacement.

## F. Additional Conditions

The following conditions apply in addition to the Common Policy Conditions and the Commercial Property Conditions:

### 1. Coinsurance

If a Coinsurance percentage is shown in the Declarations, the following condition applies:

- a. We will not pay the full amount of any loss if the value of Covered Property at the time of loss times the Coinsurance percentage shown for it in the Declarations is greater than the Limit of Insurance for the property.

Instead, we will determine the most we will pay using the following steps:

- (1) Multiply the value of Covered Property at the time of loss by the Coinsurance percentage;
- (2) Divide the Limit of Insurance of the property by the figure determined in Step (1);
- (3) Multiply the total amount of loss, before the application of any deductible, by the figure determined in Step (2); and
- (4) Subtract the deductible from the figure determined in Step (3).

We will pay the amount determined in Step (4) or the Limit of Insurance, whichever is less. For the remainder, you will either have to rely on other insurance or absorb the loss yourself.

### Example 1 (Underinsurance)

When:	The value of the property is:	\$ 250,000
	The Coinsurance percentage for it is:	80%
	The Limit of Insurance for it is:	\$ 100,000
	The Deductible is:	\$ 250
	The amount of loss is:	\$ 40,000

Step (1):  $\$250,000 \times 80\% = \$200,000$   
(the minimum amount of insurance to meet your Coinsurance requirements)

Step (2):  $\$100,000 \div \$200,000 = .50$

Step (3):  $\$40,000 \times .50 = \$20,000$

Step (4):  $\$20,000 - \$250 = \$19,750$

We will pay no more than \$19,750. The remaining \$20,250 is not covered.

### Example 2 (Adequate Insurance)

When:	The value of the property is:	\$ 250,000
	The Coinsurance percentage for it is:	80%
	The Limit of Insurance for it is:	\$ 200,000
	The Deductible is:	\$ 250
	The amount of loss is:	\$ 40,000

The minimum amount of insurance to meet your Coinsurance requirement is \$200,000 ( $\$250,000 \times 80\%$ ). Therefore, the Limit of Insurance in this example is adequate, and no penalty applies. We will pay no more than \$39,750 ( $\$40,000$  amount of loss minus the deductible of \$250).

- b. If one Limit of Insurance applies to two or more separate items, this condition will apply to the total of all property to which the limit applies.

**Example 3**

When: The value of the property is:

Building at Location 1:	\$ 75,000
Building at Location 2:	\$ 100,000
Personal Property at Location 2:	<u>\$ 75,000</u>
	\$ 250,000
The Coinsurance percentage for it is:	90%
The Limit of Insurance for Buildings and Personal Property at Locations 1 and 2 is:	\$ 180,000
The Deductible is:	\$ 1,000
The amount of loss is:	
Building at Location 2:	\$ 30,000
Personal Property at Location 2:	<u>\$ 20,000</u>
	\$ 50,000

Step (1):  $\$250,000 \times 90\% = \$225,000$   
 (the minimum amount of insurance to meet your Coinsurance requirements and to avoid the penalty shown below)

Step (2):  $\$180,000 \div \$225,000 = .80$

Step (3):  $\$50,000 \times .80 = \$40,000$

Step (4):  $\$40,000 - \$1,000 = \$39,000$

We will pay no more than \$39,000. The remaining \$11,000 is not covered.

**2. Mortgageholders**

- a. The term mortgageholder includes trustee.
- b. We will pay for covered loss of or damage to buildings or structures to each mortgageholder shown in the Declarations in their order of precedence, as interests may appear.
- c. The mortgageholder has the right to receive loss payment even if the mortgageholder has started foreclosure or similar action on the building or structure.
- d. If we deny your claim because of your acts or because you have failed to comply with the terms of this Coverage Part, the mortgageholder will still have the right to receive loss payment if the mortgageholder:
  - (1) Pays any premium due under this Coverage Part at our request if you have failed to do so;

- (2) Submits a signed, sworn proof of loss within 60 days after receiving notice from us of your failure to do so; and
- (3) Has notified us of any change in ownership, occupancy or substantial change in risk known to the mortgageholder.

All of the terms of this Coverage Part will then apply directly to the mortgageholder.

- e. If we pay the mortgageholder for any loss or damage and deny payment to you because of your acts or because you have failed to comply with the terms of this Coverage Part:
  - (1) The mortgageholder's rights under the mortgage will be transferred to us to the extent of the amount we pay; and
  - (2) The mortgageholder's right to recover the full amount of the mortgageholder's claim will not be impaired.

At our option, we may pay to the mortgageholder the whole principal on the mortgage plus any accrued interest. In this event, your mortgage and note will be transferred to us and you will pay your remaining mortgage debt to us.

- f. If we cancel this policy, we will give written notice to the mortgageholder at least:
  - (1) 10 days before the effective date of cancellation if we cancel for your nonpayment of premium; or
  - (2) 30 days before the effective date of cancellation if we cancel for any other reason.
- g. If we elect not to renew this policy, we will give written notice to the mortgageholder at least 10 days before the expiration date of this policy.

**G. Optional Coverages**

If shown as applicable in the Declarations, the following Optional Coverages apply separately to each item:

**1. Agreed Value**

- a. The Additional Condition, Coinsurance, does not apply to Covered Property to which this Optional Coverage applies. We will pay no more for loss of or damage to that property than the proportion that the Limit of Insurance under this Coverage Part for the property bears to the Agreed Value shown for it in the Declarations.

- b. If the expiration date for this Optional Coverage shown in the Declarations is not extended, the Additional Condition, Coinsurance, is reinstated and this Optional Coverage expires.
- c. The terms of this Optional Coverage apply only to loss or damage that occurs:
  - (1) On or after the effective date of this Optional Coverage; and
  - (2) Before the Agreed Value expiration date shown in the Declarations or the policy expiration date, whichever occurs first.

**2. Inflation Guard**

- a. The Limit of Insurance for property to which this Optional Coverage applies will automatically increase by the annual percentage shown in the Declarations.
- b. The amount of increase will be:
  - (1) The Limit of Insurance that applied on the most recent of the policy inception date, the policy anniversary date, or any other policy change amending the Limit of Insurance, times
  - (2) The percentage of annual increase shown in the Declarations, expressed as a decimal (example: 8% is .08), times
  - (3) The number of days since the beginning of the current policy year or the effective date of the most recent policy change amending the Limit of Insurance, divided by 365.

**Example**

If: The applicable Limit of Insurance is: \$ 100,000  
 The annual percentage increase is: 8%  
 The number of days since the beginning of the policy year (or last policy change) is: 146  
 The amount of increase is:  
 $\$100,000 \times .08 \times 146 \div 365 =$  \$ 3,200

**3. Replacement Cost**

- a. Replacement Cost (without deduction for depreciation) replaces Actual Cash Value in the Valuation Loss Condition of this Coverage Form.
- b. This Optional Coverage does not apply to:
  - (1) Personal property of others;
  - (2) Contents of a residence;
  - (3) Works of art, antiques or rare articles, including etchings, pictures, statuary, marbles, bronzes, porcelains and bric-a-brac; or

- (4) "Stock", unless the Including "Stock" option is shown in the Declarations.

Under the terms of this Replacement Cost Optional Coverage, tenants' improvements and betterments are not considered to be the personal property of others.

- c. You may make a claim for loss or damage covered by this insurance on an actual cash value basis instead of on a replacement cost basis. In the event you elect to have loss or damage settled on an actual cash value basis, you may still make a claim for the additional coverage this Optional Coverage provides if you notify us of your intent to do so within 180 days after the loss or damage.
- d. We will not pay on a replacement cost basis for any loss or damage:

- (1) Until the lost or damaged property is actually repaired or replaced; and
- (2) Unless the repair or replacement is made as soon as reasonably possible after the loss or damage.

With respect to tenants' improvements and betterments, the following also apply:

- (3) If the conditions in d.(1) and d.(2) above are not met, the value of tenants' improvements and betterments will be determined as a proportion of your original cost, as set forth in the Valuation Loss Condition of this Coverage Form; and
- (4) We will not pay for loss or damage to tenants' improvements and betterments if others pay for repairs or replacement.

- e. We will not pay more for loss or damage on a replacement cost basis than the least of (1), (2) or (3), subject to f. below:

- (1) The Limit of Insurance applicable to the lost or damaged property;
- (2) The cost to replace the lost or damaged property with other property:
  - (a) Of comparable material and quality; and
  - (b) Used for the same purpose; or
- (3) The amount actually spent that is necessary to repair or replace the lost or damaged property.

If a building is rebuilt at a new premises, the cost described in e.(2) above is limited to the cost which would have been incurred if the building had been rebuilt at the original premises.

- f. The cost of repair or replacement does not include the increased cost attributable to enforcement of or compliance with any ordinance or law regulating the construction, use or repair of any property.

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

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

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

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

#### **H. Definitions**

1. "Fungus" means any type or form of fungus, including mold or mildew, and any mycotoxins, spores, scents or by-products produced or released by fungi.
2. "Pollutants" means any solid, liquid, gaseous or thermal irritant or contaminant, including smoke, vapor, soot, fumes, acids, alkalis, chemicals and waste. Waste includes materials to be recycled, reconditioned or reclaimed.
3. "Stock" means merchandise held in storage or for sale, raw materials and in-process or finished goods, including supplies used in their packing or shipping.

SAMPLE

## LEGAL LIABILITY COVERAGE FORM

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

Throughout this policy, the words "you" and "your" refer to the Named Insured shown in the Declarations. The words "we", "us" and "our" refer to the company providing this insurance.

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

### A. Coverage

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

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

#### 1. Covered Property And Limitations

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

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

#### 2. Covered Causes Of Loss

See applicable Causes of Loss form as shown in the Declarations.



### 3. Additional Coverage

#### SUPPLEMENTARY PAYMENTS

We will pay, with respect to any claim or any "suit" against you we defend:

- a. All expenses we incur.
- b. The cost of bonds to release attachments, but only for bond amounts within our Limit of Insurance. We do not have to furnish these bonds.
- c. All reasonable expenses incurred by you at our request, including actual loss of earnings up to \$250 a day because of time off from work.
- d. All costs taxed against you in the "suit".
- e. Prejudgment interest awarded against you on that part of the judgment we pay. If we make an offer to pay the Limit of Insurance, we will not pay any prejudgment interest based on that period of time after the offer.
- f. All interest on the full amount of any judgment that accrues after entry of the judgment and before we have paid, offered to pay, or deposited in court the part of the judgment that is within our Limit of Insurance.

These payments will not reduce the applicable Limit of Insurance.

### 4. Coverage Extensions

#### a. Additional Insureds

If the Named Insured shown in the Declarations is a partnership, limited liability company or corporation, throughout this Coverage Form the words "you" and "your" include:

- (1) Partners, members, executive officers, trustees, directors and stockholders of such partnership, limited liability company or corporation, but only with respect to their duties as such; and
- (2) Managers of a limited liability company, but only with respect to their duties as such.

#### b. Newly Acquired Organizations

Throughout this Coverage Form, the words "you" and "your" also include any organization (other than a partnership, joint venture or limited liability company) you newly acquire or form and over which you maintain ownership or majority interest if there is no other similar insurance available to that organization.

This Coverage Extension ends:

- (1) 90 days after you acquire or form the organization; or
  - (2) At the end of the policy period shown in the Declarations;
- whichever is earlier.

This Extension does not apply to direct physical loss or damage that occurred before you acquired or formed the organization.

#### c. Newly Acquired Property

- (1) You may extend the insurance that applies to Covered Property, as used in this Coverage Form, to apply to your liability for tangible property of others that comes under your care, custody or control after the beginning of the current policy period. This Extension is subject to the following:

- (a) All terms and Conditions of this Coverage Form.

- (b) Buildings must be intended for:

- (i) Similar use as the building described in the Declarations or on the Legal Liability Coverage Schedule; or

- (ii) Use as a warehouse.

The most we will pay as the result of any one accident for loss or damage to buildings covered under this Extension is \$250,000 at each building.

- (c) Personal property must be at a location:

- (i) That you own; or

- (ii) That is or comes under your care, custody or control;

other than at fairs or exhibitions.

The most we will pay as the result of any one accident for loss or damage to personal property covered under this Extension is \$100,000 at each building.

- (2) Insurance under this Extension for each item of property of others will end when any of the following first occurs:

- (a) This policy expires;

- (b) 30 days expire after the property has come under your care, custody or control; or

- (c) You report values to us.

We will charge you additional premium for values reported from the date the property comes under your care, custody or control.

This Extension does not apply to direct physical loss or damage that occurred before the property came under your care, custody or control.

## **B. Exclusions And Limitations**

See applicable Causes of Loss form as shown in the Declarations.

## **C. Limits Of Insurance**

The most we will pay in damages as the result of any one accident is the applicable Limit Of Insurance shown on the Legal Liability Coverage Schedule, or in the Declarations.

Payments under the Additional Coverage and the Newly Acquired Property Coverage Extension are in addition to the Limits of Insurance.

The existence of one or more:

1. Additional Insureds; or
  2. Newly Acquired Organizations,
- does not increase the Limit of Insurance.

## **D. Loss Conditions**

The following conditions apply in addition to the Commercial Property Conditions:

### **1. Duties In The Event Of Accident, Claim Or Suit**

- a. You must see to it that we are notified promptly of any accident that may result in a claim. Notice should include:
  - (1) How, when and where the accident took place; and
  - (2) The names and addresses of any witnesses.Notice of an accident is not notice of a claim.
- b. If a claim is made or "suit" is brought against you, you must see to it that we receive prompt written notice of the claim or "suit".
- c. You must:
  - (1) Immediately send us copies of any demands, notices, summonses or legal papers received in connection with the claim or "suit";
  - (2) Authorize us to obtain records and other information;
  - (3) Cooperate with us in the investigation, settlement or defense of the claim or "suit"; and

- (4) Assist us, upon our request, in the enforcement of any right against any person or organization that may be liable to you because of damage to which this insurance may also apply.

- d. You will not, except at your own cost, voluntarily make a payment, assume any obligation, or incur any expense without our consent.

## **2. Legal Action Against Us**

No person or organization has a right under this Coverage Form:

- a. To join us as a party or otherwise bring us into a "suit" asking for damages from you; or
- b. To sue us on this Coverage Form unless all of its terms have been fully complied with.

A person or organization may sue us to recover on an agreed settlement or on a final judgment against you obtained after an actual trial; but we will not be liable for damages that are not payable under the terms of this Coverage Form or that are in excess of the Limit of Insurance. An agreed settlement means a settlement and release of liability signed by us, you and the claimant or the claimant's legal representative.

## **3. Other Insurance**

You may have other insurance covering the same loss as the insurance under this Coverage Form. If you do, we will pay our share of the covered loss. Our share is the proportion that the Limit of Insurance under this Coverage Form covering such loss bears to the Limits of Insurance of all insurance covering the loss.

## **4. Transfer Of Rights Of Recovery Against Others To Us**

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

## **E. Additional Conditions**

The following conditions apply in addition to the Common Policy Conditions:

### **1. Amendment Of Commercial Property Conditions**

None of the Commercial Property Conditions apply to this Coverage Form, except:

- a. Condition **A.** Concealment, Misrepresentation Or Fraud;

- b. Condition **C.** Insurance Under Two Or More Coverages; and
- c. Condition **E.** Liberalization.

**2. Bankruptcy**

Bankruptcy or insolvency of you or your estate will not relieve us of our obligations under this Coverage Form.

**3. Policy Period, Coverage Territory**

Under this Coverage Form:

- a. We will pay for loss or damage caused by an accident that occurs:
  - (1) During the Policy Period shown in the Declarations; and

- (2) Within the coverage territory.

b. The coverage territory is:

- (1) The United States of America;
- (2) Puerto Rico; and
- (3) Canada.

**4. Separation Of Insureds**

The insurance under this Coverage Form applies separately to you and each additional insured, except with respect to the Limits of Insurance.

**F. Definitions**

"Suit" includes an arbitration proceeding to which you must submit or submit with our consent.

SAMPLE



## LEASEHOLD INTEREST COVERAGE FORM

Throughout this policy the words "you" and "your" refer to the Named Insured shown in the Declarations. The words "we", "us" and "our" refer to the Company providing this insurance.

Other words and phrases that appear in quotation marks have special meaning. Refer to SECTION F. – DEFINITIONS.

### A. COVERAGE

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

#### 1. Covered Leasehold Interest

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

a. **Tenants' Lease Interest**, meaning the difference between the:

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

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

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

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

Improvements and betterments are fixtures, alterations, installations or additions:

- (1) Made a part of the building or structure you occupy but do not own; and

- (2) You acquired or made at your expense but cannot legally remove.

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

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

#### 2. Covered Causes Of Loss

See applicable Causes of Loss Form as shown in the Declarations.

### B. EXCLUSIONS AND LIMITATIONS

See applicable Causes of Loss Form as shown in the Declarations.

### C. LIMITS OF INSURANCE

#### 1. Applicable to Tenants' Lease Interest

a. The most we will pay for loss because of the cancellation of any one lease is your "net leasehold interest" at the time of loss.

But, if your lease is cancelled and your landlord lets you continue to use your premises under a new lease or other arrangement, the most we will pay for loss because of the cancellation of any one lease is the lesser of:

- (1) The difference between the rent you now pay and the rent you will pay under the new lease or other arrangement; or
- (2) Your "net leasehold interest" at the time of loss.

- b. Your "net leasehold interest" decreases automatically each month. The amount of "net leasehold interest" at any time is your "gross leasehold interest" times the leasehold interest factor for the remaining months of your lease. A proportionate share applies for any period of time less than a month.

Refer to the end of this form for a table of leasehold interest factors.

## 2. Applicable to Bonus Payments, Improvements and Betterments and Prepaid Rent

- a. The most we will pay for loss because of the cancellation of any one lease is your "net leasehold interest" at the time of loss.

But, if your lease is cancelled and your landlord lets you continue to use your premises under a new lease or other arrangement, the most we will pay for loss because of the cancellation of any one lease is the lesser of:

- (1) The loss sustained by you; or
- (2) Your "net leasehold interest" at the time of loss.

- b. Your "net leasehold interest" decreases automatically each month. The amount of each decrease is your "monthly leasehold interest". A proportionate share applies for any period of time less than a month.

## D. LOSS CONDITIONS

The following conditions apply in addition to the Common Policy Conditions and the Commercial Property Conditions.

### 1. Appraisal

If we and you disagree on the amount of loss, either may make written demand for an appraisal. In this event, each party will select a competent and impartial appraiser. The two appraisers will select an umpire. If they cannot agree, either may request that selection be made by a judge of a court having jurisdiction. The appraisers will state the amount of loss. If they fail to agree, they will submit their differences to the umpire. A decision agreed to by any two will be binding. Each party will:

- a. Pay its chosen appraiser; and
- b. Bear the other expenses of the appraisal and umpire equally.

If there is an appraisal, we will still retain our right to deny the claim.

## 2. Duties In The Event Of Loss Of Covered Leasehold Interest

- a. You must see that the following are done in the event of loss of Covered Leasehold Interest:

- (1) Notify the police if a law may have been broken.
- (2) Give us prompt notice of the direct physical loss or damage. Include a description of the property involved.
- (3) As soon as possible, give us a description of how, when and where the direct physical loss or damage occurred.
- (4) Take all reasonable steps to protect the property at the described premises from further damage by a Covered Cause of Loss. However, we will not pay for any subsequent loss or damage resulting from a cause of loss that is not a Covered Cause of Loss. Also, if feasible, set the damaged property aside and in the best possible order for examination.
- (5) As often as may be reasonably required, permit us to inspect the property proving the loss or damage and examine your books and records.

Also permit us to take samples of damaged and undamaged property for inspection, testing and analysis, and permit us to make copies from your books and records.

- (6) Send us a signed, sworn proof of loss containing the information we request to investigate the claim. You must do this within 60 days after our request. We will supply you with the necessary forms.
  - (7) Cooperate with us in the investigation or settlement of the claim.
- b. We may examine any insured under oath, while not in the presence of any other insured and at such times as may be reasonably required, about any matter relating to this insurance or the claim, including an insured's books and records. In the event of an examination, an insured's answers must be signed.

### 3. Loss Payment

We will pay for covered loss within 30 days after we receive the sworn proof of loss, if:

- a. You have complied with all of the terms of this Coverage Part; and
- b.(1) We have reached agreement with you on the amount of loss; or
- (2) An appraisal award has been made.

### 4. Vacancy

#### a. Description of Terms

- (1) As used in this Vacancy Condition, with respect to the tenant's interest in Covered Property, building means the unit or suite rented or leased to the tenant. Such building is vacant when it does not contain enough business personal property to conduct customary operations.
- (2) Buildings under construction or renovation are not considered vacant.

#### b. Vacancy Provisions – Subleased Premises

The following provisions apply if the building where direct physical loss or damage occurs has been vacant for more than 60 consecutive days before that loss or damage occurs, provided you have entered into an agreement to sublease the described premises as of the time of loss or damage:

- (1) We will not pay for any loss or damage caused by any of the following even if they are Covered Causes of Loss:
    - (a) Vandalism;
    - (b) Sprinkler leakage, unless you have protected the system against freezing;
    - (c) Building glass breakage;
    - (d) Water damage;
    - (e) Theft; or
    - (f) Attempted theft.
  - (2) With respect to a Covered Cause of Loss not listed in (1)(a) through (1)(f) above, we will reduce the amount we would otherwise pay for the loss or damage by 15%.
- c. If you have not entered into an agreement to sublease the described premises as of the time of loss or damage, we will not pay for any loss of Covered Leasehold Interest.

### E. ADDITIONAL CONDITION

The following condition replaces the Cancellation Common Policy Condition:

#### CANCELLATION

1. The first Named Insured shown in the Declarations may cancel this policy by mailing or delivering to us advance notice of cancellation.
2. We may cancel this policy by mailing or delivering to the first Named Insured written notice of cancellation at least:
  - a. 10 days before the effective date of cancellation if we cancel for nonpayment of premium; or
  - b. 30 days before the effective date of cancellation if we cancel for any other reason.
3. We will mail or deliver our notice to the first Named Insured's last mailing address known to us.
4. Notice of cancellation will state the effective date of cancellation. The policy will end on that date.
5. If this policy is cancelled, we will send the first Named Insured any premium refund due. The cancellation will be effective even if we have not made or offered a refund.
6. If this coverage is cancelled, we will calculate the earned premium by:
  - a. Computing the average of the "net leasehold interest" at the:
    - (1) Inception date, and
    - (2) Cancellation date, of this coverage.
  - b. Multiplying the rate for the period of coverage by the average "net leasehold interest".
  - c. If we cancel, we will send you a premium refund based on the difference between the:
    - (1) Premium you originally paid us; and
    - (2) Proportion of the premium calculated by multiplying the amount in paragraph a. times the rate for the period of coverage for the expired term of the policy.
  - d. If you cancel, your refund may be less than the refund calculated in paragraph c.
7. If notice is mailed, proof of mailing will be sufficient proof of notice.

**F. DEFINITIONS**

1. **"Gross Leasehold Interest"** means the difference between the:
  - a. Monthly rental value of the premises you lease; and
  - b. Actual monthly rent you pay including taxes, insurance, janitorial or other service that you pay for as part of the rent.

This amount is not changed:

- (1) Whether you occupy all or part of the premises; or
- (2) If you sublet the premises.

**Example:**

Rental value of your leased premises	\$5,000
Monthly rent including taxes, insurance, janitorial or other service that you pay for as part of the rent	-4,000
"Gross Leasehold Interest"	\$1,000

2. **"Monthly Leasehold Interest"** means the monthly portion of covered Bonus Payments, Improvements and Betterments and Prepaid Rent. To find your "monthly leasehold interest", divide your original costs of Bonus Payments, Improvements and Betterments or Prepaid Rent by the number of months left in your lease at the time of the expenditure.

**Example:**

Original cost of Bonus Payment	\$12,000
With 24 months left in the lease at time of Bonus Payment	÷ <u>24</u>
"Monthly Leasehold Interest"	\$500

**3. "Net Leasehold Interest":**

- a. Applicable to Tenants' Lease Interest.

**"Net Leasehold Interest"** means the present value of your "gross leasehold interest" for each remaining month of the term of the lease at the rate of interest shown in the Leasehold Interest Coverage Schedule.

The "net leasehold interest" is the amount that, placed at the rate of interest shown in the Leasehold Interest Coverage Schedule, would be equivalent to your receiving the "Gross Leasehold Interest" for each separate month of the unexpired term of the lease.

To find your "net leasehold interest" at any time, multiply your "gross leasehold interest" by the leasehold interest factor found in the table of leasehold interest factors attached to this form.

**Example:**

(20 months left in lease, 10% effective annual rate of interest)

"Gross Leasehold Interest"	\$ 1,000
Leasehold Interest Factor	<u>× 18.419</u>
"Net Leasehold Interest"	\$18,419

- b. Applicable to Bonus Payments, Improvements and Betterments or Prepaid Rent.

**"Net Leasehold Interest"** means the unamortized amount shown in the Schedule. Your "net leasehold interest" at any time is your "monthly leasehold interest" times the number of months left in your lease.

**Example:**

"Monthly Leasehold Interest"	\$ 500
With 10 months left in lease	<u>× 10</u>
"Net Leasehold Interest"	\$5,000

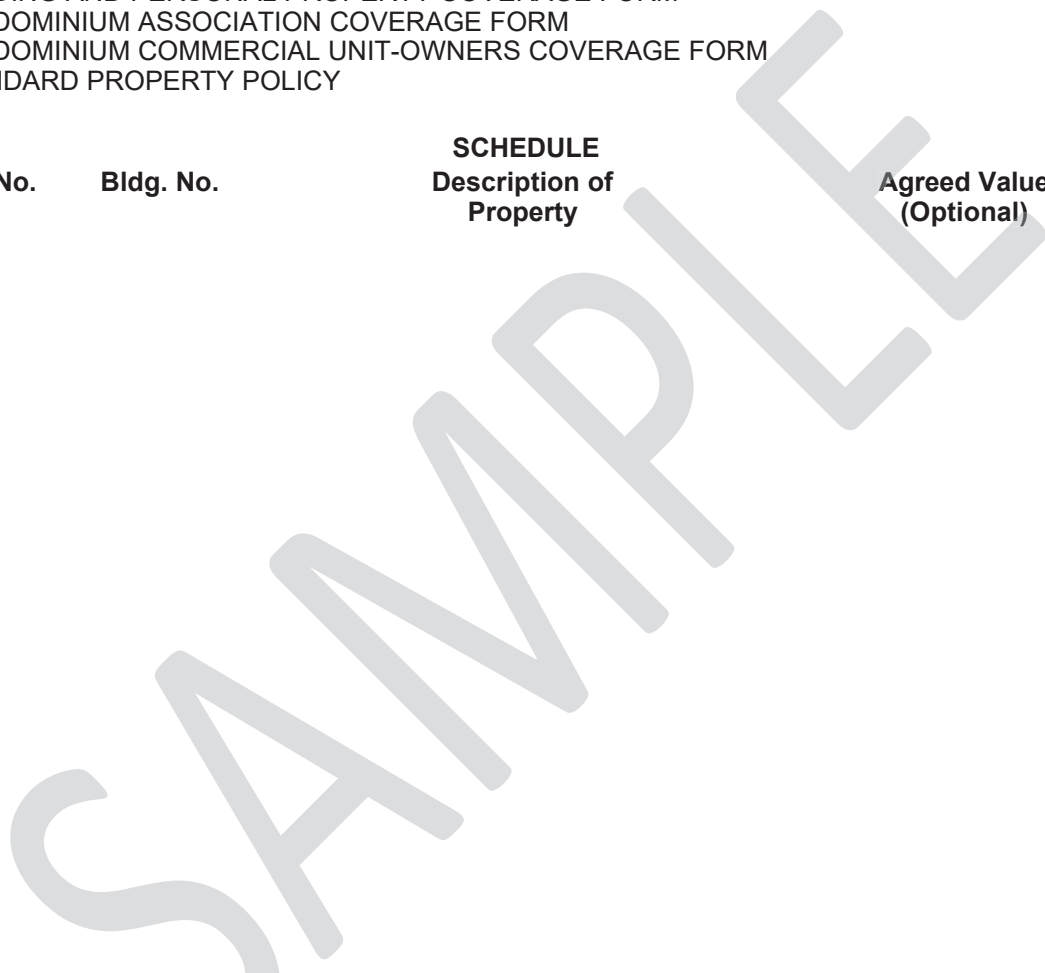
**THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.**

## **LEASED PROPERTY**

This endorsement modifies insurance provided under the following:

- BUILDING AND PERSONAL PROPERTY COVERAGE FORM
- CONDOMINIUM ASSOCIATION COVERAGE FORM
- CONDOMINIUM COMMERCIAL UNIT-OWNERS COVERAGE FORM
- STANDARD PROPERTY POLICY

Premises No.	Bldg. No.	SCHEDULE Description of Property	Agreed Value (Optional)
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- A.** When this endorsement is attached to the STANDARD PROPERTY POLICY CP 00 99 the term Coverage Part in this endorsement is replaced by the term Policy.
- B.** Your Business Personal Property is revised to include personal property of others in your care, custody or control under written leases, as described in the Schedule or in the Declarations.
- C.** If an agreed value is entered for property in the Schedule or in the Declarations, this amount will be considered to be the value of the described property at the time of loss or damage. But this does not otherwise alter the application of the Coinsurance condition.
- D.** Property described in the Schedule or in the Declarations is not included under any Personal Property of Others coverage in this Coverage Part.

