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**COMMERCIAL
MULTILINE**

L E A R N I N G G U I D E



THE NATIONAL ALLIANCE
for Insurance Education & Research

Commercial Multiline

THE CERTIFIED INSURANCE COUNSELOR PROGRAM

Agency Management

Commercial Casualty

Commercial Multiline

Commercial Property

Insurance Company Operations

Life & Health

Personal Lines

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Insurance policy forms, clauses, rules, court decisions, and laws constantly change. Policy forms and underwriting rules vary across companies.

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A Letter from William J. Hold, President/CEO

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

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

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

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

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

Let's take the first step.



William J. Hold, M.B.A., CRM, CISR

President/CEO

To the Participant

Welcome to Commercial Multiline, part of the Certified Insurance Counselor designation program. This program will provide you with the core knowledge and tools you need in your work as a highly trained insurance service representative.

A Certified Insurance Counselor is recognized as someone knowledgeable in all areas of insurance. As a participant in The National Alliance program of study, it is expected that you will not only gain knowledge that will give you greater success in your work, but that you will be challenged to make integrity, innovation, inspiration, and imagination part of your daily practice.

As experts in their fields, TNA faculty, consultants, and academic directors—each with a commitment to assisting you in your efforts to achieve standards of excellence—have contributed to the content of this course. In this course, you can expect:

- engagement in the learning process
- clear learning objectives supported by essential content
- activities designed to strengthen understanding
- exposure to real-world examples and contexts

As representatives of The National Alliance (TNA), we take great pleasure in welcoming you to this program and to our organization. We are committed to helping you become a successful Certified Insurance Counselor.

Program Overview

This program overview provides an at-a-glance view of the contents of this Learning Guide. Here you will find section goals as well as specific learning objectives for every section.

Section 1: Commercial Inland Marine Concepts and Coverage

Section Goal

In this section, you will learn some of the basic concepts of commercial inland marine policies and become familiar with the coverage features of five specific policies: **bailee**, **builders risk**, **installation**, **contractors equipment** and **transportation**.

Learning Objectives:

Part 1

- 1.1 *Explain the basic concepts of bailment, including:*
 - *Parties involved*
 - *Types of bailment*
 - *Standard of care in a bailment relationship*
- 1.2 *Compare bailee coverage written on a legal liability basis with coverage written on a direct damage basis.*
- 1.3 *Understand the following features of a bailee policy, including:*
 - *Property covered*
 - *Where coverage applies*
 - *Coverage extensions and supplemental coverages*
- 1.4 *Apply bailee policy exclusions to determine whether damage to covered property is covered or excluded.*
- 1.5 *Apply the different options available to insurers to settle claims under a bailee policy.*

Part 2

- 1.6 *Describe whose interests may be covered under builders risk as well as the advantages and disadvantages of including numerous parties as insureds.*
- 1.7 *Understand the coverage provided by a builders risk policy, including:*
 - *Property covered and not covered*
 - *Coverage extensions and supplemental coverages*
 - *Exclusions*
- 1.8 *Use policy language and coverage-ending triggers to determine when builders risk coverage begins and ends.*

- 1.9 Explain time element coverages that can be included on a builders risk policy, including various loss of income coverages and soft costs coverages.
- 1.10 Explain the purpose of the installation floater and why a contractor may want to buy this coverage.
- 1.11 Understand the coverage provided by an installation floater including:
- Property covered and not covered
 - Coverage extensions and supplemental coverages
- 1.12 Use policy language and coverage-ending triggers to determine when coverage under an installation floater ends.

Part 3

- 1.13 Understand the coverage provided by a contractors equipment policy including:
- Property covered and not covered
 - Coverage extensions and supplemental coverages
 - Exclusions
- 1.14 Describe how contractors equipment losses may be valued.
- 1.15 Explain the time element coverages that can be added to contractors equipment policies.

Part 4

- 1.16 Know the types of carriers, the legal liability of each, and the types of bills of lading.
- 1.17 Explain the benefits of purchasing a transportation policy.
- 1.18 Understand the coverage provided by a transportation policy, including:
- Property covered and not covered
 - Coverage extensions and supplemental coverages
 - Exclusions
 - Endorsements that can enhance or restrict coverage

Section 2: Employment Practices Liability Insurance

Section Goal

In this section, you will be able to analyze an employment practices liability policy to determine whether that policy provides coverage and, if so, how the policy will respond to losses that occur.

Learning Objectives:

- 2.1 *Explain the need for employment practices liability insurance (EPLI) using knowledge of liability exposures including:*
 - Violation of statutes
 - Workplace torts
 - Breach of contract
- 2.2 *Understand the key elements of an EPLI insuring agreement, including the promises made by the insurer, what wrongful acts may be covered, and who is an insured.*
- 2.3 *Demonstrate the importance of third-party liability coverage and how an EPLI policy may cover third-party liability claims.*
- 2.4 *Apply EPLI policy exclusions to determine whether a claim is covered and understand how endorsements may be used to enhance coverage.*
- 2.5 *Understand the defense provisions in an EPLI policy including the right and duty to defend, how defense costs and expenses are paid, and the consent to settle clause.*
- 2.6 *Discuss select EPLI policy provisions including limit of insurance, notice of claim, and importance of the EPLI application.*

Section 3: Crime Coverages and Endorsements

Section Goal

In this section, you will analyze the insuring agreements contained in commercial crime coverage forms to determine the appropriate insuring agreements to meet the insured's needs and to understand how coverage may be modified. Although eight insuring agreements will be discussed in this course, the focus will be on: Fidelity, Computer And Funds Transfer Fraud, and Fraudulent Impersonation.

Learning Objectives:

- 3.1 *Describe the importance of crime coverage, including the exclusions and limitations in a commercial property policy.*
- 3.2 *Identify the insuring agreements in the ISO Commercial Crime Coverage Form.*
- 3.3 *Describe when coverage applies under the Loss Sustained and Discovery crime forms.*

- 3.4 *Explain the key elements of the three Fidelity insuring agreements, including exclusions, and apply these concepts in a claims situation.*
- 3.5 *Explain the key elements of the Computer And Funds Transfer Fraud and Fraudulent Impersonation insuring agreements and apply these concepts in a claims situation.*
- 3.6 *Describe the purpose of the following insuring agreements:*
 - *Forgery Or Alteration*
 - *Inside The Premises – Theft Of Money And Securities*
 - *Inside The Premises – Robbery Or Safe Burglary Of Other Property*
 - *Outside The Premises*
 - *Money Orders And Counterfeit Money*

Section 4: Cyber Exposures and Coverage

Section Goal

In this section, you will learn to identify common cyber exposures and be able to properly analyze cyber insurance policies to determine what type of coverage, if any, is provided.

Learning Objectives:

- 4.1 *Identify the common cyber exposures faced by businesses, including an explanation of the limitations of coverage for cyber-related losses in other policies.*
- 4.2 *Discuss the key information found in the Declarations of a cyber policy.*
- 4.3 *Summarize selected definitions found in the ISO Information Security Protection Cyber Policy.*
- 4.4 *Explain the first party exposures to cyber losses as well as the coverage provided by each first party insuring agreement.*
- 4.5 *Explain the third party exposures to cyber losses as well as the coverage provided by each third party insuring agreement.*
- 4.6 *Explain the limits of insurance in a cyber policy as well as:*
 - *The difference between policy aggregate and insuring agreement limits*
 - *How retention applies in different claims scenarios*
 - *How to apply the defense and settlement provisions*
- 4.7 *Apply selected exclusions found in the Information Security Protection Cyber Policy.*

- 4.8 *Discuss the application of selected conditions found in the Information Security Protection Cyber Policy.*
- 4.9 *Summarize the Extended Discovery Period, Extended Reporting Periods, and Run-Off Coverage Period found in the Information Security Protection Cyber Policy.*

Section 5: Commercial Excess/Umbrella Coverages

Section Goal

In this section, you will be able to analyze excess liability and commercial umbrella policies to determine whether a policy provides coverage and, if so, how the policy will respond to losses that occur.

Learning Objectives:

- 5.1 *Identify and explain the purposes of excess liability and commercial umbrella policies.*
- 5.2 *Explain the term self-insured retention (SIR) and when it applies.*
- 5.3 *Explain the issues caused by nonconcurrent policy dates along with potential solutions to these issues.*
- 5.4 *Examine underlying insurance requirements and explain the issues that may arise due to noncompliance.*
- 5.5 *Define the following insuring agreements:*
- *Dual insuring agreements*
 - *Singular insuring agreement*
 - *Pay on behalf*
 - *Indemnify*
- 5.6 *Explain key coverage considerations as described in a commercial excess liability policy.*
- 5.7 *Analyze coverage using knowledge of exclusions and exceptions to exclusions found in excess liability policies.*

How to Use This Learning Guide

The Learning Guide you are using in this course is like all the learning materials published by The National Alliance; it has been written and authenticated by industry experts.

Each section in this Learning Guide shares the same features.

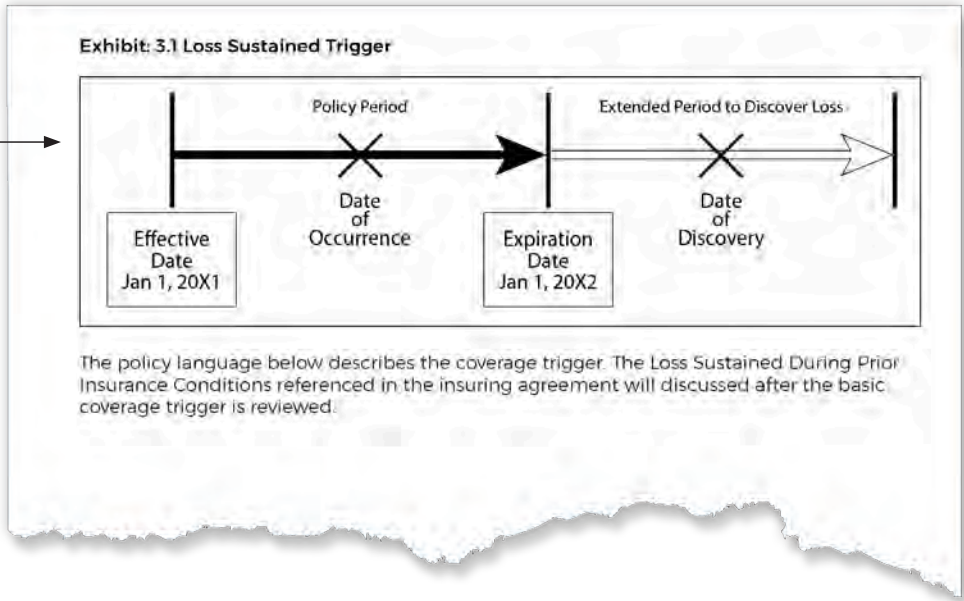
The diagram illustrates the layout of a learning guide section. It features two sample pages with callout boxes explaining their components:

- Section 2: Employment Practices Liability Insurance**
 - Section Goal:** In this section, you will be able to analyze an employment practices liability policy to determine whether a policy provides coverage and, if so, how the policy will respond to losses that occur.
 - Learning Objectives:**
 - 2.1 Explain the need for employment practices liability insurance (EPLI) using knowledge of liability exposures including:
 - Violation of statutes
 - Workplace torts
 - Breach of contract

The second sample page shows a list of bullet points with important terms bolded:

- In a **gratuitous bailment for the benefit of the bailor**, the bailee owes the bailor a low duty of care. A restaurant coat check service is an example. There is no benefit to the bailee (the restaurant) in this relationship so the bailee's duty of care is low.
- In a **gratuitous bailment for the benefit of the bailee**, the bailee owes the bailor a much higher duty of care. If a business (the bailee) borrows a piece of equipment from its neighbor (the bailor), the bailee must exercise great care to ensure the item is returned in good condition.
- Most commercial relationships involve **bailment for mutual benefit of the bailor and bailee**. An appliance repair shop (the bailee) gets paid, and the owner of the appliance (the bailor) gets back a working piece of equipment. This arrangement requires that the bailee exercise a reasonable duty of care. The duty of care may also be clarified, expanded, or limited in an oral or written contract.

Visuals such as diagrams, graphs, and tables support the text.



Each section concludes with a summary.

Summary

Many insureds can benefit by adding transportation coverage to their insurance programs. It is important to understand what cargo is being shipped and how it is being shipped so that coverage can be properly written.

Commercial inland marine coverages can be written for many types of businesses and to cover a wide variety of exposures. The five different inland marine policies studied here are examples of how broad inland marine coverage can be and how it can often be tailored to meet the coverage needs of a particular business.

This concludes all parts included in Section 1, Commercial Inland Marine. In Section 2, you will learn about Employment Practices Liability Insurance, where you will be able to analyze a policy to determine whether it provides coverage and how the policy will respond to losses.

Examples describe real-world-style scenarios to enhance your understanding of the concepts presented.




Sam is a customer of Buck's Repair Shop and leaves a piece of lawn equipment to be repaired. When the service is complete, Sam picks up the equipment and discovers that it is damaged.



The simple fact that the equipment was returned damaged is often considered evidence that the loss was due to the bailee's negligence. The only party that might know the details of what happened to the equipment is the bailee. The burden of proof shifts from the bailor to prove the negligence of the bailee to the bailee needing to prove it did nothing wrong. Writing coverage on a direct damage basis helps avoid such disputes.


Check-Ins and Knowledge Checks help you test your understanding before moving forward.

Check-In 

Directions: Complete each sentence with the appropriate word or phrase.

actual termination	wrongful termination	defend	constructive termination	negligent retention
quid pro quo	retaliation	discrimination	indemnify	hostile environment


1. Two promises made by the insurer in the ISO EPLI policy are the promise to pay sums the insured becomes legally obligated to pay and the promise to _____ the insured against a suit seeking those damages.


Knowledge Check 

Directions: Read the following and respond.

Many businesses use independent contractors. Explain some of the approaches insurers take with respect to coverage for independent contractors.

Additional icons are used throughout the Learning Guide to highlight important information.

 **Coverage Alert** icons point out important information that insurance professionals need to be aware of.

 **Endorsement** icons signal language that describes coverage provided by specific endorsements.

Each section closes with a quiz to help you assess your learning.

▶ Section 2 Self-Quiz

Directions: Read the statements below and for each one, determine whether it is true or false.

1. Most EPLI policies are written on a right and duty to defend basis.

True

False

2. If coverage is written on a non-duty to defend form, the insured has complete freedom to choose its own counsel and to settle claims.

True

False

A Glossary of Terms puts the Learning Guide's special vocabulary in one, easy-to-use location.

▶ Glossary of Terms

Section 1: Inland Marine³

Part 1 - Introduction and Bailee Coverage

actual cash value the value of covered property is based on the actual cash value at the time of loss (with a deduction for depreciation)

American Association of Insurance Services (AAIS) an organization that collects statistical data, promulgates rating information, develops standard policy forms, and files information

Section 1: Commercial Inland Marine Concepts and Coverage

Section Goal

In this section, you will learn some of the basic concepts of commercial inland marine policies and become familiar with the coverage features of five specific policies: **bailee**, **builders risk**, **installation**, **contractors equipment** and **transportation**.

Due to its length, we have broken Section 1 into four parts (Parts 1–4). At the end of each part, you will have a summary of that segment along with self-quiz questions to reinforce the learning.

Learning Objectives:

Part 1

- 1.1 *Explain the basic concepts of bailment, including:*
 - *Parties involved*
 - *Types of bailment*
 - *Standard of care in a bailment relationship*
- 1.2 *Compare bailee coverage written on a legal liability basis with coverage written on a direct damage basis.*
- 1.3 *Understand the following features of a bailee policy, including:*
 - *Property covered*
 - *Where coverage applies*
 - *Coverage extensions and supplemental coverages*
- 1.4 *Apply bailee policy exclusions to determine whether damage to covered property is covered or excluded.*
- 1.5 *Apply the different options available to insurers to settle claims under a bailee policy.*

Part 2

- 1.6 *Describe whose interests may be covered under builders risk as well as the advantages and disadvantages of including numerous parties as insureds.*
- 1.7 *Understand the coverage provided by a builders risk policy, including:*
 - *Property covered and not covered*
 - *Coverage extensions and supplemental coverages*
 - *Exclusions*
- 1.8 *Use policy language and coverage-ending triggers to determine when builders risk coverage begins and ends.*
- 1.9 *Explain time element coverages that can be included on a builders risk policy, including various loss of income coverages and soft costs coverages.*
- 1.10 *Explain the purpose of the installation floater and why a contractor may want to buy this coverage.*
- 1.11 *Understand the coverage provided by an installation floater including:*
 - *Property covered and not covered*
 - *Coverage extensions and supplemental coverages*
- 1.12 *Use policy language and coverage-ending triggers to determine when coverage under an installation floater ends.*

Part 3

- 1.13 *Understand the coverage provided by a contractors equipment policy including:*
 - *Property covered and not covered*
 - *Coverage extensions and supplemental coverages*
 - *Exclusions*
- 1.14 *Describe how contractors equipment losses may be valued.*
- 1.15 *Explain the time element coverages that can be added to contractors equipment policies.*

Part 4

- 1.16 *Know the types of carriers, the legal liability of each, and the types of bills of lading.*
- 1.17 *Explain the benefits of purchasing a transportation policy.*
- 1.18 *Understand the coverage provided by a transportation policy, including:*
 - *Property covered and not covered*
 - *Coverage extensions and supplemental coverages*
 - *Exclusions*
 - *Endorsements that can enhance or restrict coverage*

Part 1

Introduction to Inland Marine

What Is Inland Marine?



Inland marine coverage is a form of property coverage that developed from the original ocean marine policies covering goods in transit over the seas. These ocean marine policies insured against a wide range of perils—perils of the sea. Early property policies, in comparison, only covered property at a fixed location for damage by one peril—fire.

Inland marine's original purpose was to insure property in transit on land, but it has since expanded to provide coverage for

myriad exposures. Most inland marine policies are designed to cover exposures that have an element of mobility or a relationship to transportation. Builders risk policies, for example, cover property at a described project site, but can also cover property in transit to the site and property stored off-site. Contractors equipment policies cover property anywhere in the coverage territory. A commercial inland marine policy may be used to insure a bridge which facilitates the movement of property.

Many commercial inland marine forms are referred to as “floaters” because they are not location-specific and cover personal property anywhere in the coverage territory.

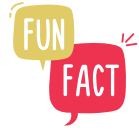
When comparing inland marine coverage to property coverage, one often finds that inland marine forms offer broader coverage terms, coverage that is more specialized for a particular exposure, and/or more underwriting flexibility. Virtually every business has an exposure that can be treated with an inland marine product, whether it is a transportation floater for goods in transit or an electronic data processing (EDP) floater for computer equipment.

In this section, five different areas of inland marine coverage are discussed.

1. Bailee coverage
2. Builders risk coverage
3. Installation coverage
4. Contractors equipment coverage
5. Transportation coverage

Although many insurers create their own inland marine coverage forms, the primary focus in this course will be on forms written by **American Association of Insurance Services (AAIS)**.

What is AAIS?



The American Association of Insurance Services (AAIS) is an organization that collects statistical data, promulgates rating information, develops standard policy forms, and files information with state regulators on behalf of insurance companies that purchase its services. It is one of two multiline advisory rating organizations—the other being the Insurance Services Office, Inc. (ISO)—that operate nationwide.

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Bailee Coverage

Learning Objective:

- 1.1 Explain the basic concepts of bailment, including:
- Parties involved
 - Types of bailment
 - Standard of care in a bailment relationship

What Is Bailment?

Bailment is a relationship where one party (the bailee) accepts property of another (the bailor) for a particular purpose. Inherent in this relationship is an expectation that the property will be returned by the bailee to the bailor in the same or better condition. This relationship creates an obligation for the bailee to act in good faith to ensure that the contract terms, whether express or implied, are met.

There are several types of bailment, and the bailee's duty of care varies depending on the type of bailment.



- In a **gratuitous bailment for the benefit of the bailor**, the bailee owes the bailor a low duty of care. A restaurant coat check service is an example. There is no benefit to the bailee (the restaurant) in this relationship so the bailee's duty of care is low.
- In a **gratuitous bailment for the benefit of the bailee**, the bailee owes the bailor a much higher duty of care. If a business (the bailee) borrows a piece of equipment from its neighbor (the bailor), the bailee must exercise great care to ensure the item is returned in good condition.
- Most commercial relationships involve **bailment for mutual benefit of the bailor and bailee**. An appliance repair shop (the bailee) gets paid, and the owner of the appliance (the bailor) gets back a working piece of equipment. This arrangement requires that the bailee exercise a reasonable duty of care. The duty of care may also be clarified, expanded, or limited in an oral or written contract.

Check-In



Directions: Read the examples below and fill in the blank with the correct term from the word bank. Please note that each term will only be used once.

bailor	bailee	gratuitous bailment for the benefit of the bailor	gratuitous bailment for the benefit of the bailee
bailment for mutual benefit	reasonable duty of care	high duty of care	low duty of care

- A museum does not allow bags over a certain size to be brought in. Visitors are allowed to store their bags for free in a bag-check area. This relationship is a _____.

The museum owes a _____.
- After a snowstorm, the insured borrows a snow blower from a neighboring business. The insured is the bailee, and the neighboring business is the _____.

The insured owes a _____ because this is a _____.
- A dry cleaner accepts a customer's clothing to be cleaned. The relationship is a _____, and the dry cleaner owes a _____.

Insuring a Bailee Exposure

Many commercial policies can cover a bailee exposure, even though that is not their primary purpose. Personal Property Of Others coverage can be included in a commercial property policy. Garagekeepers coverage can be added to a business auto policy. Coverage for rented equipment can be added to a contractors equipment policy.

When it comes to inland marine policies, some are specifically designed to cover a bailee exposure. Below are several examples of policies that can be written for bailees to provide coverage for damage to or loss of others' property in the possession of the bailee.



- Motor truck cargo legal liability coverage can cover the motor carrier hauling goods for others.
- Warehouse operators legal liability covers the warehouseman storing property for others under a warehouse receipt.
- A bailee processor floater covers the bailee who is finishing, repairing, or restoring the property of others.

Often, the bailor carries first-party coverage on its own property. This fact, though, does not eliminate the need for the bailee to carry the appropriate coverage. Once the bailor's insurer pays for the damaged property, it might subrogate against the bailee responsible for the damage. Most property policies have a "no benefit to bailee" clause which reinforces the insurer's right to subrogate against a bailee after having paid a claim. The bailee's liability coverage, however, will probably not respond to such a subrogation action.

Commercial general liability (CGL) policies have exclusions for personal property in the insured's care, custody, or control. See the excerpt below from ISO **Commercial General Liability Coverage Form (CG 00 01 04 13)**. And while some CGL insurers may add a small amount of coverage for this exposure via endorsement, that is the exception rather than the rule.

2. Exclusions

This insurance does not apply to:

j. Damage To Property

"Property damage" to:

- (3)** Property loaned to you;
- (4)** Personal property in the care, custody or control of the insured;

CG 00 01 04 13

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▶▶ Knowledge Check



Directions: Identify the type of bailment in the scenario below and describe the duty of care owed by the bailee to the bailor.

Maya brings her computer into a computer repair shop after noticing that the new battery she purchased continues to drain as quickly as her last one. Maya is not sure why, but her computer does not seem to hold a charge. The computer repair shop accepts Maya's laptop for repair.

Bailee Coverage Options: Legal Liability or Direct Damage

Learning Objective:

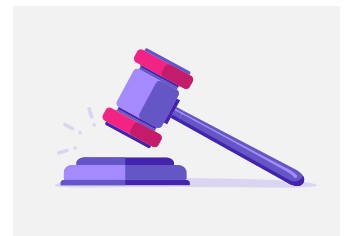
- 1.2 Compare bailee coverage written on a legal liability basis with coverage written on a damage basis.

When writing bailee coverage, there are two options to consider. Bailee coverage can be written to apply on a:

1. legal liability basis or
2. direct damage basis.

Legal Liability

Coverage written on a legal liability basis applies only if the bailee is legally liable for the damage—if, for example, the bailee is negligent. The policy typically pays for damage to the property as well as any charges the insured bailee has earned from the work performed. This second feature is important because the bailor whose property has been damaged while in the custody of the bailee is unlikely to pay the bailor's bill for services rendered.



Legal Liability Language

WAREHOUSE LEGAL LIABILITY COVERAGE

COVERAGE

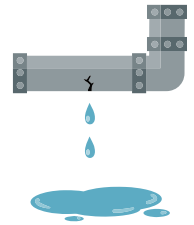
1. **Legal Liability Coverage** – “We” pay for loss or damage to covered property that “you” become legally obligated to pay as a warehouse operator under a “warehouse receipt”, but only if:
 - a. such loss or damage occurs while the property is under “your” care, custody, or control; and
 - b. the “warehouse receipt” is issued by “you” or on “your” behalf.

IM 7650 12 21

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Direct Damage

Coverage written on a direct damage basis applies regardless of whether the bailee is legally liable for the loss. As with legal liability coverage, most policies pay for damage to the property as well as any charges the insured bailee has earned from the work performed.



Direct Damage Language

MISCELLANEOUS BAILEE – PROCESSOR FLOATER

PROPERTY COVERED

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

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

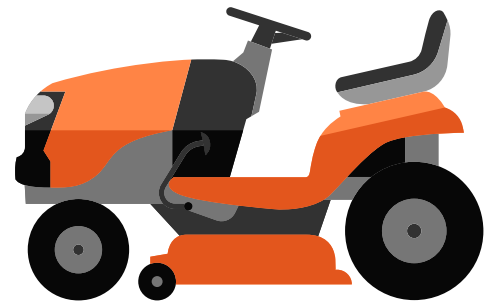
IM 7501 04 04

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Many bailees choose to purchase coverage that applies on a direct damage basis. This is usually done to maintain customer goodwill and helps to avoid disputes over whether the bailee is legally liable.



Sam is a customer of Buck’s Repair Shop and leaves a piece of lawn equipment to be repaired. When the service is complete, Sam picks up the equipment and discovers that it is damaged.



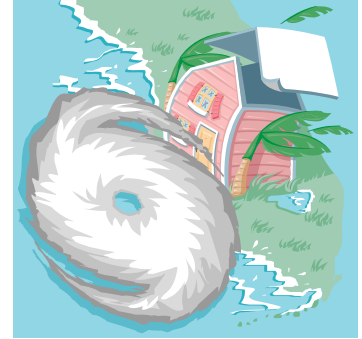
The simple fact that the equipment was returned damaged is often considered evidence that the loss was due to the bailee’s negligence. The only party that might know the details of what happened to the equipment is the bailee. The burden of proof shifts from the bailor to prove the negligence of the bailee to the bailee needing to prove it did nothing wrong. Writing coverage on a direct damage basis helps avoid such disputes.

▶▶ Knowledge Check



Directions: Read the following scenario and explain your response.

Although Artie boarded up the windows to his building in advance of the storm, Artie's Appliance Repair Shop was seriously damaged by hurricane-force winds. In addition to the damage to the building and Artie's own property, many customer appliances were damaged beyond repair. How would Artie's bailee coverage written on a direct damage basis respond to this loss? How would Artie's bailee coverage written on a legal liability basis respond to this loss?



Assume that wind is a covered cause of loss.

Review the Schedule Of Coverages on the next few pages.

<p>AAIS IM 7507 01 12 Page 1 of 2</p>	<p>POLICY NUMBER</p>	
<p>SCHEDULE OF COVERAGES MISCELLANEOUS BAILEE - PROCESSOR FLOATER</p> <p>(The entries required to complete this schedule will be shown below or on the "schedule of coverages".)</p>		
<p>COVERED PREMISES</p>		
<p>Prem. No.</p>	<p>DESCRIBED PREMISES</p>	<p>"Limits"</p>
		\$ _____
		\$ _____
		\$ _____
<p>COVERED PROPERTY</p>		
<p>DESCRIBED PROPERTY</p>		
<p>COVERED EXTENSIONS</p>		
Additional Debris Removal Expenses		\$ _____
<p>SUPPLEMENTAL COVERAGES</p>		
Off-Site Property		\$ _____
Pollutant Cleanup And Removal		\$ _____
Property In Storage		\$ _____
Transit		\$ _____
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IM 7507 01 12
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DEDUCTIBLE

Deductible Amount \$ _____

ADDITIONAL INFORMATION

IM 7507 01 12

The Bailee Coverage Form

Learning Objective:

1.3 Understand the following features of a bailee policy, including:

- Property covered
- Where coverage applies
- Coverage extensions and supplemental coverages

To illustrate some of the coverage features of a bailee coverage form, language from the AAIS **Miscellaneous Bailee – Processor Floater (IM 7501 04 04)** will be reviewed.

Covered Property



The **Schedule Of Coverages (IM 7507 01 12)** describes the covered premises and property and indicates the policy limits and deductible.

Inland marine policies follow the pattern of most property policies. They begin with a broad description of covered property and then narrow coverage in a Property Not Covered section. In this form, covered property includes property of others in the named insured's care, custody, and control for processing.

MISCELLANEOUS BAILEE – PROCESSOR FLOATER

PROPERTY COVERED

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

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

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

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Property Not Covered



Property *not* covered under this form includes:

- Aircraft or watercraft
- Contraband or property in the course of illegal transportation or trade
- Furs or fur-trimmed garments
- Jewelry, precious or semi-precious stones, and precious metals
- Money and securities
- Property accepted by a processor without a charge for services

Section 1: Commercial Inland Marine Concepts and Coverage

- Self-propelled vehicles designed for highway use
- Waterborne property except while in transit in the custody of a carrier for hire

Some property, such as contraband, is not covered because it is considered uninsurable; other types of property are not covered because they are better insured elsewhere. Vehicles in the custody of an auto repair shop, for example, are better insured under a garagekeepers endorsement. Money and securities are better insured under a crime policy.

Check-In



Directions: Given the types of property covered and not covered, should **Miscellaneous Bailee - Processor Floater (IM 7501 04 04)** be used for the following businesses? Explain your answers.

1. A jewelry store that resets stones and repairs jewelry

2. An auto detailing shop

3. A business that repairs commercial copiers and printers

4. A business that repairs kayaks

Storage Exposures

It is important to understand how the bailee operates its business so coverage can be properly written. **Miscellaneous Bailee – Processor Floater (IM 7501 04 04)** covers property in the insured’s care, custody, and control for processing. What happens, though, after the processing work is complete and the bailee is now warehousing the property for a time? This AAIS form and others address this exposure through use of a supplemental coverage.

SUPPLEMENTAL COVERAGES

3. Property In Storage –

- a. **Coverage** – “We” cover direct physical loss caused by a covered peril to covered property that “you” store after processing.
- b. **Coverage Limitations** – “We” only cover property of others that “you” store:
 - 1) if “you” have preformed processing work on the property;
 - 2) while at a premises described on the “schedule of coverages”; and
 - 3) if “you” have issued a storage receipt.
- c. **Limit** – The most “we” pay in any one occurrence for loss to property of others that “you” store is \$5,000.

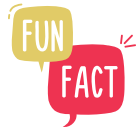
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Rose’s Restorations restores wooden doors and cabinets from old homes that are being renovated. Rose brings the materials to her shop to be restored. Frequently, the homeowner is not ready to take delivery of the materials when the restoration is complete, so Rose stores the property in her workshop for a period of time. Rose issues a storage receipt and needs to be certain that her bailee policy properly covers the exposure. Although the basic policy provides \$5,000 coverage, she has asked her insurer to increase this to \$100,000.





Care, Custody, OR Control vs. Care, Custody, AND Control

Words matter, and there is a difference! **Miscellaneous Bailee - Processor Floater (IM 7501 04 04)** covers property in the insured's care, custody, AND control. Other bailee forms, such as **Warehouse Legal Liability Coverage (IM 7650 12 21)** cover property in the insured's care, custody, OR control. Insurer forms could be written with either language.

What is the difference? With care, custody, OR control language, only one of the three elements must exist for coverage to apply. With care, custody, AND control language, all three are necessary.

So what do these three terms mean? In a 1991 Pennsylvania case⁷, the insured, a welder, went into a field to perform repairs on a loader that had broken in the field. The court determined that the insured did not have custody or control of the loader since the son of the machine owner retained the keys and stayed by the welder's side while the work was being performed. The court did decide, though, that the loader was under the care of the welder during his work on the item.

Will all courts in all circumstances apply these terms the same way? Of course not. The only thing that is clear is that coverage under a bailee form will apply more often if only one of the elements—care, custody, OR control—is needed.

Where Does Coverage Apply?

As is the case with most inland marine policies, bailee policies limit coverage to property within the coverage territory.

Miscellaneous Bailee - Processor Floater (IM 7501 04 04) has a coverage territory that includes the United States, its territories and possessions, Canada, and Puerto Rico. This could be an issue for the processor who has work performed by others overseas.

As one can see on the **Schedule Of Coverages (Form IM 7507 01 12)**, there are several different limits that may apply, depending on where the property is located. Property of others at the bailee's described premises is subject to one limit of insurance. Separate limits, though, apply to off-site property and property in transit. One of the disadvantages of using commercial property coverage to insure a bailee exposure is the absence in most forms of off-premises coverage for the bailor's property.



Bailee forms often provide this off-premises coverage using supplemental coverages. Although forms may include a low limit of coverage—\$5,000 in this case for Off-Site Property and Transit—the limit can be increased by showing a higher limit on the schedule of coverages.

⁷ "In the Court of Common Pleas of Lehigh County, Pennsylvania. *Beltz vs. Erie Insurance Exchange Et Al.*" No. 88-C-2680 (March 28, 1991).

SUPPLEMENTAL COVERAGES

1. Off-Site Property –

- a. **Coverage** – “We” cover direct physical loss caused by a covered peril to covered property while temporarily off-site at a premises that is not described on the “schedule of coverages”.
- b. **Limit** – The most “we” pay in any one occurrence for loss to off-site property is \$5,000.

4. Transit –

- a. **Coverage** – “We” cover direct physical loss caused by a covered peril to covered property while in transit.
- b. **Limit** – The most “we” pay in any one occurrence for loss to property in transit is \$5,000.

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Coverage Extension

Miscellaneous Bailee – Processor Floater (IM 7501 04 04) automatically includes a coverage extension for debris removal. The policy pays to remove the debris of covered property caused by a covered peril with a limit equal to 25% of the amount paid for direct physical loss. This sublimit is part of the limit of insurance, and if additional amounts are needed to remove debris, the extension provides for an additional \$5,000. This \$5,000 can be increased by showing a different limit on the schedule of coverages.

Supplemental Coverages

Supplemental coverages are another way that bailee policies provide additional coverage to the insured. Three of the supplemental coverages were previously discussed: Property In Storage, Off-Site Property, and Transit. The fourth supplemental coverage is Pollutant Cleanup And Removal.

The policy studied here includes a \$10,000 annual aggregate limit for Pollutant Cleanup And Removal, although a higher limit can be shown on the schedule of coverages. Coverage applies to expenses to extract pollutants from land or water after a covered peril occurs and for any testing necessary for the extraction.



Cleaning solvents in a container in a commercial laundry facility spill during a hurricane, and some of the solvents escape the building, contaminating the land at the insured’s location. The policy will pay up to \$10,000 to extract the pollutants from the land and for testing necessary for the extraction.



Section 1: Commercial Inland Marine Concepts and Coverage



Many bailees and other businesses work with pollutants. Environmental cleanup costs can be exorbitant, and a \$10,000 limit is inadequate for most insureds. In addition, most insurers are not willing to increase the limit to what might be an adequate amount of coverage to clean up after a major pollution incident. Pollutant Cleanup And Removal coverage was originally added to property and inland marine policies to limit the scope of coverage provided. Without this language, a court might find that coverage for pollutant cleanup and removal applies under debris removal—something insurers do not intend. A properly constructed environmental impairment policy should be considered for insureds who have pollutants on site.

▶▶ Knowledge Check



Directions: Read the scenario below and explain your response.



Connie's Cabinetry refinishes custom kitchen cabinets for home remodeling contractors in the area. Connie typically picks up the cabinets from the home and brings them to her shop for refinishing, delivering them back to the home when the structural renovations are complete. Describe how coverage might apply for each of the following exposures.

1. Cabinets being refinished in Connie's shop

2. Cabinets in Connie's delivery truck, between the home and the shop

3. Cabinets Connie sends to a glazier if glass cabinet fronts need to be replaced

4. Cabinets Connie stores at her shop until the customer is ready to take delivery

Covered Causes of Loss

Learning Objective:

- 1.4 Apply bailee policy exclusions to determine whether damage to covered property is covered or excluded.

Bailee coverage, like most inland marine coverage, is typically written on an open perils basis. Direct physical loss to covered property is covered unless a specific exclusion or limitation applies. Many of the exclusions are similar to exclusions found in other types of property and inland marine policies.

General Exclusions

Bailee forms typically do not cover earthquakes and other types of earth movement. They also usually exclude flood, surface and below-surface water, and back-up of sewers or drains. Often, though, coverage for damage by these causes of loss does apply while the property is in transit. That is the case in the **Miscellaneous Bailee – Processor Floater (IM 7501 04 04)**.

Other exclusions commonly found include nuclear, war, and acts of seizure or destruction by civil authorities, unless the property is used as a firebreak. Property that is simply missing, with no physical evidence to show what happened, is not normally covered unless the property is in the custody of a carrier for hire. Policies also typically exclude loss of use, delay, or loss of market.

Pollutants Exclusion

Damage by pollutants is usually excluded unless certain specified perils are involved in the loss. Examples of specified perils are fire, windstorm, and vandalism.



Cleaning solvents in a container in a commercial laundry spill during a hurricane, damaging the clothing in the bailee laundry's care. Although the solvent might be considered a pollutant, the fact that wind, a specified peril, caused the loss, restores coverage for the damage to the clothing.

PERILS EXCLUDED

2. "We" do not pay for loss or damage that is caused by or results from one or more of the following:
 - g. **Pollutants** – "We" do not pay for loss caused by or resulting from release, discharge, seepage, migration, dispersal, or escape of "pollutants":
 - 1) unless the release, discharge, seepage, migration, dispersal, or escape is caused by a "specified peril"; or
 - 2) except as specifically provided under the Supplemental Coverages - Pollutant Cleanup and Removal."We" do cover any resulting loss caused by a "specified peril".

DEFINITIONS

6. "Pollutant" means:

- a. any solid, liquid, gaseous, thermal, or radioactive irritant or contaminant, including acids, alkalis, chemicals, fumes, smoke, soot, vapor, and waste. Waste includes materials to be recycled, reclaimed, or reconditioned, as well as disposed of; and
- b. electrical or magnetic emissions, whether visible or invisible, and sound emissions.

9. "Specified perils" means aircraft; civil commotion; explosion; falling objects; fire; hail; leakage from fire extinguishing equipment; lightning; riot; "sinkhole collapse"; smoke; sonic boom; vandalism; vehicles; "volcanic action"; water damage; weight of ice, snow, or sleet; and windstorm.

Falling objects does not include loss to:

- a. personal property in the open; or
- b. the interior of buildings or structures or to personal property inside buildings or structures unless the exterior of the roofs or walls are first damaged by a falling object.

Water damage means the sudden or accidental discharge or leakage of water or steam as a direct result of breaking or cracking of a part of the system or appliance containing the water or steam.

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Criminal, Fraudulent, Dishonest, or Illegal Acts Exclusion

As is the case with most property and inland marine forms, bailee policies normally exclude criminal, fraudulent, dishonest, or illegal acts by employees and others within the insured's organization. Also excluded are these acts committed by those to whom property is entrusted. This exposure is commonly treated by properly constructed employee theft coverage.

PERILS EXCLUDED

2. “We” do not pay for loss or damage that is caused by or results from one or more of the following:
 - b. **Criminal, Fraudulent, Dishonest, Or Illegal Acts** – “We” do not pay for loss caused by or resulting from criminal, fraudulent, dishonest, or illegal acts committed alone or in collusion with another by:
 - 1) “you”;
 - 2) others who have an interest in the property;
 - 3) others to whom “you” entrust the property;
 - 4) “your” partners, officers, directors, trustees, joint venturers, or “your” members or managers if “you” are a limited liability company; or
 - 5) the employees or agents of 1), 2), 3), or 4) above, whether or not they are at work.

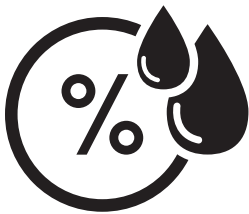
This exclusion does not apply to acts of destruction by “your” employees, but “we” do not pay for theft by employees.

This exclusion does not apply to covered property in the custody of a carrier for hire.

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Mechanical Breakdown, Temperature or Humidity Changes, Electrical Currents, Wear and Tear, Contamination or Deterioration Exclusions



Mechanical breakdown, temperature or humidity changes, and loss by artificially-generated electrical currents are also commonly excluded in bailee forms, although coverage usually applies to resultant damage by certain specified perils. Losses that happen over time, such as wear and tear, and contamination or deterioration (which includes mold) are excluded in most bailee forms.

It is interesting to note that some of the exclusions commonly found in property policies do not appear in many bailee forms. For example, along with a mechanical breakdown exclusion, most property policies exclude steam boiler explosion. **Miscellaneous Bailee - Processor Floater (IM 7501 04 04)** has no such steam boiler explosion exclusion.

Some of the bailee policy exclusions in **Miscellaneous Bailee - Processor Floater (IM 7501 04 04)** that warrant closer inspection include:

- Processing work
- Theft from an unattended vehicle
- Voluntary parting

Processing Work Exclusion



There is no coverage if a bailee damages the bailor's property during the course of processing or other work done on the property. The appliance repair shop that damages the intricate circuitry in a television during a repair has no coverage for this loss. If, however, fire or some other specified peril results, damage by the resultant peril is covered.

PERILS EXCLUDED

2. "We" do not pay for loss or damage that is caused by or results from one or more of the following:

h. **Processing Work** – "We" do not pay for loss to property of others caused by any processing or other work upon the property.

But if processing or other work upon the property results in a "specified peril", "we" do cover the loss or damage caused by that "specified peril".

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Processing errors can be a significant exposure for a bailee. Some insurers will include this coverage for certain types of bailees. AAIS has an endorsement, for example, which can be added to its bailee coverage form for dry cleaners and laundries. The endorsement, **Error Or Omission During Processing Coverage (IM 7563 05 11)** adds a specific limit of coverage for direct physical loss caused by a covered peril to covered property resulting from an error or omission during processing. This is helpful when the laundry accidentally adds bleach to a load of dark clothing, for example. This damage could far exceed any policy deductible.

Theft From An Unattended Vehicle Exclusion

One of the advantages of writing coverage on an inland marine form is that coverage usually applies to property away from the insured's premises. If the bailee's vehicle is left unattended, though, theft coverage is limited. Imagine this scenario: Employees of a lawnmower repair service have five lawnmowers to be returned to customers. They stop for lunch midday, leaving the delivery truck unattended. If the lawnmowers are stolen while the employees are in the restaurant, coverage applies only if there are visible signs of forced entry into a securely enclosed and locked vehicle.

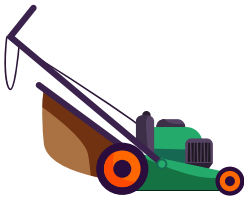
PERILS EXCLUDED

2. “We” do not pay for loss or damage that is caused by or results from one or more of the following:
 - j. **Theft From An Unattended Vehicle** – “We” do not pay for theft from an unattended vehicle except when it is securely locked, its windows are fully closed, and there is visible evidence that entry into the vehicle was forced.
This exclusion does not apply to covered property in the custody of a carrier for hire.

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Voluntary Parting Exclusion



Using the same lawnmower repair service as an example, what if a couple comes into the shop intending to steal a lawnmower? They claim to have lost their claim ticket, but describe the lawnmower perfectly, convincing the bailee’s employee that a particularly expensive mower belongs to them. The repair shop has voluntarily parted with the property, and there is no coverage for this loss.

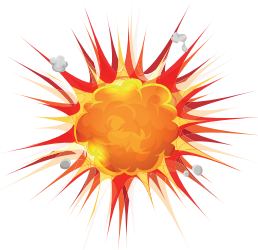
PERILS EXCLUDED

2. “We” do not pay for loss or damage that is caused by or results from one or more of the following:
 - k. **Voluntary Parting** – “We” do not pay for loss caused by or resulting from voluntary parting with title to or possession of any property because of any fraudulent scheme, trick, or false pretense.

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Damage For Resultant Loss Exception



For several of these exclusions, coverage applies when there is resultant damage from certain causes of loss. In some cases, the resultant damage must be caused by a specified peril as defined in the form and described above. In some cases, the resultant damage must be by a very specific cause of loss such as fire or explosion.

Table: 1.1 Summary of exclusions in the Miscellaneous Bailee - Processor Floater (IM 7501 04 04)

Excluded Causes of Loss in Miscellaneous Bailee - Processor Floater (IM 7501 04 04)	There is coverage for resultant damage by:
Group 1 Exclusions	
Civil Authority	Fire, if property is destroyed to prevent the spread of fire
Earth Movement Or Volcanic Eruption	Fire, explosion, or volcanic action
Flood	Fire, explosion, or sprinkler leakage
Nuclear Hazard	Fire
Sewer Backup And Water Below The Surface	Fire, explosion, or theft
War And Military Action	N/A
Group 2 Exclusions	
Contamination Or Deterioration	N/A
Criminal, Fraudulent, Dishonest, Or Illegal Acts	N/A
Electrical Currents	Specified perils
Loss Of Use	N/A
Mechanical Breakdown	Specified perils
Missing Property	N/A
Pollutants	Specified perils
Processing Work	Specified perils
Temperature/Humidity	Specified perils
Theft From An Unattended Vehicle	N/A
Voluntary Parting	N/A
Wear and Tear	N/A

▶▶ Knowledge Check



Directions: Consider the following scenarios and determine whether the following losses are covered under **Miscellaneous Bailee – Processor Floater (IM 7501 04 04)**. Be sure to explain your answers.

1. While Connie of Connie’s Cabinetry is refinishing a cabinet, the sander malfunctions, causing damage to the intricate detail work on a cabinet front.

2. A steam boiler in the commercial laundry explodes, damaging customers’ clothing.

3. Rose of Rose’s Restorations delivers wooden doors and cabinets from her workshop to a customer’s home. There is a flash flood, and all the materials in the truck are damaged by the water.

4. An equipment repair shop gets a call to deliver a repaired item to a different address than the one on the repair order. It turns out that the call did not come from the customer, but from a thief who diverted the delivery to steal the property.

Valuation and Payment of Losses

Learning Objective:

- 1.5 Apply the different options available to insurers to settle claims under a bailee policy.

Valuation of Losses



Valuation of losses is commonly actual cash value, which considers physical depreciation of the property. Bailee forms, like other inland marine forms, often include specific language to address situations where the damaged property is part of a set or has multiple parts.

VALUATION

1. **Actual Cash Value** – The value of covered property is based on the actual cash value at the time of loss (with a deduction for depreciation).
2. **Pair Or Set** – The value of a lost or damaged article which is part of a pair or set is based on a reasonable proportion of the value of the entire pair or set. The loss is not considered a total loss of the pair or set.
3. **Loss To Parts** – The value of a lost or damaged part of an item that consists of several parts when it is complete is based on the value of only the lost or damaged part or the cost to repair or replace it.

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Consider the following example:



Uma's Upholstery was hired to re-upholster a sofa and loveseat for a customer. A fire in Uma's shop damaged the sofa, but not the loveseat. The customer wants two new pieces. The bailee policy pays only the value of the damaged item. Loss settlement is based on a reasonable proportion of the value of the entire set.

Loss Payment

The insurer has the option as to how the claim will be settled and may choose to:

- pay the value of the lost or damaged property;
- pay the cost of repairing or replacing the lost or damaged property;
- rebuild, repair, or replace the property with other property of equivalent kind and quality, to the extent practicable, within a reasonable time; or
- take all or any part of the property at the agreed or appraised value.

Section 1: Commercial Inland Marine Concepts and Coverage

The bailee policy is designed primarily to cover property of others, so language is included that allows the insurer to adjust losses with the insured or directly with the bailor—the owner of the property. It is important to remember that bailee coverage is not a liability coverage form; liability policies usually include language that gives the insurer the right and duty to defend the insured in the event of a covered loss. Bailee forms often give the insurer the right to defend any suit brought by the owner of the property at the insurer's own expense. There is, however, no duty to defend.

LOSS PAYMENT

2. Your Losses –

- a. **Adjustment And Payment Of Loss** – “We” adjust all losses with “you”. Payment will be made to “you” unless another loss payee is named in the policy.
- b. **Conditions For Payment Of Loss** – An insured loss will be payable 30 days after:
 - 1) a satisfactory proof of loss is received; and
 - 2) the amount of the loss has been established either by written agreement with “you” or the filing of an appraisal award with “us”.

3. Property Of Others –

- a. **Adjustment And Payment Of Loss To Property Of Others** – Losses to property of others may be adjusted with and paid to:
 - 1) “you” on behalf of the owner; or
 - 2) the owner.
- b. **We Do Not Have To Pay You If We Pay The Owner** – If “we” pay the owner, “we” do not have to pay “you”. “We” may also choose to defend any suits brought by the owners at “our” expense.

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How Much We Pay

A bailee policy never pays one more than its insurable interest in the property and does not pay more than the limit of insurance that applies to the covered property. A deductible applies per occurrence, and only the amount of loss over the deductible amount will be paid. And, as mentioned earlier, bailee forms also pay the value of the charges the insured has earned from the processing work.

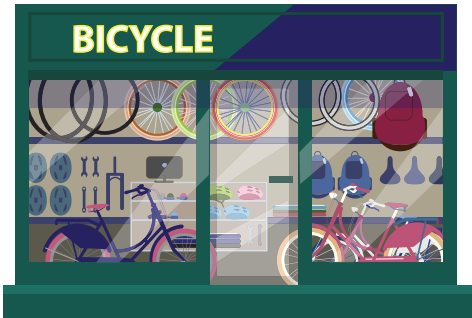
HOW MUCH WE PAY

1. **Insurable Interest** – “We” do not cover more than “your” insurable interest in any property.
2. **Deductible** – “We” pay only that part of “your” loss over the deductible amount indicated on the “schedule of coverages” in any one occurrence.
3. **Loss Settlement Terms** – Subject to paragraphs 1., 2., 4., and 5. under How Much We Pay, “we” pay the lesser of:
 - a. the amount determined under Valuation, plus charges “you” have earned from “your” processing;
 - b. the cost to repair, replace, or rebuild the property with material of like kind and quality to the extent practicable, plus charges “you” have earned from “your” processing; or
 - c. the “limit” that applies to the covered property.

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▶▶ Knowledge Check



Directions: Explain how the following claim will be paid under the **Miscellaneous Bailee - Processor Floater (IM 7501 04 04)**.

Brigid’s Bicycle Shop repairs racing bikes for its customers. Faulty wiring in Brigid’s building caused a fire, resulting in damage to several customer bikes. Brigid presents claims for the following. Assume that the limits of insurance are adequate to cover any covered claims.

1. The value of twenty bikes, owned by a racing team, that were destroyed in the fire

2. \$4,000 in charges for work done on bikes that were repaired and were awaiting pickup

3. The value of two bikes that were not damaged in the fire—the racing team that owns the twenty damaged bikes wants all twenty-two of its bikes to match. That style of bike is no longer manufactured.

Summary

Writing coverage to properly address bailee exposures involves understanding the basics of bailment, understanding the insured's operations, and understanding the coverage features of any bailee policy being considered. In Part 2, you will learn about builders risk, including topics such as whose interests may be covered, the types of coverage in builders risk policies, and how to apply builders risk policy exclusions.

Section 1, Part 1, Self-Quiz

Directions: Match the bailment relationship to the duty of care owed by the bailee to the bailor.

A. Low duty of care	_____ A garage takes in a customer's vehicle for repair.
B. Reasonable duty of care	_____ A contractor lends a friendly competitor its bulldozer while the competitor's bulldozer is being repaired.
C. High duty of care	_____ A warehouse owner offers to store cookies for a local Girl Scout troop at no charge.

Directions: Read the statements below and for each one, determine whether it is true or false.

1. Bailment is the relationship where one party (the bailee) accepts property of another (the bailor) for a particular purpose.

True

False

2. In a gratuitous bailment for the benefit of the bailee, the bailee owes the bailor a *low* duty of care.

True

False

3. A waterpark allows visitors the option to store their personal belongings for free in a bag-check area. This relationship is known as a bailment for mutual benefit.

True

False

4. After a rainstorm, the insured borrows a water pump from a neighboring business to remove water from the basement of the insured's building. The insured is the bailee, and the neighboring business is the bailor.

True

False

5. If a bailee is negligent, and the loss is due to a covered peril, coverage written on a legal liability basis would apply.

True

False

Section 1: Commercial Inland Marine Concepts and Coverage

6. With coverage written on a direct damage basis, most policies only pay for damage to the property; they do not pay for charges the insured has earned from the work performed.

True

False

7. Uncovered containers of lead paint at a commercial paint company spill during a windstorm, damaging property in the bailee's care. In this scenario, there would be coverage for the damaged property.

True

False

8. Mechanical breakdown, temperature or humidity changes, and loss by artificially generated electrical currents are commonly excluded in bailee forms.

True

False

9. Mark decides to steal a tractor from a repair shop. To do so, he visits the shop and claims he is there to retrieve "his" tractor but has lost the claim ticket. Mark fools the shop employee who hands over someone else's tractor. There is no coverage when the actual owner of the tractor makes a claim against the repair shop.

True

False

10. Under a bailee policy, one of the options the insurer has with respect to how a claim will be settled is to take all or any part of the property at the agreed or appraised value.

True

False

Part 2

Learning Objectives:

- 1.6 Describe whose interests may be covered under builders risk as well as the advantages and disadvantages of including numerous parties as insureds.
- 1.7 Understand the coverage provided by a builders risk policy, including:
 - Property covered and not covered
 - Coverage extensions and supplemental coverages
 - Exclusions
- 1.8 Use policy language and coverage-ending triggers to determine when builders risk coverage begins and ends.
- 1.9 Explain time element coverages that can be included on a builders risk policy, including various loss of income coverages and soft costs coverages.
- 1.10 Explain the purpose of the installation floater and why a contractor may want to buy this coverage.
- 1.11 Understand the coverage provided by an installation floater including:
 - Property covered and not covered
 - Coverage extensions and supplemental coverages
- 1.12 Use policy language and coverage-ending triggers to determine when coverage under an installation floater ends.

Builders Risk

Introduction

A builders risk policy insures construction projects against various types of loss. Businesses are regularly building new buildings or adding on to or renovating existing ones. And while these exposures are common, insuring these projects presents some unique coverage challenges. Unlike the commercial property policy, the builders risk policy is designed to address these issues.



Why Purchase Builders Risk?

There are many reasons why builders risk is a better option than a property policy for insuring new buildings under construction. Builders risk should also be considered when insuring renovations to an existing building or structure or an addition that is being built.

Some of the problems with relying on property coverage are described below:

Commercial Property Policies: Changing Values, Exposures, and Insurable Interests

One thing to consider for a construction or renovation project is that the values at risk are constantly changing. At the beginning of a project, there is no value, while millions in value may exist by the end of the project. Exposure to certain causes of loss also changes as the project progresses. A partially constructed building, for example, is more susceptible to damage by an approaching storm. In contrast, for most property policies, the values and exposures to loss are similar on the first and last day of the policy.

Insurable interest varies during construction, shifting from contractor to project owner. Property policies typically include as the named insured only the owner of the building or structure. In a construction project, many other parties have insurable interest and may wish to be included on the policy. Examples include the general contractor and the subcontractors. Few property underwriters would agree to add these additional parties as insureds.

Commercial Property Policies: Covered Property Coverage Gaps

Commercial property policies are designed to cover completed buildings and structures. Although a commercial property form can be used to cover buildings and structures during construction or renovation or to which additions are being built, there are numerous coverage gaps in most property forms. Using the ISO **Building And Personal Property Coverage Form (CP 00 10 10 12)** with **Causes Of Loss – Special Form (CP 10 30 09 17)** as an example, there are coverage concerns when a property form is used to cover a construction project.



Many types of property are not covered under **Building And Personal Property Coverage Form (CP 00 10 10 12)**. Bridges, roadways, walks, patios, or other paved surfaces can be damaged by perils such as trees felled by wind, earth movement, and surface water. This type of property is not covered. The cost of excavations, grading, backfilling, or filling is not covered. Foundations and underground pipes, flues, or drains are not covered. This type of property is much more susceptible to loss during construction than it is after a project is complete. Retaining walls that are not part of a building are also not covered under this property form. Although endorsements can be added to include coverage for these items, some agents don't request them, and some underwriters will not add them.



Other types of property are covered with low limits and, often, for very few causes of loss. Fences and certain landscaping materials, as an example, are only covered for damage by fire, lightning, aircraft, riot or civil commotion, and explosion. The limit of insurance is \$1,000 for all this outdoor property, with a sublimit of \$250 for any one tree, shrub, or plant. Outdoor signs, whether attached to the building or not, are only covered for \$2,500.

Commercial Property Policies: Off-Premises Property, Causes of Loss, and Time Element

Property policies are location-specific and provide little coverage for property away from the described premises. The **Building And Personal Property Coverage Form (CP 00 10 10 12)** includes only \$10,000 coverage in a Property Off-premises coverage extension. The property must be the named insured's property and not property of others. The Property In Transit extension included in the **Causes Of Loss – Special Form (CP 10 30 09 17)** is even more restrictive. Only \$5,000 coverage applies; the property must be the named insured's property, and only a few causes of loss are covered. Further, the property must be in or on a motor vehicle owned, leased, or operated by the named insured. There is no coverage, for example, for materials being transported to the jobsite by the named insured's subcontractor.

There are numerous issues concerning covered perils in the **Causes Of Loss – Special Form (CP 10 30 09 17)**. Earth movement and water damage/flood are excluded. And while most builders risk policies also exclude these causes of loss, it is often easier to add these coverages to a builders risk policy than to a property policy. There is limited coverage for collapse, with coverage applying only if a named peril causes the collapse. While many builders risk policies take this same approach, some offer broader coverage. Lastly, there is no coverage for the theft of unattached building materials—a significant exposure at a construction site. An endorsement is needed to restore this coverage, and **Theft Of Building Materials And Supplies (Other Than Builders Risk) (CP 10 44 10 12)** may be used for this purpose.

Lastly, there are various business income and extra expense exposures in a construction project. Will the property underwriter be able to construct coverage in a way that properly addresses these? This can often be a challenge.

For these and other reasons, the best policy to cover a building or structure during construction is a builders risk policy. This, too, may be the best way to insure renovations to an existing building or structure or an addition that is being built.

Check-In



Directions: What are some reasons why builders risk is a better choice than property coverage for insuring a building under construction? Use features of the **Building And Personal Property Coverage Form (CP 00 10 10 12)** with **Causes Of Loss - Special Form (CP 10 30 09 17)** as the basis for your response.

Structuring Builders Risk Policies

Before discussing the coverage that may be provided under a builders risk policy, it is important to understand the two basic ways to structure builders risk policies:

1. completed value form and
2. reporting form.



Completed Value Basis



A completed value form is normally written to cover a single project. The limit of insurance chosen is the value of the completed project plus any other property to be insured. The rate reflects the changing values and exposures over the course of the project. Unless there is a change in the completed value, the insured is not required to make any reports of value throughout the policy term. Once the project is complete, the insurer will often confirm the completed value and charge any additional premium due.

There are a few reasons why the completed value may differ from the originally declared project value. There may have been change orders to the original project design. Increases in the cost of labor and materials can also affect the completed value of the project. It is important that the insured make the insurer aware of such changes so that the limit can be increased during the term. This will help to reduce the possibility of an under-insurance issue or a coinsurance problem. Many builders risk policies are written at 100% coinsurance. Some insurers offer endorsements that increase the limit up to a certain percentage to reflect change orders and/or cost increases. These endorsements can be a valuable addition to a builders risk policy.

Reporting Form Basis

Insureds who build many similar projects will often secure builders risk coverage on a reporting form basis. A homebuilder who builds fifty new homes every year might buy one policy to cover all projects done during the year. The policy will typically have an overall catastrophe or occurrence limit and a sublimit for each project. The insurer charges a deposit premium, and the insured is required to make periodic reports of values, often on a monthly or quarterly basis. Some policies require that the insured report the estimated completed value of all projects while others require that the insured report how much of each project is completed as of the report date.



The final premium charged on a reporting form policy is based on the values reported during the term. If the insured reports values accurately and in a timely manner, there will be coverage for any new projects started. Coverage for a particular project ceases when it is not included on the next report. If the insured doesn't report values accurately or doesn't

Section 1: Commercial Inland Marine Concepts and Coverage

submit the reports when they are due, there will be a penalty in the event of a loss. This penalty varies depending on the policy form.



Carol Ann's Custom Homes builds new single-family homes in Nebraska and Iowa. Carol Ann builds approximately 50 homes per year and has coverage on a builders risk reporting form policy. The policy is written with a catastrophe limit of \$15,000,000 and a \$500,000 sublimit per project. Carol Ann submits quarterly reports with information on all homes under construction. This way, Carol Ann does not need to purchase 50 separate builders risk policies.



The Builders Risk Policy



Many insurers offering builders risk coverage have created their own coverage forms. As such, it is important that any policy being considered be carefully reviewed to make sure it meets the needs of the customer. It is crucial that the policy be analyzed with a specific project in mind. What may be important for one project could be less important for another. It is important, for example, that the insurance agent be familiar with any coverage requirements in the construction contract. Contracts with lenders may also include insurance requirements. Lastly, the insured may desire certain coverages or have certain expectations about coverage.

Fortunately, many inland marine underwriters have the flexibility to modify coverage terms to help meet the needs of the customer. And, while it is often the case that an insured can't get everything that is requested, a good inland marine underwriter can often help close the gap between what is needed and what the unendorsed builders risk form provides.

Advisory organizations such as Insurance Services Office (ISO) and American Association of Insurance Services (AAIS) have written several builders risk policies for use by their member companies. Language from the AAIS **Builders' Risk Coverage – Scheduled Jobsite Form – Comprehensive Form (IM 7050 07 20)** will be reviewed, as will some of the ways insurers' own forms may vary.

Who Is the Insured?

Learning Objective:

- 1.6 Describe whose interests may be covered under builders risk as well as the advantages and disadvantages of including numerous parties as insureds.

Builders risk policies are typically purchased by the project owner or the general contractor, and responsibility for purchasing the policy is usually determined as part of the construction contract. Regardless of who buys the policy, it is common to include numerous parties as insureds. While some builders risk policies make a distinction between named insureds and additional insureds, some simply refer to all covered parties as insureds.



The construction contract and other contracts related to the project will usually detail which parties must be covered as insureds. Some parties that may need to be included as insureds are:

- **Project owner/developer**
- **General contractor**
- **Subcontractors of every tier**

This phrase is intended to include subcontractors, sub-subcontractors, etc. In most builders risk policies, this general phrase can be used instead of listing each contractor by name.

- **Construction manager**
- **Architects and engineers**
- **Material suppliers**
- **Mortgagees and lenders**

Not all insurers are willing to cover all these parties as insureds; the reasons for this are as follows:

- Some insurers are reluctant to add architects and engineers as insureds. Some take this position because architects and engineers don't typically have an ownership interest in the property to be insured. Other insurers want to preserve, as best they can, their ability to subrogate against an architect or engineer whose work results in damage.
- Material suppliers are another party that many insurers do not want to include as insureds. Builders risk is designed to protect the interests of project owners and contractors, not suppliers. Also, including material suppliers as insureds reduces the chance that an insurer can subrogate against the supplier whose materials result in a loss.

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- Still other insurers may cover the insurable interest of subcontractors, but not include the subcontractors as insureds. The reason for this is usually to try to preserve any right of subrogation that may exist against the subcontractor.

While **Builders' Risk Coverage – Scheduled Jobsite Form – Comprehensive Form (IM 7050 07 20)** only covers as insureds those listed on the Declarations, many insurer forms include numerous parties automatically.

SAMPLE POLICY LANGUAGE

If a signed construction contract requires they be included, and if the value of their work has been included in the contract value declared, the following are additional insureds:

- The principal and/or the principal's rep
- Architects
- Consulting engineer or designer
- Subcontractors and sub-subcontractors of every tier

When writing builders risk, it is important to understand which entities need to be covered and to compare that with the language in the policy form. Additional entities can often be added by endorsement.

Advantages to Including Numerous Parties as Insureds



Aside from compliance with contract requirements, there are many advantages to including numerous parties as insureds on the builders risk policy. This approach is more efficient and creates a more streamlined claims settlement process. Imagine what would happen if there were a fire at a construction site and each subcontractor had a policy to cover the materials it installed into the project. Numerous insurers and disputes over who covers what could significantly delay the repair or rebuilding. Builders risk is written so that one policy covers the entire project and the insurable interests of many.

Another advantage to including numerous parties is that all insureds have direct rights under the policy. If a subcontractor is an insured, the subcontractor is a party to the insurance contract and can make a claim under the policy.

One of the most important reasons to include numerous parties as insureds is to avoid litigation and to limit subrogation. It is not uncommon for there to be damage to a project because of something a contractor has done wrong. Consider the following example:



Marty is contractor who is doing welding on a portion of the building's frame. A flying spark lands on a combustible surface and isn't immediately noticed. Before anyone realizes what has happened, fire spreads and seriously damages the project. While the immediate reaction of some may be to have the party responsible for the damage pay for the damage, that could involve a protracted claims process and litigation. In the interest of getting the project back on track, it is best to allow the builders risk policy to pay to repair the damage. This is the type of risk, after all, contemplated by the builders risk insurer.



In most cases, once an insurer pays for a property loss, it attempts to subrogate against the party responsible for the damage. When thinking about subrogation in the builders risk policy, one needs to consider two things:

1. what the contracts say and
2. what the policy says.

An insurer's right to subrogate is derived from the insured's right to seek damages from the party responsible for causing the damage. If the insured has waived rights of recovery against another party, there are no rights to transfer to the insurer. Many construction contracts include language that requires the owner and general contractor to waive rights of recovery against each other and any subcontractors, architects, and possibly others. Most builders risk policies permit the insured to waive rights of recovery in writing prior to a loss.

Disadvantages to Including Numerous Parties as Insureds



Although there are many advantages to including all those with an insurable interest as insureds, there are a few disadvantages to this approach that are worth mentioning.

First, the claim payment may be made payable to all those who are named as insureds under the policy. This might be contrary to what the construction contract requires. Some contracts, for example, state that the losses should be paid to the owner as fiduciary for all insureds.

Another possible disadvantage is that misrepresentation, concealment, or fraud by any insured may void coverage under the policy. This problem can be avoided with policy language that protects innocent insureds.

There are clearly a number of advantages and disadvantages to including numerous parties as insureds. It is important to remember, though, that it is the construction contract that determines what parties must be included as insureds under builders risk.

▶▶ Knowledge Check



Directions: Read the scenario below and explain your response.



Jennifer, your insured who is a property developer, doesn't understand the advantages of having numerous parties included as insureds on the builders risk policy she is about to purchase. After all, isn't this her building, and shouldn't the insurance be for her benefit only? How would you address her concerns?

Review the Schedule Of Coverages on the next few pages.

**SCHEDULE OF COVERAGES
BUILDERS' RISK
COMPREHENSIVE FORM**

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

SCHEDULED JOBSITES

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

Check if applicable:

Attach Additional Builders' Risk Schedule to schedule more "jobsites"

CATASTROPHE LIMIT

"Limits"

Separate Catastrophe Limits

Builders' Risk Catastrophe Limit applies only to coverage provided under the Builders' Risk Coverage Form \$ _____

Delay In Completion Catastrophe Limit applies only to coverage provided under the Delay In Completion Coverage Part \$ _____

Combined Catastrophe Limit

Combined Catastrophe Limit applies to coverage provided under the Builders' Risk Coverage Form and the Delay In Completion Coverage Part \$ _____

COVERAGE EXTENSIONS

"Limits"

Additional Debris Removal Expenses	\$ _____
Emergency Removal	_____ days
Emergency Removal Expenses	\$ _____
Fraud And Deceit	\$ _____
Limited Fungus Coverage	\$ _____
Waterborne Property	\$ _____

SUPPLEMENTAL COVERAGES

"Limits"

Expediting Expenses	\$ _____
Expense To Re-Erect Scaffolding	\$ _____
Fire Department Service Charges	\$ _____
Ordinance Or Law (Undamaged Parts Of A Building)	_____ Covered
Ordinance Or Law (Increased Cost To Repair And Cost To Demolish/Clear Site)	\$ _____
Personal Property	\$ _____
Pollutant Cleanup And Removal	\$ _____
Rewards	\$ _____
Sewer Backup	\$ _____
Temporary Storage Locations	\$ _____
Transit	\$ _____
Trees, Shrubs, And Plants	\$ _____

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DEDUCTIBLE

Deductible Amount \$ _____

COINSURANCE (check one)

- 100%
- Coinsurance Provisions Are Waived

PERMISSION TO OCCUPY (check one)

- Permission to occupy is not granted.
- The occupancy and use provisions under Additional Coverage Limitations are deleted, and permission is granted to occupy covered property after the date indicated below:

Month____ Day____ Year____

ADDITIONAL INFORMATION

What Does the Builders Risk Policy Cover?

Learning Objectives:

- 1.7 Understand the coverage provided by a builders risk policy, including:
- Property covered and not covered
 - Coverage extensions and supplemental coverages
 - Exclusions

The **Schedule Of Coverages (IM 7055 07 20)** is attached to **Builders' Risk Coverage - Scheduled Jobsite Form - Comprehensive Form (IM 7050 07 20)** to describe the jobsite and indicate the policy limits, deductible, and other coverage features.

Property Covered

Builders risk policies cover two separate types of property:

- property that will become a permanent part of the described project and
- other property that will not.

These second items are often referred to as temporary structures or temporary works.

Builders' Risk Coverage - Scheduled Jobsite Form - Comprehensive Form (IM 7050 07 20) describes covered property as follows:

PROPERTY COVERED

Course Of Construction –

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

IM 7050 07 20

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Section 1: Commercial Inland Marine Concepts and Coverage

“Buildings or structures” is a defined term as indicated by the quotation marks, and the definition appears below. Many types of property that create coverage concerns under the **Building and Personal Property Coverage Form (CP 00 10 10 12)**, such as foundations, sitework and fencing, are covered under the builders risk policy. Builders risk covers the building and structure and the materials that will become a permanent part of the finished project even while these materials are at the jobsite waiting to be installed.

DEFINITIONS

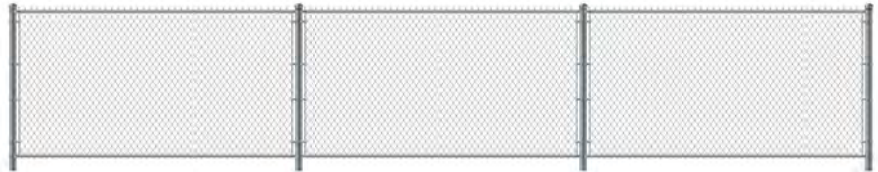
1. **“Buildings or structures” means:**

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

IM 7050 07 20

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The second type of property covered includes scaffolding, construction forms, fencing and temporary structures. When setting a limit of insurance, it is important to



include the value of any temporary works to be covered by the policy. Failure to do so could result in an insured having inadequate coverage in the event of a loss. It is possible that the scaffolding contractor, for example, may be required to insure its own scaffolding, but it is just as likely that the builders risk policy is expected to cover this type of property. The construction contract should provide information on who is responsible to carry the insurance and pay the deductible. These are key details to investigate when coverage is being written. Buildings and structures and temporary works are covered at the described jobsite, and in many builders risk policies, a sublimit of coverage applies to the temporary works.

PROPERTY COVERED

2. **Scaffolding, Construction Forms, Fencing, And Temporary Structures –**

“We” also cover direct physical loss or damage caused by a covered peril to:

- a. scaffolding, construction forms, or temporary fencing; and
- b. temporary structures.

IM 7050 07 20

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Where Does Coverage Apply?

Property At the Project Site

Builders' Risk Coverage – Scheduled Jobsite Form – Comprehensive Form (IM 7050 07 20) defines jobsite as any location, project, or work site where “you” are in the process of constructing, erecting, or fabricating “buildings or structures.”

It is important that the jobsite and the project be properly described on the policy’s schedule of coverages. As an example, the insured may be constructing a building on Block 100, Lot 3, which will be known in the future as 100 Main Street. If the jobsite is described as Block 100, Lot 3, or 100 Main Street, there may be no coverage for materials being stored at Block 100, Lot 2, or for equipment at the staging area at Block 100, Lot 4. Understanding where all the property to be insured is located is important to writing builders risk properly.



A broad description of the project is also desirable. Think about the difference between these two descriptions:

- 100 Main Street (Block 100, Lot 3), Anytown, USA—one-story building to be occupied as a shopping center
- Block 100, Lots 2, 3, and 4, Anytown, USA—property of every kind and description and as included in the total project value – Contract #ABC123

With the first description, is it clear that the intent is to insure the parking lot and walkways? And what about the items stored and staged on Lots 2 and 4? While some insurers may resist a description as broad as the second example above, it is important to negotiate a description that clearly expresses the intent of the parties and which is satisfactory to both.

Property Away From the Project Site

Most builders risk policies provide a small amount of coverage for property that is away from the jobsite. **Builders' Risk Coverage – Scheduled Jobsite Form – Comprehensive Form (IM 7050 07 20)**, for example, includes two supplemental coverages, Temporary Storage Locations and Transit. Each provides \$10,000 coverage for property away from the project site, although the limits can be changed by entering a different limit on the schedule of coverages. This off-site coverage, though, does not apply to temporary works such as scaffolding and construction forms. That type of property is covered only at the jobsite.

For property in temporary storage away from a described location, the builders risk requires that the property be specifically allocated to a particular project. This is to ensure that the builders risk is not required to pay for damage to property, for example, that an insured contractor might be storing in its shop for use on another project.

Section 1: Commercial Inland Marine Concepts and Coverage

Whether this small amount of off-premises coverage is adequate depends, in large part, on what the contracts require others to insure. It is common, for example, for a trade contractor to be required to insure its own property until it arrives at the jobsite.

These two supplemental coverages are only some of the ones included in **Builders' Risk Coverage - Scheduled Jobsite Form - Comprehensive Form (IM 7050 07 20)**; the remaining supplemental coverages will be discussed separately.

SUPPLEMENTAL COVERAGES

10. Temporary Storage Locations –

a. **Coverage** – “We” cover direct physical loss or damage caused by a covered peril to:

- 1) materials and supplies that will become a permanent part of covered “buildings or structures”;
- 2) business personal property as described under Supplemental Coverages - Personal Property; and
- 3) trees, shrubs, plants, and lawns as described under Supplemental Coverages - Trees, Shrubs, And Plants and only for the perils described under Trees, Shrubs, And Plants

while temporarily in storage at a location that is not described on the “schedule of coverages”.

b. **We Do Not Cover** – “We” do not cover property in storage if the property has not been specifically allocated to or otherwise identified with covered “buildings or structures”.

c. **Limit** – The most “we” pay in any one occurrence under this Supplemental Coverage is \$10,000.

11. Transit –

a. **Coverage** – “We” cover direct physical loss or damage caused by a covered peril to:

- 1) materials and supplies that will become a permanent part of covered “buildings or structures”;
- 2) business personal property as described under Supplemental Coverages - Personal Property; and
- 3) trees, shrubs, plants, and lawns as described under Supplemental Coverages - Trees, Shrubs, And Plants and only for the perils described under Trees, Shrubs, And Plants

while in transit.

b. **Limit** – The most “we” pay in any one occurrence under this Supplemental Coverage is \$10,000.

Check-In



Directions: Answer the questions below based on **Builders' Risk Coverage – Scheduled Jobsite Form – Comprehensive Form (IM 7050 07 20)**.

1. The policy only covers property that will become part of the finished project.

True

False

2. The jobsite limit of insurance also applies to property in transit on the way to the jobsite.

True

False

3. For the supplemental coverage, Temporary Storage Locations, to apply, property must be specifically allocated to or otherwise identified with covered “buildings or structures.”

True

False

Property Not Covered

Builders risk policies, like most other property and inland marine policies, begin with a broad description of covered property. Then, coverage is narrowed through the addition of a Property Not Covered list. In **Builders' Risk Coverage – Scheduled Jobsite Form – Comprehensive Form (IM 7050 07 20)**, several types of property are not covered.

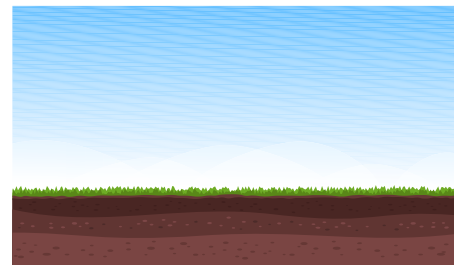
Contraband

Contraband or property in the course of illegal transportation or trade is not covered.

Land

Land, including land on which the covered property is located, is not covered. Land is generally considered uninsurable and is not covered under most property and inland marine policies.

While land itself is excluded, it is important to remember that sitework is not. The definition of buildings or structures includes excavations, grading, and filling.





Teenagers on dirt bikes destroy a freshly graded site. Because the definition of buildings and structures includes grading, this act of vandalism is covered under builders risk.

Property Not a Permanent Part of Building

Aside from temporary works as described earlier, builders risk does not cover most types of property that will not become a permanent part of the building or structure. This includes materials and supplies, machinery, tools, equipment, and business personal property.

Builders' Risk Coverage – Scheduled Jobsite Form – Comprehensive Form (IM 7050 07 20) includes a supplemental coverage—Personal Property—which restores \$10,000 coverage while business personal property is being installed, assembled, or stored in a covered building or structure. This is a common approach in many property and inland marine policies. All coverage is removed, and then a small amount of coverage is given back.

Roadways and Walkways



Roadways, walkways, and other paved surfaces that are more than 1,000 feet from a covered building or structure are not covered. This could create a coverage problem for the insured whose project includes, for example, a large parking lot. It is important to find out the insured's expectations of coverage for this type of property so that policy terms can be negotiated.

Trees, Shrubs, or Plants

Another type of property not covered is landscaping material. **Builders' Risk Coverage – Scheduled Jobsite Form – Comprehensive Form (IM 7050 07 20)** does include, though, a supplemental coverage, Trees, Shrubs, And Plants. This coverage is included with a \$10,000 limit for trees, shrubs, plants, and lawns that are planted or installed inside or upon covered buildings or structures. An additional \$10,000 coverage applies for trees, shrubs, plants, and lawns that are planted or installed within 1,000 feet of covered buildings or structures. Even though some coverage applies to landscaping materials, it applies only to damage by a small number of perils: fire, lightning, explosion, riot or civil commotion, falling objects, or vandalism.



\$5,000 of new shrubs were planted along the 500-foot driveway leading to the building insured under builders risk. A construction vehicle swerves to avoid a deer and drives over the shrubs, destroying \$2,000-worth of them. Although the supplemental coverage, Trees, Shrubs, And Plants, covers loss by some causes of loss, vehicle damage is not a covered peril.

Waterborne Property



Builders' Risk Coverage – Scheduled Jobsite Form – Comprehensive Form (IM 7050 07 20) does not cover property while waterborne unless in transit in the custody of a carrier for hire. Once again, though, a small amount of coverage is restored—this time, in a coverage extension for Waterborne Property. \$10,000 coverage is included but does not apply to certain bodies of water—the Mississippi River and coastal waters of the US, for example.

PROPERTY NOT COVERED

1. **Contraband** – “We” do not cover contraband or property in the course of illegal transportation or trade.
2. **Land** – “We” do not cover land including land on which covered property is located.
3. **Not A Permanent Part Of Building** – Except as provided under Supplemental Coverages - Personal Property, “we” do not cover:
 - a. materials and supplies;
 - b. machinery, tools, and equipment; and
 - c. business personal propertythat will not become a permanent part of covered “buildings or structures”.
4. **Roadways And Walkways** – “We” do not cover any portion of walkways, roadways, and other paved surfaces that is more than 1,000 feet from covered “buildings or structures”.
5. **Standing Buildings Or Structures** – [to be discussed separately]
6. **Trees, Shrubs, Or Plants** – Except as provided under Supplemental Coverages - Trees, Shrubs, And Plants, “we” do not cover trees, shrubs, plants, or lawns.
7. **Waterborne Property** – Except as provided under Coverage Extensions - Waterborne Property, “we” do not cover property while waterborne unless in transit in the custody of a carrier for hire.

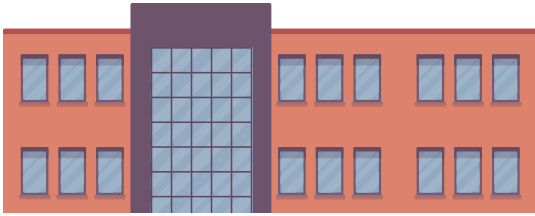
IM 7050 07 20

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Other Property

Other builders risk forms may exclude other types of property such as motor vehicles, aircraft, and watercraft. It is important to review with the insured what property should be covered and to compare that to the policy form. If there are any gaps, the insurer may be able to add coverage back for certain types of property.

The Standing/Existing Building Issue



Standing buildings or structures, also known as existing buildings or structures, are excluded from nearly all builders risk policies.

This language creates a problem in two situations. First, it is not uncommon for an insured to attempt to secure builders risk coverage once a project is already underway. Some don't feel there is an exposure to loss, for example, until vertical construction begins, i.e., until the building is out of the ground. Still others don't think about coverage until the values at risk become significant.

PROPERTY NOT COVERED

5. Standing Buildings Or Structures –

- a. “We” do not cover any:
 - 1) standing “buildings or structures”; or
 - 2) parts of standing “buildings or structures” that have been wholly or partially constructed, erected, or fabricated prior to the inception of this policy.
- b. “We” do not cover any standing “buildings or structures” in the process of rehabilitation or renovation. Rehabilitation and renovation includes, but is not limited to, any additions, alterations, improvements, or repairs to existing “buildings or structures”.

IM 7050 07 20

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If part of the construction is done before the builders risk policy is effective, that part of the project would not be covered. Insurers have different positions on insuring projects that have already begun. Some will refuse to provide coverage, while others will agree to provide coverage if less than a certain percentage of the work is done. If the insurer does agree to insure a project that has already begun, it is important that any limiting language be modified by endorsement.

Standing Building Or Structure Coverage (IM 7093 09 08)



This endorsement can be added to an AAIS policy to add coverage for a standing building or structure.

AAIS
IM 7093 09 08
Page 1 of 1

This endorsement changes the
Builders' Risk Coverage
-- PLEASE READ THIS CAREFULLY --

STANDING BUILDING OR STRUCTURE COVERAGE

Standing Building Or Structure --

1. **Coverage** -- "We" cover direct physical loss or damage caused by a covered peril to standing "buildings or structures" that were in the course of construction at the inception date of this policy.
2. **Coverage Limitation** -- "We" only cover standing "buildings or structures" in the course of construction at "your" "jobsite".
3. **Property Not Covered** -- Under Property Not Covered, Standing Building Or Structure is deleted but only to the extent that coverage is provided under this endorsement.

IM 7093 09 08

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The bigger issue with standing/existing building or structure language is when the project being insured is a renovation or rehabilitation project. Builders risk will typically cover only the new work, not the standing or existing building. There are several ways to remedy this problem. Some insurers will agree to add an endorsement to the builders risk to cover the existing building. Some insurers have special forms they use for renovation or rehabilitation projects. AAIS **Builders' Risk Coverage Rehabilitation And Renovation Form (IM 7054 07 20)** is an example. It covers both the new work and the existing building.

Sometimes, an existing property policy is used to cover both the existing building and the new work. Some of the coverage problems with this approach were discussed in the introduction to this section. Lastly, in some cases, it may be necessary to write property coverage on the existing building and builders risk for the new work. In this case, particular care must be taken to avoid coverage gaps and overlaps, especially if different insurers write the property and builders risk policies. Which is the best solution is a function of the type of project and what the insurers involved are willing and able to do.

Check-In



Directions: Read the scenarios below and explain your response.



There is a fire at a construction site where a new big box store is being built. You are an adjuster in training and are working on your first big claim. You have established that all the damaged items are part of the jobsite as described on the schedule of coverages and must now determine what is covered property.

The project is insured using an unendorsed **Builders' Risk Coverage - Scheduled Jobsite Form - Comprehensive Form (IM 7050 07 20)**, and the following are damaged. Explain why coverage does or does not apply to each type of property.

1. Lumber that is stored on the jobsite and which was to have been used in the building project

2. Part of the foundation that was not fully cured when the fire happened

3. A contractor's forklift that was left in the parking lot overnight

4. Scaffolding erected on the north side of the building

5. A section of parking lot near the building

Coverage Extensions

Most builders risk policies include coverage extensions. These extra coverages are sometimes provided with a sublimit of coverage, although in some cases, the full policy limit applies. When a limit applies, the limit can often be increased by showing a higher limit on the schedule of coverages.

The Waterborne Property extension previously described is one such extension. Other coverage extensions include:

Debris Removal

Debris removal is arguably one of the most important coverage extensions in the builders risk policy. If a covered cause of loss damages the covered property, costs will be incurred for demolition, clearing, and removal of debris. These costs can be substantial.

Coverage applies with a sublimit equal to 25% of the amount paid for direct physical loss. If additional money is needed to cover debris removal costs, the policy pays up to an additional \$5,000. Additional dollars may be needed because the sublimit is insufficient or because the sum of direct loss paid and debris removal costs exceeds the limit of insurance. Debris removal coverage does not pay to clean up or restore polluted land and water, and all expenses must be reported to the insurer within 180 days of the loss.



Example #1

Limit of Insurance: \$1,000,000

Deductible: \$10,000

Direct Damage Amount: \$60,000

Debris Removal Costs: \$20,000

Coinsurance is satisfied, and the project is damaged by a covered cause of loss.

Amount paid for direct damage: \$50,000 (\$60,000 less \$10,000 deductible)

Debris removal sublimit: \$12,500 (25% of \$50,000)

The policy pays \$50,000 for direct damage + \$12,500 debris removal sublimit + an additional \$5,000 for debris removal.

The remaining \$2,500 of debris removal is unpaid.



Example #2

Limit of Insurance: \$1,000,000

Deductible: \$10,000

Direct Damage Amount: \$950,000

Debris Removal Costs: \$200,000

Coinsurance is satisfied, and the project is damaged by a covered cause of loss.

Amount paid for direct damage: \$940,000 (\$950,000 less \$10,000 deductible)

Debris removal sublimit: \$235,000 (25% of \$940,000)

The policy pays \$940,000 for direct damage + \$60,000 debris removal before the overall limit of \$1,000,000 is reached + an additional \$5,000 for debris removal.

The remaining \$135,000 of debris removal is unpaid.

The \$5,000 Debris Removal additional limit can be increased by showing a higher limit on the schedule of coverages, and it is good to do so on most policies.

COVERAGE EXTENSIONS

1. Debris Removal –

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

Emergency Removal

If covered property is in danger of being damaged by a covered cause of loss, and the insured moves it to protect it from damage, there is coverage for any cause of loss that damages the property. This coverage applies for up to ten days after the property is first moved unless the policy expires before the ten-day period ends. Coverage applies while the property is in transit or being stored.



A hurricane is in the forecast for the area where the jobsite is located, and the insured fears the building under construction will be damaged by the winds. A large quantity of building materials has been delivered to the jobsite but not yet installed. The insured moves those materials to a storage facility one hundred miles inland to protect them from damage by the hurricane. Because wind is a covered cause of loss under builders risk, no matter what happens to the materials in the next 10 days, the builders risk will cover the loss.



Emergency Removal Expenses

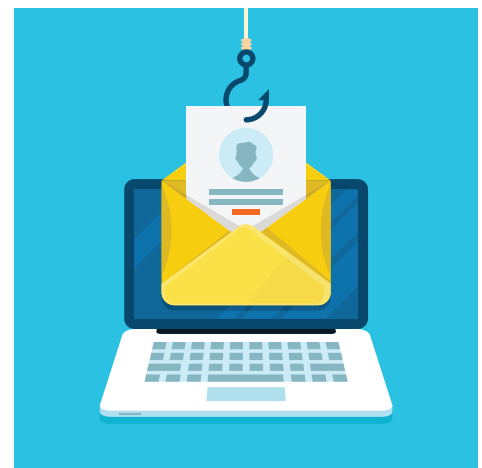
Some builders risk policies pay the insured's expenses to move or store the property to protect it from damage by a covered cause of loss threatening the project site. **Builders' Risk Coverage – Scheduled Jobsite Form – Comprehensive Form (IM 7050 07 20)** will pay up to \$10,000 to cover these expenses. Using the hurricane example above, this coverage would help cover the cost to rent the storage facility.

Fraud And Deceit

Most property and inland marine policies do not provide coverage if an insured is tricked into giving up property. Fraud And Deceit coverage is an exception to this and is included in **Builders' Risk Coverage – Scheduled Jobsite Form – Comprehensive Form (IM 7050 07 20)**. \$50,000 coverage applies to this type of fraud.



The insured receives a shipment of plumbing fixtures to be used in the construction of an office building insured under builders risk. The insured gets an email from the distributor advising that the wrong fixtures were sent. As soon as the insured returns them, the distributor will send the correct fixtures. The insured does as instructed, sending the fixtures to the address provided in the email. It is only when the insured calls to follow up that the scheme becomes apparent. The email didn't come from the distributor—it came from someone who has stolen the plumbing fixtures. Up to \$50,000 coverage applies.



COVERAGE EXTENSIONS

4. Fraud And Deceit –

- a. **Coverage** – “We” cover theft of covered property when “you” or “your” agents, customers, or consignees are fraudulently induced to part with the covered property:
 - 1) to persons who falsely represent themselves as the proper persons to receive such property;
 - 2) by the acceptance of fraudulent bills of lading or shipping receipts; or
 - 3) as a result of or directly related to the use of any electronic data processing hardware or software.
- b. **Limit** – The most “we” pay in any one occurrence under this Coverage Extension is \$50,000.

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Limited Fungus Coverage

Mold is often a problem after a builders risk loss involving water. The policy limits coverage to an annual aggregate limit of \$15,000 unless a higher limit is shown in the schedule of coverages or unless the loss was caused by fire or lightning or collapse due to hidden decay. In the case of these fire, lightning or collapse losses, full policy limits apply. This limited coverage for fungus applies only to losses caused by certain specified perils including flood, if the policy is endorsed to provide flood coverage. Specified perils include, for example, hail; leakage from fire extinguishing equipment; water damage; weight of ice, snow, or sleet; and windstorm.

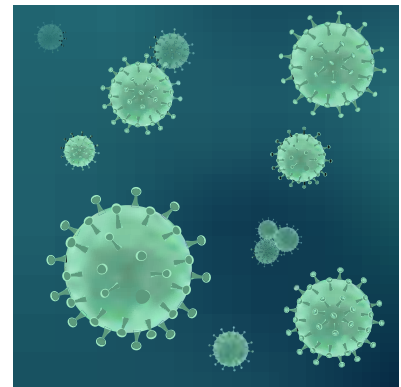


Table: 1.2 Builders’ Risk Coverage – Scheduled Jobsite Form – Comprehensive Form (IM 7050 07 20) – Coverage Extensions

Coverage	Limit
Debris Removal	Sublimit: 25% of the amount paid for direct loss Additional amount: \$5,000
Emergency Removal	Policy limit: 10 days
Emergency Removal Expenses	\$10,000
Fraud And Deceit	\$50,000
Limited Fungus Coverage	\$15,000 annual aggregate limit
Waterborne Property	\$10,000

Supplemental Coverages

Supplemental coverages are another way builders risk policies provide coverages beyond damage to the covered property at the jobsite. As was the case with coverage extensions, when a limit applies, the limit can often be increased by showing a higher limit on the schedule of coverages.

Some of these supplemental coverages were previously discussed: Personal Property; Temporary Storage Locations; Transit; and Trees, Shrubs, and Plants. Others are covered below in detail.

Expediting Expenses

If a covered peril damages covered property, the insured may incur additional expenses to get the project back on track so it can be finished by the original completion date in the contract. Examples of these expenses include labor or overtime, transportation and storage expenses, and expenses to rent additional equipment. The policy provides up to \$10,000 coverage for these costs. While this coverage is not as broad as true extra expense coverage, it can speed up the repair or replacement of property, so is an important coverage.



Wind damages a section of a building that is under construction and insured under builders risk. The general contractor needs to get the project done on time so he decides to hire extra workers for the next two weeks. Expediting Expenses supplemental coverage will pay up to \$10,000.

SUPPLEMENTAL COVERAGES

1. Expediting Expenses –

- a. **Coverage** – When a covered peril occurs to covered “buildings or structures” and that covered peril causes a delay in completion of construction, “we” pay for reasonable expediting expenses necessary to address the delay in completion of construction caused by the covered peril so as to complete construction within the time frame specified in the construction contract.
- b. **Coverage Limitation** – “We” only pay expediting expenses if prior to the delay caused by the covered peril the “buildings or structures” are otherwise on track to be completed by the completion date set forth in the construction contract including amendments or change orders incorporated into the construction contract.
- c. **Expediting Expenses Include** – Expediting expenses include, but are not limited to, additional:
 - 1) labor or overtime;
 - 2) transportation costs and storage expense;
 - 3) expense to rent additional equipment; and
 - 4) similar construction expenses.
- d. **Limit** – The most “we” pay in any one occurrence under this Supplemental Coverage is \$10,000.

IM 7050 07 20

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Expenses To Re-erect Scaffolding

Scaffolding is described in the property covered section and covered while at the jobsite if damaged by a covered cause of loss. If a building or structure is damaged, though, the scaffolding may need to be re-erected once the damage is repaired. This is the case whether or not the scaffolding is damaged. The builders risk policy pays up to \$5,000 to re-erect the scaffolding after a covered loss to covered buildings or structures.



Hail damages the exterior of a building under construction. The scaffolding is not damaged by the hail, but needs to be taken down so that the building damage can be repaired. \$5,000 of coverage is available to re-erect the scaffolding.



Fire Department Service Charges

If the insured is liable for fire department or volunteer fire department service charges, the builders risk policy will pay up to \$1,000. The charge must relate to saving or protecting covered property from a covered peril.

Ordinance Or Law



The builders risk policy excludes any loss or increased costs the insured has because of enforcement of codes, ordinances, or law. The policy pays to repair the damaged property only and doesn't provide additional funds if the insured needs to rebuild differently to comply with building codes.

There are two separate ordinance or law coverages included in **Builders' Risk Coverage – Scheduled Jobsite Form – Comprehensive Form (IM 7050 07 20)**. These coverages, which are required in many construction contracts, are not included in all builders risk policies, though, and must sometimes be added by endorsement.

Ordinance Or Law (Undamaged Parts Of A Building)

It is often the case that a building that has sustained major damage must be demolished, even though part of the building is undamaged. In some jurisdictions, this is required when a certain percentage of the building is damaged. In some jurisdictions, this decision is left to the discretion of the appropriate authorities. Ordinance Or Law (Undamaged Parts Of A Building) coverage pays the value of the undamaged portion of the building that must be taken down. No limit applies to this coverage as it is part of the limit for covered property.

Ordinance Or Law (Increased Cost To Repair And Cost To Demolish And Clear Site)

This second coverage is really two separate coverages combined into one. In fact, in many builders risk policies, these are separated into two distinct coverages. A \$50,000 total limit is shared between the two parts of this coverage, and higher limits can be included by showing a different amount on the schedule of coverages.

Part 1: Building codes change frequently. If there are additional costs to repair, rebuild, or reconstruct the building to meet current codes, Ordinance Or Law (Increased Cost To Repair) responds. It pays the cost to bring both the damaged and undamaged portions of the building up to code.

Part 2: The previously discussed coverage extension for Debris Removal pays to demolish and remove the debris of damaged covered property. If an undamaged portion of the building needs to be demolished, though, to comply with building codes, the Ordinance Or Law (Cost To Demolish And Clear Site) coverage applies to those demolition costs and to the costs to remove the debris.

There are a few important things to note about all the Ordinance Or Law coverages. They do not cover any additional loss or costs incurred because of ordinances or laws concerning pollutants or fungus. They do not provide coverage beyond that which is needed to rebuild the project for the same type of occupancy unless that occupancy is no longer permitted. Lastly, Ordinance Or Law (Increased Cost To Repair) coverage will not pay unless the building is repaired or rebuilt within two years, unless the insurer agrees to an extension.

Check-In



Directions: Read the scenario below and explain your response.

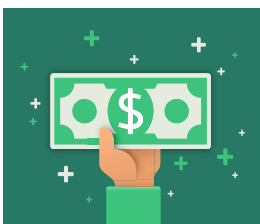
ABC Development, Inc., is constructing a new condominium building insured on **Builders' Risk Coverage – Scheduled Jobsite Form – Comprehensive Form (IM 7050 07 20)**. The building under construction is seriously damaged in a hurricane, and the town orders ABC to demolish the building. In addition, since building codes have changed since the project started, ABC will need to rebuild with fire resistive construction rather than masonry non-combustible and include sprinklers that were not part of the original design. Explain how the builders risk ordinance or law coverages can help ABC.

Pollutant Cleanup And Removal

If a covered cause of loss causes the release of pollutants, this supplemental coverage pays up to \$25,000, which is an annual aggregate limit, to extract pollutants from the land or water. As an example, lightning could strike an above ground oil tank, causing oil to be released into the ground at the construction site.



Rewards



The policy will pay up to \$1,000 as a reward to anyone providing information leading to the arrest and conviction of any person who committed arson, theft, or vandalism. Coverage applies when these are covered causes of loss that affect covered property. The reward will not be paid, though, to the criminal, to a law enforcement officer, or to certain individuals involved in the insured's operations.

Sewer Backup

The policy will pay up to \$10,000 for loss resulting from water or waterborne material that backs up, overflows, or is discharged through a sewer or drain, sump, or septic tank. Coverage also applies when damage is caused by water or waterborne material below the surface of the ground—e.g., water that exerts pressure on or leaks through the covered building. The coverage does require that the insured perform routine maintenance to keep the equipment in good working order.

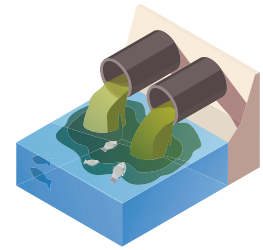


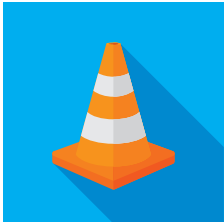
Table: 1.3 Builders’ Risk Coverage – Scheduled Jobsite Form – Comprehensive Form (IM 7050 07 20) – Supplemental Coverages

Coverage	Limit
Expediting Expenses	\$10,000
Expense To Re-Erect Scaffolding	\$5,000
Fire Department Service Charges	\$1,000
Ordinance Or Law (Undamaged Parts Of A Building)	Included in Policy limit
Ordinance Or Law (Increased Cost To Repair And Cost To Demolish/Clear Site)	\$50,000
Personal Property	\$10,000
Pollutant Cleanup And Removal	\$25,000 annual aggregate limit
Rewards	\$1,000
Sewer Backup	\$10,000
Temporary Storage Locations	\$10,000
Transit	\$10,000
Trees, Shrubs, And Plants	\$10,000

▶▶ Knowledge Check



Directions: Read the scenarios below and determine whether coverage applies under the builders risk coverage extensions or supplemental coverages. Explain your answers.



Your adjuster training at the big box store construction site fire is going well. You did such a great job figuring out what is covered property, your supervisor asks you to help determine whether coverage for the following applies under the builders risk coverage extensions and supplemental coverages. Recall that the project is insured using an unendorsed **Builders' Risk Coverage - Scheduled Jobsite Form - Comprehensive Form (IM 7050 07 20)**.

1. After assessing the cost to remove the debris of damaged covered property from the site, it appears that:
 - \$1,000,000 of the \$5,000,000 limit will be paid for direct damage.
 - Debris removal costs are \$200,000.

2. While most of the building was severely damaged in the fire, there is a 1,000 square foot section that was not damaged. The town ordinance, though, requires that this section of the building be demolished.
 - The value of the undamaged section is \$250,000.
 - The cost to demolish the undamaged section and remove the debris is \$25,000.

3. At some point in the reconstruction process, the insured will need to re-erect the scaffolding that wasn't damaged in the fire but which needs to be taken down to repair the damage to the building. It will cost \$4,000 to re-erect.

Covered Causes of Loss

As was demonstrated in the policy language seen to this point, builders risk policies provide coverage for various types of property and include numerous coverage extensions and supplemental coverages. Equally important, though, are the causes of loss covered by the builders risk. A good starting point for this discussion is the construction contract which describes what coverage is required.

The Construction Contract



Construction contracts commonly require “all risks” coverage. While this phrase has been eliminated from most current property and inland marine forms, it is important to recognize what is meant by this phrase and what coverage features must be included in a builders risk policy to satisfy a contract requirement. Below is sample contract language that illustrates this point.

SAMPLE CONTRACT LANGUAGE

EXCERPT FROM AIA A101 – 2017 EXHIBIT A

..... the Owner shall purchase and maintain..... property insurance written on a builder’s risk “all-risks” completed value or equivalent policy form.....

The insurance..... shall provide coverage for direct physical loss or damage, and shall not exclude the risks of fire, explosion, theft, vandalism, malicious mischief, collapse, earthquake, flood or windstorm. The insurance shall also provide coverage for ensuing loss or resulting damage from error, omission, or deficiency in construction methods, design, specifications, workmanship, or materials.

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The Builders Risk Policy

PERILS COVERED

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

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Like most inland marine policies, builders risk provides coverage on an open perils basis. Loss to covered property is covered unless the loss is limited or excluded by the policy. It is unusual to see named perils coverage on a builders risk policy. Our discussion of bailee

coverage focused on a few specific exclusions. This section includes a more comprehensive discussion of the exclusions in **Builders' Risk Coverage – Scheduled Jobsite Form – Comprehensive Form (IM 7050 07 20)**.

Group 1 Exclusions

The first group of exclusions is prefaced with strong language often referred to as “anti-concurrent causation” language. If the loss involves, in any way, one of these excluded perils, the entire loss is excluded. The only exception is an occasional give-back for resultant damage by certain causes of loss.

PERILS EXCLUDED

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

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The exclusions in this first group are as follows:

Civil Authority

Unless the property is destroyed by a civil authority to prevent the spread of fire, any order of civil authority is excluded. This includes seizure, confiscation, destruction, or quarantine of property.



The DEA believes that members of a gang are selling drugs each night from a nearly completed building insured under a builders risk policy. One night, agents enter the premises to make arrests, damaging several doors and windows in the process. There is no coverage for this act of a civil authority.

Earth Movement



This exclusion applies to earthquake as well as other types of earth movement, whether natural or man-made, as described in the policy language. There is coverage, however, for property in transit as well as for damage by resultant fire or explosion.

Coverage for earthquake is commonly required in construction contracts, and, depending on the location of the project, an insurer may agree to add coverage by endorsement. Often, though, this added coverage applies only to earthquake and does not include coverage for other types of earth movement. Earthquake coverage is often subject to a sublimit and/or a higher deductible.

DEFINITIONS

2. "Earth movement" means:

- a. The movement of the ground, soil, sediments, substrates, or strata whether the movement is caused by an act of nature or is manmade, including but not limited to:
 - 1) earthquake including aftershocks, liquefaction, or ground displacement associated with earthquake;
 - 2) eruption, explosion, or effusion of a volcano;
 - 3) shaking or ground rupture before, during or after a volcanic eruption;
 - 4) landslide;
 - 5) mine subsidence whether or not the manmade mine is currently in use; or
 - 6) any other ground movement, including sinking (other than "sinkhole collapse"), shifting, contraction, or rising of the ground including, but not limited to:
 - a) erosion, expansion, shrinking;
 - b) freezing or thawing;
 - c) soil compaction; and
 - d) movement caused by water under the surface of the ground that cause cracking, settling, tilting, leaning, or shifting of covered property.
- b. The movement of the ground, soil, sediments, substrates, or strata resulting from any act, error or omission including but not limited to:
 - 1) construction or excavation activities, regardless of whether or not occurring under covered property and regardless of whether the construction or excavation was being performed at "your" request or for "your" benefit;
 - 2) blasting or vibration from any source;
 - 3) any process for removing gas; oil; minerals; water; steam; or any other natural resource, substance, or material from below the surface of the ground including, but not limited to, hydraulic fracturing (fracking), mining, drilling, or geothermal energy extraction;
 - 4) water injection below the surface of the ground, whether wastewater from hydraulic fracturing or any other source or water injected into underground rock for the purpose of creating geothermal energy; or
 - 5) carbon sequestration, biosequestration or any other process for removing carbon dioxide or other forms of carbon from the atmosphere and placed it in an underground reservoir, underground geologic formations or any other underground storage technique.

Flood

This exclusion applies to overflow of a body of water and other types of water as described below. There is coverage, though, for property in transit as well as for damage by resultant fire, explosion, or sprinkler leakage. Coverage for flood is commonly required in construction contracts, and, depending on the location of the project, an insurer may agree to add coverage by endorsement. Flood coverage is often subject to a sublimit and/or a higher deductible.



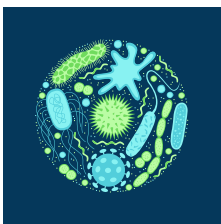
DEFINITIONS

3. "Flood" means an overflowing or inundation by water of an area that was previously and normally dry or not covered by water, whether caused artificially or naturally, by human or animal forces or by an act of nature. "Flood" includes, but is not limited to:
 - a. overflow of inland or tidal waters, waves, tidal waves, or tsunamis, or spray that results from any of these, all whether driven by wind or not, including but not limited to storm surge;
 - b. unusual and rapid accumulation or runoff of surface waters from any source; or
 - c. mudslides or mudflows if caused by:
 - 1) unusual and rapid accumulation or runoff of surface waters or waves; or
 - 2) currents of water exceeding anticipated cyclical levels.

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Fungus



Aside from the previously discussed coverage extension, Limited Fungus Coverage, **Builders' Risk Coverage - Scheduled Jobsite Form - Comprehensive Form (IM 7050 07 20)** excludes all loss resulting from fungus unless the cause is fire, lightning, or collapse caused by hidden decay. If fungus results in loss by a specified peril, however, the resultant damage will be covered.

PERILS EXCLUDED

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

d. **Fungus** – Except as provided under Coverage Extensions - Limited Fungus Coverage, the existence of or any activity of “fungus”.

But if “fungus” results in a “specified peril”, “we” cover loss or damage caused by that “specified peril”.

This exclusion does not apply to:

- 1) loss that results from fire or lightning; or
- 2) collapse caused by hidden decay.

IM 7050 07 20

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“Specified perils” is a defined term.

DEFINITIONS

10. “Specified perils” means aircraft; civil commotion; explosion; falling objects; fire; hail; leakage from fire extinguishing equipment; lightning; riot; “sinkhole collapse”; smoke; sonic boom; vandalism; vehicles; “volcanic action”; water damage; weight of ice, snow, or sleet; and windstorm...

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REMINDER: Limited Fungus coverage applies with an annual aggregate limit of \$15,000.

Nuclear

Any loss involving nuclear reaction or radioactive contamination is excluded. Damage by a resultant fire, though, is covered.

Ordinance Or Law



Aside from the previously discussed supplemental coverages, Ordinance Or Law (Undamaged Parts Of A Building) and Ordinance Or Law (Increased Cost To Repair And Cost To Demolish/Clear Site), **Builders’ Risk Coverage – Scheduled Jobsite Form – Comprehensive Form (IM 7050 07 20)** excludes all loss resulting from enforcement of codes, ordinances, or laws regulating construction.

Section 1: Commercial Inland Marine Concepts and Coverage



Condos By The Sea is constructing a new building in its development. The building under construction is seriously damaged in a fire. Since building codes have changed since the project started, Condos By The Sea will need to install a different type of sprinkler system that was not part of the original design. This exposure is only partially addressed by the Ordinance Or Law supplemental coverages. Condos By The Sea has only \$50,000 coverage to pay for the increased costs of construction.

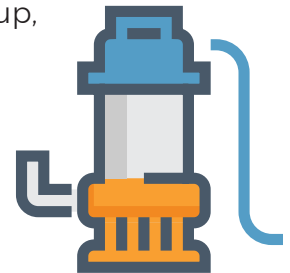


REMINDER: Ordinance Or Law (Undamaged Parts Of A Building) Coverage is included in the policy limit.

Ordinance Or Law (Increased Cost To Repair And Cost To Demolish/Clear Site) applies with a limit of \$50,000.

Sewer, Septic Tank, Sump, Or Drain Backup And Water Below The Surface

Aside from the previously discussed supplemental coverage, Sewer Backup, **Builders' Risk Coverage – Scheduled Jobsite Form – Comprehensive Form (IM 7050 07 20)** excludes all loss resulting from water or waterborne material that backs up, overflows, or is discharged through a sewer or drain, sump, or septic tank. Coverage also does not apply when damage is caused by water or waterborne material below the surface of the ground—e.g., water that exerts pressure on or leaks through the covered building.



The exclusion does not apply, though, to resultant damage caused by fire, explosion, or sprinkler leakage. It also does not apply to covered property while in transit.



REMINDER: Sewer Backup coverage applies with a limit of \$10,000.

War And Military Action

Losses involving war and warlike action are excluded.

Group 2 Exclusions

Group 2 exclusions do not have the same strong anti-concurrent causation language seen in Group 1 Exclusions. The exclusions in this second section are as follows:

PERILS EXCLUDED

2. “We” do not pay for loss or damage that is caused by or results from one or more of the following:

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Contamination Or Deterioration

There is no coverage for losses resulting from contamination or deterioration including corrosion, decay, rust, or any quality in the property that causes it to damage or destroy itself. If the contamination or deterioration results in a covered peril, though, the resultant damage is covered.



Criminal, Fraudulent, Dishonest, Or Illegal Acts



There is no coverage for criminal, fraudulent, dishonest, or illegal acts committed by various persons within the insured's organization or by persons to whom property has been entrusted. As to employee acts, there is coverage for an employee's destruction of property, but not for employee theft. Lastly, there is coverage if the property is in the custody of a carrier for hire.

PERILS EXCLUDED

2. "We" do not pay for loss or damage that is caused by or results from one or more of the following:

b. **Criminal, Fraudulent, Dishonest, Or Illegal Acts** – "We" do not pay for loss or damage caused by or resulting from criminal, fraudulent, dishonest, or illegal acts committed alone or in collusion with another by:

- 1) "you";
- 2) others who have an interest in the property;
- 3) others to whom "you" entrust the property;
- 4) "your" partners, officers, directors, trustees, joint venturers, or "your" members or managers if "you" are a limited liability company; or
- 5) the employees or agents of 1), 2), 3), or 4) above, whether or not they are at work.

This exclusion does not apply to acts of destruction by "your" employees, but "we" do not pay for theft by employees.

This exclusion does not apply to covered property in the custody of a carrier for hire.

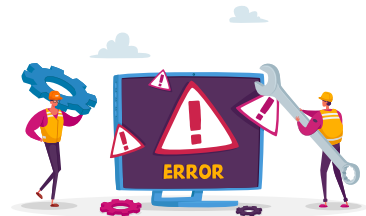
IM 7050 07 20

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Theft by those involved in the construction project is best addressed with properly constructed employee theft coverage.

Defects, Errors, And Omissions

Builders risk does not pay for loss relating to errors and defects in design, construction, planning, maintenance, and other similar activities. These are faulty workmanship and design error issues that builders risk is not intended to respond to. If the error or defect results in a covered peril, however, resultant damage is covered.





A newly installed support beam collapses due to a faulty weld. It knocked over a barrel of combustible liquid, and a fire resulted. There is no coverage for the beam that was improperly welded, but there is coverage for the property damaged in the fire.

PERILS EXCLUDED

2. “We” do not pay for loss or damage that is caused by or results from one or more of the following:

c. **Defects, Errors, And Omissions**

1) “We” do not pay for loss or damage consisting of, caused by, or resulting from an act, defect, error, or omission (negligent or not) relating to:

- a) design, specifications, construction, materials, or workmanship;
- b) planning, zoning, development, siting, surveying, grading, or compaction; or
- c) maintenance, installation, renovation, remodeling, or repair.

But if an act, defect, error, or omission as described above results in a covered peril, “we” do cover the loss or damage caused by that covered peril.

2) This exclusion applies regardless of whether or not the act, defect, error, or omission:

- a) originated at covered “buildings or structures”; or
- b) was being performed at “your” request or for “your” benefit.

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Delay In Completion And Increased Construction Costs



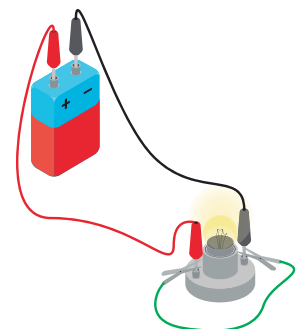
With the exception of the supplemental coverage, Expediting Expenses, builders risk doesn’t automatically cover losses resulting from delays in completion or increased costs resulting from a delay in completion. Examples of such excluded costs are increased construction costs, overhead and labor costs, and loss of earnings. Delay In Completion coverage can be added to builders risk to address some of these exposures and will be separately discussed.



REMINDER: Expediting Expenses coverage applies with a limit of \$10,000.

Electrical Currents

There is no coverage for loss resulting from arcing or other artificial electrical currents. If a specified peril results, though, the resultant damage will be covered.



Loss Of Use And Consequential Loss



There is no coverage for loss due to loss of use, delay, or loss of market. There is no coverage, either, for consequential loss or damage. Delay In Completion coverage can be added to builders risk to address some of these exposures and will be separately discussed.

Mechanical Breakdown

There is no coverage for loss due to mechanical breakdown or rupturing of moving parts of machinery caused by centrifugal force. If such an event results in a specified peril, though, coverage for the resultant damage will apply.

Missing Property

Property that is simply missing, with no physical evidence to show what happened, is not covered unless the property is in the custody of a carrier for hire.

Pollutants

Damage caused by pollutants is excluded unless a specified peril causes the release of the pollutants or results from the release of the pollutants.



Lightning strikes an oil drum at a construction site, and the oil that is released stains the newly installed patio outside the back door of the building. This is covered. Although oil might be considered a pollutant, the loss was caused by lightning, which is a specified peril.

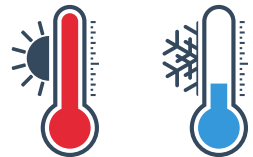


Steam Boiler Explosion

There is no coverage for loss caused by the explosion of steam boilers and other steam equipment. Resultant damage by fire or combustion explosion, however, is covered.

Temperature/Humidity

There is no coverage for loss caused by changes in temperature or humidity unless the change results in a covered peril. In that case, the resultant damage is covered.



Voluntary Parting

With the exception of the previously discussed coverage extension, Fraud And Deceit, there is no coverage if the insured is tricked into parting with the title to or possession of property.



REMINDER: Fraud And Deceit coverage applies with a limit of \$50,000.

Wear And Tear

There is no coverage for loss caused by wear and tear, marring, or scratching unless these result in a covered peril. In that case, the resultant damage is covered.

Equipment Breakdown and Testing Issues

Builders' Risk Coverage – Scheduled Jobsite Form – Comprehensive Form (IM 7050 07 20) includes three exclusions commonly seen in property and inland marine forms.

- Electrical currents
- Mechanical breakdown
- Steam boiler explosion

When writing coverage on a completed building or structure, it is common practice for an agent to recommend equipment breakdown coverage to cover these exposures. It is important to recognize that these exposures exist for projects under construction as well. At some point during the construction process, it is likely that the electrical system, heating, air conditioning, and other equipment may be operating. These systems can be damaged by such things as electrical arcing, mechanical breakdown, and power surges.

Adding equipment breakdown coverage to builders risk is the way to remedy these coverage problems, and many insurers have endorsements to do this.

A related issue is coverage for damage during the testing of equipment and/or other property. Insurers address this issue in many ways, but three common approaches are as follows:

1. Some insurers exclude damage to property while it is being tested, although many will still cover resultant damage to other property. These insurers may re-add a small amount of testing coverage as an additional coverage or offer an endorsement to add back the coverage.
2. Some insurers exclude only hot testing, leaving in place coverage for cold/operational/building start-up testing. If hot testing coverage is needed, it can sometimes be added by endorsement. The language below helps to illustrate one insurer's distinction between hot and cold testing. This coverage is important should the building systems be damaged when they are being started and tested.

SAMPLE POLICY LANGUAGE

“Hot testing” means any start-up, commissioning or other form of testing making use of any feedstock, including operational tests and performance tests performed in conjunction with “hot testing”. “Hot testing” includes the examination, experiment, or trial of Covered Property such as ovens, boilers, turbines, generators, pumps, process equipment or equipment of a similar nature to prove their ability or function. “Hot testing” does not include the start-up and testing of building systems such as sprinkler systems, plumbing, piping systems, gas lines, air conditioning lines, elevators, or escalators.

3. A few insurers exclude neither hot nor cold testing. These carriers will likely take a close look at any hot testing exposures during the underwriting process.

Although **Builders’ Risk Coverage – Scheduled Jobsite Form – Comprehensive Form (IM 7050 07 20)** doesn’t have a specific testing exclusion, coverage for losses during the testing of equipment or other property could be removed by other exclusions such as Defects, Errors, And Omissions or Mechanical Breakdown.

Insurers using AAIS forms may choose to limit their exposure to testing losses or provide broader coverage for equipment breakdown and testing. These are some of the AAIS options available:

Equipment Breakdown And Testing Coverage (IM 7083 08 10)



The Equipment Breakdown And Testing Coverage endorsement is designed to provide comprehensive coverage for the equipment breakdown exposure, including testing. This endorsement provides coverage for loss to covered property caused by an accident to covered equipment. The accident must involve mechanical breakdown, artificially generated electrical current, steam equipment, or certain damage to water-heating equipment. This endorsement also has provisions that can extend coverage under the endorsement to Delay In Completion coverage.

Testing Endorsement (IM 7076 01 12)



The Testing Endorsement begins by adding an additional testing exclusion and then adds back testing coverage with a specific limit of insurance. Testing means start-up, performance, stress, pressure, or overload testing of materials, supplies, machinery, fixtures, and equipment that will become a permanent part of a covered building or structure.

AAIS
IM 7076 01 12
Page 1 of 1

This endorsement changes the
Builders' Risk Coverage
-- PLEASE READ THIS CAREFULLY --

POLICY NUMBER

TESTING ENDORSEMENT

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

TESTING SCHEDULE

The most "we" pay in any one occurrence for loss resulting from testing is:

"Limit"

\$ _____

SUPPLEMENTAL COVERAGES

Testing --

1. **Coverage** -- "We" cover direct physical loss to a covered "building or structure" resulting from testing.
2. **Testing Means** -- Testing as used in this endorsement means start-up, performance, stress, pressure, or overload testing of materials, supplies, machinery, fixtures, and equipment that will become a permanent part of a covered "building or structure".
3. **Testing Limit** -- The testing "limit" indicated on the Testing Schedule is the most "we" will pay for any loss resulting from testing.

However, if testing results in a "specified peril", the most "we" will pay for any resulting loss is the "limit" indicated on the "schedule of coverages" for the covered "building or structure".

4. **Rehabilitation And Renovation Form** -- If this endorsement is attached to the Rehabilitation And Renovation Form, the references to "building or structure" are replaced with "rehabilitation or renovation project".
5. **Exclusions That Still Apply** -- The exclusions for Electrical Currents, Steam Boiler Explosion, and Mechanical Breakdown still apply except to the extent that coverage is provided under this endorsement.

ADDITIONAL PERILS EXCLUDED

Testing -- Except to the extent coverage is provided under this endorsement, "we" do not pay for loss or damage caused by or resulting from testing.

But if testing results in a "specified peril", "we" do cover the loss or damage caused by that "specified peril".

IM 7076 01 12

Section 1: Commercial Inland Marine Concepts and Coverage

Because language for testing varies so much among builders risk policies, it is important to understand the project and read any testing language with the details of the project in mind.

Other Possible Exclusions

Although not an exclusion in **Builders' Risk Coverage - Scheduled Jobsite Form - Comprehensive Form (IM 7050 07 20)**, many builders risk forms exclude loss by collapse, unless the collapse is caused by specified perils. Some forms exclude water intrusion, water that enters a building or structure when the exterior of the building or structure has not first sustained damage by a covered peril. Still other forms exclude loss due to freezing, unless precautions to protect the property are taken. There are many other exclusions that may appear in insurer forms, and it is important to always review forms carefully to see what exclusions apply.

Table: 1.4 Summary of exclusions in Builders' Risk Coverage - Scheduled Jobsite Form - Comprehensive Form (IM 7050 07 20)

Excluded Causes of Loss in Builders' Risk Coverage - Scheduled Jobsite Form - Comprehensive Form (IM 7050 07 20)	There is coverage for damage by resultant:
Group 1 Exclusions	
Civil Authority	Fire, if property is destroyed to prevent the spread of fire
Earth Movement	Fire or explosion
Flood	Fire, explosion, or sprinkler leakage
Fungus	Specified perils
Nuclear Hazard	Fire
Ordinance Or Law	N/A
Sewer, Septic Tank, Sump, Or Drain Backup And Water Below The Surface	Fire, explosion, or sprinkler leakage
War And Military Action	N/A
Group 2 Exclusions	
Contamination Or Deterioration	Covered perils
Criminal, Fraudulent, Dishonest, Or Illegal Acts	N/A
Defects, Errors, And Omissions	Covered perils
Delay In Completion And Increased Construction Costs	N/A
Electrical Currents	Specified perils
Loss Of Use And Consequential Loss	N/A
Mechanical Breakdown	Specified perils
Missing Property	N/A
Pollutants	Specified perils
Steam Boiler Explosion	Fire or combustion explosion
Temperature/Humidity	Covered perils
Voluntary Parting	N/A
Wear and Tear	Covered perils

Check-In



Directions: Explain why the following losses are or are NOT covered under the unendorsed **Builders' Risk Coverage - Scheduled Jobsite Form - Comprehensive Form (IM 7050 07 20)**. Assume that the damaged property is covered property.

1. A power surge damages the circuitry in the newly installed elevators.

2. Copper pipes that were to have been installed the following day are stolen from the jobsite. Even though witnesses saw them flee, the thieves are never caught.

3. It is discovered that a newly poured concrete slab is at the wrong angle, and the work needs to be redone.

4. The insured's jobsite is located downhill from a shopping mall with a large parking lot. After a large amount of rain fell within a two-day period, water runoff from the shopping mall damaged materials stored at the insured's jobsite.

▶▶ Knowledge Check



Directions: Read the following scenario and provide a response.

Carmen is having a new building constructed and doesn't understand the importance of including coverage for cold/operational/building start-up testing in the builders risk policy. How would you explain the importance of this coverage to Carmen?

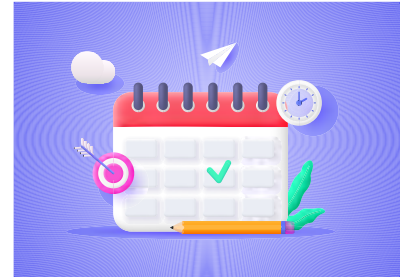
Builders Risk Policy Coverage Term

Learning Objective:

- 1.8 Use policy language and coverage-ending triggers to determine when builders risk coverage begins and ends.

When Coverage Begins

Many builders risk policies, including **Builders' Risk Coverage – Scheduled Jobsite Form – Comprehensive Form (IM 7050 07 20)**, cover buildings or structures while in the course of construction, erection, or fabrication. When writing builders risk, it is important that any pre-construction exposures be addressed with the insurer. For example, property for use in the project could be stored off-premises or be in transit to the site.



If coverage is written to include an existing building on a renovation project, the building might sit vacant until construction, erection, or fabrication begins. Language below from one insurer's form clearly addresses the issue of the vacant building.

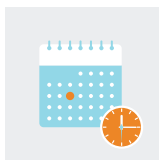
Understanding the timeline of the project is an important part of the builders risk underwriting process.

SAMPLE POLICY LANGUAGE

COVERAGE LIMITATION

Vacant Building – “We” only cover a vacant “existing building” for 60 consecutive days from the inception date of this policy unless building permits have been obtained and rehabilitation or renovation work has begun on the “existing building”.

When Coverage Ends



In most property and inland marine policies, coverage is in effect between the effective date and expiration date shown on the policy declarations. This is not the case, though, with builders risk. Builders risk policies include a series of coverage-ending triggers. When the first one occurs, coverage ends.

ADDITIONAL COVERAGE LIMITATIONS

1. **Occupancy And Use** – “We” do not provide coverage under this policy if, without “our” prior written consent, covered “buildings or structures” as described under Property Covered are:
 - a. occupied in whole or in part; or
 - b. put to its intended use.

However, this provision does not apply if Permission To Occupy is indicated on the “schedule of coverages”.

2. **When Coverage Ceases** – Coverage will end when one of the following first occurs:
 - a. this policy expires or is canceled;
 - b. covered “buildings or structures” are accepted by the purchaser;
 - c. “your” insurable interest in the covered property ceases;
 - d. “you” abandon construction with no intent to complete it; or
 - e. covered “buildings or structures” have been completed for more than 90 days.

IM 7050 07 20

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Occupancy And Use

In many builders risk policies, coverage ceases when buildings or structures are occupied in whole or in part or put to their intended use. Imagine a developer who is constructing a three-story building to be leased to others. The second and third stories will include eight apartments, while the first floor will be mercantile space. Chances are excellent that, once the first floor is complete, tenant stores may begin to move in and open while the interior work on the apartments is being completed. If the policy term has not expired, the insured may believe there is coverage, although there is not.



Many insurers will agree to include Permission To Occupy coverage. Some insurers build in a short period of time when permission to occupy is given, e.g., 60 or 90 days. Some insurers prefer to add an endorsement.

In **Builders’ Risk Coverage – Scheduled Jobsite Form – Comprehensive Form (IM 7050 07 20)**, permission to occupy is granted by indicating it on the schedule of coverages.

PERMISSION TO OCCUPY (check one)

Permission to occupy is not granted.

The occupancy and use provisions under Additional Coverage Limitations are deleted, and permission is granted to occupy covered property after the date indicated below:

Month ____ Day ____ Year ____

IM 7055 07 20

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Other Coverage-Ending Triggers

The following coverage-ending triggers appear in **Builders' Risk Coverage – Scheduled Jobsite Form – Comprehensive Form (IM 7050 07 20)**. As soon as the first of these events occurs, coverage ends.

- a. This policy expires or is cancelled.
- b. The covered building or structure is accepted by the purchaser. This typically happens after completion, and permanent property coverage should be secured by the purchaser.
- c. The insured's insurable interest in the covered property ceases. Property and inland marine policies never pay more than the insured's insurable interest in the property.
- d. The insured abandons construction with no intent to complete it. This exposure is a moral hazard for the insurer. When a project is abandoned, it is often because the insured doesn't have the funds to complete it, or some other problem has developed.
- e. Covered buildings or structures have been completed for more than 90 days. Exposures to completed buildings are different than those for builders risk. By this point in time, permanent property coverage should have been secured.

Builders risk policies may include additional coverage-ending triggers such as when space is leased or rented to others or when hot testing begins. It is advisable to make sure the insured is aware that coverage may not be in effect for the entire term of the policy.

What Should the Policy Term Be?

It is important to make sure a client understands when coverage under builders risk begins and ends. Equally important is making sure that builders risk is written for a period of time adequate to cover the entire period of construction. Often, an agent will write an annual builders risk policy to cover a project that is expected to last more than one year. The plan, of course, is to renew or extend the policy at the end of the year. What if that plan doesn't work, though? What if the insurer refuses to renew or extend due to claims or for some other reason? What if the rate for the renewal or extension is significantly higher than the rate on the original policy? While not all insurers offer policies for more than twelve months, writing coverage for at least as long as the length of the project, ideally with some extra time in case there are delays, is the better choice.

▶▶ Knowledge Check



Directions: Read the scenario below and explain your response.

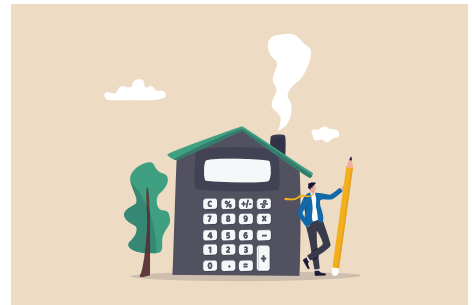


Shoppers, Inc., is building a new strip mall on the edge of town and secures builders risk coverage for a one-year term using **Builders' Risk Coverage – Scheduled Jobsite Form – Comprehensive Form (IM 7050 07 20)**. Ten months into the policy term, the first section of the building is complete, and a tenant is allowed to move in. Explain how Shoppers' coverage is affected by this occupancy, and how the problem could have been avoided.

Valuation and Payment of Losses

Valuation

Builders' Risk Coverage – Scheduled Jobsite Form – Comprehensive Form (IM 7050 07 20) values loss to covered property at replacement cost and includes the same type of Pair Or Set and Loss To Parts language discussed in the bailee coverage section.



VALUATION

1. **Replacement Cost** – The value of covered property will be based on replacement cost as described below.
 - a. **Replacement Cost Means** – Replacement cost means:
 - 1) the necessary and reasonable costs of materials and labor incurred to repair or replace, without deduction for depreciation, the part of the covered property that sustains direct physical loss or damage;
 - 2) the reasonable overhead and profit related to the covered property that sustains direct physical loss or damage but not to exceed the overhead and profit being charged for the construction, erection, or fabrication of covered “buildings or structures” in accordance with the construction contracts; and
 - 3) other related construction costs and expenses that are re-incurred to repair or replace the part of the covered property that sustains direct physical loss or damage but only if such costs have been included as part of the “limit” for covered “buildings or structures”.
 - b. **Replacement Cost Limitations** – Replacement cost is limited to the cost of repair or replacement with similar materials on the same site and used for the same purpose.
 - c. **Payment Limitation** – If the part of the covered property that sustains direct physical loss or damage is repaired or replaced, the payment will not exceed the amount “you” spend to repair or replace the damaged or destroyed property.

IM 7050 07 20

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Some builders risk policies value losses on an actual cash value basis, which considers physical depreciation. And even policies that have replacement cost valuation will often apply actual cash value valuation to any added coverage for standing or existing buildings.

AAIS has a form specifically designed to cover rehabilitation and renovation projects:

Builders’ Risk Coverage – Rehabilitation and Renovation Form (IM 7054 07 20). In this form, existing buildings can be valued at actual cash value or at a stated value indicated on the schedule of coverages.

Coinsurance

Builders’ Risk Coverage – Scheduled Jobsite Form – Comprehensive Form (IM 7050 07 20) and many other builders risk policies are written on a 100% coinsurance basis. The limit of insurance must be equal to 100% of the estimated completed value of the covered building or structure. Recall that the definition of buildings or structures includes the sitework and any permanent fixtures.

Many insurers are willing to waive coinsurance. Coinsurance is a way to ensure that the insured is carrying the proper limit of insurance. In the builders risk underwriting process, the insurer often has the construction budget, so is assured that the limit chosen is the correct one.

Limits of Insurance

A builders risk policy may have several different limits of insurance.

- One limit applies to direct damage losses at a particular jobsite.
- Separate limits typically apply to time element coverages.
- A combined catastrophe limit may apply to both direct damage and time element coverages.
- If coverage is written to cover multiple jobsites, a catastrophe limit may apply, subject to a specific limit for each jobsite.
- Lower sublimits typically apply to Property In Transit and Property Off-premises.
- Lower sublimits often apply if Flood and/or Earthquake coverages are added.
- A lower sublimit may apply to temporary structures/temporary works.

In setting a limit of insurance for a particular project, it is important to consider several factors. The cost of labor and materials as well as contractor overhead and profit should be a starting point, and this information can be found in the construction budget. One must also include the value of any temporary structures, such as scaffolding and construction forms, to be insured.

Project costs often escalate beyond the original contract price because of change orders or because the cost of labor and/or materials increases. Many insurers offer endorsements that will increase the limit of insurance by a certain amount when costs increase for these reasons.

Change Order Endorsement (IM 7975 08 12)



The Change Order Endorsement adds an additional limit of coverage for increases in construction costs related to changes in construction specifications.

Check-In



Directions: Identify several coverages for which a sublimit of coverage may apply.

Review the Delay In Completion Schedule on the next few pages.

**DELAY IN COMPLETION SCHEDULE
INCLUDES RENTAL INCOME AND INCOME COVERAGE**

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

"Jobsite"

Check if applicable:

Attach Additional Delay In Completion Schedule to schedule more "jobsites"

CATASTROPHE LIMIT Refer to Schedule Of Coverages

COVERAGES (check if coverage applies)

Additional Construction Expenses "Limits"

Additional Construction Expenses Limit \$ _____

Additional Construction Expenses are limited to the following expenses as described in the Delay In Completion Coverage Part:

- Advertising
- Design Fees
- Financing
- Lease Administration
- Professional Fees
- Permit Fees

Deductible provisions under the Builders' Risk Coverage form apply to Additional Construction Expenses.

Additional Soft Costs

30-Day Limit \$ _____

Occurrence Limit \$ _____

Additional Soft Costs are limited to the following soft costs as described in the Delay In Completion Coverage Part:

- Interest Payments
- Realty Taxes
- Lease Expenses
- Insurance Premiums

Waiting period provisions under the Delay In Completion Coverage form apply to Additional Soft Costs.

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COVERAGES (cont.)

Rental Income

"Limits"

30-Day Limit

\$ _____

Occurrence Limit

\$ _____

Waiting period provisions under the Delay In Completion Coverage form apply to Rental Income.

Income Coverage

30-Day Limit

\$ _____

Occurrence Limit

\$ _____

Waiting period provisions under the Delay In Completion Coverage form apply to Income Coverage.

OPTIONAL COVERAGES -- (check if coverage applies)

Sewer Backup Coverage (check one)

Coverage Not Provided

Coverage Provided
The most "we" pay in any one occurrence
for loss caused by sewer backup is:

\$ _____

Waiting period provisions under the Delay In Completion Coverage form apply to Sewer Backup.

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COVERAGE EXTENSIONS

Expenses To Reduce A Loss	<u>Coverage Provided</u>
Ordinance Or Law	<u>Coverage Provided</u>
Interruption By Civil Authority	_____ weeks
Limited Fungus Coverage	_____ days

Except for Expenses To Reduce A Loss the waiting period provisions under the Delay In Completion Coverage form apply to Coverage Extensions.

SUPPLEMENTAL COVERAGES

General Administration Expenses \$ _____

Deductible provisions under the Builders' Risk Coverage form apply to General Administration Expenses.

WAITING PERIOD (check one)

Not Applicable Number of Days _____ days

IM 7080 07 20

The Time Element Side of Builders Risk (Delay in Completion)

Learning Objective:

- 1.9 Explain time element coverages that can be included on a builders risk policy, including various loss of income coverages and soft costs coverages.

Our discussion to this point has focused largely on coverage to repair or replace damaged property—the direct damage or hard costs side of the builders risk policy. Various time element coverages can be added to builders risk policies, and these coverages are often referred to as delay in completion coverages.

Many insurers add these coverages by endorsement, while some may include small amounts of some of the coverages in their builders risk coverage forms. And while direct damage coverage can be written to cover the insurable interests of many involved in the project such as the project owner, the general contractor, and the subcontractors, the time element coverages are typically written for the benefit of the project owner only. The limits for these coverages are normally separate from the limit of coverage that applies to damage to property at the jobsite.



Rental Income and Income Coverages



When it comes to rental income and income coverages, these are similar in some ways to the business income coverage that is commonly added to commercial property policies. If a project is delayed due to damage by a covered cause of loss, Rental Income or Income Coverage will help the insured with continuing operating expenses and lost profit that would have been earned. A waiting period typically applies and is shown on the **Delay In Completion Schedule (IM 7080 07 20)**.

These coverages are illustrated with language from the AAIS form **Delay In Completion Coverage Part Includes Rental Income And Income Coverage (IM 7079 07 20)**. In this form, each of these coverages has a limit per occurrence with a sublimit on what can be paid during any thirty-day period.

COVERAGES

3. Rental Income –

- a. **Coverage** – “We” pay for actual loss of rental income incurred during the “delay period”.
- b. **Coverage Limitation** – “We” only cover loss of rental income that arises out of a “delay” to “buildings or structures” at a “jobsite” described on the Delay In Completion Schedule.
- c. **Deduction From Loss Of Rental Income** – Expenses that do not necessarily continue because of a “delay” will be deducted from the loss of rental income.
- d. **Limits** –
 - 1) **30-Day Limit** – The most “we” pay in any 30-day period is the Rental Income 30-Day Limit indicated on the Delay In Completion Schedule.
 - 2) **Occurrence Limit** – The most “we” pay for loss in any one occurrence is the Rental Income Occurrence Limit indicated on the Delay In Completion Schedule.

4. Income Coverage –

- a. **Coverage** – “We” pay for actual loss of net income incurred during the “delay period”.
- b. **Coverage Limitations** – “We” only cover:
 - 1) the actual loss of net income (net profit or loss before income taxes) that would have been earned or incurred and the continued operating expenses normally incurred by the “business”, including, but not limited to, payroll expense; and
 - 2) loss of net income that arises out of a “delay” to “buildings or structures” at a “jobsite” described on the Delay In Completion Schedule..
- c. **Limit** –
 - 1) **30-Day Limit** – The most “we” pay in any 30-day period is the Income Coverage 30-Day Limit indicated on the Delay In Completion Schedule.
 - 2) **Occurrence Limit** – The most “we” pay for loss in any one occurrence is the Income Coverage Occurrence Limit indicated on the Delay In Completion Schedule.

IM 7079 07 20

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Rental Income and Income Coverage apply to loss incurred during the “delay period,” a defined term in the policy. In addition, if a waiting period is included on the Delay In Completion Schedule, the policy pays for loss after the number of days shown.

ADDITIONAL DEFINITIONS

2. “Delay”

- a. “Delay” means an interruption in the construction, erection, or fabrication of “buildings or structures” caused by a covered peril.
- b. “Delay” does not mean an interruption in or extension of construction, erection, or fabrication caused by or resulting from a change order, design change, or other action or decision that is independent of direct physical loss or damage caused by a covered peril for which payment is made under the Builders’ Risk Coverage form to which this coverage part is endorsed, whether occurring prior to or after such physical loss or damage.

3. “Delay period”

- a. “Delay period” means the period of time the completion of the construction, erection, or fabrication of covered “buildings or structures” is “delayed” as a result of direct physical loss or damage caused by a covered peril to property covered under the Builders’ Risk Coverage form to which this coverage part is attached.

This is not limited by the expiration date of the policy.

- b. “Delay period” does not mean the increased time:
 - 1) required to comply with the enforcement of any ordinance, law, or decree that:
 - a) regulates the use or repair of any property; and
 - b) requires “you” or anyone else 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) caused by or resulting from a change order, design change, or other action or decision that is independent of direct physical loss or damage caused by a covered peril for which payment is made under the Builders’ Risk Coverage form to which this coverage part is endorsed, whether occurring prior to or after such physical loss or damage.

IM 7079 07 20

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Downtown Developers is building an apartment building, and the project is damaged in a nor’easter. The project is now six months behind schedule. Because the apartment building opened late, Rental Income coverage pays the loss of rental income during that six-month delay period, minus any expenses that do not necessarily continue during that time.



Additional Construction Expenses and Additional Soft Costs Coverages

One coverage that is specific to builders risk is often referred to as “soft costs” coverage. In many ways, soft costs coverage is similar to the extra expense coverage that is commonly added to commercial property policies. After physical damage to a project by a covered cause of loss, there are certain expenses that may be incurred over and above those that would not have been incurred had there been no delay. Most insurers cover only soft cost expenses specifically listed in the coverage form, although many are open to adding coverage for other soft costs at the insured’s request. Some insurers include a specific limit of coverage for each type of covered soft cost, although it is more common to include a blanket limit that applies to all covered soft costs. Lastly, some insurers include a limitation on how much of the limit can be paid for certain expenses in any thirty-day period; AAIS forms take this approach

Descriptions of covered soft costs are included in the AAIS form **Delay in Completion Coverage Part Includes Rental Income and Income Coverage (IM 7079 07 20)**. This form breaks down these expenses into separate categories for Additional Construction Expenses and Additional Soft Costs. Some builders risk policies, including those using older versions of AAIS forms, include all these expenses in one category simply called soft costs.



In addition to the loss of six months of rental income, Downtown Developers incurred some additional expenses during the delay period. Fortunately, Downtown Developers recognized the importance of adding coverage for Additional Construction Expenses and Additional Soft Costs. The builders risk insurer paid Downtown Developers for the following expenses incurred:

- additional advertising to the members of the community to update them on the project rebuilding,
- loan fees to restructure the construction loan,
- additional interest on the construction loan which now carries a higher rate, and
- premium to extend the builders risk and construction project CGL an additional six months.

COVERAGES

1. Additional Construction Expenses –

- a. **Coverage** – “We” pay for additional construction expenses incurred during the “delay period”.
- b. **Coverage Limitation** – “We” only cover additional construction expenses that arise out of a “delay” to “buildings or structures” at a “jobsite” described on the Delay In Completion Schedule.
- c. **Additional Construction Expenses Means** – Additional construction expenses means the necessary and reasonable expenses relating to the construction, erection, or fabrication of covered “buildings or structures” that are over and above those expenses that would have been incurred had there been no “delay period”.

Additional construction expenses are limited to:

- 1) **Advertising** – Additional advertising, public relations, and promotional expenses.
 - 2) **Design Fees** – Additional fees for architects, interior designers, consultants, and other technical advisors, and engineers.
 - 3) **Financing** – Additional cost of financing. Additional cost of financing means additional:
 - a) fees for letters of credit and trusts; and
 - b) commissions and loan fees incurred in rearranging financing for the project.
 - 4) **Lease Administration** – The cost of administrative expenses and commissions that result from the renegotiation of leases.
 - 5) **Professional Fees** – Additional fees for accountants and attorneys but only to the extent that services for which those fees are being claimed were being provided prior to the date of the direct physical loss or damage that caused the “delay period”. Professional fees do not include fees incurred to prepare an insurance claim, measure a loss incurred because of a “delay period”, or to analyze insurance coverage.
 - 6) **Permit Fees** – Additional fees for renewing or replacing construction permits or other licenses and permits necessary to continue construction.
- d. **Limit** – The most “we” pay for loss in any one occurrence is the Additional Construction Expenses Limit indicated on the Delay In Completion Schedule.

COVERAGES

2. Additional Soft Costs –

- a. **Coverage** – “We” pay for additional soft costs incurred during the “delay period”.
- b. **Coverage Limitation** – “We” only cover additional soft costs that arise out of a “delay” to “buildings or structures” at a “jobsite” described on the Delay In Completion Schedule.
- c. **Additional Soft Costs Means** – Additional soft costs means the necessary and reasonable costs relating to the construction, erection, or fabrication of covered “buildings or structures” that are over and above those costs that would have been incurred had there been no “delay period”.

Additional soft costs are limited to:

- 1) **Interest Payments** – Additional interest payments on money borrowed to finance construction, remodeling, renovation, or repair including increased interest payments due to a rise in interest rates.
 - 2) **Realty Taxes** – Additional realty taxes and other assessments that “you” incur for the period of time that construction has been extended beyond the projected completion date.
 - 3) **Lease Expenses** – The additional cost to extend leases for construction equipment and temporary office space.
 - 4) **Insurance Premiums** – The additional cost of insurance premiums necessary to renew or extend insurance coverage.
- d. **Interest Payments Do Not Include** – Interest payments do not include “your” loss or forfeiture of any equity or ownership interest as the result of the inability by anyone to satisfy any obligations including, but not limited to, the repayment of financing imposed by agreement, contract, or law.
 - e. **Limits** –
 - 1) **30-Day Limit** – The most “we” pay in any 30-day period is the Additional Soft Costs 30-Day Limit indicated on the Delay In Completion Schedule.
 - 2) **Occurrence Limit** – The most “we” pay for loss in any one occurrence is the Additional Soft Costs Occurrence Limit indicated on the Delay In Completion Schedule.

Table: 1.5 Coverages In Delay In Completion Coverage Part Includes Rental Income And Income Coverage (IM 7079 07 20)

Additional Construction Expenses (subject to the deductible in the Builders Risk form)	Additional Soft Costs (subject to a waiting period shown on the Delay In Completion Schedule)
Advertising	Interest Payments
Design Fees	Realty Taxes
Financing	Lease Expenses
Lease Administration	Insurance Premiums
Professional Fees	
Permit Fees	

Other Time Element Coverages

In addition to the Rental Income and Income Coverage and the coverage for Additional Construction Expenses and Additional Softs Costs, **Delay In Completion Coverage Part Includes Rental Income And Income Coverage (IM 7079 07 20)** includes several other coverages which are similar to coverages found in other builders risk policies.

Optional Coverage: Sewer Backup

Sewer Backup coverage can be added with a limit separate from the other available time element coverages. An additional covered cause of loss is added. Like the direct damage coverage, coverage will also apply when water or waterborne material backs up, overflows, or is discharged through a sewer or drain, sump, or septic tank. Coverage will also apply when damage is caused by water or waterborne material below the surface of the ground.

Coverage Extensions

Several coverage extensions are automatically included. These coverages are part of the limits that apply to Rental Income, Income Coverage, Additional Construction Expenses, and Additional Soft Costs.

Expenses To Reduce A Loss

This coverage pays expenses to expedite the repair or replacement of covered property that sustains direct physical loss or damage. Coverage applies only to the extent that these expenses reduce the amount of loss otherwise payable.

Ordinance Or Law

The selected coverages—Rental Income, Income Coverage, Additional Construction Expenses, and/or Additional Softs Costs—apply when there is a delay due to the enforcement of ordinances or laws.

Section 1: Commercial Inland Marine Concepts and Coverage



Let's revisit ABC Development, Inc., the company introduced in an earlier Check-In. ABC was building a new condominium that was damaged in a hurricane. The town ordered ABC to demolish the undamaged portion of the building and to rebuild with a different construction type and sprinklers that were not part of the original plans. Without the Ordinance Or Law coverage extension, ABC would only have time element coverages for the length of time it would take to repair the damaged part of the building with the same features it originally had. With this coverage extension, coverage applies during this longer delay period.

Interruption By Civil Authority

The selected coverages—Rental Income, Income Coverage, Additional Construction Expenses, and/or Additional Softs Costs—apply when the access to the covered building or structure is denied by an order of civil authority. The order must be a result of direct damage to property away from the jobsite by a covered cause of loss. Unless the number of weeks is changed on the Delay In Completion Schedule, the policy provides coverage for up to two consecutive weeks.

Limited Fungus Coverage

The selected coverages—Rental Income, Income Coverage, Additional Construction Expenses, and/or Additional Softs Costs—apply when there is a delay due to loss caused by fungus. Unless the number of days is changed on the Delay In Completion Schedule, the policy provides up to 30 days of coverage.

Supplemental Coverage: General Administration Expenses

General Administration Expenses coverage applies with a \$50,000 limit that is separate from the other coverages included on the policy. Coverage applies to general administrative and overhead expenses for additional clerical personnel, additional security costs, and other similar additional expenses incurred during the delay period.

Note that some builders risk policies include these types of expenses as a covered soft cost.

▶▶ Knowledge Check



Directions: Read the scenario below and explain your response.



Your customer is about to start construction on a new office building that will be leased to others. Using coverage options from **Delay In Completion Coverage Part Includes Rental Income And Income Coverage (IM 7079 07 20)**, what coverages would you recommend and why?

Installation Floater

Learning Objective:

1.10 Explain the purpose of the installation floater and why a contractor may want to buy this coverage.

Installation Floater vs. Builders Risk

Builders risk is written to cover buildings or structures under construction or in the course of renovation or rehabilitation. Builders risk usually covers the insurable interest of many parties involved in the project such as the project owner, the general contractor, and the subcontractors.

Installation floaters, in comparison, are usually written to cover materials or equipment to be installed in an existing building or structure or to cover a particular aspect of a project. And while the buyer of builders risk is usually the project owner or general contractor, most installation floaters are sold to trade contractors working with materials and equipment. Other customers for an installation floater include those who have bought or sold equipment to be installed.



Both builders risk and installation floaters can be written to cover property at a project site, in transit, and in temporary storage away from the project site. Sometimes it is not obvious whether a builders risk policy or an installation floater is the best way to cover certain property. In fact, some coverage forms combine both builders risk and installation floater coverages—the AAIIS **Builders' Risk Coverage – Builders' Risk And Installation Floater Form (IM 7053 07 20)** is an example. Whenever there is doubt, it is best to obtain a clear description of the work to be performed and to discuss coverage options with a knowledgeable inland marine underwriter so that an appropriate insurance program can be constructed.

Why Purchase an Installation Floater?

The insurable interest of trade contractors is often covered under builders risk policies written to cover the projects on which they work. These contractors, however, are not typically involved in the purchase of builders risk and may not be adequately covered. Trade contractors, for example, usually have no input into the choice of policy limits and coverage features, and may find that they are responsible for a builders risk deductible much higher than they can afford to carry.

Further, many construction contracts require trade contractors to carry their own coverage on materials and equipment away from the jobsite. Recall that there is only \$10,000 Property Off-premises coverage in the **Building and Personal Property Coverage Form (CP 00 10 10 12)** and only \$5,000 limited Property in Transit coverage in the **Causes Of Loss – Special Form (CP 10 30 09 17)**.

Lastly, many contractors work on projects that are not covered by builders risk. The HVAC contractor installing a new compressor for a homeowner and the plumber replacing a water heater in an apartment building will not have a builders risk policy to turn to.

One of the best ways for a business involved in the installation of materials or equipment to protect its interest in the property is through the purchase of an installation floater.



When a trade contractor is insured under both a builders risk policy and an installation floater, it is important to remember that other insurance clauses in each policy will determine the priority of payment. When another policy with different terms also covers a loss, **Installation Floater Coverage (IM 7100 08 10)** states that it will pay the amount of covered loss in excess of the amount due from the other policy whether the insured can collect on it or not. If the other policy is subject to the same terms, **Installation Floater Coverage (IM 7100 08 10)** states that it will pay a proportional share of the loss. If builders risk includes the same type of other insurance language, this could create confusion at the time of loss. It is important to review the other insurance clause in any installation floater being considered when the insured may also be covered under builders risk.

Non-Reporting Form vs. Reporting Form Basis

Like builders risk, an installation floater can be written to cover property for one project or for many.

Non-Reporting Form Policies

If coverage is to apply to just one project, it is commonly written on a non-reporting form basis. The limit of insurance chosen applies to the scheduled jobsite. This approach may be taken for a large project, for a project with specific coverage requirements, or where the construction contract requires a dedicated policy for the project.

Non-reporting form policies can also be written on a blanket basis to cover property for numerous unscheduled projects. The schedule of coverages includes blanket jobsite and catastrophe limits rather than a limit that applies to a particular project.

Reporting Form Policies

When an installation floater is written to cover numerous unscheduled projects, it is sometimes written on a reporting form basis. AAIS **Installation Floater Coverage Reporting Form (IM 7101 08 10)** is an example of such a form. There is one overall catastrophe limit and a separate jobsite limit. The insured is required to make periodic reports of the receipts earned from installation projects, and the premium charged is based on those reports. If the insured submits the required reports on time and accurately, the full policy limit is available to pay losses. If the insured does not report information accurately and honestly, however, various penalties described in the policy apply.

▶▶ Knowledge Check



Directions: Read the scenario below and explain your response.

Henry's Hardwood installs hardwood floors. Approximately 50% of Henry's work is new construction where a builders risk policy may be in effect. The rest of Henry's work involves installing flooring in existing buildings. Explain to Henry why he may want to consider purchase of an installation floater.

Review the Schedule Of Coverages on the next few pages.

AAIS
IM 7105 01 12
Page 1 of 2

POLICY NUMBER

**SCHEDULE OF COVERAGES
INSTALLATION FLOATER COVERAGE**

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

PROPERTY COVERED (check one)

"Limit"

Blanket Coverage

Jobsite Limit

\$ _____

Catastrophe Limit

\$ _____

Scheduled Locations Coverage

Loc.
No.

"Jobsite"

"Limit"

_____ \$ _____

_____ \$ _____

Catastrophe Limit

\$ _____

COVERAGE EXTENSIONS

"Limit"

Additional Debris Removal Expenses

\$ _____

Emergency Removal

_____ days

Limited Fungus Coverage

\$ _____

SUPPLEMENTAL COVERAGES

Pollutant Cleanup And Removal

\$ _____

Sewer Backup

\$ _____

Temporary Storage Locations

\$ _____

Transit

\$ _____

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DEDUCTIBLE

Deductible Amount \$ _____

COINSURANCE (check one)

Waived

80% 90% 100% Other _____%

ADDITIONAL INFORMATION

IM 7105 01 12

Installation Floater – The Policy Coverage

Learning Objective:

1.11 Understand the coverage provided by an installation floater including:

- Property covered and not covered
- Coverage extensions and supplemental coverages

As is true with many inland marine coverages, insurers often write their own installation coverage forms. This course examines language from AAIS **Installation Floater Coverage (IM 7100 08 10)**. The **Schedule Of Coverages (IM 7105 01 12)** is attached to the installation floater to describe the policy limits, deductible, and other coverage features.

Following the pattern seen in bailee and builders risk, this policy starts with a broad description of covered property and narrows that description in a Property Not Covered section.

Covered Property

Installation floaters typically cover property of others in the insured's care, custody, or control in addition to the insured's own property. This coverage feature is important because, as was discussed in the bailee section, CGL policies exclude damage to personal property in the insured's care, custody, or control. CGL policies also exclude damage to that particular part of real property on which an insured is performing operations if the property damage arises out of those operations.



Kristin's Kitchens is a kitchen remodeling contractor doing a renovation for a homeowner. Kristin supplies and installs the cabinetry and fixtures for the project. The homeowner, though, purchased the granite countertops and had them delivered to the home for Kristin to install. While Kristin is installing the countertops, they are covered property under Kristin's installation floater.



Installation Floater Coverage (IM 7100 08 10) covers property, at a jobsite, that the named insured is installing, constructing, or rigging. Such operations must be part of an installation project. Both “installation project” and “jobsite” are defined terms in the policy.

PROPERTY COVERED

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

1. **Coverage** – “We” cover direct physical loss or damage caused by a covered peril to:
 - a. “your” materials, supplies, fixtures, machinery, or equipment; and
 - b. similar property of others that is in “your” care, custody, or controlwhile at “your” “jobsite” and that “you” are installing, constructing, or rigging as part of an “installation project”.
2. **Coverage Limitations** –
 - a. “We” only cover materials, supplies, machinery, fixtures, and equipment that will become a permanent part of “your” completed “installation project”.
 - b. If Scheduled Locations Coverage is indicated on the “schedule of coverages”, “we” only cover an “installation project” at a “jobsite” that is described on the “schedule of coverages”.
3. **We Do Not Cover** – “We” do not cover materials, supplies, fixtures, machinery, or equipment that “you” are not or will not be installing, constructing, or rigging.

IM 7100 08 10

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DEFINITIONS

4. “Installation project” means an installation or construction project including, but not limited to, a repair or maintenance project that involves the installation, construction, or rigging of materials, supplies, fixtures, machinery, or equipment.
5. “Jobsite” means any location, project, or work site where “you” are involved in the installation, construction, or rigging of materials, supplies, fixtures, machinery, or equipment.

IM 7100 08 10

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Loss of Use

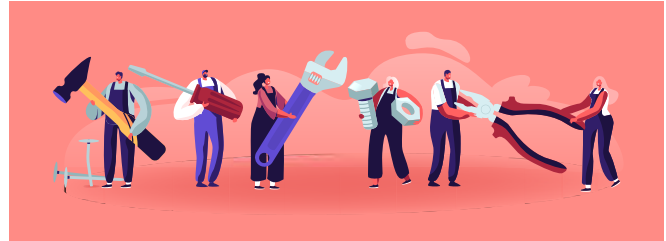
Installation floaters cover direct physical loss to covered property. Many insureds, though, also have an exposure to loss of use claims. Take, for example, the millwright who is hired to disassemble a piece of equipment at a customer’s location and re-assemble and install it at a different location in the building. Due to the negligence of the millwright, the item is damaged while being moved, and the customer sues for loss of use of the equipment.

Section 1: Commercial Inland Marine Concepts and Coverage

This loss of use exposure can be difficult to insure for many contractors. If the contractor is rigging, a rigger's liability form can be used to cover both direct damage and loss of use. The CGL policy includes loss of use in its property damage definition, and some insurers may provide a small amount of coverage as an exception to the CGL's Damage To Property exclusion. For many contractors, though, the loss of use exposure remains uninsured.

Repair Projects

Although repair projects are included in this definition of installation project, it is important to note that coverage applies only to materials, supplies, fixtures, machinery, or equipment that the insured is installing, constructing, or rigging. If a project includes repair work on a piece of equipment, for example, coverage under **Installation Floater Coverage (IM 7100 08 10)** and most other installation floaters does not apply to the item being repaired.



Depending on what happened to the equipment being repaired, the CGL policy may also exclude such damage in the Damage To Property exclusion.

COMMERCIAL GENERAL LIABILITY COVERAGE FORM

SECTION I – COVERAGES

COVERAGE A – BODILY INJURY AND PROPERTY DAMAGE LIABILITY

2. Exclusions

This insurance does not apply to:

j. Damage To Property

“Property damage” to:

- (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.

CG 00 01 04 13

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Some CGL insurers may add a small amount of coverage as an exception to exclusions j(4), j(5) and/or j(6).

There are some installation floaters that may have broader language, as seen below. Even with this broader language, though, any loss to the property being repaired caused by faulty workmanship will be excluded by most installation floaters.

SAMPLE POLICY LANGUAGE

Covered Property, as used in this Coverage Form, means:

Machinery, equipment, materials, and supplies which you own or which is in your care, custody, or control and which you will install, repair and/or move at the installation site shown in the Declarations.

Property Not Covered

The Property Not Covered section of this installation floater removes from coverage some of the same types of property that are excluded under the builders risk. Contraband, land, trees, shrubs, and plants, and waterborne property are excluded under both policies. Also excluded are machinery and equipment that will not become a permanent part of the finished project.

PROPERTY NOT COVERED

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

IM 7100 08 10

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Table: 1.6 Property Not Covered: Installation Floater vs. Builders Risk

Property Not Covered Installation Floater Coverage (IM 7100 08 10)	Property Not Covered Builders' Risk Coverage - Scheduled Jobsite Form - Comprehensive Form (IM 7050 07 20)
Airborne Property (except while in transit on a regularly scheduled airline flight)	N/A
Buildings, Structures, And Land	Land
Contraband	Contraband
Machinery, Tools, Or Equipment (or similar property) that will not be a permanent part of the project	Machinery, Tools, And Equipment (and materials and supplies and personal property) that will not become a permanent part of the project
Trees, Shrubs, And Plants (and lawns)	Trees, Shrubs, Or Plants (or lawns)
Waterborne Property (except while in transit in the custody of a carrier for hire)	Waterborne Property (except while in transit in the custody of a carrier for hire)
N/A	Roadways And Walkways (and other paved surfaces) more than 1,000 feet from the covered building or structure
N/A	Standing Buildings Or Structures

One significant difference between the coverage provided by builders risk as compared to an installation floater is that builders risk usually includes coverage for temporary works such as scaffolding, construction forms, fencing, and temporary structures. Although **Installation Floater Coverage (IM 7100 08 10)** does not cover this type of property, some insurers' installation floaters do. Other insurers are able to add coverage by endorsement. One insurer's language is below:

SAMPLE POLICY LANGUAGE

TEMPORARY PROJECT WORKS

Scaffolding erection costs (but not scaffolding), formwork, falsework and temporary structures necessary for the completion of the installation project provided their full cost is charge to the project and included in the contract value declared to us.

Temporary project works does not mean...contractors' or subcontractors' equipment, machinery and tools, trailers, materials, and supplies of a similar nature.....

▶▶ Knowledge Check



Directions: Read the scenarios below and explain your responses.

Amazing AV Systems installs large audiovisual systems in office buildings, conference rooms, and sports arenas. Amazing wants to better understand the coverage provided under its unendorsed **Installation Floater Coverage (IM 7100 08 10)** and asks whether the following are covered. How will you respond to the following questions?



1. Amazing hires a helicopter to place a large screen on the top of a 10-story building. Is the screen covered while it is being lifted into place?

2. Some of Amazing's customers purchase their own TV screens to be used in their projects. Amazing installs them along with the rest of the equipment supplied by Amazing. Are these TV screens covered property during the installation process?

3. Amazing brings a forklift to installation sites to move property. Is the forklift covered?

Coverage Extensions

Like builders risk policies, most installation floaters include coverage extensions. These extra coverages are often subject to a sublimit, although in some cases, the full policy limit applies. When a sublimit applies, the limit can often be increased by showing a higher limit on the schedule of coverages.

Many of the coverage extensions in an installation floater are similar to those in builders risk. For that reason, only a summary of the coverage extensions is included here.

Table: 1.7 Coverage Extensions: Installation Floater vs. Builders Risk

Coverage Extensions Installation Floater Coverage (IM 7100 08 10)	Coverage Extensions Builders' Risk Coverage - Scheduled Jobsite Form - Comprehensive Form (IM 7050 07 20)
Debris Removal	Debris Removal
Sublimit: 25% of the amount paid for direct loss	Sublimit: 25% of the amount paid for direct loss
Additional amount: \$5,000	Additional amount: \$5,000
Emergency Removal: 10 days	Emergency Removal: 10 days
N/A	Emergency Removal Expenses: \$10,000
N/A	Fraud And Deceit: \$50,000
Limited Fungus Coverage: \$15,000 annual aggregate limit	Limited Fungus Coverage: \$15,000 annual aggregate limit
N/A	Waterborne Property: \$10,000

Supplemental Coverages

Supplemental coverages are another way installation floaters provide coverage beyond coverage for damage to the covered property at the jobsite. As was the case with coverage extensions, the limit for these supplemental coverages can often be increased by showing a higher limit on the schedule of coverages.

Once again, some of the supplemental coverages in the installation floater are similar to those in builders risk.

Table: 1.8 Supplemental Coverages: Installation Floater vs. Builders Risk

Supplemental Coverages Installation Floater Coverage (IM 7100 08 10)	Supplemental Coverages Builders' Risk Coverage - Scheduled Jobsite Form - Comprehensive Form (IM 7050 07 20)
N/A	Expediting Expenses: \$10,000
N/A	Expense To Re-Erect Scaffolding: \$5,000
N/A	Fire Department Service Charges: \$1,000
N/A	Ordinance Or Law (Undamaged Parts Of A Building): included in policy limit
N/A	Ordinance Or Law (Increased Cost To Repair And Cost To Demolish/Clear Site): \$50,000
N/A	Personal Property: \$10,000
Pollutant Cleanup And Removal: \$10,000 annual aggregate limit	Pollutant Cleanup And Removal: \$25,000 annual aggregate limit
N/A	Rewards: \$1,000
Sewer Backup: \$5,000	Sewer Backup: \$10,000
Temporary Storage Locations: \$5,000	Temporary Storage Locations: \$10,000
Transit: \$5,000	Transit: \$10,000
N/A	Trees, Shrubs, And Plants: \$10,000

Two of the supplemental coverages that warrant closer inspection are Temporary Storage Locations and Transit.

SUPPLEMENTAL COVERAGES

3. Temporary Storage Locations –

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

4. Transit –

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

IM 7100 08 10

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The included limits are low—\$5,000 for each coverage—but can be increased by showing a higher limit on the schedule of coverages.

For Temporary Storage Locations coverage to apply, the property must be specifically allocated to or otherwise identified with a covered installation project. For Transit coverage to apply, the property must be property that will become a permanent part of a covered installation project. The installation floater is not intended to cover the inventory of a trade contractor, or the inventory of a material or equipment buyer or seller.

With some insurers’ installation floater forms, no coverage applies to property stored at the named insured’s own warehouse or storage yard. It is important to understand what the installation floater covers so that adequate business personal property limits can be included on the property policy.



Kristin’s Kitchens, a kitchen remodeling contractor, fabricates cabinets in its shop. Some cabinets are designed for a particular project and stored in the shop until they can be installed at the jobsite. Kristin’s has other cabinets, though, that are kept on hand to demonstrate certain features and finishes to customers. The cabinets that are allocated to a particular project can be covered under the installation floater. The other cabinets, though, should be covered as Your Business Personal Property on Kristin’s property policy.

▶▶ Knowledge Check



Directions: Read the scenario below and explain your response.

Carter's Custom Woodwork wants to better understand the coverage under its newly purchased **Installation Floater Coverage (IM 7100 08 10)** form. Carter understands that coverage applies to property being installed while it is at the jobsite, but questions if there is coverage away from the jobsite. How will you respond?

Covered Causes of Loss

Covered causes of loss under an installation floater are similar to the covered causes of loss under builders risk. Installation floaters typically provide coverage on an open perils basis; loss to covered property is covered unless the loss is limited or excluded by the policy. Given the lengthy discussion of causes of loss in the builders risk section, this section includes only a summary of the exclusions in **Installation Floater Coverage (IM 7100 08 10)** and discussion of the loss of use issue.

Table: 1.9 Excluded Causes of Loss: Installation Floater vs. Builders Risk

Excluded Causes of Loss in Installation Floater Coverage (IM 7100 08 10)	Excluded Causes of Loss in Builders' Risk Coverage - Scheduled Jobsite Form - Comprehensive Form (IM 7050 07 20)
Group 1 Exclusions	
Civil Authority	Civil Authority
Earth Movement	Earth Movement
Flood	Flood
Fungus	Fungus
Nuclear Hazard	Nuclear Hazard
Ordinance Or Law	Ordinance Or Law
Sewer, Septic Tank, Sump, Or Drain Backup And Water Below The Surface	Sewer, Septic Tank, Sump, Or Drain Backup And Water Below The Surface
War And Military Action	War And Military Action
Group 2 Exclusions	
Contamination Or Deterioration	Contamination Or Deterioration
Criminal, Fraudulent, Dishonest, Or Illegal Acts	Criminal, Fraudulent, Dishonest, Or Illegal Acts
Defect, Weakness, Or Inadequacy In Materials Defects, Errors, Or Omissions In Property	Defects, Errors, And Omissions
Delay in Completion And Increased Installation Costs	Delay In Completion And Increased Construction Costs
Electrical Currents	Electrical Currents
Loss Of Use And Consequential Loss	Loss Of Use And Consequential Loss
Mechanical Breakdown	Mechanical Breakdown
Missing Property	Missing Property
Pollutants	Pollutants
Steam Boiler Explosion	Steam Boiler Explosion
Temperature/Humidity	Temperature/Humidity
Voluntary Parting	Voluntary Parting
Wear And Tear	Wear And Tear

As was previously discussed, installation floaters provide coverage for direct damage to property, but no coverage for loss of use. This point is made even clearer here in the Loss Of Use And Consequential Loss exclusion.

PERILS EXCLUDED

2. “We” do not pay for loss or damage that is caused by or results from one or more of the following:
 - g. **Loss Of Use And Consequential Loss –**
“We” do not pay for loss or damage caused by or resulting from loss of use, delay, or loss of market. “We” also do not pay for any consequential loss or damage of any nature.

IM 7100 08 10

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When Does Coverage End?

Learning Objective:

- 1.12 *Use policy language and coverage-ending triggers to determine when coverage under an installation floater ends.*

The named insured under an installation floater may not have coverage for certain property throughout the entire policy term. Although installation floaters do not include occupancy language as was seen in builders risk, the policies do include a series of coverage-ending triggers. Once the first of the listed events occurs, coverage ends.

ADDITIONAL COVERAGE LIMITATIONS

When Coverage Ceases – Coverage ends when one of the following occurs:

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

IM 7100 08 10

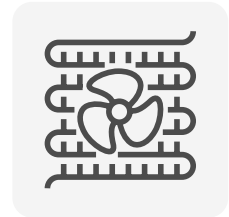
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Section 1: Commercial Inland Marine Concepts and Coverage

One difference between **Installation Floater Coverage (IM 7100 08 10)** and **Builders' Risk Coverage - Scheduled Jobsite Form - Comprehensive Form (IM 7050 07 20)** is in the number of days after completion that coverage still applies. In the installation floater, there is 30 days coverage; in the builders risk, there is 90 days coverage. Of course, under either form, if the covered property has been put to its intended use during that time, coverage ceases.



It is 100 degrees in Atlanta, and several contractors are at work on a home remodeling project. The HVAC contractor has just installed a new central air conditioning system, and the other contractors on the site are looking for relief from the oppressive heat. The HVAC contractor, wanting to help, turns on the unit. Because the unit has been put to its intended use, coverage for the air conditioning unit no longer applies under the installation floater.



Insurer forms may include different coverage-ending triggers. Some policies, for example, continue to cover a contractor's property until the contractor has been paid for the work. In other forms, coverage ends once the materials have been installed and have become a permanent part of a building or structure. It is critical that an insured understands when coverage under the installation floater ends.

▶▶ Knowledge Check



Directions: Explain why coverage under **Installation Floater Coverage (IM 7100 08 10)** does or does not apply in the following scenario.



Michael's Millwork was hired to install a new staircase in a customer's home. The customer paid the deposit, and the staircase was delivered to the jobsite. The customer's second check to Michael bounced before the installation began. Michael cancelled the contract and decided to leave the staircase there since it would be difficult to remove it under the circumstances. One month later, a fire in the home damaged the staircase.

Valuation and Payment of Losses

Valuation

Installation Floater Coverage (IM 7100 08 10) values loss to covered property at the cost to repair, replace, or rebuild property with materials of like kind and quality which includes material, labor, reasonable overhead and profit, and delivery charges. The form includes the same type of Pair Or Set and Loss To Parts language previously discussed.

VALUATION

1. **Cost To Repair, Replace, Or Rebuild –**

a. **If Property Is Repaired, Replaced, Or Rebuilt –** If covered property is repaired, replaced, or rebuilt, the value of covered property will be based on the reasonable and necessary costs and expenses “you” incur to repair, replace, or rebuild the covered property with materials of like kind and quality. The reasonable and necessary costs and expenses may include material, labor, reasonable overhead and profit, and delivery charges.

b. **If Property Is Not Repaired, Replaced, Or Rebuilt –** If covered property is not repaired, replaced, or rebuilt, the value of covered property will be based on the estimated reasonable and necessary costs that would have been incurred to repair, replace, or rebuild the covered property with material of like kind and quality.

However, the value of covered property does not include any unincurred or estimated costs for overhead, profit, or delivery charges.

c. **Payment Limitation –** In no event will “we” pay more than the “limit” indicated on the “schedule of coverages”.

2. **Pair Or Set –** The value of a lost or damaged article that is part of a pair or set is based on a reasonable proportion of the value of the entire pair or set. The loss is not considered a total loss of the pair or set.

3. **Loss To Parts –** The value of a lost or damaged part of an item that consists of several parts when it is complete is based on the value of only the lost or damaged part or the cost to repair or replace it.

IM 7100 08 10

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Coinsurance

Installation Floater Coverage (IM 7100 08 10) is often written on an 80%, 90%, or 100% coinsurance basis. The form does allow for coinsurance to be waived, which is an important coverage feature to be requested. Language in the form illustrates how coinsurance applies.

HOW MUCH WE PAY

4. Coinsurance

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

The most “we” pay is the amount determined in b.3) above or the “limit”, whichever is less. “We” do not pay any remaining part of the loss.

- c. **If There Is More Than One Limit** – If there is more than one “limit” indicated on the “schedule of coverages” for this coverage part, this procedure applies separately to each “limit”.
- d. **If There Is Only One Limit** – If there is only one “limit” indicated on the “schedule of coverages” for this coverage, this procedure applies to the total of all covered property to which the “limit” applies.
- e. **When Coinsurance Does Not Apply** – Conditions for coinsurance do not apply unless a coinsurance percentage is indicated on the “schedule of coverages”.



Patrick Plumber does not think he will ever have an installation floater loss that exceeds \$20,000, so he decides to purchase this amount of coverage under his installation floater written on **Installation Floater Coverage (IM 7100 08 10)**. The policy has a \$20,000 jobsite limit, and 80% coinsurance. \$10,000 of the \$30,000 in plumbing fixtures at a jobsite are damaged when a fire breaks out. Patrick breathes a sigh of relief and believes his \$20,000 limit was an excellent choice. Patrick quickly learns he was mistaken. The coinsurance clause requires that he carry a limit of \$24,000 ($\$30,000 \times 80\%$), so a coinsurance penalty will apply.

Limits of Insurance

An installation floater may have several different limits of insurance as indicated on the schedule of coverages.

- One limit applies to direct damage loss at any one unscheduled jobsite.
- Specific limits may apply to scheduled jobsites.
- A catastrophe limit normally limits the amount paid in any one occurrence, even if multiple projects and jobsites are damaged.
- Lower sublimits typically apply to property in transit and property off-premises.

Some insurers provide additional limits if the loss exceeds the limit because of increases in the cost of labor and materials. One insurer's language illustrates this valuable coverage feature.

SAMPLE POLICY LANGUAGE

Cost Escalation

In the event of a total "loss" that exhausts the Limit of Insurance applicable to the site of your "installation operations" where the total "loss" occurs, we will pay up to an additional 5% of that Limit of Insurance, not to exceed \$100,000 in any one occurrence, to cover any increase in the cost of labor or materials.

Such costs must result from direct physical "loss" to Covered Property caused by or resulting from a Covered Cause of Loss at a site of your "installation operations" and will only be payable if no Coinsurance penalty is applicable to the "loss"

Endorsements and Additional Coverage Forms

Insurers have a variety of endorsements and additional coverage forms that can be used to tailor coverage to the needs of a particular insured or to limit the insurer's exposure to certain losses. Below are examples of some of the AAIS forms that can be added.

Contract Penalty Endorsement (IM 7120 01 12)



Contractors who cannot complete a project on time often face penalties for noncompliance with the contract provisions. This endorsement provides coverage, up to the limit chosen, for these contract penalties. The inability to complete the project on time must be a direct result of loss or damage by a covered peril to a covered installation project.

Delay In Completion Coverage Part - Installation Floater Coverage (IM 7125 08 10)

Trade contractors purchasing installation floaters have some of the same delay in completion exposures discussed in builders risk. Delay In Completion Coverage allows for the addition of Additional Installation Expenses And Additional Soft Costs coverages. These coverages are similar to Additional Construction Expenses And Additional Soft Costs coverages in **Delay In Completion Coverage Part Includes Rental Income And Income Coverage (IM 7079 07 20)**.

Additional Installation Expenses coverage includes design fees, financing, lease administration, professional fees and permit fees.

Additional Soft Costs coverage includes interest payments, realty taxes, lease expenses and insurance premiums.

Earthquake And Flood Coverage Endorsement (IM 7121 08 10)



Coverage for earthquake and/or flood as covered causes of loss can often be added to the installation floater. Separate limits and/or deductibles often apply to loss by these added perils.

Equipment Breakdown And Testing Coverage (IM 7119 08 10)



The Equipment Breakdown And Testing Coverage endorsement is designed to provide comprehensive coverage for the equipment breakdown exposure, including testing. This endorsement provides coverage for loss to covered property caused by an accident to covered equipment. The accident must involve mechanical breakdown, artificially generated electrical current, steam equipment, or certain damage to water heating equipment. This endorsement also has provisions that can extend coverage under the endorsement to Delay In Completion Coverage.

Testing And Commissioning Coverage (IM 7114 02 11)



The Testing And Commissioning Coverage endorsement adds coverage for direct physical loss to covered property caused by or resulting from cold testing, hot testing, and/or commissioning. The **Testing And Commissioning Schedule (IM 7115 01 12)** indicates the type of testing to be covered, while the endorsement defines each of the three types of testing: cold testing, hot testing, and commissioning. Once testing begins, it must be completed within the number of days indicated as the testing period on the Testing And Commissioning Schedule. Loss after the testing period is not covered. The exclusions for electrical currents, mechanical breakdown, and steam boiler explosion still apply except to the extent that coverage is provided under this endorsement.

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POLICY NUMBER _____

**TESTING AND COMMISSIONING SCHEDULE
INSTALLATION FLOATER**

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

TESTING SCHEDULE

Testing Limit \$ _____

Testing Deductible Amount \$ _____

Description of Covered Project

Location of Project

Testing Period _____ days

Type of Testing (check one)

"Cold Testing" "Hot Testing" "Commissioning"

PROTECTIVE SAFEGUARDS

Described Safeguards

IM 7115 01 12

ADDITIONAL DEFINITIONS

1. “Cold testing” means the checking of the component parts of equipment or machinery by mechanical, electrical, hydrostatic, or other forms of testing under dry run conditions.

“Cold testing” does not include:

- a. the firing of furnaces or any application of direct or indirect heat;
 - b. the use of feedstock or other materials for processing; or
 - c. the connection of electrical generating, transforming, converting, or rectifying equipment to a power grid or other load circuit.
2. “Hot testing” means the checking of the component parts of equipment or machinery under load or operational conditions.
“Hot testing” includes:
 - a. the firing of furnaces or any application of direct or indirect heat;
 - b. the use of feedstock or other materials for processing or other means to simulate working conditions; or
 - c. the connection of electrical generating, transforming, converting, or rectifying equipment to a power grid or other load circuit for the purposes of checking the equipment or machinery.
 3. “Commissioning” means the operation of equipment or machinery with feedstock or other materials for processing under production conditions for the purposes of attaining specification requirements or for training operational personnel.

Check-In



Directions: Fill in the blanks uses the options below.

flood	earthquake	mysterious disappearance	employee theft	contract penalties
Additional Installation Expenses coverage	Additional Soft Costs coverage	hot testing	cold testing	commissioning

- _____ means the operation of equipment or machinery with feedstock or other materials for processing under production conditions for the purposes of attaining specification requirements or for training operational personnel.
- Contractors who cannot complete a project on time often face _____ for noncompliance with the contract provisions.
- _____ means the checking of the component parts of equipment or machinery by mechanical, electrical, hydrostatic, or other forms of testing under dry run conditions.
- _____ includes design fees, financing, lease administration, professional fees and permit fees.
- _____ means the checking of the component parts of equipment or machinery under load or operational conditions.
- _____ includes interest payments, realty taxes, lease expenses and insurance premiums.
- Coverage for _____ and/or _____ as covered causes of loss can often be added. Separate limits and/or deductibles often apply to loss by these added perils.

Summary

Builders risk and installation floaters are policies that are written to cover construction and installation projects. The two share some common characteristics, and many contractors find that they have coverage under both types of policies on certain jobs.

In writing builders risk for a new construction, rehabilitation, or renovation project, it is important to understand the project to be insured, including its timeline and its contract requirements. Once the insured's needs are known, the proper combination of direct damage and time element coverages can be written to cover many of the exposures.

Installation floaters are important for contractors working with materials but can also be written for those buying and selling materials and equipment. Understanding the insured's exposures to loss and coordinating installation floater coverage with builders risk, where applicable, and with commercial property coverage is important when constructing a contractor's insurance program.

In Part 3 of Section 1, you will learn about the different components of the contractors equipment policy, including what types of property are covered, valuation, and common exclusions.

Section 1, Part 2, Self-Quiz

Directions: Read the statements below and for each one, determine whether it is true or false.

1. General contractors, subcontractors, and project owners/developers are all parties that may need to be included as insureds on a builders risk policy.

True

False

2. An advantage to including numerous parties as insureds on a builders risk policy is that it helps to avoid litigation and limit subrogation.

True

False

3. Builders risk policies cover three separate types of property: property that will become a permanent part of the described project, scaffolding and other temporary structures, and equipment that contractors use during the construction process.

True

False

4. A group of teenagers on four-wheelers destroys a freshly graded site; this act of vandalism is covered under builders risk.

True

False

5. If a covered peril damages covered property, the insured may incur additional expenses to get the project back on track so it can be finished by the original completion date in the contract. This is an example of Ordinance Or Law under a builders risk policy.

True

False

6. With Group 1 Exclusions, if the loss involves any of the listed excluded perils, the entire loss is excluded, even if a covered peril contributes to the loss.

True

False

Section 1: Commercial Inland Marine Concepts and Coverage

Directions: Read the following multiple-choice questions and select the correct response for each one.

7. In a builders risk policy, coverage ends when one of the coverage-ending triggers occurs. Which of the following does NOT end coverage?
- The policy expires or is cancelled.
 - The named insured abandons construction with no intent to complete it.
 - Covered buildings or structures have been completed for more than 30 days.
8. When it comes to rental income and income coverages, if a project is delayed due to damage by a covered cause of loss, a waiting period:
- typically applies and is shown on the **Delay in Completion Schedule (IM 7080 07 20)**.
 - does not apply; immediate reimbursement is provided.
 - typically applies and is shown on the **Installation Floater Coverage (IM 7100 08 10)**.
9. Trade contractors may purchase installation floaters because they:
- are required to insure items they have been hired to repair.
 - typically have no input into the choice of builders risk policy limits and coverage features which might result in responsibility for a builders risk deductible higher than they can afford to carry.
 - want to insure their inventory stored at their own premises.
10. **Installation Floater Coverage (IM 7100 08 10)** covers property at a jobsite that the named insured is:
- installing or rigging
 - installing, rigging, and later destructing
 - constructing or rigging
 - installing, constructing, or rigging

Section 1: Commercial Inland Marine Concepts and Coverage

11. Each of the following is an example of property not covered under an installation floater, EXCEPT:
- machinery to be installed at the named insured's jobsite
 - airborne property
 - trees, shrubs, and plants
 - contraband at the named insured's jobsite
12. Identify one of the possible reasons that installation floater coverage might end before the policy term expires.
- The project has been occupied in whole or in part.
 - The project has been completed for fourteen days.
 - The named insured abandons the installation project with no intent to complete it.
 - Roofs and walls are put to their intended purpose.

Part 3

Learning Objectives:

1.13 Understand the coverage provided by a contractors equipment policy, including:

- Property covered and not covered
- Coverage extensions and supplemental coverages
- Exclusions

1.14 Describe how contractors equipment losses may be valued.

1.15 Explain the time element coverages that can be added to contractors equipment policies.

Contractors Equipment Coverage

Introduction

A contractors equipment policy typically covers tools and equipment that a contractor uses to complete a project; these policies are often referred to as contractors equipment floaters. Examples of equipment that contractors use in their projects include cranes, backhoes, bulldozers, generators, and tools. This equipment is commonly left on the jobsite and can be stolen or vandalized. Other common losses to equipment are collision and overturn, overload, and damage during transport.



Despite its name, however, contractors equipment policies are not just for contractors. Myriad businesses have equipment which can be insured on this type of policy, including the following examples:

- Farms have tractors and tillage equipment.
- Golf courses and resorts have greens-keeping equipment and golf carts.
- Warehouses often have forklifts and scissor lifts.

Why Purchase Contractors Equipment Coverage?

If contractors equipment is operated principally on the insured's premises, it could be covered under a commercial property policy. ISO **Building and Personal Property Coverage Form (CP 00 10 10 12)** excludes vehicles and self-propelled machines only under certain circumstances—when the item is licensed for use on public roads or when the item is operated principally away from the described premises.

A. Coverage

2. Property Not Covered

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;

CP 00 10 10 12

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Even if equipment is operated primarily on the insured's premises and, as such, covered as either Building or Your Business Personal Property, little coverage applies should the equipment be off-premises for maintenance or repair. The **Building And Personal Property Coverage Form (CP 00 10 10 12)** includes only \$10,000 coverage in a coverage extension, Property Off-premises, for items away from the described location. The Property In Transit extension included in the **Causes Of Loss – Special Form (CP 10 30 09 17)** provides only \$5,000 limited-perils coverage for property in or on a motor vehicle owned, leased, or operated by the named insured.

An additional problem in the **Causes Of Loss – Special Form (CP 10 30 09 17)** is that builders' machinery, tools, and equipment away from the insured's premises are only covered for damage by specified causes of loss and building glass breakage. Notably absent from the list of specified causes of loss is theft.

G. Definitions

2. "Specified causes of loss" means the following: fire; lightning; explosion; windstorm or hail; smoke; aircraft or vehicles; riot or civil commotion; vandalism; leakage from fire-extinguishing equipment; sinkhole collapse; volcanic action; falling objects; weight of snow, ice or sleet; water damage...

CP 10 30 09 17

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Even if equipment items can be insured on a property policy, businesses often choose to purchase a contractors equipment policy. The inland marine coverage is often broader, and the contractors equipment policy covers the equipment on and away from the insured's premises. There may be differences between contractors equipment coverage and property coverage rates. There might also be differences in how certain items are valued. All of these factors should be considered when making a decision about how to best insure contractors equipment.

Check-In



Directions: Read the statements below and for each one, determine whether it is true or false.

1. A forklift used only on the insured's premises, can be covered on a commercial property policy, like ISO **Building And Personal Property Coverage Form (CP 00 10 10 12)**.

True

False

2. **Causes Of Loss - Special Form (CP 10 30 09 17)** covers a contractor's tools stolen from a jobsite, making contractors equipment coverage unnecessary to cover this exposure.

True

False

Review the Schedule Of Coverages on the next few pages.

**SCHEDULE OF COVERAGES
CONTRACTORS' EQUIPMENT**

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

PROPERTY COVERED

(check one)

Scheduled Equipment (Refer to Equipment Schedule)

Schedule On File

"Limit"

Catastrophe Limit -- The most "we" pay for loss in any one occurrence is: \$ _____

COVERAGE EXTENSIONS

Additional Debris Removal Expenses \$ _____

SUPPLEMENTAL COVERAGES

Employee Tools \$ _____

Equipment Leased or Rented From Others \$ _____

Newly Purchased Equipment (check one)

Percentage of Catastrophe Limit _____ %

Dollar Limit \$ _____

Pollutant Cleanup and Removal \$ _____

Rental Reimbursement

-- Reimbursement Limit \$ _____

-- Waiting Period _____

Spare Parts and Fuel \$ _____

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COINSURANCE (check one)

80% 90% 100% Other _____%

REPORTING CONDITIONS (check if applicable)

Equipment Leased or Rented From Others

-- Reporting Rate \$ _____

-- Deposit Premium \$ _____

-- Minimum Premium \$ _____

VALUATION (check if applicable)

Actual Cash Value Replacement Cost

Indicated on Equipment Schedule

DEDUCTIBLE (check one)

Flat Deductible Amount \$ _____

Percentage Deductible _____ %

Maximum Deductible Amount \$ _____

Minimum Deductible Amount \$ _____

ADDITIONAL INFORMATION

IM 7005 01 12

The Contractors Equipment Policy

Learning Objective:

1.13 Understand the coverage provided by a contractors equipment policy, including:

- Property covered and not covered
- Coverage extensions and supplemental coverages
- Exclusions

Contractors' Equipment Coverage

(IM 7000 04 04) can be used to insure contractors equipment that is owned by the named insured or equipment of others in the named insured's care, custody, or control. The insured may, for example, schedule items leased, rented, or



borrowed for an extended period of time. The **Schedule Of Coverages (IM 7005 01 12)** is attached to the contractors equipment policy to describe the covered property, policy limits, deductible, and other coverage features.

Scheduled vs. Blanket Coverage

Many contractors equipment policies are written on a scheduled basis. Each item to be insured has a specific limit of insurance that is the most that will be paid if there is loss of or damage to the item. The policy form to be reviewed here, **Contractors' Equipment Coverage (IM 7000 04 04)**, is an example of a scheduled policy.

Some insurers list each covered item in the policy with its corresponding limit of insurance. Some policies, though, simply show "schedule on file." With this second approach, it is critical that the insured, the agent, and the insurer all have good documentation about which items are to be covered since the schedule is not physically attached to the policy.

In addition to a specific limit for each item insured, there is often a catastrophe limit which is the most that will be paid for loss in any one occurrence. The catastrophe limit might be equal to the sum of equipment values or might be a lesser amount if the insurer is trying to limit its exposure. Sometimes it is the insured who requests a lower catastrophe limit, usually to get a better rate. Whether a catastrophe limit that is lower than the sum of equipment values is a problem for the insured depends largely on where the insured's equipment is located. If the equipment is spread out geographically, it is unlikely that all of it will be damaged in the same occurrence. In this case, it might make sense for the insured to pay a lower rate for a catastrophe limit that is less than its total equipment value.

For insureds with large equipment schedules or frequent equipment sales and purchases, coverage may be written on a blanket basis. AAIS has a form specifically designed for this purpose, **Contractors' Equipment Coverage Blanket Equipment Form (IM 7002 06 04)**.

Section 1: Commercial Inland Marine Concepts and Coverage

With this approach, there is a single catastrophe limit that applies per occurrence and, usually, a maximum per item limit.

With a blanket policy, the insured, at policy inception, submits a schedule of the items to be covered with a description and value for each item. Rather than notifying the insurer each time an equipment item is to be added or deleted, the insured submits an updated schedule periodically throughout the policy term. AAIS offers options for monthly, quarterly, or annual reporting, and the final premium is based on the reports made by the insured. As long as the insured submits reports accurately and on time, the full policy limit will be available to pay losses to items that are within the description of covered property.

Even if coverage is written on a scheduled basis, it is common to include a blanket limit for miscellaneous tools and equipment. Typically, a limit per occurrence and a maximum limit per item apply to this type of property. AAIS **Small Tools Endorsement (IM 7015 01 12)** can be used for this purpose.

Check-In



Directions: Read the statements below and for each one, determine whether it is true or false.

1. A contractors equipment policy must include a list of the items covered under the policy.

True

False

2. Contractors equipment policies may be written with a catastrophe limit that is less than sum of the values of covered equipment

True

False

What Property Is Covered Under a Contractors Equipment Policy?

Covered Property

What can be covered under a contractors equipment policy varies among insurers' forms. Most policies start with a broad description of covered property and narrow that down in a Property Not Covered section.

Note that contractors equipment in **Contractors' Equipment Coverage (IM 7000 04 04)** must be used in the insured's contracting, installation, erection, repair, or moving operations or projects. The golf cart used by a resort's security personnel may not fit this description.

Self-propelled vehicles designed and used primarily to carry mounted equipment are contractors equipment under this policy. Also included are vehicles designed for highway use that are unlicensed and not operated on public roads. Not all forms, though, include this type of equipment as contractors equipment. In fact, another AAIS option, **Contractors' Equipment Coverage – Scheduled Equipment Form (IM 7001 04 04)**, specifically excludes

this type of equipment. It is important to carefully review the language in any policy being considered to be sure it meets the insured's needs.

PROPERTY COVERED

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

1. Scheduled Equipment –

a. **Coverage** – "We" cover direct physical loss caused by a covered peril to:

- 1) "your" "contractors' equipment"; and
- 2) "contractors' equipment" of others in "your" care, custody, or control.

b. **Coverage Limitation** – "We" only cover "your" "contractors' equipment" and "contractors' equipment" of others:

- 1) that are described on the "equipment schedule"; and
- 2) when Scheduled Equipment is indicated on the "schedule of coverages".

2. Schedule On File –

a. **Coverage** – "We" cover direct physical loss caused by a covered peril to:

- 1) "your" "contractors' equipment"; and
- 2) "contractors' equipment" of others in "your" care, custody, or control.

b. **Coverage Limitation** – "We" only cover "your" "contractors' equipment" and "contractors' equipment" of others:

- 1) that are listed in a schedule which "you" must submit to "us" and "we" keep on file, the schedule must contain a description of each item to be covered and a "limit" for each item; and
- 2) when Schedule on File is indicated on the "schedule of coverages".

IM 7000 04 04

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DEFINITIONS

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

"Contractors' equipment" also means:

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

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

IM 7000 04 04

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Some insurers' forms have a broader definition of contractors equipment, and some scheduled policies have no definition at all. One insurer's form defines contractors equipment as follows:

SAMPLE POLICY LANGUAGE

Contractors' equipment means the contractors' machinery, equipment, and tools, including accessories for the contractors' machinery, equipment, and tools, usual to your business which you own, or which is owned by others and in your care, custody or control.

Property Not Covered

Contractors' Equipment Coverage (IM 7000 04 04) lists several types of equipment that are not covered, even though the definition of contractors equipment might initially appear to include them.

Aircraft or Watercraft

Watercraft is typically covered under a separate watercraft policy, but some insurers may be willing to extend coverage to a dredge or barge or other watercraft used by a contractor. In that case, the watercraft and waterborne property language should be modified. Although most insureds would not expect a contractors equipment policy to cover a plane or a helicopter, drones are a type of aircraft exposure that should be addressed. Many contractors use drones for pre-construction site review or to monitor jobsite progress and safety. Many insurers are not comfortable insuring drones, but if the inland marine underwriter agrees to cover a drone, this language should be modified.



Contraband

As was seen in the previously reviewed inland marine policies, there is no coverage for contraband or property in the course of illegal transportation or trade.

PROPERTY NOT COVERED

1. **Aircraft Or Watercraft** – “We” do not cover aircraft or watercraft.
2. **Contraband** – “We” do not cover contraband or property in the course of illegal transportation or trade.

IM 7000 04 04

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Leased Or Rented Property/Loaned Property

Property that the insured leases, rents, or loans to others is not covered. This restriction is especially important for the insured to understand because the insured has paid premium to insure the equipment item and assumes coverage is in effect. It is common for



Section 1: Commercial Inland Marine Concepts and Coverage

contractors to share or rent their equipment, and when that happens, coverage for the item ends.

PROPERTY NOT COVERED

3. **Leased Or Rented Property** – “We” do not cover property that “you” lease or rent to others.
4. **Loaned Property** – “We” do not cover property that “you” loan to others.

IM 7000 04 04

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Some insurers will agree to add an endorsement to restore coverage for this exposure, although many are reluctant to do so. The equipment is out of the insured’s control, and the renter or borrower may not have the same training and safety programs the insured has.



The following AAIS endorsements are examples of how an insurer willing to insure this exposure may provide coverage:

- **Equipment Leased Or Rented To Others Endorsement (IM 7013 04 04)** covers equipment leased or rented to others. Two limits typically apply—one is the most that will be paid in any one occurrence, and the second is the most that will be paid for any one item. Premium is based on the total receipts from equipment rented or leased to others during the policy term.
- **Property Loaned To Others - Scheduled Contractors (IM 7022 01 12)** provides a scheduled amount of coverage when equipment is loaned to contractors or individuals named on the endorsement.
- **Property Loaned To Others - Jobsite Coverage (IM 7023 01 12)** provides a scheduled amount of coverage when equipment is loaned to others while the property is at a jobsite where the named insured is performing operations.

Underground Mining Operations

Underground mining operations are considered especially hazardous, and **Contractors’ Equipment Coverage (IM 7000 04 04)** does not cover property stored or operated underground in connection with mining operations.

PROPERTY NOT COVERED

5. **Underground Mining Operations** – “We” do not cover property while stored or operated underground in connection with any mining operations.

IM 7000 04 04

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Some insurer forms have broader language regarding underground property. They may exclude “underground property” or “property while underground” or “property below the surface of the ground.” Some forms are extremely specific as seen in the language below.

**BELOW THE SURFACE OF THE GROUND EXCLUSION
ADDITIONAL PROPERTY NOT COVERED**

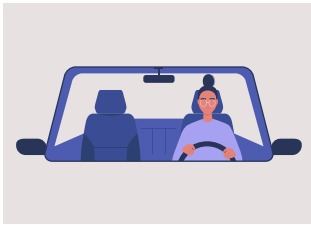
Equipment Below The Surface Of The Ground – “We” do not cover equipment or attachments while below the surface of the ground or equipment underground including, but not limited to, drilling equipment below the surface of the ground or underground during drilling operations. This exclusion does not apply to buckets or other attachments to an excavator, backhoe, or similar equipment used for excavations or trenching.

IM 7039 07 11

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Particular attention should be paid to this language for contractors who perform any type of work that might be considered underground or below the surface of the ground.

Vehicles



Automobiles, motor trucks, tractors, trailers, and similar conveyances designed for highway use are not covered property. In most cases, a business auto policy is a more appropriate choice for providing coverage. **Contractors' Equipment Coverage (IM 7000 04 04)** does provide coverage for self-propelled vehicles designed and used primarily to carry mounted equipment and for vehicles that are unlicensed and not operated on public roads.

PROPERTY NOT COVERED

6. **Vehicles** – “We” do not cover automobiles, motor trucks, tractors, trailers, and similar conveyances designed for highway use and used for over the road transportation of people or cargo. However, this does not include:
- a. self-propelled vehicles designed and used primarily to carry mounted equipment; or
 - b. vehicles designed for highway use that are unlicensed and not operated on public roads.

IM 7000 04 04

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It is worth noting that what is covered as contractors equipment in the inland marine form and what is included in the definition of mobile equipment in the business auto and CGL forms do not necessarily match. Policy language on both the liability policies and the inland marine policy must be checked when an insured acquires a new piece of equipment.

Section 1: Commercial Inland Marine Concepts and Coverage



A quarry maintains a dump truck for use solely at the quarry. Assuming that this vehicle is not subject to a compulsory or financial responsibility law or other motor vehicle insurance law where it is licensed or principally garaged, many CGL forms, including ISO **Commercial General Liability Coverage Form (CG 00 01 04 13)**, consider this dump truck to be mobile equipment. The liability exposures from this dump truck are covered under the CGL. While **Contractors' Equipment Coverage (IM 7000 04 04)** covers this type of vehicle, other contractors equipment forms may not.



Waterborne Property

Lastly, waterborne property is not covered unless the property is in transit in the custody of a carrier for hire. This language is problematic for a contractor who may place a piece of equipment on a barge to get to a particular jobsite or to perform work on a bridge or pier.

PROPERTY NOT COVERED

7. **Waterborne Property** – “We” do not cover property while waterborne except while in transit in the custody of a carrier for hire.

IM 7000 04 04

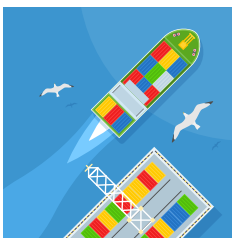
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Many insurers will agree to add coverage for this exposure, and AAIS **Waterborne Endorsement (IM 7019 01 12)** is an example of an endorsement that can be used. With this endorsement, a separate limit and deductible apply to waterborne property.

▶▶ Knowledge Check



Directions: Read the scenario below and explain your response.



You are meeting with a prospective client, a site development contractor. The client's company does occasional construction of pre-cast concrete bridges and puts equipment on a barge for part of the operation. Your client asks whether the unendorsed **Contractors' Equipment Coverage (IM 7000 04 04)** policy you are proposing will cover the barge and the equipment on the barge. How will you respond? Explain whether coverage will apply, and if so, why.

Coverage Extension and Supplemental Coverages

As was seen in the other inland marine policies studied, a contractor's equipment policy adds additional coverages through the use of a coverage extension and supplemental coverages.

Coverage Extension: Debris Removal

Contractors' Equipment Coverage (IM 7000 04 04) includes just one coverage extension, Debris Removal. The policy pays to remove the debris of covered property caused by a covered peril. The limit is the same as in the other AAIS forms reviewed here—25% of the amount paid for direct physical loss. This sublimit is part of the limit of insurance, and if additional amounts are needed to remove debris, the extension provides for an additional \$5,000. This \$5,000 can be increased by showing a different limit on the schedule of coverages.



A piece of equipment is severely damaged when a flash flood hits a remote jobsite where the equipment was left over the weekend. The \$200,000 limit of insurance that applies to the item is equal to the actual cash value of the item. After a \$1,000 deductible, the insured will be paid \$199,000 for the equipment. Because heavy equipment is needed to extract the vehicle from the mud, the insured is facing a debris removal bill of \$20,000.

- Amount paid for the direct damage loss: \$199,000
- Debris removal that can be paid before the limit of insurance is reached: \$1,000
- Additional debris removal limit available: \$5,000
- Amount of unpaid debris removal: \$14,000

Supplemental Coverages

Employee Tools



Contractors' employees often use their own tools in their employers' businesses. The contractor named insured may want to provide coverage for such tools, and **Contractors' Equipment Coverage (IM 7000 04 04)** includes up to \$5,000 coverage per

occurrence for employees' tools on the named insured's premises or a jobsite. Higher limits can be shown on the schedule of coverages.

In some insurers' forms, employee tools coverage is an optional coverage or is added by endorsement. Some forms include sublimits of coverage per employee and/or per tool. Some forms also cover employee work clothes, and many offer coverage with a lower deductible or no deductible at all.

SUPPLEMENTAL COVERAGES

1. Employee Tools –

- a. **Coverage** – “We” cover direct physical loss caused by a covered peril to tools owned by “your” employees.
- b. **Coverage Limitation** – “We” only cover tools owned by “your” employees while at a:
 - 1) premises that “you” own or operate; or
 - 2) “jobsite”.
- c. **Limit** – The most “we” pay in any one occurrence for loss to employee tools is \$5,000.

IM 7000 04 04

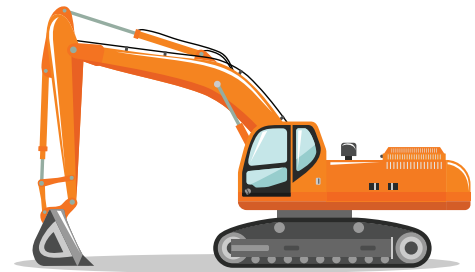
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While the employees of Cameron Contracting were at lunch, someone broke into the locked construction trailer and stole tools owned by the employees. The supplemental coverage, Employee Tools, provides up to \$5,000 coverage per occurrence. Had the tools been in the vehicle in the parking lot of the diner where the employees were eating, there would have been no coverage.

Equipment Leased Or Rented From Others

A contractor that leases or rents equipment, especially high-value equipment, may choose to add the item to be covered to the equipment schedule. Recall that contractors’ equipment includes property owned by the named insured and property of others in the named insured’s care, custody, or control.



Contractors’ Equipment Coverage

(IM 7000 04 04) provides automatic coverage, though, for unscheduled contractors equipment leased or rented from others. Coverage applies with a limit of \$25,000 per occurrence, but a higher limit can be included on the schedule of coverages.

SUPPLEMENTAL COVERAGES

2. Equipment Leased Or Rented From Others –

- a. **Coverage** – “We” cover direct physical loss caused by a covered peril to “contractors’ equipment” that “you” have leased or rented from others.
- b. **Limit** – The most “we” pay in any one occurrence for equipment leased or rented from others is \$25,000.

IM 7000 04 04

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Section 1: Commercial Inland Marine Concepts and Coverage

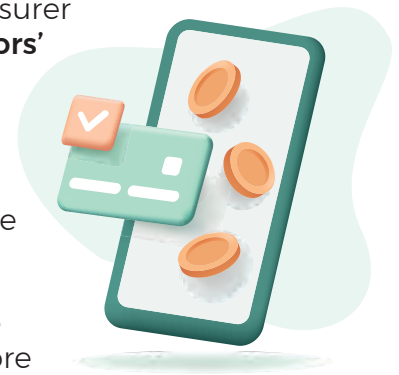
Many insurers choose to address this exposure with an endorsement, especially if the insured is renting often or renting high-value equipment. AAIS **Equipment Leased Or Rented From Others Endorsement (IM 7012 07 11)** is an example. When this approach is taken, coverage is typically written on a reporting form with the final premium based on the expenditures during the policy term for leased or rented equipment. Two limits commonly apply—one is the most that will be paid in any one occurrence, and the second is the most that will be paid for any one item.

Note that neither the supplemental coverage nor the **Equipment Leased Or Rented From Others Endorsement (IM 7012 07 11)** covers equipment the insured has borrowed from others. AAIS **Equipment Borrowed From Others (IM 7037 01 12)** is an example of an endorsement that provides coverage for this exposure. One limit applies per occurrence, and a second limit applies per item.

Newly Purchased Property

It is common for an insured to forget to immediately notify the insurer when a new equipment item is purchased. Fortunately, **Contractors' Equipment Coverage (IM 7000 04 04)** includes some automatic coverage for newly purchased contractors equipment. The limit can be expressed as a dollar amount or a percentage of the catastrophe limit, either of which would be shown on the schedule of coverages. If no limit is indicated, the most that will be paid is 30% of the catastrophe limit.

This supplemental coverage applies for up to sixty days unless the policy period ends, or the purchase is reported to the insurer before then.



SUPPLEMENTAL COVERAGES

3. Newly Purchased Property –

- a. **Coverage** – “We” cover direct physical loss caused by a covered peril to additional “contractors’ equipment” that “you” purchase during the policy period.
- b. **Limit** – The most that “we” pay for any loss under this supplemental coverage is the least of the:
 - 1) actual cash value of the covered property; or
 - 2) “limit” for newly purchased property indicated on the “schedule of coverages”. If no “limit” is indicated, then 30% of the Catastrophe Limit indicated on the “schedule of coverages” applies to this coverage.
- c. **Time Limitation** – “We” extend coverage to the additional “contractors’ equipment” that “you” purchase for up to 60 days.

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

 - 1) this policy expires;
 - 2) 60 days after “you” obtain the additional “contractors’ equipment”; or
 - 3) “you” report the additional “contractors’ equipment” to “us”.
- d. **Additional Premium** – “You” must pay any additional premium due from the date “you” purchase the additional “contractors’ equipment”.

IM 7000 04 04

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Pollutant Cleanup And Removal

Contractors’ Equipment Coverage (IM 7000 04 04) includes a \$25,000 annual aggregate limit for Pollutant Cleanup And Removal, although a higher limit can be shown on the schedule of coverages. Coverage applies to expenses to extract pollutants from land or water after a covered peril occurs and for any testing necessary for the extraction.

SUPPLEMENTAL COVERAGES

4. Pollutant Cleanup And Removal –

- a. **Coverage** – “We” pay “your” expense to extract “pollutants” from land or water if the discharge, dispersal, seepage, migration, release, or escape of the “pollutants” is caused by a covered peril that occurs during the policy period.
- b. **Time Limitation** – The expenses to extract “pollutants” are paid only if they are reported to “us” in writing within 180 days from the date the covered peril occurs.
- c. **We Do Not Cover** – “We” do not pay the cost of testing, evaluating, observing, or recording the existence, level, or effects of “pollutants”.

However, “we” pay the cost of testing which is necessary for the extraction of “pollutants” from land or water.

- d. **Limit** – The most “we” pay for each location is \$25,000 for the sum of all such expenses arising out of a covered peril occurring during each separate 12-month period of this policy.

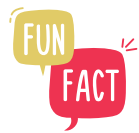
IM 7000 04 04

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An excavation contractor’s bulldozer overturns at a construction site. The diesel tank is ruptured, and the land and water are polluted.

Contractors’ Equipment Coverage (IM 7000 04 04) includes \$25,000 coverage to extract the pollutants and for testing necessary for the extraction.



Damage caused by the pollutants that are discharged during the bulldozer overturn is covered under the unendorsed **Commercial General Liability Coverage Form (CG 00 01 04 13)**. Although the contractor brought the pollutant to the jobsite, the loss involved escape of pollutants needed to run the bulldozer. This is an exception to the CGL’s pollution exclusion. Many CGL policies, though, include a total pollution exclusion, and many contractors do not purchase separate pollution coverage. These facts make the supplemental coverage in the contractors equipment policy important.

Rental Reimbursement

When covered contractors equipment is damaged by a covered cause of loss, repairing or replacing the property is only part of the named insured’s concern. The insured may need to rent similar equipment to complete a job if the insured does not have other equipment that can be used. **Contractors’ Equipment Coverage (IM 7000 04 04)** provides up to \$5,000 for the insured to rent a similar item after a 72-hour waiting period. This limit and/or waiting period can be changed by showing different information on the schedule of coverages.



Note that Rental Reimbursement coverage does not mean that the insured has automatic coverage for damage to the rented item. Adequate limits of coverage for Equipment Leased Or Rented From Others must be available.

SUPPLEMENTAL COVERAGES

5. Rental Reimbursement –

- a. **Coverage** – In the event of a direct physical loss by a covered peril to “your” “contractors’ equipment”, “we” reimburse “you” for “your” expense to rent similar equipment while “your” equipment is inoperable.

The deductible amount indicated on the “schedule of coverages” does not apply to a loss covered under this supplemental coverage.

- b. **Waiting Period** – “We” will not reimburse “you” for the rental of equipment until after the first 72-hours (unless otherwise indicated on the “schedule of coverages”) following the direct physical loss to “your” “contractors’ equipment” caused by a covered peril.
- c. **Incurred Rental Expenses** – After the waiting period has passed, “we” will only reimburse “you” for the rental expenses that “you” actually incur.
- d. **Coverage After Expiration Date** – “We” will continue to reimburse “you” for the rental of equipment after the expiration date of this coverage, provided the loss occurred before the expiration date.
- e. **Coverage Limitations** – “We” will not reimburse “you”:
- 1) if “you” can continue or resume “your” operations with similar equipment that is available to “you” at no additional expense to “you”; or
 - 2) for the rental expense of any equipment unless “you” make every reasonable effort to repair, replace, or rebuild the inoperable equipment after the loss by a covered peril occurs.
- f. **Limit** – The most “we” reimburse “you” in any one occurrence for rental expenses is \$5,000.

IM 7000 04 04

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Spare Parts And Fuel

In this last supplemental coverage, **Contractors’ Equipment Coverage (IM 7000 04 04)** includes \$5,000 coverage for spare parts and accessories for contractors equipment and fluids including gasoline, oil, and hydraulic fluid. This limit can be increased by showing a higher limit on the schedule of coverages.



Shane’s Sitework keeps a supply of equipment replacement parts in a trailer at the site of a large construction project. Thieves break into the trailer and steal the replacement parts. Up to \$5,000 coverage applies under the supplemental coverage, Spare Parts And Fuel.



SUPPLEMENTAL COVERAGES

6. Spare Parts And Fuel –

- a. **Coverage** – “We” cover direct physical loss caused by a covered peril to:
 - 1) spare parts and accessories for “contractors’ equipment”; and
 - 2) fluids for vehicles and “contractors’ equipment”; fluids include gasoline, oil, and hydraulic fluid.
- b. **Limit** – The most “we” pay in any one occurrence for loss to spare parts and accessories is \$5,000.

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Table: 1.10 Coverage Extensions and Supplemental Coverages: Contractors’ Equipment Coverage (IM 7000 04 04)

Contractors’ Equipment Coverage (IM 7000 04 04)	Automatic Limit of Insurance (can be changed using the schedule of coverages)
Coverage Extension	
Debris Removal	Sublimit: 25% of the amount paid for direct loss Additional amount: \$5,000
Supplemental Coverages	
Employee Tools	\$5,000
Equipment Leased Or Rented From Others	\$25,000
Newly Purchased Property	Limit as indicated on the schedule of coverages; if no limit is shown, 30% of the catastrophe limit 60 days coverage
Pollutant Cleanup And Removal	\$25,000 annual aggregate limit
Rental Reimbursement	\$5,000 72-hour waiting period
Spare Parts and Fuel	\$5,000

Check-In



Directions: Explain whether coverage under **Contractors' Equipment Coverage (IM 7000 04 04)** applies in the following situations.



1. Lola's Landscaping bought a new lawnmower for \$5,000 and forgot to notify the contractors equipment insurer. Four months after the item was purchased, it was stolen.

2. One of Lola's employees has tools that are used in Lola's business. The tools are stolen from the employee's garage.

3. Lola rented a weed wacker for one week since hers is in the shop for repair. It was stolen along with the lawn mower.

Covered Causes of Loss

Following the pattern seen in the first three policies, coverage under **Contractors' Equipment Coverage (IM 7000 04 04)** applies on an open perils basis. Loss to covered property is covered unless the loss is limited or excluded by the policy. Remember that policy exclusions are divided into two groups—Group 1 and Group 2 Exclusions. Most of the exclusions have been reviewed previously so will not be discussed here in detail. For a complete list of exclusions, please see the table below.



From this policy, notably absent are exclusions for earth movement and water/flood; these causes of loss are typically covered under contractors equipment policies. Other contractors equipment policies may contain additional exclusions.

Excluded Causes of Loss

Table: 1.11 Excluded Causes of Loss

Excluded Causes of Loss Contractors' Equipment Coverage (IM 7000 04 04)
Group 1 Exclusions
Civil Authority
Nuclear Hazard
War And Military Action
Group 2 Exclusions
Contamination Or Deterioration
Criminal, Fraudulent, Dishonest, Or Illegal Acts
Loss Of Use
Mechanical Breakdown
Missing Property
Pollutants
Temperature/Humidity
Voluntary Parting
Wear And Tear

Check-In



Directions: Read the scenario below and explain your responses.

You are working with a new client who has had several equipment losses over the past five years, only some of which were paid by the insurer. Your client asks whether the following would be covered under the unendorsed **Contractors' Equipment Coverage (IM 7000 04 04)** you are proposing.

1. The insured's employee steals a front-end loader that was left on a jobsite.

2. A piece of equipment is being transported to a remote jobsite when a flash flood hits, causing extensive damage to the item.

Other Possible Exclusions

The exclusions above are part of the **Contractors' Equipment Coverage (IM 7000 04 04)** form. Other exclusions, though, are often added by endorsement or found in insurer forms. Two commonly excluded exposures are weight of load and cranes.

Weight Of Load Exclusion

Although not found in the **Contractors' Equipment Coverage (IM 7000 04 04)**, it is common to see an exclusion for Weight Of Load as part of a contractors equipment coverage form. Other insurers add endorsements to exclude the exposure.

Weight Of Load Exclusion (IM 7017 06 04)



The Weight Of Load Exclusion endorsement is sometimes used by insurers who use AAIS forms. The exclusion applies when the weight of the load, under the operating conditions at the time of a loss, exceeds the capacity the equipment is designed to lift.

A forklift, for example, may have a registered lifting capacity of 6,000 pounds, but this can be reduced based on a number of factors including the shape of the load, higher lifting heights, and attachments added to the forklift. Information on the lifting capacity is normally detailed on a capacity plate or data plate attached to the forklift.

AAIS
IM 7017 06 04
Page 1 of 1

This endorsement changes the
Contractors' Equipment Coverage
-- PLEASE READ THIS CAREFULLY --

WEIGHT OF LOAD EXCLUSION

ADDITIONAL PERILS EXCLUDED

The following exclusion is added under Perils Excluded, item 2:

Weight of Load -- "We" do not pay for loss caused by the weight of a load which, under the operating conditions at the time of a loss, exceeds the registered lifting capacity of the equipment.

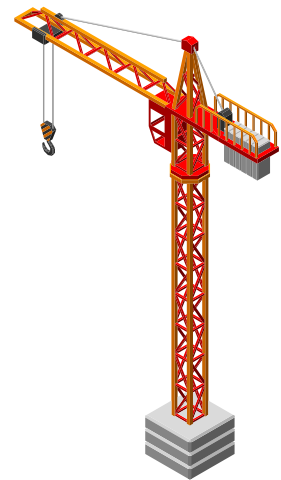
IM 7017 06 04

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Some insurer forms do not include a Weight Of Load Exclusion, and many insurers that do include the exclusion may agree to remove it via endorsement. Weight Of Load coverage is an important feature for any policy written to cover cranes, forklifts, and other equipment that is used in lifting operations.

Cranes

Cranes are often used in construction and other operations and are an area of concern for many insurers. Boom collapse is a serious hazard and often results in the total loss of the crane. For that reason, many insurers add exclusions to minimize their exposure to crane losses. Weight Of Load exclusions can be used to deny coverage when a crane exceeds its lifting capacity. Other endorsements, specific to cranes, may be added as well. Examples of these endorsements follow.



Boom Restriction Endorsement (IM 7016 04 04)



AAIS Boom Restriction Endorsement excludes coverage for damage to crane booms over 25 feet in length unless the loss is caused by a specified peril while the equipment is in transit.

AAIS
IM 7016 04 04
Page 1 of 1

This endorsement changes the
Contractors' Equipment Coverage
-- PLEASE READ THIS CAREFULLY --

BOOM RESTRICTION ENDORSEMENT

ADDITIONAL PROPERTY NOT COVERED

Booms -- "We" do not cover crane booms that exceed 25 feet in length.

However, "we" do cover booms over 25 feet in length when the loss is caused by a "specified peril" while the equipment is in transit.

IM 7016 04 04

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One insurer's approach to limiting coverage for cranes is illustrated in the language below. Damage to a boom is often caused by improper crane operation, and exclusions such as this remove coverage for that exposure.

SAMPLE POLICY LANGUAGE

The following Exclusion applies

1. Crane and Derrick Booms

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

Language regarding cranes varies greatly among insurers. As such, it is important to review such coverage carefully for the insured who owns or uses cranes.

▶▶ Knowledge Check



Directions: Read the scenario below and explain your responses.

Your insured recently purchased a crane and wants to add it to the contractor's equipment schedule. Applying your knowledge of contractor's equipment exclusions, describe which exclusions are especially problematic for those with cranes.

Valuation and Payment of Losses

Learning Objective:

1.14 Describe how contractor's equipment losses may be valued.

Valuation

When commercial property insurance is written, most insurers are willing to offer replacement cost coverage for building and personal property, and most insureds choose this option. With contractor's equipment policies, however, replacement cost coverage is not the most common type of valuation. Many insurers offer only actual cash value coverage on most equipment items, reserving the option for replacement cost coverage for newer items, commonly defined as five years old or newer.



Contractors' Equipment Coverage (IM 7000 04 04) allows for either actual cash value or replacement cost coverage, and the choice is indicated on the schedule of coverages. Replacement cost will not be paid until the item is repaired or replaced. The previously discussed Pair Or Set and Loss To Parts language appears here as well.

VALUATION

1. **Actual Cash Value** – The value of covered property will be based on the actual cash value at the time of the loss (with a deduction for depreciation) unless replacement cost is indicated on the “schedule of coverages”.
2. **Replacement Cost** – The value of covered property will be based on the replacement cost without any deduction for depreciation unless Actual Cash Value is indicated on the “schedule of coverages”.
 - a. **Replacement Cost Limitation** – The replacement cost is limited to the cost of repair or replacement with similar materials and used for the same purpose. The payment will not exceed the amount “you” spend to repair or replace the damaged or destroyed property.
 - b. **Replacement Cost Does Not Apply Until Repair Or Replacement** – Replacement cost valuation does not apply until the damaged or destroyed property is repaired or replaced.
 - c. **Time Limitation** – “You” may make a claim for actual cash value before repair or replacement takes place, and later for the replacement cost if “you” notify “us” of “your” intent within 180 days after the loss.
3. **Pair Or Set** – The value of a lost or damaged article which is part of a pair or set is based on a reasonable proportion of the value of the entire pair or set. The loss is not considered a total loss of the pair or set.
4. **Loss To Parts** – The value of a lost or damaged part of an item that consists of several parts when it is complete is based on the value of only the lost or damaged part or the cost to repair or replace it.

IM 7000 04 04

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Agreed Amount Endorsement (IM 7026 01 07)



For certain types of equipment, establishing an actual cash value or replacement cost may be difficult. An insured, for example, may have modified a purchased piece of equipment for a particular purpose. Agreed amount may be an option with many insurers; the insured and the insurer agree on the value of the property at the time the policy is written. Should there be a total loss to the equipment, the agreed amount will be paid. This approach helps avoid disputes over the value of property at the time of claim.

AAIS
IM 7026 01 07
Page 1 of 1

This endorsement changes the
Contractors' Equipment Coverage
-- PLEASE READ THIS CAREFULLY --

AGREED AMOUNT ENDORSEMENT

VALUATION

Agreed Amount --

1. **Delete And Replace** -- The Valuation provisions are deleted and replaced by the following valuation provision when covered property is:
 - a. described on the Agreed Amount Schedule; or
 - b. described on the "equipment schedule" with Agreed Amount indicated as the valuation.
2. **Valuation** -- The value of covered property will be based on the "limit" indicated for the described property.
3. **Coinsurance Does Not Apply** -- Covered property:
 - a. described on the Agreed Amount Schedule; or
 - b. described on the "equipment schedule" with Agreed Amount indicated as the valuation;is not subject to and not considered in applying coinsurance conditions if coinsurance provisions are part of this policy.

IM 7026 01 07

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Check-In



Directions: Which valuation method would you recommend for the following equipment items?

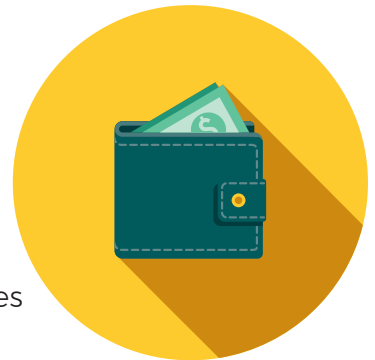
1. The insured wants to buy only new equipment and typically trades in equipment after it is only a few years old.

2. The insured often builds the equipment used or makes significant modifications to purchased equipment.

3. The insured likes to buy used equipment at auctions where a good deal can always be found.

Coinsurance

Many contractors equipment policies have coinsurance conditions that require insureds to carry an appropriate limit of insurance and which, at the time of a loss, penalize those that do not. The **Schedule Of Coverages (IM 7005 01 12)** indicates the applicable coinsurance percentage—usually 80%, 90%, or 100%. If no coinsurance is indicated on the schedule of coverages, the coinsurance condition does not apply. If there is more than one limit on the schedule of coverages, coinsurance is applied separately to each limit. If there is only one limit, coinsurance applies to the total of all covered property to which the limit applies.



Section 1: Commercial Inland Marine Concepts and Coverage

Determining the proper limit of insurance for a contractor's equipment item is important. The limit needs to be adequate to avoid a coinsurance penalty and to make sure there is enough coverage available in the event of a total loss to the equipment. Below are the steps to determining the proper limit of insurance for contractor's equipment.

1. The first step in setting the correct limit is to determine how the equipment is to be valued—replacement cost, actual cash value, or some other method.
2. The second step is to select the proper amount of coverage. Equipment dealers are a reliable source of information as are websites that deal in used contractor's equipment.

Many contractors provide values for their equipment that reflect the original purchase price, the amount left on a loan, or a book value based on tax depreciation. It is important that the insured understand what the value should represent so that correct information can be provided.

Please view the policy language below to see how coinsurance applies in **Contractors' Equipment Coverage (IM 7000 04 04)**.

HOW MUCH WE PAY

5. Coinsurance –

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

The most “we” pay is the amount determined in b.3) above or the “limit”, whichever is less. “We” do not pay any remaining part of the loss.

- c. **If There Is More Than One Limit** – If there is more than one “limit” indicated on the “schedule of coverages” for this coverage part, this procedure applies separately to each “limit”.
- d. **If There Is Only One Limit** – If there is only one “limit” indicated on the “schedule of coverages” for this coverage, this procedure applies to the total of all covered property to which the “limit” applies.
- e. **When Coinsurance Does Not Apply** – Conditions for coinsurance do not apply unless a coinsurance percentage is indicated on the “schedule of coverages”.

IM 7000 04 04

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Deductibles

A deductible in a contractors equipment policy is often a flat deductible that applies per occurrence. In many forms, however, a percentage deductible applies, and **Contractors' Equipment Coverage (IM 7000 04 04)** offers both as options.

If a percentage deductible is chosen and shown on the schedule of coverages, the deductible is a percentage of the value of the covered property involved in the loss. This differs from many forms where a percentage deductible is a percentage of the limit. If more than one item is damaged in the loss, only the highest of the percentage deductibles will apply; a minimum and a maximum deductible apply as well.

Please view the policy language below to see how deductibles apply in **Contractors' Equipment Coverage (IM 7000 04 04)**.

HOW MUCH WE PAY

2. **Flat Deductible** – “We” pay only that part of “your” loss over the deductible amount indicated on the “schedule of coverages” in any one occurrence unless Percentage Deductible is indicated on the “schedule of coverages”.
3. **Percentage Deductible** – When a percentage deductible is indicated on the “schedule of coverages”, “we” pay only that part of “your” loss over the deductible amount as determined below.
 - a. **Determining The Deductible Amount** – The deductible amount is determined by applying the percentage indicated on the “schedule of coverages” to the value of the covered property that is involved in the loss. The value is determined by the provisions described under the Valuation section of this policy.
 - b. **Two Or More Items** – If a loss involves two or more pieces of equipment, the percentage indicated on the “schedule of coverages” will apply only to the covered property with the highest value.
 - c. **Minimum and Maximum Deductible** – The percentage deductible will not exceed the Maximum Deductible amount and will not be less than the Minimum Deductible amount indicated on the “schedule of coverages”.

IM 7000 04 04

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While the **Contractors' Equipment Coverage (IM 7000 04 04)** deductible applies per occurrence, some insurer forms apply the deductible per item. This approach is problematic for the insured when multiple pieces of equipment are damaged in the same occurrence—vandalism or a significant storm, for example.

▶▶ Knowledge Check



Directions: Read the scenario below and answer the questions.



Tiffany's backhoe is damaged by a covered cause of loss. Coverage is written on **Contractors' Equipment Coverage (IM 7000 04 04)** with ACV valuation and a 2% deductible. There is no coinsurance percentage on the Schedule of Coverages so coinsurance does not apply. The backhoe has an ACV of \$110,000, but the limit of insurance on the backhoe is only \$100,000. The cost to repair the damage to the backhoe is \$20,000.

Answer the following questions for Tiffany:

1. What does ACV mean?

2. What deductible will apply?

The Time Element Side of Contractors Equipment

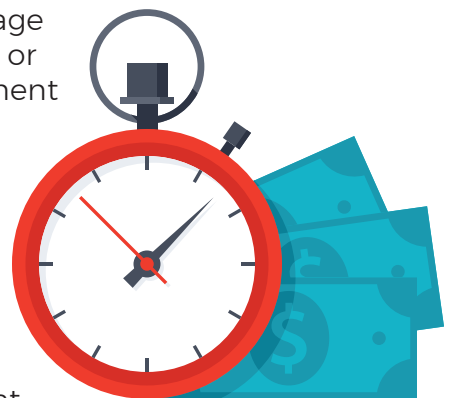
Learning Objective:

1.15 Explain the time element coverages that can be added to contractors equipment policies.

The primary focus when writing contractors equipment coverage is usually to make sure adequate coverage is in place to repair or replace damaged contractors equipment. Contractors equipment coverage also creates a time element exposure for a business.

The previously discussed supplemental coverage, Rental Reimbursement, is a time element coverage. It provides up to \$5,000 coverage for the insured to rent equipment that is similar to the equipment that is damaged; this is a form of extra expense coverage.

Keep in mind that there are other time element coverages that can be added; a few AAIS options are as follows:



Continuing Rental Or Lease Payments (IM 7038 01 12)



The Continuing Rental Or Lease Payments endorsement pays rental or lease payments the insured must continue to make on covered contractors equipment damaged by a covered cause of loss. Coverage applies only if the insured is contractually obligated to continue making the payments and ends when the covered equipment is repaired or replaced. There are two limits of insurance, one applies per item, and the second is an annual aggregate amount. A 72-hour waiting period also applies.

Contractors' Equipment Income Coverage (IM 7027 04 04)



The insured who has a loss to a piece of equipment may suffer a business income loss. If the loss happens while the equipment is on the insured's premises, that loss can be addressed by the business income coverage that is often written in conjunction with property insurance. It is when the loss happens to equipment away from the insured's premises that adding business income coverage to the contractors equipment policy becomes important.

The Contractors' Equipment Income Coverage endorsement covers the loss of net income (net profit or less before income taxes) that would have been earned or incurred plus continuing normal operating expenses, including payroll. Coverage applies during the restoration period, which is the time it should reasonably take the insured to resume business after damage to covered contractors equipment. Coverage starts when the damage happens and ends when the equipment should be repaired or replaced.

Keep the following terms in mind as you review the text that follows from **Contractors' Equipment Income Coverage (IM 7027 04 04)**:

- Earnings
- Restoration period

COVERAGE

“We” provide the coverage described below during the “restoration period” when “your” “business” is necessarily wholly or partially interrupted by direct physical loss of or damage to covered “contractors’ equipment” as a result of a covered peril.

1. **Earnings** – “We” cover “your” actual loss of net income (net profit or loss before income taxes) that would have been earned or incurred and continuing operating expenses normally incurred by “your” “business”, including, but not limited to, payroll expense.
2. **Covered Contractors Equipment Means** – Covered “contractors’ equipment” under this coverage form means:
 - a. “your” “contractors’ equipment”; and
 - b. “contractors’ equipment” of others in “your” care, custody, or controldescribed on the Contractors’ Equipment Income Coverage Schedule or described and indicated on the “equipment schedule”.

ADDITIONAL DEFINITIONS

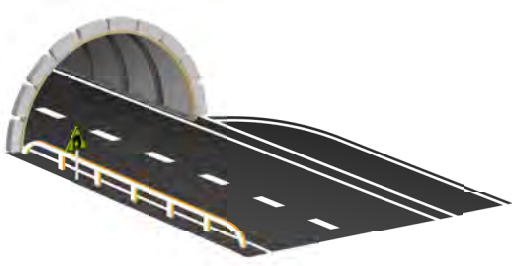
2. “Restoration period” means
 - a. The time it should reasonably take to resume “your” “business” to a similar level starting from the date of a physical loss of or damage to covered “contractors’ equipment” that is caused by a covered peril and ending on the date the property should be repaired or replaced.

This is not limited by the expiration date of the policy.
 - b. “Restoration Period” does not mean the increased time required to comply with the enforcement of any ordinance, law, or decree that:
 - 1) regulates the use or repair of any equipment; and
 - 2) requires “you” or anyone else to test for, monitor, clean up, remove, contain, treat, detoxify, or neutralize or in any way respond to or assess the effects of “pollutants”.

▶▶ Knowledge Check



Directions: Read the scenario below and explain your response.



Your insured won the bid to construct a new traffic tunnel. Collaborating with a great underwriter, you were able to amend policy language to cover the tunnel boring machine as contractors equipment. After having performed well for several months, the machine was damaged when it hit a steel pipe that no one realized was there. It took two months to repair the machine and resume operations. It was not possible to use a replacement piece of equipment to get the project back on track.

How might **Contractors' Equipment Income Coverage (IM 7027 04 04)** help?

Summary

Contractors equipment coverage can be a valuable addition to the insurance program of contractors and many other businesses. It is important to understand not only what equipment an insured has, but how it is used. The insured should understand how covered equipment is valued so that proper limits can be arranged. Lastly, time element exposures should be considered and addressed along with the direct damage exposures.

In Part 4, the final part of Section 1, you will learn about property in transit and the Transportation Policy—including types of carriers, legal liability, types of bills of lading, coverage, and exclusions.

Section 1, Part 3, Self-Quiz

Directions: Read the statements below and for each one, determine whether it is true or false.

1. The **Schedule Of Coverages (IM 7005 01 12)** is attached to the contractors equipment policy to describe the covered property, policy limits, deductible, and coverage features.

True

False

2. Self-propelled vehicles designed and used primarily to carry mounted equipment are NOT considered contractors equipment in **Contractors' Equipment Coverage (IM 7000 04 04)**.

True

False

3. In an unendorsed contractors equipment policy, property that the named insured leases or rents to others is covered.

True

False

4. **Contractors' Equipment Coverage (IM 7000 04 04)** includes up to \$5,000 coverage per occurrence for employees' tools on the named insured's premises or a jobsite.

True

False

5. A Weight Of Load Exclusion applies when the weight of the load, under the operating conditions at the time of loss, exceeds the capacity that the equipment is designed to lift.

True

False

6. In **Contractors' Equipment Income Coverage (IM 7027 04 04)**, "restoration period" is the time it should reasonably take to resume the insured's business to a similar level after physical loss of or damage to covered contractors' equipment that is caused by a covered peril. Income coverage applies for a maximum of thirty days.

True

False

Section 1: Commercial Inland Marine Concepts and Coverage

Directions: Read the statements below and fill in the blank with the appropriate word(s) from the word bank.

actual cash value	replacement cost	lost or damaged part	pair or set	coinsurance
--------------------------	-------------------------	-----------------------------	--------------------	--------------------

7. Many contractors equipment policies have _____ conditions that require insureds to carry an appropriate limit of insurance and which, at the time of a loss, penalize those that do not.
8. The value of covered property will be based on the _____ without any deduction for depreciation unless Actual Cash Value is indicated on the schedule of coverages.
9. The value of a lost or damaged article which is part of a group is based on a reasonable proportion of the value of the entire _____.
10. The value of a lost or damaged part of an item that consists of several parts when it is complete is based on the value of only the _____ or the cost to repair or replace it.
11. _____ valuation includes a deduction for depreciation.

Part 4

Learning Objectives:

- 1.16 Know the types of carriers, the legal liability of each, and the types of bills of lading.
- 1.17 Explain the benefits of purchasing a transportation policy.
- 1.18 Understand the coverage provided by a transportation policy, including:
 - Property covered and not covered
 - Coverage extensions and supplemental coverages
 - Exclusions
 - Endorsements that can enhance or restrict coverage

Transportation Policy

Introduction

There are numerous policies available to insure goods in transit.

Many businesses operate as carriers for hire—they are paid to transport the goods of others. While this course will not address coverage for carriers for hire, motor truck cargo legal liability coverage is commonly written to cover their exposures.

A trip transit policy may be written for the insured who wants to cover a one-time shipment, perhaps for a large delivery or if the business is moving from one location to another. For businesses that transport their own property using only their own vehicles, motor truck cargo owners' forms or owners' cargo forms can be used.

This course will focus on annual transit or transportation policies. Language to be studied is from AAIS **Transportation Coverage (IM 7250 04 04)**. This policy can provide coverage for all cargo shipments during the policy term when the cargo is transported by carriers for hire, railroads, airlines, or vehicles owned by the named insured.



Types of Carriers and the Liability of Each

Learning Objective:

1.16 Know the types of carriers, the legal liability of each, and the types of bills of lading.

Before beginning a discussion of transportation coverage, it is important to understand the following: the parties involved in transportation, the legal liability of carriers, and how the bill of lading comes into play.

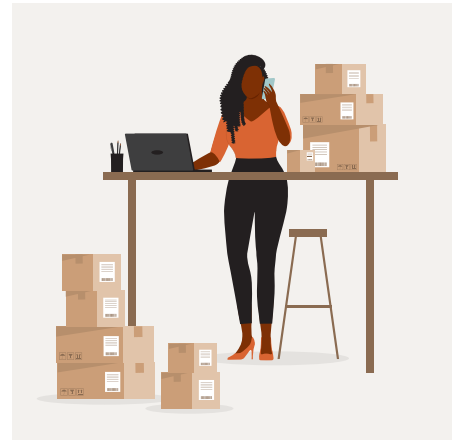
Parties Involved

The owner is the party that holds title to the property being shipped. The shipper arranges for goods to enter the course of transit and is often the same as the owner. The carrier is the party that provides the transportation.



A cosmetics company contracts with a fulfillment center to package products ordered online and ship them to customers via UPS.

- Owner – cosmetics company
- Shipper – fulfillment center
- Carrier – UPS



Types of Carriers

There are three types of carriers, with different degrees of liability:

- Common carriers
- Contract carriers
- Private carriers

Common Carriers

A common carrier provides the public with transportation for hire. Common carriers may operate interstate (between states) or intrastate (within a state) and can include trucking companies and rail carriers.

When a loss involves intrastate transportation, claims will be made under state law causes of action such as negligence or breach of contract. When the loss involves interstate transportation, however, federal law supersedes state law.

Under federal law, a common carrier is strictly liable for the goods it is transporting unless it can prove that it was not negligent and that one of five exceptions applies. “Strictly liable” means that no proof of



Section 1: Commercial Inland Marine Concepts and Coverage

carrier negligence is required for the shipper to prevail in its claim against the carrier. The five exceptions to this strict liability are:

1. Acts of God/nature

This exception refers to physical perils beyond the control of the carrier such as floods, earthquake, and storms. This defense can also be used when, for example, a truck driver suffers a heart attack while driving. The carrier is still held to a reasonable standard of care, though, so it could be held responsible if, for example, the driver chooses to drive through a nor'easter.



2. Acts of public enemy

This exception refers to hostile acts by military forces that are enemies of the government. Although a carjacker might be considered a public enemy by some, this exception would not apply to a carjacking situation.

3. Acts or default of the shipper

The carrier can use as a defense the fact that the shipper did not pack the goods properly or did not provide proper instructions—e.g., the goods need to be kept at a certain temperature.



4. Public authority

This exception applies when action of a governmental entity is the reason for the loss. Goods could be confiscated, or a road could be closed, preventing the goods from reaching their destination in time.

5. Inherent vice or nature of the goods being shipped

This exception recognizes the fact that, with time, certain goods will decay or deteriorate naturally—produce, for example; this is an inherent vice. Certain items cannot be packed together, such as apples with other fruit. Apples give off ethylene gas causing other fruit to ripen too quickly.



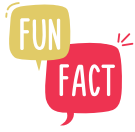
To hold a carrier liable, the shipper must prove only that the goods were in good condition when given to the carrier, that they were damaged when delivered or not delivered at all, and the amount of damages.

The carrier, when presented with a claim, has three possible responses:

- It can pay the amount claimed by the shipper.
- It can deny liability using one of the five exceptions.
- It can pay a reduced amount based on the bill of lading.



A bill of lading is a document issued by a carrier to acknowledge a receipt of cargo shipment; we will get into this more in-depth shortly.



The Carmack Amendment to the Interstate Commerce Act was first enacted in 1906 and adopted by Congress in 1935. The Act was recodified in 1995 and is now part of the ICC Termination Act. With few exceptions (e.g., fishermen, farmers), the Carmack Amendment applies to all shippers and carriers involved in interstate shipments. It establishes the strict liability of the common carrier and the five exceptions described above. It also limits a carrier's liability to the actual loss or injury to the property. The goal of the Carmack Amendment is to provide uniformity in rules governing interstate shipments. It intends to provide a uniform system of carrier liability that provides certainty to both carrier and shipper by enabling the carrier to assess its risk and predict its potential liability for damages.

Contract Carriers

A contract carrier is paid to deliver goods for specific shippers with which it has a contract. Liability is established in the contract between the parties rather than under law as with a common carrier. While a common carrier must treat all customers equally, a contract carrier may refuse to provide services to certain companies or individuals.



Private Carriers



Private carriers transport their own property on their own vehicles, usually because the private carrier makes, buys, or sells the cargo being moved. Liability to others for damage to cargo is not an issue here, but care must be taken to identify and treat any exposure the carrier may have for transporting property of others.

Many companies with vehicles backhaul, which is when a vehicle is used to carry cargo of another on a return trip. For example, a company in New Jersey might transport a shipment of its own goods on its own truck to California. Rather than return to New Jersey with an empty truck, the company arranges to haul goods for another on the trip back. The private carrier has now become a contract or common carrier for that part of the trip, and specific coverage must be arranged. Some insurers can add a backhauling endorsement to a transportation policy or to another type of inland marine policy. If that is not an option, separate motor truck cargo legal liability coverage can be written.

Check-In



Directions: For which one of the following would a common carrier be legally liable?

- The ATF confiscates the cargo in a FedEx truck, believing that illegal firearms are being shipped.
- The cargo in a UPS truck is damaged in an earthquake.
- Cargo in the truck of a common carrier is damaged in an auto accident.
- A shipper of glassware did not pack the goods properly before shipment, and the glassware is broken when it arrives.

Bills of Lading

As briefly mentioned earlier, a bill of lading is a contract that evidences a carrier's receipt of the goods to be shipped and which outlines the agreed upon terms for shipping the goods. The bill of lading is also a document of title that states the ownership or possession of goods in transit. The bill of lading includes such information as the parties involved, the date and destination of the shipment, what is being shipped, shipping charges, and any special instructions. Two types of bills of lading that will be discussed here are released bill of lading and uniform or valued bill of lading.

Released Bill of Lading

A released bill of lading limits the carrier's responsibility to the value on the bill of lading. The value is often expressed in terms of a dollar amount per pound of cargo. The Carmack Amendment allows even a strictly liable common carrier to limit its liability to a value agreed upon by the shipper and carrier. The shipper must be given a reasonable opportunity to choose between two or more levels of liability. The carrier must obtain the shipper's agreement as to its choice of liability limit and must issue a bill of lading that reflects the agreement.



Uniform or Valued Bill of Lading



With a uniform bill of lading, the shipper declares a value for the property being shipped. In the event of a loss to the cargo, the shipper can recover the declared value of the goods being shipped. Because the carrier's exposure is greater, the carrier will charge more to ship under a uniform bill of lading.

Businesses transport property in a variety of ways. They may be private carriers themselves and may still also use the services of common and contract carriers. How likely it is that the insured will be able to recover the value of property damaged in transit from the carrier depends on the type of carrier and the bill of lading.

▶▶ Knowledge Check



Directions: Read the scenario below and explain your response.

Sharon from Sharon's Shirt Company doesn't understand why the contract carrier she uses to transport her goods wouldn't be responsible to pay for the value of the shirts if the shirts are damaged in transit. How would you explain this to Sharon?

Why Purchase Transportation Coverage?

Learning Objective:

1.17 Explain the benefits of purchasing a transportation policy.

There are several reasons why a business can benefit from purchasing a transportation policy.

Limited Coverage Under Commercial Property Policies

Commercial property policies provide little coverage for property in transit away from the described premises. ISO **Causes Of Loss - Special Form (CP 10 30 09 17)** includes a coverage extension for Property In Transit. Coverage is limited to \$5,000, and only a few causes of loss are covered. The property must be the named insured's property in a vehicle owned, leased, or operated by the named insured. Further, the property cannot be in the care, custody, or control of a salesperson. Please review the policy language below for the Property In Transit coverage extension.



F. Additional Coverage Extensions

1. Property In Transit

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

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

CP 10 30 09 17

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Limited Coverage Under Businessowners Policies

Coverage for property in transit under a businessowners policy (BOP) is slightly better than under a commercial property policy. The ISO BOP, for example, includes a coverage extension for Personal Property Off-premises. Its limit is \$10,000, and there are no limitations on covered perils other than the exclusions and limitations that apply to other types of property. The property does not need to be in a vehicle owned, leased, or operated by the named insured, and property in the care, custody, or control of a salesperson is not excluded. Review the policy language below for this coverage extension.

A. Coverage

6. Coverage Extensions

b. Personal Property Off-premises

You may extend the insurance provided by this policy to apply to your Covered Property, other than "money" and "securities", "valuable papers and records" or accounts receivable, while it is in the course of transit or at a premises you do not own, lease or operate. The most we will pay for loss or damage under this Extension is \$10,000.

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Limitations on Carrier Liability

As described above, carriers are not responsible for all losses to the property they transport. Even if liability exists, the carrier may not be responsible for the full value of the cargo.

Prompt Claims Settlement

Claims made under first-party coverage like a transportation policy are usually settled more quickly than third-party claims made against a carrier. With first-party coverage, there is no need to prove the liability of the carrier. If a subrogation action against the carrier is warranted, it will be handled by the transportation insurer after payment of the claim.

Broad and Appropriate Coverage

An insured purchasing a transportation policy is typically able to arrange for broad coverage with limits and terms that are appropriate for the exposure.

Cost-Effective

Purchasing a transportation policy is more cost-effective for most insureds than purchasing additional coverage from the carrier.

There are several reasons why a business should consider the purchase of transportation coverage. There is limited coverage for property in transit under commercial property and businessowners forms. In addition, it is often preferable to have one's own coverage in place rather than relying on another party or its insurer to pay for damage done.

▶▶ Knowledge Check



Directions: Read the scenario below and explain your response.

Your client manufactures cell phone accessories and ships them using common and contract carriers. Your client asks you why a transportation policy should be purchased. Walk through how you would advise your client.

Review the Schedule Of Coverages on the next few pages.

AAIS
IM 7255 01 12
Page 1 of 3

POLICY NUMBER _____

**SCHEDULE OF COVERAGES
TRANSPORTATION COVERAGE**

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

COVERED PROPERTY

DESCRIBED PROPERTY

Catastrophe Limit -- The most "we" pay for loss in any one occurrence is: \$ _____

TRANSPORTATION LIMITS

Modes Of Transportation

"Limits"

Aircraft -- The most "we" pay for loss to covered property on any one "aircraft" is: \$ _____

Owned Vehicle -- The most "we" pay for loss to covered property on any one "owned vehicle" is: \$ _____

Carrier For Hire -- The most "we" pay for loss to covered property on any one "carrier for hire" is: \$ _____

Railroad -- The most "we" pay for loss to covered property on any one "railroad car" is: \$ _____

The most "we" pay for loss to covered property on any one "train" is: \$ _____

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 IM 7255 01 12
 Page 2 of 3

TERMINAL LIMITS

Loc. No.	TERMINALS	"Limits"
_____	_____	\$ _____
_____	_____	\$ _____
_____	_____	\$ _____
_____	_____	\$ _____

Check if applicable:

Attach Additional Terminals Schedule to schedule more terminals

COVERAGE EXTENSIONS

Additional Debris Removal Expenses	\$ _____
Emergency Removal	_____ days

SUPPLEMENTAL COVERAGES

Pollutant Cleanup And Removal	\$ _____
Property You Have Sold	\$ _____
Rejected Shipments	_____

The Transportation Policy

Learning Objective:

1.18 Understand the coverage provided by a transportation policy, including:

- Property covered and not covered
- Coverage extensions and supplemental coverages
- Exclusions
- Endorsements that can enhance or restrict coverage

The transportation policy to be reviewed is the AAIS form, **Transportation Coverage (IM 7250 04 04)**. The **Schedule Of Coverages (IM 7255 01 12)** is attached to the transportation policy to describe the covered property, policy limits, deductible, and other coverage features.

Covered Property

Transportation policies typically begin with a broad description of covered property, and then narrow coverage in a Property Not Covered section. **Transportation Coverage (IM 7250 04 04)** allows two basic types of property to be covered—property in a terminal and property in transit. In either case, property is only covered while in the due course of transit. As such, it is worth reviewing the definition of transit before describing covered property.

DEFINITIONS

16. "Transit" means the shipment of covered property that:

- a. begins at the point of shipment to a specific destination;
- b. includes the ordinary reasonable and necessary stops, interruptions, delays, or transfers incidental to the route and method of shipment, including rest periods taken by the driver(s); and
- c. ends upon acceptance of the goods by or on behalf of the consignee at the specified destination.

IM 7250 04 04

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Transit involves more than the time the goods are on a conveyance in motion. Transit begins when the property to be shipped is at its starting point and ends when the property is accepted at its final destination. This includes the loading and unloading of the property. It also includes ordinary stops, delays, and transfers along the way such as driver rest stops.

Property In A Terminal

An insured may choose to cover property in a terminal by describing the terminal on the schedule of coverages and specifying a limit of insurance to apply there. A terminal is a building where covered property is transferred between vehicles or between vehicles and other transporting conveyances. Because a transportation policy is not designed to cover a true warehouse exposure, coverage is limited to loading and unloading and any temporary storage associated with the transfer of property. The terminal location must be described on the schedule of coverages, and the property must be in the due course of transit.

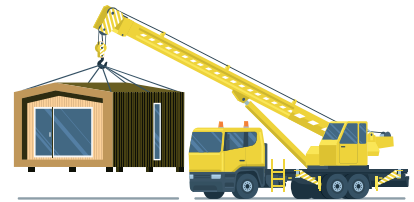


The property to be covered may be the named insured's property or property of others. In the case of property of others, coverage applies only to the extent of the insured's legal liability for direct physical loss caused by a covered peril.

Consider the example here:



Mason's Manufactured Homes makes and ships homes to locations on the east coast. One driver took the trailer carrying the home from Massachusetts to Virginia. The trailer and manufactured home were left overnight in a scheduled terminal so that a second driver could pick them up in the morning and take them to Florida. Unfortunately, the manufactured home was stolen from the terminal. If the terminal was scheduled on the policy, coverage would apply.



PROPERTY COVERED

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

1. Property In A Terminal –

- a. **Coverage** – “We” cover direct physical loss caused by a covered peril to property described on the “schedule of coverages” while at a “terminal” location.
- b. **Coverage Limitations** –
 - 1) “We” only cover described property while:
 - a) at a “terminal” location that is described on the “schedule of coverages” or within 100 feet of the described “terminal”; and
 - b) the property is in due course of “transit”.
 - 2) If property described on the “schedule of coverages” includes property of others, “we” only cover property of others to the extent of “your” legal liability for direct physical loss caused by a covered peril.

IM 7250 04 04

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Property In Transit

Coverage also applies while property is in transit, which includes loading and unloading. For coverage during loading and unloading to apply, however, the cargo must be loaded from or unloaded onto a sidewalk, street, loading dock, or similar area that is adjacent to the indicated mode of transportation.

While **Transportation Coverage (IM 7250 04 04)** covers cargo while it is being loaded and unloaded, not all transportation policies do. This is an important coverage feature to look for as cargo is often damaged during the loading and unloading processes.



As was seen with terminal coverage, the covered property may be the named insured’s property or property of others. In the case of property of others, coverage applies only to the extent of the insured’s legal liability for direct physical loss caused by a covered peril.

The policy only covers transportation by the modes of transportation for which a limit is shown on the schedule of coverages. The possible modes of transportation are aircraft, owned vehicle, carrier for hire, and railroad.



“Carrier for hire” means any one vehicle, truck, trailer, semitrailer, or combination of these pulled by one power unit operated by a carrier for hire.

The limit applies separately to each conveyance. In the case of railroad transportation, there is one limit per railroad car and a separate limit per train. Lastly, a catastrophe limit may apply, which is the most that would be paid in any one occurrence.

Section 1: Commercial Inland Marine Concepts and Coverage

It is a good idea to make sure that coverage applies to all modes of transportation because an insured may not realize what modes of transportation are being used. A shipper who uses a freight forwarder may assume that the cargo will be transported on a truck, not realizing that air and rail transportation will also be involved. If limits for air and rail are not shown on the schedule of coverages, coverage will not apply during the air and rail part of the trip.

PROPERTY COVERED

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

2. Property In Transit –

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

Check-In



Directions: Read the scenario below and explain your response.

Lorelei's Lumberyard has a transportation policy with the following limits:

Owned Vehicle - \$500,000

Carrier for Hire - \$500,000

Catastrophe Limit - \$1,000,000

Building materials are being delivered to a construction project. Two of Lorelei's trucks are carrying \$400,000 of material each. Two contract carriers are carrying \$300,000 each. A tornado strikes while the four vehicles are in transit, and all the materials are destroyed. How much will be paid?



When setting limits, keep the catastrophe exposure in mind. Insureds tend to set limits based on the maximum amount of cargo that will be on one conveyance. If the catastrophe limit is not higher, there may be inadequate coverage if property on more than one conveyance is damaged in the same occurrence.

There is another key point with respect to covered property. Coverage is limited to property described on the schedule of coverages. It is important that this description be broad enough to include all types of property an insured may be shipping. If the description is too specific, it could unnecessarily limit coverage.



Steven's Scientific sells and ships elemental analyzers to customers in various states. If the description of covered property on the schedule of coverages shows "elemental analyzers," Steven will have no coverage for the consumable supplies and parts that may be shipped. While a description such as "all property shipped at the insured's risk" is desirable from the insured's point of view, many underwriters will resist such broad language. It is important to negotiate language that is broad enough to cover both known exposures and related exposures that may arise.

Property Not Covered

There are eleven categories of property that are not covered under **Transportation Coverage (IM 7250 04 04)**. Please review the policy language below for each of these categories.

High Value Items

Certain high value items are not covered; included in this category are art, antiques, fur, jewelry, precious or semi-precious stones, and precious metals.

PROPERTY NOT COVERED

1. **Art, Antiques And Fur** – “We” do not cover objects of art, antiques, or fur garments.
5. **Jewelry, Stones And Metals** – “We” do not cover jewelry, precious or semi-precious stones, gold, silver, platinum, or other precious metals or alloys.

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Contraband

Contraband is not covered, and this limitation was seen in the other inland marine policies studied.

PROPERTY NOT COVERED

3. **Contraband** – “We” do not cover contraband or property in the course of illegal transportation or trade.

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Exports And Imports

Exports and imports are not covered if they are covered under an ocean cargo policy or if they are on an ocean or air conveyance. Ocean cargo policies typically provide warehouse-to-warehouse coverage, and this language in a transportation policy is included, in part, to prevent a duplication of coverage with the ocean cargo policy.



PROPERTY NOT COVERED

4. **Exports And Imports** – “We” do not cover exported or imported property:
- a. that is covered under any ocean marine cargo policy that anyone has obtained to cover exports or imports; or
 - b. while on an ocean or air conveyance.

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Some insurer forms have broader exclusions for waterborne property, but often make exceptions for incidental transportation on inland waterways—e.g., the delivery truck on a ferry. An example of such language is below.

SAMPLE POLICY LANGUAGE

PROPERTY NOT COVERED

Property while waterborne. However, we cover property while aboard vessels on inland waterways when the waterborne transportation is incidental to the land portion of the journey.

Live Animals



Transportation Coverage (IM 7250 04 04) does not cover live animals unless death is caused or made necessary by a specified peril as defined in the form below.

PROPERTY NOT COVERED

7. **Live Animals** – “We” do not cover animals including cattle or poultry unless death is caused or made necessary by a “specified peril”.

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The live animals section includes a defined term, “specified perils.” The definition is below.

DEFINITIONS

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

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Mail Shipments



There is no coverage for property shipped by mail with the U.S. Postal Service. Some insurers may include a small amount of coverage for this exposure in their forms. A separate mail coverage form can also be written to provide this coverage.

PROPERTY NOT COVERED

8. **Mail** – “We” do not cover mail shipments in the custody of the U.S. Postal Service.

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Money And Securities

Coverage also does not apply to money and securities which are better insured under a crime policy.

PROPERTY NOT COVERED

9. **Money And Securities** – “We” do not cover accounts, bills, currency, food stamps, or other evidences of debt, lottery tickets not held for sale, money, notes, or securities.

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Sales Representative Samples

Samples in the custody of a sales representative are not covered, and a separate sales representative or salespersons samples floater can be written if coverage is needed.

PROPERTY NOT COVERED

10. **Samples** – “We” do not cover samples while in the custody of a sales representative.

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Property in Storage



Property held in storage is not covered. This type of property is not in the due course of transit and should be insured separately under another inland marine policy or a property policy.

PROPERTY NOT COVERED

11. **Storage** – “We” do not cover property held in storage.

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Carrier For Hire and Lease Agreement

Transportation policies are not designed to cover carriers for hire, and the remaining two categories in the Property Not Covered section address this. Although property of others can be covered property, coverage will not apply if the insured is acting as a carrier for hire or an arranger of transportation. A manufacturer that delivers purchased goods to a customer has coverage, while a trucking company hired to deliver goods for another does not.

There is no coverage for property for which the insured is contractually liable under a lease agreement with any transportation carrier. A tractor owner, for example, may lease its tractor to a trucking company and operate under the authority of the trucking company. If the tractor owner is contractually liable for damage to the cargo, coverage will not apply.



Fred’s Farm owns a tractor-trailer, and, after harvest, Fred transports his harvested crops to market. During the winter, however, Fred’s tractor-trailer is not in use for the business of the farm. Fred leases his tractor to a motor carrier and is now hauling for the motor carrier. In the contract with the motor carrier, Fred agreed to be responsible for damage to the cargo and to the motor carrier’s trailer. Coverage for such damage under the transportation policy would not apply.

PROPERTY NOT COVERED

2. **Carrier For Hire** – “We” do not cover property of others that “you” are responsible for as:
 - a. a carrier for hire; or
 - b. an arranger of transportation; this includes carloader, consolidator, broker, freight forwarder, or shipping association.
6. **Lease Agreement** – “We” do not cover property for which “you” are contractually liable under a lease agreement with any transportation carrier.

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Check-In



Directions: For each of the questions following, based on the unendorsed **Transportation Coverage (IM 7250 04 04)**, select the best answer. Assume that limits apply for all modes of transportation and that the description of covered property on the schedule of coverages is broad enough.

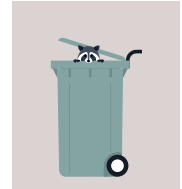
1. Which of the following, in the due course of transit, is NOT covered property?
 - Computers the insured ships via Federal Express
 - Computers the insured ships via the U.S. Postal Service
 - Computers the insured ships via a contract carrier
 - Computers the insured ships via railroad
2. Which of the following, in the due course of transit, is covered property?
 - Gold earrings the insured has crafted and shipped to a jewelry store via Federal Express
 - Electronics the insured backhauls after having delivered a truck full of its own products to a distribution center
 - Electronics the insured has manufactured that are being shipped to a distribution center via contract carrier
 - Raw materials the insured is importing while on an aircraft

Coverage Extensions

Transportation Coverage (IM 7250 04 04) includes two coverage extensions that are like extensions discussed in the other policies studied here. The extensions are Debris Removal and Emergency Removal.

Debris Removal

The policy pays to remove the debris of covered property caused by a covered peril. Coverage applies with a sublimit equal to 25% of the amount paid for direct physical loss. If additional money is needed to cover debris removal costs, the policy pays up to an additional \$5,000. A higher limit can be shown on the schedule of coverages.



Emergency Removal

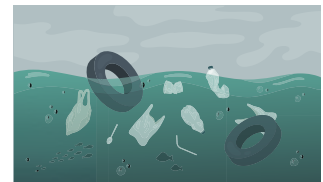
If covered property is in danger of being damaged by a covered cause of loss, and the insured moves it to protect it from damage, there is coverage for any cause of loss that damages the property. While the other inland marine forms reviewed in this course provide this coverage for ten days, the transportation policy provides coverage for up to 365 days after the property is first moved. Coverage will not extend, though, past the policy expiration date.

Supplemental Coverages

Transportation Coverage (IM 7250 04 04) includes three supplemental coverages. The first, Pollutant Cleanup And Removal, is similar to coverage found in the other policies studied. Property You Have Sold and Rejected Shipments, though, are new here in the transportation policy.

Pollutant Cleanup And Removal

This policy includes a \$10,000 annual aggregate limit for Pollutant Cleanup And Removal, although a higher limit can be shown on the schedule of coverages. Coverage applies to expenses to extract pollutants from land or water after a covered peril occurs and for any testing necessary for the extraction.



The cost to clean up pollutants can be considerable. Even if an insurer agrees to increase the Pollutant Cleanup and Removal limit, the limit offered will likely be inadequate to clean up a large release of pollutants.

Recall that a business auto policy excludes losses involving the release of pollutants being carried in a covered auto. For the insured whose cargo could be considered a pollutant, pollution liability coverage should be considered. Coverage can often be added to a business auto policy by endorsement. If that is not an option, separate pollution liability coverage should be considered.

Property You Have Sold



An insured under a transportation policy may be shipping goods already sold at the owner's risk, meaning that the owner is responsible for the goods. If title has passed but the owner has not yet paid for the goods, the insured still has an exposure. If the cargo is damaged, and the owner rejects the shipment and refuses to pay for the property, coverage under the transportation policy will apply. Unless a different limit is shown on the schedule of coverages, there is not a separate limit for this coverage; the limit shown on the schedule of coverages for a particular conveyance will apply.



Ollie's Organics sells organic beauty products. A shipment of product was sold to a natural food store. Title passed to the customer, and Ollie shipped the product at the risk of the food store. The goods were damaged in transit by a covered cause of loss, and the customer refused to accept delivery and pay Ollie. Ollie has coverage under the Property You Have Sold supplemental coverage.

SUPPLEMENTAL COVERAGES

2. Property You Have Sold –

- a. **Coverage** – “We” pay for direct physical loss caused by a covered peril to covered property that “you” have sold and are shipping at the owner’s risk.
- b. **Coverage Limitation** – “We” only cover property that “you” have sold when the shipment has been rejected by the owner because:
 - 1) the property is damaged; and
 - 2) the owner of the property has refused to pay “you”.

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Rejected Shipments

Shipments are sometimes undeliverable or rejected by the intended recipient, the consignee. Coverage under the supplemental coverage, Rejected Shipments, applies when the property is awaiting return shipment or in due course of transit back to the insured. Unless the property is in due course of transit back to the insured, coverage ends ten days after the delivery has been attempted. There is not a separate limit for this coverage; the limit shown on the schedule of coverages for a particular conveyance will apply. Note, too, that this coverage pays for damage to the goods, not for the shipping costs to return them.



SUPPLEMENTAL COVERAGES

3. Rejected Shipments –

- a. **Coverage** – “We” pay for direct physical loss caused by a covered peril to outgoing shipments of covered property that have been rejected by the consignee, including shipments that are not deliverable.
- b. **Coverage Limitation** – “We” only cover rejected shipments while the property is:
 - 1) in due course of “transit” back to “you”; or
 - 2) awaiting return shipment to “you”.
- c. **Time Limitation** – This supplemental coverage will end ten days after delivery has been attempted or made to the consignee unless the covered property is in due course of “transit” back to “you”.

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Renate’s Restaurant Equipment hires a contract carrier to deliver a shipment of flatware and silverware to a new restaurant. The restaurant does not accept delivery because the items are the wrong color. The goods are covered while in transit back to Renate’s. If the restaurant did not notice the error for two weeks, though, and then arranged to return the goods, coverage for the goods at the restaurant would not apply beyond the tenth day after the original delivery was made.



Check-In



Directions: Read the scenario below and explain your response.



The insured is transporting liquid chocolate in an owned tanker truck. The truck overturns, and the tank ruptures. Chocolate must be removed from the roadway. In addition, some of the chocolate has entered a nearby stream and is considered a pollutant in this jurisdiction. How might the coverage extensions and supplemental coverages in **Transportation Coverage (IM 7250 04 04)** help the insured?

Covered Causes of Loss

Coverage under **Transportation Coverage (IM 7250 04 04)** applies on an open perils basis. Loss to covered property is covered unless the loss is limited or excluded by the policy; policy exclusions are divided into two groups. Most of these exclusions have been reviewed previously, so only a few will be discussed here in detail. The complete list of exclusions, though, is as follows:

Excluded Causes of Loss

Table: 1.12

Excluded Causes of Loss Transportation Coverage (IM 7250 04 04)
Group 1 Exclusions
Civil Authority
Nuclear Hazard
War And Military Action
Group 2 Exclusions
Contamination Or Deterioration
Criminal, Fraudulent, Dishonest, Or Illegal Acts
Loss Of Use
Missing Property
Pollutants
Spoilage
Temperature/Humidity
Voluntary Parting
Wear And Tear

Notably absent are exclusions for earth movement and water/flood. These causes of loss are typically covered under transportation policies.

Spoilage and Temperature/Humidity Exclusions

Spoilage and changes in temperature or humidity are excluded causes of loss.

PERILS EXCLUDED

2. “We” do not pay for loss or damage that is caused by or results from one or more of the following:
 - f. **Spoilage** – “We” do not pay for loss to “perishable stock” caused by “spoilage”.
 - g. **Temperature/Humidity** – “We” do not pay for loss caused by dryness, dampness, humidity, or changes in or extremes of temperature.
But if dryness, dampness, humidity, or changes in or extremes of temperature results in a “specified peril”, “we” do cover the loss or damage caused by that “specified peril”.

IM 7250 04 04

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The Spoilage and Temperature/Humidity exclusions include several terms defined in the policy. Those definitions are included below.

DEFINITIONS

7. “Perishable stock” means property preserved and maintained under controlled conditions and susceptible to loss or damage if the controlled conditions change.
12. “Spoilage” means any detrimental change in physical state of “perishable stock”. Detrimental change includes, but is not limited to, thawing of frozen goods, warming of refrigerated goods, solidification of liquid material.

IM 7250 04 04

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Because these exclusions are not group one exclusions, prefaced with anti-concurrent causation language, coverage would apply if the spoilage resulted from another covered cause of loss.



Charlie’s Cheeses uses owned vehicles to transport gourmet cheese products to grocery stores in three states. Charlie’s vehicle is involved in a collision, causing the refrigeration system to stop working. Because this happened during a heatwave, the cheese spoiled before it could be removed from the vehicle. This loss is covered. Had the refrigeration system on the truck simply broken down, the loss would not have been covered.



Refrigeration Breakdown Endorsement (IM 7275 01 12)



When an insured is shipping cargo that needs to be kept at a particular temperature, it is often possible to add coverage for loss due to sudden or accidental breakdown or malfunction of the conveyance's refrigeration or heating unit. AAIS **Refrigeration Breakdown Endorsement (IM 7275 01 12)** is an example of an endorsement to add this coverage. Because tractors and trailers designed to transport items needing temperature control are commonly referred to as "reefer trucks or trailers," this coverage is often referred to as "reefer breakdown."

Please see the following policy language for more information on this endorsement.

AAIS
IM 7275 01 12
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This endorsement changes the
Transportation Coverage or the Trip Transit Coverage
-- PLEASE READ THIS CAREFULLY --

POLICY NUMBER

REFRIGERATION BREAKDOWN ENDORSEMENT

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

REFRIGERATION BREAKDOWN SCHEDULE

	"Limits"
Any One Conveyance Limit --	\$ _____
Catastrophe Limit --	\$ _____
Refrigeration Deductible --	\$ _____

SUPPLEMENTAL COVERAGES

Refrigeration Breakdown --

1. **Coverage** -- "We" cover direct physical loss to covered property consisting of "perishable stock" caused by "spoilage".
2. **Coverage Limitations** --
 - a. "We" only cover loss to "perishable stock" caused by "spoilage" when the refrigeration or heating unit of an "owned vehicle", "aircraft", or "railroad car" transporting covered property has a sudden or accidental breakdown or malfunction.
 - b. "We" only cover loss to "perishable stock" caused by "spoilage" when the covered property is in "transit" via a mode of transportation that is indicated on the "schedule of coverages".
3. **We Do Not Cover** -- The following exclusion only applies to covered property on "owned vehicles"; "we" do not pay for loss caused by breakdown or malfunction:
 - a. that results from the failure to maintain adequate fuel levels for the refrigeration or heating unit; or
 - b. of a refrigeration or heating unit if "you" or a service representative do not inspect a vehicle's refrigeration or heating unit at least once each month.

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4. **Coverage Condition** -- The following coverage condition only applies to covered property on "owned vehicles"; "you" must maintain a record of each inspection of a refrigeration or heating unit and retain the records of the inspection for at least one year. "You" must provide "us" with all records that relate to a loss and permit copies and abstracts to be made from them.
5. **Limit** -- The most "we" pay for loss to "perishable stock" on any one "owned vehicle", "aircraft", or "railroad car" is the Any One Conveyance Limit indicated on the Refrigeration Breakdown Schedule. The most "we" pay for loss to "perishable stock" in any one occurrence is the Catastrophe Limit indicated on the Refrigeration Breakdown Schedule.
6. **Refrigeration Deductible** -- "We" pay only that part of "your" loss over the deductible amount indicated on the Refrigeration Breakdown Schedule in any one occurrence.

PERILS EXCLUDED

The exclusion for Spoilage still applies except to the extent that coverage is provided under this endorsement.

IM 7275 01 12

Section 1: Commercial Inland Marine Concepts and Coverage

There are a few items of interest in this AAIS endorsement. Note that there are two limits—one per conveyance and a separate catastrophe limit—and that the endorsement has its own deductible. For coverage to apply, the policy must first cover transportation by the type of conveyance being used to transport the cargo. Secondly, the conveyance must be an aircraft, railroad car, or owned vehicle.

“Owned vehicle” means any one vehicle, truck, trailer, semitrailer, or combination of these pulled by one power unit owned by “you” or leased by “you” and that is operated by “you.”

Even if the transportation policy includes a limit of coverage for property transported by a carrier for hire, the refrigeration breakdown coverage would not apply to losses in those vehicles.

There are a few exclusions in the endorsement that apply to property in owned vehicles. There is no coverage if adequate fuel levels for the refrigeration or heating unit are not maintained. There is no coverage if the insured does not inspect a vehicle’s refrigeration or heating unit at least once each month.

There is also a condition stating that the insured must maintain a record of each inspection of a refrigeration or heating unit and must retain the records of the inspection for at least one year.

Check-In



Directions: Read the scenario below and respond to statements that follow.

Ichabod's Ice Cream ships ice cream to various states using a variety of conveyances: aircraft, railroad car, owned vehicles, and contract carriers. Coverage is written using **Transportation Coverage (IM 7250 04 04)** with the **Refrigeration Breakdown Endorsement (IM 7275 01 12)**, and adequate limits of insurance apply to each of the four modes of transportation.

Does coverage apply to the following losses?

1. Ichabod ships ice cream on his own refrigerated truck. The last time he inspected the refrigeration unit was three months before the refrigeration unit broke down. \$200,000 of product melted.

Yes

No

2. Ichabod ships ice cream via railroad to another state. The refrigeration unit on the railroad car breaks down, and the \$300,000 of product melted.

Yes

No

3. Ichabod hires a contract carrier to ship product via truck. The truck's refrigeration unit breaks down, and \$200,000 of product melted.

Yes

No

Voluntary Parting Exclusion

There is no coverage if the insured voluntarily parts with title to or possession of any property because of any fraudulent scheme, trick, or false pretense. There is an exception, though, for loss caused by false bills of lading or shipping receipts that the named insured accepts in good faith. This exception is like the Fraud And Deceit coverage extension in **Builders' Risk Coverage - Scheduled Jobsite Form - Comprehensive Form (IM 7050 07 20)**.

Valuation and Payment of Losses

How losses are valued under **Transportation Coverage (IM 7250 04 04)** depends on whether there is an invoice. If there is an invoice, the valuation is based on the invoice amount plus accrued costs, pre-paid charges, and charges since the shipment. In the absence of an invoice, the property will be valued at actual cash value. This policy, like the others studied, includes specific language to address situations where the damaged property is part of a set or has multiple parts.



Section 1: Commercial Inland Marine Concepts and Coverage

In the event of a loss, the policy pays the lesser of:

- the amount determined under Valuation;
- the cost to repair, replace, or rebuild the property with material of like kind and quality to the extent practicable; or
- the limit shown on the schedule of coverages.

VALUATION

1. **Value Of Covered Property** – The value of covered property is based on the following:
 - a. **Invoice** – The value of covered property is based on the invoice amount plus accrued costs, pre-paid charges, and charges since shipment.
 - b. **Actual Cash Value** – In the absence of an invoice the value of covered property will be based on the actual cash value at the time of loss (with a deduction for depreciation).
2. **Pair Or Set** – The value of a lost or damaged article which is part of a pair or set is based on a reasonable proportion of the value of the entire pair or set. The loss is not considered a total loss of the pair or set.
3. **Loss To Parts** – The value of a lost or damaged part of an item that consists of several parts when it is complete is based on the value of only the lost or damaged part or the cost to repair or replace it.

IM 7250 04 04

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Conditions

All policies have conditions, and two of those in the transportation policy will be reviewed here—Subrogation and Carriers For Hire.

Subrogation

All of the inland marine policies studied here include similar subrogation conditions. Since the language concerning subrogation was not previously discussed, it will be addressed here in **Transportation Coverage (IM 7250 04 04.)**

When an insurer pays a loss under a first-party coverage such as transportation coverage, any rights of recovery an insured may have against the party responsible for the damage must be assigned to the insurer. The insured is required to do all that is necessary to secure the insurer's rights. If the insured impairs these rights, the insurer does not have to pay the loss. There is one important exception, however: the insured may waive its right to recover from others in writing before the loss occurs.

OTHER CONDITIONS

9. **Subrogation** – If “we” pay for a loss, “we” may require “you” to assign to “us” “your” right of recovery against others. “You” must do all that is necessary to secure “our” rights. “We” do not pay for a loss if “you” impair this right to recover.

“You” may waive “your” right to recover from others in writing before a loss occurs.

IM 7250 04 04

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Carriers For Hire

When an insured ships under a released bill of lading, the insurer’s ability to recover the full amount paid for a loss is compromised. **Transportation Coverage (IM 7250 04 04)**, though, specifically allows the insured to ship this way.

OTHER CONDITIONS

12. **Carriers For Hire** – “You” may accept bills of lading or shipping receipts issued by carriers for hire that limit their liability to less than the replacement cost or actual cash value of the covered property.

IM 7250 04 04

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Endorsements

Endorsements are sometimes added to transportation policies to broaden or limit coverage. Coverage-enhancing endorsements mentioned previously include Backhauling and Refrigeration Breakdown. Two AAIS endorsements sometimes used to limit coverage are **Unattended Vehicle Exclusion (IM 7267 05 07)** and **Concealed Damage Exclusion (IM 7276 11 10)**.

Unattended Vehicle Exclusion (IM 7267 05 07)



Adding the Unattended Vehicle Exclusion endorsement restricts coverage for theft while cargo is being shipped in an owned vehicle or by carrier for hire. For theft coverage to apply, the insured or carrier for hire must have assigned an employee to guard the vehicle and its contents. In the case of the carrier for hire, the guard can be an owner-operator. The employee or owner-operator must be in or on the vehicle while it is in transit or while it is at a terminal or other location for loading and unloading.



Section 1: Commercial Inland Marine Concepts and Coverage



TV World uses owned vehicles to deliver televisions to customers' homes. TV World's transportation policy is **Transportation Coverage (IM 7250 04 04)** with **Unattended Vehicle Exclusion (IM 7267 05 07)** and **Concealed Damage Exclusion (IM 7276 11 10)**. Jack and Jill, employees of TV World, leave the warehouse in the morning with seven televisions to be delivered. At the fourth stop, Jack and Jill bring the television into the customer's home. When they return to the truck, they discover that the remaining three televisions have been stolen. There is no coverage for this loss as the vehicle was unattended at the time of the theft.

AAIS
IM 7267 05 07
Page 1 of 1

This endorsement changes the
Transportation Coverage
-- PLEASE READ THIS CAREFULLY --

UNATTENDED VEHICLE EXCLUSION TRANSPORTATION COVERAGE

PERILS EXCLUDED

The following exclusion is added:

Theft From An Unattended Vehicle --

1. "We" do not pay for loss caused by or resulting from theft from an "owned vehicle" unless at the time of the loss:
 - a. "you" have assigned an employee to guard or otherwise watch over the "owned vehicle" and its contents; and
 - b. the employee is in or on the "owned vehicle" while the vehicle is in "transit" or the vehicle is at a "terminal" or other location for loading and unloading.
2. "We" do not pay for loss caused by or resulting from theft from a vehicle operated by a "carrier for hire" unless at the time of the loss:
 - a. the "carrier for hire" has assigned an employee or hired an owner-operator to guard or otherwise watch over the vehicle and its contents; and
 - b. the "carrier for hire's" employee or owner-operator is in or on the vehicle while the vehicle is in "transit" or the "carrier for hire's" vehicle is at a "terminal" or other location for loading and unloading.

IM 7267 05 07

Concealed Damage Exclusion (IM 7276 11 10)



Adding this endorsement removes coverage when there is loss or damage to covered property but no damage to the shipping container or packaging materials. The presumption is that the property was damaged before the course of transit begin.



Jack and Jill from TV World head out the following day to deliver five more televisions. This time, they bring along another employee to sit in the truck while the delivery is made. When they enter the home of the third customer, though, and unpack the television, they discover that the screen is cracked. They assume this happened when the load shifted during a sharp turn. One of the straps securing the cargo had not been properly tightened. Coverage does not apply as there is no visible damage to the shipping container or packaging materials.

AAIS
IM 7276 11 10
Page 1 of 1

This endorsement changes the
Transportation Coverage or the Trip Transit Coverage
-- PLEASE READ THIS CAREFULLY --

CONCEALED DAMAGE EXCLUSION

ADDITIONAL PERILS EXCLUDED

The following exclusion is added:

Concealed Damage -- "We" do not pay for loss or damage to covered property unless there is visible damage to the shipping container or packaging materials.

This exclusion does not apply if covered property:

1. has been stolen from an "aircraft", "owned vehicle", "carrier for hire", "railroad car", or "terminal"; or
2. is on or in an "aircraft", "owned vehicle", "carrier for hire", or "railroad car" that has been stolen or that has disappeared.

IM 7276 11 10

▶▶ Knowledge Check



Directions: Read the scenario below and explain your responses.

Natalie of Natalie's Naturals, a manufacturer of nutritional supplements, is trying to understand how coverage under her unendorsed **Transportation Coverage (IM 7250 04 04)** applies. She only ships goods in her own trucks. She has asked whether the following hypothetical losses would be covered. How do you respond?

1. Natalie's driver, an employee, steals several cases of protein powder from a truck that is delivering product to local stores.

2. Natalie is about to start manufacturing and shipping a new line of pre-made shakes that must be refrigerated. What if the refrigeration unit in the truck breaks down and the product spoils before it can be delivered?

Summary

Many insureds can benefit by adding transportation coverage to their insurance programs. It is important to understand what cargo is being shipped and how it is being shipped so that coverage can be properly written.

Commercial inland marine coverages can be written for many types of businesses and to cover a wide variety of exposures. The five different inland marine policies studied here are examples of how broad inland marine coverage can be and how it can often be tailored to meet the coverage needs of a particular business.

This concludes all parts included in Section 1, Commercial Inland Marine. In Section 2, you will learn about Employment Practices Liability Insurance, where you will be able to analyze a policy to determine whether it provides coverage and how the policy will respond to losses.

Resources

Important concepts related to the Learning Objectives in this chapter are summarized in separate videos and podcasts. Online participants can use the links to access these learning resources. Classroom learners can access the videos at scic.com/CMLresources.



“Speaking From Experience”—What Is Inland Marine? with R. Bryan Tilden, CIC, CPCU, CLU, ChFC, ARM, ALCM, SCLA



“Speaking From Experience”—The Importance of Purchasing Contractors Equipment Coverage, with Allen Messer, CIC, CPCU

Section 1, Part 4, Self-Quiz

Directions: Match the term with the correct definition.

<p>A. Contract carriers</p>	<p>_____ Provide transportation for hire to the public and are strictly liable for the goods they are transporting unless they can prove that they were not negligent and that one of five exceptions applies</p>
<p>B. Private carriers</p>	<p>_____ Transport their own property on their own vehicles; liability to others for damage to cargo is a non-issue</p>
<p>C. Public authority</p>	<p>_____ Paid to deliver goods for specific shippers; liability is established in the agreement between the parties rather than under law as with a common carrier</p>
<p>D. Common carriers</p>	<p>_____ The exception to common carrier liability that refers to physical perils beyond the control of the carrier such as floods, earthquake, and storms</p>
<p>E. Acts of God/nature</p>	<p>_____ The exception to common carrier liability that applies when action of a governmental entity is the reason the cargo is damaged</p>

Directions: Read the statements below and for each one, determine whether it is true or false.

- One of the benefits of purchasing a transportation policy is that it is more cost-effective for most insureds than purchasing additional coverage from the carrier.

True

False

- Claims made under first-party coverage, such as a transportation policy, are usually settled more quickly than third-party claims made against a carrier.

True

False

- An insured purchasing a transportation policy can typically only arrange for limited coverage with limits and terms that many not properly address the exposure.

True

False

Section 1: Commercial Inland Marine Concepts and Coverage

4. Property in a terminal and property in transit are two basic types of property that can be covered under **Transportation Coverage (IM 7250 04 04)**.

True

False

5. Jewelry, contraband, property in storage, and sales representative samples are all examples of property COVERED under **Transportation Coverage (IM 7250 04 04)**.

True

False

6. Debris Removal and Property You Have Sold are two coverage extensions included in **Transportation Coverage (IM 7250 04 04)**.

True

False

7. \$10,000 is the annual aggregate limit for Pollutant Cleanup And Removal in **Transportation Coverage (IM 7250 04 04)**.

True

False

8. Property preserved and maintained under controlled conditions and susceptible to loss or damage if the controlled conditions change refers to "perishable stock."

True

False

9. **Refrigeration Breakdown Endorsement (IM 7275 01 12)** imposes no additional responsibilities on the insured, prior to the loss, with respect to owned vehicles.

True

False

10. Under **Transportation Coverage (IM 7250 04 04)**, if there is an invoice, the valuation is based on the invoice amount plus accrued costs, pre-paid charges, and charges since the shipment.

True

False

Section 2: Employment Practices Liability Insurance

Section Goal

In this section, you will be able to analyze an employment practices liability policy to determine whether that policy provides coverage and, if so, how the policy will respond to losses that occur.

Learning Objectives:

- 2.1 *Explain the need for employment practices liability insurance (EPLI) using knowledge of liability exposures including:*
 - *Violation of statutes*
 - *Workplace torts*
 - *Breach of contract*
- 2.2 *Understand the key elements of an EPLI insuring agreement, including the promises made by the insurer, what wrongful acts may be covered, and who is an insured.*
- 2.3 *Demonstrate the importance of third-party liability coverage and how an EPLI policy may cover third-party liability claims.*
- 2.4 *Apply EPLI policy exclusions to determine whether a claim is covered and understand how endorsements may be used to enhance coverage.*
- 2.5 *Understand the defense provisions in an EPLI policy including the right and duty to defend, how defense costs and expenses are paid, and the consent to settle clause.*
- 2.6 *Discuss select EPLI policy provisions including limit of insurance, notice of claim, and importance of the EPLI application.*

Introduction to Employment Practices Liability Insurance

Virtually every business has an exposure that can be treated with an EPLI policy. Most claims come from employees, former employees, and applicants for employment. Claims for discrimination and harassment, though, can also be made by those outside the organization, creating an EPLI need even for businesses without employees.

To help clients understand the importance of this coverage, an insurance professional working with EPLI policies should be familiar with some of the exposures that can result in claims. The insurance professional should also understand the coverage features to look for in any EPLI policy being considered.



The Need for Employment Practices Liability Insurance

Learning Objective:

- 2.1 Explain the need for employment practices liability insurance (EPLI) using knowledge of liability exposures including:
- Violation of statutes
 - Workplace torts
 - Breach of contract

Employment Practices Liability Exposures

There are three primary sources of employment-related claims:

1. Violation of statutes
2. Workplace torts
3. Breach of contract

Violation of Statutes

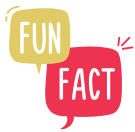
Numerous federal, state, and local laws provide protection against discrimination for employees and applicants for employment. Examples of federal laws providing such protection are:

- **Title VII of the Civil Rights Act of 1964 (Title VII)** and its amendments (The Civil Rights Act of 1991 and the Lily Ledbetter Fair Pay Act of 2009) prohibit employment discrimination based on race, color, religion, sex, and national origin. Title VII applies to employers with 15 or more employees.
- **The Age Discrimination in Employment Act of 1967 (ADEA)** and its amendments prohibit employment discrimination against persons 40 years of age or older. ADEA applies to employers with 20 or more employees.



Federal laws describe the remedies available to an employee. In the case of Title VII, an employee may be entitled to back pay and reinstatement of the job or front pay. In cases involving intentional discrimination, compensatory and punitive damages may be awarded. Title VII includes caps on damages which vary depending on the size of the employer.

State and/or local laws may provide additional protection to employees. Some states, for example, protect workers younger than age 40 from age discrimination. Other states have anti-discrimination laws that apply to employers with fewer employees.



All states are employment-at-will states, meaning that an employer can terminate employment for any legal reason without proving a just cause. Many states have exemptions, though. Montana, for example, is employment-at-will only during a six-month probationary period. Employment-at-will does not prevent an employee from filing a discrimination or wrongful termination claim against an employer. The employee might allege, for example, that termination was due to a characteristic that is protected under law, such as gender, race, or age.

Workplace Torts

Often, an employee who is filing a workplace tort claim will choose to file it in conjunction with, or in lieu of, a statutory claim. A tort is a civil wrong that does not involve a breach of contract. Torts can be unintentional, where one fails to use the amount of care warranted in a given situation (e.g., negligence.) Torts can also be intentional (e.g., defamation).





Examples of workplace tort claims:

- **Bullying, humiliation, infliction of emotional distress**
 - Berating a subordinate in front of others
- **Invasion of privacy**
 - Unreasonable search of an employee's personal property
- **Libel, slander, defamation of character**
 - A manager defames an employee seeking a transfer to another department.
- **Negligent hiring practices**
 - Hiring someone with a known history of violence who later threatens a co-employee
- **Negligent supervision**
 - Failing to take action against an employee who has harassed a co-employee
- **Wrongful or negligent evaluations, criticism, demotions, discipline**
 - An employee's evaluation is based on inaccurate information, and the employee is demoted.
- **Wrongful deprivation of a career opportunity**
 - A qualified employee is not admitted into a management training program.
- **Wrongful detention or imprisonment**
 - A manager refuses to allow an employee to leave the room until the manager is finished reprimanding the employee.

A person may choose to file a tort claim instead of a statutory claim for several reasons. One reason could be that the employer has few employees and is not subject to a statute. Another is that the claimant might be looking for a remedy in excess of that provided for by the statute. Or maybe, the statute of limitations on the statute has expired, but there is still time to file a workplace tort claim.

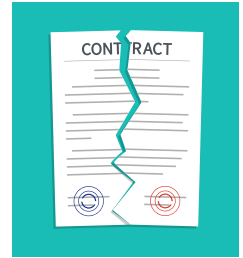
Each situation is different, but employers should understand that, even if they are not subject to any employment-related statute, they can still be sued for an employment-related act.

Breach of Contract

Claims can be made alleging that an employer breached a written contract of employment or an implied contract. Implied contracts can include job offer letters, employee manuals, or oral promises.



Jared's employer terminated one of the employee benefit programs described in the employee manual. Jared files a claim for breach of an implied contract.



Knowledge Check



Directions: Read the following scenario and explain your thinking.



Gillian's Gym is a small company employing only three people. Gillian knows that her company is too small to be subject to many of the federal employment statutes, so she decides to forego purchase of an EPLI policy. Explain to Gillian why her logic is flawed.

The EPLI Insuring Agreement

Learning Objective:

2.2 Understand the key elements of an EPLI insuring agreement including the promises made by the insurer, what wrongful acts may be covered, and who is an insured.

Although ISO has an EPLI policy, it is not commonly used; instead, most insurers have developed their own coverage forms which vary widely. It is important to carefully review any EPLI form being considered. Although this discussion uses language from the ISO **Employment-Related Practices Liability Coverage Form (EP 00 01 11 09)**, sample language from carrier-specific forms has been included as well.



What follows is the first part of the insuring agreement in ISO’s EPLI policy.

As is the case in most liability policies, the insuring agreement includes two promises the insurer makes to the insured.

1. The first is the promise to pay those sums the insured becomes legally obligated to pay as damages in a covered claim.
2. The second is the promise to defend the insured against any suit seeking those damages. This second promise is often described as the duty to defend.

EMPLOYMENT-RELATED PRACTICES LIABILITY COVERAGE FORM

SECTION I – EMPLOYMENT-RELATED PRACTICES LIABILITY COVERAGE

A. Insuring Agreement

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

EP 00 01 11 09

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Wrongful Acts

The ISO EPLI policy uses the phrase “wrongful act” to describe the types of claims covered by the policy. ISO’s form includes coverage for discrimination, wrongful termination, retaliation, harassment, and various workplace torts. Included among these torts are wrongful denial of training, negligent hiring or supervision, coercion, libel, slander, invasion of privacy, and others.

While ISO uses the phrase wrongful act, other insurer forms may refer to covered acts as wrongful employment practices, employment practices wrongful acts, employment offenses, insured events, or something else. The phrase used does not give an indication of the breadth of coverage. It is crucial to check what is included in the definition to determine what is covered by the policy.

EMPLOYMENT-RELATED PRACTICES LIABILITY COVERAGE FORM

SECTION VII – DEFINITIONS

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

Section 2: Employment Practices Liability Insurance

An example of a form with a much narrower scope of coverage than ISO's is below.

SAMPLE POLICY LANGUAGE

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

- Discrimination
- Sexual Harassment
- Retaliation
- Wrongful termination

Almost all EPLI policies cover at least the four wrongful acts in the example above, although most provide coverage for additional acts. Many insurer forms define or describe terms that are within the definition of wrongful acts. Examples of language used to define or describe the most commonly insured wrongful acts follows.

Discrimination

Some policies list a variety of discrimination bases which might trigger coverage such as race, religion, age, sex, etc. Still others limit coverage to discrimination based on characteristics protected under a statute. Some definitions are detailed and reference specific types of discrimination such as demotion, failure to hire, or segregation. Still others are more general.



In the first sample form below, employment discrimination includes wrongful termination and numerous other workplace torts that might be separately described in other policies. Coverage applies to discrimination based on certain characteristics as well as unlisted characteristics protected under statutory or common law.

SAMPLE POLICY LANGUAGE #1

Employment Discrimination means any violation of employment discrimination laws including any actual, alleged or constructive termination, dismissal, or discharge of employment, employment demotion, denial of tenure, modification of any term or condition of employment, any failure or refusal to hire or promote an employee or applicant for employment, or any limitation, segregation or classification of any employee or applicant for employment in any way that would deprive or tend to deprive such person of employment opportunities or otherwise affect his or her status as an employee based on such person's race, color, religion, creed, age, sex, national origin, disability, pregnancy, HIV status, marital status, sexual orientation or preference, military status or other status that is protected pursuant to any applicable federal, state, or local statutory law or common law anywhere in the world.

In this second form, wrongful termination is separately described in language not shown here. Coverage applies only to discrimination based on legally protected characteristics.

SAMPLE POLICY LANGUAGE #2

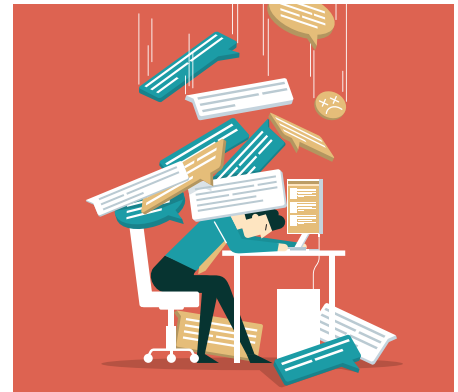
Discrimination means any actual or alleged:

1. violation of employment discrimination law; or
2. disparate treatment of, or the failure or refusal to hire a Claimant or Outside Claimant because he or she is or claims to be a member of a class which is or is alleged to be legally protected.

Harassment

Harassment can include sexual harassment and non-sexual harassment, and, ideally, coverage should apply to both. In the case of sexual harassment, one should look for coverage for both quid pro quo sexual harassment and for hostile environment. The Equal Employment Opportunity Commission (EEOC) describes the two types of sexual harassment as follows:

1. **Quid pro quo:** Submission to or rejection of unwelcome sexual conduct by an individual is used as the basis for employment decisions affecting such individual.
2. **Hostile environment:** Unwelcome sexual conduct unreasonably interferes with an individual's job performance or creates an intimidating, hostile, or offensive working environment.



In the sample language below, harassment includes both types of sexual harassment and other types of workplace harassment.

SAMPLE POLICY LANGUAGE #1

Employment Harassment means:

- (a) sexual harassment, including any unwelcome sexual advances, requests for sexual favors, or other conduct of a sexual nature that is made a condition of employment with or used as a basis for employment decisions by, interferes with performance or creates an intimidating, hostile or offensive working environment within, the Organization; or
- (b) workplace harassment, including work related harassment of a non-sexual nature that interferes with performance or creates an intimidating, hostile or offensive working environment within the Organization.

In this next form, sexual harassment includes quid pro quo sexual harassment, but not hostile environment. It is possible that a form with this type of definition might separately describe coverage for a hostile environment.

SAMPLE POLICY LANGUAGE #2

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

In this third form, below, harassment includes any type of sexual harassment as well as workplace harassment based on a variety of characteristics.

SAMPLE POLICY LANGUAGE #3

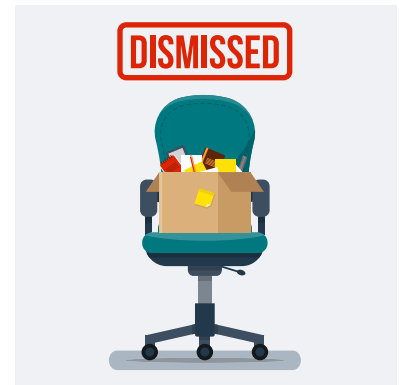
Wrongful Employment Practice means any actual or alleged

2. harassment, including any type of sexual or gender harassment as well as racial, gender, religious, national origin, sexual orientation or preference transgender status, pregnancy, disability (including HIV), marital or family status, mental status, pregnancy, age, obesity, generic information or predisposition (including BRCA state) – based harassment and including harassment via Social Media and workplace harassment by non-employees
3. abusive or hostile work environment

Wrongful Termination

Wrongful termination can be actual or constructive termination, and one should look for coverage for both. ISO's EPLI policy specifically references both in its definition of wrongful act. Actual termination is when employment is involuntarily terminated; the employee is fired. Constructive termination, also known as constructive discharge, is when an employer, instead of firing an employee, makes the working conditions unbearable so that the employee resigns.

In some forms, like the one below, wrongful termination is a defined term. Note that this form specifically covers termination in violation of an employment agreement. Not all policies do.



SAMPLE POLICY LANGUAGE #1

Wrongful termination means the actual, alleged, or constructive termination of an employment relationship...in a manner or for a reason which is contrary to applicable law or public policy, or in violation of an Employment Agreement.

Section 2: Employment Practices Liability Insurance

The form below includes only implied agreements in its definition of wrongful termination. In language not shown here, though, the form separately addresses breach of written or oral employment contract in the definition of wrongful employment act.

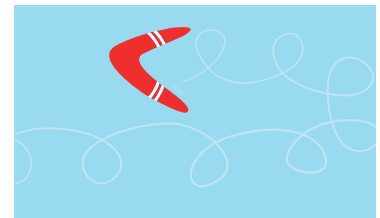
SAMPLE POLICY LANGUAGE #2

“Wrongful Termination” shall mean the actual or constructive termination of an employment relationship in a manner that is against the law or in breach of an implied agreement to continue employment.

Retaliation

The following definition and example of retaliation are from the U.S. Department of Labor.

Retaliation occurs when an employer...fires an employee or takes any other type of adverse action against an employee for engaging in protected activity. An adverse action is an action which would dissuade a reasonable employee from raising a concern about a possible violation or engaging in other related protected activity.



Consider the following example:



Deborah requested Family and Medical Leave Act (FMLA) leave from her job as a hotel desk clerk when she began suffering from migraine headaches that made it impossible for her to work. She was approved for intermittent FMLA leave and used it for three days in January and one day in February. In April, Deborah had another migraine that caused her to be out on FMLA leave for two days. Upon her return, Deborah discovered her new manager had reduced her schedule from 40 hours to 20 hours a week saying that the company needed workers who would show up every day.



In this example, Deborah’s hours were reduced because she exercised her right to FMLA. Such an act is prohibited as retaliation by her employer and a FMLA violation.

Section 2: Employment Practices Liability Insurance

As is the case with discrimination, harassment, and wrongful termination, some EPLI policies define or describe retaliation. Two examples of this follow.

SAMPLE POLICY LANGUAGE #1

Retaliation means retaliatory treatment against an employee, volunteer or Independent Contractor of the Organization on account of such individual:

- (a) exercising his or her rights under law;
- (b) refusing to violate any law;
- (c) opposing any unlawful practice;
- (d) disclosing or threatening to disclose to a superior or to any governmental agency any alleged violations of law; or
- (e) having assisted or testified in or cooperated with a proceeding or investigation regarding alleged violations of law by the Insured.

SAMPLE POLICY LANGUAGE #2

Wrongful Employment Practice means any actual or alleged

...

Retaliation, including retaliation for exercising protected rights, supporting in any way another's exercise of protected rights, or threatening or actually reporting wrongful activity of an Insured such a violation of any federal, state, or local "whistle blower" law;

Section 2: Employment Practices Liability Insurance

EPLI policies often describe or define many of the covered wrongful acts. Some forms, though, do not, as seen in the policy language below. Only terms in bold type are defined. Note that this form covers discrimination, harassment, wrongful termination, retaliation, plus numerous other workplace torts.

SAMPLE POLICY LANGUAGE

“Employment Practices Wrongful Act” shall mean any of the following acts related to employment, but only if alleged by or on behalf of a **Claimant**:

- (1) wrongful dismissal, discharge or termination of employment, whether actual or constructive;
- (2) misrepresentation;
- (3) violation of employment laws;
- (4) sexual or workplace harassment;
- (5) discrimination;
- (6) wrongful failure to employ or promote;
- (7) wrongful discipline;
- (8) wrongful deprivation of career opportunity including a wrongful failure to hire or promote;
- (9) failure to grant tenure;
- (10) negligent employee evaluation;
- (11) retaliation;
- (12) failure to provide adequate workplace or employment policies or procedures;
- (13) defamation (including libel and slander);
- (14) invasion of privacy;
- (15) wrongful demotion;
- (16) negligent reassignment;
- (17) violation of any federal, state or local civil rights laws;
- (18) negligent hiring;
- (19) negligent supervision;
- (20) negligent training;
- (21) negligent retention; or
- (22) acts described in (1) through (21) above arising from the use of the **Organization’s** or **Subsidiary’s** Internet, e-mail, telecommunication or similar systems, including the failure to provide and enforce adequate policies and procedures relating to such use of the **Organization’s** or Subsidiary’s **Internet**, e-mail, telecommunication or similar systems.

Check-In



Directions: Complete each sentence with the appropriate word or phrase.

actual termination	wrongful termination	defend	constructive termination	negligent retention
quid pro quo	retaliation	discrimination	indemnify	hostile environment

- Two promises made by the insurer in the ISO EPLI policy are the promise to pay sums the insured becomes legally obligated to pay and the promise to _____ the insured against a suit seeking those damages.
- _____ sexual harassment occurs when submission to or rejection of unwelcome sexual conduct by an individual is used as the basis for employment decisions affecting such individual.
- _____ sexual harassment is when unwelcome sexual conduct unreasonably interferes with an individual's job performance or creates an intimidating, hostile, or offensive working environment.
- _____ is when employment is involuntarily terminated.
- _____ is when an employer makes the working conditions unbearable so the employee resigns.
- _____ occurs when an employer fires an employee or takes any other type of adverse action against an employee for engaging in protected activity.
- Four wrongful acts covered in nearly all EPLI policies are discrimination, _____, sexual harassment, and retaliation.

Who Is an Insured?

Although most federal laws hold the employer responsible for employment-related acts, under some state and local statutes and in claims based on workplace torts, individuals may be named in the suit. For that reason, it is important that EPLI policies have a broad definition of who is an insured.

Insureds under the ISO EPLI policy

In addition to the named insured, ISO's EPLI policy includes many of the same entities and persons as are insureds under the ISO CGL policy, but there are differences to note. Some of those covered under the CGL but not under the EPLI policy include volunteers, spouses of partnership partners, spouses of joint venture members, and stockholders.

The following, in addition to the named insured, are included as insureds under the ISO EPLI policy:

- Spouses of individual named insureds
- Partners and members of partnerships or joint ventures
- LLC members and managers
- Executive officers and directors of other organizations (e.g., a corporation)
- Employees and former employees
- Newly acquired organizations, subject to limitations



ISO's EPLI policy description of who is an insured is below.

EMPLOYMENT-RELATED PRACTICES LIABILITY COVERAGE FORM

SECTION II – WHO IS AN INSURED

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

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

SECTION VII – DEFINITIONS

- E.** “Employee” includes a “leased worker” and a “temporary worker” but does not include an independent contractor.

EP 00 01 11 09

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Others that may be insureds under non-ISO forms

Many insurer forms include additional entities and persons as insureds, providing broader coverage than ISO. In some cases, the term “employee” is defined to include certain individuals, and in other cases, the entities or persons are separately added to the description of who is an insured. Some of those that might be insureds include volunteers, independent contractors, and subsidiaries. Spousal liability coverage will be discussed here as well.

Volunteers

When it comes to volunteers, ISO does not include them as insureds; however, many insurer forms do.

SAMPLE POLICY LANGUAGE #1

“**Employee**” means a person whose labor or service is engaged and directed by the “company” in the ordinary course of its business including past, present, part-time, seasonal, temporary, or leased employees, applicants for employment, volunteers, interns and students. “Employee” does not include independent contractors unless specifically included by written endorsement.



Independent Contractors



Coverage for independent contractors varies widely among insurers. Some policies, such as the ISO form, do not include independent contractors as insureds. Some forms cover independent contractors if the named insured has agreed to indemnify them or if they are treated under law as employees. Still other forms require an endorsement to cover independent contractors.

In the form below, independent contractors are insureds when they are treated under an applicable law as an employee of the named insured.

SAMPLE POLICY LANGUAGE #1

Employee means any past or present employee whose labor or service is engaged by and directed by the Company while performing duties related to the conduct of the Company’s business. Employee includes leased, part-time, seasonal, and temporary workers, volunteers and interns; and independent contractors who are treated under applicable law as employees of the Company.

Section 2: Employment Practices Liability Insurance

In this second form, independent contractors are insureds if the named insured agrees to indemnify them in writing before or within 30 days after the claim is made.

SAMPLE POLICY LANGUAGE #2

Insured Person means any natural person who was, now is or shall become:

- (a) a full-time, part-time, temporary, leased or seasonal employee or volunteer of the Organization but only while acting in his or her capacity as such;
- (b) a duly elected or appointed natural person director, officer, trustee or duly constituted committee member of any Organization but only while acting in his or her capacity as such; or
- (c) an Independent Contractor working for the Organization, but only while acting in his or her capacity as such and only if the Organization agrees in writing, prior to or no later than thirty (30) days after the Claim is made, to indemnify the Independent Contractor for liability arising out of such Claim.

In this third form, independent contractors are covered as insured employees if they are indemnified by the named insured as an employee would be. The independent contractor also needs to be scheduled on an endorsement.

SAMPLE POLICY LANGUAGE #3

“Employee” shall mean any person whose labor or service is engaged by and directed by the Company. Employee shall include current, former, and future full-time, part-time, leased, seasonal and temporary workers as well as volunteers whose labor or service is or was engaged by and directed by the Company. Employee shall include an applicant for employment as an Employee with the Company. Employee also shall mean any independent contractor who performs labor or service for the Company where such labor or service is under the exclusive direction of the Company, but only if the Company provides indemnification to such individual in the same manner as that provided to an Employee and such individual is scheduled by written endorsement to this Policy. The status of an individual as an independent contractor shall be determined as of the date of the alleged Wrongful Act. This Policy does not cover any Loss which any Insured is obligated to pay to an independent contractor for overtime pay, vacation pay, or any employee benefits.



Many insurer applications do not ask about independent contractors. Be sure to check with the insured to see if there are any independent contractors that need to be covered and make the insurer aware of the exposure. This way, appropriate language can be negotiated.

Subsidiaries

ISO has some coverage for newly acquired and formed entities. Subsidiaries are commonly included as insureds in non-ISO EPLI policies, even if they existed at policy inception.

In the form below, “company” refers to the named insured. Coverage automatically applies to subsidiaries that existed as of policy inception or which are newly created or acquired after inception. This form also automatically covers subsidiaries of subsidiaries created or acquired after policy inception.

SAMPLE POLICY LANGUAGE #1

“Company” shall mean the entity(s) named in Item 1. of the Declarations and any Subsidiary. “Subsidiary” shall mean any entity of which the Company owns more than fifty percent (50%) of the outstanding voting securities on the inception date of this Policy. Subsidiary shall include a subsidiary of a Subsidiary and any entity created or acquired after the inception date of this Policy, as described in Section X.B. of this Policy.

Coverage shall apply to a Subsidiary only for Wrongful Acts committed or allegedly committed during the time such entity qualified as a Subsidiary.

Note the difference between the definitions of “subsidiary” in the first sample above and the second sample below. It is important to carefully review policy definitions to make sure that any entities not automatically covered as subsidiaries are named as insureds on the policy.

SAMPLE POLICY LANGUAGE #2

Insured Organization means the Named Insured, any Subsidiary...

Subsidiary means:

1. any corporation, partnership, limited liability company or other entity organized under the laws of any jurisdiction in which, on or before the Inception Date set forth in ITEM 2 of the Declarations, the Named Insured owns, directly or indirectly, more than fifty percent (50%) of the outstanding securities or voting rights representing the present right to elect, appoint or exercise a majority control over such entity’s board of directors, board of trustees, board of managers, natural person general partners, or functional equivalent;
2. any non-profit entity over which, on or before the Inception Date set forth in ITEM 2 of the Declarations, the Named Insured has the ability to exercise managerial control;
3. any entity operated as a joint venture, in which, on or before the Inception Date set forth in ITEM 2 of the Declarations, the Named Insured owns, directly or indirectly, exactly fifty percent (50%) of the issued and outstanding voting stock and whose management and operation the Insured Organization solely controls, pursuant to a written agreement with the owner(s) of the remaining issued and outstanding voting stock; or
4. any entity that the Insured Organization acquires or forms during the Policy Period in which the Named Insured owns, directly or indirectly, more than fifty percent (50%) of the outstanding securities or voting rights representing the present right to elect, appoint or exercise a majority control over such entity’s board of directors, board of trustees, board of managers, natural person general partners, or functional equivalent, or, in the case of any non-profit entity that does not issue securities, over which the Named Insured has the ability to exercise managerial control.

Spousal Liability

Although spouses of insured persons are not usually covered as insureds, coverage for spousal liability may apply. This coverage feature, commonly found in directors and officers liability policies, is also found in many EPLI policies. It is common for a claimant to name the spouse of a company's officer or director, for example, in a lawsuit. These officers and directors may try to shield assets by transferring them to a spouse, which is the reason for naming the spouse in the suit. The spouse is covered when named in a suit alleging a wrongful act on the part of an insured, but not for any wrongful acts committed by the spouse. Two samples of spousal liability language are included here.



SAMPLE POLICY LANGUAGE #1

Subject to all limitations, conditions, provisions and other terms of these General Terms and Conditions and of the applicable Liability Coverage Section, coverage shall extend to Claims for the Wrongful Acts of an Insured Person made against:

- (a) the estate, heirs, legal representatives or assigns of such Insured Person if such Insured Person is deceased or the legal representatives or assigns of such Insured Person if such Insured Person is incompetent, insolvent or bankrupt; or
- (b) the lawful spouse or Domestic Partner of such Insured Person solely by reason of such spouse's or Domestic Partner's status as a spouse or Domestic Partner, or such spouse's or Domestic Partner's ownership interest in property which the claimant seeks as recovery for an alleged Wrongful Act of such Insured Person.

SAMPLE POLICY LANGUAGE #2

The coverage afforded under this Policy shall extend to the lawful spouse or Domestic Partner of natural person Insureds, but only for Claims that are based on (i) Wrongful Acts of such Insureds, and not upon any alleged conduct of a spouse, and (ii) either the legal status as a spouse or the spouse's ownership interest in property which the claimant seeks as recovery for an alleged Wrongful Act of such natural person Insured.

▶▶ Knowledge Check



Directions: Read the following and respond.

Many businesses use independent contractors. Explain some of the approaches insurers take with respect to coverage for independent contractors.

Third-Party Liability Coverage

Learning Objective:

2.3 Demonstrate the importance of third-party liability coverage and how an EPLI policy may cover third-party liability claims.

The primary purpose of an EPLI policy is to provide coverage for claims for employment-related acts made by employees, former employees, and applicants for employment. Claims for discrimination and harassment, though, may be made against the insured by others such as customers, clients, vendors, and other non-employees.

Third-party liability coverage is often included in an EPLI policy to protect insureds against claims from those outside the organization. Some insurers include this coverage in their policy form in the same insuring agreement as EPLI. Other insurers have separate insuring agreements for EPLI and third-party liability, while a few require endorsements to add the coverage. Even if third-party liability coverage is described in the EPLI coverage form, an insurer usually has the ability to exclude coverage if the insured does not wish to purchase it or if the insurer does not wish to provide it to a particular insured.



Section 2: Employment Practices Liability Insurance

When reviewing the third-party liability coverage in an EPLI policy, one should focus on two important points.

1. Who is a third party?
2. What wrongful acts are covered?

Who is a Third Party?

Insurers define “third party” differently. ISO has several endorsements that can be used to add third-party liability, with the broadest definition appearing in the endorsement below.

LIABILITY TO NON-EMPLOYEES (EP 01 20 09 07)



In this endorsement, a third party is anyone who is not an employee.

SAMPLE POLICY LANGUAGE #1 LIABILITY TO NON-EMPLOYEES

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

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

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

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

EP 01 20 09 07

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The second form, below, also has a broad definition of “third party,” including all persons other than applicants for employment and employees, the definition of which includes former employees.

SAMPLE POLICY LANGUAGE #2

“**Third-Party**” shall mean any natural person(s) with whom an Insured, in their capacity as such, interacts. Third-Party shall not include Employees or an applicant for employment.

Section 2: Employment Practices Liability Insurance

This third form restricts third-party liability coverage to claims by a customer, vendor, service provider or other business invitee of the named insured.

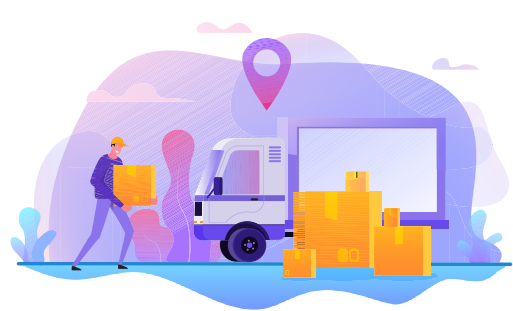
SAMPLE POLICY LANGUAGE #3

Third Party means any natural person who is a customer, vendor, service provider or other business invitee of the Organization.

Consider this example below:



Brooke hires a moving company to move her into a new apartment. Brooke's friend, Diana, is there to help. Diana alleges that Jack, an employee of the moving company made inappropriate sexual advances towards her. Diana files a suit against Jack and the moving company alleging sexual harassment. With the language in sample policy #3, there is no coverage as Diana is not a customer, vendor, service provider, or other business invitee. Diana is a third party under the broader language in sample policies #1 and #2.



What Wrongful Acts Are Covered?

In addition to knowing who a third party is, it is important to understand what wrongful acts are covered. A good third-party liability form includes coverage for discrimination and for both sexual and non-sexual harassment.

ISO's endorsement, Liability To Non-Employees, shown on the previous page, applies to discrimination and harassment. Coverage is not limited to sexual harassment.

This second form, too, covers discrimination as well as both sexual and non-sexual harassment.

SAMPLE POLICY LANGUAGE #2

“Third-Party Wrongful Act” means any actual or alleged:

- (1) discrimination against a Third-Party for disparate impact or vicarious liability and not disparate treatment based upon such Third-Party's race, color, religion, creed, age, sex, disability, marital status, national origin, pregnancy, HIV status, sexual orientation or preference, veteran status or any other status that is protected pursuant to any foreign, federal, state, or local statutory law or common law; or
- (2) harassment, directed against a Third Party, including sexual harassment, unwelcome sexual advances, requests for sexual favors or other misconduct of a sexual nature. Coverage for harassment shall not be provided to any person who allegedly: i) participates in; ii) directs; or iii) knowingly allows any act of harassment.

Coverage under this third form applies to discrimination and sexual harassment but does not clearly apply to non-sexual harassment.

SAMPLE POLICY LANGUAGE #3

Third party wrongful act” means actual or alleged discrimination, sexual harassment, or violation of any person’s civil rights related to such discrimination or sexual harassment, but only if alleged by a customer, client, vendor, service provider or other business invitee of the company.

Website Accessibility Suits

Claims alleging website accessibility discrimination are becoming more common. Claims might be brought, for example, by those with visual or hearing impairments who are unable to use the features of a company’s website.

Although the Americans With Disabilities Act (ADA) does not specifically reference websites, many courts have ruled that websites are public accommodations subject to ADA. ADA provides that a place of public accommodation engages in unlawful discrimination if it fails to “take such steps as may be necessary to ensure that no individual with a disability is excluded, denied services, segregated, or otherwise treated differently than other individuals because of the absence of auxiliary aids and services.”

There are web content accessibility guidelines (WCAG) that a business can follow to ensure that its website is ADA-compliant.

Absent an exclusion added to an EPLI policy, most EPLI policies’ third-party liability coverage will respond to website accessibility claims. A few, in fact, even provide a small amount of coverage to help the insured comply with WCAG guidelines if a website accessibility claim is made against an insured.



Section 2: Employment Practices Liability Insurance

Please review the sample language below.

SAMPLE POLICY LANGUAGE

Loss shall also include ADA Website Compliance Costs incurred in connection with a Claim that alleges the Insured Company's website is not compliant with the Americans With Disabilities Act, the Web Content Accessibility Guidelines, or any similar federal, state or local law, subject always to a sublimit of \$25,000 in the aggregate for all such costs. Such sublimit amount shall be a part of, and not in addition to the aggregate Limit of Liability.

No retention shall apply for such ADA Website Compliance Costs

Although most business owners understand that EPLI policies can protect them against claims made by employees, some do not understand that coverage can also apply to claims made by third parties. Third-party liability coverage is an important part of any EPLI policy.

▶▶ Knowledge Check



Directions: Read the following scenarios and explain your thinking.

Which of the following scenarios is most likely to be covered under third-party liability? In both cases, assume that the incident is a covered wrongful act under the policy.

Scenario 1



Todd is a server at an upscale restaurant where a regular customer has made inappropriate sexual advances toward him on several occasions. Todd reported the behavior to his manager who insisted that Todd continue to serve this customer and just try to ignore the situation. Todd files a suit against his employer for failing to provide a safe workplace.

Scenario 2

Todd is a server at an upscale restaurant. A regular customer has filed a lawsuit against Todd and the restaurant claiming that Todd made inappropriate sexual advances on a number of occasions.

EPLI Exclusions

Learning Objective:

2.4 Apply EPLI policy exclusions to determine whether a claim is covered and understand how endorsements may be used to enhance coverage.

As is the case with many liability policies, EPLI policies start with a broad coverage grant and narrow the scope of coverage through the use of exclusions. Exclusions may be embedded in the policy form or added by endorsement. Exclusions vary greatly among insurers, but some commonly seen exclusions are discussed here.

Criminal, Fraudulent, or Malicious Acts

An EPLI policy excludes liability arising out of criminal, fraudulent, or malicious acts or omissions. The exclusion typically applies only to the particular insured guilty of such behavior. In addition, most policies promise to defend that insured until it is determined in court that the insured is responsible for the alleged act. This language is often referred to as “final adjudication” language.



Some insurers expand upon the final adjudication language. In the sample language that follows, the insurer will defend until evidence of responsibility for an act is established in a final and non-appealable judgment or adjudication, or in a criminal plea of guilty.

Final adjudication language is important for two reasons. First, insureds may be accused of a crime or fraudulent act they did not commit. Defense coverage should be available for that insured until the facts are established. Second, claims are often made against more than one insured—the named insured and its employee, for example. If defense is not provided to the employee charged with the crime, there will be little incentive for the employee to cooperate with the insurer in helping to defend the named insured.



A lawsuit is filed against Barry’s Bistro and its employee, Jeff. Another employee alleged that Jeff sexually harassed and assaulted her. Jeff was arrested and charged with a crime.

Jeff is the insured accused of the criminal act. The EPLI policy will defend Jeff until it is determined, in court, that Jeff is guilty of the act. If Jeff is found guilty, the policy will not pay damages on behalf of Jeff.

Barry’s Bistro, on the other hand, is not charged with a criminal act. Coverage for Barry’s Bistro is not affected by this exclusion.



SAMPLE POLICY LANGUAGE

EXCLUSIONS

The Company shall not be liable for Loss on account of any Claim:

made against any Insured based upon, arising from, or in consequence of:

- (i) the committing of any deliberately fraudulent act or omission or any willful violation of any statute or regulation by such Insured, as evidenced by a final and non-appealable judgment or adjudication, or, in a criminal proceeding, as evidenced by any plea of guilty, nolo contendere or no contest, or any similar plea; or...

Bodily Injury and Property Damage

Bodily injury and property damage claims are commonly excluded in EPLI policies. When this exclusion is added, however, there is often an exception for certain employment-related exposures such as emotional distress resulting from a wrongful act. This is illustrated in the sample language below.



SAMPLE POLICY LANGUAGE

Exclusions

The Company shall not be liable for Loss on account of any Claim:

for bodily injury, mental anguish, emotional distress, humiliation, sickness, disease or death of any person or damage to or destruction of any tangible property including loss of use thereof whether or not it is damaged or destroyed; provided that this exclusion shall not apply to mental anguish, emotional distress or humiliation resulting from any Wrongful Act;

Contractual Liability

Most EPLI policies do not provide coverage for liability assumed under a contract or agreement unless the insured is liable in the absence of the contract or agreement. While other liability policies such as CGL or business auto make exceptions for liability assumed in certain “insured contracts,” that is not the case with EPLI policies.



The exclusion below is from the ISO EPLI policy.

EMPLOYMENT-RELATED PRACTICES LIABILITY COVERAGE FORM

B. Exclusions

This insurance does not apply to:

2. Contractual Liability

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

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Workers Compensation and Similar Laws



EPLI policies will not satisfy the insured’s obligations under laws such as workers compensation or disability. Separate protection is available for these exposures. Many EPLI forms add language similar to the language below to make it clear that coverage does apply to claims alleging retaliation against employees who exercised their rights under those laws.

SAMPLE POLICY LANGUAGE

Exclusions

The Insurer shall not be liable to make any payment for Loss in connection with any Claim:

based upon, arising out of, directly or indirectly resulting from, in consequence of, or in any way involving any obligations under a workers’ compensation, disability benefits, social security, insurance benefits or unemployment compensation law, or similar provisions of any federal, state or local statutory law or common law; provided, however, this exclusion shall not apply to the part of any Employment Claim alleging Retaliation with respect to an Employee’s exercise or attempted exercise of his or her rights under any of the foregoing acts or laws;

Section 2: Employment Practices Liability Insurance



John, an employee of Harvey's HVAC Service, has made several workers compensation claims involving back injuries. Each time, John receives medical treatment and physical therapy and returns to work a few months later. Tired of the effect John's injuries are having on the company's experience modification factor, Harvey fires John, citing inferior performance as the reason. John files a lawsuit alleging that he was wrongfully terminated and that the firing was retaliation for his having filed workers compensation claims. Workers compensation will respond to John's injury claims, but the EPLI policy should provide coverage for the retaliation claim.



Violation of Certain Laws

Although an EPLI policy responds to many claims involving violation of employment-related statutes, there are certain violations that most EPLI policies will not cover. Some of the excluded statutes include:

- **Occupational Safety and Health Act (OSHA)**

This federal law was enacted to ensure safe and healthful working conditions for workers.

- **Worker Adjustment and Retraining Notification (WARN) Act**

This federal law helps ensure advance notice in cases of qualified plant closings and mass layoffs.

- **Employee Retirement Income Security Act (ERISA) of 1974**

This federal law sets minimum standards for most voluntarily established retirement and health plans in private industry to provide protection for individuals in these plans.

- **National Labor Relations Act**

This federal law was enacted to encourage collective bargaining by protecting workers' freedom of association.



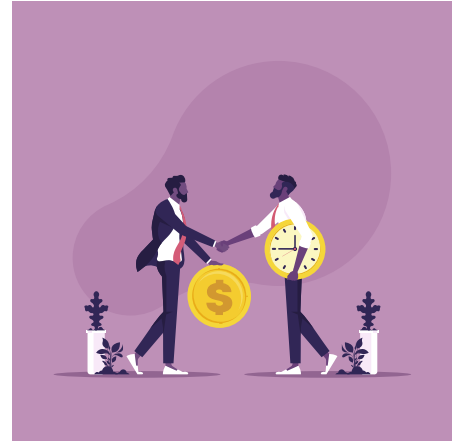
As was the case with the last exclusion discussed, most EPLI forms provide coverage for claims alleging retaliation against employees who exercise their rights under those laws.

Wage and Hour and Related Violations

The **Fair Labor Standards Act (FLSA)** is a federal law that establishes minimum wage, overtime pay, recordkeeping, and youth employment standards affecting employees in the private sector and in federal, state, and local governments. EPLI policies typically exclude claims involving violation of FLSA and similar laws.

Many insurer forms contain specific language to exclude claims involving exposures such as:

- Misclassifying employees as independent contractors
- Not paying overtime to employees entitled to be paid overtime
- Miscalculating the amount of wages owed



Two examples of policy language appear below.

SAMPLE POLICY LANGUAGE #1

Exclusions

4. The Company shall not be liable for Loss on account of any Claim:
 - e) for any actual or alleged violation of the responsibilities, obligations or duties imposed by any federal, state, or local statutory law or common law anywhere in the world (including but not limited to the Fair Labor Standards Act) or amendments to or regulations promulgated under any such law that governs wage, hour and payroll policies and practices, except the Equal Pay Act (“Wage and Hour Laws”), including but not limited to:
 - (i) the calculation, timing or manner of payment of minimum wages, prevailing wage rates, overtime pay or other compensation alleged to be due and owing;
 - (ii) the classification of any organization or person for wage and hour purposes;
 - (iii) garnishments, withholdings or other deductions from wages;
 - (iv) child labor;
 - (v) pay equity or comparable worth; or
 - (vi) any similar policies or practices;

SAMPLE POLICY LANGUAGE #2

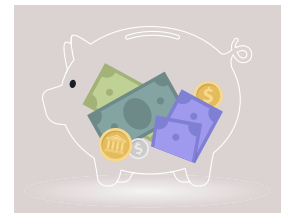
Exclusions

The Insurer shall not be liable to pay any Loss in connection with any Claim: for any actual or alleged violation of any of the responsibilities, obligations or duties imposed by the Fair Labor Standards Act (FLSA), as amended, or any other foreign, federal, state, or local law, whether statutory or common law, governing the classification of employees to determine their eligibility for compensation or the payment of wages, overtime, on-call time, rest periods or minimum wages;

Wage and Hour Defense Costs

In spite of the wage and hour exclusion, most insurers will agree to provide some protection against wage and hour claims. Coverage is often added by endorsement, and it is usually defense-only coverage, subject to a sublimit.

An example of one policy's language is below.



SAMPLE POLICY LANGUAGE

Wage and Hour Defense Costs

1. Subject to the Sub-Limit of Liability set forth, below, in this endorsement, the Insurer shall pay on behalf of the Insured Defense Costs arising from any Claim for a Wage and Hour Violation taking place prior to the end of the Policy Period, and which is first made against the Insureds during the Policy Period or the Discovery Period (if applicable) and is reported to the Insurer in the time and manner required by this Policy.
2. Solely for purposes of this endorsement, Section II. DEFINITIONS is amended by adding the following definition:

Wage and Hour Violation means any violation of any federal, state, local or foreign statutory or common law (including, but not limited to the Fair Labor Standards Act), or any amendments thereto or regulations promulgated thereunder, governing wage, hour and payroll policies and practices (except the Equal Pay Act) including, without limitation:

- a. the refusal, inability, or failure of a Company or Insured Person to pay wages or overtime pay, or any amounts representing such wages or pay, for services rendered or time spent in connection with work related activities;
- b. improper pay deductions taken by a Company or Insured Person from any Employee or purported employee;
- c. improper classification of any Employee or purported employee; or
- d. failure to provide or enforce any legally required rest or meal breaks.

Sub-Limit of Liability for Wage and Hour Claim Defense Expenses:

\$100,000

Section 2: Employment Practices Liability Insurance



The EPLI policy for Matthew's Motorcycle Shop includes the wage and hour defense endorsement above. Matthew's employee, Kimberly, files a suit alleging discrimination and also alleges that, during the period of employment, Kimberly is owed \$50,000 in overtime wages. The case is eventually settled, and the final costs are as follows:

- Defense of the discrimination claim - \$25,000
- Defense of the wage and hour claim - \$10,000
- Settlement of the discrimination claim - \$200,000
- Settlement of the wage and hour claim - \$40,000

Once the policy's retention is satisfied, all but the \$40,000 for settlement of the wage and hour claim will be paid by the EPLI insurer.

Americans With Disabilities Act (ADA) Violations



Americans with Disabilities Act (ADA) is a federal law that prohibits discrimination against people with disabilities. ADA applies to several areas, including employment and public accommodations. Under ADA, a business may need to make reasonable accommodations so that those with a disability can enjoy equal employment opportunities or

access certain public spaces. Reasonable accommodations might include, for example, making the physical space more accessible.

EPLI policies do not cover losses involving an insured's failure to comply with accommodations or building modifications as required by ADA. The policy would not pay, for example, to install an access ramp or to widen the opening in a restroom.

What is covered under EPLI policies, though, is a claim made against an insured for discrimination against those with a disability.



Janet uses a wheelchair and attempts to access the building where her accountant's office is located. She is unable to enter the building because the wheelchair ramp required by ADA does not have the appropriate landing at the top of the ramp. Janet files suit against the owner of the building, alleging discrimination and a violation of the Accessibility Guidelines for Buildings and Facilities section of the ADA.

The third-party liability coverage in the EPLI policy of the building owner will respond to Janet's discrimination claim, but the policy will not pay to make the necessary improvements to the building.



Section 2: Employment Practices Liability Insurance

Many insurer forms will agree to pay defense costs for claims made against an insured for violation of the ADA. Although the policy will not pay for the insured to make reasonable accommodations, it will pay to defend the insured against the claim that accommodations should be made. This defense coverage is illustrated in the language below.

SAMPLE POLICY LANGUAGE

The Company shall not be liable for that part of Loss, other than Defense Costs: which constitutes costs associated with providing any accommodation for persons with disabilities or any other status which is protected under any applicable federal, state, or local statutory law or common law anywhere in the world, including but not limited to the Americans With Disabilities Act, the Civil Rights Act of 1964, or amendments to or rules or regulations promulgated under any such law

Strikes And Lockouts



Most EPLI policies, including the ISO form, do not respond to claims involving labor disputes such as actions taken against a striking or locked-out employee.

EMPLOYMENT-RELATED PRACTICES LIABILITY COVERAGE FORM

B. Exclusions

This insurance does not apply to:

5. Strikes And Lockouts

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

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Prior Or Pending Litigation

An EPLI policy will not respond if a claim against the insured was pending on, or existed prior to, the policy’s prior or pending litigation (PPL) date, or if a claim arises from the same set of circumstances which are the subject of an existing claim.



An insured’s first EPLI policy is written with full prior acts coverage and a PPL date of 6/1/2022. A wrongful termination suit is filed on 5/15/2022, but not served until 6/10/2022. The insured had no knowledge of the incident or that a lawsuit was filed. There is no coverage because the litigation began prior to the PPL date.

EMPLOYMENT-RELATED PRACTICES LIABILITY COVERAGE FORM

B. Exclusions

This insurance does not apply to:

6. Prior Or Pending Litigation

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

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A PPL date is often confused with a retroactive date, but these are different concepts in claims-made policies. For a claims-made policy to be triggered, the covered act must occur on or after the retroactive date. Policies without a retroactive date are said to have “full prior acts” coverage. Even if a policy has no retroactive date, it will almost certainly have a PPL date shown on the Declarations page or described in the policy form. A retroactive date puts a starting point on when covered acts can occur. A PPL date puts a starting point on when litigation can have begun. It is crucial that both the retroactive date and PPL date remain the same when claims-made policies are renewed or rewritten.

Prior Notice

EPLI policy coverage will not apply if notice of the claim or incident has already been given under a prior policy. The exclusion below is from ISO’s EPLI policy.

EMPLOYMENT-RELATED PRACTICES LIABILITY COVERAGE FORM

B. Exclusions

This insurance does not apply to:

7. Prior Notice

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

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Connie’s Coffee Shop has good reason to believe that a recently terminated employee will file a suit for discrimination and wrongful termination. Connie’s EPLI policy allows Connie to report incidents before a claim against her is made. When the claim is ultimately made, it will be considered as having been made under



Section 2: Employment Practices Liability Insurance

the policy in effect when the incident is reported. Connie takes advantage of this opportunity and reports the incident to her insurer. One year later, a formal claim against Connie is made. The policy in effect when the formal claim is made will not apply as notice of the incident was already given under a prior policy.

Breach of Written Employment Contract



Many EPLI forms exclude coverage for claims involving breach of a written employment contract. The reasoning behind these exclusions is that the insured controls both the decision to enter into the contract and the termination of the contract. This is often considered a business risk as opposed to an insurable exposure.

Review the two breach of contract exclusions below and notice the major difference between the two. The policy using sample policy language #2 agrees to defend the insured for claims involving breach of an express employment contract, even though any settlement or judgment will not be paid. This is a significant coverage difference.

SAMPLE POLICY LANGUAGE #1

Exclusions

The Company shall not be liable to make payment for Loss in connection with any Claim made against the Insured arising out of, directly or indirectly resulting from or in consequence of, or in any way involving:

- (1) the Insured's actual or alleged liability for damages under any express employment contract or express employment agreement; provided that this exclusion shall not apply to liability for a Wrongful Act which the Insured would have in the absence of such contract or agreement; or

SAMPLE POLICY LANGUAGE #2

Exclusions

The Company shall not be liable for Loss, other than Defense Costs, resulting from any Claim based upon, arising from, or in consequence of any actual or alleged breach of any written employment contract; provided that this Exclusion 6 shall not apply to the extent an Insured would have been liable for such Loss in the absence of such written employment contract.

Violation of Employee Privacy

While many EPLI insurers provide coverage for this exposure, some add exclusions for claims involving violation of employee privacy. One insurer's policy language is below. These exclusions usually apply to situations where an employee's personally identifiable information such as social



Section 2: Employment Practices Liability Insurance

security number, driver's license number, or bank account information is improperly accessed. Insurers using these exclusions consider these exposures better covered under a cyber coverage form.

The language from the sample form below provides defense coverage for these types of claims, but no indemnity coverage. In this form, the sublimit (not shown here) is \$100,000. It is always important to coordinate the various coverages written for an insured. With respect to coverage for violation of privacy claims, language in both the EPLI and cyber forms should be reviewed to see where and how coverage applies.



There is a difference between an invasion of privacy claim and a claim involving violation of privacy. Invasion of privacy could involve claims that an employer, for example, improperly listened to phone calls or that a locker was inappropriately searched. Violation of privacy claims involve allegations that an employer failed to safeguard personal information. Invasion of privacy claims are covered under most EPLI forms. As is seen here, some insurers are excluding or limiting coverage for violation of privacy claims.

SAMPLE POLICY LANGUAGE

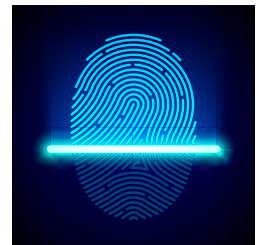
No coverage will be available under the EMPLOYMENT PRACTICES LIABILITY COVERAGE PART for Loss, other than Defense Expenses, on account of that portion of any Employment Claim alleging a Violation of Employee Privacy. Violation of Employee Privacy means a Company's failure to:

- (i) secure an employee's Record (as defined below) from actual or potential unauthorized access by another person or by an organization which results in injury to such employee; or
- (ii) provide notice as required by any state, federal or local statutory law or common law anywhere in the world to an employee whose Record was accessed or may have been accessed by an unauthorized person.

Biometric Identifiers

Employers are increasingly using biometric identifiers such as fingerprints and facial scans. This information is used to monitor when employees start and stop working, to restrict access to secure areas, and to log into certain online systems.

Many insurers are reluctant to provide coverage for this exposure and have added exclusions. An example of such language is below.



SAMPLE POLICY LANGUAGE

BIOMETRIC IDENTIFIERS EXCLUSION

In consideration of the premium charged for this Policy, it is hereby understood and agreed that, notwithstanding anything contained herein to the contrary, we are not obligated to defend or pay Loss, including Defense Costs, on account of any Claim for actual or alleged access to, retention of, disclosure of and/or failure to obtain consent to the capture, collection, obtainment, storage, conversion, transfer, sale, sharing, or dissemination of any kind of an individual's Biometric Identifier(s), regardless of how such identifier(s) and/or information is/are captured, collected, obtained, stored, converted, transferred, sold, shared, or disseminated by the PEO and/or Client Company, and/or any third party acting by, on behalf of and/or at the direction of the PEO and/or Client Company.

For the purpose of this Endorsement, Biometric Identifier(s) means any physical, physiological, biological or behavioral characteristics of an individual, including, but not limited to, retina or iris scan, fingerprint, voiceprint, DNA, finger scan, hand scan, or face geometry, or any other biometric algorithm or measurement of the foregoing which allows an individual to be uniquely identified.

EPLI policies may include numerous other exclusions, each of which should be carefully reviewed.

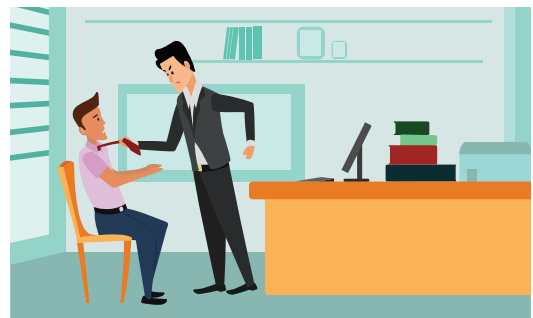
Additional Coverages Insurers May Include

In addition to EPLI and third-party liability coverages, EPLI insurers often add other coverages to their policies, usually through the addition of endorsements. Two commonly added coverages are workplace violence expense coverage and immigration claims expense coverage.

Workplace Violence Expenses

Many insurers add coverage to help an insured with expenses incurred as a result of an act involving workplace violence. Workplace violence is often defined to include acts involving deadly force or the threat of deadly force on the insured's premises.

One insurer's form includes the following definition of "workplace violence expenses" and a sublimit of \$250,000.



SAMPLE POLICY LANGUAGE

“Workplace Violence Expenses” means the reasonable fees and expenses, or cost of:

- (i) an independent security consultant for ninety (90) days following the date Workplace Violence occurs;
- (ii) an independent public relations consultant for ninety (90) days following the date Workplace Violence occurs;
- (iii) a counseling seminar for all employees conducted by an independent consultant following a Workplace Violence;
- (iv) independent security guard services for up to fifteen (15) days; and
- (v) an independent forensic analyst.

Broader coverage for workplace violence is available from many insurers as a stand alone policy or as a coverage part in an executive or management liability package.

Immigration Claims Defense Expenses



EPLI policies often exclude coverage for immigration-related claims through violation of statutes exclusionary language. Many insurers, however, add coverage to help an insured with the defense costs involved in an immigration claim. One insurer’s form, using the sample language below, provides coverage with a sublimit of \$100,000.

SAMPLE POLICY LANGUAGE

We will pay Defense Costs that an Insured, other than an Employee alleged to be employed in violation of any Immigration Practices Law, becomes obligated to pay as a result of an Immigration Practices Claim first made against any such Insured during the Policy Period, or the Extended Reporting Period, if applicable.

Immigration Practices Claim means any Claim solely alleging violations of the Immigration Reform Control Act of 1986 or any other similar federal or state laws or regulations (“Immigration Practices Law”).

▶▶ Knowledge Check



Directions: Determine whether the following claims are likely to be covered or excluded under an EPLI policy and explain your answers.

1. Subcontractor LLC enters into a contract with General Contractor LLC and agrees to indemnify General Contractor LLC for any and all damages. Jamie, an employee of another contracting firm working on the jobsite alleges that an employee of Subcontractor LLC sexually harassed her. Jamie also names General Contractor LLC in the lawsuit, alleging that General Contractor LLC did not exercise the proper control over its subcontractors. General Contractor LLC demands indemnification from Subcontractor LLC.

2. Martina and several of her co-workers file claims against their employer. They allege that they should have been paid overtime for the past four months and were not. The named insured employer claims that they are exempt employees and are not entitled to overtime.

▶▶ Knowledge Check *(continued)*



3. Cary is an insurance salesperson with a written employment contract that states he cannot be fired without cause. Cary is involuntarily terminated after he did not meet his production goals. Cary claims there are extenuating circumstances and that, under these circumstances, he cannot be fired. He files a claim for breach of the employment contract.

4. Sandra files suit against her employer, ABC Accounting Firm, and one of its officers, Charles. The suit alleges sexual harassment by Charles. Sandra also reports Charles's conduct to the police, and Charles is charged with sexual assault.

EPLI Defense Provisions

Learning Objective:

- 2.5 Understand the defense provisions in an EPLI policy including the right and duty to defend, how defense costs and expenses are paid, and the consent to settle clause.

A key component of any liability policy is the coverage the policy provides for defense. EPLI policies vary in how defense is handled, and it is important that an insured understand how the policy will respond in the event that a claim for a covered wrongful act is made.

Duty to Defend vs. Non-duty to Defend

Duty to Defend

Most EPLI policies, including ISO's form, are written on a right and duty to defend basis. If a suit is filed seeking damages as a result of a covered wrongful act, the insurer has a right and duty to defend the insured. If a wrongful act is not covered by the policy, though, the insurer will not defend.

EMPLOYMENT-RELATED PRACTICES LIABILITY COVERAGE FORM

SECTION I – EMPLOYMENT-RELATED PRACTICES LIABILITY COVERAGE

A. Insuring Agreement

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

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Non-duty to Defend

Some insureds who want greater control over the defense of claims may seek coverage on a non-duty to defend form. Some insurers offer coverage on this basis as is seen in the policy language that follows.

SAMPLE POLICY LANGUAGE

A. Defense

1. The Insureds, and not the Insurer, shall have the duty to defend all Claims. It shall not be the duty of the Insurer to defend any Claim under this Policy; but the Insurer shall have a right to associate in the defense of all Claims.
2. No Insured may incur any Defense Expenses or admit any liability for, make any settlement offer with respect to, or settle any Claim without the Insurer's written consent, such consent not to be unreasonably delayed or withheld.

Even if the insured has the duty to defend, the insurer typically reserves the right to participate in the defense of the claim. The insured must also usually obtain the insurer's consent before attempting to settle a claim.

Choice of Counsel

Most insurers have a panel of approved defense firms with which they work, and the insurer typically has the right to select defense counsel. In some cases, the insured will be allowed some input into the choice of counsel. If the insured has a particular defense firm it wants to use for EPLI claims, it is a good idea to check whether the firm is acceptable to the insurer before coverage is bound.



Payment of Defense Costs



In most EPLI policies, defense costs are included in the limit of liability. Defense expenses usually include the cost of defense counsel and other costs involved in defending the claim.

SAMPLE POLICY LANGUAGE

Defense Costs means reasonable and necessary legal fees and expenses incurred by the Company, or by any attorney designated by the Company to defend any Insured, resulting from the investigation, adjustment, defense, and appeal of a Claim. Defense Costs includes other fees, costs, costs of attachment or similar bonds (without any obligation on the part of the Company to apply for or furnish such bonds,) but does not include salaries, wages, overhead or benefits expenses of any Insured.

Defense Within the Limit

Paying defense costs within the limit can be problematic for the insured for two reasons. First, once the limit of insurance is paid, defense coverage ends. If the defense costs are included within the limit, this situation is more likely to occur. Second, using the limit of insurance to pay defense costs reduces the amount available to pay judgments and settlements.

Section 2: Employment Practices Liability Insurance

The ISO EPLI policy states that defense expenses are paid within the limit of insurance.

EMPLOYMENT-RELATED PRACTICES LIABILITY COVERAGE FORM

SECTION III – LIMIT OF INSURANCE

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

1. All damages; and
2. All “defense expenses”

because of all “wrongful acts” to which this insurance applies.

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Defense in Addition to the Limit

Some insurers will pay defense in addition to the limits of insurance. A few insurers automatically do this, while many more offer an option to have defense costs apply in addition to the limit.

SAMPLE POLICY LANGUAGE

V. LIMITS OF LIABILITY AND RETENTION

Regardless of the number of Insureds under this Policy, Claims made or brought on account of Wrongful Acts or otherwise, the Company’s liability is limited as follows:

- A. The Limit of Liability specified in the Policy Declarations as “in the aggregate” shall be the maximum liability for Loss from all Claims to which this Policy applies.
- B. The Limit of Liability specified in the Policy Declarations as the Limit for each Claim shall be the maximum liability for Loss for each Claim to which this Policy applies.
- C. Defense Costs shall be in addition to the Limit of Liability shown in the Policy Declarations.

Defense in Addition to the Limit, with a Separate Limit for Defense

In some cases, the insurer will offer defense in addition to the limit of insurance but will include a separate limit for these defense costs.

Defense Subject to Deductible or Retention

It is common in EPLI policies for the deductible or retention to apply to defense costs as well as to amounts paid in satisfaction of judgments or settlements. This approach is illustrated in the language from the ISO EPLI policy that follows.

Employment Practices Liability

Limit of Liability:	\$2,000,000	for all Claims
Third Party Claim Coverage:	<input checked="" type="checkbox"/> Applicable	<input type="checkbox"/> Not Applicable
Additional Defense Coverage:	<input checked="" type="checkbox"/> Applicable	<input type="checkbox"/> Not Applicable
Additional Defense Limit of Liability:	\$1,000,000	for all Claims

EMPLOYMENT-RELATED PRACTICES LIABILITY COVERAGE FORM

SECTION IV – DEDUCTIBLE

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

Example No. 1

Deductible: \$5,000

Limit of Insurance: \$100,000

Damages and “Defense Expenses”: \$75,000

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

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

Example No. 2

Deductible: \$5,000

Limit of Insurance: \$100,000

Damages and “Defense Expenses”: \$120,000

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

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

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The insured presents a covered employment practices liability claim to its insurer. The policy is written with a \$25,000 deductible. The insurer incurs \$20,000 in costs to defend the claim, which is dismissed with nothing paid to the claimant. The insured is responsible for payment of \$20,000 in defense costs which are within the policy’s deductible.

Check-In



Directions: Determine how much will be paid by an EPLI policy in each of the following scenarios. Disregard any deductible or retention.

1. Policy A: \$1,000,000 aggregate limit with defense inside the limit

The insured's first claim of the year is settled with final costs as follows:

- \$800,000 judgment
 - \$300,000 defense costs
-

2. Policy B: \$1,000,000 aggregate limit with defense outside the limit

The insured's first claim of the year is settled with final costs as follows:

- \$800,000 judgment
 - \$300,000 defense costs
-

Consent to Settle

As is the case with most liability policies, the EPLI insurer usually has the right to investigate claims. It is common, though, that the EPLI insurer must obtain the written consent of the insured before settling a claim. This language is different than language found in other liability policies such as a CGL or business auto. In those policies, the insurer typically has the right to settle claims without the approval of the insured.



EMPLOYMENT-RELATED PRACTICES LIABILITY COVERAGE FORM

SECTION I – EMPLOYMENT-RELATED PRACTICES LIABILITY COVERAGE

A. Insuring Agreement

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

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Consent to Settle/Hammer Clause

Because the insured must consent to a settlement, the insurer could be forced to continue to defend a claim it believes should be settled. The addition of consent to settle language protects the insurer in situations where the insured does not provide consent. This language is often referred to as a “hammer clause.”

As seen in the language below, ISO’s EPLI policy has strong consent to settle language. If the insured refuses to approve a settlement that is acceptable to the claimant, the insured is responsible for any amounts over the initial settlement amount.

EMPLOYMENT-RELATED PRACTICES LIABILITY COVERAGE FORM

SECTION V – CONDITIONS

B. Consent To Settle

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

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Section 2: Employment Practices Liability Insurance



The insured presents an employment practices liability claim to its insurer for a covered wrongful act. After several months of investigation and negotiation, the insurer wants to settle the claim for \$250,000, an amount the claimant has agreed to accept. The insured does not want to settle the claim, believing that it did nothing wrong, and the insurer is forced to continue defending the claim. Costs are as follows:



- \$250,000 – settlement amount that is acceptable to the claimant
- \$50,000 – defense costs incurred prior to getting to the acceptable settlement amount
- \$400,000 – final judgment against the insured
- \$100,000 – additional defense costs to try to the case after the insured’s refusal to settle

Under the strong consent to settle language in the ISO form, the insured is responsible for payment of \$250,000—the \$150,000 difference between the judgment and the initial settlement amount + \$100,000 additional defense costs.

Soft Hammer Clause

Some insurer forms have language that includes a lesser downside for the insured that does not agree to settle a claim. These clauses are commonly referred to as “soft hammer” or “velvet hammer” clauses. In the form below, the insured is only liable for 30% of the loss amount and defense expenses over the initial settlement amount. This percentage varies among insurer forms.

SAMPLE POLICY LANGUAGE

If the Insured does not consent to the Settlement Offer within thirty dates of being made aware of such offer by the Company, the insured will be solely responsible for thirty percent of all Defense Expenses incurred or paid after the date the Insured refused to consent to the Settlement Offer. The insured will also be responsible for thirty percent of all Loss, other than Defense Expenses, in excess of the Settlement Offer, provided that the Company’s liability under this Liability Coverage for such Claim will not exceed the remaining applicable limit of liability.

Section 2: Employment Practices Liability Insurance

Revisiting the previous example with this sample policy language, the result is as follows.



The insured presents an employment practices liability claim to its insurer for a covered wrongful act. After several months of investigation and negotiation, the insurer wants to settle the claim for \$250,000, an amount the claimant has agreed to accept. The insured does not want to settle the claim, believing that it did nothing wrong, and the insurer is forced to continue defending the claim. Costs are as follows:

- \$250,000 – settlement amount that is acceptable to the claimant
- \$50,000 – defense costs incurred prior to getting to the acceptable settlement amount
- \$400,000 – final judgment against the insured
- \$100,000 – additional defense costs to try to the case after the insured’s refusal to settle

Under this consent to settle language, the insured is responsible for payment of \$75,000—30% of the \$150,000 difference between the judgment and the initial settlement amount + 30% of the \$100,000 additional defense costs.

Incentives to Settle

Some insurers prefer another approach to encourage an insured to agree to a settlement, usually in addition to a soft hammer clause. These insurers offer an incentive to the insured to provide consent, usually in the form of a reduction in the retention or deductible.

SAMPLE POLICY LANGUAGE

If the Insured and the party bringing Claim hereunder consent to the first settlement offer recommended by the Company within thirty days of being made aware of such offer by the company, the retention will be retroactively reduced by ten percent with respect to such Claim.

▶▶ Knowledge Check



Directions: Read the following scenario and respond.

Your insured is concerned that an EPLI insurer might settle claims too freely, damaging the reputation of the insured. Explain how the insuring agreement and consent to settle clause address this issue.

Limit of Insurance

Learning Objective:

2.6 Discuss select EPLI policy provisions including limit of insurance, notice of claim, and importance of the EPLI application.

While there are numerous important conditions in EPLI policies, three have been selected for discussion.

1. Limit of insurance
2. Notice of claim
3. Importance of the application

Limit of Insurance

The limit of insurance on an EPLI policy is usually an annual aggregate limit, and it is the most that will be paid regardless of the number of insureds, claims made, or persons or entities making claims. As previously discussed, because the limit may include defense costs, it is important that the selected limit be high enough.



Section 2: Employment Practices Liability Insurance



Five employees of Sunset Suites file claims against the hotel and two of its managers for workplace harassment. The incidents allegedly occurred over a four-month period of time. Sunset Suites has an EPLI policy with a limit of \$2,000,000. No more than \$2,000,000 will be paid even though there are five plaintiffs and three insureds (hotel + two employees) involved. If a wrongful termination claim is made later in the year, it will be subject to the total annual aggregate of \$2,000,000.



EMPLOYMENT-RELATED PRACTICES LIABILITY COVERAGE FORM

SECTION III – LIMIT OF INSURANCE

A. The Limit of Insurance shown in the Declarations and the rules below fix the most we will pay regardless of the number of:

1. Insureds;
2. "Claims" made or "suits" brought; or
3. Persons, organizations or government agencies making "claims" or bringing "suits".

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

1. All damages; and
2. All "defense expenses"

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

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

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There are some insurers that will offer coverage with a maximum limit per claim and a separate annual aggregate limit. With this approach, the chances of the insured exhausting the limit due to multiple unrelated claims throughout the year is reduced.

Notice of Claim

EPLI policies are usually written on a claims-made or claims-made and reported coverage form. With these forms, it is important the insured notify the insurer of any claim in accordance with policy provisions. Failure to report claims as required by the policy will compromise coverage. As such, it is important an insured understands what constitutes a claim.

What is a Claim?

Many insureds think of a claim as a summons and complaint. Many other events, however, are considered claims and can trigger coverage. It is important that an insured understands what a claim is so the insured knows what must be reported to the insurer.

The ISO EPLI policy defines a “claim” as follows.

EMPLOYMENT-RELATED PRACTICES LIABILITY COVERAGE FORM

SECTION VII – DEFINITIONS

A. “Claim” means a “suit” or demand made by or for a current, former or prospective “employee” for damages because of an alleged “wrongful act”.

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ISO’s definition is general and could include both oral and written demands for monetary and/or non-monetary relief. Other forms have a more detailed description of “claim” and may include some or all of the following:

- 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
- 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

Duties in the Event of a Claim



ISO’s EPLI policy, a claims-made and reported form, requires that the insured notify the insurer, in writing, as soon as practicable, of any claim received by the insured. A claim received by the insured must be reported to the insurer during the policy period or within 30 days of policy expiration. The 30-day grace period does not apply, though, if a subsequent policy is available to respond to the claim.

EMPLOYMENT-RELATED PRACTICES LIABILITY COVERAGE FORM

SECTION I – EMPLOYMENT-RELATED PRACTICES LIABILITY COVERAGE

A. Insuring Agreement

2. This insurance applies to “wrongful acts” only if:
 - a. The “wrongful act” takes place in the “coverage territory”;
 - b. The “wrongful act” did not commence before the Retroactive Date, if any, shown in the Declarations or after the end of the policy period; and
 - c. A “claim” against any insured for damages because of the “wrongful act” is first made during the policy period or the Section VI – Extended Reporting Period, if provided, in accordance with Paragraphs 3. and 4. below.
3. A “claim” will be deemed to have been made at the earlier of the following times:
 - a. When notice of such “claim”, after being received by any insured, is reported to us in writing; or
 - b. When a claim against an insured is made directly to us in writing.

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

SECTION V – CONDITIONS

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

1. If a “claim” is received by any insured, you must:
 - a. Immediately record the specifics of the “claim” and the date received; and
 - b. Notify us, in writing, as soon as practicable.

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The insured’s EPLI policy with ISO language is effective 1/1/2021–2022. A claim for a covered wrongful act that allegedly occurred on 11/1/2021 is made against the insured on 12/24/2021. Although notice of the claim arrives at the insured’s office before 1/1/2022, the administrative assistant left it for the risk manager who is on vacation until 1/7/2022. Coverage will still apply if the insured promptly reports the claim as long as no subsequent policy purchased would cover the claim. The insured has up to 30 days after expiration to report the claim to the insurer.



Not all claims-made and reported forms have a reporting window that extends beyond policy expiration. This can create problems when claims are made late in the policy term as in the example above or when a suit is filed against an insured before the term, but the insured is not served with a summons and complaint until after the policy term expires. Always look for a reporting window when reviewing coverage forms.

Incident Reporting

Right to Report

Incident reporting is often-overlooked language in EPLI policies. In many forms, the insured has the right to report wrongful acts that may reasonably be expected to give rise to a claim. If the incident is reported, any claim subsequently made against an insured arising out of that wrongful act will be considered to have been made during that policy's period.



One insured's language is below.

SAMPLE POLICY 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 for Wrongful Employment Practices or Third-Party Discrimination. 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.

Exercising this right to "lock in" coverage can be especially helpful if additional exclusions or higher retentions might be added to a policy renewal.

Duty to Report

The language above gave the insured the right to report incidents to trigger coverage under a policy. Some policies, including the ISO EPLI policy, require the insured to report incidents likely to give rise to a claim.

EMPLOYMENT-RELATED PRACTICES LIABILITY COVERAGE FORM

SECTION I – EMPLOYMENT-RELATED PRACTICES LIABILITY COVERAGE

A. Insuring Agreement

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

SECTION V – CONDITIONS

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

1. If a “claim” is received by any insured, you must:
 - a. Immediately record the specifics of the “claim” and the date received; and
 - b. Notify us, in writing, as soon as practicable.
4. If you become aware of a “wrongful act” that may reasonably be expected to give rise to a “claim” and for which a “claim” has not yet been received, you must notify us, in writing, as soon as practicable. Such notice must provide:
 - a. A description of the “wrongful act”, including all relevant dates;
 - b. The names of the persons involved in the “wrongful act”, including names of the potential claimants;
 - c. Particulars as to the reasons why you became aware of and reasonably expect a “claim” which may result from such “wrongful act”;
 - d. The nature of the alleged or potential damages arising from such “wrongful act”; and
 - e. The circumstances by which the insured first became aware of the “wrongful act”.

EP 00 01 11 09

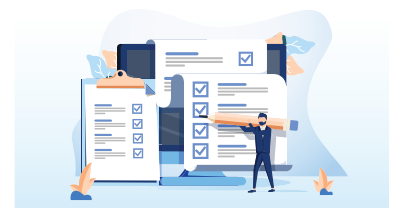
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Incentives to Report

Insurers prefer to have insureds report incidents before a claim is made. In many cases, the earlier that action is taken, the more favorable the outcome. Some insurers, in fact, reward insureds for reporting incidents that have not yet become claims, applying a reduced deductible or retention in these cases.

The Application

The importance of the application for an EPLI policy cannot be overstated. The EPLI application is a warranty application. It becomes a part of the policy; sometimes it is physically attached, and sometimes there is language that states the application is deemed to be attached. If there are misrepresentations on the application, coverage for some or all the insureds may be compromised.



Section 2: Employment Practices Liability Insurance

The language below is from ISO's application for EPLI.

NOTICE TO APPLICANT – PLEASE READ CAREFULLY		
<p>FOR THE PURPOSE OF THIS APPLICATION, THE UNDERSIGNED WARRANTS THAT TO THE BEST OF HIS/HER KNOWLEDGE THE STATEMENTS HEREIN ARE TRUE AND COMPLETE. THE INSURER IS AUTHORIZED TO MAKE ANY INQUIRY IN CONNECTION WITH THIS APPLICATION. SIGNING THIS APPLICATION DOES NOT BIND THE INSURER TO ISSUE, OR THE APPLICANT TO PURCHASE, ANY INSURANCE POLICY.</p> <p>THE INFORMATION CONTAINED IN AND SUBMITTED WITH THIS APPLICATION IS ON FILE WITH THE INSURER. THIS APPLICATION WILL BECOME A PART OF SUCH POLICY, IF ISSUED. THE INSURER WILL HAVE RELIED UPON THIS APPLICATION AND ATTACHMENTS IN ISSUING THIS POLICY. IN THE EVENT THAT THE APPLICATION CONTAINS ANY MISREPRESENTATION OR MISSTATEMENT OF A MATERIAL FACT, THIS POLICY SHALL NOT AFFORD COVERAGE TO ANY INSURED WHO KNEW OF SUCH MISREPRESENTATION OR MISSTATEMENT.</p> <p>IF THE INFORMATION IN THIS APPLICATION MATERIALLY CHANGES PRIOR TO THE EFFECTIVE DATE OF THE POLICY, THE APPLICANT MUST PROVIDE WRITTEN NOTIFICATION TO THE INSURER, WHO MAY MODIFY OR WITHDRAW THE QUOTATION.</p> <p>THE UNDERSIGNED FURTHER AGREES TO AUTHORIZE THE RELEASE OF ANY AND ALL INFORMATION IN THIS APPLICATION TO A LOSS CONTROL PROVIDER THAT PROVIDES LOSS CONTROL SERVICES TO THE INSURER AND TO COMPLY WITH THE TERMS AND CONDITIONS OF THOSE LOSS CONTROL SERVICES.</p> <p>THE UNDERSIGNED DECLARES THAT THE INDIVIDUALS AND ORGANIZATIONS PROPOSED FOR THIS INSURANCE HAVE BEEN NOTIFIED THAT:</p>		
<p>A. THIS POLICY APPLIES ONLY TO CLAIMS FIRST MADE OR DEEMED MADE AGAINST THE INSURED DURING THE POLICY PERIOD OR ANY EXTENDED REPORTING PERIOD, IF APPLICABLE; AND</p> <p>B. THE LIMIT OF LIABILITY IS REDUCED BY AMOUNTS INCURRED AS DAMAGES AND SUCH EXPENSES WILL BE SUBJECT TO THE DEDUCTIBLE AND/OR CO-PAYMENT AMOUNT.</p>		
Page 8 of 11	© ISO Properties, Inc., 2006	EP AP 00 09 07

Some of the questions on an EPLI application involve past claims and the insured's knowledge of circumstances that could give rise to a claim.

SECTION VI – EMPLOYMENT-RELATED ACTIONS/CLAIM HISTORY		
<p>Please attach a listing of all federal, state or local employment-related charges, claims, lawsuits or administrative proceedings (e.g., EEOC) in process or commenced during the past three years. Describe the type of allegation, the court or agency involved and the current status. Include any determination, judgment, defense cost or settlement for each.</p>		
<p>Are you presently subject to any judicial or administrative order, decree, judgment or conciliation agreement relating to employment?</p> <p>If Yes, please attach a copy.</p>	<input type="checkbox"/> Yes	<input type="checkbox"/> No
<p>Are you aware of any circumstance(s) with the potential to give rise to a claim under this policy?</p> <p>If Yes, please provide details in a separate document.</p>	<input type="checkbox"/> Yes	<input type="checkbox"/> No
<p>It is agreed that any claim(s) arising from any facts, circumstances or situations mentioned in Section VI above are excluded from coverage.</p>		

The representations and severability language in the EPLI policy describes how coverage is affected if there are misrepresentations on the application. Sample language is below. This policy clearly states that there is no coverage for an individual who had knowledge of the facts that were misrepresented on the application. Knowledge of one insured, though, will

Section 2: Employment Practices Liability Insurance

not be imputed to other insureds. The one exception is that knowledge of the CEO, CFO, or general counsel *will* be imputed to the named insured.

SAMPLE POLICY LANGUAGE #1

Representations

The Insureds agree that the Application is deemed attached to this Policy and incorporated herein, and that all warranties, statements and representations contained in or incorporated into the Application have been made to the Insurer and are material to the risk assumed by the Insurer. This Policy is issued in reliance upon the truth of such warranties, statements and representations. The Insureds further agree that in the event of any material misstatement, misrepresentation or omission in the Application, there shall be no coverage under this Policy for any Insured who had actual or imputed knowledge as of the inception date of the Policy Period of the facts that were misstated, misrepresented or omitted in the Application (whether or not such Insured was aware that such facts were misstated, misrepresented, or omitted in the Application). For purposes of determining the applicability of this Paragraph, any knowledge possessed by the Chief Executive Officer, the Chief Financial Officer, or the General Counsel of the Named Insured shall be imputed to the Company, but with the exception of the foregoing, any knowledge possessed by an Insured shall not be imputed to any other Insured.

This second policy below follows a similar theme. Only knowledge of certain individuals is imputed to the named insured. Knowledge of an individual insured will not compromise coverage, though, of another individual insured.

SAMPLE POLICY LANGUAGE #2

REPRESENTATIONS AND SEVERABILITY

- A. The Insured represents that the particulars and statements contained in the Application are true and agree that (1) those particulars and statements are the basis of this Policy and are to be considered as incorporated into and constituting a part of the Policy; (2) those particulars and statements are material to the acceptance of the risk assumed by the Company; and (3) the Policy is issued in reliance upon the truth of such representations.
- B. An Application for coverage shall be construed as a separate Application for coverage by each Individual Insured. With respect to the particulars and statements contained in the Application, no fact pertaining to or knowledge possessed by any Individual Insured shall be imputed to any other Individual Insured for the purpose of determining if coverage is available. However, facts pertaining to and knowledge possessed by the individual(s) signing the Application and the President, Chairperson, Chief Executive Officer, Partner and Chief Financial Officer shall be imputed to the Organization for the purpose of determining if coverage is available.

EPLI insurers typically require that applications be signed by certain individuals such as the chairman or president. Accuracy is critical. As such, it is recommended that the insured—not the insurance agent—be the one to complete the EPLI application.

▶▶ Knowledge Check



Directions: Read the following scenario and explain your thinking.



A new insured has just purchased its first EPLI policy. Explain to your insured the obligations under most policies in respect to the reporting of claims.

Buying Employment Practices Liability Insurance

An insured wanting to add EPLI to its insurance program has several options. The choices are that they can purchase a stand alone EPLI policy, they can add EPLI as a coverage part in an executive or management liability package, EPLI can be included in a directors and officers (D&O) liability policy, or EPLI coverage can be added to a commercial package policy (CPP) or a businessowners policy (BOP).

Purchasing a Stand alone EPLI Policy

This approach typically offers the broadest coverage as well as a dedicated limit for employment-related and third-party liability exposures.

Adding EPLI as a Coverage Part in an Executive or Management Liability Package

This approach normally offers coverage as broad as a stand alone EPLI policy. EPLI can have a dedicated limit with this approach. It is also possible, though, that the limit is shared among EPLI and other coverages that may be included in the package such as directors and officers liability and fiduciary liability.

Including EPLI Coverage in a Directors and Officers (D&O) Liability Policy

This approach is different than including EPLI as a separate insuring agreement in the same package as D&O. EPLI may be provided because the D&O policy does not have an exclusion for EPLI claims, because employment-related acts are included in the definition of covered acts, or because an endorsement has been added. If this approach is taken, it is important to make sure that non-officer employees and the entity are covered as insureds. While most not-for-profit and private company D&O forms do this, not all do. Additional concerns with this approach are that the limit the insured expects to have for non-employment related

Section 2: Employment Practices Liability Insurance

claims may be used to pay employment-related claims. Also, the breadth of coverage may not be as broad as with one of the first two approaches.

Adding EPLI Coverage to a Commercial Package Policy (CPP) or a Businessowners Policy (BOP)

When EPLI is written this way, coverage is usually much less broad than the coverage provided when another of the approaches is used. Costs for coverage using this approach are often minimal, which is the appeal to many insureds. As is true with many things, though, one often gets what one pays for. A \$250 EPLI endorsement is not likely to provide the same coverage as a \$5,000 EPLI policy. Keep in mind, too, that an EPLI loss could have a negative impact on the loss experience for the CPP or BOP.



If this approach is used, and the insured ultimately decides to purchase separate EPLI, be sure to remove the EPLI from the CPP or BOP. Depending on the language in each policy, other insurance problems may result if coverage under both policies applies.

Summary

EPLI is an important coverage for every business to consider. Because coverage varies so much among insurers, a careful review of all policy terms and conditions is essential. An insured should be educated on the importance of accurately completing the application and promptly reporting claims.

The EPLI policy should include coverage for both employment-related claims and third-party liability situations. Policy language should be reviewed carefully to make sure the policy being considered works for a particular insured. For example, are independent contractors used? And does the insured use written employment contracts?

Policy exclusions and defense provisions should be reviewed and discussed with an insured so the insured understands what is covered and what will happen in the event of claim.

In the next section, you will learn about crime exposures and the crime coverages that can be written to address them.

Resources

Important concepts related to the Learning Objectives in this chapter are summarized in separate videos and podcasts. Online participants can use the links to access these learning resources. Classroom learners can access the videos at scic.com/CMLresources.



“Speaking From Experience”—Explaining the Need for Employment Practices Liability Insurance, with Catherine Trischan, CIC, CRM, CPCU, ARM, AAI, AU, CRIS, MLIS, TRIP

Section 2 Self-Quiz

Directions: Read the statements below and for each one, determine whether it is true or false.

1. Most EPLI policies are written on a right and duty to defend basis.

True

False

2. If coverage is written on a non-duty to defend form, the insured has complete freedom to choose its own counsel and to settle claims.

True

False

3. EPLI policies always pay defense costs with the limit of liability.

True

False

4. An EPLI policy using ISO language is written with a \$50,000 deductible. There are \$40,000 in incurred defense costs before the claim is dismissed. The insured is not responsible for paying anything.

True

False

5. The limit of insurance on an EPLI policy is usually an annual aggregate limit.

True

False

Directions: Read the following multiple-choice questions and select the correct response for each.

6. There are three primary sources of employment-related claims. They are:

- Violation of statutes, workplace torts, EEOC claims
- Workplace torts, violation of statutes, breach of contract
- Contractual liability, breach of contract, violation of statutes

7. Each of the following is an example of a workplace tort claim EXCEPT:

- Negligent supervision
- Wrongful detention or imprisonment
- Invasion of privacy
- A claim under Americans with Disabilities Act

Section 2: Employment Practices Liability Insurance

8. Claims can be made alleging that an employer breached a written contract of employment or an implied contract. Implied contracts can include which one of the following?

- Oral promises
- Email agreements
- Collective bargaining agreements

Directions: Read the statements below and fill in the blank with the appropriate word(s) from the word bank.

discrimination	Fair Labor Standards Act (FLSA)	wrongful acts	website accessibility suit	insureds
application	Employee Retirement Income Security Act of 1974 (ERISA)	third-party liability coverage	retaliation	quid pro quo

9. _____ is the phrase the ISO EPLI policy uses to describe the types of claims covered by the policy.
10. Some policies list a variety of _____ bases which might trigger coverage such as race, religious, age, and sex.
11. Submission to or rejection of unwelcome sexual conduct by an individual that is used as the basis for employment decisions affecting such individual is known as _____ sexual harassment.
12. When an employer fires an employee or takes any other type of adverse against an employee for engaging in a protected activity, this is called _____.
13. Partners and members of partnerships or joint ventures, LLC members and managers, and newly acquired organizations (subject to limitations), are some examples of _____ under the ISO EPLI policy.

Section 2: Employment Practices Liability Insurance

14. _____ is often included in an EPLI policy to protect insureds against claims such as discrimination and harassment by those outside the organization.
15. A claim brought by a person with visual or hearing-impairment who is unable to use features of a company website might result in a(n) _____.
16. The _____ is a federal law that sets minimum standards for most voluntarily established retirement and health plans in private industry to provide protection for individuals in these plans.
17. The _____ is a federal law that establishes minimum wage, overtime pay, recordkeeping, and youth employment standards affecting employees in the private sector and in federal, state, and local governments.
18. The _____ becomes part of the EPLI policy; sometimes it is physically attached and sometimes there is language that states it is deemed to be attached.

Section 3: Crime Coverages and Endorsements

Section Goal

In this section, you will analyze the insuring agreements contained in commercial crime coverage forms to determine the appropriate insuring agreements to meet the insured's needs and to understand how coverage may be modified. Although eight insuring agreements will be discussed in this course, the focus will be on: Fidelity, Computer And Funds Transfer Fraud, and Fraudulent Impersonation.

Learning Objectives:

- 3.1 *Describe the importance of crime coverage, including the exclusions and limitations in a commercial property policy.*
- 3.2 *Identify the insuring agreements in the ISO Commercial Crime Coverage Form.*
- 3.3 *Describe when coverage applies under the Loss Sustained and Discovery crime forms.*
- 3.4 *Explain the key elements of the three Fidelity insuring agreements, including exclusions, and apply these concepts in a claims situation.*
- 3.5 *Explain the key elements of the Computer And Funds Transfer Fraud and Fraudulent Impersonation insuring agreements and apply these concepts in a claims situation.*
- 3.6 *Describe the purpose of the following insuring agreements:*
 - *Forgery Or Alteration*
 - *Inside The Premises - Theft Of Money And Securities*
 - *Inside The Premises - Robbery Or Safe Burglary Of Other Property*
 - *Outside The Premises*
 - *Money Orders And Counterfeit Money*

Introduction

Nearly every business has an exposure to loss that can be treated with crime coverage. Businesses not only need to be concerned with theft by those outside of their organizations, but should be cognizant of the risk of theft by those within their organizations as well. One crime becoming more common is computer-related crime, and coverage for this exposure is increasingly important. While many businesses would not think of going without property or general liability coverage, many do not fully appreciate the importance of crime coverage. This course discusses some of the most important crime coverages a business should consider.



Why Purchase Crime Coverage?

Learning Objective:

- 3.1 Describe the importance of crime coverage, including the exclusions and limitations in a commercial property policy.

Commercial Property Coverage Concerns

Crime coverage is an integral part of the insurance program for many businesses. One of the reasons that crime coverage is so important is because of exclusions and limitations commonly found in commercial property policies.

Property Not Covered

Regardless of the cause of loss, property policies do not cover money, securities, and similar items. Consider this example below:



Henry's Hole in the Wall is a bar in the Florida Keys. It has become a custom that patrons sign and date a one-dollar bill and tack it to the wall when visiting. The bar now has hundreds of thousands of dollars decorating its walls and other surfaces. Understand that there is no coverage under a commercial property policy should the bills be stolen or destroyed, for example, in a fire or a hurricane.



ISO's **Building and Personal Property Coverage Form (CP 00 10 10 12)** excludes accounts, bills, currency, etc., using the language below.

A. Coverage

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;

CP 00 10 10 12

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Causes Of Loss Forms

Causes Of Loss – Special Form (CP 10 30 09 17) covers loss by theft. Even if coverage is written with this cause of loss form, it is possible that the insurer has added a theft exclusion to the policy. If coverage is written with **Causes Of Loss – Basic Form (CP 10 10 10 12)** or **Causes Of Loss – Broad Form (CP 10 20 10 12)**, the only theft-related coverage that applies is for looting during a riot or civil commotion or for building damage caused by burglars entering or exiting a premises.

Special Form – Dishonesty Exclusion

Dishonesty exclusions typically bar coverage for claims arising out of dishonest or criminal acts committed by the named insured or others within the insured's organization such as partners, LLC members, or employees. There is also no coverage if someone to whom property has been entrusted has stolen it. This exclusion applies regardless of whether the theft occurs during the business's normal operating hours or whether there is collusion with someone outside the organization.



Here are some examples of losses that are not covered under a typical property policy:

- An employee steals a shipment of goods to be delivered to a customer.
- The driver for the delivery company hired by the insured to deliver a shipment of goods to a customer steals the shipment.
- An employee gives the business's alarm code to a friend so the friend can break in after hours to steal inventory.

Causes Of Loss – Special Form (CP 10 30 09 17) excludes this exposure using the language below.

B. Exclusions

2. We will not pay for loss or damage caused by or resulting from any of the following:

- h. Dishonest or criminal act (including theft) by you, any of your partners, members, officers, managers, employees (including temporary employees and leased workers), directors, trustees or authorized representatives, whether acting alone or in collusion with each other or with any other party; or theft by any person to whom you entrust the property for any purpose, whether acting alone or in collusion with any other party.

This exclusion:

- (1) Applies whether or not an act occurs during your normal hours of operation;
- (2) Does not apply to acts of destruction by your employees (including temporary employees and leased workers) or authorized representatives; but theft by your employees (including temporary employees and leased workers) or authorized representatives is not covered.

CP 10 30 09 17

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Special Form – Voluntary Parting Exclusion/Unauthorized Instructions Limitation

There is no coverage under most property forms if the insured is tricked into giving up property. It is important to note that similar exclusionary language also applies to many crime coverages.



These types of losses are not covered under property policies:

- A store's customer pays for a purchase with a check that is later returned by the bank for non-sufficient funds.
- An employee of the insured is tricked via a fraudulent email into sending a shipment of goods. The insured does not get the goods back or payment for the goods.
- A person impersonating a repairman arrives at the insured's premises to pick up a piece of equipment that is supposedly in need of service. The insured turns over the equipment to this person who turns out to be a thief that steals the equipment.

Causes Of Loss – Special Form (CP 10 30 09 17) excludes this exposure in two separate ways—the voluntary parting exclusion and the limitation for property transferred on the basis of unauthorized instructions.

B. Exclusions

2. We will not pay for loss or damage caused by or resulting from any of the following:
 - i. Voluntary parting with any property by you or anyone else to whom you have entrusted the property if induced to do so by any fraudulent scheme, trick, device or false pretense.

C. Limitations

The following limitations apply to all policy forms and endorsements, unless otherwise stated:

1. We will not pay for loss of or damage to property, as described and limited in this section. In addition, we will not pay for any loss that is a consequence of loss or damage as described and limited in this section.
 - f. Property that has been transferred to a person or to a place outside the described premises on the basis of unauthorized instructions.

CP 10 30 09 17

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Special Form – Theft Limitations

For certain types of property, there is a dollar limitation on coverage for loss by theft. It is important to note that the limitation applies only to theft. Should any other covered cause of loss apply, the sublimit does not come into play.

Review the following limitations:

- \$2,500 for furs and garments that include fur
- \$2,500 for jewelry, jewels, precious metals, and similar property. Note that the limitation does not apply to jewelry and watches worth \$100 or less per item.
- \$2,500 for patterns, dies, molds and forms
- \$250 for stamps, tickets, and letters of credit

Causes Of Loss – Special Form (CP 10 30 09 17) describes this limitation in the language that follows.

C. Limitations

3. The special limit shown for each category, **a.** through **d.**, is the total limit for loss of or damage to all property in that category. The special limit applies to any one occurrence of theft, regardless of the types or number of articles that are lost or damaged in that occurrence. The special limits are (unless a higher limit is shown in the Declarations):
- a.** \$2,500 for furs, fur garments and garments trimmed with fur.
 - b.** \$2,500 for jewelry, watches, watch movements, jewels, pearls, precious and semiprecious stones, bullion, gold, silver, platinum and other precious alloys or metals. This limit does not apply to jewelry and watches worth \$100 or less per item.
 - c.** \$2,500 for patterns, dies, molds and forms.
 - d.** \$250 for stamps, tickets, including lottery tickets held for sale, and letters of credit.
- These special limits are part of, not in addition to, the Limit of Insurance applicable to the Covered Property.
- This limitation, **C.3.**, does not apply to Business Income Coverage or to Extra Expense Coverage.

CP 10 30 09 17

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There are numerous reasons why commercial property coverage doesn't adequately address many of a business's exposures. Commercial crime policies help to fill many of the gaps discussed above and provide additional coverages.

Commercial Crime Insuring Agreements

Learning Objective:

3.2 Identify the insuring agreements in the ISO Commercial Crime Coverage form.

ISO Commercial Crime Coverage Forms

ISO has numerous crime policies and coverage forms in its library. This course focuses on the coverage in **Commercial Crime Coverage Form (Discovery Form) (CR 00 20 06 22)** and **Commercial Crime Coverage Form (Loss Sustained Form) (CR 00 21 06 22)**. These are the forms often used when crime coverage is to be incorporated into a package policy. ISO has separate forms available for government entities, for use when coverage will be written monoline, and for use when only Fidelity coverage is desired. In addition, many insurers have written their own crime policies. As is the case with any insurance policy, it is always important to review the policy carefully to fully understand how a particular form provides coverage.



Section 3: Crime Coverages and Endorsements

The ISO coverage forms being studied here include eight insuring agreements. The insured can choose which of the eight to include in the policy. When a particular coverage is included, a limit for it is shown on the policy Declarations page. Note that the first insuring agreement, Fidelity, is comprised of three separate insuring agreements: Employee Theft, ERISA Plan Official Dishonesty, and Employee Theft Of Clients' Property. The insured can choose which to include when Fidelity coverage is part of the policy. Forgery Or Alteration is comprised of two separate insuring agreements: Forgery Of Negotiable Instruments and Forgery Of Payment Card Instructions.

The ISO Commercial Crime Form insuring agreements are:

1. Fidelity

- a. Employee Theft**
- b. ERISA Plan Official Dishonesty**
- c. Employee Theft Of Clients' Property**

2. Forgery Or Alteration

- a. Forgery Of Negotiable Instruments**
- b. Forgery Of Payment Card Instructions**

3. Inside The Premises - Theft Of Money And Securities

4. Inside The Premises - Robbery Or Safe Burglary Of Other Property

5. Outside The Premises

6. Computer And Funds Transfer Fraud

7. Fraudulent Impersonation

8. Money Orders And Counterfeit Money

As seen in the Declarations page that follows, a limit of insurance can be shown for each coverage the insured is purchasing. A more in-depth discussion of these coverages will follow later in this section.

POLICY NUMBER:

**CRIME AND FIDELITY
CR DS 02 06 22**

COMMERCIAL CRIME POLICY DECLARATIONS

In return for payment of the premium, and subject to all the terms and conditions of this Policy, we agree with you to provide the insurance as stated in this Policy.

Insurance Company Name:		
Named Insured:		
Mailing Address:		
Policy Period:		
From:	To:	12:01 AM at your mailing address shown above
Coverage is provided only if an amount is shown opposite an Insuring Agreement. If the amount is left blank or "Not Covered" is inserted, such Insuring Agreement and any other reference thereto in this Policy will be deemed to be deleted therefrom.		
Insuring Agreements	Limit Of Insurance Per Occurrence	Deductible Amount Per Occurrence
1. Fidelity		
a. Employee Theft	\$	\$
b. ERISA Plan Official Dishonesty	\$	N/A
c. Employee Theft Of Clients' Property	\$	\$
2. Forgery Or Alteration		
a. Forgery Of Negotiable Instruments	\$	\$
b. Forgery Of Payment Card Instruments	\$	N/A
3. Inside The Premises – Theft Of Money And Securities	\$	\$
4. Inside The Premises – Robbery Or Safe Burglary Of Other Property	\$	\$
5. Outside The Premises	\$	\$
6. Computer And Funds Transfer Fraud	\$	\$
7. Fraudulent Impersonation	\$	\$
8. Money Orders And Counterfeit Money	\$	\$

Section 3: Crime Coverages and Endorsements

If Added By Endorsement:		
Insuring Agreement(s) Or Coverage(s)	Limit Of Insurance Per Occurrence	Deductible Amount Per Occurrence
	\$	\$
	\$	\$
	\$	\$
	\$	\$
Percentage Of Deductible Amount Over Which Losses Must Be Reported:		
		%
Percentage Of Total Assets Applicable To Subsidiary Acquisitions:		
		%
Endorsements Forming Part Of This Policy When Issued:		
Cancellation Of Prior Insurance Issued By Us:		
By acceptance of this Policy, you give us notice cancelling prior Policy Numbers _____, the cancellation to be effective at the time this Policy becomes effective.		
Producer Name:		

Section 3: Crime Coverages and Endorsements

Commercial crime coverage is an important part of any insurance program. Understanding the coverage limitations of property policies and the types of coverage available under crime policies can help an insurance professional discuss the need for coverage with a client.

Check-In



Directions: Identify the insuring agreements in the ISO Commercial Crime Coverage form.

1. _____
2. _____
3. _____
4. _____
5. _____
6. _____
7. _____
8. _____

▶▶ Knowledge Check



Directions: Read the scenario below and explain your response.



You have been invited to bid on the insurance for Eliza’s Emporium, a new specialty store opening downtown. Eliza has asked why you recommend the purchase of crime coverage when the commercial property policy with the Causes Of Loss – Special Form you have proposed seems so comprehensive. How would you respond?

Loss Sustained Form vs. Discovery Form

Learning Objective:

3.3 Describe when coverage applies under the Loss Sustained and Discovery crime forms.

There are two ways that commercial crime coverage can be written—with the Loss Sustained Form or the Discovery Form. ISO has both options available for its crime policies. While the basic coverage is the same between these forms, the coverage triggers differ.



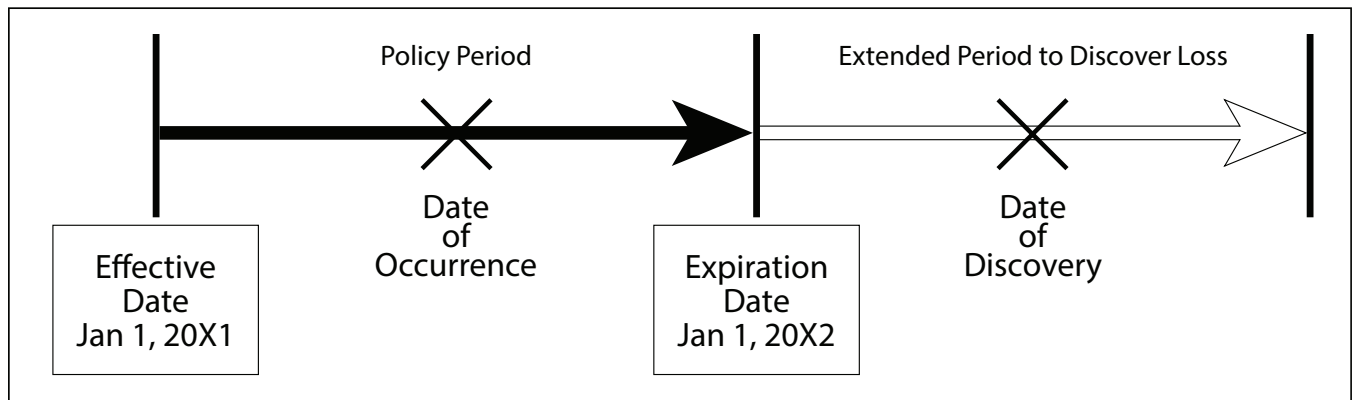
In this learning objective, all language used to illustrate the concepts is from **Commercial Crime Coverage Form (Loss Sustained Form) (CR 00 21 06 22)** and **Commercial Crime Coverage Form (Discovery Form) (CR 00 20 06 22.)**

Loss Sustained Form

When coverage is written on a Loss Sustained Form, two criteria must be satisfied to trigger coverage.

1. The “occurrence” must take place during the policy period; and
2. The “occurrence” must be “discovered” by a “designated person” during the policy period or during the extended period to discover loss.

Exhibit: 3.1 Loss Sustained Trigger



The policy language below describes the coverage trigger. The Loss Sustained During Prior Insurance Conditions referenced in the insuring agreement will be discussed after the basic coverage trigger is reviewed.

A. Insuring Agreements

Coverage is provided under the following Insuring Agreements for which a Limit Of Insurance is shown in the Declarations and applies to loss that you sustain resulting directly from an “occurrence” taking place during the Policy Period shown in the Declarations, except as provided in the Loss Sustained During Prior Insurance Conditions **E.1.i.** and **E.1.m.**, which is “discovered” by a “designated person” during the Policy Period shown in the Declarations or during the period of time provided in the Extended Period To Discover Loss Condition **E.1.h.**:

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To fully understand the Loss Sustained trigger, it is necessary to understand the definitions of “occurrence” and “discovered” and how the extended period to discover loss operates.

What Is an “Occurrence”?



The definition of “occurrence” varies among the insuring agreements. Employee theft claims will be used as examples here, and the occurrence definition for the Employee Theft coverage is shown below. An occurrence can be an individual act, but it can also be a series of acts committed by an employee alone or in collusion with others. This is important because the limit of insurance in the unendorsed policy applies per occurrence.



Each of these is one occurrence under Employee Theft coverage:

- An employee breaks into the insured’s premises after hours and steals money and property.
- An employee and a friend break into the insured’s premises after hours and steal money and property.
- An employee and several friends stage a series of armed robberies at three of the insured’s stores.
- The insured’s bookkeeper steals an average of \$50 per week from petty cash over a period of five years.

ISO's definition of "occurrence" with respect to Employee Theft coverage is below.

F. Definitions

25. "Occurrence" means:

a. Under Insuring Agreements A.1.a. and A.1.c.:

(1) An individual act;

(2) The combined total of all separate acts, whether or not related; or

(3) A series of acts, whether or not related;

committed by an "employee" acting alone or in collusion with other persons, during the Policy Period shown in the Declarations, except as provided under the Loss Sustained During Prior Insurance Conditions **E.1.i.** and **E.1.m.**

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What Does it Mean to "Discover" the Occurrence?

An occurrence is "discovered" when a designated person first becomes aware of facts that would cause a reasonable person to assume a loss has occurred. An occurrence can also be discovered when a designated person receives notice of a claim alleging that the insured is liable to a third party. An insured could, for example, be notified by a customer that an employee of the insured has stolen something belonging to the customer.

Although the name may suggest otherwise, the designated person is not named on the policy. The designated person who must discover the occurrence is one of the following:

- a. Any insurance risk manager
- b. Any partner, LLC member, LLC manager, director, or trustee
- c. Any elected, appointed, or otherwise titled officer
- d. The highest-ranking employee at the premises where the employee involved in the occurrence performs most of their duties
- e. Any administrator, fiduciary, director, trustee, officer, or manager of an employee benefit plan



ISO's definition of "discovered" is below.

F. Definitions

10. "Discovery", "discover" or "discovered" means the time when a "designated person" first becomes aware of facts which would cause a reasonable person to assume that a loss of a type covered by this insurance has been or will be incurred, regardless of when the act or acts causing or contributing to such loss occurred, even though the exact amount or details of loss may not then be known.

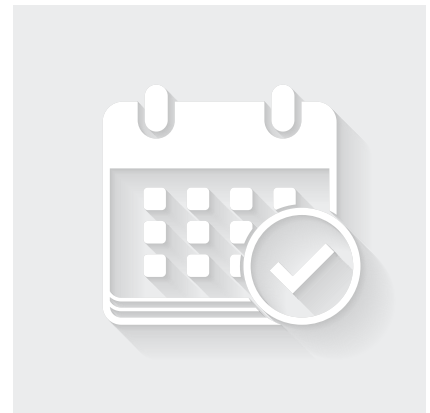
"Discovery", "discover" or "discovered" also means the time when a "designated person" first receives notice of an actual or potential claim in which it is alleged that you are liable to a third party under circumstances which, if true, would constitute a loss under this insurance.

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What is the Extended Period To Discover Loss?

The Loss Sustained Form includes a condition that describes this extended period. If the occurrence is discovered within one year following the cancellation or termination of the policy, it is as though it were discovered during the policy period. The extended period to discover loss also applies when the policy is still in effect, but coverage for a particular insured has been removed or when one of the coverages is removed. The extended period, though, terminates immediately when the insured obtains replacement crime coverage. If coverage is renewed or replaced, the insured does not have the additional year to discover the loss. Unless the insured is an ERISA employee benefit plan such as a pension plan or 401(k) plan, it does not matter whether or not the replacement policy covers losses sustained prior to its inception date.



Section 3: Crime Coverages and Endorsements



The insured purchases Employee Theft coverage on a Loss Sustained Form for the period of January 1, 2022 to January 1, 2023.

- If the insured does not renew the policy or replace Employee Theft coverage, there is a one-year extended period to discover loss.
- If the insured renews or replaces coverage, there is no extended period to discover loss on the 1/1/2022–2023 policy.

If the policy covers an ERISA employee benefit plan such as a pension plan or a 401(k) plan, the replacement policy must provide coverage that:

1. is at least as broad as the policy being replaced,
2. has a limit at least equal to the limit required by ERISA, and
3. applies to losses sustained prior to its effective date.

If the replacement policy does not meet all of these criteria, the extended period to discover loss will not immediately terminate.



Additional information on ERISA employee benefit plans will be provided in the discussion of ERISA Plan Official Dishonesty coverage.

The Extended Period To Discover Loss is described in the policy language below.

E. Conditions

1. Conditions Applicable To All Insuring Agreements

h. Extended Period To Discover Loss

We will pay for loss that you sustain prior to the effective date of cancellation or termination of this insurance in its entirety, as to any Insured or on any Insuring Agreement or coverage, which is “discovered” by a “designated person”:

- (1) Except as provided in Paragraph (2) below, no later than one year from the date of that cancellation or termination. However, this extended period to “discover” loss terminates immediately upon the effective date of any other insurance obtained by you or that Insured, whether from us or another insurer, which replaces in whole or in part the coverage afforded under this insurance, whether or not such other insurance provides coverage for loss sustained prior to its effective date.
- (2) No later than one year from the date of that cancellation or termination with regard to any “ERISA employee benefit plan”. However, this extended period to “discover” loss terminates immediately upon the effective date of any other insurance obtained by you or that “ERISA employee benefit plan”, whether from us or another insurer, that provides, at a minimum, the same coverage afforded by Insuring Agreement A.1.b. in an amount that is no less than the minimum amount of coverage required under ERISA and which also provides that such coverage applies to loss sustained prior to its effective date.

Section 3: Crime Coverages and Endorsements

The following example illustrates the Loss Sustained coverage trigger.



Policy term: 1/1/2021 to 1/1/2022

Coverage was not renewed for the 2022-2023 term.

Employee theft was discovered by the risk manager on 8/1/2022.

The date of the employee theft was 5/1/2021.

Coverage is triggered. The loss was sustained (occurred) during the policy period and was discovered by a designated person during the extended period to discover loss.

Losses Occurring Over an Extended Period or Discovered After the Policy Expiration Date

It is easy to see how the Loss Sustained Form operates when a loss happens on a specific date and is discovered during the policy term or the extended period to discover loss. What happens, though, when a loss happens over a period of time or is not discovered until long after the policy term ends?



A business has had Loss Sustained Employee Theft coverage for the past 10 years. The owner discovers today that one of the employees, the bookkeeper, has been stealing for the past five years. Recall the two-part trigger for loss sustained coverage. The loss must occur during the policy period and be discovered during the policy period or the extended period to discover loss. Given what has been discussed here so far, it would seem that the insured cannot be paid for the thefts that took place in the prior years. Fortunately, though, that is not the case. Loss Sustained forms include language that addresses situations like this. Recall that the insuring agreement mentioned Loss Sustained During Prior Insurance Conditions. Those will be discussed here.



How a loss involving theft over multiple policy terms, or a loss discovered after the extended period to discover loss ends, will be settled depends on whether the same insurer has been providing coverage during the occurrence and discovery periods or whether the insurer has changed at some point.

Prior insurance with the same insurer

The condition, Loss Sustained During Prior Insurance Issued By Us Or Any Affiliate, describes how a loss will be settled when the loss is discovered during the policy period and occurred partly during the current policy and a previous policy or entirely during the previous policy.

Section 3: Crime Coverages and Endorsements

Loss Sustained Partly During This Insurance And Partly During Prior Insurance: If the current policy, when loss is discovered, became effective at the time of cancellation or termination of the previous policy, the insurer will first settle the loss sustained during the current term and then settle the loss sustained under the previous terms. The most that will be paid for the entire loss is the highest single limit applicable during the period of loss. The current policy deductible applies.

The following examples illustrate how coverage applies when loss is sustained partly during the current policy term and partly during the term of prior policies issued by the same insurer.



Example 1

The facts:

2022 Policy A with Insurer X: \$50,000 limit, \$5,000 deductible

2021 Policy B with Insurer X: \$50,000 limit, \$5,000 deductible

The accounting manager has been stealing—\$2,500 was stolen in 2022; \$7,500 was stolen in 2021. The owner of the business discovered the loss in 2022.

The insured did not have a gap in coverage between policies A and B.

Settling the claim:

1. The most that can be paid is \$50,000, the highest of the policy limits. A \$5,000 deductible, the current deductible, applies.
2. Start by settling the amount of loss sustained under the current term—Policy A:
 - \$2,500 loss minus \$5,000 deductible = nothing paid
3. Then, settle the amount of loss sustained under the previous policy—Policy B:
 - \$7,500 loss minus \$2,500 (\$2,500 of the deductible was already applied) = \$5,000 paid

Section 3: Crime Coverages and Endorsements



Example 2

The facts:

2022 Policy A with Insurer X: \$125,000 limit, \$10,000 deductible

2021 Policy B with Insurer X: \$150,000 limit, \$25,000 deductible

The accounting manager has been stealing—\$175,000 was stolen in 2022; \$75,000 was stolen in 2021. The owner of the business discovered the loss in 2022.

The insured did not have a gap in coverage between policies A and B.

Settling the claim:

1. The most that can be paid is \$150,000, the highest of the policy limits. A \$10,000 deductible, the current deductible, applies.
2. Start by settling the amount of loss sustained under the current term—Policy A:
 - \$175,000 loss minus \$10,000 deductible = \$165,000. Because the current limit is \$125,000, only \$125,000 is paid.
3. Then, settle the amount of loss sustained under the previous policy—Policy B:
 - \$75,000 loss - The maximum payable is \$150,000. \$125,000 was already paid, so the \$25,000 remainder is paid here. The deductible was already applied and will not apply again.

ISO's language describing how these losses will be settled is below.

E. Conditions

1. Conditions Applicable To All Insuring Agreements

I. Loss Sustained During Prior Insurance Issued By Us Or Any Affiliate

(1) Loss Sustained Partly During This Insurance And Partly During Prior Insurance

If loss is "discovered" by a "designated person" during the Policy Period shown in the Declarations, resulting directly from an "occurrence" taking place:

- (a)** Partly during the Policy Period shown in the Declarations; and
- (b)** Partly during the policy period(s) of any prior cancelled or terminated insurance that we or any affiliate issued to you or any predecessor in interest;

and this insurance became effective at the time of cancellation or termination of the prior insurance, we will first settle the amount of loss that you sustained during this Policy Period. We will then settle the remaining amount of loss that you sustained during the policy period(s) of the prior insurance.

(3) In settling loss under Paragraphs (1) and (2) above:

- (a)** The most we will pay for the entire loss is the highest single Limit of Insurance applicable during the period of loss, whether such limit was written under this insurance or was written under the prior insurance issued by us.
- (b)** We will apply the applicable Deductible Amount shown in the Declarations to the amount of loss sustained under this insurance. If no loss was sustained under this insurance, we will apply the Deductible Amount shown in the Declarations to the amount of loss sustained under the most recent prior insurance.

If the Deductible Amount is larger than the amount of loss sustained under this insurance, or the most recent prior insurance, we will apply the remaining Deductible Amount to the remaining amount of loss sustained during the prior insurance.

We will not apply any other deductible amount that may have been applicable to the loss.

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Loss Sustained Entirely During Prior Insurance: If the current policy, when loss is discovered, became effective at the time of cancellation or termination of the previous policy and the loss would have been covered under the current policy had it been in effect at the time of the loss, the insurer will first settle the loss sustained during the most recent prior term and then settle the loss sustained under the previous terms. The most that will be paid for the entire loss is the highest single limit applicable during the period of loss. The current policy deductible applies.

The following example illustrates how coverage applies when loss is discovered during the current policy term but was sustained during the term of a prior policy issued by the same insurer.



EXAMPLE

The facts:

2022 Policy A with Insurer X: \$125,000 limit, \$10,000 deductible

2021 Policy B with Insurer X: \$125,000 limit, \$25,000 deductible

The accounting manager stole \$100,000 in 2021. The owner of the business discovered the loss in 2022.

The insured did not have a gap in coverage between policies A and B.

The loss would have been covered under Policy A had the theft happened during the term of Policy A.

Settling the claim:

1. The most that can be paid is \$125,000, the highest of the policy limits. A \$10,000 deductible, the current deductible, applies.
2. Start by settling the amount of loss sustained under the previous term—Policy B:
 - \$100,000 loss minus \$10,000 deductible = \$90,000 paid.

ISO's language describing how these losses will be settled is below.

E. Conditions

1. Conditions Applicable To All Insuring Agreements

I. Loss Sustained During Prior Insurance Issued By Us Or Any Affiliate

(2) Loss Sustained Entirely During Prior Insurance

If loss is “discovered” by a “designated person” during the Policy Period shown in the Declarations, resulting directly from an “occurrence” taking place entirely during the policy period(s) of any prior cancelled or terminated insurance that we or any affiliate issued to you or any predecessor in interest, we will pay for the loss, provided that:

- (a)** This insurance became effective at the time of cancellation or termination of the prior insurance; and
- (b)** The loss would have been covered under this insurance had it been in effect at the time of the “occurrence”.

We will first settle the amount of loss that you sustained during the most recent prior insurance. We will then settle any remaining amount of loss that you sustained during the policy period(s) of any other prior insurance.

(3) In settling loss under Paragraphs (1) and (2) above:

- (a)** The most we will pay for the entire loss is the highest single Limit of Insurance applicable during the period of loss, whether such limit was written under this insurance or was written under the prior insurance issued by us.
- (b)** We will apply the applicable Deductible Amount shown in the Declarations to the amount of loss sustained under this insurance. If no loss was sustained under this insurance, we will apply the Deductible Amount shown in the Declarations to the amount of loss sustained under the most recent prior insurance.

If the Deductible Amount is larger than the amount of loss sustained under this insurance, or the most recent prior insurance, we will apply the remaining Deductible Amount to the remaining amount of loss sustained during the prior insurance.

We will not apply any other deductible amount that may have been applicable to the loss.

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Prior insurance with a different insurer

The condition, Loss Sustained During Prior Insurance Not Issued By Us Or Any Affiliate, describes how a loss will be settled when the loss is discovered during the policy period but occurred during the term of a prior policy issued by another insurer.

Because the extended period to discover loss terminates when coverage is replaced, the previous insurer is no longer obligated to pay claims based on losses that occurred during its policy term. This situation differs from the one just discussed. When prior coverage is with the same insurer, the insurer can be compelled to pay losses sustained prior to the current term. The previous insurer cannot be compelled to pay.

Section 3: Crime Coverages and Endorsements

For coverage under the current policy to apply, the loss must be discovered during the current policy term. The current policy must have become effective at the time of cancellation or termination of the previous policy. The loss must be one that would have been covered under the current policy had it been in effect at the time of the loss. The most that will be paid for the loss, though, is the lesser of the current limit or the limit on the policy in effect when the loss occurred. The current policy deductible applies.

The following examples illustrate how coverage applies when loss is discovered during the current policy term but was sustained during the term of a previous policy issued by a different insurer.



Example 1

The facts:

2022 Policy A with Insurer A: \$25,000 limit, \$5,000 deductible

2021 Policy B with Insurer B: \$50,000 limit, \$2,500 deductible

The accounting manager stole \$40,000 in 2021. The owner of the business discovered the loss in 2022.

The insured did not have a gap in coverage between policies A and B.

The loss would have been covered under Policy A had the theft happened during the term of Policy A.

Settling the claim:

1. The most that can be paid is \$25,000, the lesser of the policy limits. A \$5,000 deductible, the current deductible, applies.
2. Policy A: \$40,000 loss minus \$5,000 deductible = \$35,000. Only \$25,000 will be paid, though.
3. Policy B will pay nothing. Its extended period to discover loss terminated when Policy A was issued.

Section 3: Crime Coverages and Endorsements



Example 2

The facts:

2022 Policy A with Insurer A: \$100,000 limit, \$5,000 deductible

2021 Policy B with Insurer B: \$50,000 limit, \$2,500 deductible

The accounting manager stole \$75,000 in 2021. The owner of the business discovered the loss in 2022.

The insured did not have a gap in coverage between policies A and B.

The loss would have been covered under Policy A had the theft happened during the term of Policy A.

Settling the claim:

1. The most that can be paid is \$50,000, the lesser of the policy limits. A \$5,000 deductible, the current deductible, applies.
2. Policy A: \$75,000 loss minus \$5,000 deductible = \$70,000. Only \$50,000 will be paid, though.
3. Policy B will pay nothing. Its extended period to discover loss terminated when Policy A was issued.



Be careful when changing insurers and increasing the limit. Make sure the insured is aware that the full limit may not be available if the loss occurred prior to the time the higher limit was put into effect. This is what happened in the example above.

ISO's language describing how these losses will be settled is below. Although ISO includes language that describes what happens in the event that the loss is covered partly under this E.I.M. condition and partly under E.I.I., those details will not be discussed here.

E. Conditions

1. Conditions Applicable To All Insuring Agreements

m. Loss Sustained During Prior Insurance Not Issued By Us Or Any Affiliate

- (1)** If loss is “discovered” by a “designated person” during the Policy Period shown in the Declarations, resulting directly from an “occurrence” taking place during the policy period of any prior cancelled or terminated insurance that was issued to you or a predecessor in interest by another company, and the period of time to discover loss under that insurance had expired, we will pay for the loss under this insurance, provided that:

 - (a)** This insurance became effective at the time of cancellation or termination of the prior insurance; and
 - (b)** The loss would have been covered under this insurance had it been in effect at the time of the “occurrence”.
- (2)** In settling loss subject to this condition:

 - (a)** The most we will pay for the entire loss is the lesser of the Limits of Insurance applicable during the period of loss, whether such limit was written under this insurance or was written under the prior cancelled or terminated insurance.
 - (b)** We will apply the applicable Deductible Amount shown in the Declarations to the amount of loss sustained under the prior cancelled or terminated insurance.
- (3)** The insurance provided under this condition is subject to the following:

 - (a)** If loss covered under this condition is also partially covered under the Loss Sustained During Prior Insurance Issued By Us Or Any Affiliate Condition E.1.I. , the amount recoverable under this condition is part of, not in addition to, the amount recoverable under Condition E.1.I.
 - (b)** For loss covered under this condition that is not subject to Paragraph (a) above, the amount recoverable under this condition is part of, not in addition to, the Limit of Insurance applicable to the loss covered under this insurance and is limited to the lesser of the amount recoverable under:

 - (i)** This insurance as of its effective date; or
 - (ii)** The prior cancelled or terminated insurance had it remained in effect.

Section 3: Crime Coverages and Endorsements

The following exhibit summarizes how losses are paid when, under a Loss Sustained form, the occurrence is discovered after the Extended Period to Discover Loss of a prior policy has expired.

LOSS SUSTAINED FORM LOSS SUSTAINED DURING PRIOR INSURANCE AND DISCOVERED DURING THE CURRENT TERM	
Prior Insurance with the Same Insurer	Prior Insurance with a Different Insurer
No gap in coverage between prior and current policies	No gap in coverage between prior and current policies
Loss is the type that would be covered by the current policy (if loss occurred entirely under prior policy terms.)	Loss is the type that would be covered by the current policy.
Insurer first settles the loss sustained during the current term (if any) and then works backward, settling the loss sustained under the previous terms.	The loss is settled by the insurer whose policy is in effect when the occurrence is discovered. The previous insurer does not pay.
Highest of the current and previous limits is the most that will be paid.	Lowest of the current and previous limits is the most that will be paid.
Current policy deductible applies.	Current policy deductible applies.

Check-In



Directions: Regarding loss sustained crime coverage, indicate whether each of the following is true or false. Assume that the insured is not an ERISA employee benefit plan.

1. The extended period to discover loss in a Loss Sustained Form is 60 days.

True

False

2. A loss occurs partly during the term of the current policy and partly during the term of a previous policy written by the same insurer. The loss is discovered during the current policy term. The most that will be paid is the lesser of the limit on the current policy and the previous policy.

True

False

3. A loss occurs partly during the term of the current policy and partly during the term of a previous policy written by a different insurer. The loss is discovered during the current policy term. The most that will be paid is the lesser of the limit on the current policy and the previous policy.

True

False

4. A loss occurs entirely during the term of the previous policy with a different insurer and is discovered under the current policy term. The previous insurer will pay the claim because the insured replaced coverage.

True

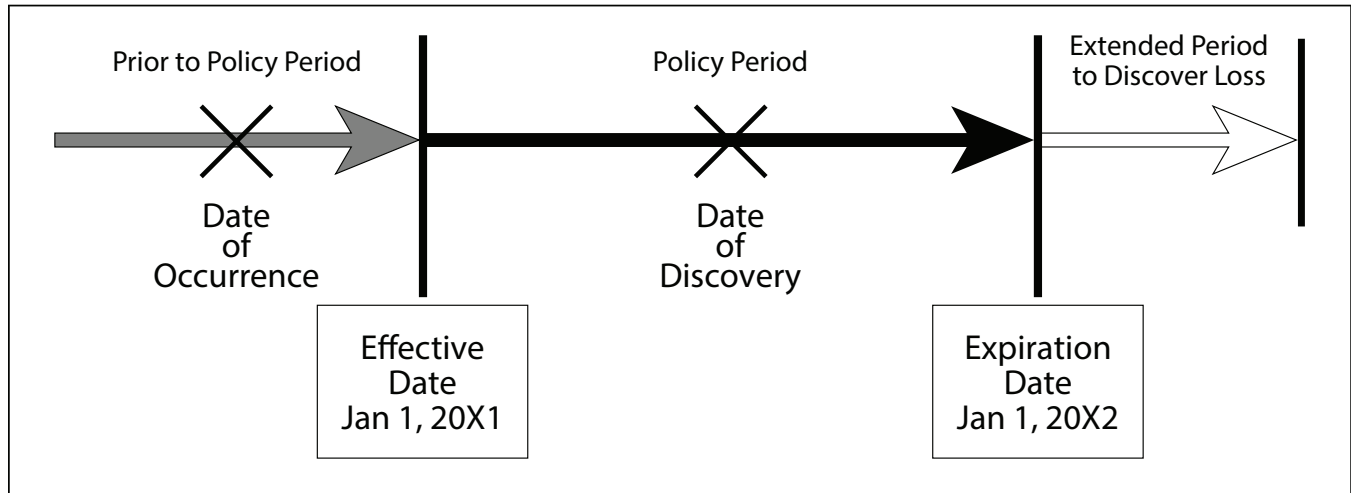
False

Discovery Form

When coverage is written on a Discovery Form, two criteria must be satisfied to trigger coverage.

1. The “occurrence” can take place at any time; and
2. The “occurrence” must be “discovered” by a “designated person” during the policy period or during the extended period to discover loss.

Exhibit: 3.2 Discovery Trigger



The policy language below describes these coverage triggers.

A. Insuring Agreements

Coverage is provided under the following Insuring Agreements for which a Limit Of Insurance is shown in the Declarations and applies to loss that you sustain resulting directly from an “occurrence” taking place at any time which is “discovered” by a “designated person” during the Policy Period shown in the Declarations or during the period of time provided in the Extended Period To Discover Loss Condition **E.1.h.**:

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What Is an “Occurrence” and What Does it Mean to “Discover” the Occurrence?

The definition of “discover” is the same in the Loss Sustained and Discovery Forms, so will not be repeated here. The definition of “occurrence” is similar to that found in the Loss Sustained Form. The main difference is that an occurrence in the Discovery Form could occur *before* the policy term.

ISO's occurrence definition for Employee Theft is below.

F. Definitions

25. "Occurrence" means:

a. Under Insuring Agreements A.1.a. and A.1.c. :

(1) An individual act;

(2) The combined total of all separate acts, whether or not related; or

(3) A series of acts, whether or not related;

committed by an "employee" acting alone or in collusion with other persons, during the Policy Period shown in the Declarations, before such Policy Period or both during and before such Policy Period.

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Frank's Insurance Agency purchased Employee Theft coverage on a Discovery Form basis effective January 1, 2022, to January 1, 2023. In March of 2022, Frank discovers that his bookkeeper, Paulina, has been transferring \$1,000 per month into her personal bank account for the last five years. Because Frank discovered the loss during the policy term, coverage is triggered, even though the theft took place prior to the policy term.

What Is the Extended Period To Discover Loss?

As was true in the Loss Sustained Form, the Discovery Form includes a condition that describes this Extended Period To Discover Loss. If the occurrence is discovered within sixty days following the cancellation or termination of the policy, it is as though it were discovered during the policy period. The Extended Period To Discover Loss also applies when the policy is still in effect, but coverage for a particular insured has been removed or when one of the coverages is removed. The extended period, though, terminates immediately when the insured obtains replacement crime coverage. If coverage is renewed or replaced, the insured does not have the additional sixty days to discover the loss. Unless the insured is an ERISA employee benefit plan such as a pension plan or 401(k) plan, it does not matter whether or not the replacement policy covers losses sustained prior to its inception date.

If the policy covers an ERISA employee benefit plan such as a pension plan or a 401(k) plan, the extended period to discover loss is one year. As was the case with the Loss Sustained Form, the replacement policy must provide coverage that:

- A. is at least as broad as the policy being replaced,
- B. has a limit at least equal to the limit required by ERISA, *and*
- C. applies to losses sustained prior to its effective date.

If the replacement policy does not meet these criteria, the extended period to discover loss will not immediately terminate.

E. Conditions

1. Conditions Applicable To All Insuring Agreements

h. Extended Period To Discover Loss

We will pay for loss that you sustain prior to the effective date of cancellation or termination of this insurance in its entirety, as to any Insured or on any Insuring Agreement or coverage, which is “discovered” by a “designated person”:

- (1) Except as provided in Paragraph (2) below, no later than 60 days from the date of that cancellation or termination. However, this extended period to “discover” loss terminates immediately upon the effective date of any other insurance obtained by you or that Insured, whether from us or another insurer, which replaces in whole or in part the coverage afforded under this insurance, whether or not such other insurance provides coverage for loss sustained prior to its effective date.
- (2) No later than one year from the date of that cancellation or termination with regard to any “ERISA employee benefit plan”. However, this extended period to “discover” loss terminates immediately upon the effective date of any other insurance obtained by you or that “ERISA employee benefit plan”, whether from us or another insurer, that provides, at a minimum, the same coverage afforded by Insuring Agreement A.1.b. in an amount that is no less than the minimum amount of coverage required under ERISA and which also provides that such coverage applies to loss sustained prior to its effective date.

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ISO does allow for a longer Extended Period To Discover Loss to be purchased, using the endorsement below.

Change Extended Period To Discover Loss (CR 20 04 06 22)



With this endorsement, the Extended Period To Discover Loss can be increased by the number of days shown on the endorsement. This can be helpful when the insured has discontinued purchasing crime coverage. A business that has ceased operating, for example, may no longer be concerned with new occurrences of employee theft, but may want to preserve coverage in case a previous theft is discovered during the process of dissolving the business.

Retroactive Date Endorsements

Some insurers offering Discovery Form coverage may be concerned about providing coverage for occurrences that took place prior to the time the insurer began to write coverage. ISO offers endorsements that allow insurers to include a retroactive date on a Discovery Form policy.

Much like the retroactive date that might be added to a claims-made liability policy, the retroactive date puts a starting point on when losses can occur.



Section 3: Crime Coverages and Endorsements

Include Retroactive Date (CR 20 05 06 22)



When this endorsement is added, coverage for a loss applies only if the loss took place entirely after the retroactive date shown on the endorsement. The loss must still be discovered by a designated person during the policy period or extended period to discover loss.

Provide Limited Coverage For Loss Occurring Before Retroactive Date (CR 20 24 06 22)



When this endorsement is added, coverage for a loss applies only if it took place entirely after the retroactive date shown on the endorsement or partly before and partly after the retroactive date. There is no coverage for losses that occurred entirely before the retroactive date. The loss must still be discovered by a designated person during the policy period or the extended period to discover loss.

Understanding the difference between Loss Sustained and Discovery Form coverage is important to anyone working with commercial crime coverage. Under Discovery Form policies, only one policy term is triggered. A loss, after all, can only be discovered once. Depending on the circumstances surrounding the loss, Loss Sustained coverage may require that language under multiple policies be considered.

▶▶ Knowledge Check



Directions: Read the scenario below and explain your thinking.

Sofia worked in the bookkeeping department of Amazing Insurance Agency and had been stealing \$100 per week from the company bank account for the last seven years of her employment. It was only after Sofia retired in 2022 that the loss was discovered by the owners of Amazing. Explain how coverage would apply under a Loss Sustained Form as compared to a Discovery Form. Assume that Amazing had the same Employee Theft insurer for all years, from the beginning of Sofia's thefts through the date the thefts were discovered.

Fidelity Insuring Agreements

Learning Objective:

- 3.4 Explain the key elements of the three Fidelity insuring agreements, including exclusions, and apply these concepts in a claims situation.

The commercial crime policy includes three different insuring agreements within the first insuring agreement, Fidelity Coverage. Fidelity is one of the most important insuring agreements as it covers various losses involving theft by employees or, in the case of ERISA Plan Official Dishonesty, by an ERISA plan official. The insured can choose to purchase up to three different insuring agreements in the Fidelity section.



Three Fidelity Insuring Agreements

- 1a: Employee Theft
- 1b: ERISA Plan Official Dishonesty
- 1c: Employee Theft Of Clients' Property

Important Concepts and Definitions

It is important to understand some basic terms and concepts with respect to the Fidelity insuring agreements before we get into understanding coverage.

What Is Covered Property?

All three insuring agreements in Fidelity coverage apply to loss of or damage to money, securities, and other property.

Money

Under the Fidelity insuring agreements, “money” includes currency, travelers checks and money orders held for sale, and deposits in a financial institution.



F. Definitions

23. “Money” means:

- a. Currency, coins and bank notes in current use and having a face value;
- b. Traveler’s checks and money orders held for sale to the public; and
- c. In addition, includes:
 - (1) Under Insuring Agreements **A.1.a.**, **A.1.b.**, **A.1.c.** and **A.2.**, deposits in your account at any “financial institution”; and
 - (2) Under Insuring Agreement **A.6.**, deposits in your account at any “financial institution” listed in Paragraph **F.16.b.**

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Securities



“Securities” include negotiable and non-negotiable instruments that represent money or property. Examples include tokens, tickets, revenue stamps, and evidence of debt issued in connection with credit cards.

F. Definitions

30. “Securities” means negotiable and nonnegotiable instruments or contracts representing either “money” or property and includes:

- a. Tokens, tickets, revenue and other stamps (whether represented by actual stamps or unused value in a meter) in current use; and
- b. Evidences of debt issued in connection with credit or charge cards, which cards are not issued by you;
but does not include “money”.

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Other Property

“Other property” means tangible property other than money and securities and does not include data. It is possible that an insurer might choose to exclude, by endorsement, certain types of property.

F. Definitions

- 26.** “Other property” means any tangible property other than “money” and “securities” that has intrinsic value. “Other property” does not include “computer programs”, “electronic data” or any property specifically excluded under this insurance.

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Ownership Of Property

A policy condition makes it clear that the money, securities, or other property does not have to be owned or leased by the named insured. It can be held by the insured in any capacity. It can also be property for which the named insured is legally liable, provided the insured was liable prior to the loss. Even if the stolen property belongs to another, the coverage is for the insured’s benefit only, and any claim must be presented by the insured.



Connor Computers works on laptops and other devices that customers drop off for repair. An employee of Connor’s stole fifteen customer computers that were repaired and awaiting pickup. There is coverage under Connor’s Employee Theft coverage, but Connor must be the one to present the claim to the Employee Theft insurer.



E. Conditions

1. Conditions Applicable To All Insuring Agreements

o. Ownership Of Property; Interests Covered

The property covered under this insurance is limited to property:

- (1) That you own or lease;
- (2) That is held by you in any capacity; or
- (3) For which you are legally liable, provided that you were liable for the property prior to the time the loss was sustained.

However, this insurance is for your benefit only. It provides no rights or benefits to any other person or entity. Any claim for loss that is covered under this insurance must be presented by you.

Note: The same condition appears in CR 00 20 06 22 as condition E.1.m.

CR 00 21 06 22

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Who Can Be the Thief?

Who can steal under ERISA Plan Official Dishonesty will be discussed when that coverage is described. The other two Fidelity insuring agreements, Employee Theft and Employee Theft Of Clients' Property, cover theft by employees, a defined term.

The definition of "employee" includes the following:

- Natural persons whom the insured compensates and has the right to direct or control. These persons are employees during the period of service and for the first 30 days after termination, unless the termination is due to fraudulent or dishonest acts committed by the employee.
- Temporary workers
- Leased workers
- With respect to employee benefit plans not subject to ERISA, certain natural persons within the insured's organization who are not independent contractors
- Former employees, partners, LLC members or managers, directors or trustees retained by the insured as a consultant
- Guest students and interns
- Natural persons employed by an entity merged or consolidated with the named insured prior to the policy effective date
- Directors, trustees, or LLC managers performing acts within the scope of the duties of an employee or acting as a member of a committee to perform specific directorial acts on behalf of the named insured

The definition of employee does not include any agent, broker, factor, commission merchant, consignee, independent contractor, or representative of the same general character not described in the first part of the definition.

F. Definitions

12. "Employee":

a. Means:

(1) Any natural person:

(a) While in your service and for the first 30 days immediately after termination of service, unless such termination is due to "theft" or any other fraudulent or dishonest act committed by the "employee";

(b) Whom you compensate directly by salary, wages or commissions; and

(c) Whom you have the right to direct and control while performing services for you;

(2) Any natural person who is furnished temporarily to you:

(a) To substitute for a permanent "employee" defined in Paragraph **(1)** above, who is on leave; or

(b) To meet seasonal or short-term workload conditions; while that person is subject to your direction and control and performing services for you;

(3) Any natural person who is leased to you under a written agreement between you and a labor leasing firm to perform duties related to the conduct of your business, but does not mean a temporary "employee" defined in Paragraph **(2) above;**

(4) Any natural person who is:

(a) An administrator, director, trustee, manager or "employee", except an administrator or manager who is an independent contractor, of a "Non-ERISA employee benefit plan"; or

(b) A director, trustee or "employee" of an Insured sponsoring a "Non-ERISA employee benefit plan", while that person is engaged in handling "money", "securities" or "other property" of the plan;

(5) Any natural person who is a former "employee", partner, "member", "manager", director or trustee retained by you as a consultant while performing services for you;

(6) Any natural person who is a guest student or intern pursuing studies or duties;

(7) Any natural person employed by an entity merged or consolidated with you prior to the effective date of this insurance; and

(8) Any natural person who is your "manager", director or trustee while:

(a) Performing acts within the scope of the usual duties of an "employee"; or

(b) Acting as a member of any committee duly elected or appointed by resolution of your board of directors, board of trustees or functional equivalent thereof, to perform specific, as distinguished from general, directorial acts on your behalf.

b. Does not mean:

Any agent, broker, factor, commission merchant, consignee, independent contractor or representative of the same general character not specified in Paragraph a. above.

Endorsements Modifying Who Is an Employee

The definition of employee is broad and includes numerous people within the insured's organization. The insured may wish to cover theft by others in or involved with the organization, and there are many endorsements that can be used to expand the definition of employee. Some of these endorsements are described below.



Endorsements to Expand Coverage

Include Designated Agents As Employees (CR 25 02 06 22)



An agent acting in the capacity designated in the endorsement and appointed in writing by the insured is included as an employee up to the limit of insurance shown on the endorsement. The agent, along with its partners, members, officers, and employees are, collectively, one employee. The endorsement includes a limit of insurance that is part of the Employee Theft limit, not in addition to it.



Beachfront Condo has appointed Pat's Property Management Service as its agent. An employee of Pat's steals the HOA fees collected from unit owners of Beachfront Condo. If "property manager" is an included agent on the Beachfront Condo crime policy using **Include Designated Agents As Employees (CR 25 02 06 22)**, Employee Theft coverage will apply.

Section 3: Crime Coverages and Endorsements

POLICY NUMBER:

CRIME AND FIDELITY
CR 25 02 06 22

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

INCLUDE DESIGNATED AGENTS AS EMPLOYEES

This endorsement modifies insurance provided under the following:

COMMERCIAL CRIME COVERAGE FORM
COMMERCIAL CRIME POLICY
COMMERCIAL FIDELITY AND FORGERY POLICY
GOVERNMENT CRIME COVERAGE FORM
GOVERNMENT CRIME POLICY
GOVERNMENT FIDELITY AND FORGERY POLICY

and applies to the Employee Theft Insuring Agreement.

SCHEDULE

Capacity Of Agent	Limit Of Insurance
	\$

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

CR 25 02 06 22

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Page 1 of 1

Endorsements to Expand Coverage (continued)

	<p>Include Partners As Employees (CR 25 03 06 22) A policy exclusion to be discussed later states that most crime coverages do not apply when theft is committed by one of the named insured partnership’s partners. Naming the partner on this endorsement restores coverage. Coverage applies only to theft in excess of that partner’s interest in the covered property.</p>
	<p>Include Members Of A Limited Liability Company As Employees (CR 25 04 06 22) A policy exclusion to be discussed later states that most crime coverages do not apply when theft is committed by one of the named insured LLC’s members. Naming the member on this endorsement restores coverage. Coverage applies only to theft in excess of that member’s interest in the covered property.</p>
	<p>Include Chairperson And Members Of Specified Committees As Employees (CR 25 06 06 22) The definition of employee is amended to include any natural person while performing services for the named insured as the chairperson or a member of a committee named on the endorsement. Coverage applies whether or not the chairperson or member is compensated.</p>
	<p>Include Specified Non-Compensated Officers As Employees (CR 25 08 06 22) The definition of employee is amended to include the insured’s non-compensated officers shown in the schedule.</p>
	<p>Include Volunteer Workers As Employees (CR 25 09 06 22) The definition of employee is amended to include non-compensated individuals performing services usual to the duties of an employee or while acting as fund solicitors during fundraising campaigns.</p>
	<p>Include Volunteer Workers Other Than Fund Solicitors As Employees (CR 25 10 06 22) The definition of employee is amended to include non-compensated individuals other than fund solicitors performing services usual to the duties of an employee.</p>
	<p>Include Designated Persons Or Classes Of Persons As Employees (CR 25 41 06 22) The definition of employee is amended to include any natural person or group of persons named or described in the schedule.</p>
	<p>Include Computer Software Contractors As Employees (CR 25 42 06 22) The computer software contractor scheduled on the endorsement, along with its partners, members, officers, and employees are considered, collectively, one employee. The endorsement includes a limit of insurance that is part of the Employee Theft limit.</p>

Endorsements to Restrict Coverage

The endorsements above expand the definition of employee, providing additional coverage. In some cases, an insured may wish to remove certain individuals from the definition of employee, usually to save premium. The following endorsements can be used for this purpose.

Exclude Designated Persons Or Classes Of Persons As Employees (CR 25 01 06 22)



The definition of employee is amended so that it does not include any person named or class of persons shown in the schedule.

Employee Theft Name Or Position Schedule (CR 04 08 06 22)



This endorsement limits coverage to theft by employees scheduled by name on the endorsement or those who hold positions scheduled on the endorsement. Unlike the unendorsed crime form where the employee who steals does not need to be identified, with this endorsement, the employee must be identified. That is the only way to know if the employee is on the schedule or holds a scheduled position.

In the unendorsed form, the policy limit applies per occurrence. If several employees conspire to commit theft, only one policy limit applies to the occurrence. With this endorsement, though, a separate limit applies to each scheduled person or position. While the fact that the limit applies separately to each person is an advantage, the deductible also applies separately to each, which is a disadvantage.



Bonnie and Clyde, two employees of Joplin Five & Dime, conspired to steal \$50,000 in cash from their employer. Joplin Five & Dime carries Employee Theft coverage with a limit of \$25,000. In the unendorsed policy, a maximum of \$25,000 will be paid for the loss. If Bonnie and Clyde are each listed on the **Employee Theft Name Or Position Schedule (CR 04 08 06 22)** with a limit of \$25,000 each, up to \$50,000 will be paid. In the case of the endorsed policy, the deductible applies separately to each employee.



Accuracy is critical with this form. If theft is by someone not scheduled on the endorsement or not holding a position scheduled on the endorsement, no coverage applies. If positions are scheduled, there is a penalty if the insured under-reports the number of people holding those positions. In the example below, one sees that the formula used to calculate the amount paid in this instance looks a lot like the coinsurance formula.

Section 3: Crime Coverages and Endorsements



Ryder’s Restaurant has Employee Theft coverage with **Employee Theft Name Or Position Schedule (CR 04 08 06 22)**. The schedule shows five servers on the position schedule. During the busy summer months, Ryder hires an additional five servers and neglects to notify the insurer. One of the servers steals \$10,000.

$$\frac{\text{Servers on endorsement (5)}}{\text{Actual number of servers (10)}} \times \$10,000 \text{ loss} = \$5,000 \text{ paid (less deductible)}$$

POLICY NUMBER:

**CRIME AND FIDELITY
CR 04 08 06 22**

THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.

EMPLOYEE THEFT – NAME OR POSITION SCHEDULE

This endorsement modifies insurance provided under the following:

- COMMERCIAL CRIME COVERAGE FORM
- COMMERCIAL CRIME POLICY
- COMMERCIAL FIDELITY AND FORGERY POLICY
- GOVERNMENT CRIME COVERAGE FORM
- GOVERNMENT CRIME POLICY
- GOVERNMENT FIDELITY AND FORGERY POLICY

SCHEDULE

Name Schedule Coverage

Item Number	Names Of Covered Employees	Limit Of Insurance On Each Employee	Deductible Amount On Each Employee
1.		\$	\$
2.		\$	\$
3.		\$	\$

Position Schedule Coverage

Item Number	Titles Of Covered Positions	Location Of Covered Positions	Number Of Employees In Each Position	Limit Of Insurance On Each Employee	Deductible Amount On Each Employee
1.				\$	\$
2.				\$	\$
3.				\$	\$

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

Section 3: Crime Coverages and Endorsements



Some insureds may wish to purchase one limit of coverage that applies to theft by any employee and additional limits for certain individuals or individuals holding certain positions. **Add Schedule Excess Limit Of Insurance For Specified Employees, ERISA Plan Officials Or Positions (CR 25 34 06 22)** can be used for this purpose. As is the case with **Employee Theft – Name or Position Schedule (CR 04 08 06 22)**, the endorsement can schedule either individuals or positions.

Check-In



Directions: Indicate which endorsement is the best to use in each of the situations described below. Select the letter that best matches each scenario.

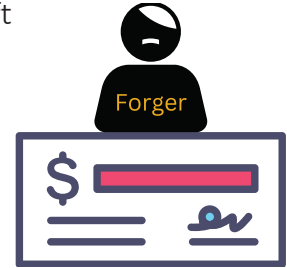
<p>A. Include Volunteer Workers As Employees (CR 25 09 06 22)</p>	<p>_____ The insured has hired a company to act as a business manager. The company is appointed as the insured’s agent and has authority to transact business on behalf of the insured.</p>
<p>B. Include Designated Persons Or Classes Of Persons As Employees (CR 25 41 06 22)</p>	<p>_____ The insured is a charity that has volunteers working at events and soliciting funds.</p>
<p>C. Include Designated Agents As Employees (CR 25 02 06 22)</p>	<p>_____ The insured wishes to only purchase coverage for theft committed by individuals holding certain positions within the company.</p>
<p>D. Include Computer Software Contractors As Employees (CR 25 42 06 22)</p>	<p>_____ An insured contractor regularly works with a certain subcontractor. The subcontractor has full access to the insured’s premises and regularly has the insured’s property.</p>
<p>E. Employee Theft Name or Position Schedule (CR 04 08 06 22)</p>	<p>_____ The insured is concerned that an employee of its independent software contractor might gain access to its banking information and steal funds.</p>

Three Fidelity Insuring Agreements

With a better understanding of important concepts and definitions, each of the three Fidelity insuring agreements will now be examined. As a reminder, the insured can choose to purchase all or none as part of the crime policy.

Agreement 1.a.: Employee Theft

The first of the three Fidelity coverages is Employee Theft. Employee Theft coverage applies when there is theft of money, securities, or other property by an employee—whether identified or not—acting alone or in collusion with other persons. Theft, in the context of this coverage, is defined as an unlawful taking of property to the deprivation of the insured. Theft includes forgery.



Each of the following would be covered by the Employee Theft insuring agreement:

- An employee forges one of the insured’s checks and cashes it, keeping \$5,000.
- An employee, in collusion with a friend who does not work for the insured, breaks into the insured’s store at night and steals cash and inventory.
- \$250,000 is stolen from the insured’s bank account. The investigation determines that the thief is an employee in the accounting department, but neither the police nor the insured can pinpoint which of the five employees in the department committed the crime.

A. Insuring Agreements

1. Fidelity

a. Employee Theft

We will pay for loss of or damage to “money”, “securities” and “other property” resulting directly from “theft” committed by an “employee”, whether identified or not, acting alone or in collusion with other persons.

For the purposes of this Insuring Agreement, “theft” includes forgery.

CR 00 20 06 22/CR 00 21 06 22 @ Insurance Services Office, Inc. , 2021

Agreement 1.b.: ERISA Plan Official Dishonesty

The second of the three Fidelity coverages is ERISA Plan Official Dishonesty. The coverage applies when there is loss of or damage to money, securities, or other property belonging to an ERISA employee benefit plan. The loss must be due to fraud or dishonesty by an ERISA plan official or a sole proprietor named insured.



Section 3: Crime Coverages and Endorsements



Tasha is the administrator of her company's 401(k) plan. She steals \$100,000 of 401(k) plan funds. Because Tasha is an ERISA plan official, ERISA Plan Official Dishonesty coverage applies to this loss.

A. Insuring Agreements

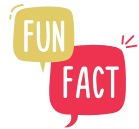
1. Fidelity

b. ERISA Plan Official Dishonesty

We will pay for loss of or damage to “money”, “securities” and “other property” belonging to an “ERISA employee benefit plan” resulting directly from “fraud or dishonesty” committed by:

- (1) An “ERISA plan official”, whether identified or not; or
- (2) You, but only if you are a sole proprietor; acting alone or in collusion with other persons.

CR 00 20 06 22/CR 00 21 06 22 @ Insurance Services Office, Inc. , 2021



The Employee Retirement Income Security Act of 1974 (ERISA) is a federal law that sets minimum standards for most voluntarily established retirement and health plans in private industry to provide protection for individuals in these plans.

ERISA requires that coverage be in effect to protect against theft of the assets in these plans by those handling plan funds. ERISA requires minimum limits of coverage.

- The required limit is 10% of the qualifying assets in the plan, with a minimum requirement of \$1,000 and a maximum bond requirement of \$500,000.
- The Pension Protection Act of 2006 increases the maximum amount to \$1 million for retirement plans that hold employer stock or other employer securities.
- If 5% or more of a plan's assets are non-qualifying assets, the non-qualifying assets must be covered for 100% of the amount of the assets. Non-qualifying assets are assets not held by financial institutions such as banks or insurance companies.

Section 3: Crime Coverages and Endorsements

To fully understand ERISA Plan Official Dishonesty coverage, it is important to understand some of the associated defined terms.

- **ERISA employee benefit plan** is a welfare or pension benefit plan subject to ERISA (Employee Retirement Income Security Act of 1974) and its amendments. Examples of such plans are pension plans and 401(k) plans.
- **Fraud or dishonesty** means larceny, theft, embezzlement, forgery, misappropriation, wrongful abstraction, wrongful conversion, willful misapplication, or other fraudulent or dishonest acts.
- **ERISA plan official** includes certain natural persons within the insured's organization handling the ERISA employee benefit plan. The complete definition is in the policy language below.

F. Definitions

15. "ERISA plan official":

a. Means any natural person who is:

- (1) An administrator, fiduciary, director, trustee, manager or "employee" of an "ERISA employee benefit plan"; or
- (2) A director, trustee or "employee" of an Insured sponsoring an "ERISA employee benefit plan", while that person is engaged in handling "money", "securities" or "other property" of such plan.

b. Does not mean:

Any agent, broker, financial institution, registered representative, investment advisor, independent contractor or representative of the same general character.

CR 00 20 06 22/CR 00 21 06 22 @ Insurance Services Office, Inc. , 2021

There are several conditions in the crime policy that pertain specifically to ERISA Plan Official Dishonesty coverage, and some of these are summarized below. Many of these conditions are included to satisfy ERISA coverage requirements.

- The named insured is responsible for selecting the limits needed to satisfy ERISA requirements.
- If, at the time a loss is discovered, the policy limit no longer satisfies the minimum amount of coverage required by ERISA, the policy limit will automatically be increased to the amount required by law. The insured is not required to pay additional premium for the increase. This coverage feature can be helpful if the plan assets increase in value because investments have performed especially well.
- No deductible applies to loss sustained by an ERISA employee benefit plan.
- The exclusion (to be discussed later) for acts committed by the named insured or its partners or members does not apply to losses to ERISA employee benefit plans.

Agreement 1.c.: Employee Theft Of Clients' Property

The last of the three Fidelity insuring agreements is Employee Theft Of Clients' Property. Coverage applies when the insured's client sustains loss of or damage to money, securities,

Section 3: Crime Coverages and Endorsements

or other property. The loss must result from theft committed by an identified employee of the named insured, acting alone or in collusion with others.

A client is defined in the policy as any natural person or entity to whom the named insured provides goods or services in exchange for a fee or pursuant to a written agreement.

In the previous example involving Connor Computers, coverage applied under Employee Theft coverage because the stolen computers were being held by Connor, and Connor was legally liable for them prior to the loss.

Employee Theft Of Clients' Property coverage, unlike Employee Theft coverage, applies when an insured's employee steals a client's covered property from the client's location. In that case, the property is not held by the insured and the insured is not legally liable for the property before the loss.



Connor Computers sends an employee to a client's office to repair a server. The employee steals several pieces of computer equipment and cash from the office. Employee Theft of Clients' Property coverage applies to this loss.

A. Insuring Agreements

1. Fidelity

c. Employee Theft Of Clients' Property

We will pay for loss of or damage to "money", "securities" and "other property" sustained by your "client" resulting directly from "theft" committed by an identified "employee", acting alone or in collusion with other persons.

For the purposes of this Insuring Agreement, "theft" includes forgery.

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The Ownership Of Property condition in the policy was previously discussed. With respect to this coverage, the Ownership Of Property condition is slightly different. The covered property might be owned or leased by the client, but it could be held by the client in any capacity. It can also be property for which the client is legally liable, provided the client was liable prior to the loss. The coverage is still for the insured's benefit only, and any claim must be presented by the insured.



Connor Computers sends an employee to a bank to repair a server. The employee is able to access the accounts of several bank customers and transfers \$1,000,000 to an offshore account. Although the money is not the bank's money, it is in the bank's care, and the bank is liable for it. Employee Theft Of Clients' Property coverage applies to this loss. The claim must be presented by the insured, though. The bank has no right to make a claim under the policy.



E. Conditions

2. Additional Conditions Applicable to Specific Insuring Agreements

b. Under Insuring Agreement A.1.c.

The **Ownership Of Property; Interests Covered Condition E.1.o.** is replaced by the following:

Ownership Of Property; Interests Covered

The property covered under this Insuring Agreement is limited to property:

- (1) That your “client” owns or leases;
- (2) That your “client” holds for others in any capacity; or
- (3) For which your “client” is legally liable, provided that your “client” was liable for the property prior to the time the loss was sustained.

However, this insurance is for your benefit only. It provides no rights or benefits to any other person or entity, including your “client”. Any claim for loss that is covered under this Insuring Agreement must be presented by you.

Note: The same condition appears in CR 00 20 06 22 and replaces E.1.m.

CR 00 21 06 22

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In earlier editions of ISO crime policies, this coverage was added by an endorsement—**Clients’ Property (CR 04 01)**. This coverage is commonly referred to as third-party crime coverage.

As is the case with most insurance policies, the broad coverage described in the insuring agreements is narrowed through the use of exclusions.

Crime Exclusions

The crime policy has general exclusions that apply to all crime insuring agreements and additional exclusions that apply only to some of the insuring agreements. Select endorsements are discussed below.

Exclusions Applicable To All Insuring Agreements

Acts Committed By You, Your Partners, Or Members

With the exception of loss under the ERISA Plan Official Dishonesty coverage, there is no coverage if the loss results from theft or other fraudulent or dishonest acts committed by the named insured, its partners, or LLC members.

Section 3: Crime Coverages and Endorsements



Recall the previously discussed endorsements that add coverage for acts of partners and LLC members to Employee Theft and Employee Theft Of Clients' Property coverages. These endorsements help to protect the assets of innocent partners and LLC members whose partners or co-members have stolen from the business.

- **Include Partners as Employees (CR 25 03 06 22)**
- **Include Members of a Limited Liability Company as Employees (CR 25 04 06 22)**

D. Exclusions

1. Exclusions Applicable To All Insuring Agreements

This insurance does not cover:

a. Acts Committed By You, Your Partners Or Members

Loss resulting from "theft" or any other fraudulent or dishonest act committed by:

(1) You; or

(2) Any of your partners or "members";

whether acting alone or in collusion with other persons, except when covered under Insuring Agreement **A.1.b.**

CR 00 20 06 22/CR 00 21 06 22 @ Insurance Services Office, Inc. , 2021

Acts Committed By Your Employees, ERISA Plan Officials, Managers, Directors, Trustees Or Representatives

This exclusion does not apply to any of the three Fidelity coverages. For every other insuring agreement, though, there is no coverage if the loss results from theft or another fraudulent or dishonest act committed by the named insured's employees, ERISA plan officials, LLC managers, directors, trustees, or authorized representatives. Regardless of the type of theft, theft by any of these individuals can only be covered by the Fidelity coverages.

D. Exclusions

1. Exclusions Applicable To All Insuring Agreements

This insurance does not cover:

b. Acts Committed By Your Employees, ERISA Plan Officials, Managers, Directors, Trustees Or Representatives

Loss resulting from "theft" or any other fraudulent or dishonest act committed by any of your "employees", "ERISA plan officials", "managers", directors, trustees or authorized representatives:

(1) Whether acting alone or in collusion with other persons; or

(2) While performing services for you or otherwise;

except when covered under Insuring Agreement **A.1.a.**, **A.1.b.** or **A.1.c.**

CR 00 20 06 22/CR 00 21 06 22 @ Insurance Services Office, Inc. , 2021

Acts Committed by Your Employees Or ERISA Plan Officials Prior To The Policy Period

There is no coverage if the loss is caused by an employee or ERISA plan official if that person committed theft or any other fraudulent or dishonest act prior to the effective date of the policy. The exclusion only applies if the named insured or a designated person not in collusion with the thief learned of the act prior to the policy period.



Recall that the designated person is one of the following:

- a. Any insurance risk manager
- b. Any partner, LLC member, LLC manager, director, or trustee
- c. Any elected, appointed, or otherwise titled officer
- d. The highest-ranking employee at the premises where the employee performs most of their duties
- e. Any administrator, fiduciary, director, trustee, officer, or manager of an employee benefit plan



Jane worked as a bookkeeper for Otto's Office Supplies LLC for three years. Jane had a drug problem, stole from Otto's, and was fired by Otto, an LLC member. Two years later, Jane is no longer using drugs, and Otto hires her back, believing everyone deserves a second chance. Jane steals again. There is a no coverage because Otto, a designated person, was aware, before the policy period, of Jane's history of dishonesty.



D. Exclusions

1. Exclusions Applicable To All Insuring Agreements

This insurance does not cover:

c. Acts Committed By Your Employees Or ERISA Plan Officials Prior To The Policy Period

Loss caused by any "employee" or "ERISA plan official" if the "employee" or "ERISA plan official" had also committed "theft" or any other fraudulent or dishonest act prior to the effective date of this insurance and you or a "designated person", not in collusion with the "employee" or "ERISA plan official", learned of such "theft" or fraudulent or dishonest act prior to the Policy Period shown in the Declarations.

CR 00 20 06 22/CR 00 21 06 22 @ Insurance Services Office, Inc., 2021

The previous exclusion applies when certain individuals are aware, prior to the policy period, of the history of dishonesty. What if certain individuals learn, during the policy period, of an employee's history of dishonesty? That scenario is addressed, not in an exclusion, but in a condition called Termination Of Coverage As To Any Employee Or ERISA Plan Official. Since this condition is related to the exclusion above, it will be discussed here.

Condition – Termination Of Coverage As To Any Employee Or ERISA Plan Official

When a designated person or human resources employee learns of theft or other dishonest acts committed by an employee or ERISA plan official, coverage immediately terminates as to that individual. It does not matter whether the dishonest act took place before or after the individual was employed by the named insured. In addition, the designated person or human resources employee cannot be in collusion with the thief.



Rita has worked as a manager in Mike’s Liquor Store LLC for three years. Rita recently confessed to Mike, the LLC member, that she lied on her employment application. When she was 19, Rita served two years in prison for armed robbery and has always felt guilty about the lie. Mike forgave Rita and feels that she is a good friend and trusted employee. The following year, Rita’s boyfriend broke into the store after Rita supplied him with the code for the burglar alarm and the combination for the safe. Together, they stole \$50,000 in cash.



There is no coverage in this scenario because Mike is a designated person. As soon as Mike became aware of Rita’s history of dishonesty, coverage for theft by Rita terminated.

E. Conditions

1. Conditions Applicable to All Insuring Agreements

b. Cancellation Or Termination

(3) Termination Of Coverage As To Any Employee Or ERISA Plan Official

This insurance terminates as to any “employee” or “ERISA plan official”:

(a) As soon as:

(i) A “designated person”; or

(ii) An “employee” in your Human Resources Department or its equivalent; not in collusion with the “employee” or “ERISA plan official”, learns of “theft” or any other fraudulent or dishonest act committed by the “employee” or “ERISA plan official”, whether before or after becoming employed by you; or

(b) On the date specified in a notice mailed to the first Named Insured. That date will be at least 30 days after the date of mailing.

We will mail or deliver our notice to the first Named Insured’s last mailing address known to us. If notice is mailed, proof of mailing will be sufficient proof of notice.

Section 3: Crime Coverages and Endorsements

What if an employee's history involves only a minor theft? The following endorsement can help in this situation.

Waive Acts Committed By Employees Or ERISA Plan Officials Below An Amount (CR 20 36 06 22)



This endorsement can be added with a waiver amount scheduled on the endorsement. The exclusion and condition involving knowledge of an employee's history do not apply unless the fraudulent or dishonest act exceeds the waiver amount shown in the schedule. This is helpful if an employee's prior theft was a small one.



Samantha's supervisor noticed that Samantha was taking office supplies home for personal use without permission. Regardless, her supervisor believes Samantha is an honest person and decided to make a note in her personnel file while allowing her employment to continue. If Samantha's theft of office supplies is below the waiver amount on the endorsement, coverage for her acts does not immediately terminate.

Check-In



Directions: Consider the following scenario and determine if Employee Theft coverage applies. Explain your answer.

Megan, a supermarket cashier, recommends that her boss hire Kevin, an old friend of hers, who was previously convicted of shoplifting. Kevin was a young man at the time, and Megan believes he is now trustworthy. Neither Megan nor Kevin mentions Kevin's past to the boss, and six months after he is hired as a cashier, Kevin steals from his new employer. Does Employee Theft Coverage apply?

Yes

No

Confidential Or Personal Information

There is no coverage for disclosure of anyone’s confidential or personal information. Nor is there coverage for use of another’s confidential or personal information. Examples of confidential or personal information addressed in this exclusion are financial information, payment card information, and health information.

There is an exception for an otherwise covered loss resulting from the use of the named insured’s or an employee benefit plan participant’s information.



Patricia works in the financial office of a community college. She has access to students’ personal information and used this information to open fraudulent credit accounts in several students’ names. This loss is not covered due to the confidential or personal information exclusion.

However, if Patricia used the college’s banking information, for example, to steal funds from the college, the exclusion would not apply.

D. Exclusions

1. Exclusions Applicable To All Insuring Agreements

This insurance does not cover:

d. Confidential Or Personal Information

Loss resulting from:

- (1) The disclosure of your or another person’s or entity’s confidential or personal information; or
- (2) The use of another person’s or entity’s confidential or personal information, except that this Paragraph (2) does not apply to loss otherwise covered under this insurance that results directly from the use of your or an “employee benefit plan” participant’s confidential or personal information.

For the purposes of this exclusion, confidential or personal information includes, but is not limited to, patents, trade secrets, processing methods, “client”, customer or “vendor” information, financial information, payment card information, health information, retirement or health savings account information or any other type of nonpublic information.

Note: A Confidential Or Personal Information exclusion also appears in CR 00 21 06 22.

Data Security Breach

There is no coverage for costs incurred which are related to access to or disclosure of another's confidential or personal information. These exposures are better insured under a cyber policy.



D. Exclusions

1. Exclusions Applicable To All Insuring Agreements

This insurance does not cover:

e. Data Security Breach

Fees, costs, fines, penalties and other expenses incurred by you, which are related to the access to or disclosure of another person's or entity's confidential or personal information including, but not limited to, patents, trade secrets, processing methods, "client", customer or "vendor" information, financial information, payment card information, health information, retirement or health savings account information or any other type of nonpublic information.

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Indirect Loss

There is no coverage for indirect losses such as the insured's inability to realize income that would have been realized had there been no loss. There is no coverage for payment of damages for which the insured is legally liable, other than compensatory damages. Lastly, there is no coverage for expenses the insured incurs to establish the existence or the amount of a loss.

D. Exclusions

1. Exclusions Applicable To All Insuring Agreements

This insurance does not cover:

g. Indirect Loss

Loss that is an indirect result of an "occurrence" covered by this insurance including, but not limited to, loss resulting from:

- (1) Your inability to realize income that you would have realized had there been no loss of or damage to "money", "securities" or "other property";
- (2) Payment of damages of any type for which you are legally liable. But, we will pay compensatory damages arising directly from a loss covered under this insurance; or
- (3) Payment of costs, fees or other expenses you incur in establishing either the existence or the amount of loss under this insurance.

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Section 3: Crime Coverages and Endorsements

Coverage for expenses to establish the existence or amount of loss can be added by endorsement.

Include Expenses Incurred To Establish Amount Of Covered Loss (CR 25 40 06 22)



This endorsement covers reasonable costs, fees, or other expenses the insured incurs for independent accounting, auditing, or other services used to determine the amount of loss covered under this policy. Coverage can be added to the Employee Theft and/or Computer And Funds Transfer Fraud insuring agreements. Coverage is limited to the lesser of the dollar amount on the endorsement or the stated percentage of the covered loss. Any amounts paid are within the limit of insurance.

POLICY NUMBER:	CRIME AND FIDELITY CR 25 40 06 22
THIS ENDORSEMENT CHANGES THE POLICY. PLEASE READ IT CAREFULLY.	
INCLUDE EXPENSES INCURRED TO ESTABLISH AMOUNT OF COVERED LOSS	
This endorsement modifies insurance provided under the following:	
COMMERCIAL CRIME COVERAGE FORM COMMERCIAL CRIME POLICY COMMERCIAL FIDELITY AND FORGERY POLICY GOVERNMENT CRIME COVERAGE FORM GOVERNMENT CRIME POLICY GOVERNMENT FIDELITY AND FORGERY POLICY	
and applies to the Insuring Agreement(s) designated in the Schedule.	
SCHEDULE	
<input type="checkbox"/> Employee Theft Insuring Agreement	
Costs, Fees Or Other Expenses	
Limit Of Insurance	Covered Loss
\$	%
<input type="checkbox"/> Computer And Funds Transfer Fraud Insuring Agreement	
(Not applicable to the Commercial Fidelity And Forgery Policy or Government Fidelity And Forgery Policy)	
Costs, Fees Or Other Expenses	
Limit Of Insurance	Covered Loss
\$	%
Information required to complete this Schedule, if not shown above, will be shown in the Declarations.	

CR 25 40 06 22

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Kidnap, Ransom, Extortion And Other Unlawful Demands



This exclusion applies to all insuring agreements except Employee Theft and ERISA Plan Official Dishonesty. There is no coverage for loss resulting from surrender of ransom in response to a variety of actions or threats.

D. Exclusions

1. Exclusions Applicable To All Insuring Agreements

This insurance does not cover:

h. Kidnap, Ransom, Extortion And Other Unlawful Demands

- (1) Loss resulting from the surrender of ransom in response to an unlawful demand including, but not limited to, an unlawful demand arising out of:
 - (a) An actual or alleged kidnap or threat to do bodily harm to any person, other than “robbery” covered under this insurance;
 - (b) A threat to do damage to any property or to contaminate, pollute or render substandard your products or goods;
 - (c) A threat to introduce a denial of service attack into any “computer system”;
 - (d) A threat to introduce a virus or other malicious instruction into any “computer system”, which would encrypt, damage, destroy or corrupt “electronic data” or “computer programs” stored within the “computer system”; or
 - (e) A threat to access, download, disseminate, divulge or utilize:
 - (i) Your information or the information of any other natural person or entity; or
 - (ii) Weaknesses in the source code within any “computer system”;except when covered under Insuring Agreement **A.1.a.** or **A.1.b.**
- (2) Loss resulting from payment of any kind in response to a denial of service attack, ransomware, virus or other malicious instruction introduced into any “computer system” that denies or restricts access, encrypts, downloads or otherwise damages, destroys or corrupts any “computer system”, “electronic data” or “computer program”, except when covered under Insuring Agreement **A.1.a.** or **A.1.b.**
- (3) Fees, costs and expenses incurred by you arising out of any act or event in Paragraph (1) or (2) above.

Virtual Currency



There is no coverage for loss involving any kind of virtual currency.

D. Exclusions

1. Exclusions Applicable To All Insuring Agreements

This insurance does not cover:

I. Virtual Currency

Loss involving virtual currency of any kind, by whatever name known, whether actual or fictitious including, but not limited to, digital currency, cryptocurrency or any other type of electronic currency.

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Coverage for certain losses to virtual currency can be added by including the endorsement below.

Include Virtual Currency As Money (CR 25 45 06 22)



Coverage for virtual currency (e.g., Bitcoin) can be added to the Employee Theft and/or Computer And Funds Transfer Fraud insuring agreements. A limit of insurance is included on the endorsement, and that limit is part of the limit of insurance that applies to the coverage. The specific type of virtual currency to be covered is scheduled on the endorsement.

Additional exclusions that will not be discussed are:

- Governmental Action
- Legal Fees, Costs, And Expenses
- Nuclear Biological Or Chemical Hazard
- Pollution
- War And Military Action

Additional Exclusions that Apply to Fidelity Coverages

In addition to the general exclusions, there are exclusions that apply only to the Fidelity coverages.

ERISA Employee Benefits Plans

Employee Theft coverage does not apply to loss of property belonging to any ERISA employee benefit plan. This property is covered under ERISA Plan Official Dishonesty coverage.

Inventory Shortages

None of the three Fidelity coverages applies if the proof of a loss is dependent upon inventory or profit and loss computations. Inventory records can be used to support the amount of loss but cannot be the only proof that a loss occurred.



Danny's Department Store just completed its annual inventory and is short \$100,000 of merchandise. Danny believes that an employee must have stolen the merchandise. Although Danny can use his inventory records as evidence of the amount of a claim, those records cannot be the only evidence of a covered loss. It is entirely possible that someone other than an employee stole the merchandise.



D. Exclusions

2. Additional Exclusions Applicable To Specific Insuring Agreements

a. Insuring Agreement A.1.a. does not cover:

(2) Inventory Shortages

Loss, or that part of any loss, the proof of which as to its existence or amount is dependent upon:

- (a) An inventory computation; or
- (b) A profit and loss computation.

However, where you establish wholly apart from such computations that you have sustained a loss, then you may offer your inventory records and actual physical count of inventory in support of the amount of loss claimed.

Note: Similar exclusions are added to A.1.b and A.1.c.

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Trading

This exclusion applies to the Employee Theft and Employee Theft Of Clients' Property insuring agreements. There is no coverage for loss resulting from trading, regardless of the name in which trading is done or whether the account is genuine or fictitious. Examples of trading activities are stock trading and commodities trading. Coverage for trading losses in a genuine account can be added with the following endorsement.

Add Trading Coverage (CR 25 16 06 22)



This endorsement includes its own limit which is part of the limit of insurance shown in the Declarations. Coverage is restored when the loss is directly from trading in a genuine account.

Warehouse Receipts

This exclusion applies to the Employee Theft and Employee Theft Of Clients' Property insuring agreements. There is no coverage for loss resulting from the fraudulent or dishonest signing, issuing, cancelling, or failing to cancel a warehouse receipt or any papers connected with it. Coverage for warehouse receipt losses can be added with the following endorsement.



Add Warehouse Receipts Coverage (CR 25 17 06 22)



This endorsement includes its own limit which is part of the limit of insurance shown in the Declarations. Coverage applies to loss resulting directly from the fraudulent or dishonest signing, issuing, cancelling, or failing to cancel a warehouse receipt or papers connected with it.

Fidelity coverage is important to most businesses and can be written to cover several different exposures. Understanding the insured's needs and important concepts such as the "employee" definition is critical to constructing a policy that meets the needs of the customer.

▶▶ Knowledge Check



Directions: Read the scenario below and explain your answer.

Your insured is a janitorial service with twelve employees and a 401(k) plan. Which of the three Fidelity coverages would you recommend and why?

Computer And Funds Transfer Fraud and Fraudulent Impersonation Insuring Agreements

Learning Objective:

- 3.5 Explain the key elements of the Computer And Funds Transfer Fraud and Fraudulent Impersonation insuring agreements and apply these concepts in a claims situation

Theft by computer is on the rise, and there are two insuring agreements in the crime policy that can respond to these types of losses:

1. Computer And Funds Transfer Fraud
2. Fraudulent Impersonation

As was the case with Fidelity coverages, a particular coverage applies if a limit for it appears on the Declarations page.



Insuring Agreement #6: Computer And Funds Transfer Fraud

Computer And Funds Transfer Fraud covers losses that result from two types of crime:

1. The entering or changing of data or computer programs within the computer system of the insured or that of a third-party performing services for the insured
2. A fraudulent transfer instruction sent to a financial institution, purportedly by the insured, directing the financial institution to transfer money or securities from the insured's account

In the *first* type of covered loss, the thief has entered or changed data or computer programs within the computer system of the insured or that of a third-party performing services for the insured. The computer system in question may also be an employee's if the employee has agreed in writing to the insured's personal device use policy. This action by the thief must cause covered property (money, securities, or other property) to be transferred to another or the insured's account at a financial institution to be debited or deleted.



Jorge is working from his hotel room on his employer's laptop. He goes to the hotel restaurant to get lunch, forgetting to log out of the company's systems before leaving his room. While he is gone, a thief enters the hotel room and accesses Jorge's laptop, transferring a shipment of expensive electronics to the thief.



A. Insuring Agreements

6. Computer And Funds Transfer Fraud

We will pay for:

a. Loss resulting directly from a fraudulent:

(1) Entry of “electronic data” or “computer program” into; or

(2) Change of “electronic data” or “computer program” within;

any “computer system”, provided that the fraudulent entry or fraudulent change causes, with regard to Paragraphs **(1)** and **(2)** above:

(a) “Money”, “securities” or “other property” to be transferred, paid or delivered to a person, entity or account beyond your control; or

(b) Your account at a “financial institution” to be debited or deleted; without your knowledge or consent.

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In the *second* type of covered loss, a fraudulent transfer instruction is sent to a financial institution directing the financial institution to transfer money or securities from the insured’s account. The fraudulent transfer instruction is by someone impersonating the insured.



Tired of working from his room, Jorge takes his laptop with him to a local coffee shop. Jorge gets up to get another cup of coffee.



While he is in line, a thief takes a photo of the log-in credentials that Jorge has written on a post-it note attached to the laptop. The thief later uses these credentials to access the company’s bank account and transfer funds to the thief’s own account.

A. Insuring Agreements

6. Computer And Funds Transfer Fraud

We will pay for:

b. Loss resulting directly from a “financial institution” debiting your “transfer account” in reliance upon a “transfer instruction” purportedly issued by you directing the “financial institution” to transfer, pay or deliver “money” or “securities” from that account, but which “transfer instruction” proves to have been fraudulently issued by an imposter without your knowledge or consent.

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Computer And Funds Transfer Fraud—Additional Exclusions

In addition to the general exclusions described in the last learning objective, several more exclusions apply to Computer And Funds Transfer Fraud.

Authorized Access



This insuring agreement does not apply if an employee or other person or entity with authorized access to the computer system is the one to fraudulently enter or change data or a computer program in a computer system. This echoes the theme of a previously discussed general exclusion. If the employee is the thief, only the Fidelity coverages will potentially cover the claim.

D. Exclusions

2. Additional Exclusions Applicable To Specific Insuring Agreements

f. Insuring Agreement A.6. does not cover:

(1) Authorized Access

Loss resulting from a fraudulent:

(a) Entry of “electronic data” or “computer program” into; or

(b) Change of “electronic data” or “computer program” within;

any “computer system” by an “employee” or other person or entity with authorized access to that “computer system”.

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Credit Card Transactions

There is no coverage for loss resulting from the use or purported use of credit, debit, charge, access, convenience, identification, or other cards, or the information contained on such cards.



Exchanges or Purchases

There is no coverage for loss resulting from the giving or surrendering of property in any exchange or purchase.

Fraudulent Instructions

Other than the coverage specifically provided by the second part of Computer And Funds Transfer Fraud coverage, there is no coverage for loss resulting from an employee or other person or entity acting upon fraudulent instructions. These losses are intended to be addressed by the Fraudulent Impersonation insuring agreement.

D. Exclusions

2. Additional Exclusions Applicable To Specific Insuring Agreements

f. Insuring Agreement **A.6.** does not cover:

(4) Fraudulent Instructions

Loss resulting from an “employee” or other person or entity acting upon any kind of instruction to:

(a) Transfer, pay or deliver “money”, “securities” or “other property”; or

(b) Debit or delete your account;

which instruction proves to be fraudulent, except for a “financial institution” acting upon an instruction to debit your “transfer account” when covered under Insuring Agreement **A.6.b.**

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Inventory Shortages

This exclusion is similar to the one found in Fidelity coverages. Coverage does not apply if the proof of a loss is dependent upon inventory or profit and loss calculations. There must be some other evidence that a loss has occurred.

Insuring Agreement #7: Fraudulent Impersonation

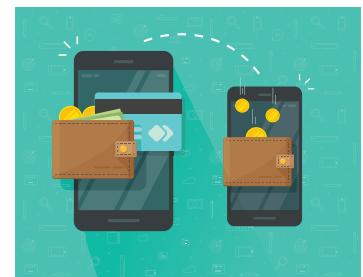
Fraudulent Impersonation coverage also applies to two different types of crime:

1. A thief tricks the insured into changing the transfer instructions for payment due a client or vendor so that the payment goes to the thief instead.
2. The insured transfers money or securities based on instructions from a thief impersonating a client, vendor, or another person within the insured’s organization.

In the *first* type of covered loss, legitimate instructions to transfer money or securities are sent to the insured by a client or vendor. Clients are those to whom the insured provides goods or services in exchange for a fee or pursuant to a written contract. Vendors are those who provide goods or services to the named insured pursuant to a written agreement. Before the funds are sent, however, the transfer instructions are changed by the insured based on a fraudulent request by a criminal impersonating the client or vendor or someone in the insured’s organization who has the authority to make such changes. The insured, following these instructions, unknowingly transfers money or securities to the thief.



Ken works in the accounting department of a manufacturer. Ken receives an email from one of his vendors asking him to wire \$100,000 to pay for a recent shipment of materials. A few minutes later, Ken receives a second email telling him that the original wiring instructions were incorrect; the email provides different wiring instructions. Unbeknownst to Ken, the second email was from a thief impersonating the vendor. Ken unknowingly wires \$100,000 to the thief.



A. Insuring Agreements

7. Fraudulent Impersonation

We will pay for:

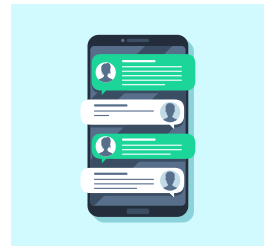
- a. Loss resulting directly from you having acted upon a “transfer instruction” that was, in fact, issued by a “client” or “vendor”, but in which the bank account information or wire transfer instructions of such “client” or “vendor” had been changed by you acting in good faith reliance upon a “change of account request” purportedly issued by an “authorized person” or the “client” or “vendor”, but which “change of account request” proves to have been fraudulently issued by an imposter without the knowledge or consent of the “authorized person”, “client” or “vendor” and the fraudulent act resulted in you transferring, paying or delivering “money” or “securities” to a person, entity or account beyond your control; or

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In the *second* type of covered loss, the insured transfers money or securities based on instructions from a thief impersonating a client, vendor, or someone within the insured’s organization who has the authority to issue transfer instructions.



Ken is not having a good week. Two days after the incident with the vendor email, Ken receives an instant message (IM) through the manufacturing company’s IM system asking him to refund \$75,000 to a dissatisfied client; wiring instructions are included in the message. Ken believes the IM came from the CFO of the manufacturing company. It is only after Ken wires the money that he learns the IM came from a thief impersonating the CFO.



A. Insuring Agreements

7. Fraudulent Impersonation

We will pay for:

- b. Loss resulting directly from you having acted in good faith reliance upon a “transfer instruction” purportedly issued by an “authorized person”, “client” or “vendor” and you transferred, paid or delivered “money” or “securities” to a person, entity or account beyond your control, but which “transfer instruction” proves to have been fraudulently issued by an impostor without the knowledge or consent of the “authorized person”, “client” or “vendor”.

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Fraudulent Impersonation – Extended Coverage (CR 04 18 06 22)



This endorsement extends Fraudulent Impersonation coverage to apply to transfers of other property. Without this endorsement, coverage applies only to transfers of money and securities.

Fraudulent Impersonation—Additional Condition

An additional condition applies to Fraudulent Impersonation coverage. The insured must make a reasonable effort to verify the authenticity of change of account requests or transfer instructions. This verification must be in a way other than by email. For example, the insured could call the vendor that appears to have issued a change of account request to confirm the request. The insured could send a text message to the employee who appears to have issued a transfer instruction to confirm the instruction. The effort to confirm the request must be documented before the transfer takes place.

E. Conditions

2. Additional Conditions Applicable to Specific Insuring Agreements

(e) Under Insuring Agreement A.7.

(1) Change Of Account Requests

You must make a reasonable effort to verify, but not through email, the authenticity of any “change of account request” with:

- (a)** The “client” or “vendor” purporting to have issued the “change of account request”; or
- (b)** An “authorized person”, but not the “authorized person” purporting to have issued the “change of account request”;

and contemporaneously document the result of your effort before transferring any property.

(2) Transfer Instructions

You must make a reasonable effort to verify, but not through email, the authenticity of any “transfer instruction” with:

- (a)** The “client” or “vendor” purporting to have issued the “transfer instruction”; or
- (b)** An “authorized person”, but not the “authorized person” purporting to have issued the “transfer instruction”;

and contemporaneously document the result of your effort before transferring any property.

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Computer And Funds Transfer Fraud and Fraudulent Impersonation coverages can help protect a business against many of the crimes committed using technology. Coverages similar to these may also be available under cyber policies. It is important to make sure that these coverages are coordinated to minimize gaps and overlap. Cyber policies will be discussed in Section 4 of this learning guide.

▶▶ Knowledge Check



Directions: Read the scenario below and explain your response

Carla is an employee in the finance department of your insured's company. Carla got tricked into sending \$200,000 to a cybercriminal after receiving an email asking that this amount be wired immediately. The email Carla received looked legitimate and was similar to many other emails she had received in the past from the company's controller.

It was only when Carla confirmed with the controller that the transfer was made that she discovered she had been tricked. Although the crime policy in force includes Fraudulent Impersonation coverage, what condition could negate coverage?

Additional Insuring Agreements

Learning Objective:

3.6 Describe the purpose of the following insuring agreements:

- *Forgery Or Alteration*
- *Inside The Premises - Theft Of Money And Securities*
- *Inside The Premises - Robbery Or Safe Burglary Of Other Property*
- *Outside The Premises*
- *Money Orders And Counterfeit Money*

Although this course focuses on the Fidelity, Computer And Funds Transfer Fraud, and Fraudulent Impersonation insuring agreements, there are additional insuring agreements that can be included in an ISO Commercial Crime Policy. A particular coverage applies when a limit for it is included on the Declarations page.

Insuring Agreement #2: Forgery Or Alteration Coverage

This insuring agreement has two parts:

1. Forgery Of Negotiable Instruments
2. Forgery Of Payment Card Instruments

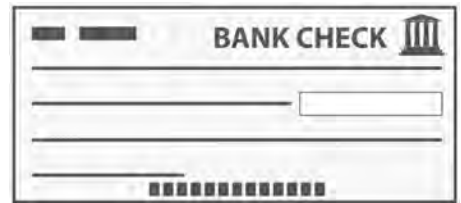
The second coverage is optional and can be added when the first is purchased. The limit for the second coverage is a sublimit of the limit for the first.

Forgery Of Negotiable Instruments

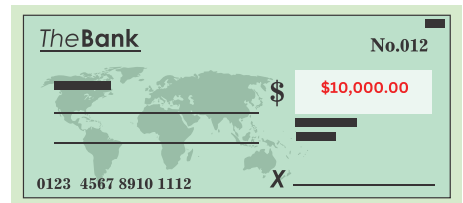
This coverage applies in the event of forgery or alteration of an outgoing negotiable instrument such as a check, draft, or promissory note. This includes substitute checks as defined in the Check Clearing for the 21st Century Act (aka “Check 21”). In the event that the insured is sued for refusing to pay any of these instruments, the insurer will pay any legal expenses incurred by the insured, provided the insured has the written consent of the insurer to defend against the suit. Any such defense costs will be paid in addition to the limit of insurance.



A visitor to the insured’s office steals several blank checks from the company checkbook which was left on the desk of one of the employees. The visitor writes a check to a local store as payment for expensive merchandise. The insured was notified by its bank of the unusual purchase, and the bank did not pay the store. The store then filed suit against the insured looking for reimbursement. If the insured has permission from the insurer to contest the suit, the insurer will pay the legal expenses.



The insured writes a check for \$1,000 to a vendor. The vendor alters the check to \$10,000, and the insured’s bank pays \$10,000 to the vendor. Although a bank is typically responsible for accepting forged or altered checks, there are exceptions. If the insured does not notice the alteration until after a certain time period, for example, the bank may not be liable. Forgery Of Negotiable Instruments coverage may apply.



Forgery Of Payment Card Instruments

Coverage is provided for forgery in conjunction with credit, debit, or charge cards issued to the insured or to any employees or ERISA plan officials for business purposes. For coverage to apply, there is a requirement that the insured fully comply with any terms under which the card was issued.



Dwayne has a company credit card for use when entertaining clients. Someone steals the card and signs Dwayne’s name while using the card to make an expensive purchase at a nearby electronics store.

Insuring Agreement #3: Inside The Premises – Theft Of Money And Securities

The title of the third insuring agreement is deceptive, suggesting that coverage applies only to theft. This coverage actually applies to loss from theft, disappearance, or destruction of money and securities. The money and securities must be inside the insured's premises, the interior of the building where business is conducted, or inside a financial institution, e.g., bank, insurance company, stock brokerage firm.



Recall Henry's Hole in the Wall, the Florida Keys bar with cash decorating its walls, from an earlier example. If the bills are destroyed in a fire or hurricane, Inside The Premises – Theft Of Money And Securities coverage applies.

This coverage does not apply only to theft, disappearance, or destruction of the money and securities. If the insured owns the building or is liable for damage to the building, the policy covers damage to the premises done during the theft. It also covers loss of or damage to the locked safe, vault, cash register, cash box, or cash drawer on the premises.



The insured is a restaurant that rents space in a building and accepts only cash payments. Thieves break into the restaurant one night to steal the cash they suspect has not yet been deposited at the bank. In addition to damaging the safe, the thieves damage the glass front door and the wall surrounding the safe. Because the lease makes the insured responsible for this damage to the building, Inside The Premises – Theft Of Money And Securities pays for the damage done as well as for the theft of the cash.

A. Insuring Agreements

3. Inside The Premises – Theft Of Money And Securities

We will pay for:


- a. Loss of "money" and "securities" inside the "premises" or "financial institution premises":
 - (1) Resulting directly from "theft" committed by a person present inside such "premises" or "financial institution premises"; or
 - (2) Resulting directly from disappearance or destruction.
- b. Loss from damage to the "premises" or its exterior resulting directly from an actual or attempted "theft" of "money" or "securities", if you are the owner of the "premises" or are liable for damage to it.
- c. Loss of or damage to a locked safe, vault, cash register, cash box or cash drawer located inside the "premises" resulting directly from an actual or attempted "theft" of, or unlawful entry into, those containers.

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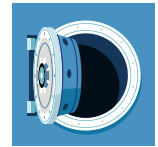
Insuring Agreement #4: Robbery Or Safe Burglary Of Other Property

Before discussing this insuring agreement, it is important to understand some vocabulary.

- **Custodian** means the named insured, its partners, LLC members, or employees who have care and custody of property inside the insured's premises. Watchpersons and janitors are not custodians.

-  **Robbery** is the unlawful taking of property by causing or threatening to cause bodily harm. Robbery includes a situation where the person with the property witnessed an unlawful act committed by the criminal.

- **Safe burglary** is the unlawful taking of property from within a locked safe or vault by someone who unlawfully entered the safe or vault as evidenced by signs of forcible entry. Safe burglary includes removing the safe or vault from inside the insured's premises.



Inside The Premises – Robbery Or Safe Burglary Of Other Property coverage applies in two situations. In either case, coverage applies only to loss of or damage to other property, not to money and securities. Other property was previously defined as tangible property, other than money and securities, with intrinsic value, not including computer programs, electronic data, or any property specifically excluded.

The two covered losses are:

1. Actual or attempted robbery of a custodian inside the insured's premises
2. Loss to other property in a safe or vault inside the insured's premises by actual or attempted safe burglary

As was the case with Inside The Premises – Theft Of Money And Securities coverage, coverage extends to damage to the premises done during the crime if the insured owns the building or is liable for damage to it. It also covers loss of or damage to a locked safe or vault.

A. Insuring Agreements

4. Inside The Premises – Robbery Or Safe Burglary Of Other Property

We will pay for:

- a. Loss of or damage to "other property":
 - (1) Inside the "premises" resulting directly from an actual or attempted "robbery" of a "custodian"; or
 - (2) Inside the "premises" in a safe or vault resulting directly from an actual or attempted "safe burglary".
- b. Loss from damage to the "premises" or its exterior resulting directly from an actual or attempted "robbery" or "safe burglary" of "other property", if you are the owner of the "premises" or are liable for damage to it.
- c. Loss of or damage to a locked safe or vault located inside the "premises" resulting directly from an actual or attempted "robbery" or "safe burglary".

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Many assume that this coverage is unnecessary because property coverage written with the Causes Of Loss – Special Form covers theft. Keep in mind that numerous types of property are not covered under commercial property coverage forms and that coverage for theft of certain types of property (e.g., jewelry, furs) is limited. The coverage provided in the crime policy for damage to the building can also be invaluable to a tenant who may not purchase the coverage needed to pay for damage to the rented space for which it is legally liable.

Insuring Agreement #5: Outside The Premises

The previous two insuring agreements cover many of the losses that take place inside the insured's premises. Outside The Premises coverage helps with losses outside the insured's building or away from the insured's location. The cause of loss for this coverage depends on whether the loss is to money and securities or to other property.

Once again, one item needs to be defined to fully understand the coverage.

- **Messenger** means the named insured, its relatives, partners, LLC members, or employees while having care and custody of property outside the insured's premises.

When the loss is to money and securities, the covered causes of loss are theft, disappearance, or destruction. The money and securities must be in the care and custody of a messenger or an armored motor vehicle company.

When the loss is to other property outside the premises, the covered cause of loss is actual or attempted robbery. The property must be in the care and custody of a messenger or an armored motor vehicle company.

A policy condition explains that, when the covered property is in the care and custody of an armored motor vehicle company, coverage applies only if the insured cannot recover the amount of loss from the armored motor vehicle company or its insurer.

Section 3: Crime Coverages and Endorsements



The following losses are covered under Outside The Premises:

- Robert, an employee of the named insured is taking the day's receipts to the bank to be deposited. Robert is involved in an accident and his vehicle catches fire. Rescuers get to Robert in time, and he is unharmed, but the bag of cash he placed in the trunk is completely destroyed by the flames.
- Blake is an employee of a company that has numerous cell phone stores. He is delivering a case of new phones from one store location to another. While Blake is stopped at a red light, a thief smashes the passenger side window, points a gun at Blake, and steals the case of cell phones. While there is no coverage for damage to the car, the loss of the phones is covered.



A. Insuring Agreements

5. Outside The Premises

We will pay for:

- a. Loss of "money" and "securities" outside the "premises" in the care and custody of a "messenger" or an armored motor vehicle company resulting directly from "theft", disappearance or destruction.
- b. Loss of or damage to "other property" outside the "premises" in the care and custody of a "messenger" or an armored motor vehicle company resulting directly from an actual or attempted "robbery".

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Exclusions that Apply to Insuring Agreements 3, 4, and 5

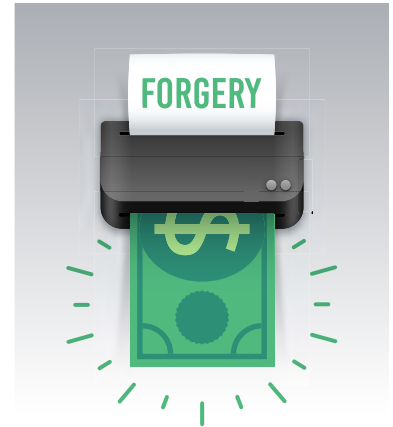
In addition to the general crime exclusions, there are a few additional exclusions that apply to these three insuring agreements.

Accounting or Arithmetical Errors or Omissions
There is no coverage for loss resulting from accounting or arithmetical errors or omissions.
Exchanges or Purchases
There is no coverage for loss resulting from the giving or surrendering of property in any exchange or purchase.
Fire
There is no coverage for loss resulting from fire except for loss to money and securities and loss from damage to a safe or vault.
Money-Operated Devices
Loss of property contained in any money-operated device is only covered if the amount of money deposited in the device is recorded by a continuous recording instrument in the device.
Motor Vehicles or Equipment and Accessories
There is no coverage for loss of or damage to motor vehicles, trailers or semitrailers, or equipment and accessories attached to them.
Vandalism
There is no coverage for losses involving vandalism to the premises or its exterior or to any safe, vault, cash register, cash box, cash drawer, or other property. Vandalism loss to money and securities is covered as money and securities are not mentioned in this exclusion.
Voluntary Parting of Title to or Possession of Property
There is no coverage for loss resulting from one being induced by any fraudulent or dishonest act to voluntarily part with title to or possession of any property. This is similar to the previously discussed exclusion in the property policy.

Insuring Agreement #8: Money Orders And Counterfeit Money

The last insuring agreement provides coverage when the insured accepts, in exchange for merchandise, money, or services, either of the following:

- Money orders that are not paid upon presentation
- Counterfeit money



A. Insuring Agreements

8. Money Orders And Counterfeit Money

We will pay for loss resulting directly from you having accepted in good faith in exchange for merchandise, “money” or services:

- a. Money orders issued by any post office, express company or “financial institution” that are not paid upon presentation; or
- b. “Counterfeit money” that is acquired during the regular course of business.

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Although many insureds understand the need for Fidelity coverages, Computer And Funds Transfer Fraud, and Fraudulent Impersonation, the remaining insuring agreements should not be overlooked as they can be a valuable addition to the insurance program of any business.

▶▶ Knowledge Check



Directions: Read the scenario below and explain your answer.



Bonnie's Bridal Shop, a tenant in a local shopping center, has a growing business. Bonnie regularly exhibits at bridal shows, taking several sample dresses to each one.

Bonnie accepts cash as well as credit cards as payment and often has large sums of money on the premises. Despite this, Bonnie is reluctant to purchase crime coverage other than the Fidelity coverages, Computer And Funds Transfer Fraud, and Fraudulent Impersonation.

What are some claims examples you could share with Bonnie to help her understand the importance of Inside The Premises - Theft Of Money And Securities and Outside The Premises coverages?

Inside The Premises - Theft Of Money And Securities

Outside The Premises

Select Conditions

The ISO Commercial Crime Policy contains numerous conditions—some of which apply to all insuring agreements and some of which are specific to a particular insuring agreement. Many of these were discussed previously in the Loss Sustained vs. Discovery discussion or in the context of a particular coverage. A few of the remaining conditions will be reviewed here.

Additional Premises or Employees

The insured has automatic coverage in the unendorsed crime policy if additional locations are added or if additional employees are hired. This automatic coverage does not apply, however, if these changes are a result of consolidations or mergers with other entities or purchase or acquisition of the assets or liabilities of another entity. Policy conditions involving consolidations, mergers, or acquisitions will not be discussed in this course.



The Additional Premises or Employees condition does not apply if **Employee Theft – Name or Position Schedule (CR 04 08 06 22)** is added to the policy. Recall that this endorsement limits coverage to theft by named individuals or those holding named positions.

E. Conditions

1. Conditions Applicable To All Insuring Agreements

a. Additional Premises Or Employees

If, while this insurance is in force, you establish any additional “premises” or hire additional “employees”, other than through:

- (1) Consolidation or merger with; or
- (2) Purchase or acquisition of assets or liabilities of;

another entity, such “premises” and “employees” will automatically be covered under this insurance.

Notice to us of an increase in the number of “premises” or “employees” is not required and no additional premium will be charged for the remainder of the Policy Period shown in the Declarations.

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Duties in the Event of Loss

In the event of a loss, the insured has numerous duties, many of which are similar to the duties in other policies. The insured must, for example, notify the insurer as soon as possible, cooperate with the insurer and submit to an examination under oath. With the exception of losses covered under the three Fidelity agreements and Forgery Or Alteration, local law enforcement must be notified if the loss involves a violation of the law.

There is one duty that warrants closer inspection. Upon discovery of loss or a situation that may result in loss or damage, the insured must give a detailed, sworn proof of loss within 120 days. In most first-party policies, the insured is required to provide a proof of loss within a certain number of days of the insurer requesting it. The **Building and Personal Property Coverage Form (CP 00 10 10 12)** requires that the insured submit a signed, sworn proof of loss within 60 days of the insurer's request. The crime policy is different. The 120 days starts when the loss or the situation that may result in the loss is discovered. In the case of an Employee Theft claim, for example, it may take more time for the insured to understand what happened so that a proper proof of loss can be filed. It is a good idea to remain mindful of this deadline and discuss the possibility of extending it with the claims adjuster.

Joint Insured

The joint insured condition has five parts and can work in the insured's favor or to the insured's detriment, depending on the circumstances surrounding the claim.

1. If there is more than one insured named in the Declarations, the first named insured will act for every other insured.
2. If a designated person of any insured has knowledge of any information relevant to this insurance, that knowledge is considered knowledge of every insured.



LLC #1 and LLC #2 are both insureds on the same crime policy with only the Employee Theft insuring agreement. Bob is a member of LLC #1 but is not involved in any way with LLC #2. Alicia, an employee of LLC #2 and an old friend of Bob's, was convicted of shoplifting many years ago. Bob knew about Alicia's history before she was hired by LLC #2 but did not mention it to anyone since he believes she is an honest person who would not steal now. If Alicia steals from LLC #2, there will be no coverage because Bob was aware of her history prior to policy inception. If LLC #1 and LLC #2 had separate crime policies, Bob's knowledge would not affect LLC #2's coverage.

3. An employee of any insured is considered to be an employee of every insured.



LLC #3 and LLC #4 are both insureds on the same crime policy with only the Employee Theft insuring agreement. Although the operations of LLC #3 and LLC #4 are completely separate, the LLCs are owned by the same people. Ethan, an employee of LLC #3, gets the login credentials for LLC#4's bank account. He logs in and steals funds belonging to LLC #4. In this case, the joint insured condition benefits LLC #4.

Section 3: Crime Coverages and Endorsements

4. The insurer will not pay more for loss sustained by more than one insured than the amount it would pay if the loss had been sustained by one insured.
5. Payment to the first named insured or an employee benefit plan fully releases the insurer on account of the loss.

E. Conditions

1. Conditions Applicable To All Insuring Agreements

i. Joint Insured

- (1) If more than one Insured is named in the Declarations, the first Named Insured will act for itself and for every other Insured for all purposes of this insurance.
- (2) If a “designated person” of any Insured has knowledge of any information relevant to this insurance, that knowledge is considered knowledge of every Insured.
- (3) An “employee” of any Insured is considered to be an “employee” of every Insured.
- (4) We will not pay more for loss sustained by more than one Insured than the amount we would pay if all such loss had been sustained by one Insured.
- (5) Payment by us to the first Named Insured for loss sustained by any Insured, or payment by us to any “employee benefit plan” for loss sustained by that plan, will fully release us on account of such loss.

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Territory

The coverage territory for all insuring agreements is anywhere in the world.

Limit of Insurance

The most that will be paid for all loss from an occurrence is the limit of insurance shown on the Declarations. If a loss is covered under more than one insuring agreement, the most that will be paid is the largest limit available under any of the insuring agreements.



Eddie’s Electronics has a commercial crime policy with a \$100,000 limit each for Inside The Premises – Theft Of Money And Securities and Inside The Premises – Robbery And Safe Burglary Of Other Property. An armed man comes into the store at the close of business one day and steals \$90,000 worth of electronics and \$20,000 in cash. No more than \$100,000 will be paid for the loss.

Summary

Commercial crime is an important part of the insurance program for most businesses. Understanding the insured's exposures and the coverages available under the crime policy is key to structuring a program that works for a commercial customer. It is also important to make sure that coverage under a crime policy is coordinated with other coverages carried such as property and cyber.

In the next section, you will learn about cyber exposures and the cyber coverages that can be written to address them.

Resources

Important concepts related to the Learning Objectives in this chapter are summarized in separate videos and podcasts. Online participants can use the links to access these learning resources. Classroom learners can access the videos at scic.com/CMLresources.



“Speaking From Experience”—The Importance of Purchasing Crime Coverage, with Tim McClendon, CIC, CWCA

Section 3 Self-Quiz

Directions: Read the statements below and for each one, determine whether it is true or false.

1. Crime coverage only treats exposures to theft by those outside the insured's organization.

True

False

2. Property policies do not cover money and securities.

True

False

3. James, an employee at Artie's Art Store, steals a shipment of oil paint to be delivered to a customer. This loss would **not be** covered under a typical property policy.

True

False

4. When the Causes Of Loss – Special Form is included on a property policy, there is no coverage if the insured is tricked into giving up property.

True

False

5. Forgery Or Alteration, Fraudulent Impersonation, and Outside The Premises are Fidelity insuring agreements.

True

False

Directions: Read the following questions and select the correct response for each one.

6. When coverage is written on a Loss Sustained Form, one of the two criteria that must be satisfied to trigger coverage is:

- The loss must be discovered within 60 days after the expiration of the policy.
- The "occurrence" must take place and the thief must be arrested during the policy period.
- The "occurrence" must take place during the policy period.

7. Provided that the coverage is not renewed or replaced, the Discovery Form includes a condition in which the occurrence must be discovered within _____ days following the cancellation or termination of the policy.

- 30
- 60
- 90

Section 3: Crime Coverages and Endorsements

8. The three Fidelity insuring agreements are:
- Forgery Or Alteration, Fraudulent Impersonation, and Outside The Premises
 - Fraudulent Impersonation, Forgery Or Alteration, Employee Theft
 - Employee Theft, ERISA Plan Official Dishonesty, Employee Theft Of Clients' Property
 - Employee Theft, ERISA Plan Official Dishonesty, Outside The Premises
9. Jessie's Print Shop sends an employee to a client's office to repair a printer. The employee steals computer equipment and two printers. Which insuring agreement would cover the loss?
- Agreement 1a - Employee Theft Coverage
 - Agreement 1b - ERISA Plan Official Dishonesty
 - Agreement 1c - Employee Theft of Clients' Property
10. Stephen is the VP of HR for his company and handles the 401(k) plan funds. Stephen steals \$150,000 of those 401(k) plan funds. What type of agreement would cover the loss?
- Agreement 1a - Employee Theft Coverage
 - Agreement 1b - ERISA Plan Official Dishonesty
 - Agreement 1c - Employee Theft of Clients' Property
11. Ella, an employee of the insured, forges the insured's checks and cashes them. From these checks, she keeps \$6,000. What type of agreement would cover the loss?
- Agreement 1a - Employee Theft Coverage
 - Agreement 1b - ERISA Plan Official Dishonesty
 - Agreement 1c - Employee Theft of Clients' Property
12. Theft committed by one's entering or changing data or computer programs within the computer system of the insured or that of a third party performing services for the insured is covered by which insuring agreement?
- Computer And Funds Transfer Fraud
 - Fraudulent Impersonation
 - Forgery Or Alteration
 - Money Orders And Counterfeit Money

Section 3: Crime Coverages and Endorsements

13. The transferring of money or securities based on instructions from a thief impersonating a client, vendor, or another person with the insured's organization is covered by which insuring agreement?

- Computer And Funds Transfer Fraud
- Money Orders And Counterfeit Money
- Forgery Or Alteration
- Fraudulent Impersonation

Directions: Select the letter of the insuring agreement that would cover in each scenario.

A. Inside the Premises - Theft Of Money And Securities	_____ A gunman enters an electronics store at closing time, threatens the employee working in the store, and steals inventory.
B. Money Orders And Counterfeit Money	_____ Thieves break into Marty's Diner and steal cash from the register, damaging the register in the process.
C. Inside The Premises - Robbery Or Safe Burglary Of Other Property	_____ Marjorie uses her corporate card to take clients out to dinner. One of her guests takes note of the credit card number and uses it later to make expensive purchases by signing Marjorie's name.
D. Forgery Or Alteration	_____ A customer pays for a large purchase with \$50 bills that turn out to be fake.
E. Outside the Premises	_____ Carla, an employee of the named insured, is robbed in the parking lot of the bank where she is planning to deposit the day's receipts.

Section 4: Cyber Exposures and Coverage

Section Goal

In this section, you will learn to identify common cyber exposures and be able to properly analyze cyber insurance policies to determine what type of coverage, if any, is provided.

Learning Objectives:

- 4.1 *Identify the common cyber exposures faced by businesses, including an explanation of the limitations of coverage for cyber-related losses in other policies.*
- 4.2 *Discuss the key information found in the Declarations of a cyber policy.*
- 4.3 *Summarize selected definitions found in the ISO Information Security Protection Cyber Policy.*
- 4.4 *Explain the first party exposures to cyber losses as well as the coverage provided by each first party insuring agreement.*
- 4.5 *Explain the third party exposures to cyber losses as well as the coverage provided by each third party insuring agreement.*
- 4.6 *Explain the limits of insurance in a cyber policy as well as:*
 - *The difference between policy aggregate and insuring agreement limits*
 - *How retention applies in different claims scenarios*
 - *How to apply the defense and settlement provisions*
- 4.7 *Apply selected exclusions found in the Information Security Protection Cyber Policy.*
- 4.8 *Discuss the application of selected conditions found in the Information Security Protection Cyber Policy.*
- 4.9 *Summarize the Extended Discovery Period, Extended Reporting Periods, and Run-Off Coverage Period found in the Information Security Protection Cyber Policy.*

Introduction

The Need for Cyber Insurance Coverage

Technology Users

It's hard to imagine a business in today's world that does not use technology in some form or fashion. From simple email conversations to complex e-commerce transactions, computers have made personal and business lives more efficient.



Retail and wholesale operations make and fulfill orders so that products can be distributed and sold to the public. Banks and other financial institutions allow transactions to be made via websites and mobile applications. From filling prescriptions to transferring complex medical scans, technology is deeply embedded in our lives. Professionals, such as attorneys, engineers, and insurance agents all use technology in various ways every day.

While cyber criminals certainly don't shy away from trying to hack large businesses, the government, or even cloud providers, the most common accessible targets are small to mid-sized businesses. Smaller businesses may be connected to larger businesses and can give cyber criminals an easier way to get in through a "backdoor" connection.

Keep in mind that no matter what the profession, any business that uses technology has an exposure to loss from a cyber standpoint. Whether it's business-to-business, business-to-consumer, or business-to-government, using technology has become an important way of life.



A large regional grocery chain was using a digital system to control its refrigeration equipment. When a thermostat encountered an issue, it would contact the onsite server to look for solutions. If the onsite server could not fix the problem, it would contact the refrigeration company's system via a dedicated internet connection. If the refrigeration company's server could not resolve the issue, their system would automatically log a service call for the next day. Overnight, a hacker was able to get into the refrigeration contractor's system. The hacker discovered the connection to the grocery store and was able to gain entry. Once in the grocery store system, the hacker was able to get to the store's point of sale (POS) devices. The POS system was then compromised, and data was stolen.



Examples of cyber transactions include:



Common Cyber Exposures

Learning Objective:

4.1 Identify the common cyber exposures faced by businesses, including an explanation of the limitations of coverage for cyber-related losses in other policies.



With the number of cyber incidents in recent years, businesses are better understanding the common cyber exposures that can cause problems. Cyber criminals target personal and business information available through social media sites and Internet-connected devices like laptops, smartphones, tablets, and desktops. Even voice assistants, smart refrigerators, and other smart devices can be targeted by cyber criminals looking for ways to obtain information or perpetrate cyber extortion and ransomware attacks.

Some common cyber exposures include the following:

- **Collection of private information** – Most businesses collect private information on their employees for HR reasons. Businesses, such as insurance agencies and companies, accountants, physicians, and many others collect private information about their clients and customers.

- **Data storage** – Data is located in a number of places, including hard drives, backup drives, laptops, flash drives, tablets, and personal devices.



- **Websites and social media** – Most businesses have at least a basic website where customers can learn more about the business and what it does. Many businesses have websites that are also built for selling products. Another way of interacting with the public is through social media pages.



- **Credit card transactions** – Businesses with e-commerce exposure generally accept credit card payments. Credit card data is also stored by brick-and-mortar businesses. Credit card data is collected and stored using point-of-sale devices.



- **The Internet of Things (IoT)** – In today's “connected” world, the Internet of Things plays a very important role. Smart devices, such as thermostats on refrigeration units, heavy garage doors, drones, GPS tracking devices, and other communication devices all contain embedded chips that can potentially be accessed by cyber criminals.



- **Regulation** – Because the internet allows access to the insured from anywhere in the world, the insured can be subject to state, federal, and even foreign regulation. Laws governing protection of privacy and private information can vary greatly across the globe.

Limitations of Traditional Policies

Traditional policies are not designed to provide coverage for most of the cyber-related exposures insureds face.

The ISO Commercial General Liability (CGL) Policy covers the typical exposures faced by insureds for bodily injury, property damage, and personal and advertising injury as defined in the coverage form. The CGL is very clear that electronic data is not tangible property and, therefore, damage to electronic data is not covered. The CGL also contains a mandatory endorsement designed to limit any coverage for cyber-related exposures.



Commercial property coverage forms and the Businessowners Policy provide very limited coverage for electronic data and for interruption of computer operations. While these limits can be increased, coverage applies to loss by a very limited set of perils and falls far short of the protection needed by the insured and provided in the typical cyber form.

The ISO Commercial Crime Policy can provide some coverage under selected insuring agreements and endorsements. Computer and Funds Transfer Fraud and Fraudulent Impersonation (also known as social engineering) coverages may be provided by the ISO crime policy; however, coverage may not be as robust as what may be available through some cyber policies. Like other traditional policies, coverage is still somewhat limited and does not provide coverage for many of the exposures faced by insureds.

Since traditional policies fall short when it comes to meeting the coverage needs of almost all insureds, separate cyber coverage is needed to fill the gaps.

Management Liability Policies

Management liability policies are package policies designed to cover exposures such as directors and officers liability, employment practices liability, fiduciary liability, and others. Some of these policies contain cyber insuring agreements that can be activated or cyber endorsements that can be added to the policy; however, there are a few issues that can arise.

One such issue is that coverage under these endorsements or insuring agreements is generally more limited in scope than that provided by stand alone cyber policies. With D&O policies, coverage is written for the individuals involved, and entity coverage must be included. It is important to make sure entity coverage exists where cyber is concerned. Another issue with management liability policies is that they can use a shared limit of insurance across all insuring agreements. To provide proper coverage, a separate limit of insurance should be purchased for each insuring agreement or a much higher shared limit should be written.

Endorsement to Other Policies



Other policies, such as businessowners policies, CGL policies, and commercial property policies can be endorsed to include some limited cyber coverage. These endorsements offer very limited coverage. In addition, endorsements can often contain sublimits that are not sufficient to cover the insured's true exposure to cyber loss.

Stand Alone Cyber Policies

The most comprehensive way to provide cyber coverage for an insured is by using a stand alone cyber policy. These policies are written specifically to cover the needs related to cyber exposures. Cyber policies are generally proprietary and may be known by specific names given them by the insurers that write the coverage.

These names include:

- CyberEdge
- Cyber Evolutionär
- CyberPro
- CyberRiskConnect
- Cyber Risk Protect
- Professional First
- Cyber 3.0
- Cyber ERM
- Cyber Defense
- NetProtect 360
- Cyber Advantage Premier
- CyberClear
- DataBreach
- Netguard Plus
- CybeRisk

While many businesses are now aware of the common exposures posed by cyber criminals, understanding the coverage available, limitations, and exclusions in the policies that are specifically designed for this risk is essential. Just like the names of the forms, the wording varies from policy to policy. It's important for an agent to understand how to compare coverages and give proper information to insureds so informed decisions can be made.

▶▶ Knowledge Check



Directions: Read the scenario below and explain your response.



Ned owns a comic book store in the revitalized downtown section of his city. While meeting with Ned to discuss his insurance, you discover that he is also the largest comic book dealer on the Internet, selling his comic books on an international sales platform. While Ned's local sales are lackluster, his e-commerce sales are lucrative.

What cyber exposures does Ned have? Be sure to explain why Ned's property and liability coverages are not sufficient to cover his exposure.

Cyber Insurance Declarations

Learning Objective:

4.2 Discuss the key information found in the Declarations of a cyber policy.

As previously mentioned, most insurers who write cyber coverage use proprietary forms. Proprietary forms are written entirely, or almost entirely, by the insurance company offering the policy. The Insurance Services Office (ISO) files several cyber forms for use by insurers, but the ISO forms are not commonly used. ISO **Information Security Protection Cyber Policy (CY 00 03 11 21)** will be used for discussion for the balance of this section, and its purpose will be to serve as a basis for comparison.



Declarations

POLICY NUMBER:

CYBER
CY DS 01 11 21

**INFORMATION SECURITY
PROTECTION CYBER POLICY DECLARATIONS**

NOTICE APPLICABLE TO CLAIMS-MADE AND REPORTED INSURING AGREEMENTS

THIS POLICY INCLUDES INSURING AGREEMENTS THAT PROVIDE CLAIMS-MADE AND REPORTED COVERAGE. CLAIMS MUST BE FIRST MADE AGAINST THE INSURED DURING THE POLICY PERIOD OR ANY APPLICABLE EXTENDED REPORTING PERIODS OR RUN-OFF COVERAGE PERIOD, AND REPORTED TO US AS SOON AS PRACTICABLE, BUT IN NO EVENT LATER THAN 60 DAYS AFTER THE END OF THE POLICY PERIOD, OR AFTER THE END OF ANY APPLICABLE EXTENDED REPORTING PERIODS OR RUN-OFF COVERAGE PERIOD.

THE LIMIT OF INSURANCE AND ANY RETENTION SHALL BE REDUCED BY AMOUNTS INCURRED AS LOSS AND DEFENSE COSTS.

In return for the payment of the premium, and subject to all the terms and conditions of this Policy, we agree with you to provide the insurance as stated in this Policy.

Company Name:	
Producer Name:	
Named Insured:	
Mailing Address:	
Policy Period	
From:	
To:	12:01 AM at the Insured's mailing address shown above
Web Site Address(es):	
Form Of Business (Check appropriate box.):	
<input type="checkbox"/> Private	<input type="checkbox"/> Public
<input type="checkbox"/> Investment Fund	<input type="checkbox"/> Not-For-Profit
<input type="checkbox"/> Government	<input type="checkbox"/> Public Subsidiary
	<input type="checkbox"/> Private Formerly Public

Section 4: Cyber Exposures and Coverage

Even though the cyber Declarations will vary by insurer, key information and risk characteristics addressed on the Declarations will be similar. To begin with, information about the insured will be listed. The insured's name and mailing address will be shown, as well as the inception and expiration dates of the policy period. In addition, some companies may include the address of the insured's website.

Some cyber coverages may be written on a claims-made or claims-made and reported basis. If this is the case, the Declarations will typically contain a retroactive date. It may also contain a prior or pending litigation date. If no retroactive date is listed or "none" is shown, the policy may provide full prior acts coverage. A close reading of the policy terms and conditions will be important.

The Declarations of the ISO policy contains a list of insuring agreements available. If coverage is included for the insured, limits and retentions will be shown. Other companies use similar concepts, although the names of insuring agreements will vary. Additional insuring agreements may be available by endorsement. If they are, the coverage, limits, and retentions will be shown. Finally, some or all of the coverages may be subject to an annual aggregate limit of insurance. Annual aggregates will be discussed later in this section.

Section 4: Cyber Exposures and Coverage

Retroactive Date And Prior Or Pending Litigation Date (Enter date or "none" if no Retroactive Date applies.):

Insuring Agreement	Retroactive Date	Prior Or Pending Litigation Date
B.1. Cyber Incident Or Information Security Breach Liability		
B.2. Regulatory Proceeding Liability		
B.3. Payment Card Industry Liability		
B.4. Media Liability		

Business Income And Extra Expense Maximum Restoration Period Days:

Annual Premium: \$

Policy Aggregate Limit Of Insurance: \$

Insuring Agreements, Limits Of Insurance And Retentions		
Insuring Agreement/Coverages	Insuring Agreement Limit Of Insurance	Retention Amount/Waiting Period
A.1. Cyber Incident Or Information Security Breach Expense	\$	\$
A.2. Cyber Extortion Events Reward Payment Sublimit	\$ \$	\$
A.3. Replacement Or Restoration Of Electronic Data	\$	\$
A.4. Business Income And Extra Expense	\$	Waiting Period Hours: Retention Amount: \$
B.1. Cyber Incident Or Information Security Breach Liability	\$	\$
B.2. Regulatory Proceeding Liability	\$	\$
B.3. Payment Card Industry Liability	\$	\$
B.4. Media Liability	\$	\$
If "Not Covered" is inserted above opposite any specified Insuring Agreement, such Insuring Agreement and any other reference to it in this Policy are deleted.		
If Added By Endorsement:		
Insuring Agreement(s) Or Coverage(s)	Limit Of Insurance	Retention Amount
	\$	\$
	\$	\$
	\$	\$
	\$	\$
	\$	\$

Section 4: Cyber Exposures and Coverage

Some insurers use a singular insuring agreement. The singular insuring agreement may include only one coverage with others added by endorsement. Some singular insuring agreements may include more than one type of coverage and/or sublimit within the agreement.

Below are some examples of how other insurers may express insuring agreements. Take note that the names of the insuring agreements can vary greatly from one insurer to another. It is important to read the entire insuring agreement and related exclusions when comparing coverage.



Example 1

- A. Information Security and Privacy Liability
- B. Privacy Notification Costs
- C. Regulatory Defense and Penalties
- D. Web Site Media Content Liability

Example 2

- A. Security and Privacy Liability Insurance
- B. Security Event Crisis Management Expense Coverage
- C. Regulatory Action Coverage
- D. Computer System Extortion Expense and Loss Coverage

Example 3—Some policies may offer a broad range of first party optional coverages.

- Business Interruption and Extra Expense
- Cyber Theft Loss
- Cyber Communications Loss
- Cyber Vandalism Expenses
- Notification Expenses, including notification not required by law
- Crisis Management
- Consequential Reputational Harm Loss
- Social Engineering Loss

▶▶ **Knowledge Check**



Directions: Read the scenario below and explain your response.



Ivan, your client, calls you as he is confused by the information in his new cyber policy. As you talk to Ivan, please tell him what information is typically included on the Declarations.

Preamble and Definitions

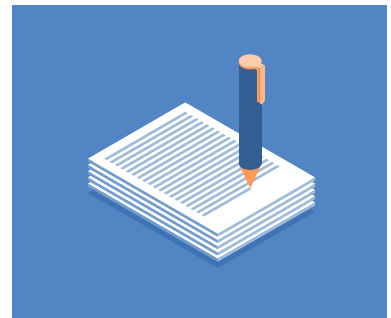
Learning Objective:

4.3 Summarize selected definitions found in the ISO Information Security Protection Cyber Policy.

As previously mentioned, **Information Security Protection Cyber Policy (CY 00 03 11 21)** is not commonly used. That said, it provides a standardized basis for comparison. One of the keys to analyzing coverage is to understand some key definitions found within the policy.

Preamble

Most insurance policies contain a preamble that gives important information to the insured before the first section of the policy. In the cyber policy, information is included as to whether some insuring agreements are claims-made or claims-made and reported. This will include an overview of the reporting requirements and any extended reporting provisions. It may include information telling the insured that defense is within the limit of insurance. The preamble also informs the insured that there are provisions that restrict coverage and emphasizes the importance of reading the entire policy.



Finally, the preamble defines a few terms used in the policy, such as “we,” “us,” and “our,” and refers the insured to the Definitions section of the policy where other words and phrases that have special meaning within the context of the policy appear. With cyber insurance, there are many terms that must be defined within the context of the policy. As a result, the Definitions section of the policy can be rather lengthy.

Selected Definitions

Terms that have special meaning within the policy are defined in the last section of the policy form. There are some key definitions that will be used throughout the policy multiple times. In order to understand what is being referred to, it’s important to discuss what those words and phrases mean before diving into the rest of the policy.

Application



The application for any insurance policy is what gathers the information necessary for the underwriter to make a decision as to the exposure and insurability of the applicant. It’s important for the application to be completed and signed by the insured.

Some cyber policies include a warranty statement on the application, and it then becomes part of the policy. It’s important to understand how the company is treating the application and to properly advise the insured. The conditions section of the policy details what

Section 4: Cyber Exposures and Coverage

consequences may result when information on the application is found to be inaccurate after a loss.

SECTION X – DEFINITIONS

- A. “Application” means all signed “applications” for this Policy, including any attachments, addenda and other materials submitted in conjunction with the signed “applications”.

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Card Company

Many insureds may have e-commerce portals where they sell their goods or services. These transactions are typically processed using the customer’s credit card. Even brick and mortar businesses accept credit cards and store transaction information. Insureds that accept credit cards must complete training on the Data Security Standards (DSS) and be certified by the Payment Card Industry (PCI).



SECTION X – DEFINITIONS

- C. “Card company” means any credit card company that requires its merchants to adhere to the Payment Card Industry Data Security Standards.

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Claim



The definition of “claim” can vary from policy to policy. This definition may or may not include demands for nonmonetary damages. Nonmonetary damages are those that involve something other than money. These can include specific performance, termination or rescission of a contract, or injunctive relief. Injunctions restrain a party from doing certain acts or acting in a certain way. When the insured receives a written demand, a claim should be filed with the insurer.

Under this definition of claim, written demands for monetary and nonmonetary damages meet the requirements, as do civil proceedings, requests for mediation or demands for arbitration, and subpoenas seeking content or content-source information. Proceedings involving regulatory authorities are also considered to be claims.

As coverage relates to PCI issues, written demands brought by a card company, bank, card processor, or financial institution maintaining the insured’s bank account are also considered claims.

SECTION X – DEFINITIONS

D. “Claim” means:

1. Under Insuring Agreement **B.1. Cyber Incident Or Information Security Breach Liability** and Insuring Agreement **B.4. Media Liability**:
 - a. A written demand against an “insured” for monetary or nonmonetary damages, including injunctive relief;
 - b. A civil proceeding against an “insured” commenced by the service of a complaint;
 - c. A written request for mediation or demand for arbitration against an “insured”;
 - d. Under Insuring Agreement **B.4. Media Liability**, “claim” also means:
 - (1) A written demand against an “insured” for retraction of “content” posted, published, disseminated or released by an “insured”; or
 - (2) A subpoena seeking “content” or the identity of an external source that supplies information or “content” to an “insured” in confidence; or
 - e. A written request to toll or waive a statute of limitations relating to a potential “claim” described in Paragraphs **1.a.** through **d.**
2. Under Insuring Agreement **B.2. Regulatory Proceeding Liability**, an investigation, demand or proceeding brought by, or on behalf of, the Federal Trade Commission, Federal Communications Commission or other administrative or regulatory agency, or any federal, state, local or foreign governmental entity in such entity’s regulatory or official capacity commenced by the filing of a notice of charges, formal investigative order, service of summons or similar document against any “insured”.
3. Under Insuring Agreement **B.3. Payment Card Industry Liability**:
 - a. A written demand against an “insured” for monetary or nonmonetary damages, including injunctive relief;
 - b. A civil proceeding against an “insured” commenced by the service of a complaint;
 - c. A written request for mediation or demand for arbitration against an “insured”; or
 - d. A written request to toll or waive a statute of limitations relating to a potential “claim” described in Paragraphs **3.a.** through **c.**;brought by a:
 - (1) “Card company”;
 - (2) Issuing bank or any financial institution that issues credit cards to consumers on behalf of “card companies”;
 - (3) Payment card processor; or
 - (4) Acquiring bank or any financial institution that maintains the “organization’s” bank account;in its capacity as such.

Computer Program



Since computers use programs to harness, collect, or manipulate data, the policy needs to define what a “computer program” is as it relates to the coverage provided.

SECTION X – DEFINITIONS

- E.** “Computer program” means a set of related electronic instructions, which direct the operation and function of a computer or devices connected to it, which enables the computer or devices to receive, process, store or send the “organization’s” “electronic data”.

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Computer System

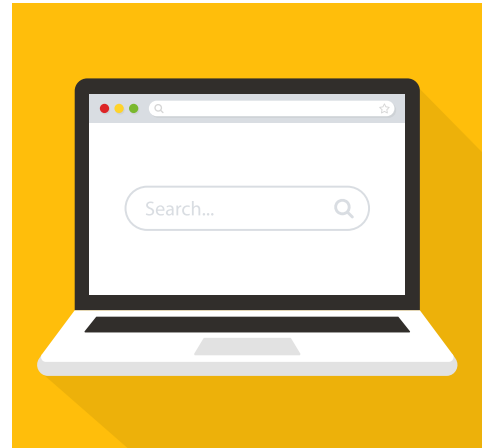
While it may seem obvious what a “computer system” is, it’s important to clearly define the term in the context of the policy. Anything not defined within the policy contract is open to interpretation, which can be broad.

SECTION X – DEFINITIONS

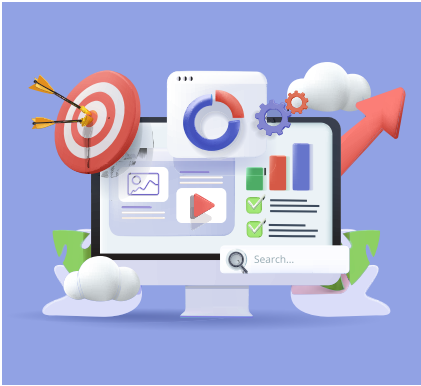
- G.** “Computer system” means any computer, including any transportable or handheld devices, electronic storage devices and related peripheral components; any systems and applications software, or any related telecommunications networks connected to or used in connection with such computer or devices.

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Content



“Content” is generally the information that makes up a website. A website without content is just background colors. However, content the insured may have on its website is not the only content that is shared. Emails contain content, and that content can also cause harm to property or people.

SECTION X – DEFINITIONS

F. “Content” means any type of communicative or informational material, regardless of its nature or form, including material disseminated electronically, such as via a web site or electronic mail.

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Defense Costs

It is common for “defense costs” to be included in the limit of insurance in many cyber policies; this means that the cost to defend the insured reduces the limit available to pay a claim.

SECTION X – DEFINITIONS

M. “Defense costs” means all reasonable costs, charges, fees (including attorneys’ fees and experts’ fees) and expenses incurred in investigating, defending, opposing or appealing any “claim” and the premium for appeal, attachment or similar bonds. “Defense costs” shall not include any salaries, wages, fees or benefits of “employees”.

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Discover or Discovered

When ANY insured becomes aware of facts which would cause a reasonable person to assume a cyber incident, cyber extortion event, information security breach or interruption has occurred, the loss is said to have been “discovered.” The use of the word “any” broadens the scope of the definition. Other forms may only be triggered if specific insureds become aware of an incident.



SECTION X – DEFINITIONS

- N.** “Discover” or “discovered” means the time when any “insured” first becomes aware of facts which would cause a reasonable person to assume that a “cyber incident”, “cyber extortion event”, “information security breach” or “interruption” has occurred, regardless of when the “cyber incident”, “cyber extortion event”, “information security breach” or “interruption” occurred, even though the exact amount or details of “loss” may not then be known.

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Electronic Data



“Electronic data” includes all the information, images, or sounds stored by the insured. This includes information stored on external devices such as backup drives, redundant drives, thumb drives, or other means of storage. If the data is licensed, leased, rented, or loaned to others, it is not included in the definition.

SECTION X – DEFINITIONS

- O.** “Electronic data” means information, facts, images or sounds stored as or on, created or used on, or transmitted to or from computer software (including systems and applications software) on electronic storage devices including, but not limited to, hard or floppy disks, CD-ROMs, tapes, drives, cells, data processing devices or any other media which are used with electronically controlled equipment. “Electronic data” is not tangible property.

“Electronic data” does not include the “organization’s” “electronic data” that is licensed, leased, rented or loaned to others.

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Employee

The phrase “natural person” is a legal term that refers to human beings. Entities such as private or public corporations and government organizations are legal entities that “live,” so it can be an important distinction in a policy. The term “employee” includes full- or part-time workers, seasonal or temporary workers, leased workers, interns, and volunteers. While this form specifically does not include independent contractors as employees, other forms may.



SECTION X – DEFINITIONS

- P. “Employee” means any natural person whose labor or service is, was or will be engaged and directed by the “organization” and includes part-time, seasonal or temporary workers, interns, volunteers, leased workers and “executives”, but only while acting within the scope of their duties as determined by the “organization”. “Employee” does not include independent contractors.

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Liability Loss and Loss



“Liability loss” applies to awards or judgments that compensate the claimant, usually in the form of money, and includes interest on those judgments, including pre- and post-judgment interest. While punitive damages and multiple damages are not excluded, it is not uncommon for case law or statutory law to prohibit insurance from paying. The purpose of such damages is to punish the party that has acted in an egregious manner. It is considered contrary to public policy in many jurisdictions for another party to pay for those damages; some cyber forms may exclude punitive and multiple damages.

The definition of the term “loss” will vary based on the insuring agreements that are triggered. Each insuring agreement will have its own definition of what loss is based on the coverage intended to apply.

SECTION X – DEFINITIONS

W. “Liability loss”:

1. Means any of the following:
 - a. Compensatory awards or judgments, including prejudgment and post-judgment interest;
 - b. Monetary settlements; or
 - c. Punitive, exemplary and multiple damages where insurable under the applicable law which most favors coverage for such damages.
2. Shall not include:
 - a. Taxes, fines, penalties or assessments imposed by law, other than punitive, exemplary or multiple damages that are considered insurable by the applicable law which most favors coverage for such damages;
 - b. Liquidated damages stipulated to in a contract in excess of any amounts the “insured” is liable for in the absence of such contract;
 - c. Any amounts that are uninsurable under the law pursuant to which this Policy shall be construed;
 - d. Restitution, disgorgement, royalties, unjust enrichment or any profits or advantage the “insured” was not legally entitled to;
 - e. The cost to comply with any order or agreement to provide any equitable relief, including injunctive relief; or
 - f. Chargebacks, interchange fees or rates, discount fees, processing fees or any costs to replace any payment cards whose card numbers were or may have been compromised.

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SECTION X – DEFINITIONS

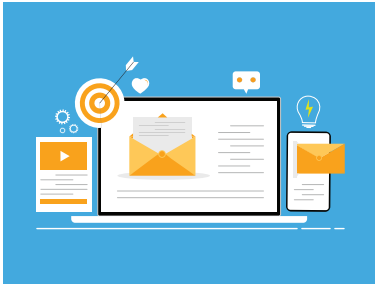
X. “Loss” means:

1. “Cyber incident or information security breach expenses” under Insuring Agreement **A.1.** Cyber Incident Or Information Security Breach Expense;
2. “Cyber extortion expenses” under Insuring Agreement **A.2.** Cyber Extortion Events;
3. “Data restoration expenses” under Insuring Agreement **A.3.** Replacement Or Restoration Of Electronic Data;
4. “Business income loss” and “extra expenses” under Insuring Agreement **A.4.** Business Income And Extra Expense;
5. “Liability loss” and “defense costs” under Insuring Agreement **B.1.** Cyber Incident Or Information Security Breach Liability and Insuring Agreement **B.4.** Media Liability;
6. “Regulatory loss” and “defense costs” under Insuring Agreement **B.2.** Regulatory Proceeding Liability; or
7. “Payment card industry loss” and “defense costs” under Insuring Agreement **B.3.** Payment Card Industry Liability.

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Organization's Computer System



While the definition of an “organization’s computer system” includes devices owned and operated by an employee, note that for coverage to apply, the employee must agree in writing to the organization’s personal device use policy. Some cyber policies may not have the same requirement while other policies may not cover personal devices at all.

SECTION X – DEFINITIONS

AA. “Organization’s computer system” means any “computer system” which collects, transmits, processes, stores or retrieves the “organization’s” “electronic data”, and is:

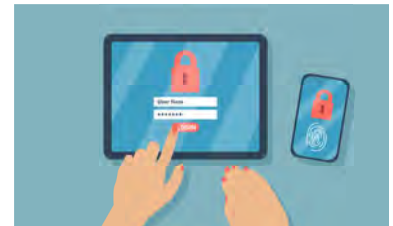
1. Owned by the “organization”;
2. Leased by the “organization” and operated by any “insured”; or
3. Owned and operated by an “employee” who has agreed in writing to the “organization’s” personal device use policy.

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Personal Information

The “personal information” definition contains a list of the types of information included; however, it is not an exhaustive list. The definition includes any other nonpublic information defined in privacy regulations. This broadens coverage to include regulations at the local, state, federal, or international level. Other cyber policies may not be as broad and may only include certain types of information listed within the definition.



SECTION X – DEFINITIONS

FF. “Personal information” means any information not available to the general public for any reason through which an individual may be identified including, but not limited to, an individual’s:

1. Social security number, driver’s license number or state identification number;
2. Protected health information;
3. Financial account numbers;
4. Security codes, passwords, PINs associated with credit, debit or charge card numbers which would permit access to financial accounts;
5. Biometric data; or
6. Any other nonpublic information as defined in “privacy regulations”.

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Privacy Regulations

While the definition of “privacy regulations” incorporates a list of specific privacy regulations it includes, as in the previous definition, it is not an exhaustive list. The last part of the definition includes any similar state, federal, or foreign regulation.

HIPAA
COMPLIANT



SECURE PATIENT FILES

SECTION X – DEFINITIONS

- II. “Privacy regulations” means any of the following statutes and regulations, and their amendments, associated with the control and use of personally identifiable financial, health, biometric or other sensitive information including, but not limited to:
1. The Health Insurance Portability and Accountability Act of 1996 (HIPAA) (Public Law 104-191);
 2. The Health Information Technology for Economic and Clinical Health Act (HITECH) (American Recovery and Reinvestment Act of 2009);
 3. The Gramm-Leach-Bliley Act of 1999;
 4. Section 5(a) of the Federal Trade Commission Act (15 U.S.C. 45(a)), but solely for alleged unfair or deceptive acts or practices in or affecting commerce;
 5. The Identity Theft Red Flags Rules under the Fair and Accurate Credit Transactions Act of 2003;
 6. The European Union General Data Protection Regulation (GDPR);
 7. Children’s Online Privacy Protection Act of 1998 (“COPPA”); or
 8. Any other similar state, federal or foreign identity theft or privacy protection statute or regulation.

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Subsidiary



The policy contains some coverage that applies to subsidiaries. To be considered a “subsidiary,” the named insured must own more than 50% of the outstanding securities or voting rights, or there must be a written contract, charter, bylaws, or other agreement that gives the organization the right to appoint or designate a majority of the board or equivalent executives of the subsidiary.

SECTION X – DEFINITIONS

KK. “Subsidiary” means any entity in which:

1. More than 50% of the outstanding securities or voting rights representing the present right to vote for the election of directors or an equivalent position is owned, in any combination, by the “organization”; or
2. The “organization” has the right, pursuant to a written contract or the bylaws, charter, operating agreement or similar documents of an entity, including a limited liability company or joint venture, to elect, appoint or designate a majority of the board of directors or equivalent executives of such entity.

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Suit



As in many policies, the term “suit” is defined as a civil proceeding in which damages are claimed against the insured, and those damages are covered by the policy. It also includes arbitration and other alternative dispute resolution proceedings provided the insurer gives its consent.

SECTION X – DEFINITIONS

LL. “Suit” means a civil proceeding in which damages to which this Policy applies are claimed against the “insured”. “Suit” includes:

1. An arbitration proceeding in which such damages are claimed and to which the “insured” submits with our consent; or
2. Any other alternative dispute resolution proceeding in which such damages are claimed and to which the “insured” submits with our consent.

“Suit” does not include a civil proceeding seeking recognition and/or enforcement of a foreign money judgment.

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▶▶ Knowledge Check



Directions: Read the scenario below and explain your response.



Associated Materials Supply, Inc., is purchasing cyber coverage from your agency. Mario, the company's CFO, does not understand some of the terms used in the coverage and would like to know more about them. Since Associated allows employees to use their personal devices to monitor email, Mario would like to know if those are considered part of Associated's computer system.

Using what you've learned from the defined terms found in the ISO Information Security Protection Policy, please respond to Mario's inquiry.

The Insuring Agreements

Learning Objective:

- 4.4 *Explain the first party exposures to cyber losses as well as the coverage provided by each first party insuring agreement.*

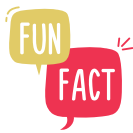


In the past, cyber coverage has been referred to as cyber liability even though most cyber policies contained both first party and liability coverages. Over the last several years, the insurance industry has shifted to referring to coverage as a cyber policy or cyber insurance. That said, it is important to understand the insuring agreements and how they apply to first party and third party losses. Cyber incidents may start with just a first party loss, but that initial loss could end up resulting in a liability loss as well.

First Party Insuring Agreements

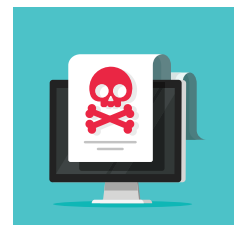
First party losses are losses that have a direct effect on the insured's operations or property. This typically includes both direct and indirect loss or expense. First party loss exposures include:

- **Forensic analysis** – When a cyber event has taken place, a computer forensic expert must examine the system and the data to determine when the event took place, what data was accessed, how data was manipulated, how to quarantine any malicious code, and many other factors. Sometimes, forensic analysis is what uncovers a cyber event in the first place.



The average cost to have an outside firm perform computer forensic analysis to determine IF a cyber breach has occurred and what data may have been compromised averages around \$700 per hour!

- **Business income** – Many businesses rely on websites and e-commerce portals for income, such as point-of-sale devices at retail locations. Lost income results when sales cannot be made or systems cannot be accessed because data and/or systems have been compromised. Insureds can also have a loss that results from a cyber event that affects a major supplier or other business on which the insured depends. Business income from dependent properties may be an option available on some cyber policies.
- **Website vandalism** – Even if the business does not rely on its website for e-commerce operations, a website is a valuable tool for promoting goods and services provided. Websites can be vandalized by infecting them with viruses or malware. Images and words can be replaced with vulgar or profane images or language. The insured may have to pay for services to have the website scrubbed and content replaced.
- **Notification costs** – When confidential files are breached, cyber regulations require notification of affected parties. Notification can include notification by regular mail and email. Employee overtime or call centers may be needed to handle inquiries from affected parties. Some cyber regulations require the business to provide identity theft monitoring and protection for at least one year.
- **Ransomware and cyber extortion** – Malware can be installed on the insured's computer systems that allows hackers to take control by encrypting data. The insured is then presented with a demand for ransom before the data is decrypted and given back to the insured. Other times, hackers will threaten to encrypt data or release sensitive information if the insured does not pay. This is known as cyber extortion.



Section 4: Cyber Exposures and Coverage

- **Denial of service attacks** – Another way of attacking e-commerce portals is through denial of service (DoS) and distributed denial of service (DDoS) attacks. Hackers use infected computers they control to make repeated connections to an e-commerce portal or website. The repeated connections use up the available bandwidth so that others wishing to access the site or portal cannot. When the attack comes from one computer, it is a DoS attack. When the attack comes from multiple computers, it is a DDoS attack.
- **Repairing or restoring data** – When data has been damaged or destroyed, databases must be repaired or restored. The cost to re-enter or restore data can be very expensive.
- **Negative publicity** – When news of a data breach becomes public, there is never a positive spin. Many small businesses never recover from a cyber breach because the public may no longer feel comfortable having their information stored in the business’s computer system. When a breach occurs, it can cost a significant amount of money to stabilize and restore the reputation of that business.
- **PCIDSS** – When a business accepts credit cards, it must have approval and certification from the Payment Card Industry (PCI). PCI’s Data Security Standard (DSS) is the certification that is required. When credit card data is compromised, the business must go through the entire DSS certification process again; this is time-consuming and expensive.



A. First Party Insuring Agreements

For coverage under First Party Insuring Agreements to apply, the “cyber incident”, “cyber extortion event” or “information security breach” must be “discovered” within the “policy period” or, if applicable, within the Extended Discovery Period, and reported to us as soon as practicable, but in no event later than 60 days after the end of the “policy period” or, if applicable, the Extended Discovery Period, in accordance with the terms of this Policy.

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Section 4: Cyber Exposures and Coverage

There are four available first party insuring agreements in **Information Security Protection Cyber Policy (CY 00 03 11 21)**:

1. Cyber Incident or Information Security Breach Expense
2. Cyber Extortion Events
3. Replacement or Restoration of Electronic Data
4. Business Income and Extra Expense

Cyber Incident or Information Security Breach Expense

This insuring agreement pays for certain expenses that result from either a cyber incident or an information security breach. Notice that this coverage is only paying for the resulting expenses and *not* any liability created by the incident, which is what makes it a first party coverage. Understanding what certain terms mean is crucial in understanding how coverage applies.

Cyber Incident

Coverage is triggered by the occurrence of a “cyber incident.” The policy defines this to include unauthorized access to or use of the organization’s computer system. It also includes malicious codes and viruses that are designed to access, alter, corrupt, damage, destroy, or otherwise harm the computer system. This includes denial of service (DoS) attacks. When the computer system has been restored after a cyber incident, a recurrence of the same virus or malicious code is considered a separate incident.

SECTION X – DEFINITIONS

J. “Cyber incident” means any:

1. Unauthorized access to or use of the “organization’s computer system” (including the “organization’s” “electronic data”).
2. Malicious code, virus or any other harmful code that is directed at, enacted upon or introduced into the “organization’s computer system” (including the “organization’s” “electronic data”) and is designed to access, alter, corrupt, damage, delete, destroy, disrupt, encrypt, exploit, use or prevent or restrict access to or the use of any part of the “organization’s computer system” (including the “organization’s” “electronic data”) or otherwise disrupt its normal functioning or operation.

Recurrence of the same malicious code, virus, or any other harmful code after the “organization’s computer system” has been restored shall constitute a separate “cyber incident”.

3. Denial of service attack specifically directed at an “organization” which disrupts, prevents or restricts access to or use of the “organization’s computer system”, or otherwise disrupts its normal functioning or operation.

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Information Security Breach

Coverage is triggered by the occurrence of an “information security breach.” This means unauthorized access, acquisition, retention or use of personal information or any confidential corporate or proprietary information of a third party. If a hacker accesses the insured’s computer system and collects customer banking information stored there, that is an information security breach.

SECTION X – DEFINITIONS

- S.** “Information security breach” means any unauthorized access, acquisition, retention or use of:
1. “Personal information”; or
 2. Any confidential corporate or proprietary information of any third party that is not available to the general public and which the “insured” has a legal obligation to maintain in confidence;

while in the care, custody or control of an “insured” or entity that the “organization” engaged under the terms of a written contract to perform services for or on behalf of an “insured”.

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Cyber incident or information security breach expenses:

SECTION X – DEFINITIONS

K. “Cyber incident or information security breach expenses”:

1. Means any of the following:

- a.** The costs to establish whether a “cyber incident” or “information security breach” has occurred or is occurring.

If a “cyber incident” or “information security breach” has occurred, the following costs are also included:

- (1)** Costs to investigate the cause, scope and extent of a “cyber incident” or “information security breach” and to identify any affected parties; and
- (2)** Costs to determine any action necessary to remediate the conditions that led to or resulted from a “cyber incident” or “information security breach” including, but not limited to, fees paid for legal and other professional advice on how to respond to the “cyber incident” or “information security breach”;
- b.** Fees and costs of a public relations firm, and any other reasonable expenses incurred by the “organization” with our written consent, to protect or restore the “organization’s” reputation solely in response to information which has been made public that has caused, or is reasonably likely to cause, a decline or deterioration in the reputation of the “organization”, or of one or more of its products or services;
- c.** Costs incurred to notify all parties affected by an “information security breach” as required by any “privacy regulation”;
- d.** Overtime salaries paid to “employees” assigned to handle inquiries from the parties affected by an “information security breach”;
- e.** Fees and costs of a company hired by the “organization” for the purpose of operating a call center to handle inquiries from the parties affected by an “information security breach”;
- f.** Costs to provide credit and identity monitoring services to natural persons affected by an “information security breach” for up to one year, or longer if required by applicable law, from the date of notification to those affected natural persons of such “information security breach”; and
- g.** Any other reasonable expenses incurred by the “organization” with our written consent.

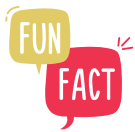
2. Does not include:

- a.** Any costs or expenses associated with upgrading, maintaining, repairing, remediating, replacing or improving “electronic data”, any “computer program” or any “computer system”; or
- b.** Chargebacks, interchange fees or rates, discount fees, processing fees, or any costs to replace any payment cards whose card numbers were or may have been compromised.

Section 4: Cyber Exposures and Coverage

Coverage inclusions:

- Forensic costs to determine if a breach has occurred and to what extent information has been accessed or compromised are covered. Coverage also includes costs to determine what action must be taken to fix and respond to the issues created, including any costs for legal or other professional advice.
- The costs incurred to hire a public relations firm to protect the reputation of the insured are covered, provided the insurer is in agreement and only if there is negative publicity that causes or may likely cause a deterioration in the reputation of the insured or its products or services.
- The costs are covered for notification of any parties that may have had information compromised in accordance with any privacy regulations that may apply.
- Notification will create activity, so the insured must be prepared for contact from affected parties. Overtime salaries for employees or fees and costs to hire a call center are covered under this insuring agreement.
- Some privacy regulations will require the insured to provide credit monitoring after the breach. The cost to provide monitoring for one year, or longer if required by law, is a covered expense.



A popular pizza shop in a small town in northeastern Massachusetts had its POS (point-of-sale) system compromised. It contained the stored credit card information for approximately 750 customers. As a result of the breach, the store had to purchase one year of credit and identity monitoring for each customer. The cost of the monitoring was \$20 per customer. The sum of \$15,000 is a large amount for a small business to have to pay, but it was required by law.



Coverage exclusions:

Costs to upgrade software or computer systems are specifically excluded. Certain credit card transactions and fees are also excluded under this insuring agreement. Some of these credit card costs may be covered under a liability insuring agreement.

Some insurers may use terms like Privacy Breach Response Costs, Crisis Management, or Security Event Costs, while others may break terms down to Notification Costs, Privacy Assistance Expense, Crisis Management Expense, Forensic Expense Costs, or Call Center Expenses. This requires the agent to dig into what is included in the terms used in the policy. For example, the terminology Privacy Breach Response Costs could include:

- Breach consultation expenses
- Public relations expenses
- Legal fees
- Fees and costs on behalf of a party for which the insured is vicariously liable
- Overtime salaries of non-exempt employees

Cyber Extortion Events

The coverage trigger for this coverage is a cyber extortion event as defined in the language that follows. This insuring agreement covers both the costs incurred in a cyber extortion event and ransom payments. In some instances, the ransom demand must be paid in a very short time period. If the insured needs to get a loan to pay the ransom before the insurance company can pay, the insurer will also pay any interest accrued on the loan. Ransom payments can be made in virtual currency.



SECTION X – DEFINITIONS

- H. “Cyber extortion event” means a demand for ransom payments made to the “organization” in connection with the actual or threatened:
1. Perpetration of a “cyber incident” or “information security breach”; or
 2. Theft, disclosure, destruction, publication or use of the “organization’s” confidential corporate or proprietary information that is stored on the “organization’s computer system” or on a “third party computer system”.

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SECTION X – DEFINITIONS

- I. “Cyber extortion expenses” means:
1. Interest costs paid by the “organization” for any loan from a financial institution taken by the “organization” to pay a ransom demand;
 2. Reward payments paid by the “organization” to a person, other than an “employee”, providing information not otherwise obtainable, solely in return for a reward offered by the “organization”, and which lead to the arrest and conviction of parties responsible for the “cyber extortion event”;
 3. Any other reasonable expenses incurred by the “organization” with our written consent, including:
 - a. Fees and costs of independent negotiators; and
 - b. Fees and costs of a company hired by the “organization”, upon the recommendation of the security firm, to protect the “organization’s” “electronic data” from further threats; and
 4. Ransom payments made by the “organization”, including payments made in the form of virtual currency such as, but not limited to, bitcoin, as a result of a “cyber extortion event”.

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Replacement or Restoration of Electronic Data



When data is lost, stolen, or damaged in a cyber incident, it must be restored or replaced. Traditional policies might pay for the blank software, but the real costs are associated with inputting the data. As such, it's important to define terms like "data restoration expense." If research was involved in putting together the initial data, the insurer will not pay to duplicate that research. As in other insuring agreements, the cost to upgrade, repair, or maintain equipment is not a covered expense.

SECTION X – DEFINITIONS

L. "Data restoration expenses":

1. Means the cost to replace or restore the "organization's" "electronic data" or "computer programs" stored within the "organization's computer system" to the condition in which they existed immediately preceding the "cyber incident" as well as the cost of data entry, reprogramming and computer consultation services. To the extent that any of the "organization's" "electronic data" cannot be replaced or restored, we will pay the cost to replace the media on which such "electronic data" was stored with blank media of substantially identical type.
2. Does not include:
 - a. The cost to duplicate research that led to the development of the "organization's" "electronic data" or "computer programs";
 - b. Any costs or expenses associated with upgrading, maintaining, repairing, remediating or improving "electronic data" or any "computer program" to a level beyond the condition in which it existed immediately preceding the "cyber incident"; or
 - c. Any costs or expenses associated with upgrading, maintaining, repairing, remediating, replacing or improving any "computer system".

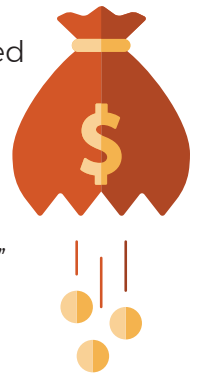
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Business Income and Extra Expense

Loss of business income is almost certain when cyber incidents occur. It takes time for a forensic analysis to be performed, not to mention the losses associated with things like compromised websites, e-commerce shutdowns, time to repair or replace data, or even negotiating a cyber extortion event. Business income losses can add up fast and be devastating to the insured.

As with the term "business income" in commercial property, terms like "business income loss," "extra expense," "period of restoration," and "interruption" must be defined. Many of these terms are similar to those in traditional insurance, but time frames may be shorter since data can be more quickly replaced than buildings can be rebuilt.



SECTION X – DEFINITIONS

B. “Business income loss” means the “organization’s”:

1. Actual loss of net income (net profit or loss before income taxes) that would have been earned or incurred; and
2. Continuing normal operating expenses incurred, including payroll.

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SECTION X – DEFINITIONS

R. “Extra expenses”:

1. Means necessary expenses the “organization” incurs:
 - a. During the “period of restoration” that the “organization” would not have incurred if there had been no “interruption”; or
 - b. To avoid or minimize the “interruption”.
2. Does not include:
 - a. Any costs or expenses associated with upgrading, maintaining, repairing, remediating, replacing or improving “electronic data”, any “computer program” or any “computer system”;
 - b. “Cyber incident or information security breach expenses”;
 - c. “Cyber extortion expenses”; or
 - d. “Data restoration expenses”.

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SECTION X – DEFINITIONS

EE. “Period of restoration” means the period of time:

1. Beginning immediately after the end of the Waiting Period shown in the Declarations; and
2. Ending when the “organization’s computer system” is or could have been repaired or restored with reasonable speed to the same functionality and level of service that existed prior to the “interruption”.

However, in no event will the “period of restoration” exceed 180 days, unless a different Maximum Restoration Period Days is shown in the Declarations.

The expiration date of this Policy will not cut short the “period of restoration”.

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SECTION X – DEFINITIONS

V. “Interruption” means an unanticipated cessation or slowdown of the “organization’s” business activities.

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Check-In

Directions: Read the statements below and for each one, determine whether it is true or false.

1. First party losses are losses that have a direct effect on the insured’s operations or property.

True

False

2. Eva, the insured, is presented with a demand for ransom in exchange for the return of confidential data. This is an example of a denial of service attack.

True

False

3. Meyer Mechanics is a small business with a tarnished reputation due to a recent data breach. This is an example of notification costs.

True

False

4. Costs incurred in a cyber extortion event and ransom payments are typically covered under one insuring agreement.

True

False

Liability Insuring Agreements

Learning Objective:

4.5 Explain the third party exposures to cyber losses as well as the coverage provided by each third party insuring agreement.

Most cyber losses are first party losses. In the event of an information security breach, there won't necessarily be a liability claim against the insured. That could change, though, if the accessed data is used to steal someone's identity or in some other unauthorized manner. When that happens, the breach can result in first party and third party claims. Third party liability claims can result from a number of acts.

- **Infected emails** – Emails can include attachments that contain viruses and malware. If an insured's employee forwards an infected email to another company and causes that company's system to be infected, the insured can be held responsible.



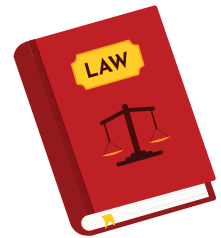
- **Infected websites** – In addition to email attachments, websites can be infected with viruses or malware. If customers and others have virus or malware attacks that result from visiting the insured's website, liability issues can be created.

- **Wrong recipient** – It's not uncommon to send the right email to the wrong person. Many email programs allow for auto-population of email addresses by just typing the first few letters and then hitting the tab key. If an employee is not paying attention, sensitive personal or corporate information can be sent to the wrong person, violating contracts or privacy regulations.



- **Infringement issues** – Copyrights and intellectual property rights can be easily violated. When websites are created, the content (words, pictures, videos, etc.) can cause issues if it contains information that has not been properly secured via royalties. Blogs, vlogs, testimonials, and website comments can cause libel and other disparagement issues.

- **Regulatory issues** – Lawsuits alleging violation of state, federal, and foreign regulations can be brought against the insured. Sometimes there are fines and penalties that result from violating these regulations. Federal acts such as the Health Insurance Portability and Accountability Act (HIPAA), the Health Information Technology for Economic and Clinical Health (HITECH) Act, and the Gramm-Leach-Bliley Act are a few federal regulations that govern certain protected information.



All 50 states, the District of Columbia, Guam, Puerto Rico, and the Virgin Islands have laws that govern privacy. The California Consumer Privacy Act (CCPA) is one of the strictest regulations in the country. Since business is conducted on the World Wide Web, insureds must be aware of foreign regulation such as the European Union's General Data Protection Regulation (GDPR) and how it affects business. Since fines and penalties are assessed directly to the insured, it's possible to see this addressed as a first party coverage in some cyber policies.

SECTION I – INSURING AGREEMENTS

B. Liability Insuring Agreements

For coverage under Liability Insuring Agreements to apply, “claims” must be first made against an “insured” during the “policy period” or during any applicable Extended Reporting Period, and reported to us as soon as practicable, but in no event later than 60 days after the end of the “policy period” or any applicable extended reporting period, in accordance with the terms of this Policy.

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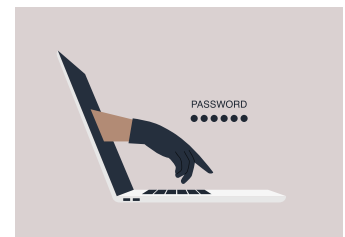
The preamble to the liability insuring agreements clearly states that coverage applies to claims first made against the insured during the policy period or within the Extended Reporting Period. The claim must be reported to the insurer no later than 60 days after the end of the policy period or Extended Reporting Period. The Extended Reporting Period will be discussed later in this section.

There are four available liability insuring agreements in **Information Security Protection Cyber Policy (CY 00 03 11 21)**:

1. Cyber Incident or Information Security Breach Liability
2. Regulatory Proceeding Liability
3. Payment Card Industry Liability
4. Media Liability

Cyber Incident Or Information Security Breach Liability

Under the first party insuring agreements, coverage was included for forensic expenses and other expenses the insured incurs to verify and respond to the issues related to the breach. However, coverage is still needed in case that breach causes the insured to be held liable for any damages to *others* that arise from the breach. Under the first liability insuring agreement, liability is created by “wrongful acts” as defined in the policy. “Interrelated wrongful acts” are multiple wrongful acts that have the same, or substantially the same, starting point.



SECTION I – INSURING AGREEMENTS

B. Liability Insuring Agreements

1. Cyber Incident Or Information Security Breach Liability

We will pay for “liability loss” that an “insured” becomes legally obligated to pay and “defense costs” as a result of a “claim” for a “wrongful act” or a series of “interrelated wrongful acts” taking place on or after the Retroactive Date, if any, and before the end of the “policy period”.

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SECTION X – DEFINITIONS

NN. “Wrongful act” means:

1. With respect to Insuring Agreement **B.1. Cyber Incident Or Information Security Breach Liability** and Insuring Agreement **B.2. Regulatory Proceeding Liability**:

Any actual or alleged neglect, breach of duty, act, error or omission by an “insured” that results in or is based upon:

- a. A “cyber incident”;
- b. An “information security breach”;
- c. A “privacy regulation” violation; or
- d. The “organization’s computer system” or a “third party computer system” transmitting, by e-mail or other means, malicious code, virus or any other harmful code to another person’s or entity’s “computer system”.

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SECTION X – DEFINITIONS

U. “Interrelated wrongful acts” means all causally connected “wrongful acts” arising out of the same or substantially the same facts, circumstance or allegations which are the subject of or the basis for any “claim”.

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Regulatory Proceeding Liability

As stated above, violation of a state, federal, or foreign statute can potentially lead to a hearing with the regulator. This insuring agreement covers “regulatory loss” as defined.

SECTION X – DEFINITIONS

JJ. “Regulatory loss”:

1. Means any of the following:
 - a. The sum of money which an “organization” is legally obligated to deposit in a fund as equitable relief for the payment of consumer claims due to a settlement or an adverse judgment resulting from a “claim”; or
 - b. Fines or penalties assessed against an “organization” by a governmental or regulatory agency where insurable under the applicable law which most favors coverage for such fines or penalties.
2. Shall not include:
 - a. Any amounts that are uninsurable under the law pursuant to which this Policy shall be construed;
 - b. Restitution, disgorgement, royalties, unjust enrichment or any profits or advantage the “organization” was not legally entitled to; or
 - c. Chargebacks, interchange fees or rates, discount fees, processing fees or any costs to replace any payment cards whose card numbers were or may have been compromised.

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Some cyber policies may have sublimits that apply for fines and penalties. Others may include coverage up to the full limit of the insuring agreement. Consumer redress coverage may apply where the law allows. Consumer redress funds are sums of money the insured may be legally required to deposit in a fund for the payment of consumer claims as the result of a regulatory claim.

Payment Card Industry Liability



When credit cards are compromised, there are PCI fines and penalties that are assessed. In addition, there may be fraud charges and card reissuance costs that are incurred by the insured. Some companies may have an insuring agreement that can provide coverage while others may require an endorsement be added to the policy. As noted under the first party insuring agreements, this is typically considered a liability loss since the insured becomes liable to the credit card providers.

SECTION I – INSURING AGREEMENTS

B. Liability Insuring Agreements

1. Payment Card Industry Liability

We will pay for “payment card industry loss” that the “organization” becomes legally obligated to pay and “defense costs” as a result of a “claim” for a “wrongful act” or a series of “interrelated wrongful acts” taking place on or after the Retroactive Date, if any, and before the end of the “policy period”.

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SECTION X – DEFINITIONS

NN. “Wrongful act” means:

2. With respect to Insuring Agreement **B.3. Payment Card Industry Liability**:
Any actual or alleged noncompliance with Payment Card Industry Data Security Standards.

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SECTION X – DEFINITIONS

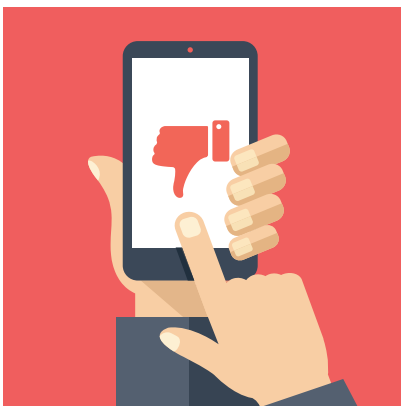
CC. “Payment card industry loss”:

1. Means any of the following:
 - a. Assessments, including card reissuance costs and fraud recoveries, and contractual fines or penalties that the “organization” is legally obligated to pay under the terms of a “payment card service agreement”, if any;
 - b. Compensatory awards or judgments, including prejudgment and post-judgment interest;
 - c. Monetary settlements; or
 - d. Punitive, exemplary and multiple damages where insurable under the applicable law which most favors coverage for such damages.
2. Shall not include:
 - a. Taxes, fines, penalties or assessments imposed by law, other than punitive, exemplary or multiple damages that are considered insurable by the applicable law which most favors coverage for such damages or assessments and contractual fines or penalties that the “organization” is legally obligated to pay under the terms of a “payment card service agreement”;
 - b. Any amounts that are uninsurable under the law pursuant to which this Policy shall be construed;
 - c. Restitution, disgorgement, royalties, unjust enrichment or any profits or advantage the “insured” was not legally entitled to; or
 - d. Interchange fees or rates, discount fees, processing fees.

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Media Liability



Media liability includes coverage provided under some cyber policies as Web Site Publishing Liability. This includes material on the insured’s website as well as any other errors arising out of the insured’s gathering, recording, collecting, writing, editing, publishing, exhibiting, broadcasting, or releasing of content. This could apply, for example, to an insured’s posts on social media sites. The key to coverage under this insuring agreement is the term “liability loss,” as well as the portion of the “wrongful acts” definition applicable to this insuring agreement.

Offenses covered by this insuring agreement and other similar agreements are broader than those found in the typical CGL policy. The use of the words “any type” in almost all the covered offenses broadens coverage.

SECTION X – DEFINITIONS

NN. “Wrongful act” means:

3. With respect to Insuring Agreement **B.4. Media Liability:**

Any actual or alleged error, misstatement or misleading statement arising out of the gathering, recording, collecting, writing, editing, publishing, exhibiting, broadcasting or releasing of “content” that results in:

- a.** Any type of defamation, disparagement or harm to the character, reputation or feelings of a person or entity, including libel, slander, product disparagement or trade libel;
- b.** Any type of negligent or intentional infliction of emotional distress, outrage or outrageous conduct;
- c.** Any actual or alleged negligent act, error or omission, misstatement or misleading statement committed by, or on behalf of, the “organization”;
- d.** Any type of invasion, infringement or interference with the right of privacy or publicity, including:
 - (1)** Eavesdropping;
 - (2)** False light;
 - (3)** Public disclosure of private facts;
 - (4)** Misappropriation of name or likeness; or
 - (5)** Trespassing or wrongful entering;
- e.** False arrest, detention or imprisonment, abuse of process or malicious prosecution;
- f.** Any type of infringement of copyright, plagiarism or misappropriation of ideas or information; or
- g.** Any type of infringement or dilution of title, slogan, trademark, trade name, trade dress, service mark or service name.

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Other Insuring Agreements

As shown above, many companies vary the names of the insuring agreements in their proprietary forms. In addition, some cyber policies offer other coverages, such as:

- **Social Engineering** – While coverage may be available under a crime policy, having the ability to provide coverage in a cyber policy might make better sense for the insured. Some forms offering this coverage might require the insured to authenticate the instruction prior to transferring money, securities, or data. With some companies, this coverage might be called Fraudulent Instruction.
- **Bricking or Computer Replacement** – Certain cyber attacks can leave an organization’s computer systems unusable, resulting in systems that are “bricked.” This coverage pays to replace systems that are permanently damaged after such an event.
- **Cryptojacking** – An insured may incur additional utility costs when a hacker uses the insured’s systems to mine for digital currency. Cryptojacking covers the additional costs.

▶▶ Knowledge Check



Directions: Read the scenario and explain your response.



Fry My Hair, Inc. (FMH), manufactures blow dryers, curling irons, and flat irons and sells them directly to the public through its e-commerce portal. FMH accepts all major credit cards, including those from outside the US, using the daily exchange rate for foreign payments. Since customers generally make repeat orders, FMH stores customer data, including credit card numbers and other personal information.

1. What exposures does FMH have for first party and liability losses if a cyber breach were to occur?

2. What insuring agreements might be important to FMH?

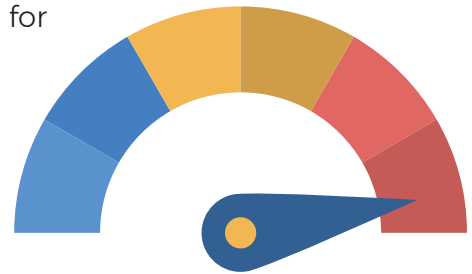
Limits of Insurance, Retention, Defense and Settlement

Learning Objective:

4.6 Explain the limits of insurance in a cyber policy as well as:

- The difference between policy aggregate and insuring agreement limits
- How retention applies in different claims scenarios
- How to apply the defense and settlement provisions

Most insureds have access to limits that should be adequate for their needs. Aggregate policy limits on cyber policies typically range from \$1 million up to \$100 million. Likewise, retentions or deductibles are available from \$500 dollars up to \$10 million. Generally, higher deductibles require a close review of financials to substantiate the insured's ability to retain higher amounts of a loss.



Policy Aggregate Limit Of Insurance

Many cyber policies include an annual aggregate limit of insurance. This is the maximum amount the policy will pay regardless of the total of the limits for each separate insuring agreement. Once this limit is reached, the policy will no longer pay for any cyber losses during the policy period. It's important to understand the insured's exposure so that the proper aggregate can be selected.

Insuring Agreement Limit Of Insurance

Each insuring agreement selected by the insured will have its own limit. This limit is the maximum amount the policy will pay for that particular insuring agreement during the policy term. Once the insuring agreement limit is reached, the insurer has no further obligation under that insuring agreement. As noted above, the total paid out on any policy may be subject to a policy aggregate.

Sublimit Of Insurance

Certain coverages provided as part of an insuring agreement may be subject to a sublimit of insurance. While the insuring agreement limit may be larger, only the sublimit will apply to a specific loss. The sublimit is not an additional amount of insurance and will typically reduce the insuring agreement limit of insurance. For example, in the ISO policy, reward payments are subject to a sublimit under the Cyber Extortion Events insuring agreement. Any payments for rewards will reduce the amount available under the insuring agreement.

Section 4: Cyber Exposures and Coverage



ACME Supply's cyber policy has a \$300,000 limit for Cyber Extortion Events. ACME gets hit with a ransomware attack, and the demand is for \$250,000. ACME wants to offer a \$50,000 reward for information leading to the arrest of the person committing the attack. ACME's policy has a sublimit for reward payments of \$25,000. As a result, ACME will have to put up the \$25,000 balance for the reward. If the reward is paid, the \$300,000 is reduced to \$275,000 because of the payment.

ACME's policy has an annual aggregate limit of \$1,000,000 for all insuring agreements. The \$25,000 reward payment would reduce the annual aggregate to \$975,000.

Retention

Each insuring agreement will typically be subject to a retention amount, which, similar to a deductible, will be subtracted from the loss. In the case of liability losses, the insured is obligated to pay the retention amount.

Typically, coverage for business income is subject to a waiting period expressed as a number of hours. However, the coverage may also be subject to a retention after the waiting period. The ISO policy applies the greater of the retention amount or the waiting period to the business income loss.

Careful attention should be paid to when and how the retention applies. In the ISO form, when a loss involves multiple insuring agreements, only the highest retention will apply. This is favorable to the insured since it only incurs one retention. Other forms may apply the retention from each insuring agreement separately.



ACME Supply has a loss and incurs expenses for forensic analysis, data restoration, and Payment Card Industry Data Security Standard (PCI DSS) costs. ACME's cyber policy includes retentions for Cyber Incident Or Information Security Breach Expense of \$2,500; Replacement Or Restoration Of Electronic Data of \$2,500; and Payment Card Industry Liability of \$5,000. Since all these insuring agreements are triggered by the same event, only the \$5,000 retention applies since it is the highest.



Defense and Settlement

Defense

In the ISO form, the insurer has the right and duty to defend any covered claim. The insurer also has the right to select defense counsel. Some cyber policies allow the insured to choose defense counsel, often subject to insurer approval. Some policies give the insurer the right but not the duty to defend the insured against claims arising from regulatory proceedings. As is always the case, if the policy does not provide coverage, the insurer has no duty to defend.

Settlement

As in many specialty policies (EPLI, D&O, etc.), the cyber insurer has the right to negotiate and settle any claim. However, the insurer will not enter into a settlement without the consent of the insured. This policy language is known as a “consent to settle clause.” This clause appears in these policies since the claim usually involves the insured’s reputation.

Some consent to settle clauses are referred to as “hammer clauses.” A hammer clause penalizes the insured for refusing to settle. If the insured refuses to accept the settlement, a strong hammer clause makes the insured responsible for all defense and settlement or judgment costs over and above what the claim could have been settled for.

Some policies contain a softer version of the hammer clause. The ISO policy makes the insured responsible for 50% of the additional defense costs and for 50% of the additional judgment or settlement. Other policies may only make the insured responsible for as little as 20% of the additional defense and settlement. These are often referred to as “soft hammer” or “velvet hammer” clauses.



As a result of the information security breach, one of ACME Supply’s customers sues after their identity is stolen. ACME sends the suit papers to its insurance company, which hires a law firm to defend ACME. The insurance company and defense attorney come to a settlement agreement with the customer in the amount of \$200,000. ACME, however, disagrees with the settlement and asserts that it did nothing wrong. ACME refuses to accept the settlement. Eventually the case goes to court, and a jury awards the customer a \$300,000 judgment. The additional attorney fees for defending ACME are \$100,000. Based on the policy wording, ACME will be responsible for paying \$100,000—50% of the excess judgment and attorney fees.



Coverage Extension

The ISO policy includes one Coverage Extension. Insureds under the policy include the organization and employees. There are times, however, when claims are made against others such as spouses, heirs, and trusts. In the case of a spouse, this might be done because the claimant seeks assets that are owned by the employee and spouse or that an employee attempts to shield by transferring them to a spouse. Those to whom coverage is extended include:

- The lawful spouse or domestic partner of an “employee” solely by reason of their status or their ownership interest in property which the claimant seeks as recovery for a wrongful act of the “employee”;
- The estate, heirs, legal representatives, or others if the “employee” is deceased, legally incompetent, insolvent, or bankrupt; or
- The trust and any legally approved trustees of the “employee.”

The policy is clear that it does not provide direct coverage for any “wrongful act” committed by any of the above. It only provides coverage for those “wrongful acts” committed directly by the “employee.”



During the discovery process in ACME’s lawsuit, the customer discovers that a spouse of one of the employees was at the business the day the cyber breach took place. The customer names the employee’s spouse in the suit as a defendant since the employee and spouse have community property. Since the spouse did nothing to cause the loss to occur, the policy will extend coverage to the spouse of the employee automatically.

▶▶ Knowledge Check



Directions: Read the following and respond to the questions below; be prepared to explain your thinking.

ACME Supply has an information security breach that results in several types of losses. ACME's cyber policy includes the following insuring agreements, limits, and retentions:

- **Cyber Incident Or Information Security Breach Expense:** limit \$300,000; retention \$2,500
- **Replacement Or Restoration Of Electronic Data:** limit \$100,000; retention \$2,500
- **Cyber Incident Or Information Security Breach Liability:** limit \$500,000; retention \$5,000
- **Payment Card Industry Liability:** limit \$500,000; retention \$5,000
- **Policy Annual Aggregate Limit:** \$1,000,000

1. After the breach, ACME incurs forensic expenses and notification costs of \$200,000. Will the policy pay?

2. ACME has to shut down its e-commerce portal for three days while data is being restored. It loses \$400,000 in income during that period. Will the policy pay?

3. ACME gets sued by customers whose identities were stolen. The claims are settled for a total of \$400,000. Will the policy pay?

4. ACME is fined \$100,000 based on the terms of the payment card service agreement. Will the policy pay?

5. How much will ACME pay in retentions for the above losses?

6. How do the above claims affect the annual aggregate?

Exclusions

Learning Objective:

4.7 Apply selected exclusions found in the Information Security Protection Cyber Policy.

Selected Exclusions

Insuring agreements are generally very broad, and coverage must be shaped by exclusions. Some exclusions will contain exceptions that give back some limited coverage under certain circumstances.

Below is a review of selected exclusions and any related exceptions.

Act Of Nature

Perils that are the result of natural phenomenon are excluded in most cyber policies. Lightning, earthquake, hail, volcanic action, and other acts of nature may be covered by a property or electronic data processing (EDP) policy. In addition, these events may be considered out of the insured's control from a liability perspective. Coverage typically applies, though, when the act of nature results in an information security breach.



Bodily Injury And Property Damage



The primary purpose of the cyber policy is to provide coverage in case of financial injury. This is different from bodily injury, where liability arises because of a physical injury to a person and is generally covered by a CGL Policy.

The same concept goes for property damage liability. The exclusion eliminates any duplication of coverage in the property damage portion of the CGL Policy.

Breach Of Contract And Assumed Liability

Generally, contractual liability is excluded as it relates to cyber policies, however, there are a few exceptions to this exclusion.

1. Liability the insured would have even if there were no contract or agreement
2. A violation of a payment card service agreement when the Payment Card Industry Liability insuring agreement is activated
3. Breach of contract: Coverage is provided for breach of any written, oral, or implied-in-fact indemnification or hold harmless agreement between an insured and a person or organization distributing "content" by or on behalf of the insured. Implied-in-fact agreements are obligations that arise because of mutual promises that have not yet been expressed in words.

Failure Or Interruption Of Services

Services such as electricity and internet are generally out of the control of the insured. This exclusion applies to both a complete failure as well as a slowdown or other bandwidth issues. It also includes cellular and satellite networks.



The local municipal electric company is working on underground electrical services. A worker accidentally cuts a major power node that supplies power to the distribution hub of the cable and internet provider in the community. It takes the power company five hours to repair the damage and restore power to the distribution hub. As a result, some local businesses lost income while the internet was down.



Since the utility service is outside the control of the insured, the cyber policy will not pay for any loss associated with this incident.

Material Published With Knowledge Of Falsity

Any oral or written publication of material that is false is excluded if the insured publishes it knowing it is false. This exclusion applies primarily to Media Liability insuring agreement claims.

Music Licensing And Royalties



It's not unusual for an insured to use music and other media on a website. Doing so is fine as long as the insured has permission and pays the appropriate royalties. Any claim brought against the insured by or on behalf of the publishing or licensing company is excluded. This exclusion applies only to the Media Liability insuring agreement.

Payment Card Industry

This exclusion applies to all insuring agreements except the Payment Card Industry Liability insuring agreement. The purpose of the exclusion is to eliminate any duplication of coverage in other insuring agreements.

Prior Knowledge, Prior Notice, and Prior Or Pending Litigation

The purpose of these three exclusions is to eliminate any coverage under the current policy for incidents, claims, or litigation that was known or pending prior to the effective date of the current policy.



War

The policy excludes coverage for the following:

SECTION VII – EXCLUSIONS

Z. War

Based upon, arising out of or attributable to:

1. War, including undeclared or civil war or civil unrest;
2. Warlike action by military force, including action hindering or defending against an actual or expected attack, by any government, sovereign or other authority using military personnel or other agents; or
3. Insurrection, rebellion, revolution, usurped power or action taken by government authority in hindering or defending against any of these.

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The ISO policy does not specify whether cyber wars brought by other governments is excluded. Without specific language to this point, it's possible for a court to rule in favor of an insured if cyber warfare were to cause a loss. It's important to read all cyber coverage forms being considered to understand how they may deal with cyber attacks by foreign governments.



Knowledge Check



Directions: Read the scenario below and explain your response.



During a thunderstorm, lightning strikes the insured's premises, causing damage to its computer systems and corrupting some data. Explain why there would or would not be cyber coverage under the insured's policy.

Conditions

Learning Objective:

4.8 Discuss the application of selected conditions found in the Information Security Protection Cyber Policy.

Selected Conditions

Cyber policies contain many of the same conditions that are seen in other coverage forms, such as:

- **Assignment** – The insured cannot modify or assign its interest under the policy without the written consent of the insurer.
- **Bankruptcy** – If the insured becomes bankrupt or insolvent, the insurer’s obligations remain.
- **Cancellation and nonrenewal** – Most policies contain provisions relating to the cancellation or nonrenewal of the policy. In some states, endorsements may need to be added to modify the policy to conform with cancellation statutes.
- **Changes** – The policy can be changed; however, it must be done by endorsement.
- **Examination of books and records** – The insurer can examine and audit the books and records up to three years after policy expiration.
- **Subrogation** – The insured has no rights to waive subrogation in this policy.



Changes In Exposure

When the insured acquires or creates another entity, it must notify the insurer within 60 days of the acquisition or creation. It must also pay any additional premium required if the insurer agrees in writing to add the entity as a subsidiary.

Once the above actions are completed, the acquired or created entity will be covered for any events covered by the policy that occur after the effective date of the acquisition or creation of the subsidiary.

Merger Or Acquisition Of Named Insured



If the named insured merges into or consolidates with another entity and either of the following occurs: the named insured is not the surviving entity; or more than 50% of the outstanding securities or voting rights are owned or controlled by the other entity, then coverage will continue as follows:

- **All first party insuring agreements** – Coverage will continue under this policy until the end of the policy period but only for events which occurred prior to the effective date of the merger, consolidation, or acquisition.

Section 4: Cyber Exposures and Coverage

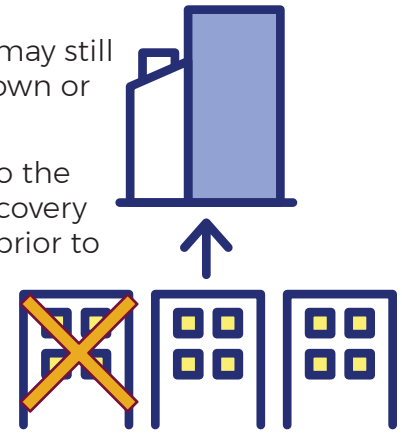
- **Liability insuring agreements** - Coverage will continue under this policy until the end of the policy period or the expiration of a Run-Off Coverage Period shown in the Declarations, if purchased. This coverage applies to “claims” for “wrongful acts” that occurred on or after the retroactive date and prior to the date of the merger, consolidation, or acquisition.

Under this condition, the annual premium for the policy period is deemed fully earned immediately upon the occurrence of the merger, consolidation, or acquisition. Written notice of the merger, consolidation, or acquisition must be given to the insurer within 60 days.

Cessation Of Subsidiaries

There are times when parent companies close or sell subsidiary companies. When the insured is covered by a cyber policy, there may still be exposure from the subsidiary that exists even after the shut-down or sale. This condition deals with these subsidiary issues as follows:

- **First party insuring agreements** - Coverage will continue to the end of the policy period or, if applicable, the Extended Discovery Period. Coverage will only apply for losses which occurred prior to the date the entity ceased to qualify as a “subsidiary.”
- **Liability insuring agreements** - Coverage will continue to the end of the policy period or the expiration of a Run-Off Coverage Period, if purchased. The date of the Run-Off Coverage Period is listed in the Declarations. Coverage will only apply to “claims” for “wrongful acts” which occurred on or after the retroactive date and prior to the date the entity ceased to qualify as a “subsidiary.”



Confidentiality

Insureds must make every reasonable effort not to divulge the existence of Cyber Extortion Events coverage. The purpose of this condition, which is also commonly found in Kidnap and Ransom policies, is to keep the insured from divulging to a cyber extortionist the existence of insurance coverage for the event.

Other Insurance

Coverage under the cyber policy is excess over any other valid and collectible insurance, unless the other insurance is expressly written to be excess over this policy. That could be the case if multiple cyber policies are layered to reach the limit of insurance required by the insured.

Reporting, Notice, And Duties In The Event Of A Cyber Incident, Cyber Extortion Event, Information Security Breach Or Interruption

These reporting conditions apply only to first party insuring agreements:

SECTION VIII – CONDITIONS

K. Reporting, Notice And Duties In The Event Of A Cyber Incident, Cyber Extortion Event, Information Security Breach Or Interruption

The provisions contained within this section apply only to First Party Insuring Agreements:

1. The “insured” must give us written notice of any “cyber incident”, “cyber extortion event”, “information security breach” or “interruption” that is “discovered” within the “policy period” as soon as practicable, but in no event later than 60 days after the end of the “policy period”. If an Extended Discovery Period applies, the “insured” must provide us written notice of any “cyber incident”, “cyber extortion event”, “information security breach” or “interruption” that is “discovered” within the Extended Discovery Period as soon as practicable, but in no event later than 60 days after the end of the Extended Discovery Period. The “insured” must also cooperate with us in the investigation and settlement of the “loss”.
2. Additionally, under Insuring Agreement A.2. Cyber Extortion Events and Insuring Agreement A.3. Replacement Or Restoration Of Electronic Data, the “insured” must:
 - a. Notify local law enforcement officials;
 - b. Submit to examination under oath at our request and give us a signed statement of the “insured’s” answers; and
 - c. Give us a detailed, sworn proof of loss within 120 days.
 - d. In addition, under Insuring Agreement A.2. Cyber Extortion Events, the “insured” must:
 - (1) Determine that the “cyber extortion event” has actually occurred;
 - (2) Make every reasonable effort to access the “organization’s” “electronic data” from backup, if any, and to remediate the cause of the ransomware;
 - (3) Make every reasonable effort to immediately notify us before making any ransom payment based upon the “cyber extortion event”; and
 - (4) Approve any ransom payment based upon the “cyber extortion event”.

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Reporting, Notice, And Duties In The Event Of A Claim Or A Wrongful Act That May Result In A Claim

The ISO cyber policy contains a separate reporting condition for liability insuring agreements:

SECTION VIII – CONDITIONS

L. Reporting, Notice And Duties In The Event Of A Claim Or A Wrongful Act That May Result In A Claim

The provisions contained within this section apply only to Liability Insuring Agreements:

1. The “insured” must give us written notice of any “claim” made against any “insured” within the “policy period” as soon as practicable, but in no event later than 60 days after the end of the “policy period”. If an Extended Reporting Period applies, the “insured” must provide us written notice of any “claim” made against any “insured” within the applicable Extended Reporting Period as soon as practicable, but in no event later than 60 days after the end of the applicable Extended Reporting Period.
2. If any “insured” receives a “claim”, the “insured” must also:
 - a. Cooperate with us in the investigation and settlement of the “claim”;
 - b. Immediately record the specifics of the “claim” and the date received;
 - c. Immediately send us copies of any demands, notices, summonses or legal papers received in connection with the “claim”;
 - d. Authorize us to obtain records and other information; and
 - e. Assist us, upon our request, in the enforcement of any right against any person or entity which may be liable to an “insured” because of a “wrongful act” to which this Policy may also apply.
3. If during the “policy period” any “insured” becomes aware of any circumstances potentially involving a “wrongful act” that could reasonably be expected to give rise to a “claim”, the “insured” must provide us with written notice of the circumstances as soon as practicable, but in no event later than 60 days after the end of the “policy period”. If any “insured” becomes aware of any circumstances during any applicable Extended Reporting Period, the “insured” must provide us with written notice of the circumstances as soon as practicable, but in no event later than 60 days after the end of the applicable Extended Reporting Period.

Such notice of any circumstances potentially involving a “wrongful act” must provide:

- a. A description, including all relevant dates;
- b. The names of the persons involved, including names of the potential claimants;
- c. Particulars as to the reasons for anticipating a “claim” which may result;
- d. The nature of the alleged or potential damages; and
- e. The circumstances by which the “insured” first became aware of the potential “wrongful act”.

If a “claim” develops from the same circumstances or from any “interrelated wrongful act”, then we will treat that “claim” as if it had first been made against an “insured” on the date the “insured” notified us of it as a potential “claim”. We will do so even if that “claim” is first made against an “insured” after the “policy period” or applicable Extended Reporting Period has ended.

4. No “insured” will, except at that “insured’s” own cost, voluntarily make a payment, assume any obligation or incur any expense without our consent.

Representations And Severability Of The Application

With many cyber policies, the application may become part of the policy. With all cyber policies, as with other policies, the application is a representation of the true facts. The insurer is relying on the information in the application for the insurability and pricing decisions it needs to make. As a result, this condition makes it clear that the insured is agreeing that the statements made in the Declarations and on the application are accurate and complete.

Under the severability clause, the insurer considers the application to be separate for each employee. Knowledge of one employee is not imputed to any other employee. Since the application is a representation of the truth, any misstatements are considered as misrepresentations. If this occurs, the insurer may void coverage for any employee who knew of the misrepresentations.

Coverage may also be void for the organization if any past or present chief financial officer, chief executive officer, in-house general counsel, managing partner, or those holding equivalent positions knew of the misrepresentations; this applies even if the individual was not aware that the application contained the misrepresentations.

Territory

The coverage territory in the ISO cyber policy is anywhere in the world. However, the suits must be brought in the United States, its territories and possessions, Puerto Rico, or Canada. Coverage in other cyber policies may be:

- Anywhere in the world regardless of where the suit is brought
- Anywhere in the world with the exception of any country or territory where the United States has imposed economic sanctions or embargoes
- Anywhere in the world with exceptions of specific countries
- Anywhere in the universe



Valuation



Premiums, limits of insurance, retentions, “loss,” and any other monetary amounts are expressed and payable in US currency. Any settlements, judgments, or other components of “loss” that are expressed in another currency will be made in US currency at the exchange rate published in the *Wall Street Journal* on the date the judgment is rendered or settlement amount is agreed upon.

Valuation for Business Income And Extra Expense:

SECTION VIII – CONDITIONS

P. Valuation

2. Business Income And Extra Expense

With respect to Insuring Agreement **A.4. Business Income And Extra Expense**:

- a. The amount of “business income loss” will be determined based on consideration of:
- (1) The net income generated from the “organization’s” business activities before the “interruption” occurred;
 - (2) The likely net income generated by the “organization’s” business activities if no “interruption” had occurred, but not including any net income that would likely have been earned as a result of an increase in the volume of business due to favorable business conditions caused by the impact of the “cyber incident” on customers or on other businesses;
 - (3) The operating expenses, including payroll, necessary to resume the “organization’s” business activities with the same quality of service that existed just before the “interruption”; and
 - (4) Other relevant sources of information, including the “organization’s” financial records and accounting procedures, bills, invoices and other vouchers, and debts, liens and contracts.

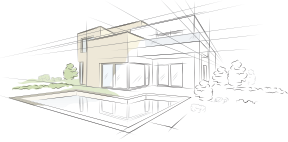
However, the amount of “business income loss” will be reduced to the extent that the reduction in the volume of business from the affected business activities is offset by an increase in the volume of business from other channels of commerce such as via telephone, mail or other sources.

- b. The amount of “extra expenses” will be determined based on:
- (1) Necessary expenses that exceed the normal operating expenses that would have been incurred in the course of the “organization’s” business activities during the “period of restoration” if no “interruption” 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 the “organization’s” business activities are resumed; and
 - (b) Any “extra expenses” that are paid for by other insurance.
 - (2) Necessary expenses that reduce the “business income loss” that otherwise would have been incurred during the “period of restoration”.
- c. We will reduce the amount of the “organization’s”:
- (1) “Business income loss”, other than “extra expense”, to the extent the “organization” can resume business activities, in whole or in part, by using “computer systems” not compromised by the “cyber incident”.
 - (2) “Extra expense” loss to the extent the “organization” can return business activities to normal and discontinue such “extra expense”.
- d. If the “organization” does not resume business activities, or does not resume business activities as quickly as possible, we will pay based on the length of time it would have taken to resume business activities as quickly as possible.

▶▶ Knowledge Check



Directions: Read the scenario below and explain your response.



Exact Architecture and Engineering has a cyber policy in force that was purchased from your agency. In addition to their primary business, they also have a subsidiary that is a general contractor. They are thinking of either selling or shutting down the subsidiary and would like to know how their policy would treat any cyber losses that might be discovered after the sale or shutdown. Please explain how the policy will respond, and list other conditions in the policy, as well.

Extended Discovery and Reporting Periods

Learning Objective:

4.9 Summarize the Extended Discovery Period, Extended Reporting Periods, and Run-Off Coverage Period found in the Information Security Protection Cyber Policy.

Extended Discovery Period

An insured may not always realize during the policy period that a first party loss has occurred. Fortunately, the **Information Security Protection Cyber Policy (CY 00 03 11 21)** includes an extended period during which the insured can discover a loss. This Extended Discovery Period starts at the end of the policy period and lasts for 60 days; there is no additional charge for this extension. This automatic extension of the discovery period does not apply, though, if the policy cancels for non-payment of premium.

The Extended Discovery Period applies to first party losses that occurred prior to the end of the policy period and are first “discovered” during the Extended Discovery Period. Losses must be reported to the insurer in accordance with the notification provisions outlined in the conditions section of the policy. The loss must be reported as soon as practicable. If the loss is discovered during the policy period, it must be reported no later than 60 days after the end of the policy period. If the loss is discovered during the 60 day Extended Discovery Period, it must be reported no later than 60 days after the end of the Extended Discovery Period.

The Extended Discovery Period terminates immediately when coverage is replaced by this or any other insurer. This applies regardless of whether the coverage under the new policy is similar or not.

Extended Reporting Periods and Run-Off Coverage Period

The Extended Reporting Periods and Run-Off Coverage Period apply only to the liability insuring agreements.

As previously mentioned, liability coverage is provided on a claims-made and reported basis. The claim must first be made against an insured during the policy period or Extended Reporting Period. In addition, the claim must be reported to the insurer no later than 60 days after the end of the policy period or, if an Extended Reporting Period applies, no later than 60 days after the end of the Extended Reporting Period.

Extended Reporting Periods



The ISO cyber policy provides a Basic Extended Reporting Period for 60 days after policy expiration for no additional premium charge. The insured also has the right to purchase an Additional Extended Reporting Period. This period is subject to an additional premium being paid based on a percentage of the expiring premium stated in the Declarations. The Basic and Additional Extended Reporting Periods are not available if the policy cancels for non-payment of premium.

Section 4: Cyber Exposures and Coverage

These additional extended reporting periods only apply to claims that are first made and reported to the insurer as required in the conditions section of the policy. They must also arise from “wrongful acts” occurring on or after the retroactive date, but prior to the end of the policy period.

Run-Off Coverage Period

In the event of a merger, consolidation, or acquisition of the named insured or cessation of a subsidiary, the named insured has the right to purchase a Run-Off Coverage Period of up to six years.

In the event of a merger, consolidation, or acquisition of the named insured, the Run-Off Coverage Period applies to claims that are first made against an “insured” and reported during the Run-Off Coverage Period in accordance with the reporting condition of the policy. The claims must also arise from “wrongful acts” occurring on or after the retroactive date, but prior to the merger, consolidation, or acquisition.

In the event of a cessation of a subsidiary, the Run-Off Coverage Period applies to any claims that are first made against the subsidiary, or any employee of the subsidiary, and reported to the insurer during the Run-Off Coverage Period in accordance with the reporting provision of the policy. The claims must also arise from “wrongful acts” occurring on or after the retroactive date, or the date the entity became a subsidiary, and prior to the cessation of the subsidiary.

The insured has 30 days after the expiration of the policy to notify the insurer and pay for any Additional Extended Reporting Period and/or Run-Off Coverage Period. The premium for these extensions must be paid in full. If not, the coverage provided by the policy will lapse. Once either of these extensions are in place, they are noncancellable, and the premiums are fully earned at inception.

The extensions do not create separate limits of insurance, and there is no reinstatement of any aggregates that have been reduced by payment of claims during the policy period. The Additional Extended Reporting Period or Run-Off Coverage Period does not apply to claims that are covered under any subsequent insurance purchased by the named insured or any subsidiary.

▶▶ Knowledge Check



Directions: Read the scenario below and explain your response.



Your client, Siros Pharmaceuticals, decides not to renew its cyber policy. Siros asks how long it has, after the policy expires, to report claims for first party losses and wrongful acts that took place prior to expiration of the policy. What do you tell them?

Summary

In today's connected world, almost every business has exposure to losses resulting from being connected to the Internet. From simple usage, such as basic websites and email, to complex uses, such as e-commerce and full user integration, exposure to cyber losses is tremendous. Agencies have many avenues available to provide cyber protection for customers. Understanding the customer's exposure and the products available to provide protection is key to ensuring that the proper coverage is in place.

It is important to keep in mind that all companies that sell some form of cyber coverage have varying policy language. Reading and comparing policies is the only way to be sure that the coverage the customer needs is what is being provided.

In the next section, you will learn about excess liability and commercial umbrella policies and their coverages.

Resources

Important concepts related to the Learning Objectives in this chapter are summarized in separate videos and podcasts. Online participants can use the links to access these learning resources. Classroom learners can access the videos at scic.com/CMLresources.



“Speaking From Experience”—Common Cyber Threats, with Paul Burkett, J.D., CIC, CRM, CPCU, ARM, ALCM

Section 4 Self-Quiz

Directions: Match the term with the correct definition.

A. Content	_____ A place to gather the information necessary for the underwriters to decide on the exposure and insurability of the applicant
B. Claim	_____ A written demand against an insured for monetary or nonmonetary damages
C. Discover or Discovered	_____ Provides important information to the insured before the first section of the policy
D. Electronic Data	_____ Any type of communicative or informational material, regardless of its nature or form, including material disseminated electronically such as via a website or electronic mail
E. Suit	_____ Unauthorized access to or use of the organization's computer system
F. Preamble	_____ When any insured becomes aware of facts that would cause a reasonable person to assume a cyber incident or extension event has occurred
G. Employee	_____ All the information, images, or sounds stored by the insured
H. Cyber Incident	_____ Applies to awards or judgments that compensate the claimant, usually in the form of money, and includes interest on those judgments, including pre- and post-judgment interest
I. Application	_____ A civil proceeding in which damages are claimed against the insured and are covered by the policy
J. Liability Loss	_____ Includes full- or part-time workers, seasonal or temporary workers, leased workers, interns, and volunteers

Section 4: Cyber Exposures and Coverage

Directions: Read the statements below and for each one, determine whether it is true or false.

1. A company collecting the demographic information of their employees is an example of a regulatory exposure.

True

False

2. When a business's Instagram page becomes hacked, this is an example of websites and social media exposure.

True

False

3. The ISO Commercial Crime Policy can provide some cyber crime coverage under selected insuring agreements and endorsements.

True

False

4. The insuring agreement section of a cyber policy includes key information and risk characteristics of the insured.

True

False

5. When confidential files are breached, cyber regulations require that affected parties be informed. This is an example of website vandalism first party loss.

True

False

6. When data is lost, stolen, or damaged in a cyber incident, it must be restored or replaced.

True

False

7. A third party liability that involves copyright violation has to do with liability pertaining to regulatory issues.

True

False

8. Under some cyber policies, media liability coverage is called website publishing liability.

True

False

9. The maximum amount the policy will pay regardless of the total of the limits for each separate insuring agreement is known as the policy aggregate limit of insurance.

True

False

Section 4: Cyber Exposures and Coverage

10. Once the insuring agreement limit is reached, the insurer has no further obligation under that insuring agreement.

True

False

Directions: Read the following multiple-choice questions and select the correct response for each one.

11. Each insuring agreement will typically be subject to a _____ amount, which will be subtracted from the loss.
- sublimit
 - retention
 - defense
 - settlement
12. The insurer will need the consent of the insured before entering into a _____.
- settlement
 - defense
 - claim
 - coverage extension
13. Contractual liability is typically excluded as it relates to cyber policies, however, there are some exceptions. Identify the exception to this exclusion from the list below.
- A lease agreement for computer hardware
 - A lease agreement for computer software
 - A contract with a cloud computing company
 - Liability the insured would have even if there were no contract or agreement
14. If the named insured consolidates with another entity, and the named insured is NOT the surviving entity, this would be an example of:
- Confidentiality
 - Cessation of Subsidiaries
 - Merger Or Acquisition Of Named Insured
 - Bankruptcy

Section 4: Cyber Exposures and Coverage

15. In the event of a merger, consolidation, or acquisition of the named insured or cessation of a subsidiary, the named insured has the right to purchase a Run-Off Coverage Period of up to how many years?
- Four years
 - Six years
 - Ten years
 - Two years

Section 5: Commercial Excess/Umbrella Coverages

Section Goal

In this section, you will be able to analyze excess liability and commercial umbrella policies to determine whether a policy provides coverage and, if so, how the policy will respond to losses that occur.

Learning Objectives:

- 5.1 *Identify and explain the purposes of excess liability and commercial umbrella policies.*
- 5.2 *Explain the term self-insured retention (SIR) and when it applies.*
- 5.3 *Explain the issues caused by nonconcurrent policy dates along with potential solutions to these issues.*
- 5.4 *Examine underlying insurance requirements and explain the issues that may arise due to noncompliance.*
- 5.5 *Define the following insuring agreements:*
 - *Dual insuring agreements*
 - *Singular insuring agreement*
 - *Pay on behalf*
 - *Indemnify*
- 5.6 *Explain key coverage considerations as described in a commercial excess liability policy.*
- 5.7 *Analyze coverage using knowledge of exclusions and exceptions to exclusions found in excess liability policies.*

Introduction

The Need for Excess Liability Coverage

A study conducted by the U.S. Small Business Administration (SBA) showed that up to 53% of small businesses deal with lawsuits annually. Another study found that 43% of small businesses faced the threat of being sued. As you can imagine, when lawsuits happen, they can be costly.¹ In 2022, the U.S. Chamber of Commerce Institute for Legal Reform published a paper analyzing nuclear verdicts in personal injury and wrongful death cases over a ten-year period between 2010 and 2019.² Nuclear verdicts are those that exceed \$10 million. Approximately half of these verdicts were between \$10 million and \$20 million, and about one-third were between \$20 million and \$50 million. The remaining 16% of nuclear verdicts exceeded \$50 million; this was a group that included 101 “mega” nuclear verdicts that exceeded \$100 million.

There is no doubt that both the number of lawsuits and award sizes have increased, and a business could be at risk if it is sued and found liable. The limits in policies such as commercial general liability (CGL), business auto liability, and employers liability may not be adequate. Even small businesses can benefit from the protection an excess liability policy provides.

¹ High Swartz LLP, “Small Business Legal Issues,” JD Supra, accessed November 3, 2022, <https://www.jdsupra.com/legalnews/small-business-legal-issues-8031240/>.

² “Nuclear Verdicts Trends, Causes, and Solutions” (U.S. Institute of Commerce Institute for Legal Reform, September 2022), <https://instituteforlegalreform.com/>.

Purposes of Excess Liability Policies

Learning Objective:

5.1 Identify and explain the purposes of excess liability and commercial umbrella policies.

Depending on the type of coverage form, an excess liability policy serves two or three purposes.

The *first* purpose is to provide additional limits that are excess over those provided in the underlying policies of insurance.



The insured causes an auto accident that results in a settlement of \$1,800,000. If the limit of insurance in the business auto policy is \$1,000,000, the insured would not have enough coverage to pay the settlement. An excess liability policy may provide coverage above the underlying limit.



\$2 Million Excess	Pays \$800,000 excess of the BAP
\$1 Million Underlying	BAP pays \$1 million

The *second* purpose is to respond to losses when the aggregate limit of an underlying policy is reduced or exhausted. Both CGL and employers liability policies, for example, contain aggregate limits. Once the aggregate limit of the underlying policy has been paid, the excess liability policy takes the place of the underlying policy. If the underlying aggregate is reduced but insufficient to pay the claim in full, the excess liability policy applies in excess of the remaining underlying limit. If the underlying aggregate is exhausted before a loss occurs, the excess liability policy becomes the primary policy to respond to the claim.

Section 5: Commercial Excess/Umbrella Coverages

Two examples of this second purpose are:



The insured has a CGL policy with limits of \$1,000,000 each occurrence and \$2,000,000 general aggregate. The insured had two premises liability claims in the amount of \$1,000,000 each. As a result, the CGL's general aggregate is exhausted. The insured then has a third premises liability claim during the policy period in the amount of \$300,000. Assuming this is a covered claim, the excess liability policy will "drop down" to provide primary coverage for the \$300,000 loss.

\$2 Million Excess	↓ Drops down and provides primary coverage over exhausted aggregate limit ↓ Excess liability pays \$300,000
\$2 Million Underlying Aggregate	CGL aggregate limit exhausted



The insured has a CGL policy with limits of \$1,000,000 each occurrence and \$2,000,000 general aggregate. The insured had two premises liability claims totaling \$1,800,000. As a result, there is only \$200,000 remaining in the CGL's general aggregate. The insured then has a third premises liability claim during the policy period in the amount of \$300,000. Assuming this is a covered claim, the CGL pays its remaining \$200,000 limit, and the excess liability policy pays the additional \$100,000.

\$2 Million Excess	Drops down and provides primary coverage over exhausted aggregate limit Excess liability pays \$100,000
\$2 Million Underlying Aggregate	CGL pays its remaining \$200,000 aggregate limit

The *third* purpose applies only if the excess liability policy is a commercial umbrella policy. In addition to providing additional limits for a catastrophic claim and dropping down when underlying aggregates are reduced or exhausted, a commercial umbrella policy may provide broader coverage in some areas than the underlying policies. When that happens, the commercial umbrella policy will drop down to be primary, subject to the self-insured retention (SIR). The SIR is paid by the insured.

Section 5: Commercial Excess/Umbrella Coverages



The insured drives a company-owned auto into Mexico for business. While in Mexico, the insured's driver causes an accident. Since the coverage territory in the business auto policy does not include Mexico, that policy does not provide coverage. A commercial umbrella policy may have a broader coverage territory. When the commercial umbrella provides broader coverage than the underlying policies, the commercial umbrella policy will drop down to be primary for the loss, subject to the policy's SIR.

\$2 Million	Provides broader coverage			
\$1 Million	CGL	Business Auto	Employers Liability	Drops down
				SIR*

Check-In



Directions: Read the questions and choose the correct response(s).

- Which of the following are purposes of an excess liability policy that is not a commercial umbrella? (Please choose one or more correct responses.)
 - To provide additional limits that are excess over those provided in the underlying policies of insurance
 - To drop down when the aggregate limit of an underlying policy is reduced or exhausted
 - To provide primary coverage, subject to the SIR, when the excess liability policy provides broader coverage than the underlying policies
- Which of the following are purposes of a commercial umbrella policy? (Please choose one or more correct responses.)
 - To provide additional limits that are excess over those provided in the underlying policies of insurance
 - To drop down when the aggregate limit of an underlying policy is reduced or exhausted
 - To provide primary coverage, subject to the SIR, when the commercial umbrella provides broader coverage than the underlying policies

Distinction Between Excess Liability and Commercial Umbrella Coverage Forms

Insurance Services Office (ISO) and the American Association of Insurance Services (AAIS) file standardized forms that insurance companies can adopt and use. Even so, many insurers use their own company-specific policies. These policies differ and must be compared to understand the differences.



This course focuses on three types of excess liability policies:

1. Follow form excess liability policy
2. Stand alone excess liability policy
3. Commercial umbrella liability policy

Excess Liability Policies

Follow form excess liability policies are excess liability policies that mirror the terms and conditions of the underlying coverage form or forms. These policies are typically shorter in length since they are relying on the terms and conditions in the underlying policies. Because follow form excess liability policies adopt the language of the underlying policies, they do not provide broader coverage.

Follow form excess liability policies provide additional limits that are excess over one or more underlying policies. The underlying policies are listed on the Declarations page in a section commonly referred to as the schedule of underlying insurance. In addition, follow form excess liability policies drop down when an underlying aggregate is reduced or exhausted.

Follow Form Excess Liability—Same terms and conditions as the underlying policy(ies)

Underlying Policy(ies)



True follow form excess liability policies are uncommon. Most forms that are labeled follow form excess liability are *conditional* follow form excess liability policies. They follow the terms and conditions of underlying policies unless a term or condition in the excess liability policy differs from the underlying policies. In that case, the excess liability policy may provide less coverage.

SAMPLE POLICY LANGUAGE – “EXCESS FOLLOW-FORM”

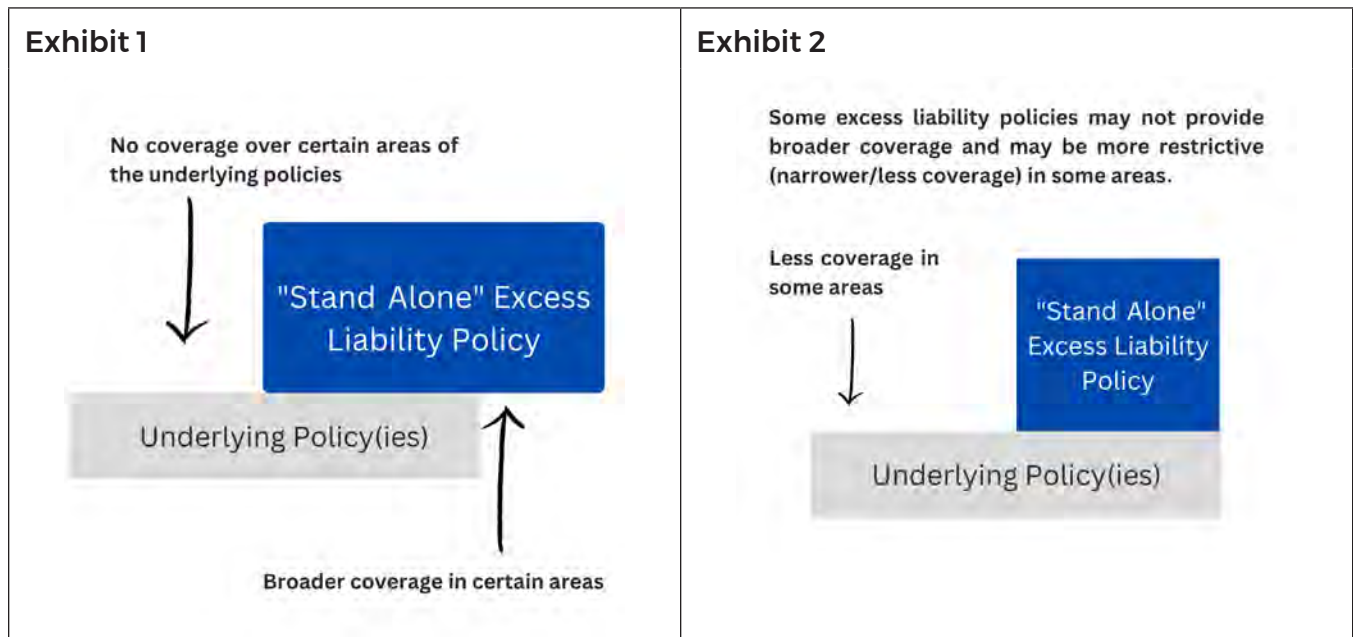
Subject to all the terms and conditions applicable to Excess Follow-Form Coverage A, we will pay, on behalf of the insured, that part of loss to which this coverage applies, which exceeds the applicable underlying limits.

This coverage will follow the terms and conditions of underlying insurance described in the Schedule of Underlying Insurance, unless a term or condition contained in this coverage differs from any term or condition contained in the applicable underlying insurance or is not contained in the applicable underlying insurance.

With respect to such exceptions described above, the terms and conditions contained in this coverage will apply to the extent that such terms and conditions provide less coverage than the terms and conditions of the applicable underlying insurance....

Stand alone excess liability policies contain their own insuring agreements and terms and conditions which are separate from those of the underlying policies. The terms and conditions may result in coverage that is similar to the underlying coverage. They may also result in broader coverage, narrower coverage, or coverage that is broader in some areas and narrower in others.

Like other types of excess liability policies, stand alone excess liability policies provide additional protection over the limits in one or more underlying policies. In addition, stand alone excess liability policies drop down when an underlying aggregate is reduced or exhausted. Unlike commercial umbrella policies, however, stand alone excess liability policies will not drop down to provide primary coverage if the excess liability coverage is broader than the underlying coverage.



Commercial Umbrella Policies

A **commercial umbrella liability policy** is a third type of excess liability policy. Commercial umbrellas have their own insuring agreements, as well as terms and conditions that will vary from those in the underlying policies. Like other types of excess liability coverage, commercial umbrellas provide additional limits of insurance over and above the underlying limits.

The commercial umbrella shares the drop down feature of other excess liability policies. It will drop down when an underlying aggregate is reduced or exhausted.

Commercial umbrellas have a second drop down feature that distinguishes them from other types of excess liability coverage. This unique feature is what makes this policy an umbrella. Unlike the stand alone excess liability policy, when a commercial umbrella has coverage that is broader than the underlying policies, it will drop down to become primary for those covered losses. When this happens, coverage is subject to a self-insured retention (SIR), which will be discussed shortly.




Section 5: Commercial Excess/Umbrella Coverages

Areas where coverage may be broader vary among policy forms, but some examples are:

1. **Non-owned watercraft:** Coverage in the commercial umbrella may be expanded to include vessels less than 50 or 55 feet.



2.  **Coverage territory:** The commercial umbrella may provide coverage worldwide or anywhere in the universe.

3. **Expected or intended injury exclusion:** The reasonable force exception may be expanded to apply to property damage losses and/or may apply to auto losses.



4.  **Definition of bodily injury:** Some commercial umbrellas include mental anguish and mental injury.

5. **Non-owned aircraft:** Coverage may be expanded to include non-owned aircraft chartered with a crew.



▶▶ Knowledge Check



Directions: Read the following and write your response.

Your insured is trying to understand the difference between a commercial umbrella liability policy and other types of commercial excess liability policies. How would you explain the difference between the two?

Please review the Commercial Liability Umbrella Declarations on the next few pages.

POLICY NUMBER:

COMMERCIAL LIABILITY UMBRELLA
CU DS 01 12 20

COMMERCIAL LIABILITY UMBRELLA DECLARATIONS

Company Name:	
Producer Name:	
Named Insured(s):	
Mailing Address:	
Policy Period	
From:	
To:	At 12:01 AM (Standard Time at your mailing address shown above)

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

Limits Of Insurance	
Each Occurrence Limit (Liability Coverage)	\$
Personal And Advertising Injury Limit	\$ Any One Person Or Organization
Aggregate Limit (Liability Coverage) (except with respect to "covered autos")	\$
Other:	\$

Description Of Business	
Form Of Business:	
<input type="checkbox"/> Individual	<input type="checkbox"/> Partnership <input type="checkbox"/> Joint Venture
<input type="checkbox"/> Limited Liability Company	<input type="checkbox"/> Organization, Including A Corporation (But Not Including A Partnership, Joint Venture Or Limited Liability Company)
Business Description:	

Section 5: Commercial Excess/Umbrella Coverages

Retained Limit		
1. Self-insured Retention	\$	
2. Schedule Of Underlying Insurance		
Employers Liability		
Company:		
Policy Number:		
Policy Period:		
Minimum Applicable Limits		
Bodily Injury By Accident	\$	Each Accident
Bodily Injury By Disease	\$	Each Employee
Bodily Injury By Disease	\$	Policy Limit
	or	Each
	\$	Accident/Occurrence
Commercial General Liability <input type="checkbox"/> Occurrence <input type="checkbox"/> Claims-made		
Company:		
Policy Number:		
Policy Period:		
Minimum Applicable Limits		
General Aggregate	\$	
Products-Completed Operations Aggregate	\$	
Personal And Advertising Injury	\$	
Each Occurrence	\$	
Commercial Auto Liability (Other Than Auto Dealers Liability)		
Company:		
Policy Number:		
Policy Period:		
Minimum Applicable Limits		
Each Accident	\$	
Auto Dealers Liability		
Company:		
Policy Number:		
Policy Period:		
Minimum Applicable Limits		
Covered Autos Liability	\$	Each Accident
General Liability Bodily Injury And Property Damage Liability	\$	Each Accident
Personal And Advertising Injury	\$	Any One Person Or Organization
General Liability Aggregate	\$	
Products And Work You Performed Aggregate	\$	

Key Features of the Declarations

Learning Objective:

5.2 Explain the term self-insured retention (SIR) and when it applies.

The Declarations page of the excess liability policy provides essential information needed to properly interpret the policy contract. Like all Declarations, information regarding the named insured, effective and expiration dates, limits of insurance, and forms and endorsements will be shown.

In addition, the Declarations will include a schedule of underlying insurance. That schedule includes the name of the insurance company writing the underlying coverage, the policy effective and expiration dates, the policy number, and the limits of insurance on that underlying policy. The schedule of underlying insurance determines, in part, when and how much the excess liability policy will pay. The Declarations for a commercial umbrella includes one other important piece of information—the self-insured retention (SIR).



Self-insured Retention (SIR)



The SIR is listed as a dollar amount on the Declarations of a commercial umbrella policy. This is the amount the named insured is responsible for when the commercial umbrella provides coverage that is broader than the underlying policies.

It is common for the SIR to be confused with a deductible, but there are differences. One difference is that a deductible usually applies to each loss that occurs under a policy. In the policy language below, it is clear that the only time the SIR applies is when the commercial umbrella drops down to be primary because its coverage is broader than that of the underlying policies. The SIR does not apply to any other type of loss.

COMMERCIAL LIABILITY UMBRELLA COVERAGE FORM

SECTION V – DEFINITIONS

20. “Self-insured retention” means the dollar amount listed in the Declarations that will be paid by the insured before this insurance becomes applicable only with respect to “occurrences” or offenses not covered by the “underlying insurance”. The “self-insured retention” does not apply to “occurrences” or offenses which would have been covered by “underlying insurance” but for the exhaustion of applicable limits.

CU 00 01 04 13

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Section 5: Commercial Excess/Umbrella Coverages



The named insured has a \$1,500,000 loss. The underlying policy has the required \$1,000,000 limit and covers the claim. The SIR does not apply when the commercial umbrella pays the \$500,000 excess.



The named insured has a \$1,000,000 premises liability loss under its CGL policy. There have been other claims, and the CGL's general aggregate has been reduced to \$500,000. Once the CGL pays \$500,000, the commercial umbrella responds. The SIR does not apply when the commercial umbrella drops down to replace the now-exhausted aggregate limit.



The named insured has a \$500,000 premises liability loss under its CGL. There have been other claims, and the general aggregate is exhausted. The SIR does not apply when the commercial umbrella drops down to be primary in this situation.



The named insured manufactures products in the US to be sold in other countries. A lawsuit is filed against the insured in France for a loss there caused by a defective product. The coverage territory in the CGL does not include other countries unless the suit is filed in the US, its territories and possessions, Puerto Rico, or Canada. The commercial umbrella, however, has true worldwide coverage. Since the umbrella provides broader coverage in this instance, it will drop down to provide primary coverage over the SIR, which applies in this situation.

Another difference between a deductible and an SIR is that the policy limit typically applies in excess of the SIR, which could be an important factor on a policy with a large SIR. Deductibles are typically included within the limit of liability.

The SIR amount will vary among policies and is often \$10,000 or even zero. Many insurers require a minimum SIR. In addition, some insureds may want to carry higher SIRs to lower premiums or to participate in a greater share of the risk. Lastly, SIRs can be written to apply on either a per occurrence/offense basis or on a policy period basis.



Because excess liability policies that are not umbrellas do not drop down to provide primary coverage when the excess liability policy is broader than the underlying policies, these coverage forms do not include SIRs. Only a commercial umbrella will include an SIR.

▶▶ Knowledge Check



Directions: Indicate whether the SIR applies in the following situations and explain why or why not.

1. A security firm signs a contract agreeing to indemnify a customer for false imprisonment and wrongful detention losses. The underlying CGL includes contractual liability coverage, but only for bodily injury and property damage claims. The commercial umbrella's contractual liability coverage is broader and applies to these types of personal injury offenses. Does the SIR apply?

Yes

No

2. The insured's driver causes a multi-vehicle collision. Several people are injured, and there is extensive property damage. The underlying business auto policy responds, but its per-accident limit is too low to pay the claims in full. The commercial umbrella responds. Does the SIR apply?

Yes

No

3. The insured has had a bad year, and by the time the fourth premises liability claim is made, there is only \$200,000 left in the CGL's general aggregate. The fourth claim is settled for \$500,000, and the commercial umbrella responds once the CGL pays the rest of its \$200,000 aggregate. Does the SIR apply?

Yes

No

Concurrency

Learning Objective:

5.3 Explain the issues caused by nonconcurrent policy dates along with potential solutions to these issues.

Policy Period

As noted above, the Declarations will show the effective and expiration dates of the excess liability policy. The policy periods of the underlying policies with aggregates should be the same as that of the excess liability policy. Under certain circumstances, problems can arise if the dates are not concurrent.



The Need for Concurrency

Concurrent Dates

When policies have the same effective and expiration dates, they are said to be concurrent. If those dates are not the same, the policies are nonconcurrent. There are reasons policies may be nonconcurrent.

- An underlying policy may have been cancelled and rewritten midterm.
- The excess liability policy was written after the underlying policies were already in force.

As previously stated, the schedule of underlying insurance is part of the Declarations page of the excess liability policy. Language in most excess liability policies requires the limits of those underlying policies (sometimes referred to as the retained limits) to be unimpaired as of the effective date of the excess liability policy. In other words, the underlying aggregate limits should not have been reduced or exhausted by losses prior to the effective date of the excess liability policy.



What Is an Unimpaired Aggregate?

Most excess liability policies require that the full limits of policies on the schedule of underlying insurance be available at the inception of the excess liability policy. It is important to note that aggregate limits are impaired by payment of claims. Reserves do not impair policy aggregate limits. If the schedule of underlying insurance includes a CGL with a \$1,000,000 each occurrence limit and a \$2,000,000 general aggregate, a \$500,000 reserve on a premises liability claim does not impair the aggregate. Once \$500,000 has been paid on that claim, the aggregate becomes impaired.

COMMERCIAL LIABILITY UMBRELLA COVERAGE FORM

SECTION III – LIMITS OF INSURANCE

5. If there is “underlying insurance” with a policy period that is nonconcurrent with the policy period of this Commercial Liability Umbrella Coverage Part, the “retained limit(s)” will only be reduced or exhausted by payments for:
- a. “Bodily injury” or “property damage” which occurs during the policy period of this Coverage Part; or
 - b. “Personal and advertising injury” for offenses that are committed during the policy period of this Coverage Part.

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As shown in the example below, having nonconcurrent dates may create a potential gap in coverage.



Joe Contractor has a CGL Policy with a \$1,000,000 each occurrence limit and a \$2,000,000 general aggregate. Coverage is effective 1/1/2021 to 1/1/2022. In June 2021, Joe is awarded a contract that requires a \$3,000,000 Umbrella. Believing there have been no losses under the 1/1/2021-2022 CGL, Joe’s agent writes a commercial umbrella effective 6/1/2021 to 1/1/2022 and adds the CGL to the schedule of underlying insurance.

In September 2021, Joe is sued because of an accident on his premises that happened in February 2021. That claim is settled for \$500,000.

In October 2021, Joe is notified of an injury to a subcontractor that happened in May 2021. He notifies his insurer, and the claim is settled for \$600,000.

In November 2021, a crane collapses at a jobsite. Several injuries occur, and a \$2,000,000 claim results.

If the first two claims had not happened, the crane collapse claim would have been paid as follows:

\$1,000,000 CGL + \$1,000,000 Umbrella

Because of the two prior losses, however, there is only \$900,000 left in the CGL’s general aggregate limit. The commercial umbrella responds as though the aggregate were unimpaired. For that reason, the claim will be paid as follows:

\$900,000 CGL + \$100,000 paid by the insured + \$1,000,000 Umbrella



Section 5: Commercial Excess/Umbrella Coverages

CGL Policy		Commercial Umbrella	Both
Eff. January		Eff. June	Expire
February loss	May loss	As of umbrella inception, only \$900,000 is left in the general aggregate.	
\$500,000	\$600,000		

Although some insurers may be willing to reinstate an aggregate limit following a loss, in most cases, there are only two ways to effectively solve nonconcurrency issues:

1. Underlying policies can be cancelled and rewritten so all policies have concurrent dates.
2. Some insurers have nonconcurrency language in their forms or can add nonconcurrency endorsements. This language is added to the excess liability policy to remove any concurrency requirement in the policy. With this nonconcurrency language, the excess liability policy can be written short-term to expire with the underlying policies, and concurrency will exist at renewal.

SAMPLE NONCONCURRENCY LANGUAGE

When Excess Follow-Form Coverage A Applies (Drop Down)

Subject to all of the terms and conditions of this insurance, with respect to Excess Follow-Form Coverage A, if the applicable underlying limits are:

Reduced by payment of judgments, settlements or related costs or expenses (if such costs or expenses reduce such limits), Excess Follow-Form Coverage A will drop down to apply in excess of the remaining amount of the applicable underlying limits; or

Exhausted by payment of judgments, settlements or related costs or expenses (if such costs or expenses reduce such limits), Excess Follow-Form Coverage A will apply in the same manner as the applicable underlying insurance would have applied but for such exhaustion.

▶▶ Knowledge Check



Directions: Respond to the scenario and explain your reasoning.



An insured with a CGL calls several months into the policy term and wants to add an excess liability policy to its insurance program. Explain why writing excess liability coverage with an effective date later than the CGL's effective date could be a problem, and offer a possible solution.

Underlying Insurance

Learning Objective:

5.4 *Examine underlying insurance requirements and explain the issues that may arise due to noncompliance.*

Underlying Insurance Requirements

When an insurer writes excess liability coverage, it requires underlying coverage to be in force. Commonly required underlying coverages include CGL, business auto liability, and employers liability.

If the insured has other known exposures, the insurer might require that additional policies be included on the schedule of underlying insurance, especially if the insurer will be providing coverage for those exposures. Other policies include employee benefits liability, liquor liability, aircraft liability, watercraft liability, and others.



Section 5: Commercial Excess/Umbrella Coverages

Underwriting guidelines will dictate the required underlying limits which vary among insurers. Sometimes an insurer's required underlying limits differ based on the risk being insured. A small retail store may be required to carry an each occurrence CGL limit of \$1,000,000, while a roofing contractor may be required to carry an each occurrence CGL limit of \$2,000,000. Underlying limits that are higher than those required by the insurer are taken into consideration when excess liability coverage is underwritten and priced.



Commonly Required Underlying Limits

Schedule of Underlying Insurance:		
Commercial General Liability		
	\$2,000,000	General Aggregate
	\$2,000,000	Products-Completed Operations Aggregate
	\$1,000,000	Personal and Advertising Injury
	\$1,000,000	Each Occurrence
Business Auto Liability		
	\$1,000,000	Each Accident
Employers Liability		
Bodily injury by accident	\$ 500,000	Each Accident
Bodily injury by disease	\$ 500,000	Each Employee
Bodily injury by disease	\$ 500,000	Policy Limit

Maintenance Of/Changes To Underlying Insurance

Underlying Policy Limits

Excess liability policies require that the insured maintain the underlying coverage as outlined in the schedule of underlying insurance. If an underlying policy is cancelled or non-renewed, or if the limits of underlying insurance are reduced during the term of the excess liability policy, there will be a coverage gap. The excess liability policy will respond as though the underlying limits that should be available actually are. In many policies, including the ISO **Commercial Liability Umbrella Coverage Form (CU 00 01 04 13)**, the insured is required to notify the insurer if any underlying policy is no longer in effect or if the scope of underlying coverage is changed.

There is one exception, however: An aggregate limit that is reduced or exhausted due to payment of claims during the term of the excess liability policy is not considered a failure to maintain the underlying coverage. Recall that one of the features of excess liability policies is that they drop down when an aggregate limit is reduced or exhausted.

COMMERCIAL LIABILITY UMBRELLA COVERAGE FORM

SECTION IV – CONDITIONS

13. Maintenance Of/Changes To Underlying Insurance

Any “underlying insurance” must be maintained in full effect without reduction of coverage or limits except for the reduction of the aggregate limit in accordance with the provisions of such “underlying insurance” that results from payment of claims, settlement or judgments to which this insurance applies.

Such exhaustion or reduction is not a failure to maintain “underlying insurance”. Failure to maintain “underlying insurance” will not invalidate insurance provided under this Coverage Part, but insurance provided under this Coverage Part will apply as if the “underlying insurance” were in full effect.

If there is an increase in the scope of coverage of any “underlying insurance” during the term of this policy, our liability will be no more than it would have been if there had been no such increase.

You must notify us in writing, as soon as practicable, if any “underlying insurance” is cancelled, not renewed, replaced or otherwise terminated, or if the limits or scope of coverage of any “underlying insurance” is changed.

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Amelia’s Auto Parts has a \$5,000,000 commercial umbrella that requires the following underlying coverages. All policies are effective 1/1/2022 to 1/1/2023.



- CGL: \$1,000,000 each occurrence
- \$1,000,000 personal and advertising injury
- \$2,000,000 general aggregate
- \$2,000,000 products-completed operations aggregate

Business Auto Liability: \$1,000,000 each accident

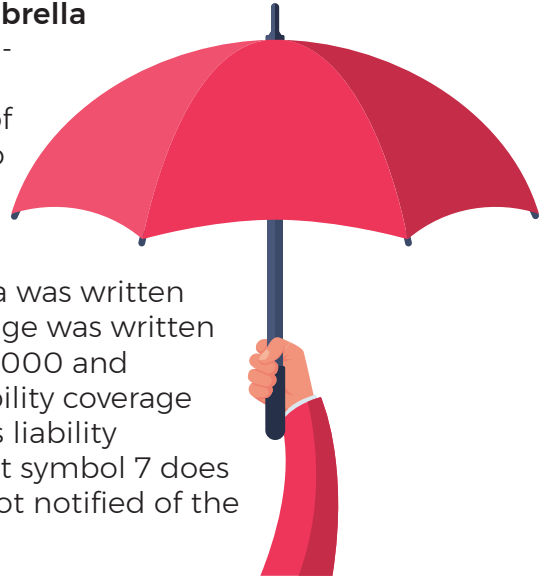
Employers Liability: \$500,000 each accident/each employee/policy limit

To save money, Amelia decided to reduce her business auto liability limit to \$500,000 effective 6/1/2022. In August 2022, Amelia’s driver caused a multi-car accident with numerous injuries. The claim is expected to settle for \$2,000,000.

Business auto pays	\$500,000
Gap between actual and required business auto liability limits	\$500,000 (Amelia must pay.)
Commercial umbrella pays	\$1,000,000

Breadth of Underlying Coverage

The above language from the **Commercial Liability Umbrella Coverage Form (CU 00 01 04 13)** includes another often-overlooked point. If there is an increase in the scope of coverage of any underlying insurance during the term of the excess liability policy, the insurer's liability will be no more than it would have been had there been no such increase.



When the \$5,000,000 commercial umbrella was written effective 1/1, the business auto liability coverage was written with the required underlying limit of \$1,000,000 and symbol 7. Effective 5/1, the business auto liability coverage was endorsed to symbol 1. Symbol 1 includes liability coverage for non-owned and hired autos, but symbol 7 does not. The commercial umbrella insurer was not notified of the change in underlying coverage.

On 10/1, there is a serious accident involving a hired auto. The claim will settle for \$1,500,000. The commercial umbrella responds as though the underlying coverage change was not made. The umbrella insurer did not expect to cover a hired auto liability exposure, so it will not do so.

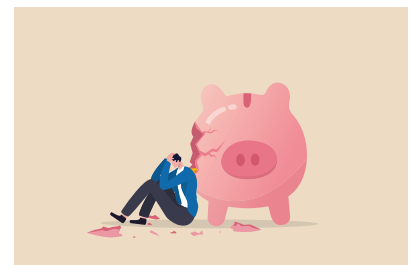
Business auto pays	\$1,000,000
Commercial umbrella pays	Nothing



If an agency is writing a client's excess liability policy but not writing all of the underlying policies, it is crucial the insured report any changes made on underlying policies to the excess liability agency. Potential gaps in coverage could result if the agency is not notified, and these gaps can create an E&O exposure for the agency. These issues should be discussed with the client before coverage is bound.

Bankruptcy or Insolvency

What happens if the insured goes bankrupt or the underlying insurer becomes insolvent? When the insured is bankrupt, the excess liability insurer is not relieved of its obligations under the policy. If an underlying insurer becomes insolvent, the excess liability policy will still pay; however, it will pay as if the underlying coverage were in full effect.



COMMERCIAL LIABILITY UMBRELLA COVERAGE FORM

SECTION IV – CONDITIONS

2. Bankruptcy

a. Bankruptcy Of Insured

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

b. Bankruptcy Of Underlying Insurer

Bankruptcy or insolvency of the "underlying insurer" will not relieve us of our obligations under this Coverage Part.

However, this insurance will not replace the "underlying insurance" in the event of bankruptcy or insolvency of the "underlying insurer". This insurance will apply as if the "underlying insurance" were in full effect.

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To reduce the chance of bankruptcy of an underlying insurer, most excess liability insurers require that underlying insurers have a certain financial rating, usually as determined by A.M. Best.

Underlying Insurance—Additional Considerations

Underlying Claims-Made Coverage

Most excess liability policies are written on an occurrence form basis. This approach works well because most underlying policies are also written on an occurrence form basis.

Sometimes, however, a claims-made policy may be added to the underlying schedule of insurance. Examples include directors and officers liability, employee benefits liability, and professional liability. When this happens, it is important that claims-made language be included in the excess liability policy so that there is consistency in how the primary and excess liability policies will respond to a loss.

Some insurer forms have language that addresses how coverage applies if an underlying policy is claims-made. In other cases, an endorsement may be needed. ISO's Underlying Claims-Made Coverage Endorsements are examples (Umbrella—CU 27 00 04 13; Excess Liability—CX 27 00 12 19).

Sublimits in Underlying Policies

There are times when an underlying policy will include a sublimit for a particular coverage. Most excess liability forms do not intend to provide excess coverage over a sublimit. The language that follows from the **Commercial Liability Umbrella Coverage Form (CU 00 01 04 13)** is an example.



The insured's CGL with a \$1,000,000 each occurrence limit is included on the schedule of underlying insurance of the excess liability policy. The CGL has a \$250,000 sublimit, however, for claims involving assault and battery. Unless that sublimit is included on the schedule of underlying insurance, an excess liability policy that includes the language below will not cover assault and battery claims.

COMMERCIAL LIABILITY UMBRELLA COVERAGE FORM

SECTION I – COVERAGES

COVERAGE A – BODILY INJURY AND PROPERTY DAMAGE LIABILITY

1. Insuring Agreement

- b.** This insurance applies to “bodily injury” or “property damage” that is subject to an applicable “retained limit”. If any other limit, such as a sublimit, is specified in the “underlying insurance”, this insurance does not apply to “bodily injury” or “property damage” arising out of that exposure unless that limit is specified in the Declarations under the Schedule of “underlying insurance”.

COVERAGE B – PERSONAL AND ADVERTISING INJURY LIABILITY

1. Insuring Agreement

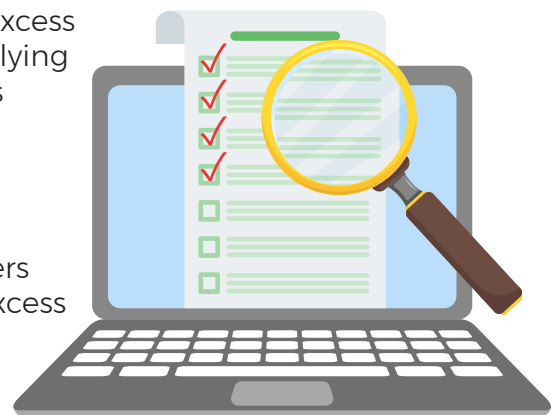
- b.** This insurance applies to “personal and advertising injury” that is subject to an applicable “retained limit”. If any other limit, such as a sublimit, is specified in the “underlying insurance”, this insurance does not apply to “personal and advertising injury” arising out of that exposure unless that limit is specified in the Declarations under the Schedule of “underlying insurance”.

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Consistency in Language

It is important to make sure that the language in the excess liability policy is consistent with the language in underlying policies. The fact that policies called follow form excess liability may not actually “follow form” was previously discussed. It is also worth noting that a form called commercial umbrella may not always provide broader coverage than the underlying policies, especially when exclusionary endorsements are added. Coverage triggers and definitions should be the same or broader in an excess liability policy. More restrictive provisions in the excess liability policy result in the insured not having the expected coverage when a claim is presented.





Knowledge Check



Directions: Explain how a \$3,000,000 excess liability policy will respond in the following situations.

1. A \$1,000,000 business auto liability policy is included on the schedule of underlying insurance. That policy cancels for non-payment of premium one month before the insured causes an accident involving significant bodily injury and property damage. The claim settles for \$2,000,000.

2. A \$1,000,000 CGL policy is included on the schedule of underlying insurance. Three months into the term, the insured reduces the CGL limit to \$500,000 to save premium. After that change is made, a products liability claim is made against the insured and settled for \$1,500,000.

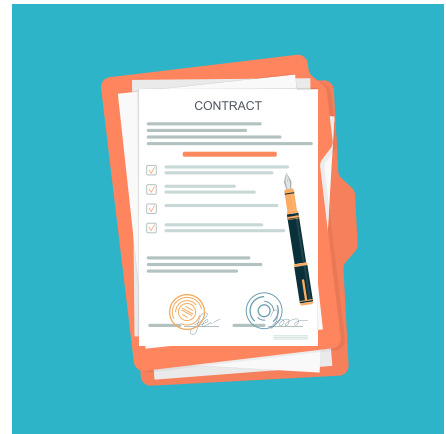
The Insuring Agreement

Learning Objective:

5.5 Define the following insuring agreements:

- Dual insuring agreements
- Singular insuring agreement
- Pay on behalf
- Indemnify

Since many insurers use their own coverage forms and policy language varies among them, it is crucial to read the entire excess liability policy to understand the coverage it provides. The insuring agreement is an important part of the policy. It includes the promises the insurer makes to the insured. It also lays the foundation as to the scope of coverage provided and for whom it provides that coverage.



Dual vs. Singular Insuring Agreements

Although follow form excess liability and stand alone excess liability policies typically have only one insuring agreement, a commercial umbrella may have one (singular) insuring agreement or two (dual) insuring agreements. Policies with dual insuring agreements are also referred to as bifurcated forms. With these policies, coverage is divided into two parts with separate insuring agreements and exclusions applying to each part. In policies with a singular insuring agreement, all coverage is included in one insuring agreement.

Dual Insuring Agreements

Policies with dual insuring agreements usually follow one of two patterns. Some insurers follow the pattern seen in ISO forms. Coverage A is bodily injury and property damage liability. All the applicable exclusions and exceptions to those exclusions follow that insuring agreement. Coverage B is personal and advertising injury liability. Following this insuring agreement are all the applicable exclusions and exceptions to those exclusions.

COMMERCIAL LIABILITY UMBRELLA COVERAGE FORM

SECTION I – COVERAGES

COVERAGE A – BODILY INJURY AND PROPERTY DAMAGE LIABILITY

1. Insuring Agreement

- a. We will pay on behalf of the insured the “ultimate net loss” in excess of the “retained limit” because of “bodily injury” or “property damage” to which this insurance applies. We will have the right and duty to defend the insured against any “suit” seeking damages for such “bodily injury” or “property damage” when the “underlying insurance” does not provide coverage or the limits of “underlying insurance” have been exhausted...

COVERAGE B – PERSONAL AND ADVERTISING INJURY LIABILITY

1. Insuring Agreement

- a. We will pay on behalf of the insured the “ultimate net loss” in excess of the “retained limit” because of “personal and advertising injury” to which this insurance applies. We will have the right and duty to defend the insured against any “suit” seeking damages for such “personal and advertising injury” when the “underlying insurance” does not provide coverage or the limits of “underlying insurance” have been exhausted...

CU 00 01 04 13

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It is often the case that policies other than CGL, business auto liability, and employers liability are included on the schedule of underlying insurance. Some of these policies—employee benefits liability and directors and officers liability, for example—do not apply to bodily injury, property damage, or personal and advertising injury claims. If the excess liability policy follows the ISO pattern, it is important that additional insuring agreements be added to provide the excess coverage needed.

Other insurers follow the pattern seen in some AAIS forms. Coverage E is excess liability coverage. All the applicable exclusions and exceptions to those exclusions follow that insuring agreement. Coverage U is umbrella liability. Following this insuring agreement are all the applicable exclusions and exceptions to those exclusions.

COMMERCIAL EXCESS/UMBRELLA LIABILITY COVERAGE FORM

COVERAGE E -- EXCESS LIABILITY

1. Insuring Agreement

- a. "We" will pay on behalf of the "insured" those sums in excess of "underlying insurance" for which an "insured" becomes legally obligated to pay as "damages" to which this insurance applies.

"We" have the right and duty to defend the "insured" against a "suit" seeking "damages" which may be covered under Coverage E -- Excess Liability, when the "limits" of "underlying insurance" are exhausted by the payment of claims, settlements, judgments, and/or defense costs if the applicable "limit" of "underlying insurance" is reduced by the payment of defense costs...

COVERAGE U -- UMBRELLA LIABILITY

1. Insuring Agreement

- a. "We" will pay on behalf of the "insured" those sums in excess of:

- 1) the "self-insured retention"; or
- 2) other insurance, excluding insurance specifically purchased by the "insured" to apply in excess of the insurance afforded by this policy, which is available to the "insured" and provides coverage with respect to injury or damage to which this policy applies; whichever is applicable, for which an "insured" becomes legally obligated to pay as "damages" because of "bodily injury", "property damage", or "personal and advertising injury" to which this insurance applies.

"We" have the right and duty to defend the "insured" against a "suit" seeking "damages" for such "bodily injury", "property damage", or "personal and advertising injury" which may be covered under Coverage U -- Umbrella Liability...

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There is one final note regarding policies with dual insuring agreements. Just because an insurer labels its insuring agreements Coverage A and Coverage B does not mean the policy follows the ISO pattern. Coverage A may not be bodily injury and property damage liability, and Coverage B may not be personal and advertising injury liability. There is no substitute for a careful review of any excess liability form being considered.

Singular Insuring Agreement

Some commercial umbrella policies are written with a singular insuring agreement, and follow form and stand alone excess liability policies are typically written this way. In these policies, all coverage provided will be addressed in a single insuring agreement that typically applies to bodily injury, property damage, and personal and advertising injury liability. All of the applicable exclusions and exceptions to those exclusions will follow.

SAMPLE POLICY LANGUAGE

1. Insuring Agreement

- a. We will pay on behalf of the insured the “ultimate net loss” in excess of the “retained limit” because of “injury or damage” to which insurance provided under this Coverage Part applies.

Check-In



Directions: Describe three common ways excess liability insuring agreements may apply.

- 1. _____

- 2. _____

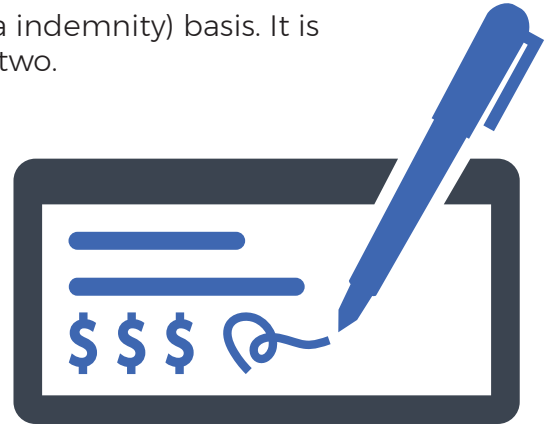
- 3. _____

Pay on Behalf of vs. Indemnify

Most excess liability policies are written on a “pay on behalf of” basis. There are a few policies, though, that are written on an indemnify (aka indemnity) basis. It is important to understand the difference between the two.

Pay On Behalf Of

Most policies in the marketplace are written on a pay on behalf of basis. When a covered claim occurs, the insurer steps into the shoes of the insured. The insurer investigates the claim and provides defense for the insured if needed. The insurer will negotiate any settlement that may be warranted and pays any judgments or settlements directly to the claimant on behalf of the insured.



COMMERCIAL LIABILITY UMBRELLA COVERAGE FORM

SECTION I – COVERAGES

COVERAGE A – BODILY INJURY AND PROPERTY DAMAGE LIABILITY

1. Insuring Agreement

- a. We will pay on behalf of the insured the “ultimate net loss” in excess of the “retained limit” because of “bodily injury” or “property damage” to which this insurance applies...

CU 00 01 04 13

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Indemnify

Indemnify policies, on the other hand, give the insured the responsibility of investigating the claim and handling its own defense. Negotiations for settlement are done by the insured and/or its defense counsel. When a settlement is reached or a judgment is awarded, the insured pays the claimant directly. Once the claim is finalized, the insurer must reimburse the insured. The policy will usually indicate the period of time in which the reimbursement should occur.

Indemnify contracts can be written on a strict indemnity basis which is described in the preceding paragraph. Some policies, though, are written on an indemnity based on legal obligation to pay basis. With strict indemnity, the insurer reimburses the insured once the claim is paid. With indemnity based on legal obligation to pay, the insurer pays the claim once the insured’s legal obligation to pay has been established. With this approach, the insured still maintains control over the claim, but does not need to produce the funds to pay the judgment or settlement.

STRICT INDEMNITY – SAMPLE LANGUAGE

The Company will indemnify the insured for ultimate net loss (as defined herein) in excess of the retained limit because of...

INDEMNITY BASED ON LEGAL OBLIGATION TO PAY – SAMPLE LANGUAGE

The Company agrees to indemnify the insured for ultimate net loss (as defined) which the insured shall become legally obligated to pay as damages, in excess of the underlying insurance or retained limit, because of...

▶▶ Knowledge Check



Directions: Read the scenario below and explain your response.

Your insured has heard that some excess liability policies may require the insured pay the claim and await reimbursement from the insurer. Your insured wants to be sure this is not the case with its newly purchased policy. Explain the difference between coverage written on a pay on behalf of basis versus coverage written on an indemnify basis.

Key Coverage Considerations

Learning Objective:

5.6 Explain key coverage considerations as described in a commercial excess liability policy.

Insured Status

In order to determine if coverage exists, one of the first questions that must be answered is the following: *Is the person or entity seeking coverage under the policy an insured?* The insuring agreement is clear that the policy will “pay on behalf of the insured” and “defend the insured.”

In a follow form excess liability policy, those who are insureds on the underlying policies are insureds on the excess liability policy. This includes any person or organization that has been added to an underlying policy by an additional insured endorsement.

With stand alone excess liability and commercial umbrella policies, who is an insured may differ from the underlying policies. With some coverage forms, any named insured on an underlying policy is automatically a named insured on the excess liability policy. In other coverage forms, all named insureds must be listed on the Declarations page of the excess liability policy.

Forms also differ in their treatment of additional insureds. In many excess liability policies, any additional insured on an underlying policy is an additional insured. This is the approach taken in the **Commercial Liability Umbrella Coverage Form (CU 00 01 04 13)** below.

COMMERCIAL LIABILITY UMBRELLA COVERAGE FORM

SECTION II – WHO IS AN INSURED

3. Any additional insured under any policy of “underlying insurance” will automatically be an insured under this insurance.

Subject to Section III – Limits Of Insurance, if coverage provided to the additional insured is required by a contract or agreement, the most we will pay on behalf of the additional insured is the amount of insurance:

- a. Required by the contract or agreement, less any amounts payable by any “underlying insurance”; or
- b. Available under the applicable Limits of Insurance shown in the Declarations;

whichever is less.

Additional insured coverage provided by this insurance will not be broader than coverage provided by the “underlying insurance”.

Section 5: Commercial Excess/Umbrella Coverages

Note that, in the ISO form above, if coverage for the additional insured is required in a contract or agreement, the amount paid on behalf of the additional insured will not exceed the amount required in the contract or agreement.



In its lease, Tenant LLC agrees to cover its landlord, Lessor LLC, as additional insured on its CGL and commercial umbrella policies. The lease requires \$1,000,000 CGL and \$1,000,000 umbrella limits. Tenant LLC carries a \$5,000,000 umbrella. A customer is seriously injured, and there is a \$4,000,000 judgment against Tenant LLC and Lessor LLC. The commercial umbrella will pay no more than \$1,000,000 on behalf of Lessor LLC since that is all the contract required.

In some excess liability policies, an additional insured is only covered if it is covered on an underlying policy *and* if the named insured agreed to provide such coverage in a written contract. With this language, an example of which appears below, it is sometimes necessary to add an additional insured endorsement to the excess liability policy.



Subcontractor LLC agrees to include General Contractor LLC as additional insured on its \$1,000,000 CGL and \$5,000,000 umbrella policies. There is no written contract between the parties, but they have a handshake agreement. General Contractor LLC is named on endorsement **Additional Insured – Owners, Lessees or Contractors – Scheduled Person or Organization (CG 20 10 12 19)**, which is added to Subcontractor LLC’s CGL. Under the **Commercial Liability Umbrella Coverage Form (CU 00 01 04 13)**, General Contractor LLC is an additional insured on Subcontractor LLC’s policy. Under a commercial umbrella with the sample language below, however, General Contractor LLC would not be an additional insured.

SAMPLE POLICY LANGUAGE

Any other person or organization insured under any policy of the “underlying insurance” listed in the Schedule of Underlying Insurance of the Declarations of this Insurance for whom you have agreed in a written contract executed prior to loss to provide insurance. This insurance is subject to all the limitations upon coverage under such policy of “underlying insurance”, and, the limits of insurance afforded to such person or organization will be:

- (i) The difference between the underlying insurance limits and the minimum limits of insurance which you agreed to provide: or
- (ii) The limits of insurance of this policy, whichever is less.



Do not assume that any named insured or additional insured on an underlying policy is also covered as an insured on the excess liability policy. Check the policy language carefully!

Check-In



Directions: Indicate whether the following statements are true or false, and include support for your answer.

1. All named insureds on underlying policies are automatically named insureds on stand alone excess liability and commercial umbrella policies.

True

False

2. It is never necessary to add an additional insured to a stand alone excess liability or commercial umbrella policy.

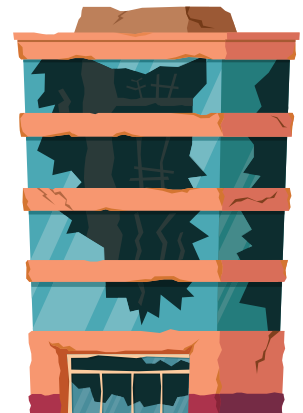
True

False

Damages Paid

Most excess liability policies pay damages for covered losses involving bodily injury, property damage, and personal and advertising injury. Since follow form excess liability policies follow the terms and conditions of the underlying policies, the types of damages the excess liability policy will pay should be the same.

With stand alone excess liability and commercial umbrella policies, though, terms can be defined differently than in the underlying policies. Those definitions can be broader than the underlying coverage definitions. For example, bodily injury may be expanded to include mental anguish or mental injury.



Notice the difference in how bodily injury is defined in the ISO CGL and ISO Umbrella.

COMMERCIAL LIABILITY UMBRELLA COVERAGE FORM

SECTION V – DEFINITIONS

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

CU 00 01 04 13

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COMMERCIAL GENERAL LIABILITY COVERAGE FORM

SECTION V – DEFINITIONS

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

CG 00 01 04 13

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Another example of broadened coverage is the following which is added to one insurer’s definition of personal injury.

SAMPLE LANGUAGE

Personal Injury includes injury caused by an offense of:

Discrimination, harassment, or segregation based on a person’s protected human characteristics as established by law.

Note: An exclusion removes coverage for employment-related offenses.

On the other hand, definitions can be narrower, resulting in less coverage on the excess liability policy. The property damage definition from the ISO CGL is below. Property damage in an excess liability policy, however, may be defined in such a way that it does not include loss of use of property that is not physically injured.

COMMERCIAL GENERAL LIABILITY COVERAGE FORM

SECTION V – DEFINITIONS

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... **[an excess liability form may omit this second part of the definition]**

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Coverage for punitive damages is another area where excess liability policy language may differ from the underlying policies. ISO’s unendorsed CGL and business auto forms, for example, do not exclude punitive damages. While it is possible that a particular jurisdiction may not permit an insurer to pay punitive damages, the policies themselves do not preclude coverage. Some excess liability policies, though, may limit coverage to compensatory damages. An example of such language follows.

SAMPLE POLICY LANGUAGE

We will pay on behalf of the insured the “ultimate net loss” in excess of the “retained limit” to which the insured will become legally obligated to pay as compensatory damages because of....

Defense

One of the primary duties of the insurer in most liability policies is the duty to defend the insured against a suit seeking damages covered by the policy. Understanding how the excess liability policy responds to claims when defense is needed is important.

Duty to Defend

With excess liability policies, there are limited circumstances under which the insurer has the duty to defend the insured. If the limit of the underlying policy has been exhausted, the excess liability policy responds. This could happen when a catastrophic claim exceeds the limit of the underlying policy or when an underlying policy’s aggregate is exhausted. When that occurs, the excess liability insurer typically has the duty to defend. Likewise, when a commercial umbrella drops down to be primary because it has broader coverage than the underlying policies, the commercial umbrella insurer normally has the duty to defend.



Language from the **Commercial Liability Umbrella Coverage Form (CU 00 01 04 13)** below illustrates this duty to defend.

COMMERCIAL LIABILITY UMBRELLA COVERAGE FORM

SECTION I – COVERAGES

COVERAGE A – BODILY INJURY AND PROPERTY DAMAGE LIABILITY

1. Insuring Agreement

- a. We will pay on behalf of the insured the “ultimate net loss” in excess of the “retained limit” because of “bodily injury” or “property damage” to which this insurance applies. We will have the right and duty to defend the insured against any “suit” seeking damages for such “bodily injury” or “property damage” when the “underlying insurance” does not provide coverage or the limits of “underlying insurance” have been exhausted. When we have no duty to defend, we will have the right to defend, or to participate in the defense of, the insured against any other “suit” seeking damages to which this insurance may apply. However, we will have no duty to defend the insured against any “suit” seeking damages for “bodily injury” or “property damage” to which this insurance does not apply. At our discretion, we may investigate any “occurrence” that may involve this insurance and settle any resultant claim or “suit” for which we have the duty to defend.

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When a commercial umbrella is primary because coverage is broader than the underlying policies, the insured’s coverage is subject to the self-insured retention. Typically, however, the SIR only applies to damages and not to defense costs. This feature is commonly referred to as “first dollar defense.”

No Duty to Defend

There are times when the excess liability policy does not have the duty to defend. When the underlying insurer is responding to the claim, it has the right and duty to defend, but the excess liability insurer does not have that same duty. That said, the excess liability insurer has the right to defend or participate in the defense and to be as involved or uninvolved as it chooses on any claim to which the excess coverage may apply.

As is the case with other liability policies, there is no duty to defend against any suit seeking damages not covered by the policy.

Supplementary Payments



Like other liability policies, excess liability policies typically include supplementary payments which cover expenses such as the costs to defend an insured, the cost of bonds to release attachments, and court costs taxed against an insured. One of the most significant supplementary payments is the expense to defend an insured. In most CGL and business auto policies, defense costs are paid in addition to the limit of liability. In many excess liability policies, including the **Commercial Liability Umbrella Coverage Form (CU 00 01 04 13)**, defense costs are also paid in addition to the limit of liability.

COMMERCIAL LIABILITY UMBRELLA COVERAGE FORM

SUPPLEMENTARY PAYMENTS – COVERAGES A AND B

1. We will pay, with respect to any claim we investigate or settle, or any “suit” against an insured we defend, when the duty to defend exists:
 - a. All expenses we incur.
 - b. Up to \$2,000 for cost of bail bonds (including bonds for related traffic law violations) required because of an “occurrence” we cover. We do not have to furnish these bonds.
 - c. The cost of bonds to release attachments, but only for bond amounts within the applicable limit of insurance. We do not have to furnish these bonds.
 - d. All reasonable expenses incurred by the insured at our request to assist us in the investigation or defense of the claim or “suit”, including actual loss of earnings up to \$250 a day because of time off from work.
 - e. All court costs taxed against the insured in the “suit”. However, these payments do not include attorneys’ fees or attorneys’ expenses taxed against the insured.
 - f. Prejudgment interest awarded against the insured on that part of the judgment we pay. If we make an offer to pay the applicable limit of insurance, we will not pay any prejudgment interest based on that period of time after the offer.
 - g. All interest on the full amount of any judgment that accrues after entry of the judgment and before we have paid, offered to pay, or deposited in court the part of the judgment that is within the applicable limit of insurance.

These payments will not reduce the limits of insurance.

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Problems can arise when an underlying policy includes defense costs within the limit of liability. In an excess liability policy, the retained limit is the available limit of underlying insurance or, if applicable, the self-insured retention. In some excess liability policies, the retained limit must be exhausted by indemnity payments before the excess liability policy will respond. The policy language below reflects this.

SAMPLE POLICY LANGUAGE

Retained Limit is the sum stated in the Declarations as such. If the policies of underlying insurance do not apply to the occurrence or offense covered by this insurance, the insured shall retain the amount stated as a Self-Insured Retention.....These retained limits shall only comprise indemnity payment. The Named Insured shall bear all legal costs and expenses incurred until such time as the retained limits are exhausted by indemnity payments.

Section 5: Commercial Excess/Umbrella Coverages



A \$5,000,000 excess liability policy includes the sample language. The \$1,000,000 underlying CGL policy is written with defense inside the limit of liability.

An injury claim recently settled for \$2,000,000. In addition, \$200,000 was spent by the CGL insurer to defend the claim. The claim is paid as follows:

- \$800,000 paid by the CGL as an indemnity payment
- \$200,000 paid by the CGL for defense
- Excess liability pays once \$1,000,000 has been paid in indemnity payments.
- There is a \$200,000 gap that is the responsibility of the insured.

In some excess liability policies, defense costs are paid as damages within the limit of liability. This is especially likely to be the case when an underlying policy includes defense within the limit. Care should be taken when reading the excess liability policy to determine if defense is within or in addition to the limits of insurance.

Notification of a Loss



When should the excess liability insurer be notified that a liability claim has occurred? Many excess liability forms are clear on this point and require that the insurer be notified of an occurrence or offense, regardless of amount. The ISO policy below clearly describes the named insured's duties in the event of a loss.

COMMERCIAL LIABILITY UMBRELLA COVERAGE FORM

SECTION IV – CONDITIONS

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

- a. You must see to it that we are notified as soon as practicable of an “occurrence” or an offense, regardless of the amount, which may result in a claim. To the extent possible, notice should include:
 - (1) How, when and where the “occurrence” or offense took place;
 - (2) The names and addresses of any injured persons and witnesses; and
 - (3) The nature and location of any injury or damage arising out of the “occurrence” or offense.

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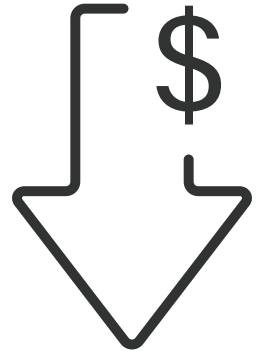


The insured had a business auto liability claim. The business auto insurer and the claimant were negotiating a settlement between \$50,000 and \$125,000. As a result, the insured never notified the excess liability insurer of the claim. Ultimately, the claimant received an award of \$1,300,000. Since the excess liability insurer was not notified of the claim, it issued a reservation of rights letter and ultimately denied the claim. This became an E&O claim against the insurance agency.

If the excess liability policy includes language like that in the ISO form, all liability claims should be reported to the excess liability insurer. One never knows the ultimate value of a claim until the time of judgment or settlement.

Ultimate Net Loss

Ultimate net loss is a term used in some excess liability policies to describe the amount the insurer is obligated to pay within the limits of liability. Even if this term is not used, an excess liability policy will describe in some other way what is paid within the limits.



Defense in Addition to the Limit

Many excess liability forms do not include defense costs within the ultimate net loss definition. The **Commercial Liability Umbrella Coverage Form (CU 00 01 04 13)** takes this approach.

COMMERCIAL LIABILITY UMBRELLA COVERAGE FORM

SECTION V – DEFINITIONS

23. “Ultimate net loss” means the total sum, after reduction for recoveries or salvages collectible, that the insured becomes legally obligated to pay as damages by reason of settlement or judgments or any arbitration or other alternate dispute method entered into with our consent or the “underlying insurer’s” consent.

COVERAGE A INSURING AGREEMENT

- a. We will pay on behalf of the insured the “ultimate net loss” in excess of the “retained limit” because of “bodily injury” or “property damage” to which this insurance applies.

COVERAGE B INSURING AGREEMENT

- b. We will pay on behalf of the insured the “ultimate net loss” in excess of the “retained limit” because of “personal and advertising injury” to which this insurance applies.

SECTION III – LIMITS OF INSURANCE

2. The Aggregate Limit is the most we will pay for the sum of all “ultimate net loss” under:
- a. Coverage A, except “ultimate net loss” because of “bodily injury” or “property damage” arising out of the ownership, maintenance or use of a “covered auto”; and
 - b. Coverage B.
3. Subject to Paragraph 2. above, the Each Occurrence Limit is the most we will pay for the sum of all “ultimate net loss” under Coverage A because of all “bodily injury” and “property damage” arising out of any one “occurrence”.
4. Subject to Paragraph 2. above, the Personal And Advertising Injury Limit is the most we will pay under Coverage B for the sum of all “ultimate net loss” because of all “personal and advertising injury” sustained by any one person or organization.

This language, combined with the previously discussed supplementary payments language, makes it clear that, in this form at least, defense costs will be paid in addition to the limits of liability.

Defense Within the Limit

As was mentioned in the discussion of supplementary payments, defense costs are sometimes paid within the limit of liability. In some excess liability policies, the definition of ultimate net loss includes all sums paid or payable when a claim is settled or a judgment is rendered. All sums will include the settlement or judgment plus all other costs associated with the claim. This language, an example of which is in the following sample, is a good indication that defense is within the limits of liability.

SAMPLE POLICY LANGUAGE

INSURING AGREEMENT

We will pay on behalf of the insured the “ultimate net loss” in excess of the “retained limit” ...

DEFINITIONS

“Ultimate net loss” means the total sum which Insured shall become obligated to pay as Damages and/or Defense Expenses on account of Personal Injury, Property Damage or Advertising Offense, either by final judgment against the insured after trial or by settlement approved in writing by the Company after making proper deductions for all recoveries and salvages collectible.

In addition to reviewing any language concerning ultimate net loss and supplementary payments, one should look for definitions of words such as *loss* and *damages*. Because insurer forms vary, information on whether defense is paid within the limits or in addition to the limits, can appear in various places in the coverage form.

Defense Within the Limit—Sometimes

In some excess liability forms, defense is paid in addition to the limit of liability unless an underlying policy pays defense within the limit. This may be the case if, for example, professional liability or directors and officers liability is included on the schedule of underlying insurance. If the underlying policy pays defense within the limit, the excess liability policy will do the same. Note that the policy form below does not use the term, ultimate net loss, to describe this concept.

SAMPLE POLICY LANGUAGE

For any “suit” for which we have the right and duty to defend the insured under Coverage A, defense expenses will be within the limits of insurance of this policy when such expenses are within the limits of insurance of the applicable “underlying insurance.”

Understanding how the excess liability policy pays defense costs is an important part of reviewing an excess liability policy. When the limits of insurance are used to pay defense costs, less is available to pay judgments and settlements.

Limits Of Insurance

The insuring agreement, in its promise to pay, generally explains that the amount payable is subject to the limits of insurance. The **Commercial Liability Umbrella Coverage Form (CU 00 01 04 13)**, for example, has three separate limits—an each occurrence limit for Coverage A, a personal and advertising injury limit for Coverage B, and an aggregate limit. The limits are shown on the Declarations page, and how the limits apply is explained in the Limits Of Insurance section of the policy.



Limits Of Insurance		
Each Occurrence Limit (Liability Coverage)	\$	
Personal And Advertising Injury Limit	\$	Any One Person Or Organization
Aggregate Limit (Liability Coverage) (except with respect to "covered autos")	\$	
Other:	\$	

COMMERCIAL LIABILITY UMBRELLA COVERAGE FORM

SECTION III – LIMITS OF INSURANCE

1. The Limits of Insurance shown in the Declarations and the rules below fix the most we will pay regardless of the number of:
 - a. Insureds;
 - b. Claims made, "suits" brought, or number of vehicles involved; or
 - c. Persons or organizations making claims or bringing "suits".
2. The Aggregate Limit is the most we will pay for the sum of all "ultimate net loss" under:
 - a. Coverage A, except "ultimate net loss" because of "bodily injury" or "property damage" arising out of the ownership, maintenance or use of a "covered auto"; and
 - b. Coverage B.
3. Subject to Paragraph 2. above, the Each Occurrence Limit is the most we will pay for the sum of all "ultimate net loss" under Coverage A because of all "bodily injury" and "property damage" arising out of any one "occurrence".
4. Subject to Paragraph 2. above, the Personal And Advertising Injury Limit is the most we will pay under Coverage B for the sum of all "ultimate net loss" because of all "personal and advertising injury" sustained by any one person or organization.

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Policy Aggregate Limits

Most excess liability policies are issued with one or more aggregate limits. In the case of the ISO form above, the aggregate limit is the sum of all ultimate net loss during the policy term. As is common, this aggregate does not apply to losses involving covered autos. Underlying business auto policies rarely include aggregate limits, so most excess liability policy aggregates do not apply to business auto liability losses.



Not all excess liability policies are written with a single aggregate. In some forms, separate aggregates apply to products-completed operations losses and to losses involving all other hazards. In other forms, separate aggregates may apply to excess liability and commercial umbrella.

SAMPLE LIMITS

Limits Of Insurance	
Excess Coverage Other Aggregate Limit (as applicable):	\$5,000,000
Umbrella Coverages Aggregate Limit:	\$5,000,000
Products-Completed Operations Aggregate Limit:	\$5,000,000
Advertising Injury and Personal Injury Aggregate Limit:	\$5,000,000
Each Occurrence Limit:	\$5,000,000

Some excess liability policies have aggregates that apply the same way that underlying policy aggregates do. If, for example, directors and officers liability is included on the schedule of underlying insurance, that policy will have its own aggregate. The excess liability policy will then, too, have a separate aggregate that applies to directors and officers liability losses. This approach is expressed in the sample language as shown.

SAMPLE POLICY LANGUAGE

The aggregate limit of liability stated in the Declarations is the most we will pay for ultimate net loss arising out of all incidents during each consecutive annual policy period commencing from its effective date. The aggregate limit applies on the same basis as the aggregate limit of liability of any underlying insurance that provides coverage subject to an aggregate limit and to which this policy also applies.

The more aggregates an excess liability policy includes, the more the policy could potentially pay. It is important to read all excess liability policies carefully to understand how their aggregates apply.

Per Project/Per Location Aggregates

It is common when writing CGL policies to add endorsements so the general aggregate applies separately to each location and/or project. While some excess liability policies have aggregates that apply this way, most do not.

SAMPLE LANGUAGE – AGGREGATE APPLIES PER PROJECT/PER LOCATION IF THE UNDERLYING CGL AGGREGATE DOES

The Aggregate Limit is the most we will pay for all “ultimate net loss” because of “bodily injury”, “property damage” and “personal and advertising injury” regardless of the number of covered “occurrences” during each annual period of this policy, except: 1. The aggregate limit shall apply separately to and in excess of each aggregate limit of the “underlying policy”. 2. The aggregate limit does not apply to “auto” liability arising out of the ownership, maintenance, use or entrustment of any “covered auto”. Use includes operation, “loading or unloading”.

When an excess liability policy does not have aggregate limits that apply in the same manner as the underlying policies, endorsements can often be added to accomplish this. The aggregate in the **Commercial Liability Umbrella Coverage Form (CU 00 01 04 13)**, for example, does not apply separately to each location and/or project. There are two endorsements that can be added—**Designated Project(s) Aggregate Limit of Insurance (CU 25 01 12 19)** and **Designated Location(s) Aggregate Limit of Insurance (CU 25 02 12 19)**. With these endorsements, the location or project is to be listed on the endorsement. Some insurers have endorsements that do not require locations or projects to be listed; each of the insured’s locations and/or projects has its own aggregate. Still other insurers do not offer this coverage feature.



Contracts often require that the excess liability policy’s general aggregate applies separately to each location and/or project. Even if the underlying CGL has a general aggregate that applies per location and/or project, one should not assume that the excess liability policy will follow form. One should review the excess liability coverage form carefully before coverage is bound. If the excess liability policy needs to be rewritten because this coverage is required and is not available, a concurrency problem could result unless the underlying policies are rewritten as well.

Check-In



Directions: Choose the appropriate word or phrase to complete each of the sentences below.

defense costs	punitive damages	endorsements	property damage	within
ultimate net loss	duty to defend	in addition to	mental anguish	exclusions

1. Bodily injury in the ISO commercial umbrella policy includes resultant _____.
2. Some excess liability policies limit coverage to compensatory damages, excluding coverage for _____.
3. In some cases, an excess liability insurer does not have a(n) _____ but may still have the right to participate in the defense.
4. Supplementary payments are paid _____ the limit of insurance.
5. _____ describes the amount the insurer is obligated to pay within the limits of liability.
6. In many excess liability policies, _____ are needed if the aggregate limits are to apply separately to each location and/or project.

Coverage Territory

Coverage territory is an important provision in excess liability policies. With a follow form excess liability policy, the coverage territory is the same as that found in the underlying coverages. For example:



- ISO Commercial General Liability Coverage Form—The coverage territory is generally limited to the US (including its territories and possessions), Puerto Rico, and Canada. There are certain circumstances, though, under which the coverage territory can be worldwide, provided the suit is brought in the US, Puerto Rico, or Canada. Worldwide coverage applies when products are made or sold in the US, Puerto Rico, or Canada, or when someone from the coverage territory is away for a short time. The third circumstance is when a personal and advertising injury offense takes place over the internet.
- ISO Business Auto Coverage Form—The coverage territory is the US (including its territories and possessions), Puerto Rico, and Canada. Coverage will apply anywhere in the world, however, if a private passenger vehicle is rented by an insured for a period of 30 days or less. In this policy, too, the suit must be brought in the US, Puerto Rico, or Canada.
- NCCI Workers Compensation and Employers Liability Insurance Policy—The coverage territory for employers liability coverage is limited to the US (including its territories and possessions) and Canada. There is a provision to extend the coverage to anywhere in the world provided the employee is domiciled in the US or Canada and is temporarily outside these countries.

With stand alone excess liability and commercial umbrella policies, the coverage territory can be similar to the underlying policies or greatly expanded. Some excess liability policies are even silent as to coverage territory.

Coverage may apply anywhere in the world, anywhere in the universe, or simply anywhere. It is important to note whether the suit must be brought in the US or if it can be brought in another country. In the sample language below, coverage is worldwide, but the suit must be brought in the US, Puerto Rico, or Canada.

SAMPLE POLICY LANGUAGE

“Coverage territory” means anywhere in the world provided the insured’s responsibility to pay damages is determined in a “suit” on the merits, in the United States of America (including its territories and possessions), Puerto Rico or Canada, or in a settlement we agree to.

Even excess liability policies with a worldwide coverage territory will typically exclude countries or jurisdictions that are subject to trade sanctions, economic sanctions, or embargo by the US.

SAMPLE POLICY LANGUAGE

“Coverage Territory”

- a. Under Coverage E – Excess Liability “coverage territory” means those countries, territories, possessions, international waters, airspace, and other parts of the world that fall within the coverage territory recognized by the applicable “underlying insurance.”
- b. Under Coverage U – Umbrella Liability, “coverage territory” means the world except for any foreign country, nation, or jurisdiction upon which the United States of America has imposed an embargo or other economic sanctions.

The **Commercial Liability Umbrella Coverage Form (CU 00 01 04 13)** has a two-part approach to expanding the coverage territory beyond that of the ISO CGL. It starts by providing a worldwide coverage territory as shown in this excerpt.

COMMERCIAL LIABILITY UMBRELLA COVERAGE FORM

SECTION V – DEFINITIONS

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

CU 00 01 04 13

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It then provides additional protection in a condition called Expanded Coverage Territory. If suit is filed in a country where the insurer is prohibited by law from defending the insured or paying a claim on behalf of the insured, the insurer agrees to reimburse the insured for any payments made.

COMMERCIAL LIABILITY UMBRELLA COVERAGE FORM

SECTION IV – CONDITIONS

14. Expanded Coverage Territory

- a. If a “suit” is brought in a part of the “coverage territory” that is outside the United States of America (including its territories and possessions), Puerto Rico or Canada, and we are prevented by law, or otherwise, from defending the insured, the insured will initiate a defense of the “suit”. We will reimburse the insured, under Supplementary Payments, for any reasonable and necessary expenses incurred for the defense of a “suit” seeking damages to which this insurance applies, that we would have paid had we been able to exercise our right and duty to defend.

If the insured becomes legally obligated to pay sums because of damages to which this insurance applies in a part of the “coverage territory” that is outside the United States of America (including its territories and possessions), Puerto Rico or Canada, and we are prevented by law, or otherwise, from paying such sums on the insured’s behalf, we will reimburse the insured for such sums.

- b. All payments or reimbursements we make for damages because of judgments or settlements will be made in U.S. currency at the prevailing exchange rate at the time the insured became legally obligated to pay such sums. All payments or reimbursements we make for expenses under Supplementary Payments will be made in U.S. currency at the prevailing exchange rate at the time the expenses were incurred.
- c. Any disputes between you and us as to whether there is coverage under this policy must be filed in the courts of the United States of America (including its territories and possessions), Canada or Puerto Rico.
- d. The insured must fully maintain any coverage required by law, regulation or other governmental authority during the policy period, except for reduction of the aggregate limits due to payments of claims, judgments or settlements.

Failure to maintain such coverage required by law, regulation or other governmental authority will not invalidate this insurance. However, this insurance will apply as if the required coverage by law, regulation or other governmental authority was in full effect.

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Note that, for this condition to apply, the insured is required to maintain any coverage required in the foreign jurisdiction. Some countries, for example, require businesses operating there to purchase auto liability, general liability and/or employers liability coverages from admitted insurers. If the insured fails to maintain this required coverage, the **Commercial Liability Umbrella Coverage Form (CU 00 01 04 13)** responds as though that coverage were in effect.

Primary and Non-Contributory

Most excess liability policies have an other insurance clause that is similar to the following. The excess liability policy is intended to be excess over any other policy except for one specifically written to be excess over it, as might be seen with a layered program.

COMMERCIAL LIABILITY UMBRELLA COVERAGE FORM

SECTION IV – CONDITIONS

5. Other Insurance

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

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

- b. When this insurance is excess over other insurance, we will pay only our share of the “ultimate net loss” that exceeds the sum of:

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

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Many insureds are required to provide primary and non-contributory coverage to additional insureds under a CGL policy. Requests for primary and non-contributory coverage for additional insureds on excess liability policies are becoming more common.

The fear of the additional insured is that its own CGL policy will be forced to respond before the excess liability policy on which it is covered as additional insured. This is known as a horizontal exhaustion of limits approach. The other insurance clauses in typical CGL and excess liability policies support this interpretation, and courts in many states have ruled that coverage should apply this way, regardless of any underlying contract requirements.

Section 5: Commercial Excess/Umbrella Coverages



General Contractor Inc. (GCI) hires Subcontractor Inc. (SBI) to construct the steel frame of a new building. GCI requires that SBI carry a CGL with a \$5,000,000 each occurrence limit and that SBI include GCI as additional insured on a primary and non-contributory basis.

SBI has a CGL with a \$1,000,000 each occurrence limit and a \$4,000,000 commercial umbrella. GCI is additional insured under SBI's CGL and umbrella.

GCI has a \$1,000,000 CGL policy and a \$10,000,000 commercial umbrella.

An SBI employee is seriously injured at the jobsite and makes a claim against GCI. GCI seeks coverage under the SBI policies. Assume coverage applies for this loss under all policies involved.

Vertical Exhaustion of Limits Approach—what GCI intended

1st to pay – SBI CGL

2nd to pay – SBI Umbrella

3rd to pay – GCI CGL

4th to pay – GCI Umbrella

Horizontal Exhaustion of Limits Approach—what most policy language supports

1st to pay – SBI CGL

2nd to pay – GCI CGL

3rd to pay – The Umbrellas

To avoid a horizontal exhaustion of limits outcome, many additional insureds require primary and non-contributory language on the excess liability policy. Some insurers will not provide this coverage, while others have added language to their coverage forms to do so. Still others have endorsements that can be used to add primary and non-contributory language. This is an example of such language:

SAMPLE POLICY LANGUAGE

If other insurance applies to damages covered by this policy, this policy will apply excess of such other insurance. However, this provision will not apply:

(2) With respect to Insuring Agreement A only, if you have agreed in a written contract with another person or organization that this policy shall be primary and non-contributory with such other person or entity's coverage, but only with respect to damages arising out of insured operations or work on your behalf performed under such written contract. When this Paragraph (2) applies, the coverage available to the other person or organization will be the lesser of the policy's Limits of Insurance or the minimum limits required by such written contract. In that case, other insurance of that person or organization will apply as excess and non-contributory prior to the insurance afforded by this policy.

It is wise to find out an insurer's position on primary and non-contributory coverage before the excess liability policy is bound.

▶▶ Knowledge Check



Directions: Read the scenario below and explain your reasoning.



Joseph, a new insured who understands the importance of defense in a liability policy, asks when an excess liability insurer will defend a claim and how defense costs are paid. How will you respond to Joseph?

Exclusions

Learning Objective:

5.7 Analyze coverage using knowledge of exclusions and exceptions to exclusions found in excess liability policies.

Exclusions and exclusionary wording will vary significantly among insurers. All excess liability policies, even those that may follow form in many circumstances, can include language that makes coverage narrower in scope than the underlying policies. It is crucial to understand what exclusions and/or limitations apply, along with any related exceptions to those exclusions. These can impact coverage significantly.



Exclusions can be found in a number of sections in the excess liability policy, including:

1. **Insuring agreement** – Some insuring agreements are much broader than others. The insuring agreement is the starting point to understanding how coverage under the policy applies.

Section 5: Commercial Excess/Umbrella Coverages

2. **Definitions section** – This is the section where certain terms are defined. Words that are in quotation marks, bold-face, or italicized are terms that have special meaning within the policy. Definitions vary greatly among excess liability policies. The definition of a term must be read and understood to determine the extent of coverage in the policy.
3. **Exclusions section** – This section includes all the listed exclusions and any related exceptions to those exclusions. This list can be lengthy depending on the insurer’s form.
4. **Endorsements** – Excess liability policies may have numerous exclusionary endorsements added. The Declarations page of the policy lists the form numbers and usually the names of the endorsements. It is important to read all the endorsements to understand how they affect coverage.

Exclusions Section

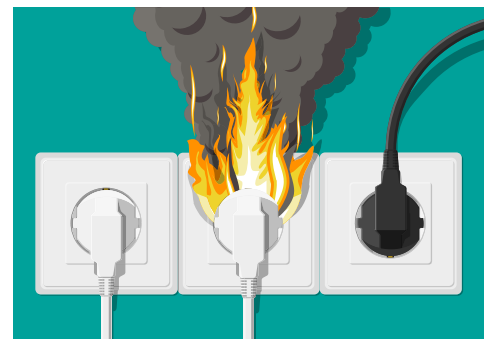


The exclusions section of excess liability policies can vary in length. Some policies have fewer exclusions, potentially providing broader coverage. Other policies have exclusions that are similar to those found in the underlying policies. As noted above, some policies have an extensive list of exclusions which generally results in more limited coverage. Ultimately, the forms must be read and compared to determine the breadth of coverage provided.

As with underlying policies, coverage is often found in exceptions to exclusions. Some excess liability policies have fewer exceptions to exclusions, thereby limiting coverage in comparison to the underlying policies. There are certain coverages that excess liability policies were not designed to provide.



A good example of this is Damage To Premises Rented To You, a coverage included in most CGL policies. It provides coverage when the insured is legally responsible for damaging its rented premises. Depending on the length of the rental, coverage may apply to damage by fire or to damage by other causes of loss. In the CGL, this coverage is created in part by an exception to the Damage to Property exclusion and in part as an exception to several other CGL exclusions. The **Commercial Liability Umbrella Coverage Form (CU 00 01 04 13)** does not include these exceptions.



COMMERCIAL LIABILITY UMBRELLA COVERAGE FORM

COVERAGE A – BODILY INJURY AND PROPERTY DAMAGE LIABILITY

2. Exclusions

m. Damage To Property (excerpts)

“Property damage” to:

(1) Property:

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

(3) Property loaned to you;

(4) Personal property in the care, custody or control of the insured;

THE FOLLOWING EXCEPTION IS INCLUDED IN THE CGL, BUT NOT IN THE COMMERCIAL UMBRELLA

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

THE CGL INCLUDES ANOTHER EXCEPTION NOT FOUND IN THE COMMERCIAL UMBRELLA

Exclusions c. through n. do not apply to damage by fire to premises while rented to you or temporarily occupied by you with permission of the owner. A separate limit of insurance applies to this coverage as described in Section III – Limits Of Insurance.

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Due to limitations in both the CGL and most excess liability policies with respect to damage to rented premises, the **Legal Liability Coverage Form (CP 00 40 10 12)** is a better choice when the insured can be held responsible for damage to rented premises. The insured can purchase the limits needed to cover this exposure.

Endorsements

Insurers often add exclusionary endorsements to excess liability policies that can be problematic for an insured. While some insurers use industry standard endorsements created by ISO and AAIS, many create their own. In some cases, the exclusions are absolute—no coverage applies, even if an underlying policy may provide coverage. In some cases, the exclusion does not apply if an underlying policy provides coverage. In a bifurcated form that provides excess liability and commercial umbrella coverages, for example, separate exclusions typically apply to each of the two coverages. It is important to carefully review all exclusions to see how they impact coverage.



Selected Exclusions

Below are some exclusions that may be found in the excess liability coverage form or added by endorsement. Wording may be more restrictive than the underlying policy language, resulting in a narrower scope of coverage. In some cases, wording may be less restrictive, resulting in broader coverage. In all examples in this section, CGL refers to the ISO **Commercial General Liability Coverage Form (CG 00 01 04 13)** and business auto refers to the ISO **Business Auto Coverage Form (CA 00 01 11 20)**.

1. **Aircraft** – An excess liability insurer may intend to provide excess liability coverage for this exposure and include an aircraft liability policy on the schedule of underlying insurance. In most cases, though, the excess liability policy excludes liability resulting from aircraft owned or operated by or rented or loaned to any insured. The CGL policy has a similar exclusion, but typically has an exception for liability assumed in an insured contract. An excess liability policy may not have this exception.



Many businesses use drones which can be considered aircraft, especially when aircraft is not defined in the coverage form. Many excess liability policies add endorsements to specifically exclude coverage for losses involving drones. ISO has several endorsements to exclude coverage for drones from both its commercial umbrella and excess liability forms. The **Exclusion – Unmanned Aircraft (CU 21 71 06 15)** is an example.

EXCLUSION – UNMANNED AIRCRAFT

A. Exclusion 2.j. Aircraft 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:

j. Aircraft 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 **j.(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”.

CU 21 71 06 15

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2. **Watercraft** – An excess liability insurer may intend to provide excess liability coverage for this exposure and include a watercraft liability policy on the schedule of underlying insurance. In most cases, though, the excess liability policy excludes liability resulting from watercraft owned or operated



Section 5: Commercial Excess/Umbrella Coverages

by or rented or loaned to any insured. The CGL policy has a similar exclusion, but typically has exceptions for watercraft ashore on premises, for non-owned watercraft under 26 feet, and for liability assumed in an insured contract. The excess liability policy may have an exclusion similar to the CGL, or it may not include some of the exceptions. Many excess liability forms expand coverage to apply to non-owned watercraft less than 50 feet.

- Contractual liability** – CGL and business auto liability policies have contractual liability exclusions. Exceptions apply, though, for liability the insured has in the absence of the contract and for liability assumed in an insured contract. Insured contract is a defined term in these underlying policies. Some excess liability forms, though, may not have an exception for insured contracts or may define insured contracts differently than the underlying policy.

In the **Commercial Liability Umbrella Coverage Form (CU 00 01 04 13)**, contractual liability coverage applies to certain personal and advertising injury offenses.

This coverage is broader than the coverage provided in an unendorsed ISO CGL.



COMMERCIAL LIABILITY UMBRELLA COVERAGE FORM

COVERAGE B – PERSONAL AND ADVERTISING INJURY LIABILITY

2. Exclusions

This insurance does not apply to:

- “Personal and advertising injury”:

- (5) Contractual Liability**

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.
- Liability for false arrest, detention or imprisonment assumed in a contract or agreement.

CU 00 01 04 13

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The following language is from a bifurcated form that includes two coverages—excess follow form liability and commercial umbrella. Although the excess follow form section does not exclude contractual liability, the commercial umbrella section does. The effect of this language is to confine any contractual liability coverage to the excess liability coverage. And in this particular form, the coverage will be no broader than that in the underlying policies.

SAMPLE POLICY LANGUAGE

COMMERCIAL UMBRELLA EXCLUSION

2. Contractual Liability

“Bodily injury”, “property damage”, “personal injury” or “advertising injury” for which the insured is obligated to pay damages by reason of the assumption of liability in a contract or agreement. This exclusion does not apply to liability for damages that the insured would have in the absence of the contract or agreement.

4. **Liquor liability** – Most excess liability policies will have some limitations regarding how they respond to claims involving liquor. Some excess liability policies will have an absolute liquor liability exclusion with no exceptions. Other excess liability policies may provide coverage similar to the CGL which includes coverage for bring-your-own establishments and host-liquor exposures. If the insured has a liquor liability policy, it should be included on the schedule of underlying insurance. It is also important that the policy language reflect the fact that coverage for liquor-related claims applies.



COMMERCIAL LIABILITY UMBRELLA COVERAGE FORM

COVERAGE A – BODILY INJURY AND PROPERTY DAMAGE LIABILITY

2. Exclusions

c. Liquor Liability

“Bodily injury” or “property damage” for which any insured may be held liable by reason of: ...

This exclusion does not apply to the extent that valid “underlying insurance” for the liquor liability risks described above exists or would have existed but for the exhaustion of underlying limits for “bodily injury” and “property damage”. To the extent this exclusion does not apply, the insurance provided under this Coverage Part for the liquor liability risks described above will follow the same provisions, exclusions and limitations that are contained in the applicable “underlying insurance”, unless otherwise directed by this insurance.

CU 00 01 04 13

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5. **Pollution** – The CGL and business auto policies have pollution exclusions with several exceptions that grant some coverage. An examination of the excess liability policy and a comparison will be needed to determine how coverage differs. Many excess liability insurers add absolute pollution exclusions to their policies. This removes any pollution or pollution-related coverage. In addition, many insurers add additional exclusions for exposures such as asbestos, lead, and silica.



Section 5: Commercial Excess/Umbrella Coverages

6. **Damage to your work** – The CGL’s damage to your work exclusion removes products-completed operations coverage when there is property damage to the insured’s work arising out of the work. An important exception, often referred to as the subcontractor exception, restores coverage if the damaged work or the work out of which the damage arises was performed by a subcontractor. Some excess liability policies do not include the subcontractor exception which results in coverage that is narrower than the CGL.
7. **Professional liability** – The unendorsed CGL does not include a professional liability exclusion, although many insurers will add endorsements to exclude coverage for professional exposures. A businessowners policy, on the other hand, includes a professional liability exclusion in the coverage form itself.

Most excess liability policies exclude losses involving professional liability either in the form itself or by endorsement. Excess liability policies that exclude professional exposures create a gap in coverage for the insured.

Some excess liability insurers are willing to provide excess liability coverage for certain professional exposures and may include a professional liability policy on the schedule of underlying coverage. This is another example of the importance of making sure that, where needed, the excess liability policy’s insuring agreement applies to more than bodily injury, property damage, and personal and advertising injury liability. Many professional exposures do not result in these types of losses.



Henri’s HVAC designs and installs a new heating system for use in a customer’s home. The system is not designed properly, and three weeks after installation, two members of the household are hospitalized with carbon monoxide poisoning. The unendorsed CGL policy would provide coverage for this loss. An excess liability policy with a professional liability exclusion, though, may not.

8. **Uninsured/underinsured motorists** – UM/UIM coverage is state-specific. In some states, the insurer providing the excess liability coverage is required to offer at least \$1,000,000 in coverage. Most excess insurers, though, will not voluntarily agree to offer additional UM/UIM coverage and specifically exclude this exposure.



9. **Electronic data liability** – The CGL excludes most losses involving damage to electronic data, only providing coverage for bodily injury resulting from loss of or damage to data. Most excess liability policies also exclude coverage for electronic data liability. In many cases, cyber forms are a better option for insuring these exposures. Care should be taken, though, to make sure the excess liability policy preserves bodily injury liability coverage as cyber forms provide little to no coverage for bodily injury liability.



10. **Employment-related practices** – Exclusions are normally added to CGL policies to ensure that no coverage will apply to employment-related practices claims such as discrimination and wrongful termination. Many excess liability insurers follow suit, with few wanting to provide coverage for these exposures. If an insured desires higher limits for employment-related practices, additional limits on an employment practices liability policy are typically written.



11. **Other exclusions** – Excess liability policies may include a number of other exclusions either within the coverage form or by endorsement. These include but are not limited to fiduciary liability, punitive damages, insured versus insured claims, transportation and deliver network apps, and many others. It is important to review the Declarations page and to read the policy and endorsements to fully understand how the insured's coverage applies.

▶▶ Knowledge Check



Directions: Read the scenario below and respond.

Greyson, your long-time customer, has been reading his policy to try to determine whether coverage applies to something that recently happened. He doesn't see an exclusion in the exclusions section, so assumes the policy should respond. Explain to Greyson some of the other places in the policy that should be checked to determine whether coverage applies or is excluded.

Structuring Excess Coverage

Often, an insured is able to obtain the required limits from a single insurer. When an insured needs excess liability limits higher than a single insurer is willing to provide, however, policies from different insurers may be combined. In these cases, the excess liability program can be structured in several ways.



Options for Structuring the Program

Single Layer

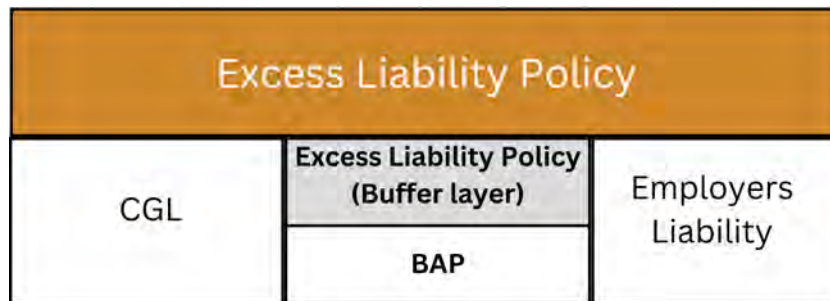
For insureds that do not need high excess liability limits, coverage can be provided by a single policy. One insurer writes the total excess limits needed by the insured.

Buffer Layer

Excess liability insurers require certain minimum limits on the underlying policies. There is sometimes a gap between the limits an underlying policy insurer will provide and what is required by the excess liability insurer. The coverage purchased to fill that gap is called a buffer layer because it sits between the underlying policy and the excess liability policy.



The excess liability insurer requires a \$1,000,000 business auto liability limit, but the insured is only able to purchase a \$500,000 business auto liability limit. An additional \$500,000 business auto liability limit is needed to fill the gap, so a buffer layer policy is written.

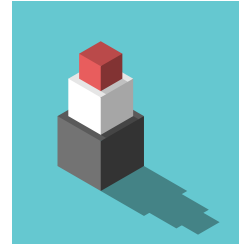


Layering

When an insured needs limits higher than one insurer will provide, multiple excess liability policies may be needed. This method is called layering.



An insured needs \$10,000,000 in excess liability limits. The excess liability insurer, though, will only offer \$5,000,000. An additional layer of coverage from another insurer is required to provide the additional \$5,000,000.



Language in the other insurance conditions of each policy will determine how these additional layers respond.

When layering coverage, it is best to have the terms and conditions of each policy be as similar as possible. Ideally, additional layers beyond the first layer will be true follow form excess liability policies.

Quota Share

When two or more insurers split coverage in one layer it is called quota share. The layer is often divided into equal shares, although this is not always the case. With quota share, it is essential that all insurers covering the same layer use the same coverage form. Terms and conditions must match. If not, coverage gaps can occur.



**Examples of Alternative Structures
for \$20M Total Coverage**

\$19 Million Excess	\$10 Million Excess	\$10 Million Excess	\$15 Million Excess Quota Share
	\$5 Million Excess	\$5 Million Quota Share \$2.5 Million Company A \$2.5 Million Company B	\$5 Million Company A \$5 Million Company A \$5 Million Company A
	\$3 Million Excess	\$4 Million Excess	\$4 Million Excess
	\$1 Million Excess		
	\$1 Million Underlying	\$1 Million Underlying	\$1 Million Underlying

Summary

Excess liability coverage should be considered by every business. Some excess liability policies are designed to provide additional limits in the event of a catastrophic claim and to drop down to replace exhausted underlying aggregate limits. Others—commercial umbrella policies—also provide primary coverage, subject to a self-insured retention, when an underlying policy doesn't cover a claim that is covered by the commercial umbrella.

As excess liability forms vary greatly among insurers, it is important that all forms and endorsements be carefully reviewed. One must consider the insuring agreement, who is an insured, underlying requirements, and common exclusions. Only after a careful review can the agent and insured understand whether the proposed program meets the insured's coverage needs.

Resources

Important concepts related to the Learning Objectives in this chapter are summarized in separate videos and podcasts. Online participants can use the links to access these learning resources. Classroom learners can access the videos at scic.com/CMLresources.



“Speaking From Experience”—The Purpose of Excess Liability and Commercial Umbrella Policies, with Allen Messer, CIC, CPCU

Section 5 Self-Quiz

Directions: Explain the purposes of each type of excess liability policy by identifying its characteristics. Fill in the columns by answering: Yes, No, and Maybe.

Characteristic	Follow form excess liability	Stand alone excess liability	Commercial umbrella
A. Provides additional limits that are excess over those provided in the underlying policies of insurance			
B. Drops down when an underlying aggregate is reduced or exhausted			
C. Provides broader coverage than the underlying policies			
D. Has its own insuring agreement, terms, and conditions			
E. Provides primary coverage, subject to a self-insured retention, if the policy provides coverage that is broader than the underlying policies			

Directions: Read the statements below and for each one, determine whether it is true or false.

1. Most excess liability policies are written on an indemnify basis.

True

False

2. With dual insuring agreements, some insurers follow the pattern seen in ISO forms and some follow the pattern seen in some AAIS forms.

True

False

3. A singular insuring agreement is also referred to as a bifurcated form.

True

False

Section 5: Commercial Excess/Umbrella Coverages

4. Excess liability policy exclusions only appear in the exclusions section of the policy.

True

False

5. **Commercial Liability Umbrella Coverage Form (CU 00 01 04 13)** provides coverage when the insured causes fire damage to a rented premises.

True

False

6. **Commercial Liability Umbrella Coverage Form (CU 00 01 04 13)** provides contractual liability coverage for certain personal and advertising injury offenses.

True

False

7. Most excess liability insurers are willing to provide coverage for uninsured/underinsured motorist and employment practices liability exposures.

True

False

8. An excess liability policy is meant to provide additional limits that are excess over those provided in the underlying policies of insurance and to respond to losses when the aggregate limit of an underlying policy is reduced or exhausted.

True

False

9. The amount the named insured is responsible for when the commercial umbrella provides coverage broader than the underlying policies is known as the self-insured retention (SIR).

True

False

10. When the commercial umbrella drops down to be primary because its coverage is broader than the underlying policies, the SIR will apply.

True

False

Section 5: Commercial Excess/Umbrella Coverages

Directions: Read the following multiple-choice questions and select the single correct response for each.

11. When policies have the same effective and expiration dates, they are said to be:
- Nonconcurrent
 - Indemnified
 - Bifurcated
 - Concurrent
12. Which of the following is **not** a reason why there could be a coverage gap if the excess liability policy and underlying policies have different effective dates?
- Excess liability policies typically require the limits of underlying policies be unimpaired as of the effective date of the excess liability policy.
 - The underlying limits should not have been reduced or exhausted by payment of losses that occurred prior to the effective date of the excess liability policy.
 - Excess liability policies typically include language that allows the underlying limits to be reduced or exhausted by payment of losses that occur at any time.
 - The underlying aggregate could have been reduced by payment of losses that occurred prior to the effective date of the excess liability policy.
13. Identify one way to effectively solve a nonconcurrency issue.
- Write a short-term excess liability policy to expire with the underlying policy.
 - Add nonconcurrency language to the CGL policy.
 - Cancel and rewrite so that all policies have concurrent dates.
 - Wait until the CGL renews to write the excess liability policy.
14. CGL, business auto liability, and employers liability are:
- policies that may be included on the schedule of underlying insurance of an excess liability policy.
 - underlying policies with aggregate limits.
 - exclusions on an excess liability policy.
 - the only policies that can be included on the schedule of underlying insurance.

Section 5: Commercial Excess/Umbrella Coverages

15. If the insured goes bankrupt or the underlying insurer becomes insolvent, the following will happen:
- The excess liability insurer is relieved of its obligations, and the excess liability policy will still pay regardless of whether the insured is bankrupt or the insurer becomes insolvent.
 - The excess insurer is not relieved of its obligations, and the excess liability policy will not pay regardless of whether the insured is bankrupt or the insurer becomes insolvent.
 - The excess liability insurer is not relieved of its obligations, and, in the case of an insolvent insurer, will pay as though the underlying coverage were in full effect.
16. Which of the following is true regarding commercial umbrella policies?
- All named insureds on underlying policies are automatically included as named insureds on a commercial umbrella policy.
 - All additional insureds on underlying policies are automatically included as additional insureds on a commercial umbrella policy.
 - If the underlying CGL general aggregate applies separately to each location, the commercial umbrella aggregate will also apply separately to each location.
 - Ultimate net loss is a term used in some policies to describe the amount that the insurer is obligated to pay within the limits of liability.

Appendix

Preparing for the Final Exam

Keep in mind, the most important measure of your knowledge will be witnessed in your service to your organization. Think of an exam as a tool. Use it to come to an understanding of what you know, how it affects your work, and what more you would like to know to have even greater success in the workplace.

The testing period is two hours long. You are required to earn a minimum of 140 out of 200 possible points. Questions appear in the order of presentation of the topics.

Remain aware of the time as you take the exam. Pace yourself and be aware that unanswered questions are considered incorrect.

Study Techniques

Here are some techniques you can use to help you prepare for the Final Exam. Apply these same techniques to each section in this Learning Guide.

1. Review the Section Goal.
2. Re-read the Introduction.
3. Review each Learning Objective.
4. Change each head and subhead into a question. Then answer the question. For example, header: Risk Financing Plans
Question: What are some examples of risk financing plans?
5. Review each diagram, graph, and table. Interpret what you see. Ask yourself how it relates to a specific learning objective.
6. Check your answers to each Check-In activity. Correct your original answers, if necessary.
7. Check your answers to each Knowledge Check. Consider ways to improve your original answers.
8. Re-read the summary at the end of each section.
9. Check your answers for each section Self-Quiz. Correct your original answers, if necessary.
10. Review any comments, highlights, or notes you made in each section.
11. Rewrite important ideas in your own words. Find ways to relate your work experiences to those ideas.
12. Make flash cards to help you review important vocabulary.

Sample Exam Questions

1. Bailment is a relationship where one party accepts property of another for a particular purpose. There are several types of bailment, and the bailee's duty of care varies depending on the type of bailment. Please explain the duty of care in a **gratuitous bailment for the benefit of the bailee**.

Sample Answer:

The bailee owes the bailor a much higher duty of care.

2. In the ISO Information Security Protection Cyber Policy, there are eight insuring agreements. Please list two first party insuring agreements and two liability insuring agreements.

Sample Answers:

First Party (need 2)

- Cyber Incident Or Information Security Breach Expense
- Cyber Extortion Events
- Replacement Or Restoration Of Electronic Data
- Business Income And Extra Expense

Liability (need 2)

- Cyber Incident Or Information Security Breach Liability
- Regulatory Proceeding Liability
- Payment Card Industry Liability
- Media Liability

Glossary of Terms

Section 1: Inland Marine³

Part 1 – Introduction and Bailee Coverage

actual cash value the value of covered property is based on the actual cash value at the time of loss (with a deduction for depreciation)

American Association of Insurance Services (AAIS) an organization that collects statistical data, promulgates rating information, develops standard policy forms, and files information with state regulators on behalf of insurance companies that purchase its services

bailee the party in a bailment relationship that accepts property of another for a particular purpose

bailee policy an inland marine policy designed to cover loss of or damage to property of others in the bailee's care

bailment a relationship where one party (the bailee) accepts property of another (the bailor) for a particular purpose

bailor the party in a bailment relationship that owns the property

coverage territory the United States, its territories and possessions, Canada, and Puerto Rico

direct damage coverage one of two ways to write bailee coverage; with this option, coverage applies regardless of whether the bailee is legally liable for the loss

floater a term used to describe many inland marine forms because coverage is not location-specific and applies to personal property anywhere in the coverage territory

inland marine coverage a form of property coverage that developed from the original ocean marine policies; most inland marine policies are designed to cover exposures that have an element of mobility or a relationship to transportation

legal liability coverage one of two ways to write bailee coverage; with this option, coverage applies only if the bailee is legally liable for the loss, e.g., the bailee is negligent

loss to parts the value of a lost or damaged part of an item that consists of several parts when it is complete is based on the value of only the lost or damaged part or the cost to repair or replace it

³ Some terms appear in multiple inland marine policies. Unless there is a significant difference in the definition between policy forms, the term appears only once in the glossary. In cases where it is common for an insurer to define terms in a significantly different way, the name of the form in which a definition appears has been included.

Glossary of Terms

no benefit to bailee a clause in a property policy that reinforces the insurer's right to subrogate against a bailee after having paid a claim

pair or set the value of a lost or damaged article which is part of a pair or set is based on a reasonable proportion of the value of the entire pair or set

pollutant any solid, liquid, gaseous, thermal, or radioactive irritant or contaminant, including acids, alkalis, chemicals, fumes, smoke, soot, vapor, and waste AND electrical or magnetic emissions, whether visible or invisible, and sound emissions

schedule of coverages describes the covered premises and property and indicates the policy limits and deductible

specified perils (as defined in AAIS Miscellaneous Bailee Processor Floater IM 7501 04 04) aircraft; civil commotion; explosion; falling objects; fire; hail; leakage from fire extinguishing equipment; lightning; riot; sinkhole collapse; smoke; sonic boom; vandalism; vehicles; volcanic action; water damage; weight of ice, snow, or sleet; and windstorm

voluntary parting voluntary parting with title to or possession of any property because of any fraudulent scheme, trick, or false pretense

Part 2 – Builders Risk and Installation Floater

additional construction expenses (as defined in AAIS Delay in Completion Coverage Part Includes Rental Income and Income Coverage IM 7079 07 20) the following expenses over and above those expenses that would have been incurred had there been no delay period: advertising, design fees, financing, lease administration, professional fees, permit fees

- **advertising** additional advertising, public relations, and promotional expenses
- **design fees** additional fees for architects, interior designers, consultants, and other technical advisors, and engineers
- **financing** the following additional cost of financing: fees for letters of credit and trusts, commissions and loan fees incurred in rearranging financing
- **lease administration** the cost of administrative expenses and commissions that result from the renegotiation of leases
- **professional fees** additional fees for accountants and attorneys
- **permit fees** additional fees for renewing or replacing construction permits or other licenses and permits necessary to continue construction

additional installation expenses (as defined in AAIS Delay in Completion Coverage Part Installation Floater Coverage IM 7125 08 10) includes design fees, financing, lease administration, professional fees, and permit fees

Glossary of Terms

additional soft costs (as defined in AAIS Delay in Completion Coverage Part Includes Rental Income and Income Coverage IM 7079 07 20) the following expenses over and above those expenses that would have been incurred had there been no delay period: interest payments, realty taxes, lease expenses, insurance premiums

- **interest payments** additional interest payments on money borrowed to finance construction, remodeling, renovation, or repair including increased interest payments due to a rise in interest rates
- **realty taxes** additional realty taxes and other assessments the named insured incurs for the period that construction has been extended beyond the projected completion date
- **lease expenses** the additional cost to extend leases for construction equipment and temporary office space
- **insurance premiums** the additional cost of insurance premiums necessary to renew or extend insurance coverage

additional soft costs (as defined in AAIS Delay in Completion Coverage Part Installation Floater Coverage IM 7125 08 10) includes interest payments, realty taxes, lease expenses, and insurance premiums

builders risk policy an inland marine policy written to cover buildings or structures under construction, or in the course of renovation or rehabilitation

buildings or structures (as defined in Builders' Risk Coverage Scheduled Jobsite Form Comprehensive Form IM 7050 07 20) buildings, structures, materials, and supplies that will become a permanent part of the buildings or the structures, and foundations, excavations, grading, filling, attachments, permanent fencing, and other permanent fixtures

cold testing (as defined in AAIS Testing and Commissioning Coverage IM 7114 02 11) the checking of the component parts of equipment or machinery by mechanical, electrical, hydrostatic, or other forms of testing under dry run conditions

completed value form (builders risk definition) one way to structure a builders risk policy; usually written to cover a single project; the limit of insurance chosen is the value of the completed project plus any other property to be insured

commissioning (as defined in AAIS Testing and Commissioning Coverage IM 7114 02 11) the operation of equipment or machinery with feedstock or other materials for processing under production conditions for the purposes of attaining specification requirements or for training operational personnel

contract penalties penalties for noncompliance with contract provisions faced by contractors who cannot complete a project on time

debris removal the costs for the demolition, clearing, and removal of debris of covered property if such debris results from a covered peril

Glossary of Terms

delay an interruption in the construction, erection, or fabrication of buildings or structures caused by a covered peril

delay period the period the completion of the construction, erection, or fabrication of covered buildings or structures is delayed because of direct physical loss or damage caused by a covered peril

earth movement the movement of the ground, soil, sediments, substrates, or strata whether the movement is caused by an act of nature or is manmade

emergency removal expenses expenses to move or store property to protect it from damage by a covered cause of loss threatening the project site

expediting expenses additional expenses to get the project back on track so that it can be finished by the original completion date in the contract

flood an overflowing or inundation by water of an area that was previously and normally dry or not covered by water, whether caused artificially or naturally, by human or animal forces, or by an act of nature

fraud and deceit theft of covered property when the insured is fraudulently induced to part with the property

hot testing (as defined in the AAIS Testing and Commissioning Coverage IM 7114 02 11) the checking of the component parts of equipment or machinery under load or operational conditions

income coverage covers the actual loss of net income (net profit or loss before income taxes) that would have been earned or incurred and the continued operating expenses normally incurred by the business

installation floater an inland marine policy written to cover materials or equipment to be installed in an existing building or structure or to cover a particular aspect of a project

installation project (as defined in AAIS Installation Floater Coverage IM 7100 08 10) an installation or construction project including but not limited to a repair or maintenance project that involves the installation, construction, or rigging of materials, supplies, fixtures, machinery, or equipment

jobsite (as defined in AAIS Installation Floater Coverage IM 7100 08 10) any location, project, or work site where the named insured is involved in the installation, construction, or rigging of materials, supplies, fixtures, machinery, or equipment

non-reporting form (installation floater) one way to structure an installation floater; can be written to cover one scheduled project or numerous unscheduled projects

rental income coverage covers the actual loss of rental income incurred during the delay period

Glossary of Terms

replacement cost (as defined in AAIS Builders' Risk Coverage Scheduled Jobsite Form Comprehensive Form IM 7050 07 20) necessary and reasonable costs of materials and labor to repair or replace, without deduction for depreciation, damaged property, including overhead and profit and other related construction costs and expenses

reporting form (builders risk) one way to structure a builders risk policy; written to cover multiple projects; the policy will typically have an overall catastrophe or occurrence limit and a sublimit for each project

reporting form (installation floater) one way to structure an installation floater that is written to cover multiple projects; the insured is required to make periodic reports of the receipts earned from installation projects

reward amount paid to an eligible person for information leading to the arrest and conviction of anyone committing arson, theft, or vandalism

sewer backup water or waterborne material that backs up, overflows, or is discharged through a sewer or drain, sump, or septic tank; includes water or waterborne material below the surface of the ground

specified perils (as defined in AAIS Builders' Risk Coverage Scheduled Jobsite Form Comprehensive Form IM 7050 07 20) aircraft; civil commotion; explosion; falling objects; fire; hail; leakage from fire extinguishing equipment; lightning; riot; "sinkhole collapse"; smoke; sonic boom; vandalism; vehicles; "volcanic action"; water damage; weight of ice, snow, or sleet; and windstorm

subcontractors of every tier this phrase is intended to include sub-contractors, sub-sub-contractors, etc.

testing (as defined in AAIS Testing Endorsement IM 7076 01 12) startup, performance, stress, pressure, or overload testing of materials, supplies, machinery, fixtures, and equipment that will become a permanent part of a covered building or structure

Part 3 – Contractors Equipment

agreed amount the insured and the insurer agree on the value of the property at the time the policy is written; should there be a total loss to the equipment, the agreed amount will be paid

blanket contractors equipment policy a policy that does not include specific limits for the items to be insured; there is a single catastrophe limit and, usually, a maximum per item limit

contractors' equipment (as defined in AAIS Contractors' Equipment Coverage IM 7000 04 04) machinery, equipment, and tools of a mobile nature that the named insured uses in its contracting, installation, erection, repair, or moving operations or projects

contractors equipment policy a policy that covers tools and equipment a contractor uses to complete a project—the policy can also be written to cover equipment for other types of businesses

Glossary of Terms

earnings net income (net profit or loss before income taxes) that would have been earned or incurred and continuing operating expenses normally incurred by the business

restoration period the time it should reasonably take to resume business to a similar level starting from the date of a physical loss of or damage to covered contractors' equipment that is caused by a covered peril and ending on the date the property should be repaired or replaced

scheduled contractors equipment policy a policy where each item to be insured is covered up to a specific limit

weight of load the weight of the load, under the operating conditions at the time of a loss, exceeds the capacity that the equipment is designed to lift

Part 4 – Transportation

bill of lading a contract that evidences a carrier's receipt of the goods to be shipped and which outlines the agreed upon terms for shipping the goods

carrier the party that provides the transportation

carrier for hire (as defined in AAIS Transportation Coverage IM 7250 04 04) any one vehicle, truck, trailer, semitrailer, or combination of these pulled by one power unit operated by a carrier for hire

common carrier provides transportation for hire to the public

contract carrier delivers goods for specific shippers with which it has a contract

private carrier transport their own property on their own vehicle

owned vehicle (as defined in AAIS Transportation Coverage IM 7250 04 04) any one vehicle, truck, trailer, semitrailer, or combination of these pulled by one power unit owned or leased by the named insured and operated by the named insured

owner the party that holds title to the property being shipped

perishable stock property preserved and maintained under controlled conditions and susceptible to loss or damage if the controlled conditions change

released bill of lading limits the carrier's responsibility to the value on the bill of lading

shipper the party that arranges for goods to enter the course of transit and is often the same as the owner

specified perils (as defined in AAIS Transportation Coverage IM 7250 04 04) fire; lightning; windstorm; hail; collision, overturn, or derailment of a transporting conveyance; collapse of a bridge or culvert; theft

spoilage any detrimental change in physical state of perishable stock

Glossary of Terms

terminal a building where covered property is transferred between vehicles or between vehicles and other transporting conveyances

transit the shipment of covered property that begins at the point of shipment to a specific destination and ends upon acceptance of the goods by or on behalf of the consignee at the specified destination; includes the ordinary reasonable and necessary stops, interruptions, delays, or transfers incidental to the route and method of shipment, including rest periods taken by the driver

transportation policy a policy written to cover an insured's cargo shipments during the policy term when the cargo is transported by carriers for hire, railroads, airlines, or vehicles owned by the named insured

uniform bill of lading the shipper declares a value for the property being shipped; in the event of a loss to the cargo, the shipper can recover the declared value of the goods being shipped

Section 2: Employment Practices Liability

actual termination employment is involuntarily terminated

Americans with Disabilities Act (ADA) a federal law that prohibits discrimination against people with disabilities; applies to several areas, including employment and public accommodations

biometric identifiers data generated by characteristics such as fingerprints and facial scans; used to monitor employees, to restrict access to secure areas, and to log into certain online systems

claim (as defined in Employment-Related Practices Liability Coverage Form EP 00 01 11 09) a suit or demand made by or for a current, former, or prospective employee for damages because of an alleged wrongful act

consent to settle/hammer clause a clause in a EPLI policy that makes the insured responsible for some portion of defense costs and claims paid if the insured does not consent to a claim settlement

constructive termination—aka constructive discharge an employer, instead of firing an employee, makes the working conditions unbearable so that the employee resigns

discrimination violation of a person's civil rights with respect to certain characteristics, many of which are protected classes under various statutes

employee (as defined in Employment-Related Practices Liability Coverage Form EP 00 01 11 09) employee includes a leased worker and a temporary worker, but does not include an independent contractor

employment-at-will an employer can terminate employment for any legal reason without proving a just cause

Glossary of Terms

extended reporting period in a claims-made policy, an additional period of time during which claims can be made, triggering coverage under the policy

Fair Labor Standards Act (FLSA) a federal law that establishes minimum wage, overtime pay, recordkeeping, and youth employment standards affecting employees in the private sector and in federal, state, and local governments

hostile environment (sexual harassment) unwelcome sexual conduct that unreasonably interferes with an individual's job performance or creates an intimidating, hostile, or offensive working environment

immigration practices claim claim alleging violations of the Immigration Reform Control Act of 1986 or similar laws or regulations

prior or pending litigation (PPL) date in a claims-made policy, there is no coverage for claims that were first made against the insured prior to the PPL date

quid pro quo (sexual harassment) submission to or rejection of unwelcome sexual conduct by an individual is used as the basis for employment decisions affecting such individual

retaliation an employer fires an employee or takes any other type of adverse action against an employee for engaging in a protected activity

retroactive date in a claims-made policy, the date on or after which the covered act must occur for coverage to apply

spousal liability an insured's spouse is covered when named in a suit alleging a wrongful act on the part of an insured

Age Discrimination in Employment Act of 1967 (ADEA) federal law that, along with its amendments, prohibits employment discrimination against persons 40 years of age or older

third-party liability coverage covers claims for discrimination and/or harassment made by certain individuals who are not employees

Title VII of the Civil Rights Act of 1964 (Title VII) federal law that, along with its amendments, prohibits employment discrimination based on race, color, religion, sex, and national origin

tort a civil wrong that does not involve a breach of contract

website accessibility suits discrimination claims made by those with a disability who are unable to use the features of a company's website

workplace violence acts involving deadly force or the threat of deadly force on the insured's premises

wrongful act a list of employment-related offenses covered by the EPLI policy

Section 3: Crime Coverages and Endorsements

authorized person certain individuals within the insured's organization with authority to act upon change of account requests or direct others to act upon such requests, or to issue transfer instructions or direct others to issue such instructions

change of account request an instruction received by the insured directing the insured to change a client's or vendor's bank account information or wire transfer instructions

client any natural person or entity to whom the named insured provides goods or services in exchange for a fee or pursuant to a written agreement

computer program a set of related electronic instructions which direct the operation and function of a computer or devices connected to it, which enables the computer or devices to receive, process, store, or send electronic data

computer system computers including peripheral components, software, and related telecommunications networks used with electronic data; the system must be the insured's or, under certain conditions, an employee's or a third party's

counterfeit money an imitation of money which is intended to deceive and to be taken as genuine

custodian the named insured, its partners, LLC members, or employees who have care and custody of property inside the insured's premises

discover when a designated person first becomes aware of facts that would cause a reasonable person to assume a loss has occurred OR when a designated person receives notice of a claim alleging that the insured is liable to a third party

designated agent an agent acting in a designated capacity appointed in writing by the insured

designated person certain individuals within the organization including an insurance risk manager, partner, LLC member or manager, officer, and others

Discovery Form crime form that covers occurrences that place at any time and are discovered during the policy period or the extended period to discover loss

electronic data information, facts, images, or sounds stored as or on, created or used on, or transmitted to or from computer software on data storage devices

employee natural persons whom the insured compensates and has the right to direct or control along with others specifically described; e.g., former employees retained as consultants and guest students and interns

Employee Retirement Income Security Act of 1974 (ERISA) federal law that sets minimum standards for most voluntarily established retirement and health plans in private industry to provide protection for individuals in these plans

Glossary of Terms

ERISA employee benefit plan a welfare or pension benefit plan subject to ERISA (Employee Retirement Income Security Act of 1974) and its amendments

ERISA plan official an administrator, fiduciary, director, trustee, manager, or employee of an ERISA employee benefit plan, or a director, trustee, or employee of an insured sponsoring an ERISA employee benefit plan, while that person is engaged in handling plan assets

extended period to discover loss the period of time after policy expiration during which a loss can be discovered in order to trigger crime coverage

financial institution (for Computer And Funds Transfer Fraud coverage) a bank or similar depository institution; an insurance company; or a stock brokerage firm or investment company

financial institution premises the interior of that portion of any building occupied by a financial institution

forgery the signing of the name of another person or entity with intent to deceive

fraud or dishonesty larceny, theft, embezzlement, forgery, misappropriation, wrongful abstraction, wrongful conversion, willful misapplication, or other fraudulent or dishonest acts

loss sustained form crime form that covers occurrences during the policy period that are discovered during the policy period or the extended period to discover loss

messenger the named insured, its relatives, partners, LLC members, or employees while having care and custody of property outside the insured's premises

money currency, travelers checks and money orders held for sale, and deposits in a financial institution

occurrence (for Employee Theft coverage) an individual act or a series of acts committed by an employee alone or in collusion with others

other property tangible property other than money and securities

premises the interior of that portion of any building occupied by the insured

retroactive date in an endorsed Discovery Form crime policy, the date after which the occurrence must take place

robbery the unlawful taking of property by causing or threatening to cause bodily harm; includes a situation where the person with the property witnessed an unlawful act committed by the criminal

safe burglary the unlawful taking of property from within a locked safe or vault by someone who unlawfully entered the safe or vault as evidenced by signs of forcible entry; includes someone removing the safe or vault from inside the insured's premises

securities negotiable and non-negotiable instruments that represent money or property

Glossary of Terms

theft the unlawful taking of property to the deprivation of the Insured—with respect to Employee Theft Of Clients' Property coverage, the unlawful taking of property to the deprivation of a client

transfer account an account maintained by the insured at a financial institution

transfer instruction (for Computer And Funds Transfer Fraud coverage) an instruction received by a financial institution which directs the financial institution to transfer, pay, or deliver money or securities from the insured's transfer account to another beyond the insured's control

transfer instruction (for Fraudulent Impersonation coverage) an instruction received by the insured directing the insured to transfer, pay, or deliver money or securities to another beyond the insured's control

vendor one that provides goods or services to the named insured pursuant to a written agreement

Section 4: Cyber Exposures and Coverage

annual aggregate maximum amount a policy will pay during the policy period regardless of the number of losses or insuring agreements

copyright exclusive legal right given to the originator or an assignee to print, publish, perform, film or record literary, artistic, or musical material, and to authorize others to do the same

cyber extortion demanding money by threatening to disable the operations of a business or compromise confidential data

denial of service (DoS) continual attack on a website or e-commerce portal through the use of a single computer to purposefully disrupt services

distributed denial of service (DDoS) continual attack on a website or e-commerce portal using multiple computers to purposefully disrupt services

e-commerce business transactions completed through the internet

fraudulent instruction (social engineering) unauthorized communication where one party impersonates another to gain access to information, property, or money

hammer clause clause that requires the insured's consent to settle a loss; if the insured refuses consent, all additional expenses for defense and additional judgment is the responsibility of the insured; commonly referred to as a "hard hammer" clause, policies with consent clauses, which make the insured responsible for a percentage of those expenses, are said to have "soft hammer" or "velvet hammer" clauses

intellectual property rights any and all rights associated with intangible assets owned by a person or company. This includes non-physical property such as patents, domain names, inventions moral rights, database rights, service marks, trademarks, tradenames, and others

Glossary of Terms

internet of things (IoT) any device connected to the internet that can send and/or receive data

PCI DSS Payment Card Industry's Data Security Standard; a widely accepted set of policies and procedures intended to optimize the security of credit, debit, and cash transactions and protect cardholders against misuse of personal information

point of sale (PoS) devices that are used in stores to transact credit and debit card payments for good and services

ransomware malicious software; designed to block access to a computer system until a sum of money is paid

severability clause in the insurance policy that states the coverage applies to each insured individually as if they were the only insured; provision does not apply to coverage limits

Section 5: Commercial Excess/Umbrella Coverages⁴

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

buffer layer coverage purchased to fill the gap between an underlying policy and the underlying requirement of the excess liability policy

commercial umbrella liability policy a type of excess liability policy that drops down to provide primary coverage when its coverage is broader than that of underlying policies

concurrent policies policies that have the same effective and expiration dates

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

dual insuring agreements (bifurcated forms) umbrella policies that have two insuring agreements

follow form excess liability policies excess liability policies that mirror the terms and conditions of the underlying coverage forms

indemnify form in the event of a covered loss, the insured investigates the claim, provides defense, negotiates any settlement, and pays any judgments or settlements—the insurer reimburses the insured for these amounts

layering a technique for using multiple excess liability policies to provide the required limits

nonconcurrency language/endorsement language that is added to the excess liability policy to remove any concurrency requirement in the policy

⁴ Definitions found in the policy are based on ISO's Commercial Liability Umbrella Coverage Form CU 00 01 04 13

Glossary of Terms

pay on behalf of form in the event of a covered loss, the insurer investigates the claim, provides defense, negotiates any settlement, and pays any judgments or settlements

property damage physical injury to tangible property, including all resulting loss of use AND loss of use of tangible property that is not physically injured

quota share two or more insurers split coverage in one layer

retained limit the available limits of underlying insurance scheduled in the Declarations or the self-insured retention, whichever applies

self-insured retention (SIR) the dollar amount the named insured is responsible for when the commercial umbrella provides coverage that is broader than the underlying policies

singular insuring agreement excess liability or umbrella policies that have only one insuring agreement

stand alone excess liability policies excess liability policies that contain their own insuring agreements and terms and conditions which are separate from the underlying policies

underlying insurance policies of insurance listed in the Declarations under the schedule of underlying insurance; the coverage the insured is required to maintain

ultimate net loss the total sum, after reduction for recoveries or salvages collectible, that the insured becomes legally obligated to pay as damages

unimpaired aggregate the aggregate limit of an underlying policy that has not been reduced by the payment of claims